2023 SENATE BILL 460

September 29, 2023 - Introduced by Senators COWLES, FFEYEN and TAYLOR,
cosponsored by Representatives SPIROS, DONOVAN, MOSES, MURSAU, OHNSTAD,
PENTERMAN and SHANKLAND. Referred to Committee on Judiciary and Public
Safety.

AN ACT to amend 346.17 (5) (a), 346.17 (5) (b), 346.22 (1) (b) 1., 346.22 (1) (b) 2.,
346.43 (1) (b) 3. a., 346.43 (1) (b) 3. b., 346.49 (1) (c) 1., 346.49 (1) (c) 2., 346.57
(3), 346.60 (3m) (a) 1., 346.60 (3m) (a) 2., 346.65 (5m) (a), 346.65 (5m) (b) and
346.89 (4m); and to create 340.01 (47e) of the statutes; relating to: traffic
violations when railroad workers 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 workers are present in a railroad construction or maintenance area and are
at risk from traffic.

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, utility area, or emergency
or roadside response 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. In
addition, if 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. The bill
expands these provisions to apply to violations committed in a railroad construction
or maintenance area.

Current law prohibits inattentive driving of a motor vehicle in general and
specifically prohibits the use of a wireless telephone while driving a motor vehicle

where persons are engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area. The bill expands this prohibition to apply to railroad construction or maintenance areas where workers are present.

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.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

**SECTION 1.** 340.01 (47e) of the statutes is created to read:

340.01 (47e) “Railroad maintenance or construction area” means any of the following:

(a) The entire section of roadway between the first advance warning sign of railroad maintenance or construction work and a sign indicating the end of the area.

(b) The entire section of roadway within 500 feet of a railroad employee using flags to signal the presence of a railroad train or other railroad vehicle or railroad employees.

(c) In the case of a moving vehicle engaged in railroad maintenance or construction work, that section of roadway where the normal flow of traffic is first altered by the vehicle until that section of roadway where traffic may return to its normal flow without impeding such work.

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

346.17 (5) (a) 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, railroad maintenance or construction area, 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 amended 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, railroad 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) 1. of the statutes is amended to read:

346.22 (1) (b) 1. 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, railroad maintenance or construction area, 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 amended 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, railroad 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. a. of the statutes is amended to read:

346.43 (1) (b) 3. a. 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, railroad maintenance or construction area, 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 amended 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, railroad
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. 346.49 (1) (c) 1. of the statutes is amended to read:

346.49 (1) (c) 1. 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, railroad maintenance or construction area, 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 9.** 346.49 (1) (c) 2. of the statutes is amended 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, railroad 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 10.** 346.57 (3) of the statutes is amended to read:

346.57 (3) **CONDITIONS REQUIRING REDUCED SPEED.** The operator of every vehicle shall, consistent with the requirements of sub. (2), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding roadway, when passing school children, highway construction or maintenance workers, railroad construction or maintenance workers, sanitation workers, or other pedestrians, and when special hazard exists with regard to other traffic or by reason of weather or highway conditions.

**SECTION 11.** 346.60 (3m) (a) 1. of the statutes is 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, railroad maintenance or construction area, 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 12. 346.60 (3m) (a) 2. of the statutes is amended 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, railroad 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 13. 346.65 (5m) (a) of the statutes is amended to read:

346.65 (5m) (a) Except as provided in par. (b), 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, railroad maintenance or construction area, 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 14.** 346.65 (5m) (b) of the statutes is amended 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, railroad 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 15.** 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, railroad maintenance or construction area, 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.