

## 2011 DRAFTING REQUEST

### Bill

Received: 11/03/2011

Received By: agary

Wanted: As time permits

Companion to LRB:

For: Scott Fitzgerald (608) 266-5660

By/Representing: Cindy Block

May Contact:

Drafter: agary

Subject: **Transportation - driver licenses**  
**Transportation - traffic laws**  
**Drunk Driving - other**

Addl. Drafters: phurley

Extra Copies: EVM

Submit via email: YES

Requester's email: Sen.Fitzgerald@legis.wisconsin.gov

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

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### Pre Topic:

No specific pre topic given

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### Topic:

Providing notice, rendering assistance, after a traffic accident; penalties; demerit points; evidence of drinking after accident in OWI cases

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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>
/?				_____			S&L
/P1	agary 11/14/2011 phurley 11/15/2011 agary	kfollett 12/01/2011	jfrantze 12/01/2011	_____ _____ _____	lparisi 12/01/2011		S&L

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	11/15/2011			_____			
/P2	agary 12/07/2011	kfollett 12/08/2011	rschluet 12/09/2011	_____	mbarman 12/09/2011		S&L
/1	agary 02/07/2012	kfollett 02/07/2012	jmurphy 02/07/2012	_____	ggodwin 02/07/2012	mbarman 02/08/2012	

FE Sent For:

*at intro*  
*2-15-12*

<END>

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*PTs:*  
*Please*  
*Jacket*  
*1.*  
*The Arc*

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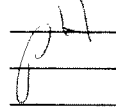
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11/15/2011

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/?	agary	1P/kjf 12/11		12/11			S&L

FE Sent For:

<END>

**Gary, Aaron**

---

**From:** Block, Cindy  
**Sent:** Thursday, November 03, 2011 1:27 PM  
**To:** Gary, Aaron  
**Subject:** FW: Daily Citizen Weekend Opinion Piece  
**Attachments:** FTR Legislation.doc; FTN changes.pdf

Gary - per our bill draft request - here are the attachments, please call if you have any questions. Thanks again,  
Cindy Block/office of Sen. Fitzgerald

---

**From:** Nehls, Todd [mailto:tnehs@co.dodge.wi.us]  
**Sent:** Thursday, November 03, 2011 11:20 AM  
**To:** Block, Cindy  
**Subject:** RE: Daily Citizen Weekend Opinion Piece

I attached tow versions of same letter with the pdf being the priority as it reflects changes proposed in red.

-----Original Message-----

**From:** Block, Cindy [mailto:Cindy.Block@legis.wisconsin.gov]  
**Sent:** Monday, October 31, 2011 1:44 PM  
**To:** Nehls, Todd  
**Cc:** Fitzgerald, Scott  
**Subject:** RE: Daily Citizen Weekend Opinion Piece

Excellent! Thanks. Cindy Block/Office of Sen. Fitzgerald

---

**From:** Nehls, Todd [mailto:tnehs@co.dodge.wi.us]  
**Sent:** Monday, October 31, 2011 1:42 PM  
**To:** Block, Cindy  
**Subject:** Re: Daily Citizen Weekend Opinion Piece

\*\*\*This message is being sent from a Dodge County Blackberry device.\*\*\*

Great. I am drafted some suggestions and will forward when complete. We had two more of these this weekend.

---

**From:** Block, Cindy [mailto:Cindy.Block@legis.wisconsin.gov]  
**Sent:** Monday, October 31, 2011 01:38 PM  
**To:** Nehls, Todd  
**Subject:** Daily Citizen Weekend Opinion Piece

Sheriff Nehls - Senator Fitzgerald is in meetings today and asked me to contact you regarding your opinion piece in the Daily Citizen "Tougher Laws Proposed". I also left a message at your office. Senator Fitzgerald wanted me to let you know that he read the piece and is intending to draft legislation that would address your concerns -- "putting some teeth in the law". Please let me know that you got this email and if you have any questions or if there are any other specifics you need the bill to address. Thanks.

Cindy Block  
Legislative Aide

Office of Senator Scott Fitzgerald  
608-266-5660

\*\*\*\*\*

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Dodge County encrypts messages with EPHI or private information pertaining to Wisconsin Act 138. [http://www.co.dodge.wi.us/DC\\_secure\\_email.pdf](http://www.co.dodge.wi.us/DC_secure_email.pdf)

\*\*\*\*\*

# OFFICE OF DODGE COUNTY SHERIFF

TODD M. NEHLS  
*Sheriff*



BLAINE LAUERSDORF  
*Chief Deputy*

October 31, 2011

Senator Scott Fitzgerald  
State Capitol Room 211 South  
P. O. Box 7882  
Madison, WI 53707-7882

Dear Senator Fitzgerald:

Over the course of the last 5 – 10 years, legislation has been passed which has significantly increased the penalties for impaired operation of a motor vehicle. An unforeseen reaction to the increases has been impaired drivers who now fail to report traffic crashes for fear of the significant penalty for Operation While Intoxicated 363.63 (1) (a) in which 1<sup>st</sup> offense penalties include \$1,185.50 fine, 6 demerit points, and a 6 month revocation vs. failure to notify police of an accident 346.70 (1) which the suspect is fined just \$263.50, receives no demerit points nor a license revocation. One can see why those who have been drinking have a motivation not to report. So far in 2011, the Dodge County Sheriffs Department has issued 48 citations and 7 warnings for violations of 346.70 (1), many of these crashes have evidence of impaired driving, time of day, bottles/cans in vehicle, or no real reason why person would have left the roadway..

The current statutes fail to recognize what I feel is a newer definition of "immediate" in that 80%+ of all adults own a cellular telephone making it more practical to make immediate notification. No longer is one required to walk to the nearest farm house to use a telephone. The advent of cellular 911 also allows for injured parties to call 911 and law enforcement can immediately plot their location on a map allowing for a quicker emergency response.

On a weekly basis, the Dodge County Sheriff's Department responds to serious motor vehicle crashes and locates no driver or occupants. Often, due to the callers' description of the vehicle condition, 911 Dispatch will send fire, EMS and multiple units. The Dodge County emergency responder community is 99% volunteer and many of these incidents occur in the very early morning hours disrupting the sleep of our valued responders. Due to evidence such as blood and significant physical damage indicating violent crash, an extensive search is orchestrated for driver or passengers who may have been ejected or attempted to walk for help and may have collapsed well away from the scene. E911 dispatchers call local hospitals while other law enforcement officers respond to the registered downers address in an attempt to ascertain what occurred. It would not be out of the ordinary for an injured person to get home collapse

in bed and not wake up the following morning. These efforts exhaust significant man power and exhaust valuable taxpayer resources.

After several hours of effort with no success, the most law enforcement can do is place a "hold" on the crashed vehicle which advises the towing company not to release the vehicle or any personal belongings until the owner comes forward to law enforcement to complete the traffic accident report (MV4000). The following day the owner/driver reports to the department with "his" version of events which include:

- I was not driving, I let a guy I just met drive me home and I do not know his name.
- I was not drinking.
- I swerved to miss hitting a deer and forgot to call.
- My car was stolen.
- I am a heavy sleeper and did not hear my phone ring when you called or hear you knocking on my door.
- I would have called but my cell phone battery was dead.
- I was scared left the scene and then went home and drank to calm my nerves.

Often, others (friends and family) are summoned to pick up the suspect. They had time to call parents, friends, or even a tow truck but did not think of calling law enforcement. Those whom respond to assist these drivers face no penalty either even though they see no law enforcement officers at the scene when they pick up driver.

On October 30, 2011, we had a young woman crash her car with three friends as occupants. Not only did she fail to report, she called her parents, they called a tow truck and removed the vehicle. We would not have known of the crash but the mother finally took the daughter to the hospital and they contacted us. Here is the message to me from my deputy:

*Add another incident to your list from this weekend, only it was the operator, the operators mom (who picked up all four people including two juveniles who later had injuries) and dropped them off at home, a homeowner who allowed them all to "warm up" in his house after witnessing the crash, and a tow company who utilized two trucks to pull the vehicle out.....ALL without law enforcement present or being notified. Huge loopholes in this law. Thanks for looking into changing it!*

Legislation needs to be drafted which will increase the penalty for failure to report accidents as well as legislation which will penalize those who aid and abet those who fail to report. From parents to towing companies, we can save significant dollars and resources the laws encourage reporting vs. fear of reporting.

Recommendation: Amend state statute 346.70 to ensure more serious penalty for those who fail to report because they may have been drinking or did not have a valid operator's license.

Current statute. Recommended changes in red.

**(1) IMMEDIATE NOTICE OF ACCIDENT.** The operator or occupant of a vehicle involved in an accident resulting in injury to or death of any person, or any damage to state or other government-owned property, except a state or other government-owned vehicle, to an apparent extent of \$200 or more or total damage to property owned by any one person or to a state or other government-owned vehicle to an apparent extent of \$1,000 or more shall immediately by the quickest means of communication give notice of such accident to the police department, the sheriff's department or the traffic department of the county or municipality in which the accident occurred or to a state traffic patrol officer. In this subsection, "injury" means injury to a person of a physical nature resulting in death or the need of first aid or attention by a physician or surgeon, whether or not first aid or medical or surgical treatment was actually received; "total damage to property owned by one person" means the sum total cost of putting the property damaged in the condition it was before the accident, if repair thereof is practical, and if not practical, the sum total cost of replacing such property. For purposes of this subsection if any property which is damaged is held in a form of joint or multiple ownership, the property shall be considered to be owned by one person.

- (a) No person in the business of towing, recovery, or repair shall contract for retrieval, recovery, or removal of any such vehicle sustains reportable damage unless contacted by a law enforcement agency or conduct such retrieval, recovery, or removal in the absence of a law enforcement officer.
- (b) No person shall assist an operator or occupant of a vehicle involved in a reportable accident by any means w/o first reporting the accident to the local law enforcement agency having jurisdiction of the accident.

Fine/forfeiture increased from \$40-200 plus costs to \$200-500 plus costs and 6 demerit points.

Second or subsequent violations w/one year increase fine/forfeiture to \$300 – 500 plus 6 demerit points

Fine/forfeiture for violations of para (1) (a) or (b) shall be \$40-200 plus costs.

Another gap in the state statutes deals with OWI itself. I would support an amendment which states "the ingestion of alcoholic beverages after a traffic crash" shall not be a

defense in court." Very often the drunk gets home and conveniently starts power drinking to make it appear they were sober when they crashed and only drank when they arrived home.

Thank you for your assistance on making our state roads and highways a safer place.

Sincerely,

Todd M. Nehls  
Sheriff

**Gary, Aaron**

---

**From:** Gary, Aaron  
**Sent:** Wednesday, November 09, 2011 12:32 PM  
**To:** Block, Cindy  
**Subject:** RE: Daily Citizen Weekend Opinion Piece

Hi Cindy,

I am in the process of drafting this request. I want to make sure that this legislation is what you want, as the impact could be far-reaching.

1. While I understand the intent of the proposal, the effect may also be to discourage the public from providing help after a motor vehicle accident and to even penalize those rendering assistance at an accident if it is not done the right way (i.e. instead of immediately rendering assistance, a good samaritan must contact law enforcement first, and then render assistance, or be subject to penalties). That is, the bill may have the secondary effect of discouraging or punishing good samaritans.

2. Will there be times when a motor vehicle accident occurs and is blocking traffic, and (under this bill) the towing company cannot clear the vehicle from the roadway because law enforcement must first be contacted and must first arrive at the scene?

3. The penalty is increased, and driver license demerit points are assessed, against an operator who fails to immediately notify law enforcement of an accident. But the proposal would also apply this increased penalty, and driver license demerit points, against an occupant of the vehicle. Is that what you want?

4. Did you want to include the part of the proposal about drinking after an accident not being a defense to OWI? Under current law, it is already not a defense to OWI. However, if you wish, we could draft something that says that consumption of alcohol after a traffic accident is inadmissible as evidence in an OWI prosecution.

Thanks. Aaron

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

---

**From:** Block, Cindy  
**Sent:** Thursday, November 03, 2011 1:27 PM  
**To:** Gary, Aaron  
**Subject:** FW: Daily Citizen Weekend Opinion Piece

Gary - per our bill draft request - here are the attachments, please call if you have any questions. Thanks again,  
Cindy Block/office of Sen. Fitzgerald

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-----Original Message-----

**From:** Block, Cindy [mailto:Cindy.Block@legis.wisconsin.gov]

11/9/2011



## Gary, Aaron

---

**From:** Block, Cindy  
**Sent:** Thursday, November 10, 2011 4:00 PM  
**To:** Gary, Aaron  
**Subject:** FW: Bill draft

Aaron, here is the information on the bill draft - thanks again, Cindy Block/office of Sen. Fitzgerald

-----Original Message-----

From: Nehls, Todd [mailto:tnehls@co.dodge.wi.us]  
Sent: Thursday, November 10, 2011 3:52 PM  
To: Block, Cindy  
Cc: Gary, Aaron  
Subject: RE: Bill draft

See below, thanks for your help.

---

From: Block, Cindy [Cindy.Block@legis.wisconsin.gov]  
Sent: Thursday, November 10, 2011 3:36 PM  
To: Nehls, Todd  
Subject: Bill draft

Sheriff Nehls - could you please look over the questions the bill drafter has and offer any input - thanks. Cindy Block/Office of Sen. Fitzgerald

I am in the process of drafting this request. I want to make sure that this legislation is what you want, as the impact could be far-reaching.

1. While I understand the intent of the proposal, the effect may also be to discourage the public from providing help after a motor vehicle accident and to even penalize those rendering assistance at an accident if it is not done the right way (i.e. instead of immediately rendering assistance, a good samaritan must contact law enforcement first, and then render assistance, or be subject to penalties). That is, the bill may have the secondary effect of discouraging or punishing good samaritans. MY INTENT IS TO HOLD THOSE ACCOUNTABLE WHO INTENTIONALLY RESPOND AND AID THE DRIVER IN COVERING UP SUCH CRASHES. I UNDERSTAND YOUR POINT AND DO NOT WANT TO NEGATIVELY IMPACT THE MANY GOOD SAMARITANS OUT THERE.

2. Will there be times when a motor vehicle accident occurs and is blocking traffic, and (under this bill) the towing company cannot clear the vehicle from the roadway because law enforcement must first be contacted and must first arrive at the scene? EXIGENT CIRCUMSTANCES WOULD PREVAIL AS WELL AS HOPEFULLY SOME OFFICER COMMON SENSE. WE DO NOT ENCOURAGE THIS EARLY REMOVAL BY TOWING SERVICES AS IT CAN DESTROY EVIDENCE OF A CRIME. WE ALWAYS WAIT UNTIL A DEPUTY IS ON SCENE BEFORE WE CALL TOWING COMPANIES. IF THE REMOVAL IS AN EMERGENCY AND FOR BETTERMENT OF SAFETY WE WOULD ALLOW IT TO OCCUR.

3. The penalty is increased, and driver license demerit points are assessed, against an operator who fails to immediately notify law enforcement of an accident. But the proposal would also apply this increased penalty, and driver license demerit points, against an occupant of the vehicle. Is that what you want? DEMERIT POINTS TO DRIVER ONLY. Maybe a forfeiture citation for passengers over the age of 16 for their failure to report being in a reportable crash and along with the driver, failed to report.

4. Did you want to include the part of the proposal about drinking after an accident not being a defense to OWI? Under current law, it is already not a defense to OWI. However, if you wish, we could draft something that says that consumption of alcohol after a traffic accident is inadmissible as evidence in an OWI prosecution. I LIKE THE SOUND OF THAT.

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Attorney, Legislative Reference Bureau  
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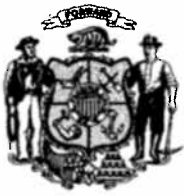
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State of Wisconsin  
2011 - 2012 LEGISLATURE

soon



LRB-3418/P1  
ARG...

Thurs. or Friday  
pm and

in  
11/15

kgf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

D-Note

Gen

1 AN ACT ...; **relating to:** giving notice of, and providing assistance after, a motor  
2 vehicle accident and providing a penalty.

***Analysis by the Legislative Reference Bureau***

Under current law, if an operator of a vehicle has an accident resulting in personal injury or vehicle damage, the operator must immediately stop the vehicle at or near the scene of the accident, provide certain information, and render reasonable assistance to any injured person. If an operator of a vehicle has an accident with an unattended vehicle or with property on or adjacent to a highway, the operator must immediately stop and fulfill certain obligations to provide notice of the vehicle operator's identity. The operator of a vehicle involved in an accident resulting in injury or death to a person or damage to property in specified amounts (reportable accident) must also immediately give notice of the accident to law enforcement, by the quickest means of communication. Within ten days after an accident, the vehicle operator must also make a written report of the accident to the Department of Transportation (DOT) unless a report has already been made by a law enforcement agency. If the vehicle operator is physically incapable of giving the immediate notice, and making the written report, after an accident, the owner of the vehicle involved in the accident must give the notice and make the report. If the vehicle owner is physically or mentally incapable of giving the notice and making the report and there was an occupant in the vehicle at the time of the accident capable of giving the notice and making the report, the occupant must give the notice and make the report.

Under current law, if a vehicle operator fails to give immediate notice after an accident, the vehicle operator may be required to forfeit not less than \$40 or more

second  
than \$200 for the first offense and may be required to forfeit not less than \$100 nor more than \$500 for the 2<sup>nd</sup> or subsequent conviction within a year. A vehicle owner or occupant required to give notice after an accident, when the vehicle operator is incapable of doing so, is subject to this same penalty.

Also under current law, DOT may adopt, by rule, a demerit point system for the purpose of determining when to suspend a person's operating privilege for being a habitually reckless or negligent driver or repeatedly violating traffic laws. Under this system, DOT may assess demerit points against the driving record of a person convicted of violations of certain traffic laws. Despite DOT's general discretion to develop a demerit point scale assigning demerit point amounts for specific violations, there are certain violations for which DOT is required by statute to assess a specific number of demerit points and certain violations for which DOT is prohibited from assessing demerit points.

second  
This bill requires a motor vehicle occupant, as well as the motor vehicle operator, to immediately give notice to law enforcement after a reportable accident. The bill also increases the penalty for violating this notice requirement to a forfeiture of not less than \$200 nor more than \$500 for the first offense and not less than \$300 nor more than \$500 for the 2<sup>nd</sup> or subsequent conviction within a year. The bill also requires DOT to assess six demerit points against the driving record of a vehicle operator who fails to give notice as required.

The bill also creates certain requirements applicable to those who render assistance after a reportable accident. Under the bill, a person in the business of towing, recovery, or repair of motor vehicles may not contract for retrieval, recovery, or removal from the scene of a reportable accident of any motor vehicle that has sustained damage unless the person has been contacted by a law enforcement agency. Moreover, a person in the business of towing, recovery, or repair of motor vehicles may not retrieve, recover, or remove from the scene of a reportable accident any motor vehicle that has sustained damage unless a law enforcement officer is present. However, these provisions do not apply if removal of the vehicle from the roadway at the scene of the accident is necessary to avoid imminent danger to motorists or other persons. In addition, under the bill, a person may not assist an operator or occupant of a motor vehicle involved in a reportable accident unless the person has first reported the accident to a law enforcement agency or has verified that another person has already reported the accident to a law enforcement agency. However, there are exceptions to this requirement for persons whose profession involves rendering medical assistance; persons who are not related by blood or marriage to, or closely acquainted with, the operator or occupant of the motor vehicle; and persons who have no knowledge that there was a traffic accident. A person who violates these new requirements applicable to those who render assistance after a reportable accident may be required to forfeit not less than \$40 nor more than \$200.

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.** 343.32 (2) (bk) of the statutes is created to read:

2           343.32 (2) (bk) The scale adopted by the secretary shall assess, for each  
3 conviction, 6 demerit points for a violation of s. 346.70 (1) by the operator of a vehicle.

4           **SECTION 2.** 346.70 (title) of the statutes is amended to read:

5           **346.70 (title) Duty to report accident; assistance following accident.**

History: 1975 c. 240, 381; 1977 c. 29 ss. 1486, 1654 (7) (a), (c); 1977 c. 100; 1979 c. 99; 1981 c. 20, 133, 314; 1985 a. 29; 1987 a. 211; 1993 a. 246, 437; 1995 a. 113; 2001 a. 27; 2005 a. 253; 2009 a. 276.

6           **SECTION 3.** 346.70 (1) of the statutes is amended to read:

7           346.70 (1) IMMEDIATE NOTICE OF ACCIDENT. The operator or occupant of a vehicle  
8 involved in an accident resulting in injury to or death of any person, any damage to  
9 state or other government-owned property, except a state or other  
10 government-owned vehicle, to an apparent extent of \$200 or more, or total damage  
11 to property owned by any one person or to a state or other government-owned vehicle  
12 to an apparent extent of \$1,000 or more shall immediately by the quickest means of  
13 communication give notice of such accident to the police department, the sheriff's  
14 department or the traffic department of the county or municipality in which the  
15 accident occurred or to a state traffic patrol officer. In this subsection, "injury" means  
16 injury to a person of a physical nature resulting in death or the need of first aid or  
17 attention by a physician or surgeon, whether or not first aid or medical or surgical  
18 treatment was actually received; "total damage to property owned by one person"  
19 means the sum total cost of putting the property damaged in the condition it was  
20 before the accident, if repair thereof is practical, and if not practical, the sum total

1 cost of replacing such property. For purposes of this subsection if any property which  
2 is damaged is held in a form of joint or multiple ownership, the property shall be  
3 considered to be owned by one person.

**History:** 1975 c. 240, 381; 1977 c. 29 ss. 1486, 1654 (7) (a), (c); 1977 c. 100; 1979 c. 99; 1981 c. 20, 133, 314; 1985 a. 29; 1987 a. 211; 1993 a. 246, 437; 1995 a. 113; 2001 a. 27; 2005 a. 253; 2009 a. 276.

4 **SECTION 4.** 346.70 (1m) of the statutes is created to read:

5 346.70 (1m) ASSISTANCE FOLLOWING AN ACCIDENT. (a) 1. No person in the  
6 business of towing, recovery, or repair of motor vehicles may contract for retrieval,  
7 recovery, or removal from the scene of a traffic accident described in sub. (1) of any  
8 motor vehicle that has sustained damage unless the person has been contacted by  
9 a law enforcement agency.

10 2. No person in the business of towing, recovery, or repair of motor vehicles may  
11 retrieve, recover, or remove from the scene of a traffic accident described in sub. (1)  
12 any motor vehicle that has sustained damage unless a law enforcement officer is  
13 present.

14 3. This paragraph does not apply with respect to removal of a motor vehicle  
15 from the roadway at the scene of an accident if such removal is necessary to avoid  
16 imminent danger to motorists or other persons.

17 (b) No person may assist, by any means, an operator or occupant of a motor  
18 vehicle involved in an accident as described in sub. (1) unless the person has first  
19 reported the accident to a law enforcement agency or has verified that another  
20 person has already reported the accident to a law enforcement agency. This  
21 paragraph does not apply to any of the following:

22 1. A physician, nurse, or other person whose profession involves rendering  
23 medical assistance.

1           2. Any person who is not related by blood or marriage to, or closely acquainted  
2 with, the operator or occupant of the motor vehicle.

3           3. Any person who has no knowledge that there was a traffic accident.

4           **SECTION 5.** 346.70 (3) of the statutes<sup>✓</sup> is amended to read:

5           346.70 (3) WHO TO REPORT WHEN OPERATOR UNABLE. Whenever the operator of  
6 a vehicle is physically incapable of giving the notice and making the report required  
7 by subs. (1) and (2), the owner of the vehicle involved in the accident shall give the  
8 notice and make the report required by subs. (1) and (2). If the owner of the vehicle  
9 is physically or mentally incapable of ~~giving the notice and~~ making the report  
10 required by ~~subs. (1) and sub.~~ (2), and if there was another occupant in the vehicle  
11 at the time of the accident capable of ~~giving the notice and~~ making the report, the  
12 occupant shall ~~give the notice and~~ make the report.

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13           **SECTION 6.** 346.74 (2) of the statutes<sup>✓</sup> is amended to read:

14           346.74 (2) Any person violating s. 346.70 (1), (2) or (3), 346.71 or 346.73 may  
15 be required to forfeit not less than \$40 nor more than \$200 for the first offense and  
16 may be required to forfeit not less than \$100 nor more than \$500 for the 2nd or  
17 subsequent conviction within a year.

History: 1971 c. 278; 1973 c. 218; 1981 c. 20, 70; 1997 a. 258, 283; 2001 a. 109; 2003 a. 74; 2005 a. 411.

18           **SECTION 7.** 346.74 (2g) of the statutes<sup>✓</sup> is created to read:

19           346.74 (2g) Any operator of a vehicle<sup>✓</sup>, and any occupant of a vehicle who is at  
20 least 16 years of age, who violates s. 346.70 (1) may be required to forfeit not less than  
21 \$200<sup>✓</sup> nor more than \$500<sup>✓</sup> for the first offense and may be required to forfeit not less  
22 than \$300<sup>✓</sup> nor more than \$500<sup>✓</sup> for the 2nd or subsequent conviction within a year.

23           **SECTION 8.** 346.74 (2r) of the statutes<sup>✓</sup> is created to read:





**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3418/P1dn

ARG:...

*ef*

*Date*

Please review the attached draft carefully to ensure that it is consistent with your intent. As discussed by e-mail, I believe that the initial instructions could be interpreted more broadly than intended. Consistent with the responses from Sheriff Nehls, I have made some modifications in order to address this overbreadth concern and focus the draft on the circumstances for which it is intended.

This draft does not include any provision relating to consumption of alcohol after an accident as a defense in an OWI prosecution. If you would like, we will add that provision in a redraft.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3418/P1dn  
ARG:kjf:jf

December 1, 2011

Please review the attached draft carefully to ensure that it is consistent with your intent. As discussed by e-mail, I believe that the initial instructions could be interpreted more broadly than intended. Consistent with the responses from Sheriff Nehls, I have made some modifications in order to address this overbreadth concern and focus the draft on the circumstances for which it is intended.

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Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: [aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

**Gary, Aaron**

**From:** Block, Cindy  
**Sent:** Monday, December 05, 2011 4:32 PM  
**To:** Gary, Aaron  
**Subject:** FW: Draft review: LRB 11-3418/P1 Topic: Providing notice, rendering assistance, after a traffic accident; penalties; demerit points; evidence of drinking after accident in OWI cases

Aaron, here is one change. Also, another bill regarding the prohibition of drinking. CB

---

**From:** Nehls, Todd [mailto:tnehs@co.dodge.wi.us]  
**Sent:** Monday, December 05, 2011 10:58 AM  
**To:** Block, Cindy  
**Subject:** RE: Draft review: LRB 11-3418/P1 Topic: Providing notice, rendering assistance, after a traffic accident; penalties; demerit points; evidence of drinking after accident in OWI cases

I would suggest one change in 346.70 regarding tow companies and the removal of vehicles in crashes, lets add the ability to do so with "prior approval of law enforcement" rather than solely law enforcement presence. This will allow us to give verbal permission via telephone or other means to tow the vehicles.

As far as Aaron's letter and the prohibition of drinking within 3 hrs of a reportable crash in which the driver failed to report, I think such legislation would be very effective.

-----Original Message-----

**From:** Block, Cindy [mailto:Cindy.Block@legis.wisconsin.gov]  
**Sent:** Friday, December 02, 2011 3:44 PM  
**To:** Nehls, Todd  
**Subject:** FW: Draft review: LRB 11-3418/P1 Topic: Providing notice, rendering assistance, after a traffic accident; penalties; demerit points; evidence of drinking after accident in OWI cases

Todd, please look over the bill draft and let me know if there are any changes you want to make. Thanks.

---

**From:** Sen.Fitzgerald  
**Sent:** Friday, December 02, 2011 9:34 AM  
**To:** Block, Cindy  
**Subject:** FW: Draft review: LRB 11-3418/P1 Topic: Providing notice, rendering assistance, after a traffic accident; penalties; demerit points; evidence of drinking after accident in OWI cases

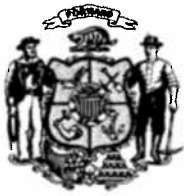
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**From:** LRB.Legal  
**Sent:** Thursday, December 01, 2011 3:04 PM  
**To:** Sen.Fitzgerald  
**Subject:** Draft review: LRB 11-3418/P1 Topic: Providing notice, rendering assistance, after a traffic accident; penalties; demerit points; evidence of drinking after accident in OWI cases

**Following is the PDF version of draft LRB 11-3418/P1 and drafter's note.**

\*\*\*\*\*

This email and any files transmitted with it are private and may contain privileged information intended solely for the use of the individual(s) or



soon

in 12/7



LRB-3418/01 P2  
ARG:kjf:jf

RMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Two changes - pp. 2, 4

Regen

1 AN ACT *to amend* 346.70 (title), 346.70 (1), 346.70 (3) and 346.74 (2); and *to*  
2 *create* 343.32 (2) (bk), 346.70 (1m), 346.74 (2g) and 346.74 (2r) of the statutes;  
3 **relating to:** giving notice of, and providing assistance after, a motor vehicle  
4 accident and providing a penalty.

***Analysis by the Legislative Reference Bureau***

Under current law, if an operator of a vehicle has an accident resulting in personal injury or vehicle damage, the operator must immediately stop the vehicle at or near the scene of the accident, provide certain information, and render reasonable assistance to any injured person. If an operator of a vehicle has an accident with an unattended vehicle or with property on or adjacent to a highway, the operator must immediately stop and fulfill certain obligations to provide notice of the vehicle operator's identity. The operator of a vehicle involved in an accident resulting in injury or death to a person or damage to property in specified amounts (reportable accident) must also immediately give notice of the accident to law enforcement, by the quickest means of communication. Within ten days after an accident, the vehicle operator must also make a written report of the accident to the Department of Transportation (DOT) unless a report has already been made by a law enforcement agency. If the vehicle operator is physically incapable of giving the immediate notice, and making the written report, after an accident, the owner of the vehicle involved in the accident must give the notice and make the report. If the vehicle owner is physically or mentally incapable of giving the notice and making the report and there was an occupant in the vehicle at the time of the accident capable

of giving the notice and making the report, the occupant must give the notice and make the report.

Under current law, if a vehicle operator fails to give immediate notice after an accident, the vehicle operator may be required to forfeit not less than \$40 nor more than \$200 for the first offense and may be required to forfeit not less than \$100 nor more than \$500 for the second or subsequent conviction within a year. A vehicle owner or occupant required to give notice after an accident, when the vehicle operator is incapable of doing so, is subject to this same penalty.

Also under current law, DOT may adopt, by rule, a demerit point system for the purpose of determining when to suspend a person's operating privilege for being a habitually reckless or negligent driver or repeatedly violating traffic laws. Under this system, DOT may assess demerit points against the driving record of a person convicted of violations of certain traffic laws. Despite DOT's general discretion to develop a demerit point scale assigning demerit point amounts for specific violations, there are certain violations for which DOT is required by statute to assess a specific number of demerit points and certain violations for which DOT is prohibited from assessing demerit points.

This bill requires a motor vehicle occupant, as well as the motor vehicle operator, to immediately give notice to law enforcement after a reportable accident. The bill also increases the penalty for violating this notice requirement to a forfeiture of not less than \$200 nor more than \$500 for the first offense and not less than \$300 nor more than \$500 for the second or subsequent conviction within a year. The bill also requires DOT to assess six demerit points against the driving record of a vehicle operator who fails to give notice as required.

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X  
or has given  
prior approval

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

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1           **SECTION 1.** 343.32 (2) (bk) of the statutes is created to read:

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10 government-owned vehicle, to an apparent extent of \$200 or more, or total damage  
11 to property owned by any one person or to a state or other government-owned vehicle  
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14 department or the traffic department of the county or municipality in which the  
15 accident occurred or to a state traffic patrol officer. In this subsection, "injury" means  
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6 recovery, or removal from the scene of a traffic accident described in sub. (1) of any  
7 motor vehicle that has sustained damage unless the person has been contacted by  
8 a law enforcement agency.

9 2. No person in the business of towing, recovery, or repair of motor vehicles may  
10 retrieve, recover, or remove from the scene of a traffic accident described in sub. (1)  
11 any motor vehicle that has sustained damage unless a law enforcement officer is  
12 present.

*or has given prior approval for the retrieval, recovery, or removal  
of the vehicle*

13 3. This paragraph does not apply with respect to removal of a motor vehicle  
14 from the roadway at the scene of an accident if such removal is necessary to avoid  
15 imminent danger to motorists or other persons.

16 (b) No person may assist, by any means, an operator or occupant of a motor  
17 vehicle involved in an accident as described in sub. (1) unless the person has first  
18 reported the accident to a law enforcement agency or has verified that another  
19 person has already reported the accident to a law enforcement agency. This  
20 paragraph does not apply to any of the following:

21 1. A physician, nurse, or other person whose profession involves rendering  
22 medical assistance.

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4 by subs. (1) and (2), the owner of the vehicle involved in the accident shall give the  
5 notice and make the report required by subs. (1) and (2). If the owner of the vehicle  
6 is physically or mentally incapable of ~~giving the notice and~~ making the report  
7 required by ~~subs. (1) and sub.~~ (2), and if there was another occupant in the vehicle  
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20           **SECTION 8.** 346.74 (2r) of the statutes is created to read:

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23           **SECTION 9. Initial applicability.**







State of Wisconsin  
2011 - 2012 LEGISLATURE

in  
2/7



LRB-3418/02

ARG:kjfrs

2/7 - per Cindy, want 11, jacketed  
wanted 2/8  
KMN  
~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Regen

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19 means the sum total cost of putting the property damaged in the condition it was  
20 before the accident, if repair thereof is practical, and if not practical, the sum total  
21 cost of replacing such property. For purposes of this subsection if any property which

1 is damaged is held in a form of joint or multiple ownership, the property shall be  
2 considered to be owned by one person.

3 **SECTION 4.** 346.70 (1m) of the statutes is <sup>✓</sup>created to read:

4 **346.70 (1m) ASSISTANCE FOLLOWING AN ACCIDENT.** (a) 1. No person in the  
5 business of towing, recovery, or repair of motor vehicles may contract for retrieval,  
6 recovery, or removal from the scene of a traffic accident described in sub. (1) of any  
7 motor vehicle that has sustained damage unless the person has been contacted by  
8 a law enforcement agency.

9 2. No person in the business of towing, recovery, or repair of motor vehicles may  
10 retrieve, recover, or remove from the scene of a traffic accident described in sub. (1)  
11 any motor vehicle that has sustained damage unless a law enforcement officer is  
12 present or has given prior approval for the retrieval, recovery, or removal of the  
13 vehicle.

14 3. This paragraph does not apply with respect to removal of a motor vehicle  
15 from the roadway at the scene of an accident if such removal is necessary to avoid  
16 imminent danger to motorists or other persons.

17 (b) No person may assist, by any means, an operator or occupant of a motor  
18 vehicle involved in an accident as described in sub. (1) unless the person has first  
19 reported the accident to a law enforcement agency or has verified that another  
20 person has already reported the accident to a law enforcement agency. This  
21 paragraph does not apply to any of the following:

22 1. A physician, nurse, or other person whose profession involves rendering  
23 medical assistance.

24 2. Any person who is not related by blood or marriage to, or closely acquainted  
25 with, the operator or occupant of the motor vehicle.

1           3. Any person who has no knowledge that there was a traffic accident.

2           **SECTION 5.** 346.70 (3) of the statutes is amended to read:

3           346.70 (3) WHO TO REPORT WHEN OPERATOR UNABLE. Whenever the operator of  
4 a vehicle is physically incapable of giving the notice and making the report required  
5 by subs. (1) and (2), the owner of the vehicle involved in the accident shall give the  
6 notice and make the report required by subs. (1) and (2). If the owner of the vehicle  
7 is physically or mentally incapable of ~~giving the notice and~~ making the report  
8 required by ~~subs. (1) and sub.~~ (2), and if there was another occupant in the vehicle  
9 at the time of the accident capable of ~~giving the notice and~~ making the report, the  
10 occupant shall ~~give the notice and~~ make the report.

11           **SECTION 6.** 346.74 (2) of the statutes is amended to read:

12           346.74 (2) Any person violating s. 346.70 (1), (2) or (3), 346.71 or 346.73 may  
13 be required to forfeit not less than \$40 nor more than \$200 for the first offense and  
14 may be required to forfeit not less than \$100 nor more than \$500 for the 2nd or  
15 subsequent conviction within a year.

16           **SECTION 7.** 346.74 (2g) of the statutes is created to read:

17           346.74 (2g) Any operator of a vehicle, and any occupant of a vehicle who is at  
18 least 16 years of age, who violates s. 346.70 (1) may be required to forfeit not less than  
19 \$200 nor more than \$500 for the first offense and may be required to forfeit not less  
20 than \$300 nor more than \$500 for the 2nd or subsequent conviction within a year.

21           **SECTION 8.** 346.74 (2r) of the statutes is created to read:

22           346.74 (2r) Any person violating s. 346.70 (1m) may be required to forfeit not  
23 less than \$40 nor more than \$200.

24           **SECTION 9. Initial applicability.**



**Parisi, Lori**

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**From:** Block, Cindy  
**Sent:** Wednesday, February 08, 2012 9:10 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 11-3418/1 Topic: Providing notice, rendering assistance, after a traffic accident; penalties; demerit points; evidence of drinking after accident in OWI cases

Please Jacket LRB 11-3418/1 for the SENATE.