



2009 ASSEMBLY BILL 346

July 15, 2009 – Introduced by Representatives GUNDRUM, STASKUNAS, ZIEGELBAUER, GOTTLIEB, BERCEAU, SMITH, VAN AKKEREN, CULLEN, LOTHIAN, KERKMAN, NYGREN, TOWNSEND, A. OTT, LEMAHIEU, RIPP, HONADEL, VUKMIR, BIES, STRACHOTA and NERISON, cosponsored by Senators PLALE, DARLING, CARPENTER and TAYLOR. Referred to Committee on Public Safety.

1 **AN ACT** *to amend* 346.65 (2) (am) 1., 346.65 (2g) (a), 346.65 (2g) (ag), 346.65 (2g)
2 (d), 346.65 (7) and 973.09 (1) (d) 1.; and *to create* 346.65 (2) (am) 1g. and 346.65
3 (2) (am) 1m. of the statutes; **relating to:** penalties for driving a vehicle while
4 under the influence of an intoxicant.

Analysis by the Legislative Reference Bureau

Under current law, if a person commits his or her first offense of operating a motor vehicle while under the influence of an intoxicant, a controlled substance, or a combination of the two, or of operating a motor vehicle with a detectable amount of a restricted controlled substance or a prohibited alcohol concentration in his or her blood, the person is subject to a forfeiture of not less than \$150 nor more than \$300.

Under this bill, if the person who commits the first offense while he or she has a blood alcohol concentration of 0.20 or more, or a blood alcohol concentration of 0.16 or more and any amount of a restricted controlled substance in his or her blood, the person would be fined not less than \$350 nor more than \$1,100 and imprisoned for not less than five days nor more than six months.

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:

ASSEMBLY BILL 346**SECTION 1**

1 **SECTION 1.** 346.65 (2) (am) 1. of the statutes is amended to read:

2 346.65 **(2)** (am) 1. Shall forfeit not less than \$150 nor more than \$300, except
3 as provided in subds. ~~2. 1g.~~ to ~~5. 7.~~ and par. (f).

4 **SECTION 2.** 346.65 (2) (am) 1g. of the statutes is created to read:

5 346.65 **(2)** (am) 1g. Except as provided in subds. 1m. to 7. and par. (f), if the
6 person had an alcohol concentration of 0.16 or more and had any detectable amount
7 of a restricted controlled substance in his or her blood, shall be fined not less than
8 \$350 nor more than \$1,100 and imprisoned for not less than 5 days nor more than
9 6 months.

10 **SECTION 3.** 346.65 (2) (am) 1m. of the statutes is created to read:

11 346.65 **(2)** (am) 1m. Except as provided in subds. 2. to 7. and par. (f), if the
12 person had an alcohol concentration of 0.20 or more, shall be fined not less than \$350
13 nor more than \$1,100 and imprisoned for not less than 5 days nor more than 6
14 months.

15 **SECTION 4.** 346.65 (2g) (a) of the statutes is amended to read:

16 346.65 **(2g)** (a) In addition to the authority of the court under s. 973.05 (3) (a)
17 to provide that a defendant perform community service work for a public agency or
18 a nonprofit charitable organization in lieu of part or all of a fine imposed under sub.
19 (2) (am) ~~1g., 1m.,~~ 2., 3., 4., and 5., (f), and (g) and except as provided in par. (ag), the
20 court may provide that a defendant perform community service work for a public
21 agency or a nonprofit charitable organization in lieu of part or all of a forfeiture under
22 sub. (2) (am) 1. or may require a person who is subject to sub. (2) to perform
23 community service work for a public agency or a nonprofit charitable organization
24 in addition to the penalties specified under sub. (2).

25 **SECTION 5.** 346.65 (2g) (ag) of the statutes is amended to read:

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1 346.65 (2g) (ag) If the court determines that a person does not have the ability
2 to pay a fine imposed under sub. (2) (am) 1g., 1m., 2., 3., 4., or 5., (f), or (g), the court
3 shall require the defendant to perform community service work for a public agency
4 or a nonprofit charitable organization in lieu of paying the fine imposed or, if the
5 amount of the fine was reduced under sub. (2e), in lieu of paying the remaining
6 amount of the fine. Each hour of community service performed in compliance with
7 an order under this paragraph shall reduce the amount of the fine owed by an amount
8 determined by the court.

9 **SECTION 6.** 346.65 (2g) (d) of the statutes is amended to read:

10 346.65 (2g) (d) With respect to imprisonment under sub. (2) (am) 1g., 1m., 2.,
11 the court shall ensure that the person is imprisoned for not less than 5 days or
12 ordered to perform not less than 30 days of community service work under s. 973.03
13 (3) (a).

14 **SECTION 7.** 346.65 (7) of the statutes is amended to read:

15 346.65 (7) A person convicted under sub. (2) (am) 1g., 1m., 2., 3., 4., 5., 6., or
16 7. or (2j) (am) 2. or 3. shall be required to remain in the county jail for not less than
17 a 48-consecutive-hour period.

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

19 973.09 (1) (d) 1. A violation under s. 346.63 (1) that subjects the person to a
20 mandatory minimum period of imprisonment under s. 346.65 (2) (am) 1g., 1m., 2. or
21 3.

22 **SECTION 9. Initial applicability.**

23 (1) This act first applies to violations committed on the effective date of this
24 subsection, but does not preclude the counting of other convictions, suspensions, or

