



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1471/1
EVM:cdc&amn

2021 ASSEMBLY BILL 338

May 21, 2021 - Introduced by Representatives SPIROS, ARMSTRONG, BILLINGS, EMERSON, JAMES, MURPHY, OHNSTAD, PETRYK, ROZAR, SNODGRASS and SUBECK, cosponsored by Senators WANGGAARD and L. TAYLOR. Referred to Committee on State Affairs.

1 **AN ACT** *to repeal* 346.89 (4) (a); *to renumber and amend* 346.89 (4) (b) and
2 346.89 (4m); *to amend* 343.315 (2) (f) 10. and 346.95 (1); and *to create* 346.89
3 (4m) (a), 346.89 (4m) (c) 1. b., 346.89 (4m) (c) 2., 346.89 (4m) (c) 3., 346.89 (4m)
4 (c) 4. and 346.95 (2g) of the statutes; **relating to:** the use of a portable wireless
5 communication device while driving and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits any person from using a portable wireless communication device (device) while driving, except for certain hands-free use, use by public safety workers, or certain use related to an emergency.

Current law prohibits inattentive driving of a motor vehicle, which means that a driver of a motor vehicle may not be engaged or occupied with an activity, other than driving the vehicle, that interferes with the safe driving of the vehicle. Persons who violate this prohibition may be required to forfeit not less than \$20 nor more than \$400. Also under current law, a person driving under an instruction permit or a probationary license is prohibited from driving a motor vehicle while using a cellular phone, except to report an emergency. Also, a person is prohibited from driving a motor vehicle while using a cellular phone in a highway construction zone, except to report an emergency. Persons who violate either of these prohibitions may be required to forfeit not less than \$20 nor more than \$40 for a first offense, and not less than \$50 nor more than \$100 for a second or subsequent offense within one year.

This bill prohibits any person from using a device while driving. Exceptions are provided for the use of a device by public safety workers and public utility employees,

ASSEMBLY BILL 338

use to report an emergency, and for certain hands-free use by persons who hold a license other than a probationary license or an instruction permit. Persons who violate this prohibition may be required to forfeit not more than \$100 for a first offense and not more than \$200 for a second or subsequent offense.

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.** 343.315 (2) (f) 10. of the statutes is amended to read:

2 343.315 **(2)** (f) 10. In this subdivision, “mobile telephone” has the meaning
3 given in 49 CFR 390.5. Violating s. 346.89 ~~(4) (b)~~ (4g) or a local ordinance in
4 conformity therewith or a law of a federally recognized American Indian tribe or
5 band in this state in conformity with s. 346.89 ~~(4) (b)~~ (4g) or the law of another
6 jurisdiction prohibiting driving a commercial motor vehicle, as defined in 49 CFR
7 390.5, while using a hand-held mobile telephone, as those or substantially similar
8 terms are used in that jurisdiction’s law.

9 **SECTION 2.** 346.89 (4) (a) of the statutes is repealed.

10 **SECTION 3.** 346.89 (4) (b) of the statutes is renumbered 346.89 (4g), and 346.89
11 (4g) (a) (intro.), as renumbered, is amended to read:

12 346.89 **(4g)** (a) (intro.) In this ~~paragraph~~ subsection:

13 **SECTION 4.** 346.89 (4m) of the statutes is renumbered 346.89 (4m) (b) and
14 amended to read:

15 346.89 **(4m)** (b) No person may ~~drive, as defined in s. 343.305 (1) (b), any motor~~
16 ~~vehicle while using~~ use a cellular or other portable wireless telephone
17 communication device, including using the telephone device for a purpose other than
18 communication, ~~where persons engaged in work in a highway maintenance or~~

ASSEMBLY BILL 338

1 ~~construction area or in a utility work area are at risk from traffic, except to report~~
2 ~~an emergency while driving.~~

3 (c) 1. This subsection does not apply to the hands-free use of a ~~voice-operated~~
4 ~~or hands-free portable wireless communication~~ device if the all of the following
5 apply:

6 a. The driver of the motor vehicle does not use any part of his or her hands body
7 to operate the device, except to activate or deactivate a feature the device or a
8 function or software application of the device.

9 **SECTION 5.** 346.89 (4m) (a) of the statutes is created to read:

10 346.89 (4m) (a) In this subsection:

11 1. "Drive" has the meaning given in s. 343.305 (1) (b).

12 2. "Hands-free use" means the use of an attachment, accessory, wirelessly
13 paired or tethered capability, application, wireless connection, or built-in feature of
14 a portable wireless communication device that allows the person to use verbal or
15 single-touch commands to activate or deactivate the device or to activate or
16 deactivate a function or software application of the device. Hands-free use does not
17 include typing or scrolling on a device.

18 **SECTION 6.** 346.89 (4m) (c) 1. b. of the statutes is created to read:

19 346.89 (4m) (c) 1. b. The driver holds an operator's license other than a
20 probationary license issued under s. 343.085, or an instruction permit issued under
21 s. 343.07.

22 **SECTION 7.** 346.89 (4m) (c) 2. of the statutes is created to read:

23 346.89 (4m) (c) 2. This subsection does not apply to the use of a portable
24 wireless communication device in the performance of official duties by a law
25 enforcement officer, fire fighter, emergency medical services practitioner licensed

ASSEMBLY BILL 338**SECTION 7**

1 under s. 256.15, ambulance driver, emergency medical responder, or other public
2 safety officer.

3 **SECTION 8.** 346.89 (4m) (c) 3. of the statutes is created to read:

4 346.89 **(4m)** (c) 3. This subsection does not apply to the use of a portable
5 wireless communication device by an employee of a public utility who is responding
6 to a service interruption or other utility emergency.

7 **SECTION 9.** 346.89 (4m) (c) 4. of the statutes is created to read:

8 346.89 **(4m)** (c) 4. This subsection does not apply to the use of a portable
9 wireless communication device to report an emergency.

10 **SECTION 10.** 346.95 (1) of the statutes is amended to read:

11 346.95 **(1)** Except as provided in sub. (13), any person violating s. 346.87,
12 346.88, 346.89 ~~(4), (4m), (4g)~~ or (5), 346.90 to 346.92, or 346.94 (1), (9), (10), (11), (12),
13 or (15) may be required to forfeit not less than \$20 nor more than \$40 for the first
14 offense and not less than \$50 nor more than \$100 for the 2nd or subsequent
15 conviction within a year.

16 **SECTION 11.** 346.95 (2g) of the statutes is created to read:

17 346.95 **(2g)** (a) Any person violating s. 346.89 (4m) may be required to forfeit
18 not more than \$100, participate in not more than 8 hours of community service work,
19 or both, for the first offense; and may be required to forfeit not more than \$200,
20 participate in not more than 16 hours of community service work, or both, for the 2nd
21 or subsequent offense.

22 (b) Before 6 months after the effective date of this paragraph [LRB inserts
23 date], no penalty may be assessed under par. (a), except a violation in which any of
24 the following occurred:

