



## ENGROSSED 1995 ASSEMBLY BILL 438

March 11, 1996 - Printed by direction of SENATE CHIEF CLERK.

1     **AN ACT** *to amend* 346.95 (1); and *to create* 66.948, 346.94 (16) (b) 7., 346.945,  
2             346.95 (5e), 346.95 (5g) and 349.135 of the statutes; **relating to:** the improper  
3             use of radios, electric sound amplification devices and other sound-producing  
4             devices, the imposition of vehicle owner liability for improper use of a radio or  
5             other electric sound amplification device and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

#### ***Engrossment information:***

The text of Engrossed 1995 Assembly Bill 438 consists of the following documents adopted in the assembly on January 18, 1996: Assembly Substitute Amendment 2 as affected by Assembly Amendments 1, 2, 3 and Assembly Amendment 4 (as affected by Assembly Amendment 1 thereto).

#### ***Content of Engrossed 1995 Assembly Bill 438:***

Current law prohibits motor vehicle operators from using a radio or other electric sound amplification device (sound-producing device) that is audible 75 or more feet from the vehicle unless the device is being used to request assistance or warn of an unsafe condition. Exceptions apply for warning horns, authorized emergency vehicles, public utility vehicles, antitheft alarms and vehicles used in advertising, special events, processions or assemblages. Improper use of a sound-producing device may result in a forfeiture of not less than \$20 nor more than \$40 or, for a 2nd or subsequent conviction within a year, a forfeiture of not less than \$50 nor more than \$100.

This bill doubles the minimum and maximum forfeiture amounts that may be imposed for the improper use of a sound-producing device. The bill also permits any city, village, town or county to enact an ordinance providing that improper use of a sound-producing device occurs if the sound-producing device is clearly audible 50 or more feet from the vehicle.

This bill imposes upon the owner of a vehicle liability for improper use of a sound-producing device of the vehicle, regardless of whether the owner was personally using the sound-producing device. Any member of the public who observes the improper use of a sound-producing device may prepare a written report and deliver the report to a traffic officer. The traffic officer is required to investigate the violation and may prepare a traffic citation for the violation. Any traffic officer employed by the issuing authority may serve it upon the owner of the vehicle.

The owner of the vehicle has a defense to liability for the violation if the vehicle had been stolen at the time of the violation or if the owner provides the traffic officer with the name and address of the person who was operating the vehicle or who had the vehicle under his or her control at the time of the violation and sufficient information for the officer to determine that probable cause does not exist to believe that the owner committed the violation. Lessors and dealers of vehicles have similar defenses.

A vehicle owner found liable for a violation is subject to the same forfeiture that applies to a vehicle operator who improperly uses a sound-producing device. The operating privilege of a person convicted of a violation may not be suspended or revoked, and no demerit points may be recorded against the person's driving record.

The bill also allows any city, village, town or county, by ordinance, to authorize a law enforcement officer to impound any sound-producing device used in the commission of a violation. The bill also allows a vehicle to be impounded for up to 5 days to remove the offending sound-producing device, if the device can not easily be removed from the vehicle. Impoundment of a vehicle or device only applies if the violator is the owner of the sound-producing device and has 2 prior convictions in a 3-year period of the prohibition against the improper use of a sound-producing device by a motor vehicle operator or of any local ordinance prohibiting excessive noise.

The violator is responsible for the costs of impounding the vehicle or sound-producing device, which must be claimed by its rightful owner after disposition of the matter, including the payment of any forfeiture imposed. If the sound-producing device or vehicle is not claimed within 90 days, the city, village, town or county may dispose of it.

If the violator has 3 prior convictions in the 3-year period, the city, village, town or county may, by ordinance, authorize the law enforcement officer to seize any sound-producing device used in the commission of the violation. The sound-producing device is subject to forfeiture in the same manner as provided under state law for property realized through the commission of a crime.

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           **66.948 Sound-producing devices; impoundment; seizure and**  
2 **forfeiture. (1)** In this section, “sound-producing device” does not include a piece  
3 of equipment or machinery that is designed for agricultural purposes and that is  
4 being used in the conduct of agricultural operations.

5           **(1m)** (a) Any city, village, town or county may, by ordinance, authorize a law  
6 enforcement officer, at the time of issuing a citation for a violation of s. 346.94 (16)  
7 or a local ordinance in strict conformity with s. 346.94 (16) or any other local  
8 ordinance prohibiting excessive noise, to impound any radio, electric sound  
9 amplification device or other sound-producing device used in the commission of the  
10 violation if the person charged with such violation is the owner of the radio, electric  
11 sound amplification device or other sound-producing device and has 2 or more prior  
12 convictions within a 3-year period of s. 346.94 (16) or a local ordinance in strict  
13 conformity with s. 346.94 (16) or any other local ordinance prohibiting excessive  
14 noise. The ordinance may provide for impoundment of a vehicle for not more than  
15 5 working days to permit the city, village, town or county or its authorized agent to  
16 remove the radio, electric sound amplification device or other sound-producing  
17 device if the vehicle is owned by the person charged with the violation and the  
18 sound-producing device may not be easily removed from the vehicle. Upon removal  
19 of the sound-producing device, an impounded vehicle shall be returned to its rightful  
20 owner.

21           (b) The ordinance under par. (a) may provide for recovery by the city, village,  
22 town or county of the cost of impounding the sound-producing device and, if a vehicle  
23 is impounded, the cost of impounding the vehicle and removing the sound-producing  
24 device. The ordinance under par. (a) shall provide that, upon disposition of the  
25 forfeiture action for the violation of s. 346.94 (16) or a local ordinance in strict

1 conformity with s. 346.94 (16) or any other local ordinance prohibiting excessive  
2 noise and payment of any forfeiture imposed, the sound-producing device shall be  
3 returned to its rightful owner.

4 (c) The city, village, town or county may dispose of any impounded  
5 sound-producing device or, following the procedure for an abandoned vehicle under  
6 s. 342.40, any impounded vehicle which has remained unclaimed for a period of 90  
7 days after disposition of the forfeiture action.

8 (d) This subsection does not apply to a radio, electric sound amplification device  
9 or other sound-producing device on a motorcycle.

10 **(2)** (a) Notwithstanding sub. (1m), any city, village, town or county may, by  
11 ordinance, authorize a law enforcement officer, at the time of issuing a citation for  
12 a violation of s. 346.94 (16) or a local ordinance in strict conformity with s. 346.94 (16)  
13 or any other local ordinance prohibiting excessive noise, to seize any radio, electric  
14 sound amplification device or other sound-producing device used in the commission  
15 of the violation if the person charged with such violation is the owner of the radio,  
16 electric sound amplification device or other sound-producing device and has 3 or  
17 more prior convictions within a 3-year period of s. 346.94 (16) or a local ordinance  
18 in strict conformity with s. 346.94 (16) or any other local ordinance prohibiting  
19 excessive noise.

20 (b) The ordinance under par. (a) may provide for impoundment of a vehicle for  
21 not more than 5 working days to permit the city, village, town or county or its  
22 authorized agent to remove the radio, electric sound amplification device or other  
23 sound-producing device if the vehicle is owned by the person charged with the  
24 violation and the sound-producing device may not be easily removed from the  
25 vehicle. Upon removal of the sound-producing device, an impounded vehicle shall

1 be returned to its rightful owner upon payment of the reasonable costs of impounding  
2 the vehicle and removing the sound-producing device.

3 (c) The ordinance under par. (a) shall include provisions that treat any seized  
4 sound-producing device in substantially the manner provided in ss. 973.075 (3),  
5 973.076 and 973.077 for property realized through the commission of any crime,  
6 except that the sound-producing device shall remain in the custody of the applicable  
7 law enforcement agency; a district attorney or city, village or town attorney,  
8 whichever is applicable, shall institute the forfeiture proceedings; and, if the  
9 sound-producing device is sold by the law enforcement agency, all proceeds of the  
10 sale shall be retained by the applicable city, village, town or county.

11 (d) The city, village, town or county may, following the procedure for an  
12 abandoned vehicle under s. 342.40, dispose of any impounded vehicle which has  
13 remained unclaimed for a period of 90 days after disposition of the forfeiture action.

14 (e) This subsection does not apply to a radio, electric sound amplification device  
15 or other sound-producing device on a motorcycle.

16 **SECTION 2m.** 346.94 (16) (b) 7. of the statutes is created to read:

17 346.94 (16) (b) 7. A local authority that has enacted an ordinance in conformity  
18 with s. 349.135.

19 **SECTION 3.** 346.945 of the statutes is created to read:

20 **346.945 Vehicle owner's liability for radios or other electric sound**  
21 **amplification devices. (1)** (a) The owner of a vehicle involved in a violation of s.  
22 346.94 (16) shall be presumed liable for the violation as provided in this section.

23 (b) Notwithstanding par. (a), no owner of a vehicle involved in a violation of s.  
24 346.94 (16) may be convicted under this section if the person operating the vehicle

1 or having the vehicle under his or her control at the time of the violation has been  
2 convicted for the violation under this section or under s. 346.94 (16).

3 (2) Any member of the public who observes a violation of s. 346.94 (16) may  
4 prepare a written report indicating that a violation has occurred. If possible, the  
5 report shall contain the following information:

6 (a) The time and the approximate location at which the violation occurred.

7 (b) The license number and color of the motor vehicle involved in the violation.

8 (c) Identification of the motor vehicle as an automobile, station wagon, motor  
9 truck, motor bus, motorcycle or other type of vehicle.

10 (3) (a) 1. Within 24 hours after observing the violation, a member of the public  
11 may deliver a report containing all of the information in sub. (2) to a traffic officer  
12 of the county or municipality in which the violation occurred. A report which does  
13 not contain all of the information in sub. (2) shall nevertheless be delivered and shall  
14 be maintained by the county or municipality for statistical purposes.

15 2. Within 48 hours after receiving a report containing all of the information in  
16 sub. (2), the traffic officer shall investigate the violation and may prepare a uniform  
17 traffic citation under s. 345.11 and, within 72 hours after receiving such report, any  
18 traffic officer employed by the authority issuing the citation may personally serve it  
19 upon the owner of the vehicle.

20 (b) If with reasonable diligence the owner cannot be served under par. (a),  
21 service may be made by leaving a copy of the citation at the owner's usual place of  
22 abode within this state in the presence of a competent member of the family who is  
23 at least 14 years of age and who shall be informed of the contents thereof. Service  
24 under this paragraph may be made by any traffic officer employed by the authority

1 issuing the citation and shall be performed within 72 hours after a report containing  
2 all of the information in sub. (2) was delivered to a traffic officer under par. (a) 1.

3 (c) If with reasonable diligence the owner cannot be served under par. (a) or (b)  
4 or if the owner lives outside of the jurisdiction of the issuing authority, service may  
5 be made by certified mail addressed to the owner's last-known address. Service  
6 under this paragraph shall be performed by posting the certified mail within 72  
7 hours after a report containing all of the information in sub. (2) was delivered to a  
8 traffic officer under par. (a) 1. Except for owners who live outside of the jurisdiction  
9 of the issuing authority, service under this paragraph may not be performed unless  
10 service under pars. (a) and (b) has been attempted.

11 (4) Defenses to the imposition of liability under this section include:

12 (a) That a report that the vehicle was stolen was given to a traffic officer before  
13 the violation occurred or within a reasonable time after the violation occurred.

14 (b) If the owner of the vehicle provides a traffic officer employed by the  
15 authority issuing the citation with the name and address of the person operating the  
16 vehicle or having the vehicle under his or her control at the time of the violation and  
17 sufficient information for the officer to determine that probable cause does not exist  
18 to believe that the owner of the vehicle was operating the vehicle or having the  
19 vehicle under his or her control at the time of the violation, then the owner of the  
20 vehicle shall not be liable under this section or under s. 346.94 (16).

21 (c) If the vehicle is owned by a lessor of vehicles and at the time of the violation  
22 the vehicle was in the possession of a lessee, and the lessor provides a traffic officer  
23 employed by the authority issuing the citation with the information required under  
24 s. 343.46 (3), then the lessee and not the lessor shall be liable under this section or  
25 under s. 346.94 (16).

1 (d) If the vehicle is owned by a dealer, as defined in s. 340.01 (11) (intro.) but  
2 including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the  
3 violation the vehicle was being operated by or was under the control of any person  
4 on a trial run, and if the dealer provides a traffic officer employed by the authority  
5 issuing the citation with the name, address and operator's license number of the  
6 person operating the vehicle or having the vehicle under his or her control on a trial  
7 run, then that person, and not the dealer, shall be liable under this section or under  
8 the applicable provision of s. 346.94 (16).

9 (5) Notwithstanding s. 346.94 (16) (b) 6., this section does not apply to the  
10 operation of a motorcycle.

11 **SECTION 4.** 346.95 (1) of the statutes is amended to read:

12 346.95 (1) Any person violating s. 346.87, 346.88, 346.89 (2), 346.90 to 346.92  
13 or 346.94 (1), (9), (10), (11), (12), or (15) ~~or (16)~~ may be required to forfeit not less than  
14 \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100  
15 for the 2nd or subsequent conviction within a year.

16 **SECTION 5.** 346.95 (5e) of the statutes is created to read:

17 346.95 (5e) Any person violating s. 346.94 (16) may be required to forfeit not  
18 less than \$40 nor more than \$80 for the first offense and not less than \$100 nor more  
19 than \$200 for the 2nd or subsequent conviction within a year.

20 **SECTION 6.** 346.95 (5g) of the statutes is created to read:

21 346.95 (5g) A vehicle owner or other person found liable under s. 346.945 may  
22 be required to forfeit not less than \$40 nor more than \$80 for the first offense and not  
23 less than \$100 nor more than \$200 for the 2nd or subsequent conviction within a year.  
24 Imposition of liability under s. 346.945 shall not result in suspension or revocation



1 of a person's operating license under s. 343.30, nor shall it result in demerit points  
2 being recorded on a person's driving record under s. 343.32 (2) (a).

3 **SECTION 6m.** 349.135 of the statutes is created to read:

4 **349.135 Authority to regulate radios or other electric sound**  
5 **amplification devices. (1)** Notwithstanding s. 346.94 (16), the governing body of  
6 any town, city, village or county may, by ordinance, provide that, except as provided  
7 in s. 347.38 (1), no person may operate or park, stop or leave standing a motor vehicle  
8 while using a radio or other electric sound amplification device emitting sound from  
9 the vehicle that is clearly audible under normal conditions from a distance of 50 or  
10 more feet, unless the electric sound amplification device is being used to request  
11 assistance or warn against an unsafe condition. The ordinance may provide that any  
12 person violating the ordinance may be required to forfeit not less than \$40 nor more  
13 than \$80 for the first violation and not less than \$100 nor more than \$200 for the 2nd  
14 or subsequent violation within a year.

15 **(2)** Any ordinance enacted under sub. (1) may not apply to any of the following:

16 (a) The operator of an authorized emergency vehicle, when responding to an  
17 emergency call or when in the pursuit of an actual or suspected violator of the law  
18 or when responding to but not upon returning from a fire alarm.

19 (b) The operator of a vehicle of a public utility, as defined in s. 11.40 (1) (a).

20 (c) The operator of a vehicle that is being used for advertising purposes.

21 (d) The operator of a vehicle that is being used in a community event or  
22 celebration, procession or assemblage.

23 (e) The activation of a theft alarm signal device.

24 (f) The operator of a motorcycle being operated outside of a business or  
25 residence district.

