

State of Wisconsin



1997 Senate Bill 39

Date of enactment: **April 17, 1998**

Date of publication*: **May 1, 1998**

1997 WISCONSIN ACT 135

AN ACT *to renumber* 346.49 (2) (b); *to renumber and amend* 346.49 (2) (a); *to amend* 59.25 (3) (f) 2., 59.40 (2) (m), 195.28 (2), 195.28 (3), 345.26 (1) (b) 1., 345.26 (2) (b), 345.36 (2) (b), 345.37 (1) (b), 345.37 (2), 345.37 (5), 345.47 (1) (intro.), 345.47 (1) (b), 345.47 (1) (c), 345.47 (2), 345.47 (3), 345.49 (1), 345.49 (2), 345.61 (2) (c), 346.62 (1) (d) and 346.65 (5m); and *to create* 20.395 (2) (gj), 25.40 (1) (ij), 343.30 (2j), 343.32 (2) (bd), 346.49 (2m) (a), 346.495, 346.62 (2m), 346.65 (4m) and 346.65 (4r) of the statutes; **relating to:** stopping at railroad crossings, reckless driving at railroad crossings, creating a railroad crossing improvement assessment, making an appropriation and providing penalties.

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

SECTION 1. 20.395 (2) (gj) of the statutes is created to read:

20.395 (2) (gj) *Railroad crossing protection installation and maintenance, state funds.* All moneys received from railroad crossing improvement assessments required under ss. 346.495 and 346.65 (4r), for the purpose of railroad crossing protection installation and maintenance under s. 195.28 (2) and (3).

SECTION 2. 25.40 (1) (ij) of the statutes is created to read:

25.40 (1) (ij) All moneys forwarded by county treasurers from railroad crossing improvement assessments required under ss. 346.495 and 346.65 (4r), as provided in s. 59.25 (3) (f) 2.

SECTION 3. 59.25 (3) (f) 2. of the statutes, as affected by 1997 Wisconsin Act 27, section 2160p, is amended to read:

59.25 (3) (f) 2. For all court imposed fines and forfeitures required by law to be deposited in the state treasury, the amounts required by s. 165.87 for the penalty assess-

ment surcharge, the amounts required by s. 165.755 for the crime laboratories and drug law enforcement assessment, the amounts required by s. 167.31 (5) for the weapons assessment, the amounts required by s. 973.045 for the crime victim and witness assistance surcharge, the amounts required by s. 938.34 (8d) for the delinquency victim and witness assistance surcharge, the amounts required by s. 973.046 for the deoxyribonucleic acid analysis surcharge, the amounts required by s. 961.41 (5) for the drug abuse program improvement surcharge, the amounts authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055 (1) for the domestic abuse assessment, the amounts required by s. 253.06 (4) (c) for the enforcement assessment under the supplemental food program for women, infants and children, the amounts required by ss. 346.495 and 346.65 (4r) for the railroad crossing improvement assessment. the amounts required by s. 346.655 (2) (a) and (b) for the driver improvement surcharge, the amounts required by s. 102.85 (4) for the uninsured employer assessment, the amounts required by s. 299.93 for the environmental assessment, the amounts required by s. 29.9965 for the wild animal protection assessment, the amounts required by s. 29.997 for the natu-

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

ral resources assessment surcharge, the amounts required by s. 29.9967 for the fishing shelter removal assessment, the amounts required by s. 350.115 for the snowmobile registration restitution payment and the amounts required by s. 29.998 for natural resources restitution payments, transmit to the state treasurer a statement of all moneys required by law to be paid on the actions entered during the preceding month on or before the first day of the next succeeding month, certified by the county treasurer's personal signature affixed or attached thereto, and at the same time pay to the state treasurer the amount thereof.

SECTION 4. 59.40 (2) (m) of the statutes, as affected by 1997 Wisconsin Act 27, section 2163p, is amended to read:

59.40 (2) (m) Pay monthly to the treasurer for the use of the state the state's percentage of the fees required to be paid on each civil action, criminal action and special proceeding filed during the preceding month and pay monthly to the treasurer for the use of the state the percentage of court imposed fines and forfeitures required by law to be deposited in the state treasury, the amounts required by s. 165.87 (2) (b) for the penalty assessment surcharge, the amounts required by s. 165.755 for the crime laboratories and drug law enforcement assessment, the amounts required by s. 167.31 (5) for the weapons assessment, the amounts required by s. 973.045 for the crime victim and witness assistance surcharge, the amounts required by s. 938.34 (8d) for the delinquency victim and witness assistance surcharge, the amounts required by s. 973.046 for the deoxyribonucleic acid analysis surcharge, the amounts required by s. 961.41 (5) for the drug abuse program improvement surcharge, the amounts authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055 for the domestic abuse assessment surcharge, the amounts required by s. 253.06 (4) (c) for the enforcement assessment under the supplemental food program for women, infants and children, the amounts required by ss. 346.495 and 346.65 (4r) for the railroad crossing improvement assessment, the amounts required by s. 346.655 for the driver improvement surcharge, the amounts required by s. 102.85 (4) for the uninsured employer assessment, the amounts required by s. 299.93 for the environmental assessment, the amounts required under s. 29.9965 for the wild animal protection assessment, the amounts required under s. 29.997 (1) (d) for the natural resources assessment surcharge, the amounts required by s. 29.9967 for the fishing shelter removal assessment, the amounts required by s. 350.115 for the snowmobile registration restitution payment and the amounts required under s. 29.998 (1) (d) for the natural resources restitution payments. The payments shall be made by the 15th day of the month following receipt thereof.

SECTION 5. 195.28 (2) of the statutes is amended to read:

195.28 (2) **INSTALLATION COSTS.** The cost of any signal or other crossing protection device which is ordered installed under sub. (1) and the cost of installing any such device shall be paid by the department from the appropriations under s. 20.395 (2) ~~(gi)~~, (gr) and (gx).

SECTION 6. 195.28 (3) of the statutes is amended to read:

195.28 (3) **MAINTENANCE COSTS.** Except as otherwise provided in this subsection, the cost of maintaining crossing protection devices ordered under sub. (1) shall be the responsibility of the railroad or railroad historical society. Any railroad company or railroad historical society that incurs expenses for maintenance of signals or other safety devices may file a claim for reimbursement with the department regardless of the date of installation of the signals or devices. At the close of each fiscal year the department shall reimburse claimants under this subsection for 50% of the costs, as determined by the office, incurred for maintenance of railroad crossing protection devices from the ~~appropriation appropriations~~ under s. 20.395 (2) ~~(gj) and (gq)~~. If the amount in the ~~appropriation appropriations~~ under s. 20.395 (2) ~~(gj) and (gq)~~ is not adequate to fund maintenance reimbursement under this subsection, the amount shall be prorated in the manner determined by the office.

SECTION 7. 343.30 (2j) of the statutes is created to read:

343.30 (2j) (a) A court may revoke a person's operating privilege upon the person's first conviction for violating s. 346.44 or 346.62 (2m) and shall revoke a person's operating privilege upon the person's 2nd or subsequent conviction within a 5-year period for violating s. 346.44 or 346.62 (2m). The revocation shall be for a period of 6 months. For purposes of determining prior convictions for purposes of this paragraph, the 5-year period shall be measured from the dates of the violations that resulted in the convictions. Each conviction under s. 346.44 or 346.62 (2m) shall be counted, except that convictions under s. 346.44 and 346.62 (2m) arising out of the same incident or occurrence shall be counted as a single conviction.

SECTION 8. 343.32 (2) (bd) of the statutes is created to read:

343.32 (2) (bd) The scale adopted by the secretary shall assess, for each conviction, 6 demerit points for a violation of s. 346.44 or 346.62 (2m), except that convictions under s. 346.44 and 346.62 (2m) arising out of the same incident or occurrence shall be counted as a single conviction.

SECTION 8r. 345.26 (1) (b) 1. of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

345.26 (1) (b) 1. If the person makes a deposit for a violation of a traffic regulation, the person need not appear in court at the time fixed in the citation, and the person will be deemed to have tendered a plea of no contest

and submitted to a forfeiture and a penalty assessment, if required by s. 165.87, a jail assessment, if required by s. 302.46 (1), a railroad crossing improvement assessment, if required by s. 346.495 or 346.65 (4r), and a crime laboratories and drug law enforcement assessment, if required by s. 165.755, plus any applicable fees prescribed in ch. 814, not to exceed the amount of the deposit that the court may accept as provided in s. 345.37; and

SECTION 8rb. 345.26 (2) (b) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

345.26 (2) (b) In addition to the amount in par. (a), the deposit shall include court costs, including any applicable fees prescribed in ch. 814, any applicable penalty assessment, any applicable jail assessment, any applicable railroad crossing improvement assessment and any applicable crime laboratories and drug law enforcement assessment.

SECTION 8rd. 345.36 (2) (b) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

345.36 (2) (b) Deem the nonappearance a plea of no contest and enter judgment accordingly. If the defendant has posted bond for appearance at that date, the court may also order the bond forfeited. The court shall promptly mail a copy of the judgment to the defendant. The judgment shall allow not less than 20 days from the date thereof for payment of any forfeiture, penalty assessment, jail assessment, railroad crossing improvement assessment, crime laboratories and drug law enforcement assessment and costs imposed. If the defendant moves to open the judgment within 20 days after the date set for trial, and shows to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise or excusable neglect, the court shall open the judgment, reinstate the not guilty plea and set a new trial date. The court may impose costs under s. 814.07. The court shall immediately notify the department to delete the record of conviction based upon the original judgment.

SECTION 8rf. 345.37 (1) (b) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

345.37 (1) (b) Deem the nonappearance a plea of no contest and enter judgment accordingly. If the defendant has posted bond for appearance at that date, the court may also order the bond forfeited. The court shall promptly mail a copy or notice of the judgment to the defendant. The judgment shall allow not less than 20 days from the date thereof for payment of any forfeiture, penalty assessment, railroad crossing improvement assessment, crime laboratories and drug law enforcement assessment and costs imposed. If the defendant moves to open the judgment within 6 months after the court appearance date fixed in the citation, and shows to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise or excusable neglect, the court shall open the judgment, accept a not guilty plea and set a trial date. The court may impose costs under s. 814.07. The court shall immediately notify the department to delete

the record of conviction based upon the original judgment. If the offense involved is a nonmoving traffic violation and the defendant is subject to s. 345.28 (5) (c), a default judgment may be entered and opened as provided in s. 345.28 (5) (c).

SECTION 8rg. 345.37 (2) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

345.37 (2) If the defendant has made a deposit under s. 345.26, the citation may serve as the initial pleading and the defendant shall be deemed to have tendered a plea of no contest and submitted to a forfeiture and a penalty assessment, if required by s. 165.87, a jail assessment, if required by s. 302.46 (1), a railroad crossing improvement assessment, if required by s. 346.495 or 346.65 (4r), and a crime laboratories and drug law enforcement assessment, if required by s. 165.755, plus costs, including any applicable fees prescribed in ch. 814, not exceeding the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons under ch. 968. If the defendant fails to appear in response to the summons, the court shall issue a warrant under ch. 968. If the court accepts the plea of no contest, the defendant may move within 6 months after the date set for the appearance to withdraw the plea of no contest, open the judgment and enter a plea of not guilty upon a showing to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise or excusable neglect. If on reopening the defendant is found not guilty, the court shall immediately notify the department to delete the record of conviction based on the original proceeding and shall order the defendant's deposit returned.

SECTION 8rh. 345.37 (5) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

345.37 (5) Within 5 working days after forfeiture of deposit or entry of default judgment, the official receiving the forfeiture, the penalty assessment, if required by s. 165.87, the jail assessment, if required by s. 302.46 (1), the railroad crossing improvement assessment, if required by s. 346.495 or 346.65 (4r), and the crime laboratories and drug law enforcement assessment, if required by s. 165.755, shall forward to the department a certification of the entry of default judgment or a judgment of forfeiture.

SECTION 8rj. 345.47 (1) (intro.) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

345.47 (1) (intro.) If the defendant is found guilty, the court may enter judgment against the defendant for a monetary amount not to exceed the maximum forfeiture, penalty assessment, if required by s. 165.87, the jail assessment, if required by s. 302.46 (1), the railroad crossing improvement assessment, if required by s. 346.495 or 346.65 (4r), and the crime laboratories and drug law enforcement assessment, if required by s. 165.755, provided for the violation and for costs under s. 345.53 and, in addition, may suspend or revoke his or her operating

privilege under s. 343.30. If the judgment is not paid, the court shall order:

SECTION 8rk. 345.47 (1) (b) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

345.47 (1) (b) In lieu of imprisonment and in addition to any other suspension or revocation, that the defendant's operating privilege be suspended for 30 days or until the person pays the forfeiture, the penalty assessment, if required by s. 165.87, the jail assessment, if required by s. 302.46 (1), the railroad crossing improvement assessment, if required by s. 346.495 or 346.65 (4r), and the crime laboratories and drug law enforcement assessment, if required by s. 165.755, but not to exceed 5 years. Suspension under this paragraph shall not affect the power of the court to suspend or revoke under s. 343.30 or the power of the secretary to suspend or revoke the operating privilege.

SECTION 8rm. 345.47 (1) (c) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

345.47 (1) (c) If a court or judge suspends an operating privilege under this section, the court or judge shall immediately take possession of the suspended license and shall forward it to the department together with the notice of suspension, which shall clearly state that the suspension was for failure to pay a forfeiture, a penalty assessment, if required by s. 165.87, a jail assessment, if required by s. 302.46 (1), a railroad crossing improvement assessment, if required by s. 346.495 or 346.65 (4r), and a crime laboratories and drug law enforcement assessment, if required by s. 165.755, imposed by the court. The notice of suspension and the suspended license, if it is available, shall be forwarded to the department within 48 hours after the order of suspension. If the forfeiture, penalty assessment, jail assessment, railroad crossing improvement assessment and crime laboratories and drug law enforcement assessment are paid during a period of suspension, the court or judge shall immediately notify the department. Upon receipt of the notice and payment of the reinstatement fee under s. 343.21 (1) (j), the department shall return the surrendered license.

SECTION 8rp. 345.47 (2) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

345.47 (2) The payment of any judgment may be suspended or deferred for not more than 60 days in the discretion of the court. In cases where a deposit has been made, any forfeitures, penalty assessments, jail assessments, railroad crossing improvement assessments, crime laboratories and drug law enforcement assessments and costs shall be taken out of the deposit and the balance, if any, returned to the defendant.

SECTION 8rr. 345.47 (3) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

345.47 (3) When a defendant is imprisoned for nonpayment of a forfeiture, a penalty assessment, a jail assessment, a railroad crossing improvement assessment or a crime laboratories and drug law enforcement assess-

ment for an action brought by a municipality located in more than one county, any commitment to a county institution shall be to the county in which the action was tried.

SECTION 8rt. 345.49 (1) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

345.49 (1) Any person imprisoned under s. 345.47 for nonpayment of a forfeiture, a penalty assessment, if required by s. 165.87, a jail assessment, if required by s. 302.46 (1), a railroad crossing improvement assessment, if required by s. 346.495 or 346.65 (4r), or a crime laboratories and drug law enforcement assessment, if required by s. 165.755, may, on request, be allowed to work under s. 303.08. If the person does work, earnings shall be applied on the unpaid forfeiture, penalty assessment, jail assessment, railroad crossing improvement assessment or crime laboratories and drug law enforcement assessment after payment of personal board and expenses and support of personal dependents to the extent directed by the court.

SECTION 8rw. 345.49 (2) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

345.49 (2) Any person who is subject to imprisonment under s. 345.47 for nonpayment of a forfeiture, penalty assessment, jail assessment, railroad crossing improvement assessment or crime laboratories and drug law enforcement assessment may be placed on probation to some person satisfactory to the court for not more than 90 days or until the forfeiture, penalty assessment, jail assessment, railroad crossing improvement assessment or crime laboratories and drug law enforcement assessment is paid if that is done before expiration of the 90-day period. The payment of the forfeiture, penalty assessment, jail assessment, railroad crossing improvement assessment or crime laboratories and drug law enforcement assessment during that period shall be a condition of the probation. If the forfeiture, penalty assessment, jail assessment, railroad crossing improvement assessment or crime laboratories and drug law enforcement assessment is not paid or the court deems that the interests of justice require, probation may be terminated and the defendant imprisoned as provided in sub. (1) or s. 345.47.

SECTION 8ry. 345.61 (2) (c) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

345.61 (2) (c) "Guaranteed arrest bond certificate" as used in this section means any printed card or other certificate issued by an automobile club, association or insurance company to any of its members or insureds, which card or certificate is signed by the member or insureds and contains a printed statement that the automobile club, association or insurance company and a surety company, or an insurance company authorized to transact both automobile liability insurance and surety business, guarantee the appearance of the persons whose signature appears on the card or certificate and that they will in the event of failure of the person to appear in court at the time of trial, pay any fine or forfeiture imposed on the person,

including the penalty assessment required by s. 165.87, the jail assessment required by s. 302.46 (1), the railroad crossing improvement assessment required by s. 346.495 or 346.65 (4r) and the crime laboratories and drug law enforcement assessment required by s. 165.755, in an amount not exceeding \$200, or \$1,000 as provided in sub. (1) (b).

SECTION 9. 346.49 (2) (a) of the statutes is renumbered 346.49 (2) and amended to read:

346.49 (2) ~~Unless otherwise provided in par. (b), any~~ Any person violating s. 346.44, 346.45, 346.455 or 346.48 may be required to forfeit not less than \$30 nor more than \$300.

SECTION 10. 346.49 (2) (b) of the statutes is renumbered 346.49 (2m) (b).

SECTION 11. 346.49 (2m) (a) of the statutes is created to read:

346.49 (2m) (a) Unless otherwise provided in par. (b), any person violating s. 346.44 may be required to forfeit not more than \$1,000.

SECTION 12. 346.495 of the statutes is created to read:

346.495 Railroad crossing improvement assessment. (1) If a court imposes a forfeiture under s. 346.49 (2m) (a) for a violation of s. 346.44, the court shall also impose a railroad crossing improvement assessment equal to 50% of the amount of the forfeiture.

(2) If a forfeiture is suspended in whole or in part, the railroad crossing improvement assessment shall be reduced in proportion to the suspension.

(3) If any deposit is made for an offense to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the railroad crossing improvement assessment under this section. If the deposit is forfeited, the amount of the railroad crossing improvement assessment shall be transmitted to the state treasurer under sub. (4). If the deposit is returned, the amount of the railroad crossing improvement assessment shall also be returned.

(4) The clerk of the circuit court shall collect and transmit to the county treasurer the railroad crossing improvement assessment as required under s. 59.40 (2) (m). The county treasurer shall then pay the state treasurer as provided in s. 59.25 (3) (f) 2. The state treasurer shall deposit all amounts received under this subsection in the transportation fund to be appropriated under s. 20.395 (2) (gj).

SECTION 13. 346.62 (1) (d) of the statutes is amended to read:

346.62 (1) (d) "Vehicle" has the meaning designated in s. 939.22 (44), except that for purposes of sub. (2m) "vehicle" has the meaning given in s. 340.01 (74).

SECTION 14. 346.62 (2m) of the statutes is created to read:

346.62 (2m) No person may recklessly endanger the safety of any person by driving a vehicle on or across a railroad crossing in violation of s. 346.44 (1) or through, around or under any crossing gate or barrier at a railroad crossing in violation of s. 346.44 (2).

SECTION 15. 346.65 (4m) of the statutes is created to read:

346.65 (4m) Except as provided in sub. (5m), any person violating s. 346.62 (2m) shall forfeit not less than \$300 nor more than \$1,000.

SECTION 16. 346.65 (4r) of the statutes is created to read:

346.65 (4r) (a) If a court imposes a forfeiture under sub. (4m) for a violation of s. 346.62 (2m), the court shall also impose a railroad crossing improvement assessment equal to 50% of the amount of the forfeiture.

(b) If a forfeiture is suspended in whole or in part, the railroad crossing improvement assessment shall be reduced in proportion to the suspension.

(c) If any deposit is made for an offense to which this subsection applies, the person making the deposit shall also deposit a sufficient amount to include the railroad crossing improvement assessment under this subsection. If the deposit is forfeited, the amount of the railroad crossing improvement assessment shall be transmitted to the state treasurer under par. (d). If the deposit is returned, the amount of the railroad crossing improvement assessment shall also be returned.

(d) The clerk of the circuit court shall collect and transmit to the county treasurer the railroad crossing improvement assessment as required under s. 59.40 (2) (m). The county treasurer shall then pay the state treasurer as provided in s. 59.25 (3) (f) 2. The state treasurer shall deposit all amounts received under this paragraph in the transportation fund to be appropriated under s. 20.395 (2) (gj).

SECTION 17. 346.65 (5m) of the statutes is amended to read:

346.65 (5m) If an operator of a vehicle violates s. 346.62 (2) to (4) where persons engaged in work in a highway maintenance or construction area are at risk from traffic, any applicable minimum and maximum forfeiture or fine specified in sub. (1), (3), (4m) or (5) for the violation shall be doubled.

SECTION 22. Initial applicability.

(1) This act first applies to offenses committed on the effective date of this subsection, but does not preclude the counting of other convictions as prior convictions for purposes of sentencing a person, suspending or revoking a person's operating privilege, disqualifying a person from operating a commercial motor vehicle or determining eligibility for authorization to operate certain vehicles.