



2013 ASSEMBLY BILL 423

October 17, 2013 – Introduced by Representative ZEPNICK. Referred to Committee on Criminal Justice.

- 1 **AN ACT to create** 341.66 of the statutes; **relating to:** impoundment of motor
2 vehicle registration plates for certain operating while intoxicated and other
3 offenses and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, no one may operate a motor vehicle while under the influence of an intoxicant or with a prohibited blood alcohol concentration or with a detectable amount of a restricted controlled substance in his or her blood. A person who does so, or who improperly refuses a field sobriety test, is guilty of an offense related to operating while intoxicated (OWI-related offense) and is subject to forfeitures or fines and periods of imprisonment that increase with each subsequent OWI-related offense.

Under this bill, an “impoundment violation” is an OWI-related offense committed within ten years of a prior OWI-related offense, with a blood alcohol concentration of more than twice the prohibited blood alcohol concentration, or with a minor passenger under 16 years of age and more than 36 months younger than the violator. Under this bill, when a person’s operating privilege is revoked for an impoundment violation, the Department of Transportation (DOT) must impound the registration plate of any vehicle owned by, or registered or leased in the name of, the violator and, in certain cases, the vehicle involved in the impoundment violation, whether or not owned by the violator. A person whose plates are impounded may seek administrative or judicial review of an impoundment order.

If the owner of a vehicle subject to an impoundment order meets certain conditions, he or she may apply to DOT for special registration plates during the

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impoundment period. These special plates must bear a series of numbers or letters that readily identify the plate as a special plate to traffic officers. For one year after the impoundment order, DOT may not issue registration plates, other than these special plates, for a vehicle subject to an impoundment order. This bill also limits the sale or transfer of a vehicle subject to an impoundment order during the impoundment period.

Also under this bill, persons who fail to comply with an impoundment order, attempt to obtain registration plates other than special plates for a vehicle subject to an impoundment order, operate a vehicle subject to an impoundment order unless equipped with special plates, operate a vehicle not equipped with special plates while subject to an impoundment order, violate vehicle transfer requirements, or make certain false statements are guilty of a misdemeanor and may be fined not more than \$500 or imprisoned for not more than 30 days, or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 341.66 of the statutes is created to read:

2 **341.66 Administrative impoundment of registration plates. (1)**

3 DEFINITIONS. In this section:

4 (a) "Close associate" means any of the following:

5 1. A parent, stepparent, or guardian.

6 2. A person related by blood, marriage, or adoption who is a brother, sister,
7 stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent,
8 great-grandparent, great-uncle, or great-aunt.

9 3. A person residing together with another.

10 4. A person who regularly associates and communicates with another outside
11 of a workplace setting.

12 (b) "Impoundment violation" means:

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1 1. A violation subject to counting under s. 343.307 (2) under any of the following
2 circumstances:

3 a. Within 10 years of a prior conviction, suspension, or revocation counted
4 under s. 343.307 (2).

5 b. If the violator had an alcohol concentration of more than twice the prohibited
6 alcohol concentration.

7 c. If a minor passenger under 16 years of age and more than 36 months younger
8 than the violator was in the vehicle at the time of the violation.

9 2. A violation of s. 343.05 by a person to whom s. 343.06 (1) (h) applies.

10 (c) "Violator" means a person who was driving or operating a motor vehicle
11 when an impoundment violation occurred.

12 **(2) IMPOUNDMENT ORDER.** (a) The department shall issue a registration plate
13 impoundment order when any of the following occurs:

14 1. A person's operating privilege is revoked for an impoundment violation.

15 2. A person is arrested for or charged with an impoundment violation under
16 sub. (1) (b) 2.

17 (b) Except as provided in par. (c), the impoundment order shall require the
18 impoundment of the registration plates of the motor vehicle involved in the
19 impoundment violation and of any other motor vehicle owned by, or registered or
20 leased in the name of, the violator.

21 (c) An impoundment order may not require the impoundment of the
22 registration plates of any of the following:

23 1. A rental vehicle that is leased in the name of the violator and is part of a fleet
24 of 2 or more motor vehicles that are rented for periods of 30 days or less.

25 2. A vehicle registered in another state.

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1 **(3) NOTICE OF IMPOUNDMENT.** (a) An impoundment order under sub. (2) is
2 effective when the department provides the violator or registered owner of the motor
3 vehicle with a notice of the department's intent to impound the vehicle's registration
4 plates and the registration plate impoundment order. If mailed, the order of
5 impoundment is effective 3 days after mailing to the last-known address of the
6 violator or registered owner.

7 (b) The notice under par. (a) shall include information regarding the
8 requirements of sub. (4), the procedure to obtain new registration plates under sub.
9 (5), the right to obtain administrative review under sub. (6), and the right to obtain
10 judicial review under sub. (7).

11 (c) If a notice and order under par. (a) are provided to a registered owner other
12 than the violator, the department shall also provide a temporary vehicle permit for
13 the vehicle that is valid for 45 days. The permit shall be in a form determined by the
14 department and, whenever practicable, shall be posted on the left side of the inside
15 rear window of the vehicle.

16 (d) 1. If a law enforcement officer arrests a person for an impoundment
17 violation under sub. (1) (b) 2., the officer shall provide the person with a notice of the
18 department's intent to impound the vehicle's registration plates and a registration
19 plate impoundment order. If the vehicle involved in the violation is accessible to the
20 officer at the time of providing the impoundment order, the officer shall seize and
21 destroy the vehicle's registration plates.

22 2. The officer shall provide the department with copies of the notice and the
23 order under this paragraph and, if registration plates have been seized and
24 destroyed under this paragraph, a notice that the registration plates impounded
25 under this paragraph have been destroyed.

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1 **(4) SURRENDER OF REGISTRATION PLATES.** (a) Except as provided in par. (c), not
2 more than 7 days after an impoundment order under sub. (2) becomes effective, a
3 person subject to the order shall surrender all registration plates subject to the order
4 that were not seized under sub. (3) (d). The registration plates shall be surrendered
5 to a law enforcement agency together with a copy of the impoundment order.

6 (b) A law enforcement agency that receives registration plates under par. (a)
7 shall destroy the plates and provide the department with a copy of the impoundment
8 order and a notification that the plates have been destroyed.

9 (c) A violator may file a sworn statement with the department not more than
10 7 days after an impoundment order under sub. (2) becomes effective, providing any
11 material information relating to the impoundment order. If the violator states that
12 the vehicle has been sold or destroyed, he or she shall supply the date, name, location,
13 and address of the person or entity that purchased or destroyed the vehicle.

14 (d) The department shall rescind the impoundment order if the department
15 determines that the impoundment order was not properly issued or if it finds that
16 the vehicle has been sold or destroyed and is no longer available for use by the
17 violator.

18 **(5) RECISSION OF IMPOUNDMENT ORDER.** (a) The department shall rescind an
19 impoundment order under sub. (2) that was provided to a registered owner other
20 than the violator if any of the following applies:

21 1. The violator possessed a valid operator's license on the date of the
22 impoundment violation and the owner files with the department a sworn statement,
23 in a form prescribed by the department, containing all of the following:

24 a. A statement that the owner is the registered owner of the vehicle from which
25 registration plates have been impounded under this section.

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1 b. A statement that the owner is the current owner and possessor of the vehicle
2 used in the violation.

3 c. The date on which the violator obtained the vehicle from the owner.

4 d. The residence addresses of the owner and the violator on the date that the
5 violator obtained the vehicle from the owner.

6 e. A statement that the owner was not a passenger in the vehicle at the time
7 of the impoundment violation.

8 f. A statement that the owner knows that the violator may not drive or operate
9 a motor vehicle without a valid operator's license.

10 2. The violator did not possess a valid operator's license on the date of the
11 impoundment violation and the owner made a report to a law enforcement agency
12 before the impoundment violation stating that the vehicle had been taken from the
13 person's possession or was being used without permission.

14 (b) The department may issue special registration plates under sub. (10) to a
15 registered owner, other than the violator, if the violator did not possess a valid
16 operator's license and the owner did not make a report under par. (a) 2. The plates
17 shall be valid for a period of one year from the effective date of the impoundment
18 order under sub. (2). After this period, the owner may apply for another registration
19 plate under this chapter.

20 (c) If registration plates were seized and destroyed and the impoundment order
21 is rescinded, the owner shall receive new registration plates, of the same kind as were
22 impounded under this section, at no cost.

23 **(6) ADMINISTRATIVE REVIEW.** (a) At any time during the effective period of an
24 impoundment order under sub. (2), a person subject to the order may request, in
25 writing, a review of the order. Upon receiving a request for review, the department

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1 shall review the order, the evidence upon which the order was based, and any other
2 material information and determine whether sufficient cause exists to sustain the
3 order. The department shall provide a written decision not more than 15 days after
4 receiving the request.

5 (b) If a registered owner's operating privilege was not revoked as a result of the
6 plate impoundment violation, the department may authorize the issuance of new
7 registration plates to the owner at no cost.

8 (c) The department's decision under this section is not subject to review under
9 ch. 227.

10 **(7) JUDICIAL REVIEW.** (a) Not later than 30 days after an impoundment order
11 under sub. (2) becomes effective, a person may petition for judicial review of the
12 order. The petition must state with specificity the grounds upon which the petitioner
13 seeks rescission of the order for impoundment. The petition must include all of the
14 following:

- 15 1. Proof of service of a copy of the petition on the department.
- 16 2. The petitioner's date of birth.
- 17 3. The petitioner's operator's license number.
- 18 4. The date of the plate impoundment violation.
- 19 5. The name of the violator.
- 20 6. The name of the law enforcement agency that issued the plate impoundment
21 order.

22 (b) The filing of a petition under this subsection does not stay the impoundment
23 order. The reviewing court may order a stay of the balance of the impoundment
24 period if the hearing has not been conducted within 60 days after filing of the
25 petition.

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1 (c) The scope of a hearing under this subsection is limited to:

2 1. If the impoundment order is based on an impoundment violation under sub.
3 (1) (b) 1. b. or c., whether the law enforcement officer had probable cause to believe
4 the violator committed the impoundment violation and whether the evidence
5 demonstrates that the plate impoundment violation occurred.

6 2. If the impoundment order is not based on an impoundment violation under
7 sub. (1) (b) 1. b. or c., whether the law enforcement officer had probable cause to
8 believe the violator committed the plate impoundment violation.

9 (d) In a hearing under this subsection, all of the following records are
10 admissible evidence:

11 1. Certified copies of the violator's driving record.

12 2. Certified copies of vehicle registration records bearing the violator's name.

13 (e) The court shall order either that the impoundment be rescinded or
14 sustained and forward the order to the department. The court shall file its order not
15 more than 14 days after the hearing.

16 **(8) RESCISSION OF REVOCATION AND DISMISSAL.** If the charge for the impoundment
17 violation that is the basis for an impoundment order under sub. (2) is dismissed with
18 prejudice and the applicant's operator's license revocation is rescinded, upon
19 application, the department shall issue new registration plates, of the same kind as
20 were impounded under this section, for the motor vehicle at no cost if the applicant
21 provides a copy of the order rescinding the revocation of operating privilege and the
22 order dismissing the charge that is the basis for the impoundment order.

23 **(9) CHARGE FOR REINSTATEMENT OF PLATES IN CERTAIN SITUATIONS.** When the
24 department reinstates a person's registration plates after impoundment for a reason

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1 other than described in sub. (8), the department shall charge the person \$50 for each
2 vehicle for which the registration plates are being reinstated.

3 **(10) SPECIAL REGISTRATION PLATES.** (a) At any time during the effective period
4 of an impoundment order, a violator or owner may apply to the department for special
5 registration plates that bear a special series of numbers or letters so as to be readily
6 identified by traffic officers. The department may issue the plates if any of the
7 following applies:

8 1. The violator has a qualified licensed driver. The violator must identify the
9 driver to qualify under this subdivision.

10 2. The violator or registered owner possesses a valid occupational license issued
11 under s. 343.10.

12 3. The registered owner is not the violator and the registered owner possesses
13 a valid operator's license.

14 4. A member of the registered owner's household possesses a valid operator's
15 license.

16 5. The violator has been reissued a valid operator's license.

17 (b) The department may not issue registration plates other than special plates
18 for a vehicle subject to an impoundment order under sub. (2) for a period of one year
19 from the date of the order. If the owner is the violator, the department may not issue
20 registration plates unless the person has been reissued a valid operator's license.

21 (c) A violator may not apply for registration plates for a vehicle before the
22 person's operating privilege is reinstated.

23 (d) The department shall charge a fee of \$50 for each vehicle for which special
24 plates are requested.

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1 (e) Notwithstanding pars. (a) to (d), the department shall issue upon request
2 registration plates other than special plates for a vehicle for which the registration
3 plates have been impounded if any of the following applies:

4 1. The impoundment order is rescinded.

5 2. The vehicle is transferred under sub. (11).

6 3. The vehicle is transferred to a licensed automobile dealer, a financial
7 institution that has submitted a repossession affidavit, or a government agency.

8 **(11) SALE OF VEHICLE SUBJECT TO IMPOUNDMENT ORDER.** A registered owner may
9 not sell or transfer a motor vehicle during the time its registration plates have been
10 ordered impounded or during the time its registration plates bear a special series of
11 numbers or letters, unless all of the following apply:

12 (a) The sale is for a valid consideration.

13 (b) The transferee and the registered owner are not close associates.

14 (c) The transferee provides a sworn statement in a form prescribed by the
15 department stating all of the following:

16 1. That the transferee and the violator are not close associates.

17 2. That the transferee understands that the vehicle is subject to an
18 impoundment order.

19 3. That the transferee understands that it is a crime to file a false statement
20 or to allow the previously registered owner to drive, operate, or be in control of the
21 vehicle during the impoundment period.

22 **(12) ACQUIRING ANOTHER VEHICLE.** Except as provided in sub. (10), the
23 department may not issue registration plates for which a violator applies during the
24 effective period of the registration plate impoundment under this section.

25 **(13) PENALTIES.** (a) No person may do any of the following:

