

1999 ASSEMBLY BILL 142

February 25, 1999 – Introduced by Representatives CULLEN, HANDRICK, STASKUNAS, COLON, RILEY, F. LASEE, OTT, CARPENTER, GOETSCH, URBAN, LA FAVE, PLOUFF, J. LEHMAN and TRAVIS, cosponsored by Senators WIRCH, ROBSON, HUELSMAN, DARLING, ROESSLER and SCHULTZ. Referred to Committee on Highway Safety.

1 **AN ACT** *to renumber* 346.65 (6) (a) 1.; *to renumber and amend* 343.305 (10m);
2 *to amend* 342.12 (4) (a), (b) and (c) 1. (intro.), 343.10 (5) (a) 3., 346.65 (3m),
3 346.65 (6) (a) 2m., 346.65 (6) (d), 940.09 (1d) and 940.25 (1d); and *to create*
4 343.305 (10m) (a) and 346.65 (6) (a) 1d. and 1g. of the statutes; **relating to:** the
5 installation of ignition interlock devices in cases involving refusals to take a
6 test to determine an individual's blood alcohol concentration and involving the
7 criminal offense of intoxicated driving.

Analysis by the Legislative Reference Bureau

Under current law, if a person has two or more prior convictions, revocations or suspensions resulting from the operation of a motor vehicle while under the influence of an intoxicant, controlled substance or other drug (OWI), any occupational license granted to that person includes a restriction requiring the person to only operate vehicles equipped with ignition interlock devices. This bill requires the ignition interlock device restriction if the person has one or more prior OWI-related convictions, revocations or suspensions.

Currently, if a person's operating privilege is revoked for refusing to submit to a test to determine his or her blood alcohol concentration when the arresting officer believes the person has committed an OWI offense (refusal), the court may order that a vehicle owned by the person be equipped with an ignition interlock device if the

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person has two or more prior OWI-related convictions, revocations or suspensions. This bill allows the court to order the vehicle equipped with an ignition interlock device if the person has one or more prior OWI-related convictions, revocations or suspensions.

Currently, if a person has two or more prior OWI-related convictions, revocations or suspensions, the court may order a law enforcement officer to seize a motor vehicle owned by the person when the person is convicted of committing another OWI-related offense. If the court does not order the seizure in that situation, current law requires the court to order the motor vehicle equipped with an ignition interlock device or immobilized.

This bill provides that a court may also order a law enforcement officer to equip with an ignition interlock device any motor vehicle owned by a person whose operating privilege is revoked for a refusal if that person has one or more prior OWI-related convictions, revocations or suspensions and to equip any motor vehicle owned by a person who is convicted of a first or subsequent OWI offense that results in the imposition of a criminal penalty.

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), (b) and (c) 1. (intro.) of the statutes are amended to
2 read:

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

11 (b) Except as provided under par. (c), the department may not issue a certificate
12 of title transferring ownership of any motor vehicle owned by a person upon receipt

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1 of a notice of intent to revoke the person's operating privilege under s. 343.305 (9) (a),
2 if the person has ~~2~~ one or more prior convictions, suspensions or revocations, as
3 counted under s. 343.307 (1), until the court assigned to the hearing under s. 343.305
4 (9) issues an order permitting the department to issue a certificate of title.

5 (c) 1. (intro.) The department shall issue a certificate of title transferring
6 ownership of a motor vehicle that was owned by a person who has received a notice
7 of intent to revoke the person's operating privilege under s. 343.305 (9) (a) or has been
8 arrested for violating s. 346.63 (1) ~~or (2), 940.09 (1) or 940.25~~ and who has ~~2~~ one or
9 more prior convictions, suspensions or revocations, as counted under s. 343.307 (1),
10 or who has been arrested for violating s. 346.63 (2), 940.09 (1) (a), (b), (c) or (d) or
11 940.25 (1) (a), (b), (c) or (d) if all of the following conditions are met:

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

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

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1 with an ignition interlock device, the applicant shall be liable for the reasonable costs
2 of equipping the vehicle with the ignition interlock device.

3 **SECTION 3.** 343.305 (10m) of the statutes is renumbered 343.305 (10m) (b) and
4 amended to read:

5 343.305 **(10m)** (b) If the person whose operating privilege is revoked under sub.
6 (10) has 2 or more prior convictions, suspensions or revocations, as counted under s.
7 343.307 (1), the procedure under s. 346.65 (6) shall be followed regarding the
8 immobilization or seizure and forfeiture of a motor vehicle owned by the person ~~or~~
9 ~~the equipping of a motor vehicle owned by the person with an ignition interlock~~
10 ~~device.~~

11 **SECTION 4.** 343.305 (10m) (a) of the statutes is created to read:

12 343.305 **(10m)** (a) If the person whose operating privilege is revoked under sub.
13 (10) has one or more prior convictions, suspensions or revocations, as counted under
14 s. 343.307 (1), the procedure under s. 346.65 (6) (a) shall be followed regarding the
15 equipping of a motor vehicle owned by the person with an ignition interlock device.

16 **SECTION 5.** 346.65 (3m) of the statutes is amended to read:

17 346.65 **(3m)** Any person violating s. 346.63 (2) or (6) shall be fined not less than
18 \$300 nor more than \$2,000 and may be imprisoned for not less than 30 days nor more
19 than one year in the county jail. If there was a minor passenger under 16 years of
20 age in the motor vehicle at the time of the violation that gave rise to the conviction
21 under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and
22 maximum fines or periods of imprisonment for the conviction are doubled and the
23 place of imprisonment shall be determined under s. 973.02. If the person committed
24 an offense under s. 346.63 (2), the procedure under s. 346.65 (6) shall be followed
25 regarding the immobilization or seizure and forfeiture of a motor vehicle owned by

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

3 **SECTION 6.** 346.65 (6) (a) 1. of the statutes is renumbered 346.65 (6) (a) 1m.

4 **SECTION 7.** 346.65 (6) (a) 1d. and 1g. of the statutes are created to read:

5 346.65 **(6)** (a) 1d. Except as provided in this paragraph, the court may order a
6 law enforcement officer to equip with an ignition interlock device any motor vehicle
7 owned by any of the following:

8 a. An individual who committed a violation of s. 346.63 (2), 940.09 (1) (a), (b),
9 (c) or (d) or 940.25 (1) (a), (b), (c) or (d).

10 b. An individual whose operating privilege is revoked under s. 343.305 (10) or
11 who committed a violation of s. 346.63 (1), if the individual whose operating privilege
12 is revoked under s. 343.305 (10) or who committed the violation of s. 346.63 (1) has
13 one prior suspension, revocation or conviction that would be counted under s.
14 343.307 (1).

15 1g. The court shall not order a motor vehicle equipped with an ignition
16 interlock device under this paragraph if that would result in undue hardship or
17 extreme inconvenience or would endanger the health and safety of a person.

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

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

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1 ~~2~~ one or more convictions, suspensions or revocations, as counted under s. 343.307
2 (1), or when a district attorney notifies the department of the filing of a criminal
3 complaint against a person under s. 342.12 (4) (a), the district attorney shall notify
4 the person of the requirement to surrender all certificates of title to the clerk of circuit
5 court. The notification shall include the time limits for that surrender, the penalty
6 for failure to comply with the requirement and the address of the clerk of circuit
7 court. The clerk of circuit court shall promptly return each certificate of title
8 surrendered to the clerk of circuit court under this subdivision after stamping the
9 certificate of title with the notation “Per section 346.65 (6) of the Wisconsin statutes,
10 ownership of this motor vehicle may not be transferred without prior court approval”.
11 Any person failing to surrender a certificate of title as required under this
12 subdivision shall forfeit not more than \$500.

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

14 346.65 **(6)** (d) At the hearing set under par. (c), the state has the burden of
15 proving to a reasonable certainty by the greater weight of the credible evidence that
16 the motor vehicle is a motor vehicle owned by a person who committed a violation of
17 s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a), (b), (c) or (d) or 940.25 (1) (a),
18 (b), (c) or (d) and, if the seizure is under par. (a) ~~1.~~ 1m., that the person had 2 prior
19 convictions, suspensions or revocations, as counted under s. 343.307 (1) or, if the
20 seizure is under par. (a) 2., 3 or more prior convictions, suspensions or revocations,
21 as counted under s. 343.307 (1). If the ~~[, (c) or (d),, (c) or (d)]~~ state fails to meet the
22 burden of proof required under this paragraph, the motor vehicle shall be returned
23 to the owner upon the payment of storage costs.

24 **SECTION 10.** 940.09 (1d) of the statutes is amended to read:

