

1993 Assembly Bill 666

Date of enactment: **April 15, 1994**
Date of publication*: **April 29, 1994**

1993 WISCONSIN ACT 317

AN ACT to amend 342.12 (4), 343.30 (1q) (b) 4 and 5, 343.305 (4) (b) and (c) 1, 343.305 (10) (b) 4 and 5, 343.305 (10m), 343.31 (3) (bm) 4 and 5, 346.65 (2) (c) to (e), 346.65 (2c), 346.65 (2j) (c), 346.65 (2w), 346.65 (6) (a) 1 and 2, 346.65 (6) (d), 940.09 (1d) and 940.25 (1d) of the statutes, relating to: increasing to 10 years the period of counting prior convictions, refusals and revocations when determining the penalty for an offense related to operating a motor vehicle while under the influence of an intoxicant.

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

SECTION 1. 342.12 (4) of the statutes is amended to read:

342.12 (4) (a) The district attorney shall notify the department when he or she files a criminal complaint against a person who has been arrested for violating s. 346.63 (1) or (2), 940.09 (1) or 940.25 and who has 2 or more prior convictions, suspensions or revocations within a ~~5-year~~ 10-year period, as counted under s. 343.307 (1). The department may not issue a certificate of title transferring ownership of any motor vehicle owned by the person upon receipt of a notice under this subsection until the court assigned to hear the criminal complaint issues an order permitting the department to issue a certificate of title.

(b) The department may not issue a certificate of title transferring ownership of any motor vehicle owned by a person upon receipt of a notice of intent to revoke the person's operating privilege under s. 343.305 (9) (a), if the person has 2 or more prior convictions, suspensions or revocations within a ~~5-year~~ 10-year period, as counted under s. 343.307 (1), until the court assigned to the hearing under s. 343.305 (9) issues an order permitting the department to issue a certificate of title.

SECTION 2. 343.30 (1q) (b) 4. and 5. of the statutes are amended to read:

343.30 (1q) (b) 4. If the number of convictions, suspensions and revocations within a ~~5-year~~ 10-year period equals 3 or more, the court shall revoke the person's operating privilege for not less than 2 years nor more than 3 years. After the first 90 days of the revocation period, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan ordered under par. (c).

5. The ~~5-year~~ or 10-year period under this paragraph shall be measured from the dates of the refusals or violations which resulted in the suspensions, revocations or convictions.

SECTION 3. 343.305 (4) (b) and (c) 1. of the statutes are amended to read:

343.305 (4) (b) If testing is refused, a motor vehicle owned by the person may be immobilized, seized and forfeited or equipped with an ignition interlock device if the person has 2 or more prior suspensions, revocations or convictions within a ~~5-year~~ 10-year period that would be counted under s. 343.307 (1), the person's operating privilege will be revoked under this section and, if the person was driving or operating or on duty time with respect to a commercial motor vehicle, the person will be issued an out-of-service order for the 24 hours following the refusal;

(c) 1. Has a prohibited alcohol concentration and was driving or operating a motor vehicle, the person will be

subject to penalties, the person's operating privilege will be suspended under this section and a motor vehicle owned by the person may be immobilized, seized and forfeited or equipped with an ignition interlock device if the person has 2 or more prior convictions, suspensions or revocations within a ~~5-year~~ 10-year period that would be counted under s. 343.307 (1);

SECTION 4. 343.305 (10) (b) 4. and 5. of the statutes are amended to read:

343.305 (10) (b) 4. If the number of convictions, suspensions and revocations in a ~~5-year~~ 10-year period equals 3 or more, the court shall revoke the person's operating privilege for 3 years. After the first 120 days of the revocation period, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan.

5. The ~~5-year~~ or 10-year period under this paragraph shall be measured from the dates of the refusals or violations which resulted in revocations or convictions.

SECTION 5. 343.305 (10m) of the statutes is amended to read:

343.305 (10m) REFUSALS; SEIZURE, IMMOBILIZATION OR IGNITION INTERLOCK OF A MOTOR VEHICLE. If the person whose operating privilege is revoked under sub. (10) has 2 or more prior convictions, suspensions or revocations, as counted under s. 343.307 (1), within a ~~5-year~~ 10-year period, the procedure under s. 346.65 (6) shall be followed regarding the immobilization or seizure and forfeiture of a motor vehicle owned by the person or the equipping of a motor vehicle owned by the person with an ignition interlock device.

SECTION 6. 343.31 (3) (bm) 4 and 5 of the statutes are amended to read:

343.31 (3) (bm) 4. If the number of suspensions, revocations and convictions within a ~~5-year~~ 10-year period equals 3 or more, the department shall revoke the person's operating privilege for not less than 2 years nor more than 3 years. If an Indian tribal court in this state revokes the person's privilege to operate a motor vehicle on tribal lands for not less than 2 years nor more than 3 years for the conviction specified in par. (bm) (intro.), the department shall impose the same period of revocation. After the first 90 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

5. The ~~5-year~~ or 10-year period under this paragraph shall be measured from the dates of the refusals or violations which resulted in the suspensions, revocations or convictions.

SECTION 7. 346.65 (2) (c) to (e) of the statutes are amended to read:

346.65 (2) (c) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the total number of suspensions, revocations and convictions counted under s. 343.307 (1) equals 3 in a ~~5-year~~ 10-year

period, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

(d) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one year in the county jail if the total number of suspensions, revocations and convictions counted under s. 343.307 (1) equals 4 in a ~~5-year~~ 10-year period, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

(e) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 6 months nor more than one year in the county jail if the total number of suspensions, revocations and convictions counted under s. 343.307 (1) equals 5 or more in a ~~5-year~~ 10-year period, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

SECTION 8. 346.65 (2c) of the statutes is amended to read:

346.65 (2c) In sub. (2) (b) to (e), the ~~5-year~~ or 10-year period shall be measured from the dates of the refusals or violations that resulted in the revocation or convictions. If a person has a suspension, revocation or conviction for any offense under a local ordinance or a state statute of another state that would be counted under s. 343.307 (1), that suspension, revocation or conviction shall count as a prior suspension, revocation or conviction under sub. (2) (b) to (e).

SECTION 9. 346.65 (2j) (c) of the statutes is amended to read:

346.65 (2j) (c) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the total of prior convictions, suspensions and revocations counted under s. 343.307 (2) equals 3 or more in a ~~5-year~~ 10-year period.

SECTION 10. 346.65 (2w) of the statutes is amended to read:

346.65 (2w) In determining the number of prior convictions for purposes of sub. (2j), the court shall count suspensions, revocations and convictions that would be counted under s. 343.307 (2). Revocations, suspensions and convictions arising out of the same incident or occurrence shall be counted as one. The ~~5-year~~ or 10-year period shall be measured from the dates of the refusals or violations which resulted in the revocation, suspension or convictions. If a person has a suspension, revocation or conviction for any offense that is counted under s. 343.307 (2), that suspension, revocation or conviction shall count as a prior suspension, revocation or conviction under this section.

SECTION 11. 346.65 (6) (a) 1. and 2. of the statutes are amended to read:

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346.65 (6) (a) 1. Except as provided in this paragraph, the court may order a law enforcement officer to seize a motor vehicle, or, if the motor vehicle is not ordered seized, shall order a law enforcement officer to equip the motor vehicle with an ignition interlock device or immobilize any motor vehicle owned by the person whose operating privilege is revoked under s. 343.305 (10) or who committed a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25 (1) (a) or (b) if the person whose operating privilege is revoked under s. 343.305 (10) or who is convicted of the violation has 2 prior suspensions, revocations or convictions within a ~~5-year~~ 10-year period that would be counted under s. 343.307 (1). The court shall not order a motor vehicle equipped with an ignition interlock device or immobilized if that would result in undue hardship or extreme inconvenience or would endanger the health and safety of a person.

2. The court shall order a law enforcement officer to seize a motor vehicle owned by a person whose operating privilege is revoked under s. 343.305 (10) or who commits a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25 (1) (a) or (b) if the person whose operating privilege is revoked under s. 343.305 (10) or who is convicted of the violation has 3 or more prior suspensions, revocations or convictions within a ~~5-year~~ 10-year period that would be counted under s. 343.307 (1).

SECTION 12. 346.65 (6) (d) of the statutes is amended to read:

346.65 (6) (d) At the hearing set under par. (c), the state has the burden of proving to a reasonable certainty by the greater weight of the credible evidence that the motor vehicle is a motor vehicle owned by a person who committed a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25 (1) (a) or (b) and, if the seizure is under par. (a) 1., that the person had 2 prior convictions, suspensions or revocations within a ~~5-year~~ 10-year period as counted under s. 343.307 (1) or, if the seizure is under par. (a) 2., 3. or more prior convictions, suspensions or revocations within a ~~5-year~~ 10-year period as counted under s. 343.307 (1). If the

owner of the motor vehicle proves by a preponderance of the evidence that he or she was not convicted of a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25 (1) (a) or (b), or, if the seizure is under par. (a) 1., that he or she did not have 2 prior convictions, suspensions or revocations within a ~~5-year~~ 10-year period as counted under s. 343.307 (1) or, if the seizure is under par. (a) 2., 3. or more prior convictions, suspensions or revocations within a ~~5-year~~ 10-year period as counted under s. 343.307 (1), the motor vehicle shall be returned to the owner upon the payment of storage costs.

SECTION 13. 940.09 (1d) of the statutes is amended to read:

940.09 (1d) If the person who committed an offense under sub. (1) (a) or (b) has 2 or more prior convictions, suspensions or revocations in a ~~5-year~~ 10-year period, as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed regarding the immobilization or seizure and forfeiture of a motor vehicle owned by the person who committed the offense or the equipping of a motor vehicle owned by the person with an ignition interlock device.

SECTION 14. 940.25 (1d) of the statutes is amended to read:

940.25 (1d) If the person who committed the offense under sub. (1) (a) or (b) has 2 or more prior convictions, suspensions or revocations in a ~~5-year~~ 10-year period, as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed regarding the immobilization or seizure and forfeiture of a motor vehicle owned by the person who committed the offense or the equipping of a motor vehicle owned by the person with an ignition interlock device.

SECTION 15. Initial applicability. This act first applies to offenses committed on the effective date of this SECTION, but does not preclude the counting of prior suspensions, revocations and convictions when sentencing a person except that it does preclude the counting of prior suspensions, revocations and convictions that occurred before January 1, 1988.