

**1981 Senate Bill 744**

**Date published: April 8, 1982**

**CHAPTER 165 , Laws of 1981**

**AN ACT to repeal 349.03 (2m); to amend 20.395 (5) (cg), 48.17 (1), 85.13, 341.08 (4m), 341.63 (1) (a), 345.20 (1) (a), 345.30, 345.31, 345.315 (1), 345.47 (1) (d), 752.31 (2) (c) and 778.103; to repeal and recreate 345.28; and to create 341.10 (7m), 341.63 (1) (c), 341.64, 345.20 (2) (d) and 785.05 of the statutes, relating to proce-**

dures for nonmoving traffic violations, providing penalties and affecting an appropriation.

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

SECTION 1. 20.395 (5) (cg) of the statutes, as affected by chapter 20, laws of 1981, is amended to read:

20.395 (5) (cg) *Traffic violation and registration program.* From the general fund, the amounts in the schedule for the traffic violation and registration program under ss. 341.08 (4m), 341.10 (7) and (7m), 341.63 (1) (c), 345.28 (4) and 345.47 (1) (d). All moneys received from local units of government and other sources shall be credited to this appropriation.

SECTION 2. 48.17 (1) of the statutes is amended to read:

48.17 (1) **TRAFFIC VIOLATIONS.** Except for ss. 342.06 (2) and 344.48 (1), and s. 346.67 when death or injury occurs, courts of criminal and civil jurisdiction shall have exclusive jurisdiction in proceedings against children 16 or older for violations of ss. 30.50 to 30.80, of chs. 341 to 351, and of traffic regulations as defined in s. 345.20 and nonmoving traffic violations as defined in s. 345.28 (1). A child convicted of a traffic or boating offense in a court of criminal or civil jurisdiction shall be treated as an adult for sentencing purposes except that the court may disregard any minimum period of incarceration specified for the offense.

SECTION 3. 85.13 of the statutes is amended to read:

**85.13 Cost of traffic violation and registration program.** The department shall develop a system for charging local units of government for the cost of the development and operation of the traffic violation and registration program under ss. 341.08 (4m), 341.10 (7) and (7m), 341.63 (1) (c), 345.28 (4) and 345.47 (1) (d) based on the number of transactions processed by the local unit of government. No notices under s. 345.28 (4) submitted by a local authority or under s. 345.47 (1) (d) submitted by the court may be processed by the department unless the local unit of government involved has paid the department the appropriate amount determined by the department under this section.

SECTION 4. 341.08 (4m) of the statutes is amended to read:

341.08 (4m) At least 30 days prior to the expiration of a vehicle's registration, the department shall mail to the last-known address of the registrant a notice of the date upon which the registration must be renewed and an application form for renewal of registration. The application form or an accompanying document shall include a list of any unpaid citations for nonmoving traffic violations or any judgments for violation of ch. 110, 194 or 341 to 350, an administrative rule of the department, or an ordinance enacted in accordance with s. 349.06, including parking violations, entered against the registrant which remain unpaid. The list of unpaid citations for nonmoving traffic violations shall be based on information obtained under s. 345.28 (4). The list of unpaid judgments shall be based on information obtained under s. 345.47 (1) (d). If there is a citation for any nonmoving traffic violation entered against the registrant which is unpaid, he or she shall be notified that the vehicle may not be registered until the citation is paid or the registrant appears in court to respond to the citation. If there is a judgment entered against the registrant which is unpaid, he or she shall be notified that the vehicle may not be registered until the judgment is paid.

SECTION 5. 341.10 (7m) of the statutes is created to read:

341.10 (7m) A local authority has notified the department under s. 345.28 (4) that a citation for a nonmoving traffic violation has been issued against the applicant and the applicant has not paid the citation or appeared in court to respond to the citation.

SECTION 6. 341.63 (1) (a) of the statutes is amended to read:

341.63 (1) (a) The registration was completed through fraud or error and the person who registered the vehicle does not or cannot register the vehicle properly; ~~or.~~

SECTION 7. 341.63 (1) (c) of the statutes is created to read:

341.63 (1) (c) Suspension of registration is specified by a local authority under s. 345.28 (4) (a) 2.

SECTION 8. 341.64 of the statutes is created to read:

**341.64 Transfer of vehicle ownership while registration is suspended.** (1) No owner may transfer the ownership or registration of any vehicle whose registration is suspended under s. 341.63 (1) (c) until the registration is reinstated under s. 341.63 (2) or until the secretary is satisfied that such transfer is proposed in good faith and not for the purpose or with the effect of defeating the purposes of s. 341.63 (1) (c).

(2) Any person violating this section may be required to forfeit not more than \$200.

(3) This section does not apply to or affect the registration of any vehicle sold by a person who, pursuant to the terms or conditions of any written instrument giving a right of repossession, has exercised such right and has repossessed such vehicle from a person whose registration has been suspended under s. 341.63 (1) (c).

SECTION 9. 345.20 (1) (a) of the statutes is amended to read:

345.20 (1) (a) "Traffic regulation" means a provision of chs. 194 or 341 to 349 for which the penalty for violation is a forfeiture, or an ordinance enacted in accordance with s. 349.06. Except as otherwise specifically provided, "traffic regulation" does not include a nonmoving traffic violation as defined in s. 345.28 (1).

SECTION 10. 345.20 (2) (d) of the statutes is created to read:

345.20 (2) (d) A nonmoving traffic violation is governed by s. 345.28. The trial of forfeiture actions for nonmoving traffic violations is governed by ss. 345.28 and 345.34 to 345.47. Where no specific procedure is provided in ss. 345.28 or 345.34 to 345.47, ch. 799 applies to actions in circuit court and ch. 800 applies to actions in municipal court.

SECTION 11. 345.28 of the statutes is repealed and recreated to read:

**345.28 Nonmoving violations.** (1) As used in this section, a "nonmoving traffic violation" is any parking of a vehicle in violation of a statute or an ordinance.

(2) (a) A person charged with a nonmoving traffic violation may mail the amount of the forfeiture to any of the places specified in s. 345.26 (1) or to a violations bureau, or to the city, town or county clerk or treasurer if the traffic citation so provides. In that case, the citation shall not be filed in court.

(b) If the person appears in response to a citation for a nonmoving traffic violation, the procedures under ss. 345.34 to 345.47 apply.

(3) (a) If the person does not pay the forfeiture or appear in court in response to the citation for a nonmoving traffic violation on the date specified in the citation or, if no date is specified in the citation, within 28 days after the citation is issued, the local authority which issued the citation may issue a summons under s. 968.04 (3) (b) to the person and, in lieu of or in addition to issuing the summons, may proceed under sub. (4) or (5) but, except as provided in this section, no warrant may be issued for the person.

(b) If the person appears in response to a summons for a nonmoving traffic violation, the procedures under ss. 345.34 to 345.47 apply.

(4) (a) 1. If the person does not pay the forfeiture or appear in court in response to the citation for a nonmoving traffic violation on the date specified in the citation or, if no date is specified in the citation, within 28 days after the citation is issued, the local authority may notify the department in the form and manner prescribed by the department that a citation has been issued to the person and the citation remains unpaid.

2. The local authority shall specify whether the department is to suspend the registration of the vehicle involved under s. 341.63 (1) (c) or refuse registration of any vehicle owned by the person under s. 341.10 (7m) or both.

(b) The notice to the department under par. (a) 1 shall include the name and last-known address of the person against whom the citation was issued, the date the citation was issued, the license number of the vehicle involved, certification that 2 notices which meet the requirements under par. (c) have been mailed to the last-known address of the person against whom the citation was issued and that the citation remains unpaid on the date specified in the citation or, if no date is specified in the citation, 28 days after the citation was issued, the place that the citation may be paid, the means by which the citation may be contested and the action the department is to take.

(c) The notices to the person required under par. (b) shall be mailed on 2 separate days to the last-known address of the person to whom the citation was issued and shall include the date the citation was issued, the license number of the vehicle involved, the place the citation may be paid, the means by which the citation may be contested and the date by which the person must pay or contest the citation to avoid further action by the local authority. The notice shall inform the person of the specific actions which the local authority and the courts are authorized to take under this section if the person fails to pay the forfeiture or appear in court in response to the citation by the date specified in the notice.

(d) The local authority may assess the person for the cost of using the traffic violation and registration program as established by the department under s. 85.13.

(e) If the person subsequently pays the amount of the forfeiture and the costs, if any, under par. (d) or appears in court in response to the citation or a notice by the local authority who issued the citation or the department, the department shall be immediately notified in writing in the form and manner prescribed by the department.

(f) Upon the person's appearance in court in response to a notice by the local authority who issued the citation or the department, the procedures under ss. 345.34 to 345.47 apply.

(g) Notification of the department under par. (a) 1 shall toll any applicable statute of limitation for 4 years from the date of the notification.

(5) (a) In lieu of the procedure under sub. (4), if the person does not pay the forfeiture or appear in court in response to the citation for a nonmoving traffic violation on the date specified in the citation or, if no date is specified in the citation, within 28 days after the citation was issued, the local authority, after sending 2 notices which meet the requirements under sub. (4) (c), may issue a warrant under par. (b) for the person.

(b) 1. If a person fails to respond to the notices under par. (a) within the time specified in the notice, a warrant that substantially complies with the mandatory provisions under s. 968.04 (3) (a) may be issued for the person, except that the warrant shall direct the officer to accept the person's deposit of money or his or her valid Wisconsin operator's license, as provided under subd. 2. a, in lieu of serving the warrant and arresting the person.

2. If an officer contacts a person for whom a warrant for a nonmoving traffic violation has been issued under subd. 1:

a. The officer shall accept a deposit of money or a deposit of the person's valid Wisconsin operator's license as defined in s. 343.01 (2) (b) in lieu of serving the warrant and arresting the person. If the license is deposited with the officer, the officer shall issue to the licensee a receipt, on a form provided by the department, which is valid as an operator's license through a date specified on the receipt, not to exceed 30 days from the date of contact, which shall be the same as the court appearance date and the officer shall at the earliest possible time prior to the court appearance date deposit the license with the court.

If a deposit of money is made, s. 345.26 (1) (a) and (2) to (5) applies. The officer shall notify the person who deposits money or his or her license, in writing, of the specific actions which the local authority and the courts are authorized to take under this section if the person fails to appear in court at the time specified by the officer, not to exceed 30 days from the date of contact, or at any subsequent court appearance for the nonmoving traffic violation citation. If the person makes a deposit of money or deposits his or her valid Wisconsin operator's license, the officer shall return the warrant to the court or judge who issued the warrant and the court or judge shall vacate the warrant.

b. The officer may serve the warrant and arrest any person who refuses to make a deposit of money or deposit his or her operator's license. If the officer arrests the person, the officer shall bring the arrested person before a court having jurisdiction to try the action or a judge without unreasonable delay.

(c) 1. If the person who was contacted under par. (b) 2 and who has made a deposit of money fails to appear in court at the date specified by the officer under par. (b) 2. a or set under s. 345.32, 345.34 or 345.36 or at any subsequent court appearance for the nonmoving traffic violation, the person shall be deemed to have entered a plea of no contest. The court shall accept the plea of no contest, find the defendant guilty and proceed under s. 345.47, except that the deposit shall be forfeited and serve as payment of the judgment. The court shall give notice of the entry of judgment to the defendant by mailing a copy of the judgment to the defendant's last-known address.

2. If the person who was contacted under par. (b) 2 and who has deposited his or her operator's license fails to appear in court at the date specified by the officer under par. (b) 2. a or set under s. 345.32, 345.34 or 345.36 or at any subsequent court appearance for the nonmoving traffic violation, the person may be deemed to have entered a plea of no contest. The court may accept the plea of no contest, find the defendant guilty and, except as limited by sub. (6), proceed under s. 345.47. If the court enters judgment under s. 345.47 (1), the court shall give notice of the entry of judgment to the defendant by mailing a copy of the judgment to the defendant's last-known address. The court shall also mail to the defendant's last-known address a statement setting forth the actions the court may take under s. 345.47 if the judgment is not paid. In lieu of accepting the plea of no contest, the court may issue a warrant commanding that the person be arrested and brought before the court. Unless the case is tried immediately with the person's consent, any person who is arrested on a warrant issued under this subdivision may be released on his or her own recognizance or on posting bond or may be released without bail and shall be released if the person posts cash bail for his or her appearance. The court may retain the person's license, but the person's operating privilege may not be suspended until after judgment is entered under s. 345.47 and the judgment is not paid.

3. A default judgment entered under this paragraph may be reopened as provided under s. 345.51.

(6) No person may be arrested or imprisoned under s. 345.47 (1) (a) or ch. 785 for failure to pay a judgment assessed under this section and s. 345.47.

(7) Nothing in this section prevents a court from issuing a warrant under s. 345.36 or 345.37 if the person appears in court in response to a citation for a nonmoving traffic violation or after notice by the local authority who issued the citation or the department under sub. (4) or on the date specified by the officer or the court under sub. (5) and then fails to appear in court at any time fixed by subsequent postponement. Unless the case is tried immediately with the person's consent, any person who is arrested on a warrant issued under this subsection may be released on his or her own recognizance or on posting bond or may be released without bail and shall be released if the person posts cash bail for his or her appearance.

SECTION 12. 345.30 of the statutes is amended to read:

**345.30 Jurisdiction.** Jurisdiction over actions for violation of traffic regulations and nonmoving traffic violations is conferred upon circuit courts. Municipal courts shall have jurisdiction over traffic regulations enacted in accordance with s. 349.06 and over actions for violations of nonmoving traffic ordinances enacted in accordance with s. 349.06 or 349.13.

SECTION 13. 345.31 of the statutes is amended to read:

**345.31 Venue in traffic regulation actions.** Section 971.19 on place of trial in criminal actions applies to actions for the violation of traffic regulations and nonmoving traffic violations except that, in the case of a violation of an ordinance of a municipality which is located in more than one county, the action may be brought in any court sitting in that municipality even though in another county. As an alternative, the plaintiff may bring the action in the county where the defendant resides.

SECTION 14. 345.315 (1) of the statutes is amended to read:

345.315 (1) In traffic regulation and nonmoving traffic violation cases a person charged with a violation may file a written request for a substitution of a new judge for the judge assigned to the trial of that case. The written request shall be filed not later than 7 days after the initial appearance in person or by an attorney. If a new judge is assigned to the trial of a case, a request for substitution must be made within 10 days of receipt of notice of assignment, provided that if the notice of assignment is received less than 10 days prior to trial, the request for substitution must be made within 24 hours of receipt of the notice and provided that if notification is received less than 24 hours prior to trial, the action shall proceed to trial only upon stipulation of the parties that the assigned judge may preside at the trial of the action. The judge against whom a request has been filed may set initial bail and accept a plea.

SECTION 15. 345.47 (1) (d) of the statutes is amended to read:

345.47 (1) (d) In addition to or in lieu of imprisonment or suspension under par. (a) or (b), the court may notify the department, in the form and manner prescribed by the department, that a judgment has been entered against the defendant and remains unpaid. The notice shall include the name and last-known address of the person against whom the judgment was entered, the date judgment was entered, the amount of the judgment, the license number of the vehicle involved, certification by the court that a warrant has been served on the person against whom the judgment was entered or, in the case of a judgment entered under s. 345.28, that the person has been notified of the entry of judgment and the judgment remains unpaid and the place where the judgment may be paid. If the person subsequently pays the judgment the court shall immediately notify the department of the payment in writing in the form and manner prescribed by the department.

SECTION 16. 349.03 (2m) of the statutes, as created by chapter 20, laws of 1981, is repealed.

SECTION 17. 752.31 (2) (c) of the statutes is amended to read:

752.31 (2) (c) Cases involving violations of traffic regulations, as defined in s. 345.20 (1) (a), or nonmoving traffic violations, as defined in s. 345.28 (1).

SECTION 18. 778.103 of the statutes is amended to read:

**778.103 Traffic regulation forfeitures; how recovered.** Where there is a conflict with this chapter, the procedure in ch. 345 shall be followed in actions to recover forfeitures for the violation of traffic regulations as defined in s. 345.20, and the procedures in ss. 345.28 and 345.34 to 345.47 shall be followed in actions to recover forfeitures for nonmoving traffic violations as defined in s. 345.28 (1).

SECTION 19. 785.05 of the statutes is created to read:

**785.05 Limitation on imprisonment.** In any case in which the contempt of court is based upon the failure to respond to the citation, summons or warrant under s. 345.28 or any other failure to pay or to appear in court for a nonmoving traffic violation, the court may not impose imprisonment as a sanction under this chapter.

**SECTION 20. Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

Statute Sections	A	Old Cross-References	B	New Cross-References	C
345.26 (1)(a)		345.22		345.22 or 345.28 (5)	
345.26 (1)(a)		345.23 (2)(a)		345.23 (2)(a) or 345.28 (5)	

**SECTION 21. Initial applicability.** (1) Except as provided by subsection (2), the treatment of section 345.28 of the statutes by this act first applies to nonmoving traffic violations occurring on the effective date of this act.

(2) If the local authority which issued the citation complies with the notice required under section 345.28 (4) (c) of the statutes, the department of transportation may be notified under section 345.28 (4) (b) of the statutes and, if notified under this subsection and section 345.28 (4) (b) of the statutes, the department of transportation shall take the action specified by the local authority.

**SECTION 22. Effective date.** This act takes effect on the first day of the 3rd month following publication.

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