



## 2011 SENATE BILL 152

July 15, 2011 - Introduced by Senators DARLING, LEIBHAM, GALLOWAY, CARPENTER and KEDZIE, cosponsored by Representatives J. OTT, SPANBAUER, JACQUE, ENDSLEY, JORGENSEN, T. LARSON, A. OTT, PETRYK, RIVARD, HONADEL and STASKUNAS. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

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

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### *Analysis by the Legislative Reference Bureau*

Under current law, a first offense for operating a motor vehicle while having a prohibited alcohol concentration (0.08 in most circumstances) or while under the influence of alcohol, a controlled substance, or both (OWI offense), is a civil violation. A person who commits a first OWI offense is subject to a forfeiture of not less than \$150 nor more than \$300. A second OWI offense is a crime and is punishable by a fine of not less than \$350 nor more than \$1,100, imprisonment for not less than five days nor more than six months, or both. Subsequent OWI offenses are also crimes punishable by fines and periods of imprisonment that increase with every subsequent offense.

Under this bill, a person who commits a first OWI offense with an alcohol concentration of 0.15 or greater is guilty of a crime and may be fined not less than \$350 nor more than \$1,100 and imprisoned for not less than five days nor more than six months. The bill also increases the penalty for a second OWI offense to a fine of not less than \$500 nor more than \$1,500, imprisonment for not less than ten days nor more than six months, or both.

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

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report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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. 1m. to 5. 7. and par. (f).

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

5           346.65 (2) (am) 1m. Except as provided in subds. 2. to 7., if the person had an  
6 alcohol concentration of 0.15 or more, shall be fined not less than \$350 nor more than  
7 \$1,100 and imprisoned for not less than 5 days nor more than 6 months.

8           **SECTION 3.** 346.65 (2) (am) 2. of the statutes is amended to read:

9           346.65 (2) (am) 2. Except as provided in pars. (bm) and (f), shall be fined not  
10 less than ~~\$350~~ \$500 nor more than ~~\$1,100~~ \$1,500 and imprisoned for not less than  
11 ~~5~~ 10 days nor more than 6 months if the number of convictions under ss. 940.09 (1)  
12 and 940.25 in the person's lifetime, plus the total number of suspensions,  
13 revocations, and other convictions counted under s. 343.307 (1) within a 10-year  
14 period, equals 2, except that suspensions, revocations, or convictions arising out of  
15 the same incident or occurrence shall be counted as one.

16           **SECTION 4.** 346.65 (2) (bm) of the statutes is amended to read:

17           346.65 (2) (bm) In any county that opts to offer a reduced minimum period of  
18 imprisonment for the successful completion of a probation period that includes  
19 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
20 and 940.25 in the person's lifetime, plus the total number of suspensions,

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1 revocations, and other convictions counted under s. 343.307 (1) within a 10-year  
2 period, equals 2, except that suspensions, revocations, or convictions arising out of  
3 the same incident or occurrence shall be counted as one, the fine shall be the same  
4 as under par. (am) 2., but the period of imprisonment shall be not less than ~~5~~ 10 days,  
5 except that if the person successfully completes a period of probation that includes  
6 alcohol and other drug treatment, the period of imprisonment shall be not less than  
7 ~~5~~ 10 nor more than ~~7~~ 14 days. A person may be sentenced under this paragraph or  
8 under par. (cm) or (dm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.

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

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

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

20 346.65 (2g) (ag) If the court determines that a person does not have the ability  
21 to pay a fine imposed under sub. (2) (am) 1m., 2., 3., 4., 4m., or 5., (f), or (g), the court  
22 shall require the defendant to perform community service work for a public agency  
23 or a nonprofit charitable organization in lieu of paying the fine imposed or, if the  
24 amount of the fine was reduced under sub. (2e), in lieu of paying the remaining  
25 amount of the fine. Each hour of community service performed in compliance with

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1 an order under this paragraph shall reduce the amount of the fine owed by an amount  
2 determined by the court.

3 **SECTION 7.** 346.65 (2g) (d) of the statutes is amended to read:

4 346.65 (2g) (d) With respect to imprisonment under sub. (2) (am) 1m. or 2., the  
5 court shall ensure that the person is imprisoned for not less than ~~5 days~~ the minimum  
6 term of imprisonment under sub. (2) (am) 1m. or 2. or ordered to perform not less than  
7 30 days of community service work under s. 973.03 (3) (a).

8 **SECTION 8.** 346.65 (7) of the statutes is amended to read:

9 346.65 (7) A person convicted under sub. (2) (am) 1m., 2., 3., 4., 4m., 5., 6., or  
10 7. or (2j) (am) 2. or 3. shall be required to remain in the county jail for not less than  
11 a ~~48-consecutive-hour~~ period.

12 **SECTION 9. Initial applicability.**

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

17 (END)