



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1657/1
EVM:emw

2017 SENATE BILL 135

March 29, 2017 - Introduced by Senators WANGGAARD and MARKLEIN, cosponsored by Representatives SPIROS, JACQUE, BERCEAU, ALLEN, HORLACHER, KATZMA, KLEEFISCH, NOVAK, SKOWRONSKI and THIESFELDT. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT to amend** 343.31 (3) (a), 343.38 (1) (intro.), 343.38 (1) (c) 1., 343.44 (2)
2 (ar) 2. and 343.44 (2p) (intro.); and **to create** 343.31 (1m), 343.38 (1) (d) and
3 343.44 (2) (ar) 2m. of the statutes; **relating to:** revocation of operating privilege
4 for certain offenses related to operating while intoxicated, operating after
5 revocation, making an appropriation, and providing a criminal penalty.

Analysis by the Legislative Reference Bureau

This bill provides for permanent revocation of a person's operating privilege if the person commits certain offenses related to drunken driving or driving under the influence of an intoxicant or other drug (OWI offenses).

Under current law, the Department of Transportation may revoke or suspend a person's operating privilege if the person commits certain traffic offenses or crimes, such as operating a vehicle while intoxicated. The period of revocation varies based on the reason for the revocation, generally ranging from several months to a year. Suspensions of operating privileges may also be ordered by a court adjudicating an underlying criminal or traffic offense. Suspensions by a court also vary in length based on the underlying criminal or traffic offense, ranging from several months to several years.

Also under current law, if a person's operating privilege is suspended or revoked, the person may apply for an occupational license, which restricts when and where the person is allowed to drive, such as to and from work. In most cases, the person is eligible for an occupational license 15 days after the date of the suspension

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or revocation. In some cases involving serious offenses, the person is not eligible for an occupational license until one year after the date of the suspension or revocation.

Also under current law, with limited exceptions, DOT may reinstate a person's revoked operating privilege if all of the following apply: 1) the period of revocation has expired; 2) the person pays DOT all required fees; 3) the person passes any examination required by DOT; and 4) with exceptions, the person files proof of financial responsibility with DOT and maintains it for three years.

This bill requires DOT to permanently revoke the operating privilege of a person who meets either of the following requirements:

1. The person has committed four or more OWI offenses.

2. The person has committed two or more OWI offenses and has two or more "qualifying convictions." A qualifying conviction is 1) a conviction for certain homicides that involve the use of a motor vehicle or 2) a conviction for certain felonies involving the use of a motor vehicle.

A person whose operating privilege is revoked under this bill is not eligible for an occupational license. After ten years of the revocation period have elapsed, the person, however, may apply for reinstatement of his or her operating privilege. DOT may reinstate the person's operating privilege if the person meets the general requirements for reinstatement and all of the following apply: 1) the person has not been convicted of certain felonies or misdemeanors related to motor vehicle use during the ten-year period immediately preceding the application for reinstatement; and 2) the person submits to and complies with an assessment by an approved public treatment facility for examination of the person's use of alcohol and controlled substances and development of a driver safety plan for the person.

Current law prohibits a person from operating a motor vehicle on a highway during any period in which the person's motor vehicle operating privilege is revoked (operating after revocation or OAR). Under current law, a person convicted of OAR is subject to a forfeiture of not more than \$2,500 unless certain penalty enhancing conditions apply. Among these, if the underlying revocation was the result of specified traffic violations involving alcohol or controlled substances, the person convicted of OAR is subject to a fine of not more than \$2,500 or imprisonment for not more than one year, or both.

Under this bill, a person convicted of a second or subsequent OAR based on a permanent revocation, as provided in this bill, is subject to a fine of not more than \$10,000 or imprisonment for not more than one year, or both.

Because this bill proposes to revoke a person's operating privilege upon conviction for an offense, the Department of Transportation, as required by law, will prepare a report to be printed as an appendix to this bill.

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:

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1 **SECTION 1.** 343.31 (1m) of the statutes is created to read:

2 343.31 **(1m)** (a) In this subsection, “qualifying conviction” means any of the
3 following:

4 1. A conviction for a violation under s. 940.06, 940.09, or 940.10 involving the
5 use of a vehicle.

6 2. A conviction for a crime punishable as a felony under chs. 341 to 348 or a
7 felony in the commission of which a motor vehicle is used.

8 (b) If the number of convictions under ss. 940.09 (1) and 940.25 in the person’s
9 lifetime, plus the total number of other convictions, suspensions, and revocations
10 counted under s. 343.307 (1), equals 4 or more, the department shall revoke the
11 person’s operating privilege permanently. The person is not eligible for an
12 occupational license under s. 343.10. After 10 years of the revocation period have
13 elapsed, the person may apply for reinstatement under s. 343.38.

14 (c) If the number of convictions under ss. 940.09 (1) and 940.25 in the person’s
15 lifetime, plus the total number of other convictions, suspensions, and revocations
16 counted under s. 343.307 (1) within a 25-year period, equals 2 or more, and the
17 person has 2 or more qualifying convictions, the department shall revoke the person’s
18 operating privilege permanently. The person is not eligible for an occupational
19 license under s. 343.10. After 10 years of the revocation period have elapsed, the
20 person may apply for reinstatement under s. 343.38.

21 **SECTION 2.** 343.31 (3) (a) of the statutes is amended to read:

22 343.31 **(3)** (a) Except as otherwise provided in this subsection or sub. (1m),
23 (2m), (2s), (2t), or (2x), all revocations or suspensions under this section shall be for
24 a period of one year.

25 **SECTION 3.** 343.38 (1) (intro.) of the statutes is amended to read:

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1 343.38 (1) REINSTATEMENT AFTER REVOCATION. (intro.) Except as provided in ss.
2 343.10, 343.31 (1m), 343.39, and 351.07, the department shall not reinstate the
3 operating privilege of a person whose operating privilege has been duly revoked
4 unless the period of revocation has expired and the person:

5 **SECTION 4.** 343.38 (1) (c) 1. of the statutes is amended to read:

6 343.38 (1) (c) 1. Except as provided in subd. 2., files and maintains with the
7 department proof of financial responsibility in the amount, form and manner
8 specified in ch. 344. This Except for a reinstatement under s. 343.31 (1m), this
9 subdivision does not apply after 3 years have elapsed since the expiration of the
10 period of revocation. For a reinstatement under s. 343.31 (1m), this subdivision does
11 not apply to a person after 3 years have elapsed since the reinstatement of the
12 operating privilege of the person.

13 **SECTION 5.** 343.38 (1) (d) of the statutes is created to read:

14 343.38 (1) (d) If the person's operating privilege has been revoked under s.
15 343.31 (1m), satisfies all of the following:

16 1. The person has not been convicted of an offense that is a felony or a
17 misdemeanor, that is counted under s. 343.307 (1) or specified under s. 351.02 (1) (a),
18 and that was committed during the 10-year period immediately preceding the
19 application for reinstatement.

20 2. Not more than 45 days before applying for reinstatement, the person submits
21 to and complies with an assessment by an approved public treatment facility, as
22 defined in s. 51.45 (2) (c), for examination of the person's use of alcohol, controlled
23 substances, or controlled substance analogs and development of a driver safety plan
24 for the person.

25 **SECTION 6.** 343.44 (2) (ar) 2. of the statutes is amended to read:

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1 343.44 (2) (ar) 2. Except as provided in subds. 2m., 3., and 4., any person who
2 violates sub. (1) (b) shall be fined not more than \$2,500 or imprisoned for not more
3 than one year in the county jail or both if the revocation identified under sub. (1) (b)
4 resulted from an offense that may be counted under s. 343.307 (2).

5 **SECTION 7.** 343.44 (2) (ar) 2m. of the statutes is created to read:

6 343.44 (2) (ar) 2m. Except as provided in subds. 3. and 4., any person who
7 violates sub. (1) (b) shall be fined not more than \$10,000 or imprisoned for not more
8 than one year or both if the revocation identified under sub. (1) (b) is under s. 343.31
9 (1m) and the person has been previously convicted of a violation of sub. (1) (b) where
10 the revocation identified under sub. (1) (b) was under s. 343.31 (1m).

11 **SECTION 8.** 343.44 (2p) (intro.) of the statutes is amended to read:

12 343.44 (2p) SENTENCING OPTION. (intro.) The legislature intends that courts use
13 the sentencing option under s. 973.03 (4) whenever appropriate for persons subject
14 to sub. (2) to provide cost savings for the state and for local governments. This option
15 shall not be used if the revocation is a permanent revocation under s. 343.31 (1m) or
16 if the suspension or revocation was for one of the following:

17 **SECTION 9. Nonstatutory provisions.**

18 (1) Notwithstanding section 16.42 (1) (e) of the statutes, if this subsection takes
19 effect in fiscal year 2018-19, in submitting information under section 16.42 of the
20 statutes for purposes of the 2019-21 biennial budget bill, the department of
21 transportation shall submit information concerning the appropriation under section
22 20.395 (5) (cq) of the statutes as though the increase in the dollar amount of that
23 appropriation by SECTION 10 (1) of this act had not been made.

24 **SECTION 10. Fiscal changes.**

