

Senate Bill 517

Published
January 4, 1966.

CHAPTER 485

AN ACT to amend 341.08 (3), 342.05 (1) (intro. par.) and (a), 342.06 (1) (c), (e) and (g), 342.10 (1) (b) and (2) and 409.302 (1) (c) and (d); to repeal and recreate 342.12, 342.13, 342.18 to 342.20 and 342.25; and to create 20.560 (1) (v), 59.57 (5m), 340.01 (56m) to (56o), 342.02, 342.10 (4) and (5), 342.14 to 342.17, 342.21 to 342.24, 342.26, 342.281 to 342.285 and 409.302 (5) of the statutes, relating to certificates of title for motor vehicles, making an appropriation and providing penalties.

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

SECTION 1. 20.560 (1) (v) of the statutes is created to read:

20.560 (1) (v) *Filing fees.* A sum sufficient to pay the county registers of deeds as provided in s. 342.14 (6).

SECTION 1m. 59.57 (5m) of the statutes is created to read:

59.57 (5m) For filing pursuant to s. 342.20 (4) the original memorandum that a security interest has been noted upon a certificate of title, and any subsequent memoranda concerning the release or assignment of such security interest, a single fee of 50 cents.

SECTION 1r. 340.01 (56m) to (56o) of the statutes are created to read:

340.01 (56m) "Secured party" means a secured party as defined in s. 409.105 (1) (i).

(56n) "Security agreement" means a security agreement as defined in s. 409.105 (1) (h).

(56o) "Security interest" means a security interest as defined in s. 401.201 (37).

SECTION 2. 341.08 (3) of the statutes is amended to read:

341.08 (3) The department may accept an application and complete registration of a vehicle when the evidence of ownership is held by a nonresident lienholder or for other reason is not immediately available and the department is satisfied as to ownership of the vehicle. ~~No certificate of title shall be issued by the department until the outstanding evidence of ownership is surrendered to the department.~~ The title fee shall be collected at the time of registration and retained even though certificate of title is not issued.

SECTION 3. 342.02 of the statutes is created to read:

342.02 EXCEPTED LIENS AND SECURITY INTERESTS. This chapter does not apply to or affect:

(1) A lien given by statute or rule of law to a supplier of services or materials for the vehicle.

(2) A lien given by statute to the United States, this state or any political subdivision of this state.

(3) A security interest in a vehicle created by a manufacturer or dealer who holds the vehicle for sale, which shall be governed by the applicable provisions of ch. 409.

SECTION 4. 342.05 (1) (intro. par.) and (a) of the statutes are amended to read:

342.05 (1) (intro. par.) The owner of a vehicle subject to registration in this state, *whether or not such vehicle is operated on any highway of this state*, shall make application for certificate of title for the vehicle under the following circumstances:

(a) If he has newly acquired the vehicle, he shall make application when and as required by s. ~~342.19~~, 342.15.

SECTION 5. 342.06 (1) (c), (e) and (g) of the statutes are amended to read:

342.06 (1) (c) The date of purchase by the applicant, the name and address of the person from whom the vehicle was acquired and the names and addresses of any ~~lienholders~~ *secured parties in the order of their priority and the dates of their security agreements*.

(e) Any further evidence of ownership which may reasonably be required by the department to enable it to determine whether the owner is entitled to a certificate of title *and the existence or nonexistence of security interests in the vehicle*.

(g) If the vehicle is a used motor vehicle which was last previously registered in another jurisdiction, the applicant shall furnish *any certifi-*

cate of ownership issued by the other jurisdiction and a sworn statement pertaining to the title history and ownership of such motor vehicle, such statement to be in such the form as the department may prescribe prescribes, and shall furnish a certification by a law enforcement officer or by an employe designated by the department to the effect that the physical description of the motor vehicle has been checked and conforms to the description given in the application.

SECTION 6. 342.10 (1) (b) and (2) of the statutes are amended to read:

342.10 (1) (b) The names of any ~~lienholders~~ *secured parties in the order of priority as shown on the application or, if the application is based on another certificate of title, as shown on such certificate.*

(2) The certificate of title shall contain forms for assignment and warranty of title by the owner, and for assignment and warranty of title by a dealer, and may contain forms for application for a certificate of title by a transferee and for the naming of a ~~lienholder~~ *secured party and the assignment or release of a security interest.*

SECTION 7. 342.10 (4) and (5) of the statutes are created to read:

342.10 (4) Unless the applicant fulfills the requirements of s. 342.12 (3), a distinctive certificate of title shall be issued for a vehicle last previously registered in another jurisdiction the laws of which do not require that secured parties be named on a certificate of title to perfect their security interests. The certificate shall contain the legend "This vehicle may be subject to an undisclosed security interest" and may contain any other information the department prescribes. If no notice of a security interest in the vehicle is received by the department within 4 months from the issuance of the distinctive certificate of title, it shall, upon application and surrender of the distinctive certificate, issue a certificate of title in ordinary form.

(5) A certificate of title issued by the department is prima facie evidence of the facts appearing on it.

SECTION 8. 342.12 and 342.13 of the statutes are repealed and re-created to read:

342.12 WITHHOLDING CERTIFICATE OF TITLE; BOND. (1) No certificate of title shall be issued by the department until the outstanding evidence of ownership is surrendered to the department.

(2) If the department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the department, subject to sub. (3), shall either:

(a) Withhold issuance of a certificate of title until the applicant presents documents reasonably sufficient to satisfy the department as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it; or

(b) Issue a distinctive certificate of title pursuant to s. 342.10 (4) or 342.283.

(3) Notwithstanding sub. (2), the department may issue a nondistinctive certificate of title if the applicant fulfills either of the following requirements:

(a) The applicant is a dealer licensed under s. 218.01 or 218.10 and is financially responsible as substantiated by the last financial statement on file with the department, a finance company licensed under s. 115.09 or 218.01, a bank organized under the laws of this state, or a national bank located in this state; or

(b) The applicant has filed with the department a bond in the form

prescribed by the department and executed by the applicant, and either accompanied by the deposit of cash with the department or also executed by a person authorized to conduct a surety business in this state. The bond shall be in an amount equal to one and one-half times the value of the vehicle as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of 5 years or prior thereto if, apart from this section, a nondistinctive certificate of title could then be issued for the vehicle, or if the vehicle is no longer registered in this state and the currently valid certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

342.13 LOST, STOLEN OR MUTILATED CERTIFICATES. (1) If a certificate of title is lost, stolen, mutilated or destroyed or becomes illegible, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, shall promptly make application for and may obtain a duplicate upon furnishing information satisfactory to the department. The duplicate certificate of title shall contain the legend "This is a duplicate certificate and may be subject to the rights of a person under the original certificate."

(2) The department shall not issue a new certificate of title to a transferee upon application made on a duplicate until 15 days after receipt of the application.

(3) A person recovering an original certificate of title for which a duplicate has been issued shall promptly surrender the original certificate to the department.

SECTION 9. 342.14 to 342.17 of the statutes are created to read:

342.14 FEES. The department shall be paid the following fees:

(1) For filing an application for a first certificate of title, \$1, by the owner of the vehicle.

(2) For the original notation and subsequent release of each security interest noted upon a certificate of title, a single fee of \$1.50 by the owner of the vehicle.

(3) For a certificate of title after a transfer, \$1, by the owner of the vehicle.

(4) For each assignment of a security interest noted upon a certificate of title, \$1 by the assignee.

(5) For a duplicate certificate of title, \$1, by the owner of the vehicle.

(6) The department shall transmit monthly, as provided in s. 59.57 (12), to the proper registers of deeds, 50 cents from each fee collected pursuant to sub. (2) to cover the fee for filing memoranda required by s. 59.57 (5m).

342.15 TRANSFER OF INTEREST IN A VEHICLE. (1) If an owner transfers his interest in a vehicle, other than by the creation of a security interest, he shall at the time of the delivery of the vehicle, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate, and cause the certificate to be mailed or delivered to the transferee, except that if the vehicle being transferred has been

junked, he shall return the certificate to the department in accordance with s. 342.34.

(2) Except as provided in s. 342.16, the transferee shall, promptly after delivery to him of the vehicle, execute the application for a new certificate of title in the space provided therefor on the certificate or as the department prescribes, and cause the certificate and application to be mailed or delivered to the department.

(3) Except as provided in s. 342.16 and as between the parties, a transfer by an owner is not effective until the provisions of this section have been complied with. An owner who has delivered possession of the vehicle to the transferee and has complied with the provisions of this section requiring action by him is not liable as owner for any damages thereafter resulting from operation of the vehicle.

(4) If the vehicle being transferred is an automobile registered pursuant to the monthly series system, the owner shall remove the registration plates and retain and preserve them for use on any other automobile which may subsequently be registered in his name. If the vehicle being transferred is a vehicle registered pursuant to s. 341.26 at a special fee and the new owner will not be entitled to register the vehicle as such fee, the transferor shall remove the plates and return them to the department. In all other cases the transferor shall permit the plates to remain attached to the vehicle being transferred, except that if the vehicle has been junked he shall return the plates to the department in accordance with s. 342.34.

(5) Any owner of a vehicle for which a certificate of title has been issued, who upon transfer of the vehicle fails to execute and deliver the assignment and warranty of title required by sub. (1) may be fined not more than \$200 or imprisoned not more than 6 months or both.

(6) Except as provided in s. 342.16, any transferee of a vehicle who fails to make application for a new certificate of title immediately upon transfer to him of a vehicle may be fined not more than \$200 or imprisoned not more than 6 months or both. A certificate is considered to have been applied for when the application accompanied by the required fee has been delivered to the department or deposited in the United States mail properly addressed with postage prepaid.

(7) Any owner of a vehicle currently registered in this state who fails to comply with the requirements of sub. (4) may be fined not more than \$200 or imprisoned not more than 6 months or both.

342.16 TRANSFER TO OR FROM DEALER. (1) If a dealer buys a vehicle and holds it for resale and procures the certificate of title from the owner he need not send the certificate to the department. Upon transferring the vehicle to another person he shall promptly execute the assignment and warranty of title, showing the name and address of the transferee and of any secured party holding a security interest created or reserved at the time of the resale and the date of his security agreement, in the spaces provided therefor on the certificate or as the department prescribes, and mail or deliver the certificate to the department with the transferee's application for a new certificate.

(2) Every dealer shall maintain for 5 years a record in the form the department prescribes of every vehicle bought, sold or exchanged by him, or received by him for sale or exchange, which shall be open to inspection by a representative of the department or a peace officer during reasonable business hours.

(3) Any dealer who fails to comply with the requirements of sub. (2) may be fined not more than \$200 or imprisoned not more than 6 months or both.

342.17 INVOLUNTARY TRANSFERS. (1) If the interest of an owner in a vehicle passes to another other than by voluntary transfer, the

transferee shall, except as provided in sub. (2), promptly mail or deliver to the department the last certificate of title, if available, and the documents required by the department to legally effect such transfer, and his application for a new certificate in the form the department prescribes.

(2) If the interest of the owner is terminated or the vehicle is sold under a security agreement by a secured party named in the certificate of title, the transferee shall promptly mail or deliver to the department the last certificate of title, his application for a new certificate in the form the department prescribes, and an affidavit made by or on behalf of the secured party that the vehicle was repossessed and that the interest of the owner was lawfully terminated or sold pursuant to the terms of the security agreement.

(3) A person holding a certificate of title whose interest in the vehicle has been extinguished or transferred other than by voluntary transfer shall mail or deliver the certificate to the department upon request of the department. The delivery of the certificate pursuant to the request of the department does not affect the rights of the person surrendering the certificate, and the action of the department in issuing a new certificate of title as provided herein is not conclusive upon the rights of an owner or secured party named in the old certificate.

(4) (a) In all cases of the transfer of a vehicle owned by a decedent, ward, trustee or bankrupt, the department shall accept as sufficient evidence of the transfer of ownership the following:

1. Evidence satisfactory to the department of the issuance of the letters of administration, letters testamentary, letters of guardianship, letters of trust or appointment of the trustee in bankruptcy;

2. The title executed by such administrator, executor, guardian or trustee; and

3. The evidence concerning payment of sales or use taxes required by s. 77.61 (1) or evidence that the transfer is exempt from such taxes.

(b) Upon compliance with this subsection neither the commissioner nor the department shall bear any liability or responsibility for the transfer of such vehicles in accordance with this section.

SECTION 10. 342.18 to 342.20 of the statutes are repealed and recreated to read:

342.18 WHEN DEPARTMENT TO ISSUE A NEW CERTIFICATE.

(1) The department, upon receipt of a properly assigned certificate of title, with an application for a new certificate of title, the required fee and any other transfer documents required by law, to support the transfer, shall issue a new certificate of title in the name of the transferee as owner.

(2) The department, upon receipt of an application for a new certificate of title by a transferee other than by voluntary transfer, with proof of the transfer, the required fee and any other documents required by law, shall issue a new certificate of title in the name of the transferee as owner. If the outstanding certificate of title is not delivered to it, the department shall make demand therefor from the holder of such certificate.

(3) The department shall file and retain for 5 years a record of every surrendered certificate of title, the file to be maintained so as to permit the tracing of title of the vehicle designated therein.

(4) Under the following circumstances only, the department shall issue a certificate of title for a transferred vehicle without requiring registration of the vehicle:

(a) Application therefor accompanied by the required fee is made by a dealer licensed under s. 218.01 or 218.10, a finance company licensed under s. 115.09 or 218.01, a bank organized under the laws of this state, or a national bank located in this state, and the vehicle in question is a used vehicle for which the department had issued a certificate of title to

the previous owner or a vehicle previously registered in another jurisdiction or is a mobile home; or

(b) Application therefor accompanied by the required fee is made by any other person and the vehicle in question is a vehicle for which the department had issued a certificate of title to the previous owner or is a vehicle previously registered in another jurisdiction or is a mobile home and the department is satisfied that the present owner has not operated or consented to the operation of the vehicle since it was transferred to him and that he understands that the certificate of title merely is evidence of his ownership of the vehicle and does not authorize operation of the vehicle on the highways of this state.

342.19 PERFECTION OF SECURITY INTERESTS. (1) Unless excepted by s. 342.02, a security interest in a vehicle of a type for which a certificate of title is required is not valid against creditors of the owner or subsequent transferees or secured parties of the vehicle unless perfected as provided in this chapter.

(2) A security interest is perfected by the delivery to the department of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the secured party and the date of his security agreement, and the required fee. It is perfected as of the time of its creation if such delivery is completed within 10 days thereafter, and without regard to the limitations expressed in s. 409.301 (2); otherwise, as of the time of such delivery.

(3) An unperfected security interest is subordinate to the rights of persons described in s. 409.301.

(4) The rules of priority stated in s. 409.312, and the other sections therein referred to, shall, to the extent appropriate, apply to conflicting security interests in a vehicle of a type for which a certificate of title is required, or in a "previously certificated vehicle" as defined in s. 342.281. A security interest perfected under this section or under ss. 342.284 and 342.285 is a security interest perfected otherwise than by filing for purposes of s. 409.312.

(5) The rules stated in ss. 409.501 to 409.507 governing the rights of secured parties and debtors upon default shall, to the extent appropriate, govern the rights of secured parties and owners with respect to security interests in vehicles perfected under this chapter.

(6) If a vehicle is subject to a security interest when brought into this state, s. 409.103 (2), (3) and (4) state the rules which apply to determine the validity and perfection of the security interest in this state.

342.20 DUTIES ON CREATION OF SECURITY INTEREST. If an owner creates a security interest in a vehicle:

(1) The owner shall immediately execute, in the space provided therefore on the certificate of title or on a separate form prescribed by the department, an application to name the secured party on the certificate, showing the name and address of the secured party and the date of his security agreement, and cause the certificate, application and the required fee to be delivered to the secured party.

(2) The secured party shall immediately cause the certificate, application and the required fee to be mailed or delivered to the department.

(3) Upon receipt of the certificate of title, application and the required fee, the department shall issue to the owner a new certificate containing the name and address of the new secured party. The department shall deliver to such new secured party and to the register of deeds of the county of the debtor's residence, memoranda, in such form as the department prescribes, evidencing the notation of the security interest upon the certificate; and thereafter, upon any assignment, termination or release of the security interest, additional memoranda evidencing such action.

(4) The registers of deeds shall maintain a file of all memoranda received from the department pursuant to sub. (3). Such filing, however, is not required for perfection, release or assignment of security interests, which shall be effective upon compliance with ss. 342.19 (2), 342.21, and 342.22.

SECTION 11. 342.21 to 342.24 of the statutes are created to read:

342.21 ASSIGNMENT OF SECURITY INTEREST. (1) A secured party may assign, absolutely or otherwise, his security interest in the vehicle to a person other than the owner without affecting the interest of the owner or the validity of the security interest, but any person without notice of the assignment is protected in dealing with the secured party as the holder of the security interest and the secured party remains liable for any obligations as a secured party until the assignee is named as secured party on the certificate.

(2) The assignee may but need not, to perfect the assignment, have the certificate of title endorsed or issued with the assignee named as secured party, upon delivering to the department the certificate and an assignment by the secured party named in the certificate in the form the department prescribes.

342.22 RELEASE OF SECURITY INTEREST. (1) Whenever there is no outstanding obligation and no commitment to make advances, incur obligations or otherwise give value, secured by the security interest in a vehicle, the secured party shall execute and deliver to the owner, upon the certificate, or as the department prescribes, a release of the security interest. If the secured party fails to execute and deliver such a release within 10 days after receipt of the owner's written demand therefor he shall be liable to the owner for \$25 and for any loss caused to the owner by such failure.

(2) The owner, other than a dealer holding the vehicle for resale, shall promptly cause the certificate and release to be mailed or delivered to the department, which shall release the secured party's rights on the certificate and issue a new certificate.

342.23 SECURED PARTY'S AND OWNER'S DUTIES. (1) A secured party named in a certificate of title shall, upon written request of the owner or of another secured party named on the certificate, disclose any pertinent information as to his security agreement and the indebtedness secured by it.

(2) An owner shall promptly deliver his certificate of title to any secured party who is named on it or who has a security interest in the vehicle described in it under any other applicable prior law of this state, upon receipt of a notice from such secured party that his security interest is to be assigned, extended or perfected.

(3) Any secured party who fails to disclose information pursuant to sub. (1) shall be liable for any loss caused to owner thereby.

(4) Any owner who fails to deliver the certificate of title to a secured party requesting it pursuant to sub. (2) shall be liable to such secured party for any loss caused to the secured party thereby and may be fined not more than \$200 or imprisoned not more than 6 months or both.

342.24 METHOD OF PERFECTING EXCLUSIVE. The method provided in this chapter of perfecting and giving notice of security interests subject to this chapter is exclusive. Security interests subject to this chapter are hereby exempted from the provisions of law which otherwise require or relate to the filing of instruments creating or evidencing security interests.

SECTION 12. 342.25 of the statutes is repealed and recreated to read:

342.25 SUSPENSION OR REVOCATION OF CERTIFICATE. (1)

The department shall suspend or revoke a certificate of title if it finds:

- (a) The certificate of title was fraudulently procured, erroneously issued or prohibited by law;
- (b) The vehicle has been scrapped, dismantled or destroyed; or
- (c) A transfer of title is set aside by a court of record by order or judgment.

(2) Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.

(3) When the department suspends or revokes a certificate of title, the owner or person in possession of it shall, immediately upon receiving notice of the suspension or revocation, mail or deliver the certificate to the department.

(4) The department may seize and impound any certificate of title which has been suspended or revoked.

SECTION 13. 342.26 and 342.281 to 342.285 of the statutes are created to read:

342.26 HEARINGS AND APPEAL. Any person aggrieved by an act or omission of the department under this chapter is entitled, upon request, to a hearing and judicial review thereof in accordance with ch. 227.

342.281 PREVIOUSLY CERTIFICATED VEHICLE. A previously certificated vehicle is a vehicle for which a certificate of title has been issued by the department prior to the effective date of this section (1966).

342.282 DEFERRED APPLICATION TO PREVIOUSLY CERTIFICATED VEHICLE. Sections 342.19 to 342.24 shall not apply to a previously certificated vehicle until:

- (1) There is a transfer of ownership of the vehicle; or
- (2) The department issues a certificate of title of the vehicle under this chapter.

342.283 DISTINCTIVE CERTIFICATE. If the department is not satisfied that there are no undisclosed security interests, created before the effective date of this section (1966), in a previously certificated vehicle, it shall, unless the applicant fulfills the requirements of s. 342.12 (3), issue a distinctive certificate of title of the vehicle containing the legend "This vehicle may be subject to an undisclosed security interest" and any other information the department prescribes.

342.284 NEW SECURITY INTEREST IN A PREVIOUSLY CERTIFICATED VEHICLE. After the effective date of this section (1966), a security interest in a previously certificated vehicle may be created and perfected only by compliance with ss. 342.19 and 342.24.

342.285 UNSATISFIED SECURITY INTEREST IN PREVIOUSLY CERTIFICATED VEHICLE. (1) If a security interest in a previously certificated vehicle is perfected under any other applicable law of this state at the time this section takes effect (1966), the security interest continues perfected until its perfection lapses under the law under which it was perfected (or would lapse in the absence of a further filing or renewal of filing) and thereafter, if, before such lapse, there is delivered to the department the existing certificate of title together with the application and fee required by s. 342.20 (1). In such case the department shall issue a new certificate pursuant to s. 342.20 (3).

(2) If a security interest in a previously certificated vehicle was created, but was unperfected, under any other applicable law of this state at

the time this section takes effect (1966), it may be perfected under sub. (1), but such perfection dates only from the date of the department's receipt of the certificate.

SECTION 14. 409.302 (1) (c) and (d) of the statutes are amended to read:

409.302 (1) (c) A purchase money security interest in farm equipment having a purchase price not in excess of \$250; but filing is required for a fixture under s. 409.313 ~~or for a motor vehicle required to be licensed;~~

(d) A purchase money security interest in consumer goods having a purchase price not in excess of \$250; but filing is required for a fixture under s. 409.313 ~~or for a motor vehicle required to be licensed;~~

SECTION 15. 409.302 (5) of the statutes is created to read:

409.302 (5) A security interest in a vehicle of a type for which a new certificate of title is required under ch. 342 can be perfected only as provided in ss. 342.19 and 342.20. A security interest in a previously certificated vehicle, as defined in s. 342.281, can be perfected only as provided in ss. 342.284 and 342.285.

SECTION 16. This act shall take effect on June 1, 1966.

Approved December 16, 1965.
