



2015 ASSEMBLY BILL 363

September 25, 2015 - Introduced by Representatives BERCEAU, J. OTT, HEATON, HINTZ, JACQUE, JOHNSON, POPE, SINICKI and C. TAYLOR, cosponsored by Senators CARPENTER and HARRIS DODD. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT to repeal** 346.65 (2) (f) 1. and 346.65 (2g) (d); **to renumber and amend**
2 346.65 (2) (am) 1. and 346.65 (2) (f) 2.; **to amend** 343.30 (1q) (b) (intro.), 343.30
3 (1q) (b) 3., 343.305 (10) (b) 3., 343.31 (3) (bm) 3., 345.20 (2) (c), 345.24 (1), 346.65
4 (2) (am) 2., 346.65 (2) (bm), 346.65 (2c), 346.65 (2e), 346.65 (2g) (a), 346.65 (2g)
5 (ag), 346.65 (2g) (am), 346.65 (2i), 939.51 (1) (intro.) and 972.11 (3m); and **to**
6 **create** 346.65 (2) (am) 1. b., c. and d. of the statutes; **relating to:** offenses
7 related to operating a vehicle while intoxicated and providing a criminal
8 penalty.

Analysis by the Legislative Reference Bureau

This bill makes changes to certain offenses relating to operating a vehicle while intoxicated (OWI-related offenses).

Under current law, a first OWI-related offense is a civil violation, unless there was a minor passenger under the age of 16 in the vehicle at the time of the offense. A person who commits a civil OWI-related offense is subject to a forfeiture of not less than \$150 nor more than \$300. Subsequent OWI-related offenses are crimes punishable by fines and periods of imprisonment that increase with every subsequent offense.

Current law increases the penalty for a second OWI-related offense if the person committed the second offense within ten years of the first offense or if the

ASSEMBLY BILL 363

person committed an OWI-related offense that caused death or great bodily harm to another.

Under this bill, a person who commits a first OWI-related offense is guilty of a Class C misdemeanor and may be fined up to \$500, imprisoned for up to 30 days, or both. Under the bill, a person who commits a second OWI-related offense is subject to the increased penalties regardless of whether the person commits the offense within ten years of his or her first OWI-related offense.

Under the bill, a court may, upon petition by the person who has been convicted of a first OWI-related offense, vacate the person's criminal conviction and amend the record to a civil violation if, in the five years since the person was convicted of the offense, he or she has not committed any other OWI-related offense. Under the bill, the clerk of courts amends the court records that are available in person and online to show only the civil violation.

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.** 343.30 (1q) (b) (intro.) of the statutes is amended to read:

2 343.30 (1q) (b) For persons convicted under s. 346.63 (1) ~~or a local ordinance~~
3 ~~in conformity therewith:~~

4 **SECTION 2.** 343.30 (1q) (b) 3. of the statutes is amended to read:

5 343.30 (1q) (b) 3. Except as provided in sub. (1r) or subd. 4m., if the number
6 of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total
7 number of other convictions, suspensions, and revocations counted under s. 343.307
8 (1) ~~within a 10-year period~~, equals 2, the court shall revoke the person's operating
9 privilege for not less than one year nor more than 18 months. After the first 45 days
10 of the revocation period has elapsed, the person is eligible for an occupational license
11 under s. 343.10 if he or she has completed the assessment and is complying with the
12 driver safety plan ordered under par. (c).

13 **SECTION 3.** 343.305 (10) (b) 3. of the statutes is amended to read:

ASSEMBLY BILL 363

1 343.305 (10) (b) 3. Except as provided in subd. 4m., if the number of convictions
2 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other
3 convictions, suspensions, and revocations counted under s. 343.307 (2) ~~within a~~
4 ~~10-year period~~, equals 2, the court shall revoke the person's operating privilege for
5 2 years. After the first 90 days of the revocation period or, if the total number of
6 convictions, suspensions, and revocations counted under this subdivision within any
7 5-year period equals 2 or more, after one year of the revocation period has elapsed,
8 the person is eligible for an occupational license under s. 343.10 if he or she has
9 completed the assessment and is complying with the driver safety plan.

10 **SECTION 4.** 343.31 (3) (bm) 3. of the statutes is amended to read:

11 343.31 (3) (bm) 3. Except as provided in subd. 4m., if the number of convictions
12 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
13 suspensions, revocations, and other convictions counted under s. 343.307 (1) ~~within~~
14 ~~a 10-year period~~, equals 2, the department shall revoke the person's operating
15 privilege for not less than one year nor more than 18 months. If an Indian tribal court
16 in this state revokes the person's privilege to operate a motor vehicle on tribal lands
17 for not less than one year nor more than 18 months for the conviction specified in par.
18 (bm) (intro.), the department shall impose the same period of revocation. After the
19 first 60 days of the revocation period or, if the total number of convictions,
20 suspensions, and revocations counted under this subdivision within any 5-year
21 period equals 2 or more, after one year of the revocation period has elapsed, the
22 person is eligible for an occupational license under s. 343.10.

23 **SECTION 5.** 345.20 (2) (c) of the statutes is amended to read:

ASSEMBLY BILL 363**SECTION 5**

1 345.20 (2) (c) Sections 967.055 and 972.11 (3m) apply to traffic forfeiture
2 actions for violations of s. 346.63 (1) ~~or~~ (5) or a local ordinance in conformity
3 therewith.

4 **SECTION 6.** 345.24 (1) of the statutes is amended to read:

5 345.24 (1) A person arrested under s. 346.63 (1) or (5) or an ordinance in
6 conformity ~~therewith~~ with s. 346.63 (5) or s. 346.63 (2) or (6) or 940.25, or s. 940.09
7 where the offense involved the use of a vehicle, may not be released until 12 hours
8 have elapsed from the time of his or her arrest or unless a chemical test administered
9 under s. 343.305 shows that the person has an alcohol concentration of less than 0.04,
10 but the person may be released to his or her attorney, spouse, relative or other
11 responsible adult at any time after arrest.

12 **SECTION 7.** 346.65 (2) (am) 1. of the statutes is renumbered 346.65 (2) (am) 1.
13 a. and amended to read:

14 346.65 (2) (am) 1. a. ~~Shall forfeit not less than \$150 nor more than \$300, except~~
15 Except as provided in subds. 2. to 5. 7. and par. (f), is guilty of a Class C misdemeanor
16 and shall be imprisoned for not less than one day.

17 **SECTION 8.** 346.65 (2) (am) 1. b., c. and d. of the statutes are created to read:

18 346.65 (2) (am) 1. b. A person who is convicted of a violation under subd. 1. a.
19 may petition the court to vacate his or her conviction. The court shall order that the
20 conviction be vacated and the record of the conviction be expunged, and that a record
21 of a civil violation be entered if the person has completed his or her sentence, as
22 defined in s. 973.015 (1) (b), and, in the 5 years after the person was convicted of the
23 violation, the person was not convicted or adjudicated of committing a subsequent
24 violation that is counted as a suspension, revocation, or conviction under s. 343.307.

ASSEMBLY BILL 363

1 c. The clerk of court shall forward a copy of the order to amend the record of the
2 conviction to a civil offense to the department of justice and to the department of
3 transportation.

4 d. A conviction that is vacated under subd. 1. b. is not a conviction for any
5 matter relating to an application for employment or for the rental, purchase, or
6 financing of housing.

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

8 346.65 (2) (am) 2. Except as provided in pars. (bm) and (f), shall be fined not
9 less than \$350 nor more than \$1,100 and imprisoned for not less than 5 days nor more
10 than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the
11 person's lifetime, plus the total number of suspensions, revocations, and other
12 convictions counted under s. 343.307 (1) ~~within a 10-year period~~, equals 2, except
13 that suspensions, revocations, or convictions arising out of the same incident or
14 occurrence shall be counted as one.

15 **SECTION 10.** 346.65 (2) (bm) of the statutes is amended to read:

16 346.65 (2) (bm) In any county that opts to offer a reduced minimum period of
17 imprisonment for the successful completion of a probation period that includes
18 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
19 and 940.25 in the person's lifetime, plus the total number of suspensions,
20 revocations, and other convictions counted under s. 343.307 (1) ~~within a 10-year~~
21 ~~period~~, equals 2, except that suspensions, revocations, or convictions arising out of
22 the same incident or occurrence shall be counted as one, the fine shall be the same
23 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,
24 except that if the person successfully completes a period of probation that includes
25 alcohol and other drug treatment, the period of imprisonment shall be not less than

ASSEMBLY BILL 363**SECTION 10**

1 5 nor more than 7 days. A person may be sentenced under this paragraph or under
2 par. (cm) or (dm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.

3 **SECTION 11.** 346.65 (2) (f) 1. of the statutes is repealed.

4 **SECTION 12.** 346.65 (2) (f) 2. of the statutes is renumbered 346.65 (2) (f) and
5 amended to read:

6 346.65 (2) (f) If there was a minor passenger under 16 years of age in the motor
7 vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (1),
8 the applicable minimum and maximum fines and imprisonment under par. (am) ~~2-~~
9 ~~to 7.~~ for the conviction are doubled. An offense under s. 346.63 (1) that subjects a
10 person to a penalty under par. (am) 3., 4., 4m., 5., 6., or 7. when there is a minor
11 passenger under 16 years of age in the motor vehicle is a felony and the place of
12 imprisonment shall be determined under s. 973.02.

13 **SECTION 13.** 346.65 (2c) of the statutes is amended to read:

14 346.65 (2c) In sub. (2) (am) ~~2., 3., 4., 4m., 5., 6., and 7.,~~ the time period shall
15 be measured from the dates of the refusals or violations that resulted in the
16 revocation or convictions. If a person has a suspension, revocation, or conviction for
17 any offense under a local ordinance or a state statute of another state that would be
18 counted under s. 343.307 (1), that suspension, revocation, or conviction shall count
19 as a prior suspension, revocation, or conviction under sub. (2) (am) ~~2., 3., 4., 4m., 5.,~~
20 ~~6., and 7.~~

21 **SECTION 14.** 346.65 (2e) of the statutes is amended to read:

22 346.65 (2e) If the court determines that a person does not have the ability to
23 pay the costs and fine ~~or forfeiture~~ imposed under sub. (2) (am), (f), or (g), the court
24 may reduce the costs, or fine, ~~and forfeiture~~ imposed and order the person to pay,
25 toward the cost of the assessment and driver safety plan imposed under s. 343.30 (1q)

ASSEMBLY BILL 363

1 (c), the difference between the amount of the reduced costs and fine ~~or forfeiture~~ and
2 the amount of costs and fine ~~or forfeiture~~ imposed under sub. (2) (am), (f), or (g).

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

4 346.65 **(2g)** (a) In addition to the authority of the court under s. 973.05 (3) (a)
5 to provide that a defendant perform community service work for a public agency or
6 a nonprofit charitable organization in lieu of part or all of a fine imposed under sub.
7 (2) (am) 1., 2., 3., 4., 4m., and 5., (f), and (g) and except as provided in par. (ag), the
8 court ~~may provide that a defendant perform community service work for a public~~
9 ~~agency or a nonprofit charitable organization in lieu of part or all of a forfeiture under~~
10 ~~sub. (2) (am) 1. or~~ may require a person who is subject to sub. (2) to perform
11 community service work for a public agency or a nonprofit charitable organization
12 in addition to the penalties specified under sub. (2).

13 **SECTION 16.** 346.65 (2g) (ag) of the statutes is amended to read:

14 346.65 **(2g)** (ag) If the court determines that a person does not have the ability
15 to pay a fine imposed under sub. (2) (am) 1., 2., 3., 4., 4m., or 5., (f), or (g), the court
16 shall require the defendant to perform community service work for a public agency
17 or a nonprofit charitable organization in lieu of paying the fine imposed or, if the
18 amount of the fine was reduced under sub. (2e), in lieu of paying the remaining
19 amount of the fine. Each hour of community service performed in compliance with
20 an order under this paragraph shall reduce the amount of the fine owed by an amount
21 determined by the court.

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

23 346.65 **(2g)** (am) Notwithstanding s. 973.05 (3) (b), an order under par. (a) or
24 (ag) may apply only if agreed to by the organization or agency. The court shall ensure
25 that the defendant is provided a written statement of the terms of the community

ASSEMBLY BILL 363**SECTION 17**

1 service order and that the community service order is monitored. Any organization
2 or agency acting in good faith to which a defendant is assigned pursuant to an order
3 under this subsection has immunity from any civil liability in excess of \$25,000 for
4 acts or omissions by or impacting on the defendant. ~~The issuance or possibility of the~~
5 ~~issuance of a community service order under this subsection does not entitle an~~
6 ~~indigent defendant who is subject to sub. (2) (am) 1. to representation by counsel~~
7 ~~under ch. 977.~~

8 **SECTION 18.** 346.65 (2g) (d) of the statutes is repealed.

9 **SECTION 19.** 346.65 (2i) of the statutes is amended to read:

10 346.65 (2i) In addition to the authority of the court under sub. (2g) and s. 973.05
11 (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to
12 s. 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1), or 940.25, to visit a site that
13 demonstrates the adverse effects of substance abuse or of operating a vehicle while
14 under the influence of an intoxicant or other drug, including an alcoholism treatment
15 facility approved under s. 51.45 or an emergency room of a general hospital in lieu
16 ~~of part or all of any forfeiture imposed or in addition to any penalty imposed.~~ The
17 court may order the defendant to pay a reasonable fee, based on the person's ability
18 to pay, to offset the costs of establishing, maintaining, and monitoring the visits
19 ordered under this subsection. The court may order a visit to the site only if agreed
20 to by the person responsible for the site. If the opportunities available to visit sites
21 under this subsection are fewer than the number of defendants eligible for a visit,
22 the court shall, when making an order under this subsection, give preference to
23 defendants who were under 21 years of age at the time of the offense. The court shall
24 ensure that the visit is monitored. A visit to a site may be ordered for a specific time
25 and a specific day to allow the defendant to observe victims of vehicle accidents

ASSEMBLY BILL 363

1 involving intoxicated drivers. If it appears to the court that the defendant has not
2 complied with the court order to visit a site or to pay a reasonable fee, the court may
3 order the defendant to show cause why he or she should not be held in contempt of
4 court. Any organization or agency acting in good faith to which a defendant is
5 assigned pursuant to an order under this subsection has immunity from any civil
6 liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.
7 ~~The issuance or possibility of the issuance of an order under this subsection does not~~
8 ~~entitle an indigent defendant who is subject to sub. (2) (am) 1. to representation by~~
9 ~~counsel under ch. 977.~~

10 **SECTION 20.** 939.51 (1) (intro.) of the statutes is amended to read:

11 939.51 (1) (intro.) Misdemeanors in chs. 346 and 939 to 951 are classified as
12 follows:

13 **SECTION 21.** 972.11 (3m) of the statutes is amended to read:

14 972.11 (3m) A court may not exclude evidence in any criminal action ~~or traffic~~
15 ~~forfeiture action~~ for violation of s. 346.63 (1) or any criminal action or traffic
16 forfeiture action for a violation of s. 346.63 (5), or a local ordinance in conformity with
17 s. 346.63 (1) or (5), on the ground that the evidence existed or was obtained outside
18 of this state.

19 **SECTION 22. Initial applicability.**

20 (1) This act first applies to violations committed on the effective date of this
21 subsection but does not preclude the counting of other convictions, suspensions, or
22 revocations as prior convictions, suspensions, or revocations for purposes of
23 administrative action by the department of transportation or sentencing by a court.

