



1995 ASSEMBLY BILL 748

December 19, 1995 - Introduced by Representatives BRANDEMUEHL, KREUSER, MUSSER, HAHN, SILBAUGH and LEHMAN, cosponsored by Senator RUDE. Referred to Committee on Urban and Local Affairs.

- 1 **AN ACT to create** 349.135 of the statutes; **relating to:** municipal ordinances
2 regulating the use of immobilization devices to enforce motor vehicle parking
3 restrictions.

Analysis by the Legislative Reference Bureau

Under current law, any person who owns or leases public or private property may regulate parking on that property by posting a sign that indicates for whom parking on that property is permitted, limited, restricted or prohibited. A person who parks in violation of a posted sign may be required to pay a civil monetary penalty of not less than \$20 nor more than \$40 for a first offense, and not less than \$50 nor more than \$100 for each subsequent offense committed within one year. Current law does not specifically regulate the use of immobilization devices (boots) on private property.

This bill permits a city, village or town to enact an ordinance permitting the use of a boot at certain public or private parking areas to enforce posted restrictions against unauthorized parking and, under certain conditions, permitting the person who attached the boot to charge a fee to remove the boot in addition to any applicable civil penalty. An immobilization device is a device or mechanism that attaches to a motor vehicle making the vehicle inoperable. The bill prohibits any person from using a boot to immobilize a motor vehicle to enforce parking restrictions unless the person uses the boot in accordance with an ordinance enacted by the applicable municipality. An ordinance permitting the use of a boot must, at a minimum and in addition to other requirements, do all of the following:

1. Require that a boot be removed within 60 minutes after receiving a removal request by telephone.
2. Specify the maximum fee that may be charged to remove a boot.
3. Allow the vehicle owner, lessee or operator to contest the use of the boot or the amount of the removal fee.

4. Require the posting of warning signs, in a parking area, that a boot may be used.

For further information see the *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.** 349.135 of the statutes is created to read:

2 **349.135 Authority to regulate use of motor vehicle immobilization**
3 **devices. (1)** In this section:

4 (a) “Operator” has the meaning given in s. 340.01 (41).

5 (b) “Parking area” means an area used for parking that is not on a highway.

6 (c) “Parking enforcer” means a person who enforces restrictions against
7 unauthorized parking. The term includes a person who owns or operates a parking
8 area and any employes or agents of an owner or operator.

9 (d) “Removal fee” means a fee charged by a parking enforcer to remove an
10 immobilization device, including any amounts imposed for parking in violation of a
11 restriction against unauthorized parking.

12 (e) “Unauthorized parking” means parking a motor vehicle in a parking area
13 contrary to a sign posted under s. 346.55 (4).

14 **(2)** No person may use an immobilization device to immobilize a motor vehicle
15 to enforce restrictions against unauthorized parking except in conformity with a
16 municipal ordinance enacted under this section.

17 **(3)** The governing body of any municipality may by ordinance provide for the
18 use of immobilization devices to enforce restrictions against unauthorized parking.
19 Any ordinance under this subsection shall do all of the following:

1 (a) Require the owner or operator of a parking area in which immobilization
2 devices may be used to post and maintain in a manner that is clearly visible to
3 operators entering the parking area a sign at each vehicular entrance to the parking
4 area. At least one additional sign shall be posted for every 10 parking spaces in the
5 parking area. The ordinance shall require all such signs to be at least 12 inches by
6 18 inches in size and to clearly indicate all of the following:

7 1. That unauthorized parking is prohibited in the parking area.

8 2. That an immobilization device may be used in the parking area to enforce
9 restrictions against unauthorized parking.

10 3. Whether a removal fee will be charged to remove an immobilization device
11 and, if so, the amount of the fee.

12 (b) Require the parking enforcer, before using an immobilization device, to do
13 all of the following:

14 1. Establish a process by which the owner, lessee or operator of a motor vehicle
15 may contest the propriety of the use of an immobilization device or the amount of a
16 removal fee.

17 2. Maintain in effect a policy of bodily injury and property damage liability
18 insurance for injury or damage arising from the use of an immobilization device in
19 an amount of at least \$1,000,000 per use of an immobilization device.

20 3. Notwithstanding s. 346.94 (4), at the time of immobilization of a motor
21 vehicle, place a written notice in a reasonably secure manner on the motor vehicle
22 that clearly states all of the following:

23 a. The name of the parking enforcer and a telephone number that a person may
24 call to request the removal of the immobilization device.

25 b. The amount of the removal fee, if any.

1 c. The terms of the deferral agreement described in par. (d) 2.

2 4. Have a person available 24 hours a day either at the parking area or at the
3 telephone number shown on the notice described in subd. 3. to take requests for
4 removal and to remove the immobilization device.

5 (c) Require the parking enforcer, before removing an immobilization device, to
6 do all of the following:

7 1. Display prominently an identification card that identifies that person as a
8 parking enforcer and that contains a photograph of that person.

9 2. Inform the owner, lessee or operator of the motor vehicle, orally and in
10 writing, before removing an immobilization device, of all of the following:

11 a. If a removal fee is charged, that the owner, lessee or operator is required
12 either to pay the removal fee or to sign a deferral agreement described in par. (d) 2.

13 b. That a parking enforcer may commence legal action to collect any removal
14 fee that has not been paid within 14 days after the removal of an immobilization
15 device.

16 c. That the owner, lessee or operator of an immobilized motor vehicle may
17 contest the propriety of the use of an immobilization device on his or her motor
18 vehicle or the validity of a removal fee using the process described in par. (b) 1., and
19 may contest any legal action commenced to collect a removal fee.

20 d. That, except for the payment of the removal fee or the signing of a deferral
21 agreement, no person may be required to do anything to have an immobilization
22 device removed.

23 e. That, if a parking enforcer uses an immobilization device on a motor vehicle
24 that is not parked in violation of a restriction against unauthorized parking, the
25 owner, lessee or operator shall not be required to pay a removal fee and the parking

1 enforcer shall be liable to the owner or lessee of the motor vehicle for an amount equal
2 to the removal fee.

3 (d) Require the owner, lessee or operator of a motor vehicle to do any of the
4 following before an immobilization device may be removed:

5 1. Pay the removal fee.

6 2. Sign a deferral agreement under which the person signing the agreement
7 agrees to pay the removal fee to the parking enforcer or contest the removal fee, or
8 the property of the use of an immobilization device on his or her motor vehicle, using
9 the process described in par. (b) 1. within 14 days after the immobilization device is
10 removed.

11 (e) Require the parking enforcer to remove the immobilization device without
12 undue delay after receiving a request to remove the device, not to exceed 60 minutes
13 whenever a request for removal is made by telephone.

14 (f) Require that, whenever a deferral agreement is signed, the parking enforcer
15 provide the owner or operator of the motor vehicle a copy of the signed deferral
16 agreement.

17 (g) Require a person who signs a deferral agreement and does not do any of the
18 activities described in par. (d) 2. within 14 days after the removal of the
19 immobilization device to pay an amount equal to 3 times the removal fee plus the
20 reasonable costs incurred to collect the removal fee to the parking enforcer within 30
21 days after the removal of the immobilization device.

22 (h) Require a parking enforcer who uses an immobilization device on a motor
23 vehicle that is not parked in violation of a restriction against unauthorized parking
24 to pay an amount equal to the removal fee to the owner of the motor vehicle within
25 14 days after the determination that the immobilization device was used improperly.

1 (i) Prohibit a parking enforcer from requiring a person to transfer any goods,
2 perform any services, or waive any available legal rights or remedies, as a condition
3 for removing an immobilization device, except as specified in par. (d).

4 (j) Specify the maximum removal fee that may be charged.

5 (4) A municipality may enact or enforce any regulation of the use of
6 immobilization devices to enforce parking restrictions that is not contrary to or
7 inconsistent with this section.

8 **SECTION 2. Initial applicability.**

9 (1) This act first applies to motor vehicles parked on the effective date of this
10 subsection.

11 **SECTION 3. Effective date.**

12 (1) This act takes effect on the first day of the 13th month beginning after
13 publication.

14 (END)