



2009 ASSEMBLY BILL 218

April 17, 2009 – Introduced by Representatives STASKUNAS, PASCH, POPE-ROBERTS, TOWNSEND, BERCEAU, MONTGOMERY, A. OTT, RICHARDS, SMITH, MASON, HONADEL and BIES, cosponsored by Senators PLALE, LEHMAN, DARLING and OLSEN. Referred to Committee on Public Safety.

1 **AN ACT to amend** 165.755 (1) (b), 302.46 (1) (a), 343.23 (2) (b), 343.30 (1q) (c) 1.
2 (intro.), 346.655 (1), 757.05 (1) (a), 814.63 (1) (c), 814.63 (2), 814.65 (1), 814.85
3 (1) (a) and 814.86 (1) of the statutes; **relating to:** penalty surcharges, court
4 fees, drivers' records, and drug and alcohol assessment for persons who commit
5 certain offenses relating to driving while intoxicated.

Analysis by the Legislative Reference Bureau

Under current law, a person who is subject to a forfeiture or a fine for violating most state laws or local ordinances is also liable for a variety of penalty surcharges and court fees. In addition, a person who commits an offense relating to driving while intoxicated is liable for a penalty surcharge for driver improvement programs and is required to comply with an alcohol and other drug assessment before he or she is eligible for reinstatement of his or her driving privileges.

Currently, a person who commits his or her first offense related to driving while intoxicated and who has a blood alcohol concentration between 0.08 and 0.099 at the time of the offense is not liable for the surcharges or fees and does not need to comply with an alcohol or other drug assessment program. Further, the Department of Transportation (DOT) must purge its records of a first offense related to driving while intoxicated after ten years; the department keeps all other records of offenses related to driving while intoxicated permanently.

Under this bill, a person who commits his or her first offense related to driving while intoxicated and who has a blood alcohol concentration between 0.08 and 0.099

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at the time of the violation is liable for the surcharges or fees and must comply with an alcohol or other drug assessment program before his or her driving privileges may be reinstated. Under this bill, DOT must keep a record of this offense permanently.

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

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

1 **SECTION 1.** 165.755 (1) (b) of the statutes is amended to read:

2 165.755 (1) (b) A court may not impose the crime laboratories and drug law
3 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar),
4 (bm), (br), or (bv) or (5) (b), ~~for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1.,~~
5 ~~346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood~~
6 ~~alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation,~~
7 or for a violation of a state law or municipal or county ordinance involving a
8 nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use
9 violation under s. 347.48 (2m).

10 **SECTION 2.** 302.46 (1) (a) of the statutes is amended to read:

11 302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law
12 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
13 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or for a first violation of s. 23.33 (4c) (a)~~
14 ~~2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the~~
15 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~
16 ~~time of the violation,~~ or for a violation of state laws or municipal or county ordinances
17 involving nonmoving traffic violations, violations under s. 343.51 (1m) (b), or safety
18 belt use violations under s. 347.48 (2m), the court, in addition, shall impose a jail
19 surcharge under ch. 814 in an amount of 1 percent of the fine or forfeiture imposed

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1 or \$10, whichever is greater. If multiple offenses are involved, the court shall
2 determine the jail surcharge on the basis of each fine or forfeiture. If a fine or
3 forfeiture is suspended in whole or in part, the court shall reduce the jail surcharge
4 in proportion to the suspension.

5 **SECTION 3.** 343.23 (2) (b) of the statutes is amended to read:

6 343.23 (2) (b) The information specified in pars. (a) and (am) must be filed by
7 the department so that the complete operator's record is available for the use of the
8 secretary in determining whether operating privileges of such person shall be
9 suspended, revoked, canceled, or withheld, or the person disqualified, in the interest
10 of public safety. The record of suspensions, revocations, and convictions that would
11 be counted under s. 343.307 (2) shall be maintained permanently, ~~except that the~~
12 ~~department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1)~~
13 ~~(b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the~~
14 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~
15 ~~time of the violation, if the person does not have a commercial driver license, if the~~
16 ~~violation was not committed by a person operating a commercial motor vehicle, and~~
17 ~~if the person has no other suspension, revocation, or conviction that would be counted~~
18 ~~under s. 343.307 during that 10-year period.~~ The record of convictions for
19 disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10
20 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) and
21 (j), and all records specified in par. (am), shall be maintained for at least 3 years. The
22 record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be
23 maintained permanently, except that 5 years after a licensee transfers residency to
24 another state such record may be transferred to another state of licensure of the
25 licensee if that state accepts responsibility for maintaining a permanent record of

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1 convictions for disqualifying offenses. Such reports and records may be cumulative
2 beyond the period for which a license is granted, but the secretary, in exercising the
3 power of suspension granted under s. 343.32 (2) may consider only those reports and
4 records entered during the 4-year period immediately preceding the exercise of such
5 power of suspension.

6 **SECTION 4.** 343.30 (1q) (c) 1. (intro.) of the statutes is amended to read:

7 343.30 **(1q)** (c) 1. (intro.) Except as provided in subd. 1. a. or b., and except for
8 a first violation of s. ~~346.63 (1) (b)~~, if the person who committed the violation had a
9 blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
10 violation, the court shall order the person to submit to and comply with an
11 assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for
12 examination of the person's use of alcohol, controlled substances or controlled
13 substance analogs and development of a driver safety plan for the person. The court
14 shall notify the department of transportation of the assessment order. The court
15 shall notify the person that noncompliance with assessment or the driver safety plan
16 will result in revocation of the person's operating privilege until the person is in
17 compliance. The assessment order shall:

18 **SECTION 5.** 346.655 (1) of the statutes is amended to read:

19 346.655 **(1)** If a court imposes a fine or a forfeiture for a violation of s. 346.63
20 (1) or (5), ~~except for a first violation of s. 346.63 (1) (b), if the person who committed~~
21 ~~the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at~~
22 ~~the time of the violation~~, or a local ordinance in conformity therewith, or s. 346.63
23 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, it shall
24 impose a driver improvement surcharge under ch. 814 in an amount of \$365 in

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1 addition to the fine or forfeiture, plus costs, fees, and other surcharges imposed under
2 ch. 814.

3 **SECTION 6.** 757.05 (1) (a) of the statutes is amended to read:

4 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
5 state law or for a violation of a municipal or county ordinance except for a violation
6 of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or for a first violation of s.~~
7 ~~23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who~~
8 ~~committed the violation had a blood alcohol concentration of 0.08 or more but less~~
9 ~~than 0.1 at the time of the violation,~~ or for a violation of state laws or municipal or
10 county ordinances involving nonmoving traffic violations, violations under s. 343.51
11 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be imposed in
12 addition a penalty surcharge under ch. 814 in an amount of 26 percent of the fine or
13 forfeiture imposed. If multiple offenses are involved, the penalty surcharge shall be
14 based upon the total fine or forfeiture for all offenses. When a fine or forfeiture is
15 suspended in whole or in part, the penalty surcharge shall be reduced in proportion
16 to the suspension.

17 **SECTION 7.** 814.63 (1) (c) of the statutes is amended to read:

18 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
19 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~for a first violation of s. 23.33~~
20 ~~(4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who~~
21 ~~committed the violation had a blood alcohol concentration of 0.08 or more but less~~
22 ~~than 0.1 at the time of the violation,~~ or for a violation under s. 343.51 (1m) (b), or a
23 safety belt use violation under s. 347.48 (2m).

24 **SECTION 8.** 814.63 (2) of the statutes is amended to read:

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1 814.63 (2) Upon the disposition of a forfeiture action in circuit court for
2 violation of a county, town, city, village, town sanitary district or public inland lake
3 protection and rehabilitation district ordinance, except for an action for a first
4 violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the
5 person who committed the violation had a blood alcohol concentration of 0.08 or more
6 but less than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m)
7 (b) or a safety belt use violation under s. 347.48 (2m), the county, town, city, village,
8 town sanitary district or public inland lake protection and rehabilitation district
9 shall pay a nonrefundable fee of \$5 to the clerk of circuit court.

10 **SECTION 9.** 814.65 (1) of the statutes is amended to read:

11 814.65 (1) COURT COSTS. In a municipal court action, except for an action for
12 a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1)
13 (b), if the person who committed the violation had a blood alcohol concentration of
14 0.08 or more but less than 0.1 at the time of the violation, or for a violation of an
15 ordinance in conformity with s. 343.51 (1m) (b) or 347.48 (2m), the municipal judge
16 shall collect a fee of not less than \$15 nor more than \$28 on each separate matter,
17 whether it is on default of appearance, a plea of guilty or no contest, on issuance of
18 a warrant or summons, or the action is tried as a contested matter. Of each fee
19 received by the judge under this subsection, the municipal treasurer shall pay
20 monthly \$5 to the secretary of administration for deposit in the general fund and
21 shall retain the balance for the use of the municipality.

22 **SECTION 10.** 814.85 (1) (a) of the statutes is amended to read:

23 814.85 (1) (a) Except for an action for a first violation of s. 23.33 (4c) (a) 2.,
24 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the
25 violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the

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1 ~~time of the violation, or for a violation under s. 343.51 (1m) (b) or a safety belt use~~
2 violation under s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$68
3 court support services surcharge from any person, including any governmental unit
4 as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am) or
5 814.63 (1).

6 **SECTION 11.** 814.86 (1) of the statutes is amended to read:

7 814.86 (1) Except for an action for ~~a first violation of s. 23.33 (4c) (a) 2., 30.681~~
8 ~~(1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation~~
9 ~~had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the~~
10 ~~violation, or for a violation under s. 343.51 (1m) (b) or a safety belt use violation under~~
11 s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$12 justice
12 information system surcharge from any person, including any governmental unit, as
13 defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62
14 (1), (2), or (3) (a) or (b), or 814.63 (1). The justice information system surcharge is in
15 addition to the surcharge listed in sub. (1m).

16 (END)