



State of Wisconsin
2011 – 2012 LEGISLATURE



LRB-2370/1
EVM:nwn:jf

2011 SENATE BILL 154

July 19, 2011 – Introduced by Senator DARLING, cosponsored by Representatives J. OTT, KERKMAN, STEINEKE, JACQUE, LEMAHIEU and RIPP. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

1 **AN ACT** *to repeal* 973.09 (2) (am); and *to amend* 48.685 (5) (bm) 4., 48.685 (5)
2 (br) 6., 346.65 (2) (am) 3., 346.65 (2) (am) 4., 346.65 (2) (am) 4m., 346.65 (2) (am)
3 5., 346.65 (2) (am) 6., 346.65 (2) (am) 7. and 973.09 (2) (a) 1. d. of the statutes;
4 **relating to:** penalties for operating–while–intoxicated offenses and providing
5 a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person who commits a third offense related to drunken driving or driving under the influence of an intoxicant or other drug (OWI) must be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 45 days nor more than one year. A person who commits a fourth OWI must be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one year. A person who commits a fourth OWI within five years of a prior offense is guilty of a Class H felony and must be fined not less than \$600 and imprisoned not less than six months. A person who commits a fifth or sixth OWI is guilty of a Class H felony and must be fined not less than \$600 and imprisoned for not less than six months. A person who commits a seventh, eighth, or ninth OWI is guilty of a Class G felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than three years. A person who commits a tenth or subsequent OWI is guilty of a Class F felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than four years. Also under current law, the penalty for a Class E felony is a fine not to exceed \$50,000 or

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imprisonment not to exceed 15 years, or both, the penalty for a Class F felony is a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months, or both, the penalty for a Class G felony is a fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both, and the penalty for a Class H felony is a fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both.

Under this bill, a person who commits a third OWI is guilty of a Class H felony and the person must be fined not less than \$600 and must be imprisoned for not less than 45 days. A person who commits a fourth OWI is guilty of a Class H felony and the person must be fined not less than \$600 and must be imprisoned for not less than 60 days. A person who commits a fourth OWI within five years of a prior offense is guilty of a Class G felony and must be fined not less than \$600 and imprisoned for not less than six months. A person who commits a fifth or sixth OWI is guilty of a Class G felony and the person must be fined not less than \$600 and must be imprisoned for not less than six months. A person who commits a seventh, eighth, or ninth OWI is guilty of a Class F felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than three years. A person who commits a tenth or greater OWI is guilty of a Class E felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than four years.

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

8 **SECTION 2.** 48.685 (5) (br) 6. of the statutes is amended to read:

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1 48.685 (5) (br) 6. A violation of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b),
2 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5), or (6), 940.20, 940.203, 940.205,
3 940.207, 940.25, or 943.23 (1g), a violation of s. 948.51 (2) that is a felony under s.
4 948.51 (3) (b) or (c), a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under
5 s. 346.65 (2) (am) ~~5., 6., or 3. to 7.~~, or (f), (2j) (d), or (3m), or an offense under ch. 961
6 that is a felony, if the person completed his or her sentence, including any probation,
7 parole, or extended supervision, or was discharged by the department of corrections,
8 less than 5 years before the date of the investigation under sub. (2) (am) or (b) 1.

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

10 346.65 (2) (am) 3. Except as provided in pars. (cm), (f), and (g), is guilty of a class
11 H felony and shall be fined not less than \$600 ~~nor more than \$2,000~~ and imprisoned
12 for not less than 45 days ~~nor more than one year in the county jail~~ if the number of
13 convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total
14 number of suspensions, revocations, and other convictions counted under s. 343.307
15 (1), equals 3, except that suspensions, revocations, or convictions arising out of the
16 same incident or occurrence shall be counted as one.

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

18 346.65 (2) (am) 4. Except as provided in subd. 4m. and pars. (dm), (f), and (g),
19 is guilty of a Class H felony and shall be fined not less than \$600 ~~nor more than \$2,000~~
20 and imprisoned for not less than 60 days ~~nor more than one year in the county jail~~
21 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
22 plus the total number of suspensions, revocations, and other convictions counted
23 under s. 343.307 (1), equals 4, except that suspensions, revocations, or convictions
24 arising out of the same incident or occurrence shall be counted as one.

25 **SECTION 5.** 346.65 (2) (am) 4m. of the statutes is amended to read:

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1 346.65 (2) (am) 4m. Except as provided in pars. (f) and (g), is guilty of a Class
2 H G felony and shall be fined not less than \$600 and imprisoned for not less than 6
3 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's
4 lifetime, plus the total number of suspensions, revocations, and other convictions
5 counted under s. 343.307 (1), equals 4 and the person committed an offense that
6 resulted in a suspension, revocation, or other conviction counted under s. 343.307 (1)
7 within 5 years prior to the day of current offense, except that suspensions,
8 revocations, or convictions arising out of the same incident or occurrence shall be
9 counted as one.

10 **SECTION 6.** 346.65 (2) (am) 5. of the statutes is amended to read:

11 346.65 (2) (am) 5. Except as provided in pars. (f) and (g), is guilty of a Class H
12 G felony and shall be fined not less than \$600 and imprisoned for not less than 6
13 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's
14 lifetime, plus the total number of suspensions, revocations and other convictions
15 counted under s. 343.307 (1), equals 5 or 6, except that suspensions, revocations or
16 convictions arising out of the same incident or occurrence shall be counted as one.

17 **SECTION 7.** 346.65 (2) (am) 6. of the statutes is amended to read:

18 346.65 (2) (am) 6. Except as provided in par. (f), is guilty of a Class G F felony
19 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
20 plus the total number of suspensions, revocations, and other convictions counted
21 under s. 343.307 (1), equals 7, 8, or 9, except that suspensions, revocations, or
22 convictions arising out of the same incident or occurrence shall be counted as one.
23 The confinement portion of a bifurcated sentence imposed on the person under s.
24 973.01 shall be not less than 3 years.

25 **SECTION 8.** 346.65 (2) (am) 7. of the statutes is amended to read:

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1 346.65 (2) (am) 7. Except as provided in par. (f), is guilty of a Class ~~F~~ E felony
2 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
3 plus the total number of suspensions, revocations, and other convictions counted
4 under s. 343.307 (1), equals 10 or more except that suspensions, revocations, or
5 convictions arising out of the same incident or occurrence shall be counted as one.
6 The confinement portion of a bifurcated sentence imposed on the person under s.
7 973.01 shall be not less than 4 years.

8 **SECTION 9.** 973.09 (2) (a) 1. d. of the statutes is amended to read:

9 973.09 (2) (a) 1. d. A misdemeanor under s. 23.33 (4c) or (4p) (e), 30.681, 30.684
10 (5), 350.101, 350.104 (5), or 350.17 or a misdemeanor punishable under s. ~~346.63~~ to
11 which s. ~~973.09 (1) (d)~~ applies 346.65 (2) (am) 2.

12 **SECTION 10.** 973.09 (2) (am) of the statutes is repealed.

13 **SECTION 11. Initial applicability.**

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

20

(END)