



2009 SENATE BILL 130

March 24, 2009 - Introduced by Senator A. LASEE, cosponsored by Representatives BIES and A. OTT. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT** *to amend* 346.65 (6) (a) 1. and 346.65 (6) (d); and *to create* 346.65 (5r)
2 and 346.65 (6) (a) 1r. of the statutes; **relating to:** surrendering vehicle
3 registration plates and the seizure and sale of vehicles used in certain drunken
4 driving violations and creating a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person who is convicted of, or who has his or her driver's license suspended or revoked for, an offense related to operating a motor vehicle while intoxicated or using drugs (commits a drunken driving offense) is subject to a forfeiture for a first offense of not less than \$150 nor more than \$300, or a fine that increases with each subsequent offense and ranges from a minimum of \$350 to a maximum of \$25,000, and a term of imprisonment beginning with the second offense, that also increases with each subsequent offense and ranges from a minimum of five days to a maximum of 12 years and six months.

Further, under current law a person who commits a drunken driving offense loses his or her vehicle operating privileges for a period of time, the length of which depends upon the number of prior offenses committed by the person. Current law also allows, after a third drunken driving offense, the court to seize and sell the motor vehicle used in the fourth offense or to require that the vehicle be immobilized or equipped with an ignition interlock device.

This bill requires a person who commits a second drunken driving offense to surrender the registration plates for the vehicle used in the offense to a law enforcement agency for a period of 90 days. A person who commits a third drunken

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driving offense must surrender the registration plates for the vehicle used in the offense to a law enforcement agency for a period of 180 days. Under the bill, if a person commits a fourth or subsequent drunken driving offense, the court is required to order that the vehicle used in the offense be seized and sold.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 346.65 (5r) of the statutes is created to read:

2 346.65 (5r) (a) If the person whose operating privilege is revoked for improper
3 refusal under s. 343.305 (10) or who committed a violation of s. 346.63 (1) (a), (am),
4 or (b) or (2) (a) 1., 2., or 3., 940.09 (1) (a), (am), (b), (c), (cm), or (d), or 940.25 (1) (a),
5 (am), (b), (c), (cm), or (d) has one prior suspension, revocation, or conviction, counting
6 a conviction under ss. 940.09 (1) and 940.25 in the person's lifetime, plus a conviction,
7 suspension, or revocation counted under s. 343.307, the court shall order the person
8 to surrender the vehicle registration plates for the motor vehicle owned by the person
9 and used in the improper refusal or violation to a law enforcement agency for a period
10 of 90 days.

11 (b) If the person whose operating privilege is revoked for improper refusal
12 under s. 343.305 (10) or who committed a violation of s. 346.63 (1) (a), (am), or (b) or
13 (2) (a) 1., 2., or 3., 940.09 (1) (a), (am), (b), (c), (cm), or (d), or 940.25 (1) (a), (am), (b),
14 (c), (cm), or (d) has 2 or more prior suspensions, revocations, or convictions, counting
15 convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus other
16 convictions, suspensions, or revocations counted under s. 343.307, the court shall
17 order the person to surrender the vehicle registration plates for the motor vehicle

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1 owned by the person and used in the improper refusal or violation to a law
2 enforcement agency for a period of 180 days.

3 **SECTION 2.** 346.65 (6) (a) 1. of the statutes is amended to read:

4 346.65 (6) (a) 1. The Except as provided in subd. 1r., the court may order a law
5 enforcement officer to seize the motor vehicle used in the violation or improper
6 refusal and owned by the person whose operating privilege is revoked under s.
7 343.305 (10) or who committed a violation of s. 346.63 (1) (a), (am), or (b) or (2) (a)
8 1., 2., or 3., 940.09 (1) (a), (am), (b), (c), (cm), or (d), or 940.25 (1) (a), (am), (b), (c), (cm),
9 or (d) if the person whose operating privilege is revoked under s. 343.305 (10) or who
10 is convicted of the violation has 2 or more prior suspensions, revocations, or
11 convictions, counting convictions under ss. 940.09 (1) and 940.25 in the person's
12 lifetime, plus other convictions, suspensions, or revocations counted under s. 343.307
13 (1). The Except as provided in subd. 1r., the court may not order a motor vehicle
14 seized if the court enters an order under s. 343.301 to immobilize the motor vehicle
15 or equip the motor vehicle with an ignition interlock device or if seizure would result
16 in undue hardship or extreme inconvenience or would endanger the health and
17 safety of a person.

18 **SECTION 3.** 346.65 (6) (a) 1r. of the statutes is created to read:

19 346.65 (6) (a) 1r. The court shall order a law enforcement officer to seize the
20 motor vehicle used in the violation or improper refusal and owned by the person
21 whose operating privilege is revoked under s. 343.305 (10) or who committed a
22 violation of s. 346.63 (1) (a), (am), or (b) or (2) (a) 1., 2., or 3., 940.09 (1) (a), (am), (b),
23 (c), (cm), or (d), or 940.25 (1) (a), (am), (b), (c), (cm), or (d) if the person whose operating
24 privilege is revoked under s. 343.305 (10) or who is convicted of the violation has 3
25 or more prior suspensions, revocations, or convictions, counting convictions under ss.

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1 940.09 (1) and 940.25 in the person's lifetime, plus other convictions, suspensions,
2 or revocations counted under s. 343.307 (1).

3 **SECTION 4.** 346.65 (6) (d) of the statutes is amended to read:

4 346.65 (6) (d) At the hearing set under par. (c), the state has the burden of
5 proving to a reasonable certainty by the greater weight of the credible evidence that
6 the motor vehicle seized under par. (a) ~~1~~ is a motor vehicle used in the violation or
7 the improper refusal and owned by a person who committed a violation of s. 346.63
8 (1) (a), (am), or (b) or (2) (a) 1., 2., or 3., 940.09 (1) (a), (am), (b), (c), (cm), or (d) or 940.25
9 (1) (a), (am), (b), (c), (cm), or (d) and that the person had 2 or more prior convictions,
10 suspensions or revocations, counting convictions under ss. 940.09 (1) and 940.25 in
11 the person's lifetime, plus other convictions, suspensions or revocations counted
12 under s. 343.307 (1). If the state fails to meet the burden of proof required under this
13 paragraph, the motor vehicle shall be returned to the owner upon the payment of
14 storage costs.

15 **SECTION 5. Initial applicability.**

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

22 (END)