2019 ASSEMBLY BILL 746

January 16, 2020 - Introduced by Representatives SHANKLAND, LOUDENBECK, SPIROS, ANDERSON, BOWEN, CONSIDINE, DITTRICH, EMERSON, FIELDS, HEBL, JAMES, KITCHENS, KULP, MILROY, MURSAU, NOVAK, PLUMER, SINICKI, SUBECK, TUSLER and VRUWIN, cosponsored by Senators TESTIN, CARPENTER, BEWLEY, MARKLEIN, OLSEN, SCHACHTNER and LARSON. Referred to Committee on Criminal Justice and Public Safety.

AN ACT to renumber and amend 346.17 (5), 346.22 (1) (b), 346.43 (1) (b) 3.,
346.49 (1) (c), 346.60 (3m) (a), 346.65 (5m) and 349.11 (10); to amend 346.43
(4) (a), 346.43 (4) (b), 346.49 (5) (a), 346.49 (5) (b), 346.89 (4m) and 349.06 (3);
and to create 340.01 (15pu), 346.17 (5) (b), 346.22 (1) (b) 2., 346.43 (1) (b) 3. b.,
346.49 (1) (c) 2., 346.60 (3m) (a) 2., 346.65 (5m) (b) and 349.11 (10) (b) of the statutes; relating to: traffic violations when emergency or roadside response vehicles are present and providing a penalty.

Analysis by the Legislative Reference Bureau
This bill increases the penalties for certain traffic violations that are committed where an authorized emergency vehicle or tow truck giving a visible signal is present and law enforcement officers, fire fighters, or emergency medical personnel or tow truck operators are at risk from traffic (emergency or roadside response area).

Under current law, the amount of any applicable minimum and maximum fine or forfeiture is doubled for specified traffic violations committed where persons working in a highway maintenance or construction area or utility area are at risk from traffic. These traffic violations include failing to follow certain traffic signs and signals, failing to follow certain orders of traffic officers, exceeding certain maximum speed limits, and driving recklessly. Under the bill, the minimum and maximum fine or forfeiture for these covered violations is also doubled when committed in an
emergency or roadside response area. Also under the bill, if an operator commits one of the covered violations in a highway maintenance or construction area, utility work area, or emergency or roadside response area and the violation results in an injury to another, the operator may be fined not more than $10,000 or imprisoned not more than nine months, or both.

Current law prohibits inattentive driving of a motor vehicle in general and in several specific manners. Among the specific prohibitions is a prohibition of using a wireless telephone while driving a motor vehicle in a construction zone. A person who violates this particular prohibition may be required to forfeit not less than $20 nor more than $40 for the first offense and not less than $50 nor more than $100 for the second or subsequent conviction within a year.

The bill specifically prohibits using a wireless telephone while driving a motor vehicle in an emergency or roadside response area. The penalty for a violation of this prohibition is the same as is provided for the offense described above.

Also under current law, local authorities may post temporary reduced speed limits on highways under construction or repair. The bill allows law enforcement officers, fire fighters, or emergency medical responders to post temporary reduced speed limits in response to an emergency.

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.

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:*

**SECTION 1.** 340.01 (15pu) of the statutes is created to read:

340.01 (15pu) “Emergency or roadside response area” means the section of roadway where an authorized emergency vehicle giving a visible signal or tow truck flashing red lamps, as required by s. 347.26 (6) (b), is present and law enforcement officers, fire fighters, or emergency medical personnel or tow truck operators are at risk from traffic.

**SECTION 2.** 346.17 (5) of the statutes is renumbered 346.17 (5) (a) and amended to read:

346.17 (5) (a) If except as provided in par. (b), if an operator of a vehicle violates s. 346.04 (1) or (2) where persons engaged in work in a highway maintenance or
construction area or in a utility work area, or emergency or roadside response area
are at risk from traffic, any applicable minimum and maximum forfeiture specified
in sub. (1) for the violation shall be doubled.

SECTION 3. 346.17 (5) (b) of the statutes is created to read:

346.17 (5) (b) If an operator of a vehicle violates s. 346.04 (1) or (2) where
persons engaged in work in a highway maintenance or construction area, utility
work area, or emergency or roadside response area are at risk from traffic and the
violation results in bodily harm, as defined in s. 939.22 (4), to another, the operator
may be fined not more than $10,000 or imprisoned for not more than 9 months, or
both. In addition to the penalties specified under this paragraph, a court may also
order a person convicted under this paragraph to perform not fewer than 100 nor
more than 200 hours of community service work and attend traffic safety school, as
provided under s. 345.60.

SECTION 4. 346.22 (1) (b) of the statutes is renumbered 346.22 (1) (b) 1. and
amended to read:

346.22 (1) (b) 1. If Except as provided in subd. 2., if an operator of a vehicle
violates s. 346.18 (6) where persons engaged in work in a highway maintenance or
construction area or in a utility work area, or emergency or roadside response area
are at risk from traffic, any applicable minimum and maximum forfeiture specified
in par. (a), (c), (d), or (e) for the violation shall be doubled.

SECTION 5. 346.22 (1) (b) 2. of the statutes is created to read:

346.22 (1) (b) 2. If an operator of a vehicle violates s. 346.18 (6) where persons
engaged in work in a highway maintenance or construction area, utility work area,
or emergency or roadside response area are at risk from traffic and the violation
results in bodily harm, as defined in s. 939.22 (4), to another, the operator may be
fined not more than $10,000 or imprisoned for not more than 9 months, or both. In
addition to the penalties specified under this subdivision, a court may also order a
person convicted under this subdivision to perform not fewer than 100 nor more than
200 hours of community service work and attend traffic safety school, as provided
under s. 345.60.

SECTION 6. 346.43 (1) (b) 3. of the statutes is renumbered 346.43 (1) (b) 3. a. and
amended to read:

346.43 (1) (b) 3. a. If Except as provided in subd. 3. b., if an operator of a vehicle
violates s. 346.37 or 346.39 where persons engaged in work in a highway
maintenance or construction area or in a utility work area, or emergency or roadside
response area are at risk from traffic, any applicable minimum and maximum
forfeiture specified in subd. 1. for the violation shall be doubled.

SECTION 7. 346.43 (1) (b) 3. b. of the statutes is created to read:

346.43 (1) (b) 3. b. If an operator of a vehicle violates s. 346.37 or 346.39 where
persons engaged in work in a highway maintenance or construction area, utility
work area, or emergency or roadside response area are at risk from traffic and the
violation results in bodily harm, as defined in s. 939.22 (4), to another, the operator
may be fined not more than $10,000 or imprisoned for not more than 9 months, or
both. In addition to the penalties specified under this subd. 3. b., a court may also
order a person convicted under this subd. 3. b. to perform not fewer than 100 nor more
than 200 hours of community service work and attend traffic safety school, as
provided under s. 345.60.

SECTION 8. 346.43 (4) (a) of the statutes is amended to read:
346.43 (4) (a) If Except as provided in sub. (1) (b) 3. b., if a person violates s. 346.37 (1) (a) 1., (c) 3., or (d) 1. or 346.39 (1) and the violation results in great bodily harm, as defined in s. 939.22 (14), to another, the person shall forfeit $500.

SECTION 9. 346.43 (4) (b) of the statutes is amended to read:

346.43 (4) (b) If Except as provided in sub. (1) (b) 3. b., if a person violates s. 346.37 (1) (a) 1., (c) 3., or (d) 1. or 346.39 (1) and the violation results in death to another, the person shall forfeit $1,000.

SECTION 10. 346.49 (1) (c) of the statutes is renumbered 346.49 (1) (c) 1. and amended to read:

346.49 (1) (c) 1. If Except as provided in subd. 2., if an operator of a vehicle violates s. 346.46 (1) where persons engaged in work in a highway maintenance or construction area or in a utility work area, or emergency or roadside response area are at risk from traffic, any applicable minimum and maximum forfeiture specified in par. (a) for the violation shall be doubled.

SECTION 11. 346.49 (1) (c) 2. of the statutes is created to read:

346.49 (1) (c) 2. If an operator of a vehicle violates s. 346.46 (1) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic and the violation results in bodily harm, as defined in s. 939.22 (4), to another, the operator may be fined not more than $10,000 or imprisoned for not more than 9 months, or both. In addition to the penalties specified under this subdivision, a court may also order a person convicted under this subdivision to perform not fewer than 100 nor more than 200 hours of community service work and attend traffic safety school, as provided under s. 345.60.

SECTION 12. 346.49 (5) (a) of the statutes is amended to read:
346.49 (5) (a) Except as provided in sub. (1) (c) 2., if a person violates s. 346.46 (1) or (4) (a) or 346.47 (1) or (2) and the violation results in great bodily harm, as defined in s. 939.22 (14), to another, the person shall forfeit $500.

SECTION 13. 346.49 (5) (b) of the statutes is amended to read:

346.49 (5) (b) Except as provided in sub. (1) (c) 2., if a person violates s. 346.46 (1) or (4) (a) or 346.47 (1) or (2) and the violation results in death to another, the person shall forfeit $1,000.

SECTION 14. 346.60 (3m) (a) of the statutes is renumbered 346.60 (3m) (a) 1. and amended to read:

346.60 (3m) (a) 1. Except as provided in subd. 2., if an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area or in a utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture specified in sub. (2) or (3) for the violation shall be doubled.

SECTION 15. 346.60 (3m) (a) 2. of the statutes is created to read:

346.60 (3m) (a) 2. If an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic and the violation results in bodily harm, as defined in s. 939.22 (4), to another, the operator may be fined not more than $10,000 or imprisoned for not more than 9 months, or both. In addition to the penalties specified under this subdivision, a court may also order a person convicted under this subdivision to
perform not fewer than 100 nor more than 200 hours of community service work and attend traffic safety school, as provided under s. 345.60.

**SECTION 16.** 346.65 (5m) of the statutes is renumbered 346.65 (5m) (a) and amended to read:

346.65 (5m) (a) If an operator of a vehicle violates s. 346.62 (2) to (4) where persons engaged in work in a highway maintenance or construction area or in a utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture or fine specified in sub. (1), (3), (4m), or (5) for the violation shall be doubled.

**SECTION 17.** 346.65 (5m) (b) of the statutes is created to read:

346.65 (5m) (b) If an operator of a vehicle violates s. 346.62 (2) to (3) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic and the violation results in bodily harm, as defined in s. 939.22 (4), to another, the operator may be fined not more than $10,000 or imprisoned for not more than 9 months, or both. In addition to the penalties specified under this paragraph, a court may also order a person convicted under this paragraph to perform not fewer than 100 nor more than 200 hours of community service work and attend traffic safety school, as provided under s. 345.60.

**SECTION 18.** 346.89 (4m) of the statutes is amended to read:

346.89 (4m) No person may drive, as defined in s. 343.305 (1) (b), any motor vehicle while using a cellular or other wireless telephone, including using the telephone for a purpose other than communication, where persons engaged in work
in a highway maintenance or construction area or in a utility work area, or emergency or roadside response area are at risk from traffic, except to report an emergency. This subsection does not apply to the use of a voice-operated or hands-free device if the driver of the motor vehicle does not use his or her hands to operate the device, except to activate or deactivate a feature or function of the device.

**SECTION 19.** 349.06 (3) of the statutes is amended to read:

349.06 (3) If an operator of a vehicle violates a local ordinance in strict conformity with s. 346.04 (1) or (2), 346.18 (6), 346.27, 346.37, 346.39, 346.46 (1), 346.57 (2), (3), (4) (d) to (h), or (5), or 346.62 (2) where persons engaged in work in a highway maintenance or construction area or in a utility work area, or emergency or roadside response area are at risk from traffic or violates a local ordinance in strict conformity with s. 346.57 (2), (3), (4) (d) to (h), or (5) or 346.62 (2) where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture for the violation shall be doubled.

**SECTION 20.** 349.11 (10) of the statutes is renumbered 349.11 (10) (a) and amended to read:

349.11 (10) (a) Notwithstanding any speed limits imposed under this section or under s. 346.57, if a highway is being constructed, reconstructed, maintained, or repaired, local authorities with respect to highways under their jurisdiction, any county highway committee performing maintenance on the state trunk highway system under s. 84.07, and any local authority with respect to highways not under its jurisdiction that are being constructed, reconstructed, maintained, or repaired by the local authority may, for the safety of the highway construction and maintenance workers, pedestrians, and highway users, post a temporary speed limit less than the
speed limit imposed under this section or under s. 346.57. The temporary limits may be posted for the duration of the construction, reconstruction, maintenance, or repair period.

(c) Temporary speed limits imposed under this subsection may be posted with signs on portable supports. When portable supports are used under this subsection, the bottom of the sign shall be not less than one foot above the surface of the pavement or shoulder.

SECTION 21. 349.11 (10) (b) of the statutes is created to read:

349.11 (10) (b) Notwithstanding any speed limits imposed under this section or under s. 346.57, a law enforcement officer, fire fighter, or emergency medical responder may post a temporary speed limit less than the speed limit imposed under this section or under s. 346.57 in reasonable response to an emergency.

SECTION 22. Nonstatutory provisions.

(1) In the 2019–21 fiscal biennium, the department of transportation shall conduct an advertising campaign to acquaint the public with the hazards posed by highway construction and maintenance areas, utility areas, and emergency or roadside response areas and the traffic laws and associated penalties related to highway construction and maintenance areas, utility areas, and emergency or roadside response areas.

SECTION 23. Initial applicability.

(1) This act first applies to violations committed on the effective date of this subsection.