



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2007 Assembly Bill 26

**Assembly Amendment 1 and
Senate Amendment 1**

Memo published: February 7, 2008

Contact: Joyce L. Kiel, Senior Staff Attorney (266-3137)
Russ Whitesel, Senior Staff Attorney (266-0922)

CURRENT LAW

Current law requires the operator of a motor vehicle approaching a school crossing which is controlled by a duly appointed adult school crossing guard to follow the directions of the crossing guard, including stopping when directed to do so. [s. 346.46 (2m), Stats.]

In addition to applicable surcharges and demerit points, current law provides the following penalty for failing to do so:

- For the operator of the motor vehicle, a forfeiture of not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the second or subsequent conviction within a year. [s. 346.49 (1) (a), Stats.]
- For the operator of a bicycle or electric personal assistive mobility device (EPAMD), a forfeiture of not more than \$20. [s. 346.49 (1) (b), Stats.]¹

Current law also provides that if an adult crossing guard observes such a violation, the crossing guard may prepare a written report identifying the vehicle and, within 24 hours, deliver the report to a traffic officer of the county or municipality in which the violation occurred. Within 48 hours, the traffic officer may prepare a traffic citation and serve it on the owner of the vehicle. Subject to certain

¹ However, there appears to be some ambiguity in current law regarding whether bicycles and EPAMDs are subject to s. 346.46 (2m). The reason is that, while there is a stated penalty for bicycle and EPAMD operators who violate s. 346.46 (2m), that statute does not clearly apply to them. That is because the first sentence of s. 346.46 (2m), refers only to *motor* vehicles (which does not include bicycles or EPAMDs) whereas the general provisions that make many provisions of ch. 346, Stats. (Rules of the Road), applicable to bicycles [s. 346.02 (2), Stats.] and EPAMDs [s. 346.02 (12), Stats.] include an exception for statutes that apply expressly to *motor* vehicles.

exceptions (such as a reported stolen vehicle or another person's admitting operation at the time), the owner of the vehicle (or lessee if the vehicle is leased and the lessor provides the lessee's name to the traffic officer) involved in a violation of s. 346.46 (2m) is liable for the violation. [s. 346.465, Stats.] If a vehicle owner or other person is liable under this crossing guard reported statute, the penalty may be a forfeiture of not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the second or subsequent conviction within a year. However, a conviction based on a crossing guard report does not result in demerit points or the revocation or suspension of an operator's license. [s. 346.49 (1m), Stats.]

2007 ASSEMBLY BILL 26

Assembly Bill 26 does the following:

- For the operator of the motor vehicle who fails to obey an adult crossing guard, the bill increases the penalty to a forfeiture of not less than \$30 nor more than \$300, with no distinction made between initial and subsequent offenses. (However, Assembly Bill 26 does *not* increase the penalty when there is liability under s. 346.49 (1m) because of failure to obey an adult crossing guard under s. 346.46 (2m) that is reported by a crossing guard under s. 346.465. That penalty remains as a forfeiture of not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the second or subsequent conviction within a year.)
- SECTION 3 (page 2, line 10) of the bill provides that this minimum and maximum forfeiture of \$30 to \$300 is doubled if the violation occurs where persons engaged in work in a highway maintenance or construction area or in a utility work area are at risk from traffic. (However, the bill is internally inconsistent on this point as SECTION 3 (page 2, line 7) refers to doubling only for a violation of s. 346.46 (1) (failure to stop at an official stop sign at an intersection and failure to yield right-of-way at an uncontrolled intersection), not to a violation of s. 346.46 (2m) (failure to obey an adult crossing guard).)

ASSEMBLY AMENDMENT 1 TO ASSEMBLY BILL 26

Assembly Amendment 1 to Assembly Bill 26 does the following:

- Also increases the penalty for vehicle owner liability because of failure to obey an adult crossing guard under s. 346.46 (2m) that is reported by a crossing guard under s. 346.465 to a forfeiture of not less than \$30 nor more than \$300.
- Eliminates the internal inconsistency in the bill relating to whether minimum and maximum forfeitures are doubled if the violation occurs where persons engaged in work in a highway maintenance or construction area or in a utility work area are at risk from traffic by clarifying that the doubling applies to disobeying an adult school crossing guard in such an area.
- Eliminates an inconsistency in current law regarding whether operators of bicycles and EPAMDS are required to obey an adult school crossing guard by making it clear that they

are subject to this requirement. (This is accomplished by changing “motor vehicle” to “vehicle” in the first sentence of s. 346.46 (2m).)

SENATE AMENDMENT 1 TO ASSEMBLY BILL 26

Senate Amendment 1 does the following:

- Specifies that owners of bicycles and EPAMDs are not subject to the forfeitures which apply under certain circumstances to the owner of a motor vehicle when an adult school crossing guard reports to a traffic officer that a vehicle has failed to obey the crossing guard. (This is accomplished by inserting the word “motor” vehicle in the first sentence of s. 346.465 (1).)
- Modifies the penalty for the operator of a vehicle, including a bicycle or EPAMD, who fails to obey an adult crossing guard to a forfeiture of not less than \$50 nor more than \$100 for the first offense and not less than \$100 nor more than \$300 for the second or subsequent conviction within a year.

LEGISLATIVE HISTORY

Assembly Amendment 1 to the bill was offered by Representative Gottlieb. The Assembly Committee on Education recommended adoption of the amendment of a vote of Ayes, 10; Noes, 0. The committee then recommended passage of the bill, as amended, on a vote of Ayes, 10; Noes, 0.

The Assembly adopted Assembly Amendment 1 on a voice vote and passed the bill, as amended, on a voice vote.

The bill was referred to the Senate Education Committee which held a public hearing on the bill on August 23, 2007. The Senate Education Committee, in executive session, recommended introduction and adoption of Senate Amendment 1 on votes of Ayes, 7; Noes, 0. The committee also recommended concurrence on a vote of Ayes, 7; Noes 0.

JLK:RW:ksm:jb:ty