

2003 ASSEMBLY BILL 15

January 30, 2003 – Introduced by Representatives HAHN, AINSWORTH, GRONEMUS, M. LEHMAN, KREIBICH, FREESE, LASSA, OWENS, MUSSER, ALBERS, BIES, SERATTI, HINES, OTT, LEMAHIEU, TOWNSEND and MCCORMICK, cosponsored by Senators WELCH, COWLES, ROESSLER, LAZICH, BRESKE and LEIBHAM. Referred to Committee on Highway Safety.

1 **AN ACT** *to renumber* 346.495 (1); *to amend* 346.01 (2); and *to create* 346.452,
2 346.49 (2r) and 346.495 (1) (b) of the statutes; **relating to:** vehicle owner
3 liability for violations of certain traffic laws relating to railroad crossings and
4 providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, the operator of a vehicle is prohibited from doing any of the following:

1. Driving the vehicle on or across a railroad crossing while being signaled to stop by a traffic officer, railroad employee, or warning device. After stopping for a warning device, however, the operator may proceed if no train is approaching.

2. Driving the vehicle through, around, or under any railroad crossing gate or barrier if it is closed or is being opened or closed.

An operator who fails to comply with either of these prohibitions may be required to forfeit not more than \$1,000, except that a bicyclist may be required to forfeit not more than \$40.

Current law also requires the operator of certain vehicles, including school buses, motor buses, and vehicles that are transporting certain hazardous substances, with limited traffic-related exceptions, to stop within 50 feet from the nearest track and take certain precautions before proceeding to ensure that a train is not approaching. An operator who fails to comply with this requirement is required to forfeit not less than \$60 nor more than \$600.

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Current law imposes various surcharges or assessments to be levied against persons who violate certain laws; these surcharges and assessments must be paid in addition to any fine or forfeiture imposed and in addition to any other surcharge or assessment imposed. A railroad crossing improvement assessment is imposed on any person found to have violated any of these traffic laws relating to railroad crossings. The amount of the assessment is equal to 50% of the amount of the forfeiture that is imposed upon conviction. The money collected from the assessment must be used to fund railroad crossing protection improvements, such as automatic signals or other warning devices, and their maintenance.

This bill imposes liability upon the owner of a vehicle involved in a violation of any of these traffic laws relating to railroad crossings. A railroad employee who observes a railroad crossing violation may submit a written report concerning the violation to a traffic officer within 24 hours of observing the violation. The traffic officer may, within 48 hours of receiving the report, prepare a traffic citation for the violation and serve it upon the owner of the vehicle.

The bill subjects the owner of a vehicle involved in a violation of any of these traffic laws relating to railroad crossings to the same penalties as those that apply to the operator of the vehicle involved in the violation, including a railroad crossing improvement assessment. However, the bill provides that the vehicle owner's operating privilege may not be suspended or revoked, and no demerit points may be recorded against the owner's driving record, for the imposition of vehicle owner liability created by this bill.

The vehicle owner has a defense to liability for the violation if the vehicle had been stolen at the time of the violation or if the owner provides the traffic officer with the name and address of the person who was operating the vehicle or who had the vehicle under his or her control at the time of the violation and that person admits operating the vehicle or having the vehicle under his or her control at the time of the violation. Lessors and dealers of vehicles have similar types of defenses.

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.** 346.01 (2) of the statutes is amended to read:

2 346.01 **(2)** In this chapter, notwithstanding s. 340.01 (42), "owner" means, with
3 respect to a vehicle that is registered, or is required to be registered, by a lessee of
4 the vehicle under ch. 341, the lessee of the vehicle for purposes of vehicle owner
5 liability under ss. 346.175, 346.195, 346.205, 346.452, 346.457, 346.465, 346.485,
6 346.505 (3), and 346.945.

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1 **SECTION 2.** 346.452 of the statutes is created to read:

2 **346.452 Owner’s liability for vehicle illegally crossing at a railroad**
3 **crossing. (1)** Subject to s. 346.01 (2), the owner of a vehicle involved in a violation
4 of s. 346.44 or 346.45 shall be liable for the violation as provided in this section.

5 **(2)** A railroad employee who observes a violation of s. 346.44 or 346.45 may
6 prepare a written report indicating that a violation has occurred. If possible, the
7 report shall contain the following information:

8 (a) The violation alleged.

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

10 (c) The license number and color of the vehicle involved in the violation.

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

13 **(3)** Within 24 hours after observing the violation, the railroad employee may
14 deliver the report to a traffic officer of the county or municipality in which the
15 violation occurred. A report which does not contain all of the information in sub. (2)
16 shall nevertheless be delivered and shall be maintained by the county or
17 municipality for statistical purposes.

18 **(4) (a)** Within 48 hours after receiving a report containing all of the information
19 in sub. (2), the traffic officer may prepare a uniform traffic citation under s. 345.11
20 and may personally serve it upon the owner of the vehicle.

21 (b) If with reasonable diligence the owner cannot be served under par. (a),
22 service may be made by leaving a copy of the citation at the owner’s usual place of
23 abode within this state in the presence of a competent member of the family at least
24 14 years of age, who shall be informed of the contents thereof.

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1 (c) If with reasonable diligence the owner cannot be served under par. (a) or (b)
2 or if the owner lives outside of the jurisdiction of the issuing authority, service may
3 be made by certified mail addressed to the owner's last-known address.

4 (5) (a) Except as provided in par. (b), it shall be no defense to a violation of this
5 section that the owner was not operating the vehicle at the time of the violation.

6 (b) The following are defenses to a violation of this section:

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

9 2. If the owner of the vehicle provides a traffic officer with the name and address
10 of the person operating the vehicle at the time of the violation and the person so
11 named admits operating the vehicle at the time of the violation, then the person
12 operating the vehicle and not the owner shall be charged under this section.

13 3. If the vehicle is owned by a lessor of vehicles and at the time of the violation
14 the vehicle was in the possession of a lessee, and the lessor provides a traffic officer
15 with the information required under s. 343.46 (3), then the lessee and not the lessor
16 shall be charged under this section.

17 4. If the vehicle is owned by a dealer as defined in s. 340.01 (11) (intro.) but
18 including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the
19 violation the vehicle was being operated by any person on a trial run, and if the dealer
20 provides a traffic officer with the name, address, and operator's license number of the
21 person operating the vehicle, then the person operating the vehicle, and not the
22 dealer, shall be charged under this section.

23 **SECTION 3.** 346.49 (2r) of the statutes is created to read:

24 346.49 (2r) (a) A vehicle owner or other person found liable under s. 346.452
25 with respect to a violation of s. 346.44 may be required to forfeit not more than

