

## 2009 DRAFTING REQUEST

### Bill

Received: 11/03/2008

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Peggy Krusick (608) 266-1733

By/Representing: Christian Moran

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Transportation - driver licenses  
Transportation - traffic laws

Extra Copies: EVM

Submit via email: YES

Requester's email: Rep.Krusick@legis.wisconsin.gov

Carbon copy (CC:) to: aaron.gary@legis.wisconsin.gov

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### Pre Topic:

No specific pre topic given

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### Topic:

Operating after revocation, while suspended, or without a license; suspension for railroad crossing violations

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### Instructions:

See attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 11/03/2008	nmatzke 11/07/2008		_____			State
/1			rschluet 11/07/2008	_____	mbarman 11/07/2008		State
/2	agary 02/05/2009	nmatzke 02/05/2009	rschluet 02/05/2009	_____	lparisi 02/05/2009	cduerst 03/13/2009	

FE Sent For: "12" @ intro. 4/1/09

<END>

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/?	agary	1 nym 11/3 1 11/7 JLD					
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FE Sent For:

<END>

**Gary, Aaron**

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**To:** Moran, Christian

**Subject:** RE: bill draft request

**From:** Moran, Christian

**Sent:** Friday, October 31, 2008 3:04 PM

**To:** Gary, Aaron

**Subject:** bill draft request

Hi Aaron,

Could you please re-draft LRB-4444/1 for next session? This is the OAR bill draft you prepared for us in June for a criminal justice hearing that was ultimately canceled.

Thanks,

Christian

11/03/2008

P.W.F. ✓

in 11/3

9  
2007 BILL

RMNR  
nwn+  
jld

SA 07 ✓  
09 ✓  
X-ref ✓

✓ Regen. ✓

1 AN ACT *to repeal* 343.05 (5) (b) 3., 343.31 (1) (hm), 343.44 (1) (am), 343.44 (2)  
2 (am), 343.44 (2) (as) and 343.44 (2) (e) to (h); *to renumber* 343.05 (5) (a); *to*  
3 *renumber and amend* 343.44 (2) (a); *to amend* 343.05 (5) (b) 1., 343.30 (1g),  
4 343.30 (2j) (a), 343.31 (2m) and 343.44 (2) (b) (intro.); and *to create* 343.05 (5)  
5 (ag), 343.05 (5) (b) 4. and 5., 343.30 (1d), 343.30 (1g) (c), 343.44 (2) (ad), 343.44  
6 (2) (ag) 2. and 3., 343.44 (2) (ar) and 343.44 (2) (br) of the statutes; **relating to:**  
7 operating a motor vehicle without a valid driver's license or after suspension  
8 or revocation of an operating privilege and providing penalties. ✓

**Analysis by the Legislative Reference Bureau**

Current law prohibits a person from operating a motor vehicle ✓ on the highway during any period in which the person's motor vehicle operating privilege is suspended ✓ (operating while suspended or OWS) ✓ or revoked ✓ (operating after revocation or OAR) ✓ or, with limited exceptions, if the person does not possess a valid operator's license issued by the Department of Transportation (DOT) that is not ✓  
\* revoked, suspended, canceled, or expired ✓ (operating without a license or OWL). ✓  
\* ✓

Under current law, a person convicted of OWS ✓ must forfeit not less than \$50 nor more than \$200. ✓ In addition, a person convicted of "knowing" OWS may be required to forfeit not more than \$200. ✓ A person convicted of first-offense ✓ OAR must forfeit



**BILL**

✓ involving alcohol or controlled substances

not more than \$2,500 unless the underlying operating privilege revocation was the result of specified alcohol- or controlled substance-related traffic violations. A person convicted of OAR who has a prior conviction in the preceding five-year period under state statutes for OAR (but not under a local ordinance) or for whom the underlying operating privilege revocation was the result of specified alcohol- or controlled substance-related traffic violations, must be fined not more than \$2,500 or imprisoned for not more than one year or both. Also under current law, as created in 2005 Wisconsin Act 412, a person who, in the course of a "knowing" OWS violation or OAR violation, causes:

✓ involving alcohol or controlled substances

- 1
- 2

(a) damage to the property of another must forfeit \$1,000; (b) injury to another person must forfeit \$5,000; or (c) great bodily harm or death to another person is guilty of a Class A misdemeanor, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of nine months or both.

3

Under current law, with limited exceptions, a person convicted of OWL with respect to a motor vehicle that is not a commercial motor vehicle may be required to forfeit not more than \$200 for the first offense, may be fined not more than \$300 and imprisoned for not more than 30 days for the second offense occurring within three years, and may be fined not more than \$500 and imprisoned for not more than six months for the third or subsequent offense occurring within three years. Under one exception, if the OWL violation results from the person's operator's license being expired for not more than three months and the person has no prior OWL convictions, the person may be required to forfeit not more than \$100 for the OWL violation. Under another exception, as created in 2005 Wisconsin Act 412, if, in the course of operating the vehicle knowingly without a valid operator's license or knowingly with an operator's license that has been revoked, suspended, or canceled, the person causes: (a) damage to the property of another, the person must forfeit \$1,000; (b) injury to another person, the person must forfeit \$5,000; or (c) great bodily harm or death to another person, the person is guilty of a Class A misdemeanor.

1

- 2
- 3

This bill provides that a person convicted of OAR, regardless of whether it is a first or subsequent offense and regardless of the underlying reason for the revocation, must be fined not more than \$2,500 or imprisoned for not more than one year or both. The bill repeals "knowing" OWS as a separate and distinct violation and repeals all other provisions of 2005 Wisconsin Act 412. The bill creates new penalties for OWS, OAR, and OWL violations where the person, in the course of the violation, causes great bodily harm or death to another person.

in which

Under the bill, a person convicted of OWL or OWS who, in the course of the violation, causes great bodily harm to another person: (1) must forfeit not less than \$5,000 nor more than \$7,500 if, at the time of the violation, the person did not know, respectively, that he or she did not possess a valid operator's license or that his or her operating privilege was suspended or revoked; or (2) is guilty of a Class I felony if the person knew. A Class I felony is punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of three and one-half years or both. If the person causes the death of another in the course of the OWL or OWS violation, the person: (1) must forfeit not less than \$7,500 nor more than \$10,000 if the person did not know, respectively, that he or she did not possess a valid operator's license or that his or her operating privilege was suspended or revoked; or (2) is guilty of a Class H felony if

@ \*

- \*
- \*
- \*
- \*

\*

2

**BILL**

the person knew. A Class H felony is punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of six years or both. A person convicted of OAR who, in the course of the violation, causes great bodily harm to another person: (1) must be fined not less than \$5,000 nor more than \$7,500 or imprisoned for not more than one year or both if, at the time of the violation, the person did not know that his or her operating privilege was revoked; or (2) is guilty of a Class I felony if the person knew. If the person causes the death of another in the course of the OAR violation, the person: (1) must be fined not less than \$7,500 nor more than \$10,000 or imprisoned for not more than one year or both if the person did not know that his or her operating privilege was revoked; or (2) is guilty of a Class H felony if the person knew.

Under current law, a court may suspend a person's operating privilege for any period not exceeding six months upon the person's conviction for OAR or OWS or operating a commercial motor vehicle during a period in which the person is disqualified (operating while disqualified or OWD). However, a court must revoke a person's operating privilege, for a period of six months or less, upon the person's conviction for OAR, OWS, or OWD if the person has been convicted of three or more prior violations of OAR, OWS, or OWD within the preceding five-year period. In addition, (DOT) must administratively revoke a person's operating privilege, for a period of six months unless the court has ordered a revocation for a lesser period, upon receiving a record of conviction showing that the person has been convicted of OAR, OWS, or OWD if the person has been convicted of three or more prior violations of OAR, OWS, or OWD within the preceding five-year period.

This bill makes court-ordered operating privilege revocation for a fourth offense OAR, OWS, or OWD permissive rather than mandatory and eliminates the requirement that DOT administratively revoke a person's operating privilege for a fourth offense OAR, OWS, or OWD. In addition, the bill requires a court to revoke a person's operating privilege if the person is convicted of OWL, OWS, or OAR and, in the course of the violation, the person causes great bodily harm or death to another person. The bill also provides that, as with OWS and OAR, DOT may revoke a resident's operating privilege if the resident is convicted in another state for an OWL offense in the course of which the person causes great bodily harm or death to another person.

Under current law, a vehicle operator may not drive on or across a railroad crossing while any traffic officer or railroad employee signals to stop, while any warning device signals to stop, or, if any crossbuck sign is maintained at the crossing, while any train occupies or closely approaches the crossing. A vehicle operator may not drive through or around any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed. A court may revoke a person's operating privilege upon the person's first conviction of any of these violations and must revoke the person's operating privilege upon the person's second or subsequent conviction within a five-year period. The revocation is for six months.

This bill provides for suspension of a person's operating privilege, rather than revocation of the person's operating privilege, for any of these violations.

*the Department  
of Transportation*

**BILL**

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 343.05 (5) (a) of the statutes is renumbered 343.05 (5) (am).

2           **SECTION 2.** 343.05 (5) (ag) of the statutes is created to read:

3           343.05 (5) (ag) In this subsection, "great bodily harm" has the meaning given  
4 in s. 939.22 (14).

5           **SECTION 3.** 343.05 (5) (b) 1. of the statutes is amended to read:

6           343.05 (5) (b) 1. Except as provided in subd. subds. 2. or 3. to 5. and sub. (6),  
7 any person who violates sub. (3) (a) may be required to forfeit not more than \$200 for  
8 the first offense, may be fined not more than \$300 and imprisoned for not more than  
9 30 days for the 2nd offense occurring within 3 years, and may be fined not more than  
10 \$500 and imprisoned for not more than 6 months for the 3rd or subsequent offense  
11 occurring within 3 years. ~~A~~ In this paragraph, a violation of a local ordinance in  
12 conformity with this section or a violation of a law of a federally recognized American  
13 Indian tribe or band in this state in conformity with this section shall count as a  
14 previous offense.

15           **SECTION 4.** 343.05 (5) (b) 3. of the statutes is repealed.

16           **SECTION 5.** 343.05 (5) (b) 4. and 5. of the statutes are created to read:

17           343.05 (5) (b) 4. Except as provided in subd. 2. and sub. (6), any person who  
18 violates sub. (3) (a) and, in the course of the violation, causes great bodily harm to  
19 another person is required to forfeit not less than \$5,000 nor more than \$7,500,

**BILL**

1 except that, if the person knows at the time of the violation that he or she does not  
2 possess a valid operator's license, the person is guilty of a Class I felony.

3 5. Except as provided in subd. 2. and sub. (6), any person who violates sub. (3)  
4 (a) and, in the course of the violation, causes the death of another person is required  
5 to forfeit not less than \$7,500 nor more than \$10,000, except that, if the person knows  
6 at the time of the violation that he or she does not possess a valid operator's license,  
7 the person is guilty of a Class H felony.

8 **SECTION 6.** 343.30 (1d) of the statutes is created to read:

9 343.30 (1d) A court shall revoke a person's operating privilege upon the  
10 person's conviction for violating s. 343.05 (3) (a) or a local ordinance in conformity  
11 therewith if the person, in the course of the violation, causes great bodily harm, as  
12 defined in s. 939.22 (14), to another person or the death of another person. Any  
13 revocation under this subsection shall be for a period of 6 months, unless the court  
14 orders a period of revocation of less than 6 months and places its reasons for ordering  
15 the lesser period of revocation on the record.

16 **SECTION 7.** 343.30 (1g) of the statutes is amended to read:

17 343.30 (1g) (a) ~~Except as provided in par. Subject to pars. (b) and (c),~~ a court  
18 may suspend a person's operating privilege for any period not exceeding 6 months  
19 upon the person's conviction for violating s. 343.44 (1) (a), (b), or (d) or a local  
20 ordinance in conformity therewith.

21 (b) ~~A~~ Except as provided in par. (c), a court shall may revoke a person's  
22 operating privilege upon the person's conviction for violating s. 343.44 (1) (a), (b), or  
23 (d) or a local ordinance in conformity therewith if the person has been convicted of  
24 3 or more prior violations of s. 343.44 (1) (a), (b), or (d), or similar violations under

**BILL****SECTION 7**

1 s. 343.44 (1), 1997 stats., or a local ordinance in conformity therewith, within the  
2 5-year period preceding the violation. The

3 (d) Any revocation under this subsection shall be for a period of 6 months,  
4 unless the court orders a period of revocation of less than 6 months and places its  
5 reasons for ordering the lesser period of revocation on the record.

6 **SECTION 8.** 343.30 (1g) (c) of the statutes is created to read:

7 343.30 (1g) (c) A court shall revoke a person's operating privilege upon the  
8 person's conviction for violating s. 343.44 (1) (a) or (b), or a local ordinance in  
9 conformity with s. 343.44 (1) (a), if the person, in the course of the violation, causes  
10 great bodily harm, as defined in s. 939.22 (14), to another person or the death of  
11 another person.

12 **SECTION 9.** 343.30 (2j) (a) of the statutes is amended to read:

13 343.30 (2j) (a) A court may revoke suspend a person's operating privilege upon  
14 the person's first conviction for violating s. 346.44 or 346.62 (2m) and shall revoke  
15 suspend a person's operating privilege upon the person's 2nd or subsequent  
16 conviction within a 5-year period for violating s. 346.44 or 346.62 (2m). The  
17 ~~revocation~~ suspension shall be for a period of 6 months. For purposes of determining  
18 prior convictions for purposes of this paragraph, the 5-year period shall be measured  
19 from the dates of the violations that resulted in the convictions. Each conviction  
20 under s. 346.44 or 346.62 (2m) shall be counted, except that convictions under s.  
21 346.44 and 346.62 (2m) arising out of the same incident or occurrence shall be  
22 counted as a single conviction.

23 **SECTION 10.** 343.31 (1) (hm) of the statutes is repealed.

24 **SECTION 11.** 343.31 (2m) of the statutes is amended to read:

**BILL**

1           343.31 (2m) The department may suspend or revoke, respectively, the  
2 operating privilege of any resident upon receiving notice of the conviction of that  
3 person under a law of another jurisdiction or a federally recognized American Indian  
4 tribe or band in this state for an offense which, if the person had committed the  
5 offense in this state and been convicted of the offense under the laws of this state,  
6 would have permitted suspension or revocation of the person's operating privilege  
7 under s. 343.30 (1d) or (1g). Upon receiving similar notice with respect to a  
8 nonresident, the department may suspend or revoke the privilege of the nonresident  
9 to operate a motor vehicle in this state. The suspension or revocation shall not apply  
10 to the operation of a commercial motor vehicle by a nonresident who holds a valid  
11 commercial driver license issued by another state. A suspension or revocation under  
12 this subsection shall be for any period not exceeding 6 months.

13           **SECTION 12.** 343.44 (1) (am) of the statutes is repealed.

14           **SECTION 13.** 343.44 (2) (a) of the statutes is renumbered 343.44 (2) (ag) 1. and  
15 amended to read:

16           343.44 (2) (ag) 1. Any Except as provided in subds. 2. and 3. any person who  
17 violates sub. (1) (a) ~~or a local ordinance in conformity therewith~~ shall be required to  
18 forfeit not less than \$50 nor more than \$200.

19           **SECTION 14.** 343.44 (2) (ad) of the statutes is created to read:

20           343.44 (2) (ad) <sup>In this subsection,</sup> "Great bodily harm" has the meaning given in s. 939.22 (14).

21           **SECTION 15.** 343.44 (2) (ag) 2. and 3. of the statutes are created to read:

22           343.44 (2) (ag) 2. Any person who violates sub. (1) (a) and, in the course of the  
23 violation, causes great bodily harm to another person is required to forfeit not less  
24 than \$5,000 nor more than \$7,500, except that, if the person knows at the time of the

**BILL**

1 violation that his or her operating privilege has been suspended, the person is guilty  
2 of a Class I felony.

3 3. Any person who violates sub. (1) (a) and, in the course of the violation, causes  
4 the death of another person is required to forfeit not less than \$7,500 nor more than  
5 \$10,000, except that, if the person knows at the time of the violation that his or her  
6 operating privilege has been suspended, the person is guilty of a Class H felony.

7 **SECTION 16.** 343.44 (2) (am) of the statutes is repealed.

8 **SECTION 17.** 343.44 (2) (ar) of the statutes is created to read:

9 343.44 (2) (ar) 1. Except as provided in subs. 2. and 3., any person who violates  
10 sub. (1) (b) shall be fined not more than \$2,500 or imprisoned for not more than one  
11 year in the county jail or both.

12 2. Any person who violates sub. (1) (b) and, in the course of the violation, causes  
13 great bodily harm to another person shall be fined not less than \$5,000 nor more than  
14 \$7,500 or imprisoned for not more than one year in the county jail or both, except  
15 that, if the person knows at the time of the violation that his or her operating  
16 privilege has been revoked, the person is guilty of a Class I felony.

17 3. Any person who violates sub. (1) (b) and, in the course of the violation, causes  
18 the death of another person shall be fined not less than \$7,500 nor more than \$10,000  
19 or imprisoned for not more than one year in the county jail or both, except that, if the  
20 person knows at the time of the violation that his or her operating privilege has been  
21 revoked, the person is guilty of a Class H felony.

22 **SECTION 18.** 343.44 (2) (as) of the statutes is repealed.

23 **SECTION 19.** 343.44 (2) (b) (intro.) of the statutes is amended to read:

24 343.44 (2) (b) (intro.) Except as provided in pars. (am) and (as), any person who  
25 violates sub. (1) (b) or (d) shall be fined not more than \$2,500 or imprisoned for not

**BILL**

1 ~~more than one year in the county jail or both.~~ In imposing a sentence under this  
2 ~~paragraph, or a local ordinance in conformity with this paragraph, par. (ar) 1. to 3.~~  
3 ~~or (br).~~ the court shall review the record and consider the following:

4 **SECTION 20.** <sup>x</sup> 343.44 (2) (br) of the statutes is created to read:

5 343.44 (2) (br) Any person who violates sub. (1) (d) shall be fined not more than  
6 \$2,500 or imprisoned for not more than one year in the county jail or both.

7 **SECTION 21.** <sup>w</sup> 343.44 (2) (e) to (h) of the statutes are repealed.

8 **SECTION 22. Initial applicability.**

9 (1) This act first applies to violations committed on the effective date of this  
10 subsection, but does not preclude the counting of other violations as prior violations  
11 for purposes of sentencing a person.

12 **SECTION 23. Effective date.**

13 (1) This act takes effect on the first day of the 3rd month beginning after  
14 publication.

15 (END)



**Gary, Aaron**

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**From:** Moran, Christian  
**Sent:** Thursday, January 29, 2009 10:54 AM  
**To:** Gary, Aaron  
**Subject:** OAR bill revision request (LRB-0624/1)

Hi Aaron,

Could you please make the following one revision to our OAR draft (LRB-0624/1).

LRB-0624/1 provides that a person convicted of OAR, regardless of whether it is a first or subsequent offense and regardless of the underlying reason for the revocation, must be fined not more than \$2,500 or imprisoned for not more than one year or both.

Please amend the draft so as to retain current law for first-offense OAR, whereby the offense remains criminal if the underlying reason for the revocation is an OWI or drug impaired driving conviction and civil for all other convictions.

Hope all is well. Just call with any questions.

Christian  
6-1733



State of Wisconsin  
2009 - 2010 LEGISLATURE

soon

LRB-0624/2  
ARG:nwn&jld:rs

RMR

in 2/5

2009 BILL

SA ✓  
X-ref ✓

Regen.

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 4 343.30 (2j) (a), 343.31 (2m) and 343.44 (2) (b) (intro.); and *to create* 343.05 (5)  
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Current law prohibits a person from operating a motor vehicle on the highway during any period in which the person's motor vehicle operating privilege is suspended (operating while suspended or OWS) or revoked (operating after revocation or OAR) or, with limited exceptions, if the person does not possess a valid operator's license (operating without a license or OWL).

Under current law, a person convicted of OWS must forfeit not less than \$50 nor more than \$200. In addition, a person convicted of "knowing" OWS may be required to forfeit not more than \$200. A person convicted of first-offense OAR must forfeit not more than \$2,500 unless the underlying operating privilege revocation was the

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result of specified traffic violations involving alcohol or controlled substances. A person convicted of OAR who has a prior conviction in the preceding five-year period under state statutes for OAR (but not under a local ordinance) or for whom the underlying operating privilege revocation was the result of specified traffic violations involving alcohol or controlled substances must be fined not more than \$2,500 or imprisoned for not more than one year or both. Also under current law, as created in 2005 Wisconsin Act 412, a person who, in the course of a "knowing" OWS violation or OAR violation, causes: 1) damage to the property of another must forfeit \$1,000; 2) injury to another person must forfeit \$5,000; or 3) great bodily harm or death to another person is guilty of a Class A misdemeanor, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of nine months or both.

Under current law, with limited exceptions, a person convicted of OWL with respect to a motor vehicle that is not a commercial motor vehicle may be required to forfeit not more than \$200 for the first offense, may be fined not more than \$300 and imprisoned for not more than 30 days for the second offense occurring within three years, and may be fined not more than \$500 and imprisoned for not more than six months for the third or subsequent offense occurring within three years. Under one exception, if the OWL violation results from the person's operator's license being expired for not more than three months and the person has no prior OWL convictions, the person may be required to forfeit not more than \$100 for the OWL violation. Under another exception, as created in 2005 Wisconsin Act 412, if, in the course of operating the vehicle knowingly without a valid operator's license or knowingly with an operator's license that has been revoked, suspended, or canceled, the person causes: 1) damage to the property of another, the person must forfeit \$1,000; 2) injury to another person, the person must forfeit \$5,000; or 3) great bodily harm or death to another person, the person is guilty of a Class A misdemeanor.

This bill provides that a person convicted of OAR, regardless of whether it is a first or subsequent offense and regardless of the underlying reason for the revocation, must be fined not more than \$2,500 or imprisoned for not more than one year or both. The bill repeals "knowing" OWS as a separate and distinct violation and repeals all other provisions of 2005 Wisconsin Act 412. The bill creates new penalties for OWS, OAR, and OWL violations in which the person, in the course of the violation, causes great bodily harm or death to another person.

Under the bill, a person convicted of OWL or OWS who, in the course of the violation, causes great bodily harm to another person: 1) must forfeit not less than \$5,000 nor more than \$7,500 if, at the time of the violation, the person did not know, respectively, that he or she did not possess a valid operator's license or that his or her operating privilege was suspended; or 2) is guilty of a Class I felony if the person knew. A Class I felony is punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of three and one-half years or both. If the person causes the death of another in the course of the OWL or OWS violation, the person: 1) must forfeit not less than \$7,500 nor more than \$10,000 if the person did not know, respectively, that he or she did not possess a valid operator's license or that his or her operating privilege was suspended; or 2) is guilty of a Class H felony if the person

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knew. A Class H felony is punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of six years or both. A person convicted of OAR who, in the course of the violation, causes great bodily harm to another person: 1) must be fined not less than \$5,000 nor more than \$7,500 or imprisoned for not more than one year or both if, at the time of the violation, the person did not know that his or her operating privilege was revoked; or 2) is guilty of a Class I felony if the person knew. If the person causes the death of another in the course of the OAR violation, the person: 1) must be fined not less than \$7,500 nor more than \$10,000 or imprisoned for not more than one year or both if the person did not know that his or her operating privilege was revoked; or 2) is guilty of a Class H felony if the person knew.

Under current law, a court may suspend a person's operating privilege for any period not exceeding six months upon the person's conviction for OAR or OWS or operating a commercial motor vehicle during a period in which the person is disqualified (operating while disqualified or OWD). However, a court must revoke a person's operating privilege, for a period of six months or less, upon the person's conviction for OAR, OWS, or OWD if the person has been convicted of three or more prior violations of OAR, OWS, or OWD within the preceding five-year period. In addition, the Department of Transportation (DOT) must administratively revoke a person's operating privilege, for a period of six months unless the court has ordered a revocation for a lesser period, upon receiving a record of conviction showing that the person has been convicted of OAR, OWS, or OWD if the person has been convicted of three or more prior violations of OAR, OWS, or OWD within the preceding five-year period.

This bill makes court-ordered operating privilege revocation for a fourth offense OAR, OWS, or OWD permissive rather than mandatory and eliminates the requirement that DOT administratively revoke a person's operating privilege for a fourth offense OAR, OWS, or OWD. In addition, the bill requires a court to revoke a person's operating privilege if the person is convicted of OWL, OWS, or OAR and, in the course of the violation, the person causes great bodily harm or death to another person. The bill also provides that, as with OWS and OAR, DOT may revoke a resident's operating privilege if the resident is convicted in another state for an OWL offense in the course of which the person causes great bodily harm or death to another person.

Under current law, a vehicle operator may not drive on or across a railroad crossing while any traffic officer or railroad employee signals to stop, while any warning device signals to stop, or, if any crossbuck sign is maintained at the crossing, while any train occupies or closely approaches the crossing. A vehicle operator may not drive through or around any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed. A court may revoke a person's operating privilege upon the person's first conviction of any of these violations and must revoke the person's operating privilege upon the person's second or subsequent conviction within a five-year period. The revocation is for six months.

This bill provides for suspension of a person's operating privilege, rather than revocation of the person's operating privilege, for any of these violations.

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Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 343.05 (5) (a) of the statutes is renumbered 343.05 (5) (am).

2           **SECTION 2.** 343.05 (5) (ag) of the statutes is created to read:

3           343.05 (5) (ag) In this subsection, "great bodily harm" has the meaning given  
4 in s. 939.22 (14).

5           **SECTION 3.** 343.05 (5) (b) 1. of the statutes is amended to read:

6           343.05 (5) (b) 1. Except as provided in ~~subd. subds. 2. or 3. to 5.~~ and sub. (6),  
7 any person who violates sub. (3) (a) may be required to forfeit not more than \$200 for  
8 the first offense, may be fined not more than \$300 and imprisoned for not more than  
9 30 days for the 2nd offense occurring within 3 years, and may be fined not more than  
10 \$500 and imprisoned for not more than 6 months for the 3rd or subsequent offense  
11 occurring within 3 years. ~~A~~ In this paragraph, a violation of a local ordinance in  
12 conformity with this section or a violation of a law of a federally recognized American  
13 Indian tribe or band in this state in conformity with this section shall count as a  
14 previous offense.

15           **SECTION 4.** 343.05 (5) (b) 3. of the statutes is repealed.

16           **SECTION 5.** 343.05 (5) (b) 4. and 5. of the statutes are created to read:

17           343.05 (5) (b) 4. Except as provided in subd. 2. and sub. (6), any person who  
18 violates sub. (3) (a) and, in the course of the violation, causes great bodily harm to  
19 another person is required to forfeit not less than \$5,000 nor more than \$7,500,

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1 except that, if the person knows at the time of the violation that he or she does not  
2 possess a valid operator's license, the person is guilty of a Class I felony.

3 5. Except as provided in subd. 2. and sub. (6), any person who violates sub. (3)  
4 (a) and, in the course of the violation, causes the death of another person is required  
5 to forfeit not less than \$7,500 nor more than \$10,000, except that, if the person knows  
6 at the time of the violation that he or she does not possess a valid operator's license,  
7 the person is guilty of a Class H felony.

8 **SECTION 6.** 343.30 (1d) of the statutes is created to read:

9 343.30 (1d) A court shall revoke a person's operating privilege upon the  
10 person's conviction for violating s. 343.05 (3) (a) or a local ordinance in conformity  
11 therewith if the person, in the course of the violation, causes great bodily harm, as  
12 defined in s. 939.22 (14), to another person or the death of another person. Any  
13 revocation under this subsection shall be for a period of 6 months, unless the court  
14 orders a period of revocation of less than 6 months and places its reasons for ordering  
15 the lesser period of revocation on the record.

16 **SECTION 7.** 343.30 (1g) of the statutes is amended to read:

17 343.30 (1g) (a) ~~Except as provided in par. (c).~~ Subject to pars. (b) and (c), a court  
18 may suspend a person's operating privilege for any period not exceeding 6 months  
19 upon the person's conviction for violating s. 343.44 (1) (a), (b), or (d) or a local  
20 ordinance in conformity therewith.

21 (b) ~~A~~ Except as provided in par. (c), a court shall may revoke a person's  
22 operating privilege upon the person's conviction for violating s. 343.44 (1) (a), (b), or  
23 (d) or a local ordinance in conformity therewith if the person has been convicted of  
24 3 or more prior violations of s. 343.44 (1) (a), (b), or (d), or similar violations under

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1 s. 343.44 (1), 1997 stats., or a local ordinance in conformity therewith, within the  
2 5-year period preceding the violation. The

3 (d) Any revocation under this subsection shall be for a period of 6 months,  
4 unless the court orders a period of revocation of less than 6 months and places its  
5 reasons for ordering the lesser period of revocation on the record.

6 **SECTION 8.** 343.30 (1g) (c) of the statutes is created to read:

7 343.30 **(1g)** (c) A court shall revoke a person's operating privilege upon the  
8 person's conviction for violating s. 343.44 (1) (a) or (b), or a local ordinance in  
9 conformity with s. 343.44 (1) (a), if the person, in the course of the violation, causes  
10 great bodily harm, as defined in s. 939.22 (14), to another person or the death of  
11 another person.

12 **SECTION 9.** 343.30 (2j) (a) of the statutes is amended to read:

13 343.30 **(2j)** (a) A court may ~~revoke~~ suspend a person's operating privilege upon  
14 the person's first conviction for violating s. 346.44 or 346.62 (2m) and shall ~~revoke~~  
15 suspend a person's operating privilege upon the person's 2nd or subsequent  
16 conviction within a 5-year period for violating s. 346.44 or 346.62 (2m). The  
17 ~~revocation~~ suspension shall be for a period of 6 months. For purposes of determining  
18 prior convictions for purposes of this paragraph, the 5-year period shall be measured  
19 from the dates of the violations that resulted in the convictions. Each conviction  
20 under s. 346.44 or 346.62 (2m) shall be counted, except that convictions under s.  
21 346.44 and 346.62 (2m) arising out of the same incident or occurrence shall be  
22 counted as a single conviction.

23 **SECTION 10.** 343.31 (1) (hm) of the statutes is repealed.

24 **SECTION 11.** 343.31 (2m) of the statutes is amended to read:

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1           343.31 **(2m)** The department may suspend or revoke, respectively, the  
2 operating privilege of any resident upon receiving notice of the conviction of that  
3 person under a law of another jurisdiction or a federally recognized American Indian  
4 tribe or band in this state for an offense which, if the person had committed the  
5 offense in this state and been convicted of the offense under the laws of this state,  
6 would have permitted suspension or revocation of the person's operating privilege  
7 under s. 343.30 (1d) or (1g). Upon receiving similar notice with respect to a  
8 nonresident, the department may suspend or revoke the privilege of the nonresident  
9 to operate a motor vehicle in this state. The suspension or revocation shall not apply  
10 to the operation of a commercial motor vehicle by a nonresident who holds a valid  
11 commercial driver license issued by another state. A suspension or revocation under  
12 this subsection shall be for any period not exceeding 6 months.

13           **SECTION 12.** 343.44 (1) (am) of the statutes is repealed.

14           **SECTION 13.** 343.44 (2) (a) of the statutes is renumbered 343.44 (2) (ag) 1. and  
15 amended to read:

16           343.44 **(2)** (ag) 1. Any Except as provided in subds. 2. and 3., any person who  
17 violates sub. (1) (a) ~~or a local ordinance in conformity therewith~~ shall be required to  
18 forfeit not less than \$50 nor more than \$200.

19           **SECTION 14.** 343.44 (2) (ad) of the statutes is created to read:

20           343.44 **(2)** (ad) In this subsection, "great bodily harm" has the meaning given  
21 in s. 939.22 (14).

22           **SECTION 15.** 343.44 (2) (ag) 2. and 3. of the statutes are created to read:

23           343.44 **(2)** (ag) 2. Any person who violates sub. (1) (a) and, in the course of the  
24 violation, causes great bodily harm to another person is required to forfeit not less  
25 than \$5,000 nor more than \$7,500, except that, if the person knows at the time of the



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1 violation that his or her operating privilege has been suspended, the person is guilty  
2 of a Class I felony.

3 3. Any person who violates sub. (1) (a) and, in the course of the violation, causes  
4 the death of another person is required to forfeit not less than \$7,500 nor more than  
5 \$10,000, except that, if the person knows at the time of the violation that his or her  
6 operating privilege has been suspended, the person is guilty of a Class H felony.

7 **SECTION 16.** 343.44 (2) (am) of the statutes is repealed.

8 **SECTION 17.** 343.44 (2) (ar) <sup>3, and 4.</sup> of the statutes <sup>are</sup> is created to read:

9 343.44 (2) (ar) <sup>1.</sup> Except as provided in subds. 2. and 3., any person who violates  
10 sub. (1) (b) shall be fined not more than \$2,500 or imprisoned for not more than one  
11 year in the county jail or both.

12 <sup>not</sup> **3.** Any person who violates sub. (1) (b) and, in the course of the violation, causes  
13 great bodily harm to another person shall be fined not less than \$5,000 nor more than  
14 \$7,500 or imprisoned for not more than one year in the county jail or both, except  
15 that, if the person knows at the time of the violation that his or her operating  
16 privilege has been revoked, the person is guilty of a Class I felony.

17 <sup>4</sup> **3.** Any person who violates sub. (1) (b) and, in the course of the violation, causes  
18 the death of another person shall be fined not less than \$7,500 nor more than \$10,000  
19 or imprisoned for not more than one year in the county jail or both, except that, if the  
20 person knows at the time of the violation that his or her operating privilege has been  
21 revoked, the person is guilty of a Class H felony.

22 **SECTION 18.** 343.44 (2) (as) of the statutes is repealed.

23 **SECTION 19.** 343.44 (2) (b) (intro.) of the statutes is amended to read:

24 343.44 (2) (b) (intro.) Except as provided in pars. (am) and (as), any person who  
25 violates sub. (1) (b) or (d) shall be fined not more than \$2,500 or imprisoned for not

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1 ~~more than one year in the county jail or both. In imposing a sentence under this~~  
2 ~~paragraph, or a local ordinance in conformity with this paragraph, par. (ar) 1. to 3.~~  
3 ~~or (br),~~ the court shall review the record and consider the following:

4 **SECTION 20.** 343.44 (2) (br) of the statutes is created to read:

5 343.44 (2) (br) Any person who violates sub. (1) (d) shall be fined not more than  
6 \$2,500 or imprisoned for not more than one year in the county jail or both.

7 **SECTION 21.** 343.44 (2) (e) to (h) of the statutes are repealed.

8 **SECTION 22. Initial applicability.**

9 (1) This act first applies to violations committed on the effective date of this  
10 subsection, but does not preclude the counting of other violations as prior violations  
11 for purposes of sentencing a person.

12 **SECTION 23. Effective date.**

13 (1) This act takes effect on the first day of the 3rd month beginning after  
14 publication.

15 (END)

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0624/2ins  
ARG:.....

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**INSERT 8-22:**

**SECTION 1.** 343.44 (2) (as) of the statutes is renumbered 343.44 (2) (ar) 1. and amended to read:

343.44 (2) (ar) 1. Any Except as provided in subds. 2. to 4., any person who violates sub. (1) (b) after July 27, 2005, shall forfeit not more than \$2,500, except that,

2. Except as provided in subd. 3. and 4., any person who violates sub. (1) (b) shall be fined not more than \$2,500 or imprisoned for not more than one year in the county jail or both if the person has been convicted of a previous violation of sub. (1) (b) within the preceding 5-year period or if the revocation identified under sub. (1) (b) resulted from an offense that may be counted under s. 343.307 (2), the penalty under par. (b) shall apply.

**History:** 1971 c. 164 s. 83; 1971 c. 280, 307; 1973 c. 90; 1977 c. 29 s. 1654 (7) (a); 1977 c. 165, 272; 1979 c. 221; 1981 c. 20; 1983 a. 535; 1989 a. 12, 105, 336; 1991 a. 39, 64, 189, 277; 1995 a. 113; 1997 a. 84; 1999 a. 9, 32, 143; 2003 a. 33; 2005 a. 25, 254, 412.

**Duerst, Christina**

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**From:** Moran, Christian  
**Sent:** Friday, March 13, 2009 9:06 AM  
**To:** LRB.Legal  
**Cc:** Lynch, Abigail  
**Subject:** bill jacket requests

Please jacket the following bill drafts for introduction in the Assembly:

LRB-0624/2 Relating to: Operating after revocation, while suspended, or without a license; suspension for railroad crossing violations  
LRB-0788/1 Relating to: Immobilization, removal, impoundment, and disposal of vehicles owned by habitual parking violators (car booting)  
LRB-0802/1 Relating to: Assignment of earning and income in municipal court

Thanks,

Christian Moran  
Office of Representative Peggy Krusick  
State Capitol, 128 North  
Madison, WI 53708  
608-266-1733