



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 496**

February 10, 1998 - Offered by JOINT COMMITTEE ON FINANCE.

1 **AN ACT to repeal** 343.30 (1q) (b) 5., 343.305 (10) (b) 5. and 343.31 (3) (bm) 5.; **to**
2 **amend** 342.12 (4) (a), 342.12 (4) (b), 343.10 (5) (a) 3., 343.23 (2) (b), 343.30 (1q)
3 (b) 3., 343.30 (1q) (b) 4., 343.305 (4) (b), 343.305 (4) (c), 343.305 (10) (b) 3.,
4 343.305 (10) (b) 4., 343.305 (10m), 343.307 (1) (intro.), 343.307 (2) (intro.),
5 343.31 (3) (bm) 3., 343.31 (3) (bm) 4., 346.65 (2) (b), 346.65 (2) (c), 346.65 (2) (d),
6 346.65 (2) (e), 346.65 (2c), 346.65 (2j) (b), 346.65 (2j) (c), 346.65 (2w), 346.65 (6)
7 (a) 1., 346.65 (6) (a) 2., 346.65 (6) (a) 2m., 346.65 (6) (d), 940.09 (1d) and 940.25
8 (1d); and **to create** 343.23 (2) (c) of the statutes; **relating to:** the counting of
9 convictions, suspensions and revocations related to driving while under the
10 influence of an intoxicant and providing a penalty.

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

11 **SECTION 1.** 342.12 (4) (a) of the statutes is amended to read:

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

9 **SECTION 2.** 342.12 (4) (b) of the statutes is amended to read:

10 342.12 (4) (b) The department may not issue a certificate of title transferring
11 ownership of any motor vehicle owned by a person upon receipt of a notice of intent
12 to revoke the person's operating privilege under s. 343.305 (9) (a), if the person has
13 2 or more prior convictions, suspensions or revocations ~~within a 10-year period~~, as
14 counted under s. 343.307 (1), until the court assigned to the hearing under s. 343.305
15 (9) issues an order permitting the department to issue a certificate of title.

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

17 343.10 (5) (a) 3. If the applicant has 2 or more prior convictions, suspensions
18 or revocations, as counted under s. 343.307 (1), the occupational license of the
19 applicant ~~may~~ shall restrict the applicant's operation under the occupational license
20 to vehicles that are equipped with a functioning ignition interlock device ~~as provided~~
21 if the court has ordered under s. 346.65 (6) (a) 1. that a motor vehicle owned by the
22 person be equipped with an ignition interlock device. A person to whom a restriction
23 under this subdivision applies violates that restriction if he or she requests or
24 permits another to blow into an ignition interlock device or to start a motor vehicle
25 equipped with an ignition interlock device for the purpose of providing the person an

1 operable motor vehicle without the necessity of first submitting a sample of his or her
2 breath to analysis by the ignition interlock device. If the occupational license
3 restricts the applicant's operation to a vehicle that is equipped with an ignition
4 interlock device, the applicant shall be liable for the reasonable costs of equipping
5 the vehicle with the ignition interlock device.

6 **SECTION 4.** 343.23 (2) (b) of the statutes, as affected by 1995 Wisconsin Act 184,
7 is amended to read:

8 343.23 (2) (b) The information specified in par. (a) must be filed by the
9 department so that the complete operator's record is available for the use of the
10 secretary in determining whether operating privileges of such person shall be
11 suspended, revoked, canceled or withheld in the interest of public safety. The Except
12 as provided under par. (c), the record of suspensions, revocations and convictions that
13 would be counted under s. 343.307 (2) and shall be maintained permanently. The
14 record of convictions for disqualifying offenses under s. 343.315 (2) (h) shall be
15 maintained for at least 10 years. The record of convictions for disqualifying offenses
16 under s. 343.315 (2) (f) shall be maintained for at least 3 years. The record of
17 convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be
18 maintained permanently, except that 5 years after a licensee transfers residency to
19 another state such record may be transferred to another state of licensure of the
20 licensee if that state accepts responsibility for maintaining a permanent record of
21 convictions for disqualifying offenses. Such reports and records may be cumulative
22 beyond the period for which a license is granted, but the secretary, in exercising the
23 power of suspension or revocation granted under s. 343.32 (2) may consider only
24 those reports and records entered during the 4-year period immediately preceding
25 the exercise of such power of suspension or revocation.

1 **SECTION 5.** 343.23 (2) (c) of the statutes is created to read:

2 343.23 **(2)** (c) The record of a suspension, revocation or conviction that would
3 be counted under s. 343.307 (2) shall be deleted 10 years after the date of the
4 suspension, revocation or conviction if, at that time, the person has only one
5 suspension, revocation or conviction that would be counted under s. 343.307 (2). If
6 the record of a suspension, revocation or conviction is deleted under this paragraph,
7 that suspension, revocation or conviction shall not be counted under s. 343.307.

8 **SECTION 6.** 343.30 (1q) (b) 3. of the statutes is amended to read:

9 343.30 **(1q)** (b) 3. Except as provided in subd. 4m., if the number of convictions,
10 suspensions and revocations ~~within a 5-year period~~ equals 2, the court shall revoke
11 the person's operating privilege for not less than one year nor more than 18 months.
12 After the first 60 days of the revocation period, the person is eligible for an
13 occupational license under s. 343.10 if he or she has completed the assessment and
14 is complying with the driver safety plan ordered under par. (c).

15 **SECTION 7.** 343.30 (1q) (b) 4. of the statutes is amended to read:

16 343.30 **(1q)** (b) 4. Except as provided in subd. 4m., if the number of convictions,
17 suspensions and revocations ~~within a 10-year period~~ equals 3 or more, the court
18 shall revoke the person's operating privilege for not less than 2 years nor more than
19 3 years. After the first 90 days of the revocation period, the person is eligible for an
20 occupational license under s. 343.10 if he or she has completed the assessment and
21 is complying with the driver safety plan ordered under par. (c).

22 **SECTION 8.** 343.30 (1q) (b) 5. of the statutes is repealed.

23 **SECTION 9.** 343.305 (4) (b) of the statutes is amended to read:

24 343.305 **(4)** (b) If testing is refused, a motor vehicle owned by the person may
25 be immobilized, seized and forfeited or equipped with an ignition interlock device if

1 the person has 2 or more prior suspensions, revocations or convictions ~~within a~~
2 ~~10-year period~~ that would be counted under s. 343.307 (1) and the person's operating
3 privilege will be revoked under this section;

4 **SECTION 10.** 343.305 (4) (c) of the statutes is amended to read:

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

12 **SECTION 11.** 343.305 (10) (b) 3. of the statutes is amended to read:

13 343.305 (10) (b) 3. Except as provided in subd. 4m., if the number of convictions,
14 suspensions and revocations ~~in a 5-year period~~ equals 2, the court shall revoke the
15 person's operating privilege for 2 years. After the first 90 days of the revocation
16 period, the person is eligible for an occupational license under s. 343.10 if he or she
17 has completed the assessment and is complying with the driver safety plan.

18 **SECTION 12.** 343.305 (10) (b) 4. of the statutes is amended to read:

19 343.305 (10) (b) 4. Except as provided in subd. 4m., if the number of convictions,
20 suspensions and revocations ~~in a 10-year period~~ equals 3 or more, the court shall
21 revoke the person's operating privilege for 3 years. After the first 120 days of the
22 revocation period, the person is eligible for an occupational license under s. 343.10
23 if he or she has completed the assessment and is complying with the driver safety
24 plan.

25 **SECTION 13.** 343.305 (10) (b) 5. of the statutes is repealed.

1 **SECTION 14.** 343.305 (10m) of the statutes is amended to read:

2 **343.305 (10m)** REFUSALS; SEIZURE, IMMOBILIZATION OR IGNITION INTERLOCK OF A
3 MOTOR VEHICLE. If the person whose operating privilege is revoked under sub. (10)
4 has 2 or more prior convictions, suspensions or revocations, as counted under s.
5 343.307 (1), ~~within a 10-year period,~~ the procedure under s. 346.65 (6) shall be
6 followed regarding the immobilization or seizure and forfeiture of a motor vehicle
7 owned by the person or the equipping of a motor vehicle owned by the person with
8 an ignition interlock device.

9 **SECTION 15.** 343.307 (1) (intro.) of the statutes is amended to read:

10 **343.307 (1)** (intro.) The Except as provided in s. 343.23 (2) (c), the court shall
11 count the following to determine the length of a revocation or suspension under s.
12 343.30 (1q) (b) and to determine the penalty under s. 346.65 (2):

13 **SECTION 16.** 343.307 (2) (intro.) of the statutes is amended to read:

14 **343.307 (2)** (intro.) The Except as provided in s. 343.23 (2) (c), the court shall
15 count the following to determine the length of a revocation under s. 343.305 (10) and
16 to determine the penalty under s. 346.65 (2j) and to determine the prohibited alcohol
17 concentration under s. 340.01 (46m):

18 **SECTION 17.** 343.31 (3) (bm) 3. of the statutes is amended to read:

19 **343.31 (3)** (bm) 3. Except as provided in subd. 4m., if the number of
20 suspensions, revocations and convictions ~~within a 5-year period~~ equals 2, the
21 department shall revoke the person's operating privilege for not less than one year
22 nor more than 18 months. If an Indian tribal court in this state revokes the person's
23 privilege to operate a motor vehicle on tribal lands for not less than one year nor more
24 than 18 months for the conviction specified in par. (bm) (intro.), the department shall

1 impose the same period of revocation. After the first 60 days of the revocation period,
2 the person is eligible for an occupational license under s. 343.10.

3 **SECTION 18.** 343.31 (3) (bm) 4. of the statutes is amended to read:

4 343.31 (3) (bm) 4. Except as provided in subd. 4m., if the number of
5 suspensions, revocations and convictions ~~within a 10-year period~~ equals 3 or more,
6 the department shall revoke the person's operating privilege for not less than 2 years
7 nor more than 3 years. If an Indian tribal court in this state revokes the person's
8 privilege to operate a motor vehicle on tribal lands for not less than 2 years nor more
9 than 3 years for the conviction specified in par. (bm) (intro.), the department shall
10 impose the same period of revocation. After the first 90 days of the revocation period,
11 the person is eligible for an occupational license under s. 343.10.

12 **SECTION 19.** 343.31 (3) (bm) 5. of the statutes is repealed.

13 **SECTION 20.** 346.65 (2) (b) of the statutes is amended to read:

14 346.65 (2) (b) Except as provided in par. (f), shall be fined not less than \$300
15 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months
16 if the total number of suspensions, revocations and convictions counted under s.
17 343.307 (1) equals 2 ~~in a 5-year period~~. Suspensions, revocations or convictions
18 arising out of the same incident or occurrence shall be counted as one.

19 **SECTION 21.** 346.65 (2) (c) of the statutes is amended to read:

20 346.65 (2) (c) Except as provided in par. (f), shall be fined not less than \$600
21 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one
22 year in the county jail if the total number of suspensions, revocations and convictions
23 counted under s. 343.307 (1) equals 3 ~~in a 10-year period~~, except that suspensions,
24 revocations or convictions arising out of the same incident or occurrence shall be
25 counted as one.

1 **SECTION 22.** 346.65 (2) (d) of the statutes is amended to read:

2 346.65 (2) (d) Except as provided in par. (f), shall be fined not less than \$600
3 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one
4 year in the county jail if the total number of suspensions, revocations and convictions
5 counted under s. 343.307 (1) equals 4 ~~in a 10-year period~~, except that suspensions,
6 revocations or convictions arising out of the same incident or occurrence shall be
7 counted as one.

8 **SECTION 23.** 346.65 (2) (e) of the statutes is amended to read:

9 346.65 (2) (e) Except as provided in par. (f), shall be fined not less than \$600
10 nor more than \$2,000 and imprisoned for not less than 6 months nor more than ~~one~~
11 ~~year in the county jail~~ 5 years if the total number of suspensions, revocations and
12 convictions counted under s. 343.307 (1) equals 5 or more ~~in a 10-year period~~, except
13 that suspensions, revocations or convictions arising out of the same incident or
14 occurrence shall be counted as one.

15 **SECTION 24.** 346.65 (2c) of the statutes is amended to read:

16 346.65 (2c) ~~In sub. (2) (b) to (e), the 5-year or 10-year period shall be measured~~
17 ~~from the dates of the refusals or violations that resulted in the revocation or~~
18 ~~convictions.~~ If a person has a suspension, revocation or conviction for any offense
19 under a local ordinance or a state statute of another state that would be counted
20 under s. 343.307 (1), that suspension, revocation or conviction shall count as a prior
21 suspension, revocation or conviction under sub. (2) (b) to (e).

22 **SECTION 25.** 346.65 (2j) (b) of the statutes is amended to read:

23 346.65 (2j) (b) Except as provided in par. (d), shall be fined not less than \$300
24 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months

1 if the total of prior convictions, suspension and revocations counted under s. 343.307
2 (2) equals 2 in a 5-year period.

3 **SECTION 26.** 346.65 (2j) (c) of the statutes is amended to read:

4 346.65 (2j) (c) Except as provided in par. (d), shall be fined not less than \$600
5 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one
6 year in the county jail if the total of prior convictions, suspensions and revocations
7 counted under s. 343.307 (2) equals 3 or more in a 10-year period.

8 **SECTION 27.** 346.65 (2w) of the statutes is amended to read:

9 346.65 (2w) In determining the number of prior convictions for purposes of sub.
10 (2j), the court shall count suspensions, revocations and convictions that would be
11 counted under s. 343.307 (2). Revocations, suspensions and convictions arising out
12 of the same incident or occurrence shall be counted as one. ~~The 5-year or 10-year~~
13 ~~period shall be measured from the dates of the refusals or violations which resulted~~
14 ~~in the revocation, suspension or convictions.~~ If a person has a suspension, revocation
15 or conviction for any offense that is counted under s. 343.307 (2), that suspension,
16 revocation or conviction shall count as a prior suspension, revocation or conviction
17 under this section.

18 **SECTION 28.** 346.65 (6) (a) 1. of the statutes is amended to read:

19 346.65 (6) (a) 1. Except as provided in this paragraph, the court may order a
20 law enforcement officer to seize a motor vehicle, or, if the motor vehicle is not ordered
21 seized, shall order a law enforcement officer to equip the motor vehicle with an
22 ignition interlock device or immobilize any motor vehicle owned by the person whose
23 operating privilege is revoked under s. 343.305 (10) or who committed a violation of
24 s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25 (1) (a) or (b) if
25 the person whose operating privilege is revoked under s. 343.305 (10) or who is

1 convicted of the violation has 2 prior suspensions, revocations or convictions ~~within~~
2 ~~a 10-year period~~ that would be counted under s. 343.307 (1). The court shall not
3 order a motor vehicle equipped with an ignition interlock device or immobilized if
4 that would result in undue hardship or extreme inconvenience or would endanger
5 the health and safety of a person.

6 **SECTION 29.** 346.65 (6) (a) 2. of the statutes is amended to read:

7 346.65 (6) (a) 2. The court shall order a law enforcement officer to seize a motor
8 vehicle owned by a person whose operating privilege is revoked under s. 343.305 (10)
9 or who commits a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a)
10 or (b) or 940.25 (1) (a) or (b) if the person whose operating privilege is revoked under
11 s. 343.305 (10) or who is convicted of the violation has 3 or more prior suspensions,
12 revocations or convictions ~~within a 10-year period~~ that would be counted under s.
13 343.307 (1).

14 **SECTION 30.** 346.65 (6) (a) 2m. of the statutes is amended to read:

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

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

9 **SECTION 31.** 346.65 (6) (d) of the statutes is amended to read:

10 346.65 (6) (d) At the hearing set under par. (c), the state has the burden of
11 proving to a reasonable certainty by the greater weight of the credible evidence that
12 the motor vehicle is a motor vehicle owned by a person who committed a violation of
13 s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25 (1) (a) or (b) and,
14 if the seizure is under par. (a) 1., that the person had 2 prior convictions, suspensions
15 or revocations ~~within a 10-year period,~~ as counted under s. 343.307 (1) or, if the
16 seizure is under par. (a) 2., 3 or more prior convictions, suspensions or revocations
17 ~~within a 10-year period,~~ as counted under s. 343.307 (1). If the owner of the motor
18 vehicle proves by a preponderance of the evidence that he or she was not convicted
19 of a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25
20 (1) (a) or (b), or, if the seizure is under par. (a) 1., that he or she did not have 2 prior
21 convictions, suspensions or revocations ~~within a 10-year period,~~ as counted under
22 s. 343.307 (1) or, if the seizure is under par. (a) 2., 3 or more prior convictions,
23 suspensions or revocations ~~within a 10-year period,~~ as counted under s. 343.307 (1),
24 the motor vehicle shall be returned to the owner upon the payment of storage costs.

25 **SECTION 32.** 940.09 (1d) of the statutes is amended to read:

1 940.09 (1d) If the person who committed an offense under sub. (1) (a) or (b) has
2 2 or more prior convictions, suspensions or revocations in a 10-year period, as
3 counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed
4 regarding the immobilization or seizure and forfeiture of a motor vehicle owned by
5 the person who committed the offense or the equipping of a motor vehicle owned by
6 the person with an ignition interlock device.

7 **SECTION 33.** 940.25 (1d) of the statutes is amended to read:

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

14 **SECTION 34. Initial applicability.**

15 (1) This act first applies to offenses committed on the effective date of this
16 subsection, but does not preclude the counting of other violations as prior
17 convictions, suspensions or revocations for purposes of administrative action by the
18 department of transportation, sentencing by a court or revocation or suspension of
19 operating privileges, except that it does preclude the counting of offenses that
20 occurred before January 1, 1988, as prior convictions, suspensions or revocations.

21 (END)