

CHAPTER 363 , Laws of 1981

AN ACT to amend 344.02 (title), (1), (3) and (4), 344.03, 344.04 (title) and (2) and 344.14 (title) and (2) (intro.), (a), (b) and (h); and to create 344.14 (1m) and (4) and 344.185 of the statutes, relating to impoundment of motor vehicles for failure to deposit security.

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

SECTION 1. 344.02 (title) and (1) of the statutes are amended to read:

344.02 (title) Hearing on suspension or impoundment. (1) Whenever the department under s. 344.13 gives notice of the amount of security required to be deposited and that an order of suspension or impoundment will be made if such security is not deposited, it shall afford the person so notified an opportunity for a hearing on the proposed suspension action, if written request for such hearing is received by the department prior to the date specified in such notice, or prior to the postponed effective date of suspension if postponement has been granted under s. 344.14 (1). Upon receipt of timely request for hearing, the department shall refer the matter to the transportation commission which shall fix the time and place of such hearing and give notice thereof to such person by regular mail. The scope of the hearing shall be limited to the matter set forth in s. 344.14 (2) (k) and to whether or not the person is the owner of the motor vehicle to be impounded. Any person who fails without reasonable cause to appear at the time and place specified in the notice shall forfeit the right to a hearing.

SECTION 2. 344.02 (3) and (4) of the statutes are amended to read:

344.02 (3) Upon completion of the hearing, the transportation commission shall make findings of fact, conclusions of law, and a decision, and shall either proceed to order suspension of the person's operating privilege, or registrations, or both, and may also order the impoundment of the person's motor vehicle, in accordance with s. 344.14, or upon good cause appearing therefor, shall terminate suspension the proceedings.

(4) The time during which enforcement of an order of suspension or impoundment is stayed pending completion of court review thereof shall not be included as part of the one-year period fixed by s. 344.18 (1) (d) for suspension or the period fixed under s. 344.185 (2) (a) or (b) for impoundment.

SECTION 3. 344.03 of the statutes is amended to read:

344.03 Judicial review. (1) Any person aggrieved by a decision of the transportation commission under this chapter may, at any time prior to 30 days after the entry of an order of suspension or, revocation or impoundment, seek judicial review under ch. 227.

(2) If any person aggrieved by a decision of the transportation commission under this chapter fails to seek judicial review under ch. 227 within the time allowed in sub. (1), the circuit court may, upon the person's petition and notice to the department and transportation commission, and upon the terms and within a time as the court deems reasonable, but not later than one year after the act complained of or, in the case of an impoundment, after the vehicle has been ordered sold under s. 344.185 (2), allow a review with the same effect as though done within the time prescribed in sub. (1). This subsection does not authorize the court to stay suspension or revocation of an operator's license.

SECTION 4. 344.04 (title) and (2) of the statutes are amended to read:

344.04 (title) Power of court to stay suspension of registration or impoundment of vehicles.

(2) Upon receiving information, other than of a judgment for damages in a court of this state, that would be cause for revocation or suspension of registration or impoundment of the vehicle, the secretary shall notify the registrant of the intention to revoke or suspend such registration or impound the vehicle. The registrant may thereupon petition any court of record in the registrant's county for an order enjoining the secretary's contemplated action, whereupon the judge of such court shall grant an order restraining the secretary in the matter until the petition is finally determined by the court. If such petition and order are served upon the secretary within 10 days after the date of the secretary's notice or in any event before the secretary has revoked or suspended the registration or impounded the vehicle, the secretary shall await the final determination of the court. The secretary shall be given notice of the hearing. Upon a showing that it would result in undue hardship upon the petitioner to have any such registration revoked or suspended or the vehicle impounded, the court shall issue an order restraining the secretary from revoking or suspending the registration or impounding the vehicle.

SECTION 5. 344.14 (title) of the statutes is amended to read:

344.14 (title) Suspension for failure to deposit security; impoundment of vehicle; exceptions.

SECTION 6. 344.14 (1m) of the statutes is created to read:

344.14 (1m) In addition to the suspensions under sub. (1), the secretary may order the impoundment of any motor vehicle which is:

- (a) Registered in the name of the owner of the motor vehicle involved in the accident.
- (b) Registered in the name of the operator of the motor vehicle involved in the accident.

SECTION 7. 344.14 (2) (intro.), (a), (b) and (h) of the statutes are amended to read:

344.14 (2) (intro.) ~~The requirements as to security and suspension stated in sub. Subsections (1) and (1m) do not apply:~~

(a) To the owner of a motor vehicle involved in an accident if the owner had in effect at the time of the accident ~~an automobile liability~~ a policy or bond with respect to such motor vehicle, which policy or bond complies with the requirements of s. 344.15.

(b) To the operator who is not the owner of the vehicle involved in the accident if either the owner had in effect ~~an automobile liability~~ a policy or bond applying to the operator's operation of the motor vehicle at the time of the accident or there was in effect at the time of the accident ~~an automobile liability~~ a policy or bond with respect to the operator's operation of motor vehicles not owned by him, which policy or bond meets the requirements of s. 344.15.

(h) To any person who would otherwise have to deposit security if, prior to the date the secretary would otherwise suspend such person's operating privilege and registrations under sub. (1) or order the impoundment of the motor vehicle under sub. (1m), there is filed with the secretary evidence satisfactory to the secretary that such person has been released from liability or has been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in instalments with respect to all claims for injuries or damage resulting from the accident. The secretary may accept a release from liability executed by a parent as natural guardian on behalf of a minor child with respect to property damage or personal injuries sustained by such minor, provided that the total damages, including the cost of medical care, does not exceed \$1,500 and that, in case of personal injury, the doctor's certificate of injury filed with the department certifies that such minor received no permanent injury.

SECTION 8. 344.14 (4) of the statutes is created to read:

344.14 (4) (a) Before the impoundment of a motor vehicle under sub. (1m), the department shall conduct a reasonable search for the owner of the motor vehicle and any holder of a security interest, mortgage or other interest and notify the person so identified of the action.

(b) Any person notified under par. (a) before the vehicle is impounded shall be given not less than 10 days to furnish sufficient proof to the secretary that one of the exceptions in sub. (2) applies.

SECTION 9. 344.185 of the statutes is created to read:

344.185 Duration of impoundment of motor vehicle; disposition. (1) Any motor vehicle impounded under s. 344.14 (1m) may not be returned to the owner unless:

(a) An owner or holder of a security interest, mortgage or other interest who is first notified after the vehicle is impounded furnishes satisfactory proof to the secretary that one of the exceptions in s. 344.14 (2) applies and pays the expenses incurred by the department in impounding the vehicle; or

(b) The owner deposits the security required under s. 344.13 (3) and pays the expenses incurred by the department in impounding the vehicle.

(2) (a) Any impounded vehicle which is not returned to the owner within 30 days after impoundment shall be sold by the department.

(b) If the owner is making a good faith attempt to redeem the vehicle under sub. (1), the department may grant an extension of up to 30 additional days before selling the vehicle.

(c) The department, upon request, may permit the person who, according to the department's records, holds a security interest in the vehicle to accept and maintain custody of the vehicle after impoundment or to sell the vehicle in a commercially reasonable manner at a public or private sale. The proceeds of the sale under this paragraph shall be transmitted to the department for distribution under par. (e).

(d) If the vehicle is sold, any person who is the holder of a security interest which is perfected under s. 342.19 shall be notified of the sale and any person who holds a security interest, mortgage or other interest in the vehicle and who acquired the security interest, the mortgage or other interest in good faith may file a claim within 30 days after the sale with the department.

(e) 1. The money from the sale of a vehicle shall be used first for payment of all proper expenses of impounding, preparing for the sale and selling the vehicle, including expenses for seizure, maintenance of custody and advertising. Any remaining money may be paid to a claimant under par. (d) in the priority provided under s. 342.19.

2. All other proceeds of the sale remaining after the payments under subd. 1 shall be retained by the secretary and applied as security for payment of judgments and assignments as provided under s. 344.20 (2). Any amounts not used to pay judgments or assignments shall be transmitted to the state treasurer for deposit in the school fund.

(3) Notwithstanding sections 409.501 to 409.507 and ch. 425:

(a) A creditor with a security interest in a vehicle which is ordered sold under this section may accelerate the maturity of the secured indebtedness, is not required to give notice of default and right to cure, may accept custody of the vehicle and may conduct the sale of the vehicle as provided under sub. (2) (c) without sending notification of the sale to the debtor and may receive proceeds from the sale as provided under sub. (2) (e).

(b) The owner of a vehicle which is ordered sold under this section is deemed in default under the instrument securing the indebtedness but has no right to cure the default or redeem the vehicle once the sale has been ordered, may not receive any proceeds from the

sale and remains liable to a secured party for any deficiency which remains unsatisfied after the distribution under sub. (2) (e).

(4) When a vehicle is sold by or at the direction of the department under this section, the sale transfers to the purchaser for value all of the owner's rights therein, and discharges all security interests in the vehicle. The purchaser takes free of all such rights and interests even though the sale is not conducted in a commercially reasonable manner or the department fails to give the notifications required under s. 344.14 (4) (a):

(a) In the case of the public sale, if the purchaser has no knowledge of such defects in the sale and does not buy in collusion with the department, other bidders or the person conducting the sale; or

(b) In any other case, if the purchaser acts in good faith.

SECTION 10. Effective date. This act takes effect on the first day of the month commencing 6 months after the date of publication.
