



## 1995 ASSEMBLY BILL 438

June 8, 1995 - Introduced by Representatives RILEY, SCHNEIDERS, KRUG, OTTE, HAHN, WASSERMAN, OTT, ROBSON, LA FAVE, RYBA, BELL, BOYLE and CULLEN, cosponsored by Senators DARLING, LEEAN, BURKE, HUELSMAN, ROSENZWEIG, PETAK and WEEDEN. Referred to Committee on Highways and Transportation.

1     **AN ACT to renumber and amend** 347.38 (1); **to amend** 346.94 (16) (a) and  
2           346.95 (1); and **to create** 66.948, 346.945, 346.95 (5e), 346.95 (5g), 347.385 and  
3           347.50 (1g) of the statutes; **relating to:** the improper use of radios, electric  
4           sound amplification devices and other sound-producing devices, the imposition  
5           of vehicle owner liability for improper use of a horn, other warning device, radio  
6           or other electric sound amplification device and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Current law prohibits motor vehicle operators from using a radio or other electric sound amplification device that is audible 75 or more feet from the vehicle unless the device is being used to request assistance or warn of an unsafe condition. Exceptions apply for warning horns, authorized emergency vehicles, public utility vehicles, antitheft alarms and vehicles used in advertising, special events, processions or assemblages. Improper use of a radio or other electric sound amplification device may result in a forfeiture of not less than \$20 nor more than \$40 or, for a 2nd or subsequent conviction within a year, a forfeiture of not less than \$50 nor more than \$100.

This bill provides that improper use of a radio or other electric sound amplification device occurs if the sound-producing device is clearly audible 25 or more feet from the vehicle. The bill also doubles the minimum and maximum forfeiture amounts that may be imposed for a violation.

Under current law, no person may use the horn or other warning device of a vehicle or make unnecessary or unreasonable noise by using the horn or warning device except as needed for purposes of a warning. Improper use of a horn or other warning device by a person may result in a forfeiture of not less than \$10 nor more than \$200.

This bill imposes upon the owner of a vehicle liability for improper use of the horn, other warning device, radio or other electric sound amplification device of the vehicle, regardless of whether the owner was personally using the sound-producing device. A traffic officer may, instead of stopping, pursuing or issuing a citation to the operator of a vehicle involved in the improper use of the radio, electric sound amplification device, horn or other warning device, investigate the violation and prepare a traffic citation for the violation. Any traffic officer employed by the issuing authority may serve it upon the owner of the vehicle.

The owner of the vehicle 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 sufficient information for the officer to determine that probable cause does not exist to believe that the owner committed the violation. Lessors and dealers of vehicles have similar defenses.

Vehicle owner liability subjects the owner to the same forfeiture for a violation that is applicable to a vehicle operator who violates the traffic law. 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.

The bill also allows any city, town, village or county, by ordinance, to authorize a law enforcement officer who has issued a citation for improper use of a radio or other electric sound amplification device or for a violation of any local ordinance prohibiting excessive noise to impound any radio, electric sound amplification device or other sound-producing device used in the commission of the violation. Impoundment only applies if the violator has 2 prior convictions in a 3-year period of the prohibition against the improper use of a radio or other electric sound amplification device by a motor vehicle operator or of any local ordinance prohibiting excessive noise.

The violator is responsible for the costs of impounding the sound-producing device, which must be claimed by its rightful owner after disposition of the matter, including the payment of any forfeiture imposed. If the sound-producing device is not claimed within 90 days, the city, village, town or county may dispose of it.

If the violator has 3 prior convictions in the 3-year period, the city, town, village or county may, by ordinance, authorize the law enforcement officer to seize any radio, electric sound amplification device or other sound-producing device used in the commission of the violation. The sound-producing device is subject to forfeiture in the same manner as provided under state law for property realized through the commission of a crime.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 66.948 of the statutes is created to read:

2           **66.948    Sound-producing devices; impoundment; seizure and**  
3 **forfeiture. (1)** Any city, village, town or county may, by ordinance, authorize a law  
4 enforcement officer, at the time of issuing a citation for a violation of s. 346.94 (16)  
5 or a local ordinance in strict conformity with s. 346.94 (16) or any other local  
6 ordinance prohibiting excessive noise, to impound any radio, electric sound  
7 amplification device or other sound-producing device used in the commission of the  
8 violation if the person charged with such violation has 2 or more prior convictions  
9 within a 3-year period of s. 346.94 (16) or a local ordinance in strict conformity with  
10 s. 346.94 (16) or any other local ordinance prohibiting excessive noise. The ordinance  
11 may provide for recovery by the city, village, town or county of the cost of impounding  
12 the sound-producing device. The ordinance shall provide that, upon disposition of  
13 the forfeiture action for the violation of s. 346.94 (16) or a local ordinance in strict  
14 conformity with s. 346.94 (16) or any other local ordinance prohibiting excessive  
15 noise and payment of any forfeiture imposed, the sound-producing device shall be  
16 returned to its rightful owner. The city, village, town or county may dispose of any  
17 impounded sound-producing device which has remained unclaimed for a period of  
18 90 days after disposition of the forfeiture action.

19           **(2)** Notwithstanding sub. (1), any city, village, town or county may, by  
20 ordinance, authorize a law enforcement officer, at the time of issuing a citation for  
21 a violation of s. 346.94 (16) or a local ordinance in strict conformity with s. 346.94 (16)  
22 or any other local ordinance prohibiting excessive noise, to seize any radio, electric  
23 sound amplification device or other sound-producing device used in the commission  
24 of the violation if the person charged with such violation has 3 or more prior  
25 convictions within a 3-year period of s. 346.94 (16) or a local ordinance in strict

1 conformity with s. 346.94 (16) or any other local ordinance prohibiting excessive  
2 noise. The ordinance shall include provisions that treat any seized sound-producing  
3 device in substantially the manner provided in ss. 973.075 (3) to 973.077 for property  
4 realized through the commission of any crime, except that the sound-producing  
5 device shall remain in the custody of the applicable law enforcement agency; a  
6 district attorney or city, village or town attorney, whichever is applicable, shall  
7 institute the forfeiture proceedings; and, if the sound-producing device is sold by the  
8 law enforcement agency, all proceeds of the sale shall be retained by the applicable  
9 city, village, town or county.

10 **SECTION 2.** 346.94 (16) (a) of the statutes is amended to read:

11 346.94 (16) (a) Except as provided in s. 347.38 (1), no person may operate or  
12 park, stop or leave standing a motor vehicle while using a radio or other electric  
13 sound amplification device emitting sound from the vehicle that is clearly audible  
14 under normal conditions from a distance of ~~75~~ 25 or more feet, unless the electric  
15 sound amplification device is being used to request assistance or warn against an  
16 unsafe condition.

17 **SECTION 3.** 346.945 of the statutes is created to read:

18 **346.945 Vehicle owner's liability for radios or other electric sound**  
19 **amplification devices.** (1) (a) The owner of a vehicle involved in a violation of s.  
20 346.94 (16) shall be presumed liable for the violation as provided in this section.

21 (b) Notwithstanding par. (a), no owner of a vehicle involved in a violation of s.  
22 346.94 (16) may be convicted under this section if the person operating the vehicle  
23 or having the vehicle under his or her control at the time of the violation has been  
24 convicted for the violation under this section or under s. 346.94 (16).

1           **(2)** A traffic officer may proceed under sub. (3) instead of stopping, pursuing  
2 or issuing a citation to the person operating the vehicle or having the vehicle under  
3 his or her control at the time of a violation of s. 346.94 (16).

4           **(3)** (a) Within 72 hours after observing the violation or receiving information  
5 that provides a reasonable basis for the belief that a violation has been committed  
6 or that an investigation of a possible violation is warranted, the traffic officer shall  
7 investigate the violation and may prepare a uniform traffic citation under s. 345.11  
8 for the violation and, within 96 hours after observing the violation or receiving  
9 information that provides a reasonable basis for the belief that a violation has been  
10 committed or that an investigation of a possible violation is warranted, any traffic  
11 officer employed by the authority issuing the citation may personally serve it upon  
12 the owner of the vehicle.

13           (b) If with reasonable diligence the owner cannot be served under par. (a),  
14 service may be made by leaving a copy of the citation at the owner's usual place of  
15 abode within this state in the presence of a competent member of the family who is  
16 at least 14 years of age and who shall be informed of the contents thereof. Service  
17 under this paragraph may be made by any traffic officer employed by the authority  
18 issuing the citation and shall be performed within 96 hours after the violation was  
19 observed or the traffic officer received information that provided a reasonable basis  
20 for the belief that a violation had been committed or that an investigation of a  
21 possible violation was warranted.

22           (c) If with reasonable diligence the owner cannot be served under par. (a) or (b)  
23 or if the owner lives outside of the jurisdiction of the issuing authority, service may  
24 be made by certified mail addressed to the owner's last-known address. Service  
25 under this paragraph shall be performed by posting the certified mail within 96

1 hours after the violation was observed or the traffic officer received information that  
2 provided a reasonable basis for the belief that a violation had been committed or that  
3 an investigation of a possible violation was warranted.

4 (4) Defenses to the imposition of liability under this section include:

5 (a) That a report that the vehicle was stolen was given to a traffic officer before  
6 the violation occurred or within a reasonable time after the violation occurred.

7 (b) If the owner of the vehicle provides a traffic officer employed by the  
8 authority issuing the citation with the name and address of the person operating the  
9 vehicle or having the vehicle under his or her control at the time of the violation and  
10 sufficient information for the officer to determine that probable cause does not exist  
11 to believe that the owner of the vehicle was operating the vehicle or having the  
12 vehicle under his or her control at the time of the violation, then the owner of the  
13 vehicle shall not be liable under this section or under s. 346.94 (16).

14 (c) If the vehicle is owned by a lessor of vehicles and at the time of the violation  
15 the vehicle was in the possession of a lessee, and the lessor provides a traffic officer  
16 employed by the authority issuing the citation with the information required under  
17 s. 343.46 (3), then the lessee and not the lessor shall be liable under this section or  
18 under s. 346.94 (16).

19 (d) If the vehicle is owned by a dealer, as defined in s. 340.01 (11) (intro.) but  
20 including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the  
21 violation the vehicle was being operated by or was under the control of any person  
22 on a trial run, and if the dealer provides a traffic officer employed by the authority  
23 issuing the citation with the name, address and operator's license number of the  
24 person operating the vehicle or having the vehicle under his or her control on a trial

1 run, then that person, and not the dealer, shall be liable under this section or under  
2 the applicable provision of s. 346.94 (16).

3 **SECTION 4.** 346.95 (1) of the statutes is amended to read:

4 346.95 (1) Any person violating s. 346.87, 346.88, 346.89 (2), 346.90 to 346.92  
5 or 346.94 (1), (9), (10), (11), (12), or (15) ~~or (16)~~ may be required to forfeit not less than  
6 \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100  
7 for the 2nd or subsequent conviction within a year.

8 **SECTION 5.** 346.95 (5e) of the statutes is created to read:

9 346.95 (5e) Any person violating s. 346.94 (16) may be required to forfeit not  
10 less than \$40 nor more than \$80 for the first offense and not less than \$100 nor more  
11 than \$200 for the 2nd or subsequent conviction within a year.

12 **SECTION 6.** 346.95 (5g) of the statutes is created to read:

13 346.95 (5g) A vehicle owner or other person found liable under s. 346.945 may  
14 be required to forfeit not less than \$40 nor more than \$80 for the first offense and not  
15 less than \$100 nor more than \$200 for the 2nd or subsequent conviction within a year.  
16 Imposition of liability under s. 346.945 shall not result in suspension or revocation  
17 of a person's operating license under s. 343.30, nor shall it result in demerit points  
18 being recorded on a person's driving record under s. 343.32 (2) (a).

19 **SECTION 7.** 347.38 (1) of the statutes is renumbered 347.38 (1) (a) and amended  
20 to read:

21 347.38 (1) (a) No person shall operate a motor vehicle upon a highway unless  
22 such motor vehicle is equipped with a horn in good working order and capable of  
23 emitting sound audible under normal conditions from a distance of not less than 200  
24 feet, ~~but~~

1           **(b) Notwithstanding par. (a),** no person shall at any time use a horn otherwise  
2 than as a reasonable warning or make any unnecessary or unreasonably loud or  
3 harsh sound by means of a horn or other warning device.

4           **SECTION 8.** 347.385 of the statutes is created to read:

5           **347.385 Vehicle owner's liability for horns and warning devices. (1) (a)**

6 The owner of a vehicle involved in a violation of s. 347.38 (1) (b) shall be presumed  
7 liable for the violation as provided in this section.

8           (b) Notwithstanding par. (a), no owner of a vehicle involved in a violation of s.  
9 347.38 (1) (b) may be convicted under this section if the person operating the vehicle  
10 or having the vehicle under his or her control at the time of the violation has been  
11 convicted for the violation under this section or under s. 347.38 (1) (b).

12           **(2)** A traffic officer may proceed under sub. (3) instead of stopping, pursuing  
13 or issuing a citation to the person operating the vehicle or having the vehicle under  
14 his or her control at the time of a violation of s. 347.38 (1) (b).

15           **(3) (a)** Within 72 hours after observing the violation or receiving information  
16 that provides a reasonable basis for the belief that a violation has been committed  
17 or that an investigation of a possible violation is warranted, the traffic officer shall  
18 investigate the violation and may prepare a uniform traffic citation under s. 345.11  
19 for the violation and, within 96 hours after observing the violation or receiving  
20 information that provides a reasonable basis for the belief that a violation has been  
21 committed or that an investigation of a possible violation is warranted, any traffic  
22 officer employed by the authority issuing the citation may personally serve it upon  
23 the owner of the vehicle.

24           (b) If with reasonable diligence the owner cannot be served under par. (a),  
25 service may be made by leaving a copy of the citation at the owner's usual place of



1 abode within this state in the presence of a competent member of the family at least  
2 14 years of age, who shall be informed of the contents thereof. Service under this  
3 paragraph may be made by any traffic officer employed by the authority issuing the  
4 citation and shall be performed within 96 hours after the violation was observed or  
5 the traffic officer received information that provided a reasonable basis for the belief  
6 that a violation had been committed or that an investigation of a possible violation  
7 was warranted.

8 (c) If with reasonable diligence the owner cannot be served under par. (a) or (b)  
9 or if the owner lives outside of the jurisdiction of the issuing authority, service may  
10 be made by certified mail addressed to the owner's last-known address. Service  
11 under this paragraph shall be performed by posting the certified mail within 96  
12 hours after the violation was observed or the traffic officer received information that  
13 provided a reasonable basis for the belief that a violation had been committed or that  
14 an investigation of a possible violation was warranted.

15 (4) Defenses to the imposition of liability under this section include:

16 (a) That a report that the vehicle was stolen was given to a traffic officer before  
17 the violation occurred or within a reasonable time after the violation occurred.

18 (b) If the owner of the vehicle provides a traffic officer employed by the  
19 authority issuing the citation with the name and address of the person operating the  
20 vehicle or having the vehicle under his or her control at the time of the violation and  
21 sufficient information for the officer to determine that probable cause does not exist  
22 to believe that the owner of the vehicle was operating the vehicle or having the  
23 vehicle under his or her control at the time of the violation, then the owner of the  
24 vehicle shall not be liable under this section or under s. 347.38 (1) (b).

1 (c) If the vehicle is owned by a lessor of vehicles and at the time of the violation  
2 the vehicle was in the possession of a lessee, and the lessor provides a traffic officer  
3 employed by the authority issuing the citation with the information required under  
4 s. 343.46 (3), then the lessee and not the lessor shall be liable under this section or  
5 under s. 347.38 (1) (b).

6 (d) If the vehicle is owned by a dealer, as defined in s. 340.01 (11) (intro.) but  
7 including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the  
8 violation the vehicle was being operated by or was under the control of any person  
9 on a trial run, and if the dealer provides a traffic officer employed by the authority  
10 issuing the citation with the name, address and operator's license number of the  
11 person operating the vehicle or having the vehicle under his or her control on a trial  
12 run, then that person, and not the dealer, shall be liable under this section or under  
13 s. 347.38 (1) (b).

14 **SECTION 9.** 347.50 (1g) of the statutes is created to read:

15 347.50 (1g) A vehicle owner or other person found liable under s. 347.385 may  
16 be required to forfeit not less than \$10 nor more than \$200. Imposition of liability  
17 under s. 347.385 shall not result in suspension or revocation of a person's operating  
18 license under s. 343.30, nor shall it result in demerit points being recorded on a  
19 person's driving record under s. 343.32 (2) (a).

20 **SECTION 10. Initial applicability.**

21 (1) This act first applies to violations committed on the effective date of this  
22 subsection, but does not preclude the counting of other violations as prior violations  
23 for sentencing a person, impounding or seizing a sound-producing device or for  
24 suspending or revoking a person's operating privilege.

25 (END)