

2007 Senate Bill 116

Date of enactment: **March 18, 2008**

Date of publication\*: **April 1, 2008**

# 2007 WISCONSIN ACT 111

AN ACT *to amend* 20.435 (6) (hx), 48.685 (5) (bm) 4., 346.65 (2) (am) 5., 346.65 (2) (f), 346.65 (2c), 346.65 (7), 346.655 (1), 346.655 (2) (a) and 346.655 (2) (b); and *to create* 346.65 (2) (am) 6. and 346.65 (2) (am) 7. of the statutes; **relating to:** repeat drunken driving offenders and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1g.** 20.435 (6) (hx) of the statutes is amended to read:

20.435 (6) (hx) *Services related to drivers, receipts.* The amounts in the schedule for services related to drivers. All moneys received by the secretary of administration from the driver improvement surcharge on court fines and forfeitures authorized under s. 346.655 and all moneys transferred from the appropriation account under s. 20.395 (5) (di) shall be credited to this appropriation. The secretary of administration shall annually transfer to the appropriation account under s. 20.395 (5) (ek) ~~3.76%~~ 9.75 percent of all moneys credited to this appropriation from the driver improvement surcharge. Any unencumbered moneys in this appropriation account may be transferred to sub. (7) (hy) and ss. 20.255 (1) (hm), 20.285 (1) (ia), 20.395 (5) (ci) and (di), and 20.455 (5) (h) by the secretary of administration, after consultation with the secretaries of health and family services and transportation, the superintendent of public instruction, the attorney general, and the president of the University of Wisconsin System.

**SECTION 1m.** 48.685 (5) (bm) 4. of the statutes is amended to read:

48.685 (5) (bm) 4. A violation of s. 940.19 (3), 1999 stats., or of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5), or (6), 940.20, 940.203, 940.205, 940.207, or 940.25, a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under s. 346.65 (2) (am) ~~5., 6., or 7.~~ or (f), (2j) (d), or (3m), or an offense under ch. 961 that is a felony, if committed not more than 5 years before the date of the investigation under sub. (2) (am).

**SECTION 2.** 346.65 (2) (am) 5. of the statutes is amended to read:

346.65 (2) (am) 5. Except as provided in pars. (f) and (g), is guilty of a Class H felony and shall be fined not less than \$600 and imprisoned for not less than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations and other convictions counted under s. 343.307 (1), equals 5 or ~~more~~ 6, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

**SECTION 3.** 346.65 (2) (am) 6. of the statutes is created to read:

346.65 (2) (am) 6. Except as provided in par. (f), is guilty of a Class G felony if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and

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\* Section 991.11, WISCONSIN STATUTES 2005-06 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

other convictions counted under s. 343.307 (1), equals 7, 8, or 9, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.

**SECTION 4.** 346.65 (2) (am) 7. of the statutes is created to read:

346.65 (2) (am) 7. Except as provided in par. (f), is guilty of a Class F felony if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 10 or more except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.

**SECTION 5.** 346.65 (2) (f) of the statutes is amended to read:

346.65 (2) (f) If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (1), the applicable minimum and maximum forfeitures, fines, or imprisonment under par. (am) for the conviction are doubled. An offense under s. 346.63 (1) that subjects a person to a penalty under par. (am) 3., 4., ~~or 5., 6., or 7.~~ when there is a minor passenger under 16 years of age in the motor vehicle is a felony and the place of imprisonment shall be determined under s. 973.02.

**SECTION 6.** 346.65 (2c) of the statutes is amended to read:

346.65 (2c) In sub. (2) (am) 2., 3., 4., ~~and 5., 6., and 7.~~, the time period shall be measured from the dates of the refusals or violations that resulted in the revocation or convictions. If a person has a suspension, revocation, or conviction for any offense under a local ordinance or a state statute of another state that would be counted under s. 343.307 (1), that suspension, revocation, or conviction shall count as a prior suspension, revocation, or conviction under sub. (2) (am) 2., 3., 4., ~~and 5., 6., and 7.~~

**SECTION 7.** 346.65 (7) of the statutes is amended to read:

346.65 (7) A person convicted under sub. (2) (am) 2., 3., 4., ~~or 5., 6., or 7.~~ or (2j) (am) 2. or 3. shall be required

to remain in the county jail for not less than a 48-consecutive-hour period.

**SECTION 7e.** 346.655 (1) of the statutes is amended to read:

346.655 (1) If a court imposes a fine or a forfeiture for a violation of s. 346.63 (1) or (5), except for a first violation of s. 346.63 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, it shall impose a driver improvement surcharge under ch. 814 in an amount of ~~\$355~~ \$365 in addition to the fine or forfeiture, plus costs, fees, and other surcharges imposed under ch. 814.

**SECTION 7m.** 346.655 (2) (a) of the statutes is amended to read:

346.655 (2) (a) Except as provided in par. (b), the clerk of court shall collect and transmit the amount under sub. (1) to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment of ~~38.5%~~ 40 percent of the amount to the secretary of administration as provided in s. 59.25 (3) (f) 2.

**SECTION 7s.** 346.655 (2) (b) of the statutes is amended to read:

346.655 (2) (b) If the forfeiture is imposed by a municipal court, the court shall transmit the amount to the treasurer of the county, city, town, or village, and that treasurer shall make payment of ~~38.5%~~ 40 percent of the amount to the secretary of administration as provided in s. 66.0114 (1) (bm). The treasurer of the city, town, or village shall transmit the remaining ~~61.5%~~ 60 percent of the amount to the treasurer of the county.

**SECTION 7y. Initial applicability.**

(1) This act first applies to violations committed or refusals occurring on the effective date of this subsection, but does not preclude the counting of other convictions, suspensions, or revocations as prior convictions, suspensions, or revocations for purposes of administrative action by the department of transportation, sentencing by a court, or revocation or suspension of motor vehicle operating privileges.