



1997 ASSEMBLY BILL 496

September 2, 1997 - Introduced by Representatives OLSEN, WALKER, WASSERMAN, HANSON, NOTESTEIN, KELSO, GREEN, DOBYNS, GUNDERSON, HAHN, ZIEGELBAUER, ROBSON, RYBA, GARD, HUEBSCH, LAZICH, POWERS, VRAKAS, ZUKOWSKI, OTT, STASKUNAS, HUTCHISON, PLOUFF and PLALE, cosponsored by Senators DRZEWIECKI, CLAUSING, ROESSLER, HUELSMAN, WEEDEN, RISSER, A. LASEE, FARROW and DARLING. Referred to Committee on Highways and Transportation.

1 **AN ACT to repeal** 343.305 (10) (b) 5. and 343.31 (3) (bm) 5.; and **to amend** 342.12
2 (4) (a), 342.12 (4) (b), 343.10 (5) (a) 3., 343.23 (2) (b), 343.305 (4) (b), 343.305 (4)
3 (c), 343.305 (10) (b) 3., 343.305 (10) (b) 4., 343.305 (10m), 343.31 (3) (bm) 3.,
4 343.31 (3) (bm) 4., 346.65 (2) (b), 346.65 (2) (c), 346.65 (2) (d), 346.65 (2) (e),
5 346.65 (2c), 346.65 (2j) (b), 346.65 (2j) (c), 346.65 (2w), 346.65 (6) (a) 1., 346.65
6 (6) (a) 2m., 346.65 (6) (d), 940.09 (1d) and 940.25 (1d) of the statutes; **relating**
7 **to:** the counting of convictions, suspensions and revocations related to driving
8 while under the influence of an intoxicant.

Analysis by the Legislative Reference Bureau

Under current law, if a person commits the offense of operating a motor vehicle while under the influence of an intoxicant (OWI), the penalties that may be imposed for that offense depend on the number of prior OWI-related convictions or operating privilege suspensions or revocations the person has in a 5-year or 10-year period. For example, if the person has no prior convictions, suspensions or revocations, his or her operating privilege may be suspended for 6 to 9 months and he or she is subject to a forfeiture of \$150 to \$300. If the person has 2 OWI-related convictions or operating privilege suspensions or revocations in a 5-year period, his or her operating privilege will be revoked for not less than one year nor more than 18

months and he or she is subject to a fine of \$300 to \$1,000 and imprisonment of 5 days to 6 months. The person's motor vehicle may be seized and forfeited, equipped with an ignition interlock device or immobilized if the person has 3 OWI-related convictions or operating privilege suspensions or revocations in a 10-year period.

This bill removes the 5-year and 10-year limits on counting the number of prior OWI-related convictions or operating privilege suspensions or revocations. Under the bill, the department of transportation (DOT) is required to keep records of OWI-related convictions or operating privilege suspensions or revocations permanently. The bill requires a court or DOT to consider all OWI-related convictions or operating privilege suspensions or revocations when determining the penalty for the offender, not just the OWI-related convictions or operating privilege suspensions or revocations that occurred in the past 5-year or 10-year period.

Under current law, if a person has 2 or more prior convictions, suspensions or revocations related to the operation of a motor vehicle while under the influence of an intoxicant, an occupational license issued to that person may restrict him or her to operating a vehicle equipped with an ignition interlock device. This bill provides that an occupational license issued to a person who has 2 or more OWI-related prior convictions, suspensions or revocations within a 10-year period shall restrict him or her to operating a vehicle equipped with an ignition interlock device if the court has ordered, as part of the penalty for the offense, that a motor vehicle owned by the person be equipped with an ignition interlock device.

For further information see the *state and 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.** 342.12 (4) (a) of the statutes is amended to read:

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

10 **SECTION 2.** 342.12 (4) (b) of the statutes is amended to read:

1 342.12 (4) (b) The department may not issue a certificate of title transferring
2 ownership of any motor vehicle owned by a person upon receipt of a notice of intent
3 to revoke the person's operating privilege under s. 343.305 (9) (a), if the person has
4 2 or more prior convictions, suspensions or revocations ~~within a 10-year period~~, as
5 counted under s. 343.307 (1), until the court assigned to the hearing under s. 343.305
6 (9) issues an order permitting the department to issue a certificate of title.

7 **SECTION 3.** 343.10 (5) (a) 3. of the statutes is amended to read:

8 343.10 (5) (a) 3. If the applicant has 2 or more prior convictions, suspensions
9 or revocations, as counted under s. 343.307 (1), the occupational license of the
10 applicant ~~may~~ shall restrict the applicant's operation under the occupational license
11 to vehicles that are equipped with a functioning ignition interlock device ~~as provided~~
12 if the court has ordered under s. 346.65 (6) (a) 1. that a motor vehicle owned by the
13 person be equipped with an ignition interlock device. A person to whom a restriction
14 under this subdivision applies violates that restriction if he or she requests or
15 permits another to blow into an ignition interlock device or to start a motor vehicle
16 equipped with an ignition interlock device for the purpose of providing the person an
17 operable motor vehicle without the necessity of first submitting a sample of his or her
18 breath to analysis by the ignition interlock device. If the occupational license
19 restricts the applicant's operation to a vehicle that is equipped with an ignition
20 interlock device, the applicant shall be liable for the reasonable costs of equipping
21 the vehicle with the ignition interlock device.

22 **SECTION 4.** 343.23 (2) (b) of the statutes, as affected by 1995 Wisconsin Act 184,
23 is amended to read:

24 343.23 (2) (b) The information specified in par. (a) must be filed by the
25 department so that the complete operator's record is available for the use of the

1 secretary in determining whether operating privileges of such person shall be
2 suspended, revoked, canceled or withheld in the interest of public safety. The record
3 of suspensions, revocations and convictions that would be counted under s. 343.307
4 (2) and shall be maintained permanently. The record of convictions for disqualifying
5 offenses under s. 343.315 (2) (h) shall be maintained for at least 10 years. The record
6 of convictions for disqualifying offenses under s. 343.315 (2) (f) shall be maintained
7 for at least 3 years. The record of convictions for disqualifying offenses under s.
8 343.315 (2) (a) to (e) shall be maintained permanently, except that 5 years after a
9 licensee transfers residency to another state such record may be transferred to
10 another state of licensure of the licensee if that state accepts responsibility for
11 maintaining a permanent record of convictions for disqualifying offenses. Such
12 reports and records may be cumulative beyond the period for which a license is
13 granted, but the secretary, in exercising the power of suspension or revocation
14 granted under s. 343.32 (2) may consider only those reports and records entered
15 during the 4-year period immediately preceding the exercise of such power of
16 suspension or revocation.

17 **SECTION 5.** 343.305 (4) (b) of the statutes is amended to read:

18 343.305 (4) (b) If testing is refused, a motor vehicle owned by the person may
19 be immobilized, seized and forfeited or equipped with an ignition interlock device if
20 the person has 2 or more prior suspensions, revocations or convictions ~~within a~~
21 ~~10-year period~~ that would be counted under s. 343.307 (1) and the person's operating
22 privilege will be revoked under this section;

23 **SECTION 6.** 343.305 (4) (c) of the statutes is amended to read:

24 343.305 (4) (c) If one or more tests are taken and the results of any test indicate
25 that the person has a prohibited alcohol concentration and was driving or operating

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

6 **SECTION 7.** 343.305 (10) (b) 3. of the statutes is amended to read:

7 343.305 (10) (b) 3. Except as provided in subd. 4m., if the number of convictions,
8 suspensions and revocations ~~in a 5-year period~~ equals 2, the court shall revoke the
9 person's operating privilege for 2 years. After the first 90 days of the revocation
10 period, the person is eligible for an occupational license under s. 343.10 if he or she
11 has completed the assessment and is complying with the driver safety plan.

12 **SECTION 8.** 343.305 (10) (b) 4. of the statutes is amended to read:

13 343.305 (10) (b) 4. Except as provided in subd. 4m., if the number of convictions,
14 suspensions and revocations ~~in a 10-year period~~ equals 3 or more, the court shall
15 revoke the person's operating privilege for 3 years. After the first 120 days of the
16 revocation period, the person is eligible for an occupational license under s. 343.10
17 if he or she has completed the assessment and is complying with the driver safety
18 plan.

19 **SECTION 9.** 343.305 (10) (b) 5. of the statutes is repealed.

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

21 343.305 (10m) REFUSALS; SEIZURE, IMMOBILIZATION OR IGNITION INTERLOCK OF A
22 MOTOR VEHICLE. If the person whose operating privilege is revoked under sub. (10)
23 has 2 or more prior convictions, suspensions or revocations, as counted under s.
24 343.307 (1), ~~within a 10-year period~~, the procedure under s. 346.65 (6) shall be
25 followed regarding the immobilization or seizure and forfeiture of a motor vehicle

1 owned by the person or the equipping of a motor vehicle owned by the person with
2 an ignition interlock device.

3 **SECTION 11.** 343.31 (3) (bm) 3. of the statutes is amended to read:

4 343.31 (3) (bm) 3. Except as provided in subd. 4m., if the number of
5 suspensions, revocations and convictions ~~within a 5-year period~~ equals 2, the
6 department shall revoke the person's operating privilege for not less than one year
7 nor more than 18 months. If an Indian tribal court in this state revokes the person's
8 privilege to operate a motor vehicle on tribal lands for not less than one year nor more
9 than 18 months for the conviction specified in par. (bm) (intro.), the department shall
10 impose the same period of revocation. After the first 60 days of the revocation period,
11 the person is eligible for an occupational license under s. 343.10.

12 **SECTION 12.** 343.31 (3) (bm) 4. of the statutes is amended to read:

13 343.31 (3) (bm) 4. Except as provided in subd. 4m., if the number of
14 suspensions, revocations and convictions ~~within a 10-year period~~ equals 3 or more,
15 the department shall revoke the person's operating privilege for not less than 2 years
16 nor more than 3 years. If an Indian tribal court in this state revokes the person's
17 privilege to operate a motor vehicle on tribal lands for not less than 2 years nor more
18 than 3 years for the conviction specified in par. (bm) (intro.), the department shall
19 impose the same period of revocation. After the first 90 days of the revocation period,
20 the person is eligible for an occupational license under s. 343.10.

21 **SECTION 13.** 343.31 (3) (bm) 5. of the statutes is repealed.

22 **SECTION 14.** 346.65 (2) (b) of the statutes is amended to read:

23 346.65 (2) (b) Except as provided in par. (f), shall be fined not less than \$300
24 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months
25 if the total number of suspensions, revocations and convictions counted under s.

1 343.307 (1) equals 2 in a 5-year period. Suspensions, revocations or convictions
2 arising out of the same incident or occurrence shall be counted as one.

3 **SECTION 15.** 346.65 (2) (c) of the statutes is amended to read:

4 346.65 (2) (c) Except as provided in par. (f), shall be fined not less than \$600
5 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one
6 year in the county jail if the total number of suspensions, revocations and convictions
7 counted under s. 343.307 (1) equals 3 in a 10-year period, except that suspensions,
8 revocations or convictions arising out of the same incident or occurrence shall be
9 counted as one.

10 **SECTION 16.** 346.65 (2) (d) of the statutes is amended to read:

11 346.65 (2) (d) Except as provided in par. (f), shall be fined not less than \$600
12 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one
13 year in the county jail if the total number of suspensions, revocations and convictions
14 counted under s. 343.307 (1) equals 4 in a 10-year period, except that suspensions,
15 revocations or convictions arising out of the same incident or occurrence shall be
16 counted as one.

17 **SECTION 17.** 346.65 (2) (e) of the statutes is amended to read:

18 346.65 (2) (e) Except as provided in par. (f), shall be fined not less than \$600
19 nor more than \$2,000 and imprisoned for not less than 6 months nor more than one
20 year in the county jail if the total number of suspensions, revocations and convictions
21 counted under s. 343.307 (1) equals 5 or more in a 10-year period, except that
22 suspensions, revocations or convictions arising out of the same incident or
23 occurrence shall be counted as one.

24 **SECTION 18.** 346.65 (2c) of the statutes is amended to read:

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

7 **SECTION 19.** 346.65 (2j) (b) of the statutes is amended to read:

8 346.65 **(2j)** (b) Except as provided in par. (d), shall be fined not less than \$300
9 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months
10 if the total of prior convictions, suspension and revocations counted under s. 343.307
11 (2) equals 2 ~~in a 5-year period.~~

12 **SECTION 20.** 346.65 (2j) (c) of the statutes is amended to read:

13 346.65 **(2j)** (c) Except as provided in par. (d), shall be fined not less than \$600
14 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one
15 year in the county jail if the total of prior convictions, suspensions and revocations
16 counted under s. 343.307 (2) equals 3 or more ~~in a 10-year period.~~

17 **SECTION 21.** 346.65 (2w) of the statutes is amended to read:

18 346.65 **(2w)** In determining the number of prior convictions for purposes of sub.
19 (2j), the court shall count suspensions, revocations and convictions that would be
20 counted under s. 343.307 (2). Revocations, suspensions and convictions arising out
21 of the same incident or occurrence shall be counted as one. ~~The 5-year or 10-year~~
22 ~~period shall be measured from the dates of the refusals or violations which resulted~~
23 ~~in the revocation, suspension or convictions.~~ If a person has a suspension, revocation
24 or conviction for any offense that is counted under s. 343.307 (2), that suspension,

1 revocation or conviction shall count as a prior suspension, revocation or conviction
2 under this section.

3 **SECTION 22.** 346.65 (6) (a) 1. of the statutes is amended to read:

4 346.65 (6) (a) 1. Except as provided in this paragraph, the court may order a
5 law enforcement officer to seize a motor vehicle, or, if the motor vehicle is not ordered
6 seized, shall order a law enforcement officer to equip the motor vehicle with an
7 ignition interlock device or immobilize any motor vehicle owned by the person whose
8 operating privilege is revoked under s. 343.305 (10) or who committed a violation of
9 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
10 the person whose operating privilege is revoked under s. 343.305 (10) or who is
11 convicted of the violation has 2 prior suspensions, revocations or convictions ~~within~~
12 ~~a 10-year period~~ that would be counted under s. 343.307 (1). The court shall not
13 order a motor vehicle equipped with an ignition interlock device or immobilized if
14 that would result in undue hardship or extreme inconvenience or would endanger
15 the health and safety of a person.

16 **SECTION 23.** 346.65 (6) (a) 2m. of the statutes is amended to read:

17 346.65 (6) (a) 2m. A person who owns a motor vehicle subject to seizure,
18 equipping with an ignition interlock device or immobilization under this paragraph
19 shall surrender to the clerk of circuit court the certificate of title issued under ch. 342
20 for every motor vehicle owned by the person. The person shall comply with this
21 subdivision within 5 working days after receiving notification of this requirement
22 from the district attorney. When a district attorney receives a copy of a notice of
23 intent to revoke the operating privilege under s. 343.305 (9) (a) of a person who has
24 2 or more convictions, suspensions or revocations ~~within a 5-year period~~, as counted
25 under s. 343.307 (1), or when a district attorney notifies the department of the filing

1 of a criminal complaint against a person under s. 342.12 (4) (a), the district attorney
2 shall notify the person of the requirement to surrender all certificates of title to the
3 clerk of circuit court. The notification shall include the time limits for that surrender,
4 the penalty for failure to comply with the requirement and the address of the clerk
5 of circuit court. The clerk of circuit court shall promptly return each certificate of title
6 surrendered to the clerk of circuit court under this subdivision after stamping the
7 certificate of title with the notation "Per section 346.65 (6) of the Wisconsin statutes,
8 ownership of this motor vehicle may not be transferred without prior court approval".

9 Any person failing to surrender a certificate of title as required under this
10 subdivision shall forfeit not more than \$500.

11 **SECTION 24.** 346.65 (6) (d) of the statutes is amended to read:

12 346.65 (6) (d) At the hearing set under par. (c), the state has the burden of
13 proving to a reasonable certainty by the greater weight of the credible evidence that
14 the motor vehicle is a motor vehicle owned by a person who committed a violation of
15 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,
16 if the seizure is under par. (a) 1., that the person had 2 prior convictions, suspensions
17 or revocations ~~within a 10-year period,~~ as counted under s. 343.307 (1) or, if the
18 seizure is under par. (a) 2., 3 or more prior convictions, suspensions or revocations
19 ~~within a 10-year period,~~ as counted under s. 343.307 (1). If the owner of the motor
20 vehicle proves by a preponderance of the evidence that he or she was not convicted
21 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
22 (1) (a) or (b), or, if the seizure is under par. (a) 1., that he or she did not have 2 prior
23 convictions, suspensions or revocations ~~within a 10-year period,~~ as counted under
24 s. 343.307 (1) or, if the seizure is under par. (a) 2., 3 or more prior convictions,

1 suspensions or revocations ~~within a 10-year period~~, as counted under s. 343.307 (1),
2 the motor vehicle shall be returned to the owner upon the payment of storage costs.

3 **SECTION 25.** 940.09 (1d) of the statutes is amended to read:

4 940.09 (1d) If the person who committed an offense under sub. (1) (a) or (b) has
5 2 or more prior convictions, suspensions or revocations ~~in a 10-year period~~, as
6 counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed
7 regarding the immobilization or seizure and forfeiture of a motor vehicle owned by
8 the person who committed the offense or the equipping of a motor vehicle owned by
9 the person with an ignition interlock device.

10 **SECTION 26.** 940.25 (1d) of the statutes is amended to read:

11 940.25 (1d) If the person who committed the offense under sub. (1) (a) or (b)
12 has 2 or more prior convictions, suspensions or revocations ~~in a 10-year period~~, as
13 counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed
14 regarding the immobilization or seizure and forfeiture of a motor vehicle owned by
15 the person who committed the offense or the equipping of a motor vehicle owned by
16 the person with an ignition interlock device.

17 **SECTION 27. Initial applicability.**

18 (1) This act first applies to offenses committed on the effective date of this
19 subsection, but does not preclude the counting of other violations as prior
20 convictions, suspensions or revocations for purposes of administrative action by the
21 department of transportation, sentencing by a court or revocation or suspension of
22 operating privileges.

23 (END)