

State of Wisconsin



1995 Assembly Bill 438

Date of enactment: **May 28, 1996**
Date of publication*: **June 11, 1996**

1995 WISCONSIN ACT 373

AN ACT to amend 346.95 (1); and to create 66.948, 346.94 (16) (b) 7., 346.945, 346.95 (5e), 346.95 (5g) and 349.135 of the statutes; **relating to:** the improper use of radios, electric sound amplification devices and other sound-producing devices, the imposition of vehicle owner liability for improper use of a radio or other electric sound amplification device and providing a penalty.

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

SECTION 1. 66.948 of the statutes is created to read:
66.948 Sound-producing devices; impoundment; seizure and forfeiture. (1) In this section, "sound-producing device" does not include a piece of equipment or machinery that is designed for agricultural purposes and that is being used in the conduct of agricultural operations.

(1m) (a) Any city, village, town or county may, by ordinance, authorize a law enforcement officer, at the time of issuing a citation for a violation of s. 346.94 (16) or a local ordinance in strict conformity with s. 346.94 (16) or any other local ordinance prohibiting excessive noise, to impound any radio, electric sound amplification device or other sound-producing device used in the commission of the violation if the person charged with such violation is the owner of the radio, electric sound amplification device or other sound-producing device and has 2 or more prior convictions within a 3-year period of s. 346.94 (16) or a local ordinance in strict conformity with s. 346.94 (16) or any other local ordinance prohibiting excessive noise. The ordinance may provide for impoundment of a vehicle for not more than 5 working days to permit the

city, village, town or county or its authorized agent to remove the radio, electric sound amplification device or other sound-producing device if the vehicle is owned by the person charged with the violation and the sound-producing device may not be easily removed from the vehicle. Upon removal of the sound-producing device, an impounded vehicle shall be returned to its rightful owner.

(b) The ordinance under par. (a) may provide for recovery by the city, village, town or county of the cost of impounding the sound-producing device and, if a vehicle is impounded, the cost of impounding the vehicle and removing the sound-producing device. The ordinance under par. (a) shall provide that, upon disposition of the forfeiture action for the violation of s. 346.94 (16) or a local ordinance in strict conformity with s. 346.94 (16) or any other local ordinance prohibiting excessive noise and payment of any forfeiture imposed, the sound-producing device shall be returned to its rightful owner.

(c) The city, village, town or county may dispose of any impounded sound-producing device or, following the procedure for an abandoned vehicle under s. 342.40, any impounded vehicle which has remained unclaimed for a period of 90 days after disposition of the forfeiture action.

* Section 991.11, WISCONSIN STATUTES 1993-94: 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].

(d) This subsection does not apply to a radio, electric sound amplification device or other sound-producing device on a motorcycle.

(2) (a) Notwithstanding sub. (1m), any city, village, town or county may, by ordinance, authorize a law enforcement officer, at the time of issuing a citation for a violation of s. 346.94 (16) or a local ordinance in strict conformity with s. 346.94 (16) or any other local ordinance prohibiting excessive noise, to seize any radio, electric sound amplification device or other sound-producing device used in the commission of the violation if the person charged with such violation is the owner of the radio, electric sound amplification device or other sound-producing device and has 3 or more prior convictions within a 3-year period of s. 346.94 (16) or a local ordinance in strict conformity with s. 346.94 (16) or any other local ordinance prohibiting excessive noise.

(b) The ordinance under par. (a) may provide for impoundment of a vehicle for not more than 5 working days to permit the city, village, town or county or its authorized agent to remove the radio, electric sound amplification device or other sound-producing device if the vehicle is owned by the person charged with the violation and the sound-producing device may not be easily removed from the vehicle. Upon removal of the sound-producing device, an impounded vehicle shall be returned to its rightful owner upon payment of the reasonable costs of impounding the vehicle and removing the sound-producing device.

(c) The ordinance under par. (a) shall include provisions that treat any seized sound-producing device in substantially the manner provided in ss. 973.075 (3), 973.076 and 973.077 for property realized through the commission of any crime, except that the sound-producing device shall remain in the custody of the applicable law enforcement agency; a district attorney or city, village or town attorney, whichever is applicable, shall institute the forfeiture proceedings; and, if the sound-producing device is sold by the law enforcement agency, all proceeds of the sale shall be retained by the applicable city, village, town or county.

(d) The city, village, town or county may, following the procedure for an abandoned vehicle under s. 342.40, dispose of any impounded vehicle which has remained unclaimed for a period of 90 days after disposition of the forfeiture action.

(e) This subsection does not apply to a radio, electric sound amplification device or other sound-producing device on a motorcycle.

SECTION 2m. 346.94 (16) (b) 7. of the statutes is created to read:

346.94 (16) (b) 7. A local authority that has enacted an ordinance in conformity with s. 349.135.

SECTION 3. 346.945 of the statutes is created to read:
346.945 Vehicle owner's liability for radios or other electric sound amplification devices. (1) (a) The

owner of a vehicle involved in a violation of s. 346.94 (16) shall be presumed liable for the violation as provided in this section.

(b) Notwithstanding par. (a), no owner of a vehicle involved in a violation of s. 346.94 (16) may be convicted under this section if the person operating the vehicle or having the vehicle under his or her control at the time of the violation has been convicted for the violation under this section or under s. 346.94 (16).

(2) Any member of the public who observes a violation of s. 346.94 (16) may prepare a written report indicating that a violation has occurred. If possible, the report shall contain the following information:

(a) The time and the approximate location at which the violation occurred.

(b) The license number and color of the motor vehicle involved in the violation.

(c) Identification of the motor vehicle as an automobile, station wagon, motor truck, motor bus, motorcycle or other type of vehicle.

(3) (a) 1. Within 24 hours after observing the violation, a member of the public may deliver a report containing all of the information in sub. (2) to a traffic officer of the county or municipality in which the violation occurred. A report which does not contain all of the information in sub. (2) shall nevertheless be delivered and shall be maintained by the county or municipality for statistical purposes.

2. Within 48 hours after receiving a report containing all of the information in sub. (2), the traffic officer shall investigate the violation and may prepare a uniform traffic citation under s. 345.11 and, within 72 hours after receiving such report, any traffic officer employed by the authority issuing the citation may personally serve it upon the owner of the vehicle.

(b) If with reasonable diligence the owner cannot be served under par. (a), service may be made by leaving a copy of the citation at the owner's usual place of abode within this state in the presence of a competent member of the family who is at least 14 years of age and who shall be informed of the contents thereof. Service under this paragraph may be made by any traffic officer employed by the authority issuing the citation and shall be performed within 72 hours after a report containing all of the information in sub. (2) was delivered to a traffic officer under par. (a) 1.

(c) If with reasonable diligence the owner cannot be served under par. (a) or (b) or if the owner lives outside of the jurisdiction of the issuing authority, service may be made by certified mail addressed to the owner's last-known address. Service under this paragraph shall be performed by posting the certified mail within 72 hours after a report containing all of the information in sub. (2) was delivered to a traffic officer under par. (a) 1. Except for owners who live outside of the jurisdiction of the issuing authority, service under this paragraph may not be

performed unless service under pars. (a) and (b) has been attempted.

(4) Defenses to the imposition of liability under this section include:

(a) That a report that the vehicle was stolen was given to a traffic officer before the violation occurred or within a reasonable time after the violation occurred.

(b) If the owner of the vehicle provides a traffic officer employed by the authority issuing the citation with the name and address of the person operating the vehicle or having the vehicle under his or her control at the time of the violation and sufficient information for the officer to determine that probable cause does not exist to believe that the owner of the vehicle was operating the vehicle or having the vehicle under his or her control at the time of the violation, then the owner of the vehicle shall not be liable under this section or under s. 346.94 (16).

(c) If the vehicle is owned by a lessor of vehicles and at the time of the violation the vehicle was in the possession of a lessee, and the lessor provides a traffic officer employed by the authority issuing the citation with the information required under s. 343.46 (3), then the lessee and not the lessor shall be liable under this section or under s. 346.94 (16).

(d) If the vehicle is owned by a dealer, as defined in s. 340.01 (11) (intro.) but including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the violation the vehicle was being operated by or was under the control of any person on a trial run, and if the dealer provides a traffic officer employed by the authority issuing the citation with the name, address and operator's license number of the person operating the vehicle or having the vehicle under his or her control on a trial run, then that person, and not the dealer, shall be liable under this section or under the applicable provision of s. 346.94 (16).

(5) Notwithstanding s. 346.94 (16) (b) 6., this section does not apply to the operation of a motorcycle.

SECTION 4. 346.95 (1) of the statutes is amended to read:

346.95 (1) Any person violating s. 346.87, 346.88, 346.89 (2), 346.90 to 346.92 or 346.94 (1), (9), (10), (11), (12), ~~or (15) or (16)~~ may be required to forfeit not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within a year.

SECTION 5. 346.95 (5e) of the statutes is created to read:

346.95 (5e) Any person violating s. 346.94 (16) may be required to forfeit not less than \$40 nor more than \$80 for the first offense and not less than \$100 nor more than \$200 for the 2nd or subsequent conviction within a year.

SECTION 6. 346.95 (5g) of the statutes is created to read:

346.95 (5g) A vehicle owner or other person found liable under s. 346.945 may be required to forfeit not less than \$40 nor more than \$80 for the first offense and not less than \$100 nor more than \$200 for the 2nd or subsequent conviction within a year. Imposition of liability under s. 346.945 shall not result in suspension or revocation of a person's operating license under s. 343.30, nor shall it result in demerit points being recorded on a person's driving record under s. 343.32 (2) (a).

SECTION 6m. 349.135 of the statutes is created to read:

349.135 Authority to regulate radios or other electric sound amplification devices. (1) Notwithstanding s. 346.94 (16), the governing body of any town, city, village or county may, by ordinance, provide that, except as provided in s. 347.38 (1), no person may operate or park, stop or leave standing a motor vehicle while using a radio or other electric sound amplification device emitting sound from the vehicle that is clearly audible under normal conditions from a distance of 50 or more feet, unless the electric sound amplification device is being used to request assistance or warn against an unsafe condition. The ordinance may provide that any person violating the ordinance may be required to forfeit not less than \$40 nor more than \$80 for the first violation and not less than \$100 nor more than \$200 for the 2nd or subsequent violation within a year.

(2) Any ordinance enacted under sub. (1) may not apply to any of the following:

(a) The operator of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm.

(b) The operator of a vehicle of a public utility, as defined in s. 11.40 (1) (a).

(c) The operator of a vehicle that is being used for advertising purposes.

(d) The operator of a vehicle that is being used in a community event or celebration, procession or assemblage.

(e) The activation of a theft alarm signal device.

(f) The operator of a motorcycle being operated outside of a business or residence district.

SECTION 7. Initial applicability.

(1) This act first applies to violations committed on the effective date of this subsection, but does not preclude the counting of other violations as prior violations for sentencing a person, impounding a vehicle or impounding or seizing a sound-producing device or for suspending or revoking a person's operating privilege.