



## 1995 SENATE BILL 393

November 1, 1995 – Introduced by Senators HUELSMAN, DRZEWIECKI and BUETTNER, cosponsored by Representatives FOTI, LEHMAN, DUFF, GOETSCH, HUBER, LADWIG, F. LASEE, SCHNEIDERS, KELSO, ZIEGELBAUER, WIRCH, GROBSCHMIDT, VRAKAS, GUNDERSON, NASS and GREEN. Referred to Committee on Judiciary.

1 **AN ACT to amend** 346.65 (6) (b), 346.65 (6) (c) and 346.65 (6) (e) (intro.); **to repeal**  
2 **and recreate** 346.65 (6) (a) 1. and 346.65 (6) (a) 2.; and **to create** 346.65 (6) (a)  
3 1m. of the statutes; **relating to:** seizure of motor vehicles in cases involving  
4 intoxicated operation of a motor vehicle.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a court may order the seizure, immobilization or equipping with an ignition interlock device of a motor vehicle owned by a person if the person meets both of the following conditions:

1. Is convicted of operating a motor vehicle while under the influence of an intoxicant, controlled substance or a combination of an intoxicant and a controlled substance (OWI) or has his or her operating privilege revoked because he or she improperly refused to submit to a test to determine if he or she was under the influence of an intoxicant or a controlled substance.

2. Has 2 or more prior suspensions, revocations or convictions related to OWI within a 10-year period.

If the person who is convicted of an OWI offense or who has his or her operating privilege revoked because he or she improperly refused to submit to an OWI test has 3 or more prior suspensions, revocations or convictions related to OWI within a 10-year period, current law requires the court to seize a motor vehicle owned by the person.

Under this bill, if the court orders the seizure of a motor vehicle, the court must order the seizure of the specific motor vehicle that was operated at the time of the offense or refusal if the motor vehicle was owned by the person committing the offense or improper refusal.

If a motor vehicle is immobilized or seized, under current law the law enforcement agency is required to notify the owner and any lienholder of that action by certified mail. This bill allows the law enforcement agency to personally or by certified mail notify the owner and any lienholder of that action.

Current law requires the district attorney of the county where the motor vehicle was seized to commence an action to forfeit the motor vehicle to the state so that the vehicle may be sold and part of the proceeds used to pay some of the costs related to the OWI arrest and conviction. Under this bill, the district attorney of the county where the OWI conviction occurred is also permitted to commence the forfeiture action. In addition, the bill allows a forfeited motor vehicle to be used for official purposes, junked or sold.

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.** 346.65 (6) (a) 1. of the statutes is repealed and recreated to read:

2           346.65 (6) (a) 1. If the person whose operating privilege is revoked under s.  
3 343.305 (10) or who is convicted of a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or  
4 2., 940.09 (1) (a) or (b) or 940.25 (1) (a) or (b) has 2 prior suspensions, revocations or  
5 convictions within a 10-year period that would be counted under s. 343.307 (1), the  
6 court shall do one of the following if the person owns a motor vehicle:

7           a. Order a law enforcement officer to seize the motor vehicle owned and  
8 operated by the person at the time of the refusal or violation or, if the motor vehicle  
9 operated at the time of the offense was not owned by the person, order a law  
10 enforcement officer to seize a motor vehicle owned by the person.

11           b. Order a law enforcement officer to equip a motor vehicle owned by the person  
12 with an ignition interlock device.

13           c. Order a law enforcement officer to immobilize a motor vehicle owned by the  
14 person.

15           **SECTION 2.** 346.65 (6) (a) 1m. of the statutes is created to read:

16           346.65 (6) (a) 1m. The court shall not order that a motor vehicle be equipped  
17 with an ignition interlock device or immobilized under subd. 1. if that would result

1 in undue hardship or extreme inconvenience or would endanger the health and  
2 safety of a person.

3 **SECTION 3.** 346.65 (6) (a) 2. of the statutes is repealed and recreated to read:

4 346.65 (6) (a) 2. If the person whose operating privilege is revoked under s.  
5 343.305 (10) or who is convicted of a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or  
6 2., 940.09 (1) (a) or (b) or 940.25 (1) (a) or (b) has 3 or more prior suspensions,  
7 revocations or convictions within a 10-year period that would be counted under s.  
8 343.307 (1) and owns a motor vehicle, the court shall order a law enforcement officer  
9 to seize the motor vehicle owned and operated by the person at the time of the refusal  
10 or offense or, if the motor vehicle operated at the time of the offense was not owned  
11 by the person, order a law enforcement officer to seize a motor vehicle owned by the  
12 person.

13 **SECTION 4.** 346.65 (6) (b) of the statutes is amended to read:

14 346.65 (6) (b) Within 10 days after seizing or immobilizing a motor vehicle  
15 under par. (a), the law enforcement agency that seized or immobilized the vehicle  
16 shall provide notice of the seizure or immobilization personally or by certified mail  
17 to the owner of the motor vehicle and to all lienholders of record. The notice shall set  
18 forth the year, make, model and serial number of the motor vehicle, where the motor  
19 vehicle is located, the reason for the seizure or immobilization, and the forfeiture  
20 procedure if the vehicle was seized. When a motor vehicle is seized under this  
21 section, the law enforcement agency that seized the vehicle shall place the motor  
22 vehicle in a secure place subject to the order of the court.

23 **SECTION 5.** 346.65 (6) (c) of the statutes is amended to read:

24 346.65 (6) (c) The district attorney of the county where the motor vehicle was  
25 seized or in which the person was convicted shall commence an action to forfeit the

1 motor vehicle within 30 days after the motor vehicle is seized. The action shall name  
2 the owner of the motor vehicle and all lienholders of record as parties. The forfeiture  
3 action shall be commenced by filing a summons, complaint and affidavit of the law  
4 enforcement agency with the clerk of circuit court. Upon service of an answer, the  
5 action shall be set for hearing within 60 days after the service of the answer. If no  
6 answer is served or no issue of law or fact joined and the time for that service or  
7 joining of issues has expired, the court may render a default judgment as provided  
8 in s. 806.02.

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

10 346.65 (6) (e) (intro.) If, upon default or after a hearing, the court determines  
11 that the motor vehicle is forfeited to the state, the law enforcement agency that  
12 seized the motor vehicle shall dispose of may retain the motor vehicle by sealed bid  
13 or auction sale following the procedure under s. 342.40 (3) (c) for official use, junk the  
14 motor vehicle or sell the motor vehicle, except as provided in par. (em). The law  
15 enforcement agency that seized the motor vehicle shall distribute 50% of the  
16 proceeds of ~~the~~ a sale in the following order:

17 **SECTION 7. Initial applicability.**

18 (1) This act first applies to offenses or refusals committed on the effective date  
19 of this subsection.

20 (END)