



1997 ASSEMBLY BILL 401

June 4, 1997 - Introduced by Representative BAUMGART, by request of Mr. Daniel Merkel, Sheboygan, Wisconsin. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to repeal** 346.65 (6) (a) 1., 346.65 (6) (m) and 347.417; **to amend** 342.12
2 (4), 343.10 (5) (a) 3., 343.305 (4) (b), 343.305 (4) (c), 343.305 (10m), 346.65 (6)
3 (a) 2., 346.65 (6) (a) 2m., 346.65 (6) (a) 3., 346.65 (6) (a) 4. (intro.), 346.65 (6) (b),
4 346.65 (6) (c), 346.65 (6) (d), 346.65 (6) (h), 346.65 (6) (k), 347.413 (1), 347.50 (1),
5 347.50 (1s), 940.09 (1d) and 940.25 (1d); and **to create** 346.65 (6) (a) 1g. of the
6 statutes; **relating to:** seizure of motor vehicles.

Analysis by the Legislative Reference Bureau

Under current law, a court may order a law enforcement officer to immobilize, equip with an ignition interlock device or seize a motor vehicle owned by a person whose operating privilege is revoked for committing an offense related to driving while under the influence of an intoxicant (OWI) or for refusing to submit to testing to determine the alcohol content in his or her blood if the person has 2 or more prior OWI-related suspensions, revocations or convictions within a 10-year period. Current law requires a court to order a law enforcement officer to seize a motor vehicle owned by a person whose operating privilege is revoked for committing an OWI-related offense or for refusing to submit to testing to determine the alcohol content in his or her blood if the person has 3 or more prior OWI-related suspensions, revocations or convictions within a 10-year period. Under current law, a seized motor vehicle is subject to forfeiture. Under current law, however, certain motor vehicles are not subject to seizure, including motor vehicles used as common carriers,

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rented or leased motor vehicles and commercial motor vehicles, unless the owner knew of or consented to the violation or refusal.

This bill requires a court to order the sheriff to seize the motor vehicle used in committing the first OWI-related offense. The vehicle is held in secure storage by the sheriff for a period of 30 days and then released to the owner upon payment of the sheriff's costs related to the seizure and storage. If a vehicle is not claimed by the owner, the sheriff is required to sell the motor vehicle, following the same procedures that are followed for motor vehicles that are seized and forfeited. Under the bill, certain motor vehicles are not subject to this 30-day seizure, including stolen motor vehicles and motor vehicles used as common carriers, rented or leased motor vehicles and commercial motor vehicles, unless the owner knew of or consented to the violation or refusal.

Under this bill, if a person commits an OWI-related offense or refusal and has one or more prior OWI-related offenses or refusals, the court is required to order the seizure and forfeiture of the vehicle used during the offense or refusal. Under the bill, immobilization and installation of ignition interlock devices are no longer options in these situations.

If the department of transportation (DOT) permits a person with an OWI-related offense or refusal to obtain an occupational license, under current law, DOT may order that the occupational license be limited to vehicles equipped with an ignition interlock device if the person has 2 or more prior offenses or refusals. This bill allows the use of an ignition interlock device on a vehicle used by a person who is operating under an occupational license if the person has one or more prior OWI-related offenses or refusals.

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) 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~~ one 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

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1 the court assigned to hear the criminal complaint issues an order permitting the
2 department to issue a certificate of title.

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

9 **SECTION 2.** 343.10 (5) (a) 3. of the statutes is amended to read:

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

20 **SECTION 3.** 343.305 (4) (b) of the statutes is amended to read:

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

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

2 343.305 (4) (c) If one or more tests are taken and the results of any test indicate
3 that the person has a prohibited alcohol concentration and was driving or operating
4 a motor vehicle, the person will be subject to penalties, the person's operating
5 privilege will be suspended under this section and a the motor vehicle ~~owned~~ used
6 by the person ~~may~~ will be immobilized, seized and ~~forfeited or equipped with an~~
7 ~~ignition interlock device,~~ if the person has ~~2~~ one or more prior convictions,
8 suspensions or revocations within a 10-year period that would be counted under s.
9 343.307 (1), seized and forfeited; and

10 **SECTION 5.** 343.305 (10m) of the statutes is amended to read:

11 343.305 (10m) (title) ~~REFUSALS; SEIZURE, IMMOBILIZATION OR IGNITION INTERLOCK~~
12 ~~OF A MOTOR VEHICLE.~~ If the ~~person whose~~ person's operating privilege is revoked under
13 sub. (10) ~~has 2 or more prior convictions, suspensions or revocations, as counted~~
14 ~~under s. 343.307 (1), within a 10-year period,~~ the procedure under s. 346.65 (6) shall
15 be followed regarding the ~~immobilization or seizure and forfeiture of a motor vehicle~~
16 ~~owned~~ used by the person ~~or the equipping of a motor vehicle owned by the person~~
17 ~~with an ignition interlock device~~ at the time of the refusal.

18 **SECTION 6.** 346.65 (6) (a) 1. of the statutes is repealed.

19 **SECTION 7.** 346.65 (6) (a) 1g. of the statutes is created to read:

20 346.65 (6) (a) 1g. Except as otherwise provided in this subdivision, the court
21 shall order the sheriff to seize the motor vehicle used by a person during the incident
22 that resulted in the person's operating privilege being revoked under s. 343.305 (10)
23 or used by the person while committing a violation of s. 346.63 (1) or (2), 940.09 (1)
24 (a) or (b) or 940.25 (1) (a) or (b). The sheriff shall store the motor vehicle in a secure
25 location for a period of 30 days and, within 10 days after seizure, shall notify the

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1 owner of the motor vehicle by 1st class mail of the year, make, model, serial number
2 and location of the motor vehicle and of his or her right to obtain the motor vehicle
3 after the 30-day period has ended upon payment of the sheriff's costs incurred in
4 seizing the motor vehicle, transporting the motor vehicle to the place of storage and
5 storing the motor vehicle. If the owner fails to claim his or her motor vehicle within
6 10 days after the 30-day period has ended, the sheriff shall dispose of the motor
7 vehicle by sealed bid or auction following the procedure under s. 342.40 (3) (c), except
8 as provided in par. (em). The sheriff shall distribute the proceeds of any sale as
9 provided in pars. (e), (f) and (g). The following motor vehicles are not subject to
10 seizure under this subdivision:

11 a. A motor vehicle used by any person as a common carrier in the transaction
12 of business as a common carrier unless the owner or other person in charge of the
13 motor vehicle had knowledge of or consented to the commission of the violation or
14 refusal.

15 b. A commercial motor vehicle used by any person unless the owner or other
16 person in charge of the commercial motor vehicle had knowledge of or consented to
17 the commission of the violation or refusal.

18 c. A rented or leased motor vehicle used by any person unless the owner of the
19 motor vehicle had knowledge of or consented to the commission of the violation or
20 refusal.

21 d. A motor vehicle owned by a dealer, as defined in s. 340.01 (11) (intro.) but
22 including the persons specified in s. 340.01 (11) (a) to (d), if at the time of the violation
23 the vehicle was under the control of a person on a trial run, unless the owner of the
24 motor vehicle had knowledge of or consented to the commission of the violation or
25 refusal.

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1 e. A motor vehicle that was reported stolen to a traffic officer before the
2 violation occurred or within a reasonable time after the violation occurred if the
3 owner of the motor vehicle was not the person who committed the violation or refusal.

4 **SECTION 8.** 346.65 (6) (a) 2. of the statutes is amended to read:

5 346.65 (6) (a) 2. The court shall order a law enforcement officer to seize a and
6 subject to forfeiture the motor vehicle ~~owned~~ used by a person ~~whose operating~~
7 ~~privilege is~~ during the incident that resulted in the person's operating privilege being
8 ~~revoked under s. 343.305 (10) or who commits~~ used by a person while committing a
9 violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25 (1)
10 (a) or (b) if the person whose operating privilege is revoked under s. 343.305 (10) or
11 who is convicted of the violation has ~~3~~ one or more prior suspensions, revocations or
12 convictions within a 10-year period that would be counted under s. 343.307 (1).

13 **SECTION 9.** 346.65 (6) (a) 2m. of the statutes is amended to read:

14 346.65 (6) (a) 2m. A person who owns a motor vehicle subject to seizure,
15 ~~equipping with an ignition interlock device or immobilization under this paragraph~~
16 subd. 2. shall surrender to the clerk of circuit court the certificate of title issued under
17 ch. 342 for ~~every~~ the motor vehicle ~~owned by the person~~ subject to seizure under subd.
18 2. The person shall comply with this subdivision within 5 working days after
19 receiving notification of this requirement from the district attorney. When a district
20 attorney receives a copy of a notice of intent to revoke the operating privilege under
21 s. 343.305 (9) (a) of a person who has ~~2~~ one or more convictions, suspensions or
22 revocations within a 5-year period, as counted under s. 343.307 (1), or when a district
23 attorney notifies the department of the filing of a criminal complaint against a person
24 under s. 342.12 (4) (a), the district attorney shall notify the person of the requirement
25 to surrender ~~all certificates~~ the certificate of title to the clerk of circuit court. The

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1 notification shall include the time limits for that surrender, the penalty for failure
2 to comply with the requirement and the address of the clerk of circuit court. The clerk
3 of circuit court shall promptly return each certificate of title surrendered to the clerk
4 of circuit court under this subdivision after stamping the certificate of title with the
5 notation "Per section 346.65 (6) of the Wisconsin statutes, ownership of this motor
6 vehicle may not be transferred without prior court approval". Any person failing to
7 surrender a certificate of title as required under this subdivision shall forfeit not
8 more than \$500.

9 **SECTION 10.** 346.65 (6) (a) 3. of the statutes is amended to read:

10 346.65 (6) (a) 3. The court shall notify the department, in a form and manner
11 prescribed by the department, that an order to equip a motor vehicle with an ignition
12 interlock device, to immobilize a motor vehicle or to seize a motor vehicle has been
13 entered under subd. 2. The registration records of the department shall reflect that
14 the order has been entered against the vehicle and remains unexecuted. Any law
15 enforcement officer may execute that order and shall transfer any motor vehicle
16 ordered seized to the law enforcement agency that was originally ordered to seize the
17 vehicle based on the information provided by the department. The law enforcement
18 agency shall notify the department when an order has been executed under this
19 subdivision and the department shall amend its vehicle registration records to
20 reflect that notification.

21 **SECTION 11.** 346.65 (6) (a) 4. (intro.) of the statutes is amended to read:

22 346.65 (6) (a) 4. (intro.) The following motor vehicles are not subject to seizure
23 and forfeiture under ~~this subsection~~ subd. 2:

24 **SECTION 12.** 346.65 (6) (b) of the statutes is amended to read:

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1 346.65 (6) (b) Within 10 days after seizing ~~or immobilizing~~ a motor vehicle
2 under par. (a) 2, the law enforcement agency that seized ~~or immobilized~~ the vehicle
3 shall provide notice of the seizure ~~or immobilization~~ by certified mail to the owner
4 of the motor vehicle and to all lienholders of record. The notice shall set forth the
5 year, make, model and serial number of the motor vehicle, where the motor vehicle
6 is located, the reason for the seizure ~~or immobilization~~, and the forfeiture procedure
7 ~~if the vehicle was seized~~. When a motor vehicle is seized under ~~this section~~ par (a)
8 2, the law enforcement agency that seized the vehicle shall place the motor vehicle
9 in a secure place subject to the order of the court.

10 **SECTION 13.** 346.65 (6) (c) of the statutes is amended to read:

11 346.65 (6) (c) The district attorney of the county where the motor vehicle was
12 seized under par. (a) 2, shall commence an action to forfeit the motor vehicle within
13 30 days after the motor vehicle is seized. The action shall name the person convicted
14 of the offense or whose refusal under s. 343.305 (10) resulted in the motor vehicle
15 being seized, the owner of the motor vehicle and all lienholders of record as parties.
16 The forfeiture action shall be commenced by filing a summons, complaint and
17 affidavit of the law enforcement agency with the clerk of circuit court. Upon service
18 of an answer, the action shall be set for hearing within 60 days after the service of
19 the answer. If no answer is served or no issue of law or fact joined and the time for
20 that service or joining of issues has expired, the court may render a default judgment
21 as provided in s. 806.02.

22 **SECTION 14.** 346.65 (6) (d) of the statutes is amended to read:

23 346.65 (6) (d) At the hearing set under par. (c), the state has the burden of
24 proving to a reasonable certainty by the greater weight of the credible evidence that
25 the motor vehicle is a motor vehicle ~~owned~~ used by a person who committed a

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1 violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25 (1)
2 (a) or (b) and, if the seizure is under par. (a) ~~1.~~, that the person had ~~2~~ prior convictions,
3 ~~suspensions or revocations within a 10-year period as counted under s. 343.307 (1)~~
4 ~~or, if the seizure is under par. (a) 2.,~~ 3 one or more prior convictions, suspensions or
5 revocations within a 10-year period as counted under s. 343.307 (1). If the ~~owner of~~
6 ~~the motor vehicle~~ person proves by a preponderance of the evidence that he or she
7 was not convicted of a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1)
8 (a) or (b) or 940.25 (1) (a) or (b), or, if the seizure is under par. (a) ~~1.~~ 2., that he or she
9 did not have ~~2~~ any prior convictions, suspensions or revocations within a 10-year
10 period as counted under s. 343.307 (1) ~~or, if the seizure is under par. (a) 2.,~~ ~~3 or more~~
11 ~~prior convictions, suspensions or revocations within a 10-year period as counted~~
12 ~~under s. 343.307 (1),~~ the motor vehicle shall be returned to the owner upon the
13 payment of the seizure and storage costs.

14 **SECTION 15.** 346.65 (6) (h) of the statutes is amended to read:

15 346.65 (6) (h) After a determination is made that a motor vehicle seized under
16 par. (a) 2. is not subject to forfeiture, the agency having custody of the motor vehicle
17 shall take reasonable steps to notify the owner or other person in charge of the motor
18 vehicle of the location of the motor vehicle and of his or her right to take possession
19 of the motor vehicle.

20 **SECTION 16.** 346.65 (6) (k) of the statutes is amended to read:

21 346.65 (6) (k) No person may transfer ownership of any motor vehicle that is
22 subject to ~~immobilization or seizure or to equipping with an ignition interlock device~~
23 ~~under this subsection~~ par. (a) 2. or make application for a new certificate of title
24 under s. 342.18 for the that motor vehicle unless the court determines that the
25 transfer is in good faith and not for the purpose of or with the effect of defeating the

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1 purposes of this subsection. The department may cancel a title or refuse to issue a
2 new certificate of title in the name of the transferee as owner to any person who
3 violates this paragraph.

4 **SECTION 17.** 346.65 (6) (m) of the statutes is repealed.

5 **SECTION 18.** 347.413 (1) of the statutes is amended to read:

6 347.413 (1) No person may remove, disconnect, tamper with or otherwise
7 circumvent the operation of an ignition interlock device installed in response to the
8 court order under s. ~~346.65 (6)~~ 343.10 (5) (a) 3. This subsection does not apply to the
9 removal of an ignition interlock device upon the expiration of the order requiring the
10 motor vehicle to be so equipped or to necessary repairs to a malfunctioning ignition
11 interlock device by a person authorized by the department.

12 **SECTION 19.** 347.417 of the statutes is repealed.

13 **SECTION 20.** 347.50 (1) of the statutes is amended to read:

14 347.50 (1) Any person violating ss. 347.35 to 347.49, except s. 347.413 (1) or s.
15 347.415 (1), (2) and (3) to (5) ~~or s. 347.417 (1)~~ or s. 347.48 (2m) or (4) (a) or s. 347.489,
16 may be required to forfeit not less than \$10 nor more than \$200.

17 **SECTION 21.** 347.50 (1s) of the statutes is amended to read:

18 347.50 (1s) Any person violating s. 347.413 (1) ~~or 347.417 (1)~~ may be required
19 to forfeit not less than \$150 nor more than \$600 for the first offense. For a 2nd or
20 subsequent conviction within 5 years, the person may be fined not less than \$300 nor
21 more than \$1,000 or imprisoned for not more than 6 months or both.

22 **SECTION 22.** 940.09 (1d) of the statutes is amended to read:

23 940.09 (1d) If the person ~~who~~ committed an offense under sub. (1) (a) or (b) ~~has~~
24 ~~2 or more prior convictions, suspensions or revocations in a 10-year period, as~~
25 ~~counted under s. 343.307 (1), the procedure under s. 346.65 (6) may~~ shall be followed

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1 regarding the ~~immobilization or seizure and forfeiture of a motor vehicle owned~~ used
2 by the person who ~~committed~~ when committing the offense ~~or the equipping of a~~
3 ~~motor vehicle owned by the person with an ignition interlock device.~~

4 **SECTION 23.** 940.25 (1d) of the statutes is amended to read:

5 940.25 **(1d)** If the person ~~who~~ committed the offense under sub. (1) (a) or (b)
6 has ~~2 or more prior convictions, suspensions or revocations in a 10-year period, as~~
7 ~~counted under s. 343.307 (1), the procedure under s. 346.65 (6) may~~ shall be followed
8 regarding the ~~immobilization or seizure and forfeiture of a motor vehicle owned by~~
9 the person who ~~committed~~ when committing the offense ~~or the equipping of a motor~~
10 ~~vehicle owned by the person with an ignition interlock device.~~

11 **SECTION 24. Initial applicability.**

12 (1) This act first applies to violations or refusals committed on the effective date
13 of this subsection, but does not preclude the counting of other convictions,
14 revocations or suspensions for purposes of determining if a motor vehicle is subject
15 to seizure and sale.

16 **SECTION 25. Effective date.**

17 (1) This act takes effect on the first day of the 4th month beginning after
18 publication.

19 (END)