

CHAPTER 346

RULES OF THE ROAD

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GENERAL PROVISIONS

346.01 Words and phrases defined. Words and phrases defined in s. 340.01 are used in the same sense in this chapter unless a different definition is specifically provided.

346.02 Applicability of chapter. (1) APPLIES PRIMARILY UPON HIGHWAYS. This chapter applies exclusively upon highways except as otherwise expressly provided in this chapter.

(2) APPLICABILITY TO PERSONS RIDING OR DRIVING ANIMALS OR PROPELLING PUSH CARTS. Every person riding an animal or driving any animal-drawn vehicle or propelling any push cart upon a roadway is granted all the rights and is subject to all the duties which this chapter grants or applies to the operator

of a vehicle, except those provisions of this chapter which by their very nature would have no application.

(4) APPLICABILITY TO PERSONS RIDING BICYCLES AND MOTOR BICYCLES. (a) Subject to the special provisions applicable to bicycles, every person riding a bicycle upon a roadway is granted all the rights and is subject to all the duties which this chapter grants or applies to the operator of a vehicle, except those provisions which by their express terms apply only to motor vehicles or which by their very nature would have no application to bicycles. For purposes of this chapter, provisions which apply to bicycles also apply to motor bicycles, except as otherwise expressly provided.

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(b) Provisions which apply to the operation of bicycles in crosswalks under ss. 346.23, 346.24, 346.37 (1) (a) 2, (c) 2 and (d) 2 and 346.38 do not apply to motor bicycles.

(5) **APPLICABILITY TO PUBLIC OFFICERS AND EMPLOYEES.** The provisions of this chapter applicable to operators of vehicles apply also to operators of vehicles owned by or operated by or for any governmental agency, including the United States government, subject to the specific exceptions set forth in this section and s. 346.03.

(6) **APPLICABILITY TO PERSONS WORKING ON HIGHWAYS.** This chapter applies to persons, teams, motor vehicles and road machinery while traveling to or from highway construction or maintenance work but the provisions of ss. 346.05 (3), 346.06 to 346.17, 346.28; 346.29 (2), 346.31 to 346.36, 346.52 to 346.56 and 346.59 do not apply to persons, teams, motor vehicles or road machinery when actually engaged in maintenance or construction work upon a highway.

(7) **APPLICABILITY OF PROVISIONS REQUIRING SIGNPOSTING.** No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section is effective even though no signs are erected or in place.

(8) **APPLICABILITY TO PEDESTRIAN WAYS.** (a) All of the applicable provisions of this chapter pertaining to highways, streets, alleys, roadways and sidewalks also apply to pedestrian ways. A pedestrian way means a walk designated for the use of pedestrian travel.

(b) Public utilities may be installed either above or below a pedestrian way, and assessments may be made therefor as if such pedestrian way were a highway, street, alley, roadway or sidewalk.

(9) **APPLICABILITY TO URBAN MASS TRANSIT SYSTEMS.** Every person operating an urban mass transportation vehicle or using related facilities is granted all the rights and is subject to all the duties which this chapter grants or applies to such persons, except those provisions of this chapter which by their very nature would have no application.

(10) **APPLICABILITY TO SNOWMOBILES.** The operator of a snowmobile upon a roadway shall in addition to the provisions of ch. 350 be subject to ss. 346.04, 346.06, 346.11, 346.14 (1), 346.18, 346.19, 346.20, 346.21, 346.26, 346.27, 346.33, 346.35, 346.37, 346.39, 346.40, 346.44, 346.46, 346.47, 346.48, 346.50 (1) (b), 346.51, 346.52, 346.53, 346.54, 346.55, 346.87, 346.88, 346.89, 346.90, 346.91, 346.92 (1) and 346.94 (1) and (9).

(11) **APPLICABILITY TO ALL-TERRAIN VEHICLES.** The operator of an all-terrain vehicle on a roadway is subject to ss. 346.04, 346.06, 346.11, 346.14 (1), 346.18, 346.19, 346.20, 346.21, 346.26, 346.27, 346.33, 346.35, 346.37, 346.39, 346.40, 346.44, 346.46, 346.47, 346.48, 346.50 (1) (b), 346.51, 346.52, 346.53, 346.54, 346.55, 346.71, 346.87, 346.88, 346.89, 346.90, 346.91, 346.92 (1) and 346.94 (1) and (9) but is not subject to any other provision of this chapter.

History: 1971 c. 125, 277; 1981 c. 390 s. 252; 1983 a. 243; 1985 a. 29, 69; 1989 a. 56 s. 259; 1989 a. 335 s. 89.

Discussion of state, county and tribal jurisdiction to regulate traffic on streets in housing projects that have been built and are maintained by Winnebago Tribe on tribal lands. 78 Atty. Gen. 122.

346.03 Applicability of rules of the road to authorized emergency vehicles. (1) The operator of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire

alarm, may exercise the privileges set forth in this section, but subject to the conditions stated in subs. (2) to (5).

(2) The operator of an authorized emergency vehicle may:

(a) Stop, stand or park, irrespective of the provisions of this chapter;

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) Exceed the speed limit;

(d) Disregard regulations governing direction of movement or turning in specified directions.

(3) The exemption granted the operator of an authorized emergency vehicle by sub. (2) (a) applies only when the operator of the vehicle is giving visual signal by means of at least one flashing, oscillating or rotating red light except that the visual signal given by a police vehicle may be by means of a blue light and a red light which are flashing, oscillating or rotating. The exemptions granted by sub. (2) (b), (c) and (d) apply only when the operator of the emergency vehicle is giving both such visual signal and also an audible signal by means of a siren or exhaust whistle, except as otherwise provided in sub. (4).

(4) A law enforcement officer operating a police vehicle shall otherwise comply with the requirements of sub. (3) relative to the giving of audible and visual signals but may exceed the speed limit without giving audible and visual signal under the following circumstances:

(a) If the officer is obtaining evidence of a speed violation.

(b) If the officer is responding to a call which the officer reasonably believes involves a felony in progress and the officer reasonably believes any of the following:

1. Knowledge of the officer's presence may endanger the safety of a victim or other person.

2. Knowledge of the officer's presence may cause the suspected violator to evade apprehension.

3. Knowledge of the officer's presence may cause the suspected violator to destroy evidence of a suspected felony or may otherwise result in the loss of evidence of a suspected felony.

4. Knowledge of the officer's presence may cause the suspected violator to cease the commission of a suspected felony before the officer obtains sufficient evidence to establish grounds for arrest.

(5) The exemptions granted the operator of an authorized emergency vehicle by this section do not relieve such operator from the duty to drive with due regard under the circumstances for the safety of all persons nor do they protect such operator from the consequences of his or her reckless disregard for the safety of others.

(6) Every law enforcement agency which uses authorized emergency vehicles shall provide written guidelines for its officers and employes regarding exceeding speed limits under the circumstances specified in sub. (4) and when otherwise in pursuit of actual or suspected violators. The guidelines shall consider, among other factors, road conditions, density of population, severity of crime and necessity of pursuit by vehicle. The guidelines are not subject to requirements for rules under ch. 227.

History: 1983 a. 56; 1985 a. 82, 143; 1987 a. 126.

Sub. (5) limits the exercise of privileges granted by (2). City of Madison v. Polenska, 143 W. (2d) 525, 421 NW (2d) 862 (Ct. App. 1988).

See note to 340.01, citing 77 Atty. Gen. 214.

Police civil liability and the law of high speed pursuit. Zevitz, 70 MLR 237 (1987).

346.04 Obedience to traffic officers, signs and signals; fleeing from officer. (1) No person shall fail or refuse to comply with any lawful order, signal or direction of a traffic officer.

(2) No operator of a vehicle shall disobey the instructions of any official traffic sign or signal unless otherwise directed by a traffic officer.

(3) No operator of a vehicle, after having received a visual or audible signal from a traffic officer, or marked police vehicle, shall knowingly flee or attempt to elude any traffic officer by wilful or wanton disregard of such signal so as to interfere with or endanger the operation of the police vehicle, or the traffic officer or other vehicles or pedestrians, nor shall he increase the speed of his vehicle or extinguish the lights of his vehicle in an attempt to elude or flee.

Intent to elude unmarked police car is difficult to prove since many authorized non-police emergency vehicles resemble such cars; violation of 346.19 is intrinsic to violation of 346.04 (3) [and is easier to prove in such cases]. 65 Atty. Gen. 27.

Unmarked police vehicle displaying red and blue lights isn't marked vehicle for purposes of (3). 76 Atty. Gen. 214.

DRIVING, MEETING, OVERTAKING AND PASSING

346.05 Vehicles to be driven on right side of roadway; exceptions. (1) Upon all roadways of sufficient width the operator of a vehicle shall drive on the right half of the roadway and in the right-hand lane of a 3-lane highway, except:

(a) When making an approach for a left turn under circumstances in which the rules relating to left turns require driving on the left half of the roadway; or

(b) When overtaking and passing under circumstances in which the rules relating to overtaking and passing permit or require driving on the left half of the roadway; or

(c) When the right half of the roadway is closed to traffic while under construction or repair; or

(d) When overtaking and passing pedestrians, animals or obstructions on the right half of the roadway; or

(e) When driving in a particular lane in accordance with signs or markers designating such lane for traffic moving in a particular direction or at designated speeds; or

(f) When the roadway has been designated and posted for one-way traffic, subject, however, to the rule stated in sub. (3) relative to slow moving vehicles.

(2) The operator of a vehicle actually engaged in constructing or maintaining the highway may operate on the left-hand side of the highway; however, whenever such operation takes place during the hours of darkness the vehicle shall be lighted as required by s. 347.23.

(3) Any vehicle proceeding upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand edge or curb of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

Cross Reference: See 346.59 for minimum speed regulation and duty of slow drivers.

346.06 Meeting of vehicles. Operators of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each operator shall give to the other at least one-half of the main traveled portion of the roadway as nearly as possible.

346.07 Overtaking and passing on the left. The following rules govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules stated in ss. 346.075 (2) and 346.08 to 346.11:

(1) The operator of an overtaking motor vehicle not within a business or residence district shall give audible warning with his warning device before passing or attempting to pass on the left a vehicle proceeding in the same direction. This subsection shall not apply on a highway having 2 or more lanes available for traffic in the same direction, except when reasonably necessary to warn the operator of the vehicle about to be passed.

(2) The operator of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(3) Except when overtaking and passing on the right is permitted, the operator of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

History: 1971 c. 208; 1985 a. 301 s. 4.

The necessity of an audible warning prior to passing a vehicle applies only to a vehicle passing on the left, since the vehicle given the warning is required by the statute to yield to the right. *Bode v. Buchman*, 68 W (2d) 276, 228 NW (2d) 718.

Failure to warn before passing was not necessarily causal negligence. *Westfall v. Kottke*, 110 W (2d) 86, 328 NW (2d) 481 (1983).

346.075 Overtaking and passing bicycles and motor buses. (1) The operator of a motor vehicle overtaking a bicycle proceeding in the same direction shall exercise due care, leaving a safe distance, but in no case less than 3 feet clearance when passing the bicycle and shall maintain clearance until safely past the overtaken bicycle.

(2) Except as provided in s. 346.48, if the operator of a motor vehicle overtakes a motor bus which is stopped at an intersection on the right side of the roadway and is receiving or discharging passengers, the operator shall pass at a safe distance to the left of the motor bus and shall not turn to the right in front of the motor bus at that intersection.

History: 1973 c. 182; 1977 c. 208; 1985 a. 301.

346.08 When overtaking and passing on the right permitted. The operator of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety and only if he can do so without driving off the pavement or main-traveled portion of the roadway, and then only under the following conditions:

(1) When the vehicle overtaken is making or about to make a left turn; or

(2) Upon a street or highway with unobstructed pavement of sufficient width to enable 2 or more lines of vehicles lawfully to proceed, at the same time, in the direction in which the passing vehicle is proceeding; or

(3) Upon a one-way street or divided highway with unobstructed pavement of sufficient width to enable 2 or more lines of vehicles lawfully to proceed in the same direction at the same time.

346.09 Limitations on overtaking on left or driving on left side of roadway. (1) Upon any roadway where traffic is permitted to move in both directions simultaneously, the operator of a vehicle shall not drive to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be done in safety. In no case when overtaking and passing on a roadway divided into 4 or more clearly indicated lanes shall the operator of a vehicle drive to the left of the pavement marking indicating allocation of lanes to vehicles moving in the opposite direction or, in the absence of such marking, to the left of the center of the roadway. In no case shall the

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operator of a vehicle drive in a lane when signs or signals indicate that such lane is allocated exclusively to vehicles moving in the opposite direction.

(2) Upon any roadway where traffic is permitted to move in both directions simultaneously, the operator of a vehicle shall not drive on the left side of the center of the roadway upon any part of a grade or upon a curve in the roadway where the operator's view is obstructed for such a distance as to create a hazard in the event another vehicle might approach from the opposite direction.

(3) The operator of a vehicle shall not drive on the left side of the center of a roadway on any portion thereof which has been designated a no-passing zone, either by signs or by a yellow unbroken line on the pavement on the right-hand side of and adjacent to the center line of the roadway, provided such signs or lines would be clearly visible to an ordinarily observant person.

(4) Other provisions of this section notwithstanding, the operator of a vehicle shall not overtake and pass on the left any other vehicle which, by means of signals as required by s. 346.34 (1), indicates its intention to make a left turn.

346.10 When passing at a railroad crossing, intersection, bridge, viaduct or tunnel prohibited. (1) The operator of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction when approaching within 100 feet of or traversing any railroad crossing unless the roadway is of sufficient width for 2 or more lines of vehicles to lawfully proceed simultaneously in the direction in which such vehicle is proceeding or unless permitted or directed by a traffic officer to pass at such crossing.

(2) Subject to the exception stated in sub. (3), the operator of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction when approaching within 100 feet of or traversing any intersection unless the roadway is marked or posted for 2 or more lines of vehicles moving simultaneously in the direction in which such vehicle is proceeding or unless permitted or directed by a traffic officer to pass at such intersection.

(3) Outside of a business or residence district, the restrictions which sub. (2) places upon passing at an intersection apply only if such intersection has been designated by an official traffic sign or signal, regardless of whether such sign or signal was intended to guide, direct, warn or regulate traffic.

(4) The operator of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction when the view is obstructed upon approaching within 100 feet of any bridge, viaduct or tunnel unless the roadway is of sufficient width for 2 or more lines of vehicles to lawfully proceed simultaneously in the direction in which such vehicle is proceeding or unless permitted or directed by a traffic officer to so overtake and pass.

History: 1989 a. 105.

346.11 Passing or meeting frightened animal. Whenever a person riding, driving or leading an animal which is frightened gives a signal of distress to the operator of a motor vehicle by a raising of the hand or otherwise, the operator of the motor vehicle shall promptly stop his vehicle unless a movement forward is necessary to avoid an accident or injury and shall, upon request, stop all motive power until such animal is under control.

346.12 Driving through safety zones prohibited. The operator of a vehicle shall not at any time drive through or over a safety zone when such safety zone is clearly indicated.

346.13 Driving on roadways laned for traffic. Whenever any roadway has been divided into 2 or more clearly indicated lanes, including those roadways divided into lanes by clearly indicated longitudinal joints, the following rules, in addition to all others consistent with this section, apply:

(1) The operator of a vehicle shall drive as nearly as practicable entirely within a single lane and shall not deviate from the traffic lane in which he is driving without first ascertaining that such movement can be made with safety to other vehicles approaching from the rear.

(2) Upon a 2-way roadway which is divided into 3 lanes the operator of a vehicle shall not drive in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn, or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is marked or posted to give notice of such allocation.

(3) Notwithstanding sub. (2), when lanes have been marked or posted for traffic moving in a particular direction or at designated speeds, the operator of a vehicle shall drive in the lane designated.

In calculating time required to safely execute deviation from traffic lane or turn at intersection driver must consider condition of highway. See note to 895.045, citing *Thompson v. Howe*, 77 W (2d) 441, 253 NW (2d) 59.

Driver of front car had no duty to take precautionary action regarding car with headlights lit rapidly approaching from rear where approaching driver did not sound horn or flash lights. *Krainz v. Strle*, 81 W (2d) 26, 259 NW (2d) 707.

346.14 Distance between vehicles. (1) The operator of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the highway.

(2) (a) Upon a highway outside a business or residence district, the operator of any motor truck with a gross weight of more than 10,000 pounds or of any motor vehicle which is drawing or towing another vehicle where the combined gross weight is more than 10,000 pounds shall do all of the following:

1. Keep the vehicle he or she is operating at a distance of not less than 500 feet to the rear of any vehicle immediately preceding it, being driven in the same direction.

2. Leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger.

(b) This subsection does not apply upon any lane especially designated for use by motor trucks or by truck tractor-semitrailer or tractor-trailer units nor does it apply when overtaking and passing another vehicle, but the fact that the operator of any vehicle or combination of vehicles mentioned in this subsection follows the preceding vehicle more closely than 500 feet for one mile or more or follows more closely than 500 feet when the preceding vehicle is moving at the maximum speed then and there permissible for such following vehicle is prima facie evidence that the operator of such following vehicle is violating this subsection.

History: 1987 a. 27; 1989 a. 105.

Sub. (1) not only imposes a duty upon the tailgating driver to the driver of the preceding vehicle, but to all other cars and persons who are causally affected by the negligence of tailgating. *Northland Ins. Co. v. Avis Rent-A-Car*, 62 W (2d) 643, 215 NW (2d) 439.

See note to 346.13, citing *Krainz v. Strle*, 81 W (2d) 26, 259 NW (2d) 707.

This section does not impose upon driver absolute liability to avoid accidents. *Millonig v. Bakken*, 112 W (2d) 445, 334 NW (2d) 80 (1983).

346.15 Driving on divided highway. Whenever any highway has been divided into 2 roadways by an intervening unpaved or otherwise clearly indicated dividing space or by a physical barrier so constructed as to substantially impede crossing by vehicular traffic, the operator of a vehicle shall drive only to the right of such space or barrier and no

operator of a vehicle shall drive over, across or within any such space or barrier except through an opening or at a crossover or intersection established by the authority in charge of the maintenance of the highway, except that the operator of a vehicle when making a left turn to or from a private driveway, alley or highway may drive across a paved dividing space or a physical barrier not so constructed as to impede crossing by vehicular traffic, unless such crossing is prohibited by signs erected by the authority in charge of the maintenance of the highway.

346.16 Use of controlled-access highways, expressways and freeways. (1) No person shall drive a vehicle onto or from a controlled-access highway, expressway or freeway except through an opening provided for that purpose.

(2) (a) Except as provided in par. (b), no pedestrian or person riding a bicycle or other nonmotorized vehicle and no person operating a moped or motor bicycle may go upon any expressway or freeway when official signs have been erected prohibiting such person from using the expressway or freeway.

(b) A pedestrian or other person under par. (a) may go upon a portion of a hiking trail, cross-country ski trail, bridle trail or bicycle trail incorporated into the highway right-of-way and crossing the highway if the portion of the trail is constructed under s. 84.06 (11).

History: 1983 a 243; 1987 a 98

Cross Reference: See 59.965 (2) (j) for additional restrictions on the use of expressways in Milwaukee county.

346.17 Penalty for violating sections 346.04 to 346.16. (1) Any person violating s. 346.04 (1) or (2), 346.06, 346.07 (1), 346.12 or 346.13 (1) or (3) may be required to forfeit not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within a year.

(2) Any person violating ss. 346.05, 346.07 (2) or (3), 346.08 to 346.11, 346.13 (2) or 346.14 to 346.16 may be required to forfeit not less than \$30 nor more than \$300.

(3) (a) Except as provided in par. (b), (c) or (d), any person violating s. 346.04 (3) shall be fined not less than \$300 nor more than \$2,000 and may be imprisoned for not more than one year in the county jail.

(b) If the violation results in bodily harm, as defined in s. 939.22 (4), to another, or causes damage to the property of another, as defined in s. 939.22 (28), the person shall be fined not less than \$500 nor more than \$2,000 and may be imprisoned for not more than one year in the county jail.

(c) If the violation results in great bodily harm, as defined in s. 939.22 (14), to another, the person shall be fined not less than \$600 nor more than \$10,000 and may be imprisoned for not more than 2 years.

(d) If the violation results in the death of another, the person shall be fined not less than \$600 nor more than \$10,000 and may be imprisoned for not more than 5 years.

(4) Any person violating s. 346.075 may be required to forfeit not less than \$25 nor more than \$200 for the first offense and not less than \$50 nor more than \$500 for the 2nd or subsequent violation within 4 years.

History: 1971 c 278; 1973 c 182; 1977 c 208; 1981 c 324; 1983 a 27; 1985 a 82.

RIGHT OF WAY

346.18 General rules of right-of-way. (1) GENERAL RULE AT INTERSECTIONS. Except as otherwise expressly provided in this section or in s. 346.19, 346.20 or 346.46 (1), when 2 vehicles approach or enter an intersection at approximately the same time, the operator of the vehicle on the left shall yield the

right-of-way to the vehicle on the right. The operator of any vehicle driving at an unlawful speed forfeits any right-of-way which he or she would otherwise have under this subsection.

(2) **TURNING LEFT AT INTERSECTION.** The operator of a vehicle within an intersection intending to turn to the left across the path of any vehicle approaching from the opposite direction shall yield the right-of-way to such vehicle.

(3) **RULE AT INTERSECTION WITH THROUGH HIGHWAY.** The operator of a vehicle shall stop as required by s. 346.46 (2) (a), (b) or (c) before entering a through highway, and shall yield the right-of-way to other vehicles which have entered or are approaching the intersection upon the through highway.

(3m) **UNCONTROLLED "T" INTERSECTION.** At an intersection where traffic is not controlled by an official traffic control device or by a traffic officer, the operator of a vehicle approaching the intersection on a highway which terminates at the intersection shall yield the right-of-way to any vehicle approaching the intersection on a highway which continues through the intersection.

(4) **ENTERING HIGHWAY FROM ALLEY OR NONHIGHWAY ACCESS.** The operator of a vehicle entering a highway from an alley or from a point of access other than another highway shall yield the right-of-way to all vehicles approaching on the highway which he is entering.

(5) **MOVING FROM PARKED POSITION.** The operator of any vehicle that has been parked or standing shall, while moving such vehicle from such position, yield the right of way to all vehicles approaching on the highway.

(6) **RIGHT OF WAY WHERE YIELD SIGN INSTALLED.** The operator of a vehicle, when approaching any intersection at which has been installed a yield sign, shall yield the right of way to other vehicles which have entered the intersection from an intersecting highway or which are approaching so closely on the intersecting highway as to constitute a hazard of collision and, if necessary, shall reduce speed or stop in order to so yield.

(7) **ENTERING ALLEY OR DRIVEWAY FROM HIGHWAY.** (a) The operator of any vehicle intending to turn to the left into an alley or private driveway across the path of any vehicle approaching from the opposite direction shall yield the right-of-way to the vehicle.

(b) The operator of any vehicle crossing a sidewalk or entering an alley or driveway from a highway shall yield the right-of-way to any pedestrian, vehicle or conveyance on the sidewalk or in the alley or driveway.

History: 1979 c 210; 1987 a 25, 28

A driver who makes a left turn which results in an accident is not always guilty of more negligence than the other driver; the comparison is for the jury. *Pucci v. Rausch*, 51 W (2d) 513, 187 NW (2d) 138.

346.19 What to do on approach of emergency vehicle. (1) Upon the approach of any authorized emergency vehicle giving audible signal by siren the operator of a vehicle shall yield the right of way and shall immediately drive such vehicle to a position as near as possible and parallel to the right curb or the right-hand edge of the shoulder of the roadway, clear of any intersection and, unless otherwise directed by a traffic officer, shall stop and remain standing in such position until the authorized emergency vehicle has passed.

(2) This section does not relieve the operator of an authorized emergency vehicle from the duty to drive with due regard under the circumstances for the safety of all persons using the highway.

See note to 346.04, citing 65 Atty. Gen. 27.

346.20 Right of way of funeral processions and military convoys. (1) Funeral processions and military convoys have the right of way at intersections when vehicles comprising

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such procession have their headlights lighted, subject to the following conditions and exceptions:

(a) Operators of vehicles in a funeral procession or military convoy shall yield the right of way in accordance with s. 346.19 upon the approach of an authorized emergency vehicle giving audible signal by siren;

(b) Operators of vehicles in a funeral procession or military convoy shall yield the right of way when directed to do so by a traffic officer;

(c) The operator of the leading vehicle in a funeral procession or military convoy shall comply with stop signs and traffic control signals; but when the leading vehicle has proceeded across an intersection in accordance with such signal or after stopping as required by the stop sign, all vehicles in such procession may proceed without stopping, regardless of the sign or signal.

(2) The operator of a vehicle not in a funeral procession shall not drive his vehicle between the vehicles of the funeral procession, except when authorized to do so by a traffic officer or when such vehicle is an authorized emergency vehicle giving audible signal by siren.

(3) Operators of vehicles not a part of a funeral procession or military convoy shall not form a procession or convoy and have their headlights lighted for the purpose of securing the right of way granted by this section to funeral processions or military convoys.

History: 1977 c. 43

346.21 Right of way of livestock. The operator of a motor vehicle shall yield the right of way to livestock being driven over or along any highway but any person in charge of such livestock shall use reasonable care and diligence to open the roadway for vehicular traffic.

346.22 Penalty for violating sections 346.18 to 346.21. (1) Any person violating s. 346.18 may be required to forfeit not less than \$20 nor more than \$50 for the first offense and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within a year.

(2) Any person violating s. 346.19 or 346.20 (1) (a) may be required to forfeit not less than \$30 nor more \$300.

(3) Any person violating s. 346.20 (1) (b) or (c), (2), (3) or 346.21 may be required to forfeit not less than \$10 nor more than \$20 for the first offense and not less than \$25 nor more than \$50 for the 2nd or subsequent conviction within a year.

History: 1971 c. 278; 1983 a. 27

**RESPECTIVE RIGHTS AND DUTIES OF DRIVERS,
PEDESTRIANS AND BICYCLISTS**

346.23 Crossing controlled intersection or crosswalk. (1) At an intersection or crosswalk where traffic is controlled by traffic control signals or by a traffic officer, the operator of a vehicle shall yield the right-of-way to a pedestrian, or to a person who is riding a bicycle in a manner which is consistent with the safe use of the crosswalk by pedestrians, who has started to cross the highway on a green or "Walk" signal and in all other cases pedestrians and bicyclists shall yield the right-of-way to vehicles lawfully proceeding directly ahead on a green signal. No operator of a vehicle proceeding ahead on a green signal may begin a turn at a controlled intersection or crosswalk when a pedestrian or bicyclist crossing in the crosswalk on a green or "Walk" signal would be endangered or interfered with in any way. The rules stated in this subsection are modified at intersections or crosswalks on divided highways or highways provided with safety zones in the manner and to the extent stated in sub. (2).

(2) At intersections or crosswalks on divided highways or highways provided with safety zones where traffic is controlled by traffic control signals or by a traffic officer, the operator of a vehicle shall yield the right-of-way to a pedestrian or bicyclist who has started to cross the roadway either from the near curb or shoulder or from the center dividing strip or a safety zone with the green or "Walk" signal in the pedestrian's or bicyclist's favor.

History: 1979 c. 36; 1985 a. 69

Duties of driver and pedestrian under 346.23 and 346.24 discussed and compared. Schoenauer v. Wendinger, 49 W (2d) 415, 182 NW (2d) 441.

Pedestrians have right-of-way on green light only where there are no pedestrian control signals. City of Hartford v. Godfrey, 92 W (2d) 815, 286 NW (2d) 10 (Ct. App. 1979).

346.24 Crossing at uncontrolled intersection or crosswalk. (1) At an intersection or crosswalk where traffic is not controlled by traffic control signals or by a traffic officer, the operator of a vehicle shall yield the right-of-way to a pedestrian, or to a person riding a bicycle in a manner which is consistent with the safe use of the crosswalk by pedestrians, who is crossing the highway within a marked or unmarked crosswalk.

(2) No pedestrian or bicyclist shall suddenly leave a curb or other place of safety and walk, run or ride into the path of a vehicle which is so close that it is difficult for the operator of the vehicle to yield.

(3) Whenever any vehicle is stopped at an intersection or crosswalk to permit a pedestrian or bicyclist to cross the roadway, the operator of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

History: 1985 a. 69

See note to 346.23, citing Schoenauer v. Wendinger, 49 W (2d) 415, 182 NW (2d) 441.

346.25 Crossing at place other than crosswalk. Every pedestrian or bicyclist crossing a roadway at any point other than within a marked or unmarked crosswalk shall yield the right-of-way to all vehicles upon the roadway.

History: 1985 a. 69

891.44 provides an exception to this section and the standard instruction is not to be given when the pedestrian is a child under 7. Thoreson v. Milwaukee & S. Transport Corp. 56 W (2d) 231, 201 NW (2d) 745.

346.26 Blind pedestrian on highway. (1) An operator of a vehicle shall stop the vehicle before approaching closer than 10 feet to a pedestrian who is carrying a cane or walking stick which is white in color or white trimmed with red and which is held in an extended or raised position or who is using a dog guide and shall take such precautions as may be necessary to avoid accident or injury to the pedestrian. The fact that the pedestrian may be violating any of the laws applicable to pedestrians does not relieve the operator of a vehicle from the duties imposed by this subsection.

(2) Nothing in this section shall be construed to deprive any totally or partially blind person not carrying the white or the red and white cane or walking stick or not using a dog guide of the rights of other pedestrians crossing highways, nor shall the failure of such totally or partially blind pedestrian to carry such cane or walking stick or to use a dog guide be evidence of any negligence.

(3) No person who is not totally or partially blind shall carry or use on any street, highway or other public place any cane or walking stick which is white in color, or white trimmed with red.

History: 1977 c. 302

346.27 Persons working on highway. The operator of a vehicle shall yield the right of way to persons engaged in maintenance or construction work on a highway whenever he is notified of their presence by flagmen or warning signs.

346.28 Pedestrians to walk on left side of highway; pedestrians and bicyclists on sidewalks. (1) Any pedestrian traveling along and upon a highway other than upon a sidewalk shall travel on and along the left side of the highway and upon meeting a vehicle shall, if practicable, move to the extreme outer limit of the traveled portion of the highway.

(2) Operators of vehicles shall yield the right-of-way to pedestrians and bicyclists on sidewalks as required by s. 346.47.

History: 1985 a. 69; 1987 a. 259

346.29 When standing or loitering in roadway or highway prohibited. (1) No person shall be on a roadway for the purpose of soliciting a ride from the operator of any vehicle other than a public passenger vehicle.

(2) No person shall stand or loiter on any roadway other than in a safety zone if such act interferes with the lawful movement of traffic.

(3) No person shall be on a bridge or approach thereto for the purpose of utilizing such bridge or approach for fishing or swimming when signs have been erected by the authority in charge of maintenance of the highway indicating that fishing or swimming off of such bridge or approach is prohibited.

346.30 Penalty for violating sections 346.23 to 346.29. (1)

(a) Any pedestrian violating s. 346.23, 346.24 (2), 346.25, 346.28 or 346.29 may be required to forfeit not less than \$2 nor more than \$20 for the first offense and not less than \$10 nor more than \$50 for the 2nd or subsequent conviction within a year.

(b) 1. Unless otherwise provided in subd. 2, any operator of a vehicle violating s. 346.23 or 346.28 may be required to forfeit not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within a year.

2. Any operator of a bicycle violating s. 346.23, 346.24 or 346.25 may be required to forfeit not more than \$20.

(2) Unless otherwise provided in sub. (1) (b) 2, any person violating s. 346.24 (1) or (3) or 346.27 may be required to forfeit not less than \$30 nor more than \$300.

(3) Any person violating s. 346.26 may be required to forfeit not less than \$25 nor more than \$200 for the first offense and may be required to forfeit not less than \$50 nor more than \$500 for the 2nd or subsequent conviction within a year.

History: 1971 c. 278; 1983 a. 27; 1985 a. 69.

TURNING AND STOPPING AND REQUIRED SIGNALS

346.31 Required position and method of turning at intersections. (1) TURNS INDICATED BY MARKERS. Where state or local authorities have placed markers, buttons or signs within or adjacent to an intersection directing traffic turning at such intersection to follow a particular course, the operator of a vehicle turning at such intersection shall comply with such directions. In the absence of such markers, buttons or signs, the operator of a vehicle intending to turn at an intersection shall do as provided in subs. (2) to (4).

(2) RIGHT TURNS. Both the approach for a right turn and the right turn shall be made as closely as practicable to the right-hand edge or curb of the roadway. If, because of the size of the vehicle or the nature of the intersecting roadway, the turn cannot be made from the traffic lane next to the right-hand edge of the roadway, the turn shall be made with due regard for all other traffic.

(3) LEFT TURNS. Except as otherwise provided in sub. (4), left turns at intersections shall be made as follows:

(a) The approach for a left turn shall be made in that lane farthest to the left which is lawfully available to traffic moving in the direction of travel of the vehicle about to turn left. Unless otherwise marked or posted, this means the lane immediately to the right of the center line or center dividing strip of a 2-way highway and the lane next to the left-hand curb or edge of the roadway of a one-way highway.

(b) The intersection shall be entered in the lane of approach and, whenever practicable, the left turn shall be made in that portion of the intersection immediately to the left of the center of the intersection. For the purposes of this paragraph, a divided highway intersected by any other highway is considered to be one intersection.

(c) A left turn shall be completed so as to enter the intersecting highway in that lane farthest to the left which is lawfully available to traffic moving in the direction of the vehicle completing the left turn. Unless otherwise marked or posted, this means the lane immediately to the right of the center line or center dividing strip of a 2-way highway and the lane next to the left-hand curb or edge of the roadway of a one-way highway.

(4) LEFT TURNS ON 3-LANE HIGHWAYS. On a 2-way highway having an uneven number of lanes the approach for a left turn shall be made in the center lane thereof, unless otherwise posted or marked. A left turn into a 2-way highway having an uneven number of lanes shall be made so as to enter the highway in the lane immediately to the right of the center lane.

346.32 Required position for turning into private road or driveway. The operator of a vehicle on a highway who intends to turn into a private road or driveway shall make the approach for the turn in the same manner as specified in s. 346.31 for vehicles making an approach for a right or left turn at an intersection. If, because of the size of the vehicle or the nature of the intersecting private road or driveway, the turn cannot be made from the specified lane of approach, the turn shall be made with due regard for all other traffic.

346.33 Where turns prohibited, exception. (1) The operator of a vehicle shall not turn his vehicle so as to proceed in the opposite direction upon a highway at any of the following places:

(a) At any intersection at which traffic is being controlled by traffic control signals or by a traffic officer;

(b) In mid-block on any street in a business district, except where the highway is a divided highway and where the turn is made at an opening or crossover established by the authority in charge of the maintenance of the highway.

(c) In mid-block on any through highway in a residence district, except where the highway is a divided highway and where the turn is made at an opening or crossover established by the authority in charge of the maintenance of the highway.

(d) At any place where signs prohibiting such turn have been erected by the authority in charge of the maintenance of the highway.

(2) The operator of a vehicle shall not back his vehicle into an intersection at which turns are prohibited by sub. (1) (a) for the purpose of turning his vehicle so as to proceed in the opposite direction upon the highway.

(3) In this section, "mid-block" means any part of a street or highway other than an intersection.

History: 1971 c. 203.

346.34 Turning movements and required signals on turning and stopping. (1) TURNING. (a) No person may:

1. Turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in s. 346.31.

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2. Turn a vehicle to enter a private road or driveway unless the vehicle is in proper position on the roadway as required in s. 346.32.

3. Turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety.

(b) In the event any other traffic may be affected by such movement, no person may so turn any vehicle without giving an appropriate signal in the manner provided in s. 346.35. When given by the operator of a vehicle other than a bicycle, such signal shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning. The operator of a bicycle shall give such signal continuously during not less than the last 50 feet traveled before turning.

(2) **STOPPING.** No person may stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided in s. 346.35 to the operator of any vehicle immediately to the rear when there is opportunity to give such signal. This subsection does not apply to the operator of a bicycle approaching an official stop sign or traffic control signal.

History: 1973 c. 182

Where conditions do not allow the full 100 feet for signaling a turn, such as a parked bus in the right lane, a driver is not negligent giving the signal for a lesser distance. *Tuschel v. Haasch*, 46 W (2d) 130, 174 NW (2d) 497.

See note to 895.045, citing *Thompson v. Howe*, 77 W (2d) 441, 253 NW (2d) 59.

Where it is impossible to signal for the last 100 feet before turning, 100 feet requirement does not apply. *Betchkal v. Willis*, 127 W (2d) 177, 378 NW (2d) 684 (1985).

346.35 Method of giving signals on turning and stopping.

Whenever a stop or turn signal is required by s. 346.34, such signal may in any event be given by a signal lamp or lamps of a type meeting the specifications set forth in s. 347.15. Except as provided in s. 347.15 (3m), such signals also may be given by the hand and arm in lieu of or in addition to, signals by signal lamp. When given by hand and arm, such signals shall be given from the left side of the vehicle in the following manner and shall indicate as follows:

(1) Left turn—Hand and arm extended horizontally.

(2) Right turn—Hand and arm extended upward.

(3) Stop or decrease speed—Hand and arm extended downward.

346.36 Penalty for violating sections 346.31 to 346.35. (1)

Unless otherwise provided in sub. (2), any person violating ss. 346.31 to 346.35 may be required to forfeit not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within a year.

(2) Any operator of a bicycle violating ss. 346.31 to 346.35 may be required to forfeit not more than \$20.

History: 1971 c. 278; 1977 c. 208

TRAFFIC SIGNS, SIGNALS AND MARKINGS

346.37 Traffic-control signal legend. (1) Whenever traffic is controlled by traffic control signals exhibiting different colored lights successively, or with arrows, the following colors shall be used and shall indicate and apply to operators of vehicles and pedestrians as follows:

(a) *Green.* 1. Vehicular traffic facing a green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn, but vehicular traffic shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

2. Pedestrians, and persons who are riding bicycles in a manner which is consistent with the safe use of the crosswalk

by pedestrians, facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(b) *Yellow.* When shown with or following the green, traffic facing a yellow signal shall stop before entering the intersection unless so close to it that a stop may not be made in safety.

(c) *Red.* 1. Vehicular traffic facing a red signal shall stop before entering the crosswalk on the near side of an intersection, or if none, then before entering the intersection or at such other point as may be indicated by a clearly visible sign or marking and shall remain standing until green or other signal permitting movement is shown.

2. No pedestrian or bicyclist facing such signal shall enter the roadway unless he or she can do so safely and without interfering with any vehicular traffic.

3. Vehicular traffic facing a red signal at an intersection may, after stopping as required under subd. 1, cautiously enter the intersection to make a right turn into the nearest lawfully available lane for traffic moving to the right or to turn left from a one-way highway into the nearest lawfully available lane of a one-way highway on which vehicular traffic travels to the left. No turn may be made on a red signal if lanes of moving traffic are crossed or if a sign at the intersection prohibits a turn. In making a turn on a red signal vehicular traffic shall yield the right-of-way to pedestrians and bicyclists lawfully within a crosswalk and to other traffic lawfully using the intersection.

(d) *Green arrow.* 1. Vehicular traffic facing a green arrow signal may enter the intersection only to make the movement indicated by the arrow but shall yield the right-of-way to pedestrians and bicyclists lawfully within a crosswalk and to other traffic lawfully using the intersection. When the green arrow signal indicates a right or left turn traffic shall cautiously enter the intersection.

2. No pedestrian or bicyclist facing such signal shall enter the roadway unless he or she can do so safely and without interfering with any vehicular traffic.

(2) In the event an official traffic signal is erected and maintained at a place other than an intersection, the provisions of this section are applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

History: 1975 c. 23; 1979 c. 152; 1985 a. 69.

346.38 Pedestrian control signals. Whenever special pedestrian control signals exhibiting the words "Walk" or "Don't Walk" are in place, such signals indicate as follows:

(1) *WALK.* A pedestrian, or a person riding a bicycle in a manner which is consistent with the safe use of the crossing by pedestrians, facing a "Walk" signal may proceed across the roadway or other vehicular crossing in the direction of the signal and the operators of all vehicles shall yield the right-of-way to the pedestrian or bicyclist.

(2) *DON'T WALK.* No pedestrian or bicyclist may start to cross the roadway or other vehicular crossing in the direction of a "Don't Walk" signal, but any pedestrian or bicyclist who has partially completed crossing on the "Walk" signal may proceed to a sidewalk or safety zone while a "Don't Walk" signal is showing.

History: 1975 c. 229, 421; 1979 c. 36; 1985 a. 69.

See note to 346.23, citing *City of Hartford v. Godfrey*, 92 W (2d) 815, 286 NW (2d) 10 (Ct. App. 1979).

346.39 Flashing signals. Whenever flashing red or yellow signals are used they require obedience by vehicular traffic as follows:

(1) **FLASHING RED (STOP SIGNAL).** When a red lens is illuminated with rapid intermittent flashes, operators of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed is subject to the rules applicable after making a stop at a stop sign.

(2) **FLASHING YELLOW (CAUTION SIGNAL).** When a yellow lens is illuminated with rapid intermittent flashes, operators of vehicles may proceed through the intersection or past such signal only with caution.

Duty of care under (2) discussed. *Sabinasz v. Milw. & Suburban Tr. Corp.* 71 W (2d) 218, 238 NW (2d) 99.

346.40 Whistle signals. (1) Whenever traffic is alternately being directed to stop and to proceed by a traffic officer using a whistle, such officer shall use the following whistle signals which shall signify as follows:

(a) One blast of the whistle means that all traffic not within the intersection shall stop.

(b) Two blasts of the whistle means that traffic which had been stopped prior to the one blast shall proceed through the intersection and that the traffic which was stopped by the one blast shall remain stopped.

(2) The traffic officer shall regulate the interval between the one and the 2 blasts so as to permit traffic that is legally within the intersection to clear the intersection.

346.41 Display of unauthorized signs and signals prohibited. (1) No person shall place, maintain or display upon or in view of any highway or at or in view of any railroad crossing any unauthorized sign, light, reflector, signal, marking or device which:

(a) Purports to be or is an imitation of or resembles or may be mistaken for an official traffic sign or signal or railroad sign or signal; or

(b) Attempts to direct the movement of traffic; or

(c) Hides from view or by its color, location, brilliance or manner of operation interferes with the effectiveness of any official traffic sign or signal or railroad sign or signal.

(2) No person shall place or maintain nor shall any public authority permit upon any highway any traffic control device bearing thereon any advertising except that a federal yellow flag, 24 inches square and bearing either the words "Safety Patrol" or "School," attached to a light weight pole 8 feet or less in length may be used by members of school safety patrols standing adjacent to but off the roadway to warn traffic that children are about to cross the roadway.

(3) No person shall place or maintain, or allow to be displayed any red or amber reflector within the limits of the highway boundaries at or near the entrance to a private road or driveway. The use of blue reflectors is permitted provided there is no disapproval by the highway authority in charge of maintenance of the highway.

History: 1981 c. 42.

346.42 Interference with signs and signals prohibited. No person may intentionally damage, deface, move, or obstruct an official traffic sign or signal or neighborhood watch sign under s. 60.23 (17m) or 66.046 (2) or intentionally interfere with the effective operation of such sign or signal.

History: 1985 a. 194; 1987 a. 205.

346.43 Penalty for violating sections 346.37 to 346.42. (1)

(a) Any pedestrian violating s. 346.37 or 346.38 may be required to forfeit not less than \$2 nor more than \$20 for the first offense and not less than \$10 nor more than \$50 for the 2nd or subsequent conviction within a year.

(b) 1. Unless otherwise provided in subd. 2, any operator of a vehicle violating ss. 346.37 to 346.39 may be required to forfeit not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within a year.

2. Any operator of a bicycle violating s. 346.37, 346.38 or 346.39 may be required to forfeit not more than \$20.

(2) Any person violating s. 346.42 may be required to forfeit not less than \$30 nor more than \$300.

(3) Any person violating s. 346.41 may be required to forfeit not less than \$25 nor more than \$200 for the first offense and may be required to forfeit not less than \$50 nor more than \$500 for the 2nd or subsequent conviction within a year.

History: 1971 c. 278, 336; 1973 c. 182; 1983 a. 27; 1985 a. 69 s. 16.

REQUIRED STOPS

346.44 All vehicles to stop at signal indicating approach of train. (1) The operator of a vehicle shall not drive on or across a railroad crossing under any of the following circumstances:

(a) While any traffic officer or railroad employe signals to stop;

(b) While any warning device signals to stop, except that if the operator of the vehicle after stopping and investigating finds that no railroad train is approaching he may proceed.

(2) The operator of a vehicle shall not drive through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

346.45 Certain vehicles to stop at railroad crossings. (1)

Except as provided in sub. (3), the operator of any of the following vehicles before crossing at grade any track of a railroad, shall stop such vehicle within 50 feet, but not less than 15 feet from the nearest rail of such railroad:

(a) Every motor bus transporting passengers.

(am) Every vehicle painted and displaying markings in accordance with s. 347.44 (1).

(b) Every motor vehicle transporting any quantity of chlorine.

(c) Every motor vehicle which, in accordance with sub. (4), is required to be marked or placarded with one of the following markings:

1. Explosives A.

2. Explosives B.

3. Poison.

4. Flammable.

5. Oxidizers.

6. Compressed gas.

7. Corrosives.

8. Flammable gas.

9. Radioactive.

10. Dangerous.

(d) Every cargo tank motor vehicle, whether loaded or empty, used for the transportation of any liquid having a flashpoint below 200° Fahrenheit, as determined by the test method approved for that product by the American society for testing and materials.

(e) Every cargo tank motor vehicle transporting a commodity which at the time of loading has a temperature above its flashpoint as determined by the same standard method of testing as prescribed in par. (d).

(2) The operator of every vehicle required to stop before crossing any track shall listen and look in both directions along the track for any approaching train, and shall not proceed until such precautions have been taken and until the

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operator has ascertained that the course is clear. Wherever an auxiliary lane is provided for stopping at a railroad, operators of vehicles required to stop shall use such lane for stopping.

(3) A stop need not be made at:

(a) A railroad grade crossing when a police officer or crossing flagman directs traffic to proceed.

(b) A railroad grade crossing when an official traffic control signal permits traffic to proceed.

(c) An abandoned railroad grade crossing with a sign indicating the rail line is abandoned.

(d) A railroad grade crossing which is marked with a sign in accordance with s. 195.285 (3). Such signs shall be erected by the maintaining authority only upon order of the office of the commissioner of transportation as set forth in s. 195.285.

(4) The department shall adopt rules for the marking and placarding of vehicles being used to transport hazardous materials which are potentially dangerous to life and property, which rules shall be in accordance with the regulations of the U.S. department of transportation.

History: 1973 c. 12; 1975 c. 41, 63, 199; 1977 c. 29 s. 1654 (6) (b), (9) (f); 1977 c. 410; 1981 c. 347 s. 80 (2).

346.46 Vehicles to stop at stop signs and school crossings.

(1) Except when directed to proceed by a traffic officer or traffic control signal, every operator of a vehicle approaching an official stop sign at an intersection shall cause such vehicle to stop before entering the intersection and shall yield the right-of-way to other vehicles which have entered or are approaching the intersection upon a highway which is not controlled by an official stop sign or traffic signal.

(2) Stops required by sub. (1) shall be made in the following manner:

(a) If there is a clearly marked stop line, the operator shall stop his vehicle immediately before crossing such line.

(b) If there is no clearly marked stop line, the operator shall stop his vehicle immediately before entering the crosswalk on the near side of the intersection.

(c) If there is neither a clearly marked stop line nor a marked or unmarked crosswalk at the intersection or if the operator cannot efficiently observe traffic on the intersecting roadway from the stop made at the stop line or crosswalk, he shall, before entering the intersection, stop his vehicle at such point as will enable him to efficiently observe the traffic on the intersecting roadway.

(2m) Every operator of a motor vehicle approaching a school crossing which is controlled by an adult school crossing guard appointed under s. 120.13 (31) or 349.215 shall follow the directions of the school crossing guard. If directed by the school crossing guard to stop, the operator shall stop the vehicle not less than 10 feet nor more than 30 feet from the school crossing and shall remain stopped until the school crossing guard directs the operator to proceed.

(3) Every operator of a vehicle approaching an official stop sign at a railroad crossing shall, before proceeding on or over such crossing, stop his vehicle not less than 10 nor more than 30 feet from the nearest rail.

(4) (a) Every operator of a vehicle approaching an official stop sign or official temporary stop sign erected mid-block on or in the roadway by local authorities under s. 349.07 (6) shall cause such vehicle to stop not less than 10 nor more than 30 feet from such official sign except when directed to proceed by a traffic officer.

(b) As used in this subsection "mid-block" has the meaning given it in s. 346.33 (3).

History: 1977 c. 116 s. 16; 1979 c. 344, 1985 a. 29 s. 3202 (43); 1987 a. 25; 1989 a. 359.

346.465 Owner's liability for vehicle illegally crossing controlled school crossing. (1) The owner of a vehicle involved in a violation of s. 346.46 (2m) shall be liable for the violation as provided in this section.

(2) An adult school crossing guard who observes a violation of s. 346.46 (2m) may prepare a written report indicating that a violation has occurred. If possible, the report shall contain the following information:

(a) The time and the approximate location at which the violation occurred.

(b) The license number and color of the vehicle involved in the violation.

(c) Identification of the vehicle as an automobile, station wagon, motor truck, motor bus, motorcycle or other type of vehicle.

(3) Within 24 hours after observing the violation, the school crossing guard may deliver the report to a traffic officer of the county or municipality in which the violation occurred. A report which does not contain all the information in sub. (2) shall nevertheless be delivered and shall be maintained by the county or municipality for statistical purposes.

(4) (a) Within 48 hours after receiving a report containing all the information in sub. (2), the traffic officer may prepare a uniform traffic citation under s. 345.11 and may personally serve it upon the owner of the vehicle.

(b) If with reasonable diligence the owner cannot be served under par. (a), service may be made by leaving a copy of the citation at the owner's usual place of abode within this state in the presence of a competent member of the family at least 14 years of age, who shall be informed of the contents thereof.

(c) If with reasonable diligence the owner cannot be served under par. (a) or (b) or if the owner lives outside of the jurisdiction of the issuing authority, service may be made by certified mail addressed to the owner's last-known address.

(5) (a) Except as provided in par. (b), it shall be no defense to a violation of this section that the owner was not operating the vehicle at the time of the violation.

(b) The following are defenses to a violation of this section:

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

1m. If the owner of the vehicle provides a traffic officer with the name and address of the person operating the vehicle at the time of the violation and the person so named admits operating the vehicle at the time of the violation, then the person operating the vehicle and not the owner shall be charged under this section.

2. If the vehicle is owned by a lessor of vehicles and at the time of the violation the vehicle was in the possession of a lessee, and the lessor provides a traffic officer with the information required under s. 343.46 (3), then the lessee and not the lessor shall be charged under this section.

3. If the vehicle is owned by a dealer as defined in s. 340.01 (11) (intro.) but including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the violation the vehicle was being operated by any person on a trial run, and if the dealer provides a traffic officer with the name, address and operator's license number of the person operating the vehicle, then the person operating the vehicle, and not the dealer, shall be charged under this section.

History: 1985 a. 186.

346.47 When vehicles using alley or nonhighway access to stop. (1) The operator of a vehicle emerging from an alley or about to cross or enter a highway from any point of access other than another highway shall stop such vehicle immedi-

ately prior to moving on to the sidewalk or on to the sidewalk area extending across the path of such vehicle and shall yield the right-of-way to any pedestrian or bicyclist and upon crossing or entering the roadway shall yield the right-of-way to all vehicles approaching on such roadway.

(2) The operator of a vehicle on an alley shall stop such vehicle immediately before crossing or entering an intersecting alley, whether or not such intersecting alley crosses the alley on which the vehicle is being operated.

(3) The operator of a vehicle about to cross or enter a highway from a point of access other than another highway is not required to stop in compliance with sub. (1) if a traffic control officer or official traffic control device directs or permits otherwise.

History: 1975 c. 229; 1985 a. 69.

346.475 Human service vehicles; loading or unloading handicapped children. No person who operates a human service vehicle may stop to load or unload passengers who are handicapped children unless the vehicle is entirely off the traveled portion of the roadway in an area where stopping, standing or parking is not prohibited and the children do not have to cross the roadway in order to be loaded or unloaded.

History: 1983 a. 175 s. 28; Stats. 1983 s. 346.475.

346.48 Vehicles to stop for school buses displaying flashing lights. (1) The operator of a vehicle which approaches from the front or rear any school bus which has stopped on a street or highway when the bus is equipped according to s. 347.25 (2) and when it is displaying flashing red warning lights, shall stop the vehicle not less than 20 feet from the bus and shall remain stopped until the bus resumes motion or the operator extinguishes the flashing red warning lights. The operator of any school bus which approaches from the front or rear any school bus which has stopped and is displaying flashing red warning lights shall display its flashing red lights while stopped. This subsection does not apply to operators of vehicles proceeding in the opposite direction on a divided highway.

(2) (a) Except as provided in par. (b) the operator of a school bus equipped with flashing red warning lights as specified in s. 347.25 (2) shall actuate such lights at least 100 feet before stopping to load or unload pupils or other authorized passengers, and shall not extinguish such lights until loading or unloading is completed and persons who must cross the highway are safely across. Where the curb and sidewalk are laid on one side of the road only, the operator shall use the flashing red warning lights when loading or unloading passengers from either side.

(b) School bus operators shall not use the flashing red warning lights in:

1. Special school bus loading areas where the bus is entirely off the traveled portion of the highway.

2. Residence or business districts when pupils or other authorized passengers are to be loaded or unloaded where a sidewalk and curb are laid on both sides of the road, unless required otherwise by municipal ordinance enacted under s. 349.21 (1).

(bm) Except as provided in par. (b) 2 or unless prohibited by municipal ordinance enacted under s. 349.21 (2), a school bus operator shall use the flashing red warning lights as provided in par. (a) in a zone designated by "school" warning signs as provided in s. 118.08 (1) in which a street or highway borders the grounds of a school when pupils or other authorized passengers are loaded or unloaded directly from or onto the school grounds or that portion of the right-of-way between the roadway and the school grounds.

(c) When a school bus is being used on a highway for purposes other than those specified in s. 340.01 (56) (a) and (am), the flashing red warning lights shall not be used, and all markings on the front and rear of the bus indicating it is a school bus shall be removed or completely concealed; except that any time a motor vehicle is equipped as provided under ss. 347.25 (2) and 347.44 and is transporting children for any purpose, the school bus markings may remain unconcealed and the flashing red signals may be used as provided in this section and when so used, sub. (1) applies to operators of other motor vehicles.

(3) If the operator of a motor vehicle overtakes a school bus which is stopped and is loading or unloading pupils or other authorized passengers at an intersection on the right side of a roadway in a business or residence district in which the display of the flashing red warning lights on the school bus is not permitted, the operator shall pass at a safe distance to the left of the school bus and shall not turn to the right in front of the school bus at that intersection.

History: 1973 c. 93; 1975 c. 18, 120, 429; 1985 a. 287, 301; 1987 a. 125.

Cross Reference: See 349.21 which authorizes towns, cities, villages and counties to provide for the use of flashing red lights by school buses in certain residence or business districts.

346.485 Owner's liability for vehicle illegally passing school bus. (1) The owner of a vehicle involved in a violation of s. 346.48 (1) shall be liable for the violation as provided in this section.

(2) The operator of a school bus who observes a violation of s. 346.48 (1) may prepare a written report indicating that a violation has occurred. If possible, the report shall contain the following information:

(a) The time and the approximate location at which the violation occurred.

(b) The license number and color of the vehicle involved in the violation.

(c) Identification of the vehicle as an automobile, station wagon, motor truck, motor bus, motorcycle or other type of vehicle.

(3) Within 24 hours after observing the violation, the school bus operator may deliver the report to a traffic officer of the county or municipality in which the violation occurred. A report which does not contain all the information in sub. (2) shall nevertheless be delivered and shall be maintained by the county or municipality for statistical purposes.

(4) (a) Within 48 hours after receiving a report containing all the information in sub. (2), the traffic officer may prepare a uniform traffic citation under s. 345.11 and may personally serve it upon the owner of the vehicle.

(b) If with reasonable diligence the owner cannot be served under par. (a), service may be made by leaving a copy of the citation at the owner's usual place of abode within this state in the presence of a competent member of the family at least 14 years of age, who shall be informed of the contents thereof.

(c) If with reasonable diligence the owner cannot be served under par. (a) or (b) or if the owner lives outside of the jurisdiction of the issuing authority, service may be made by certified mail addressed to the owner's last-known address.

(5) (a) Except as provided in par. (b), it shall be no defense to a violation of this section that the owner was not operating the vehicle at the time of the violation.

(b) The following are defenses to a violation of this section:

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

1m. If the owner of the vehicle provides a traffic officer with the name and address of the person operating the vehicle at the time of the violation and the person so named admits

operating the vehicle at the time of the violation, then the person operating the vehicle and not the owner shall be charged under this section.

2. If the vehicle is owned by a lessor of vehicles and at the time of the violation the vehicle was in the possession of a lessee, and the lessor provides a traffic officer with the information required under s. 343.46 (3), then the lessee and not the lessor shall be charged under this section.

3. If the vehicle is owned by a dealer as defined in s. 340.01 (11) (intro.) but including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the violation the vehicle was being operated by any person on a trial run, and if the dealer provides a traffic officer with the name, address and operator's license number of the person operating the vehicle, then the person operating the vehicle, and not the dealer, shall be charged under this section.

History: 1981 c. 168; 1983 a. 243, 252.

346.49 Penalty for violating ss. 346.44 to 346.485. (1) (a) Unless otherwise provided in par. (b), any person violating s. 346.46 or 346.47 may be required to forfeit not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within a year.

(b) Any operator of a bicycle violating s. 346.46 may be required to forfeit not more than \$20.

(1m) A vehicle owner or other person found liable under s. 346.465 may be required to forfeit not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within a year. Imposition of liability under s. 346.465 shall not result in suspension or revocation of a person's operating license under s. 343.30, nor shall it result in demerit points being recorded on a person's driving record under s. 343.32 (2) (a).

(2) (a) Unless otherwise provided in par. (b), any person violating s. 346.44, 346.45 or 346.48 may be required to forfeit not less than \$30 nor more than \$300.

(b) Any operator of a bicycle violating s. 346.44 may be required to forfeit not more than \$20.

(3) A vehicle owner or other person found liable under s. 346.485 may be required to forfeit not less than \$30 nor more than \$300. Imposition of liability under s. 346.485 shall not result in suspension or revocation of a person's operating license under s. 343.30, nor shall it result in demerit points being recorded on a person's driving record under s. 343.32 (2) (a).

(4) Any person violating s. 346.475 may be required to forfeit not less than \$50 nor more than \$200.

History: 1971 c. 278; 1973 c. 182; 1981 c. 168; 1983 a. 27, 175; 1985 a. 186.

RESTRICTIONS ON STOPPING AND PARKING

346.50 Exceptions to stopping and parking restrictions.

(1) The prohibitions against stopping or leaving a vehicle stand contained in ss. 346.51 to 346.54 and 346.55 (1), (3) and (4) do not apply when:

(a) The vehicle becomes disabled while on the highway in such a manner or to such an extent that it is impossible to avoid stopping or temporarily leaving the vehicle in the prohibited place; or

(b) The stopping of the vehicle is necessary to avoid conflict with other traffic or to comply with traffic regulations or the directions of a traffic officer or traffic control sign or signal.

(c) The vehicle of a public utility, as defined in s. 196.01 (5), or a rural electric cooperative is stopped or left standing and is required for maintenance, installation, repair, construction or inspection of its facilities by the public utility or a rural

electric cooperative when warning signs, flags, traffic cones, or flashing yellow lights or barricades, have been placed to warn approaching motorists of any obstruction to the traveled portion of the highway.

(2) A motor vehicle bearing a special registration plate issued under s. 341.14 (1) or (1r) (a) to a disabled veteran or on his or her behalf is exempt from any ordinance imposing time limitations on parking in any street or highway zone and parking lot, whether municipally owned or leased, or both municipally owned and leased or a parking place owned or leased, or both owned and leased by a municipal parking utility, with one-half hour or more limitation but otherwise is subject to the laws relating to parking. Where the time limitation on a metered stall is one-half hour or more, no meter payment is required. Parking privileges granted by this subsection are limited to the disabled veteran to whom or on whose behalf the special plates were issued and to qualified operators acting under the disabled veteran's express direction with the disabled veteran present.

(2a) A motor vehicle bearing special registration plates issued under s. 341.14 (1a), (1e), (1m), (1q) or (1r) (a) or a motor vehicle, other than a motorcycle, upon which a special identification card issued under s. 343.51 is displayed or a motor vehicle registered in another jurisdiction upon which is displayed a registration plate, a card or an emblem issued by the other jurisdiction designating the vehicle as a vehicle used by a physically disabled person is exempt from any ordinance imposing time limitations on parking in any street or highway zone and parking lot, whether municipally owned or leased, or both municipally owned and leased or a parking place owned or leased, or both owned and leased by a municipal parking utility, with one-half hour or more limitation but otherwise is subject to the laws relating to parking. Where the time limitation on a metered stall is one-half hour or more, no meter payment is required. Parking privileges granted by this subsection are limited to the following:

(a) A person to whom plates were issued under s. 341.14 (1a).

(b) A qualified operator acting under the express direction of a person to whom plates were issued under s. 341.14 (1a) when such person is present.

(c) A person to whom plates were issued under s. 341.14 (1m) when the disabled person for whom the plates were issued is present.

(d) A person for whom plates were issued under s. 341.14 (1q).

(e) A qualified operator acting under the express direction of a person for whom plates were issued under s. 341.14 (1q) when such person is present.

(f) A person for whom plates were issued under s. 341.14 (1r) (a).

(g) A qualified operator acting under the express direction of a person for whom plates were issued under s. 341.14 (1r) (a) when the person is present.

(h) A person or organization to whom a special identification card was issued under s. 343.51.

(j) A qualified operator acting under the express direction of a person to whom a special identification card was issued under s. 343.51 when such person is present.

(k) A qualified operator of a motor vehicle registered in another jurisdiction upon which is displayed a registration plate, a card or an emblem issued by the other jurisdiction designating the vehicle as a vehicle used by a physically disabled person if the vehicle is transporting the disabled person for whom the plate, card or emblem was issued.

(L) A person to whom a plate was issued under s. 341.14 (1e).

(m) A qualified operator acting under the express direction of a person to whom a plate was issued under s. 341.14 (1e) when such person is present.

(3) A vehicle bearing special registration plates issued under s. 341.14 (1), (1a), (1e), (1m), (1q) or (1r) (a) or a motor vehicle, other than a motorcycle, upon which a special identification card issued under s. 343.51 is displayed or a motor vehicle registered in another jurisdiction upon which is displayed a registration plate, a card or an emblem issued by the other jurisdiction designating the vehicle as a vehicle used by a physically disabled person is exempt from s. 346.505 or any ordinance in conformity therewith prohibiting parking, stopping or standing upon any portion of a street, highway or parking facility reserved for handicapped persons by official traffic signs indicating the restriction. Stopping, standing and parking privileges granted by this subsection are limited to the persons listed under subs. (2) and (2a) (a) to (m).

(4) In subs. (2) and (2a), the terms "municipal" and "municipally" include county.

History: 1977 c. 29, 418; 1979 c. 55, 276, 288; 1981 c. 119; 1981 c. 255 ss. 5, 6, 13; 1983 a. 53 s. 114; 1983 a. 227; 1985 a. 87; 1989 a. 304.

346.503 Parking spaces for vehicles displaying special registration plates or special identification cards. (1) In this section, "motor vehicle used by a physically disabled person" means a motor vehicle bearing special registration plates issued under s. 341.14 (1), (1a), (1e), (1m), (1q) or (1r) (a) or a motor vehicle, other than a motorcycle, upon which a special identification card issued under s. 343.51 is displayed or a motor vehicle registered in another jurisdiction and displaying a registration plate, card or emblem issued by the other jurisdiction which designates the vehicle as a vehicle used by a physically disabled person.

(1m) (a) The owner or lessee of any public building or place of employment and the owner or lessee of any parking facility which offers parking to the public shall reserve at least the following number of spaces for use by a motor vehicle used by a physically disabled person:

1. At least one space for a facility offering 26 to 49 spaces.
2. At least 2% of all spaces for a facility offering 50 to 1,000 spaces.
3. At least one percent, in addition to that specified in subd. 2, of each 1,000 spaces over the first 1,000 for a facility offering more than 1,000 spaces.

(b) Parking spaces reserved under this subsection shall be at least 12 feet wide.

(c) Parking spaces reserved under this subsection shall be located as close as possible to an entrance of the parking facility and to an entrance of a public building or place of employment which allows a physically disabled person to enter and leave without assistance. Parking spaces reserved under this subsection in a parking ramp shall be located as close as possible to the main entrance of the parking ramp, to an adjacent public walk, or to an elevator which allows a physically disabled person to enter and leave without assistance.

(d) If the state or any other employer maintains a parking facility restricted to use by employes, the employer shall, at the request of a physically disabled employe, reserve a parking space for the employe as provided by pars. (b) and (c) for use by a motor vehicle used by a physically disabled person.

(e) Instead of complying with the requirements under par. (a), a nonprofit organization as defined under s. 108.02 (19), an institution of higher education as defined under s. 108.02 (18) or a government unit as defined under s. 108.02 (17) which owns more than one parking facility which offers parking to the public may reserve at least 2% of the total

number of parking spaces in its facilities. A nonprofit organization, institution of higher education or government unit which reserves parking space under this paragraph shall reserve at least one parking space in each facility for use by a motor vehicle used by any physically disabled person. If the number of spaces so reserved in a facility is fewer than would be reserved under par. (a), upon request of a physically disabled person the nonprofit organization, institution of higher education or government unit shall reserve one additional space in the facility for use by a motor vehicle used by any physically disabled person.

(f) The owner or lessee of a parking facility which is ancillary to a building and restricted wholly or in part to use by tenants of the building shall, at the request of a physically disabled tenant, reserve a parking space in the facility as provided by pars. (b) and (c) for use by a motor vehicle used by the physically disabled tenant.

(g) This subsection does not affect the authority under s. 101.13 of the department of industry, labor and human relations to require by rule the reservation of parking spaces for use by a motor vehicle used by a physically disabled person.

(2) The owner or lessee subject to the requirements of sub. (1m) shall post official traffic signs indicating that the spaces are reserved.

(2m) In addition to the requirements of sub. (1m), the owner or lessee of a parking facility not open to the public and the owner or lessee of a parking facility which offers parking for 25 or fewer motor vehicles to the public may reserve one or more spaces as provided under sub. (1m) and (c) for use by a motor vehicle used by a physically disabled person. An owner or lessee reserving spaces under this subsection shall post official traffic signs indicating that the spaces are reserved.

(3) The official traffic sign shall include the international symbol for barrier-free environments and a statement to inform the public that the parking space is reserved for vehicles designated under sub. (1m) or (2m).

(4) The department, after consulting with the department of industry, labor and human relations, shall promulgate rules governing the design, size and installation of the official traffic signs required under sub. (2) or (2m).

History: 1981 c. 255 ss. 7, 13; 1983 a. 77, 227, 246; 1985 a. 87 s. 5; 1985 a. 135 s. 85; 1987 a. 260; 1989 a. 304.

346.505 Stopping, standing or parking prohibited in parking spaces reserved for vehicles displaying special registration plates or special identification cards. (1) The legislature finds that parking facilities which are open to use by the public without a permit, whether publicly or privately owned, are public places. By enacting this section the legislature intends to ensure that people who are physically disabled have clear and reasonable access to public places. The legislature, therefore, urges the police, sheriff's and traffic departments of every unit of government and each authorized department of the state to enforce this section vigorously and see that all violations of this section are promptly prosecuted.

(2) Except for a motor vehicle used by a physically disabled person as defined under s. 346.503 (1), no person may park, stop or leave standing any vehicle, whether attended or unattended and whether temporarily or otherwise, upon any portion of a street, highway or parking facility reserved, by official traffic signs indicating the restriction, for vehicles displaying special registration plates issued under s. 341.14 (1), (1a), (1e), (1m), (1q) or (1r) (a) or a special identification card issued under s. 343.51 or vehicles registered in another jurisdiction and displaying a registration plate, card or em-

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blem issued by the other jurisdiction which designates the vehicle as a vehicle used by a physically disabled person.

(3) (a) The owner of a vehicle involved in a violation of sub. (2) shall be liable for the violation as provided in this subsection.

(b) A member of a disabled parking enforcement assistance council under s. 349.145 who observes a violation of sub. (2) may prepare a written report indicating that a violation has occurred. The report shall contain the following information:

1. The time and location at which the violation occurred.
2. The license number and color of the vehicle involved in the violation.
3. Identification of the vehicle as an automobile, station wagon, motor truck, motor bus, motorcycle or other type of vehicle.

(c) Within 24 hours after observing the violation, the member may deliver the report to a traffic officer of the political subdivision in which the violation occurred. A report which does not contain all of the information in par. (b) shall nevertheless be delivered and shall be maintained by the political subdivision for statistical purposes.

(d) 1. Within 48 hours after receiving a report containing all of the information in par. (b), the traffic officer may prepare a uniform traffic citation under s. 345.11 for the violation and may personally serve it upon the owner of the vehicle.

2. If with reasonable diligence the owner cannot be served under subd. 1 or if the owner lives outside of the jurisdiction of the issuing authority, service may be made by certified mail addressed to the owner's last-known address.

(e) 1. Except as provided in subd. 2, it shall be no defense to a violation of sub. (2) that the owner was not in control of the vehicle at the time of the violation.

2. The following are defenses to a violation of sub. (2).

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

b. If the owner of the vehicle provides a traffic officer with the name and address of the person who was in control of the vehicle at the time of the violation and the person so named admits having the vehicle under his or her control at the time of the violation, then that person and not the owner shall be charged with the violation.

c. If the vehicle is owned by a lessor of vehicles and at the time of the violation the vehicle was in the possession of a lessee, and the lessor provides a traffic officer with the information required under s. 343.46 (3), then the lessee and not the lessor shall be charged with the violation.

d. If the vehicle is owned by a dealer as defined in s. 340.01 (11) (intro.) but including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the violation the vehicle was under the control of any person on a trial run, and if the dealer provides a traffic officer with the name, address and operator's license number of that person, then that person and not the dealer shall be charged with the violation.

History: 1977 c. 418; 1979 c. 276; 1981 c. 255 ss. 8, 9, 13; 1983 a. 77, 192; 1985 a. 87 s. 5; 1987 a. 260; 1989 a. 304.

346.51 Stopping, standing or parking outside of business or residence districts. (1) No person shall park, stop or leave standing any vehicle, whether attended or unattended, upon the roadway of any highway outside a business or residence district when it is practical to park, stop or leave such vehicle standing off the roadway, but even the parking, stopping or standing of a vehicle off the roadway of such highway is unlawful unless the following requirements are met:

(a) An unobstructed width of at least 15 feet upon the roadway of such highway must be left opposite such standing vehicle for the free passage of other vehicles. This section shall not apply to a school bus when the school bus is loading or unloading pupils or other authorized passengers where red flashing signal lights are used as required by s. 346.48 (2).

(b) Such standing vehicle must be capable of being seen by operators of other vehicles from a distance of 500 feet in each direction along such highway.

(2) This section also applies to vehicles or equipment used in highway maintenance or construction work unless the nature of the work is such as to require the stopping or standing of the vehicle or equipment on the roadway.

History: 1987 a. 125

346.52 Stopping prohibited in certain specified places. (1)

No person shall stop or leave standing any vehicle, whether attended or unattended and whether temporarily or otherwise, in any of the following places:

- (a) Within an intersection;
- (b) On a crosswalk;
- (c) Between a safety zone and the adjacent curb, or within 15 feet of a point on the curb immediately opposite the end of a safety zone unless a different distance is clearly indicated by an official traffic sign or marker or parking meter;
- (d) On a sidewalk or sidewalk area, except when parking in such place is clearly indicated by official traffic signs or markers or parking meters;

(e) Alongside or opposite any highway excavation or obstruction when such stopping or standing would obstruct traffic or when pedestrian traffic would be required to travel in the roadway;

(f) On the roadway side of any parked vehicle unless double parking is clearly indicated by official traffic signs or markers;

(g) Within 15 feet of the driveway entrance to a fire station or directly across the highway from such entrance;

(h) Upon any portion of a highway where and at the time when stopping or standing is prohibited by official traffic signs indicating the prohibition of any stopping or standing.

(i) Within 25 feet of the nearest rail at a railroad crossing.

(1m) Notwithstanding sub. (1) (a) and (b), if snow accumulation at the usual bus passenger loading area makes it difficult to load or discharge bus passengers, the driver may stop a motor bus to load or discharge passengers on a crosswalk at an intersection where traffic is not controlled by a traffic control signal or a traffic officer.

(2) During the hours of 7:30 a.m. to 4:30 p.m. during school days, no person may stop or leave any vehicle standing, whether temporarily or otherwise, upon the near side of a through highway adjacent to a schoolhouse used for any children below the 9th grade. If the highway adjacent to the schoolhouse is not a through highway, the operator of a vehicle may stop upon the near side thereof during such hours, provided such stopping is temporary and only for the purpose of receiving or discharging passengers. This subsection shall not apply to villages or cities when the village board or common council thereof by ordinance permits parking of any vehicle or of school buses only on the near side of specified highways adjacent to schoolhouses during specified hours.

History: 1979 c. 325; 1983 a. 59; 1989 a. 71

346.53 Parking prohibited in certain specified places. No person shall stop or leave any vehicle standing in any of the following places except temporarily for the purpose of and while actually engaged in loading or unloading or in receiving or discharging passengers and while the vehicle is attended by

a licensed operator so that it may promptly be moved in case of an emergency or to avoid obstruction of traffic:

- (1) In a loading zone;
- (2) In an alley in a business district;
- (3) Within 10 feet of a fire hydrant, unless a greater distance is indicated by an official traffic sign;
- (4) Within 4 feet of the entrance to an alley or a private road or driveway;
- (5) Closer than 15 feet to the near limits of a crosswalk;
- (6) Upon any portion of a highway where and at the time when parking is prohibited, limited or restricted by official traffic signs.

Trial court erred in finding truck driver negligent as matter of law and refusing to submit question of practicality to jury where driver parked on highway for purpose of unloading sewage into manhole. *Nelson v. Travelers Ins. Co.* 80 W (2d) 272, 259 NW (2d) 48.

346.54 How to park and stop on streets. (1) Upon streets where stopping or parking is authorized or permitted, a vehicle is not lawfully stopped or parked unless it complies with the following requirements:

(a) Upon a street where traffic is permitted to move in both directions simultaneously and where angle parking is not clearly designated by official traffic signs or markers, a vehicle must be parked parallel to the edge of the street, headed in the direction of traffic on the right side of the street;

(b) Upon a one-way street or divided street where parking on the left side of the roadway is clearly authorized by official traffic signs or markers, vehicles shall be parked as indicated by such markers;

(c) Upon streets where angle parking is clearly authorized by official traffic signs or markers, vehicles shall be parked at the angle and within the spaces indicated.

(cm) 1. In a parallel parking area, a Type 1 motorcycle may park at an angle. If parallel parking spaces are not indicated by markers, no Type 1 motorcycle may be parked within 2 feet of another vehicle. Where a parallel parking space is indicated by a marker or where angle parking is authorized, up to 3 Type 1 motorcycles may park in the space.

2. Up to 3 Type 1 motorcycles may be parked in a parking space where a parking meter has been installed unless the space is restricted by official traffic sign or marker to a single motorcycle. The operator of each Type 1 motorcycle parked in a single space regulated by a parking meter shall receive a citation for any violation of a time restriction.

(d) In parallel parking, a vehicle shall be parked facing in the direction of traffic with the right wheels within 12 inches of the curb or edge of the street when parked on the right side and with the left wheels within 12 inches of the curb or edge of the street when parked on the left side. In parallel parking, a vehicle shall be parked with its front end at least 2 feet from the vehicle in front and with its rear end at least 2 feet from the vehicle in the rear, unless a different system of parallel parking is clearly indicated by official traffic signs or markers.

(e) For the purpose of parking, mopeds as defined in s. 340.01 (29m) shall be considered bicycles. Where possible without impeding the flow of pedestrian traffic, a moped may be parked on a sidewalk. A moped may be parked in a bike rack or other similar area designated for bicycle parking.

(2) No person shall stop or leave a vehicle standing in violation of this section.

History: 1977 c. 288; 1983 a. 57, 243; 1985 a. 65.

346.55 Other restrictions on parking and stopping. (1) No person shall stop or leave standing any vehicle on the left side of a highway except as provided in s. 346.54.

(2) No person shall stop or leave standing upon any highway any vehicle displayed for sale.

(3) No person may leave or park any motor vehicle on private property without the consent of the owner or lessee of the property.

(4) Owners or lessees of public or private property may permit parking by certain persons and limit, restrict or prohibit parking as to other persons if the owner or lessee posts a sign on the property indicating for whom parking is permitted, limited, restricted or prohibited. No person may leave or park any motor vehicle on public or private property contrary to a sign posted thereon.

History: 1979 c. 276, 288; 1981 c. 157; 1981 c. 255 ss 9g, 9m, 13; 1983 a. 77.

346.56 Penalty for violating sections 346.503 to 346.55. (1)

(a) Any person violating s. 346.503 (1m) to (3) or a rule of the department under s. 346.503 (4) may be required to forfeit not less than \$50 nor more than \$200.

(b) No forfeiture may be assessed under par. (a) if within 30 days after the uniform traffic citation was issued the person provides proof that he or she has complied with the provision of s. 346.503 for which the citation was issued.

(1m) Any person violating s. 346.52 to 346.54 or 346.55 (3) or (4) may be required to forfeit not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within a year.

(2) Any person violating s. 346.505 (2), 346.51 or 346.55 (1) or (2) may be required to forfeit not less than \$30 nor more than \$300.

History: 1971 c. 278; 1977 c. 418; 1979 c. 288; 1981 c. 157; 1983 a. 27, 77; 1987 a. 260.

SPEED RESTRICTIONS

346.57 Speed restrictions. (1) DEFINITIONS. In this section:

(a) "Outlying district" means the territory contiguous to and including any highway within the corporate limits of a city or village where on each side of the highway within any 1,000 feet along such highway the buildings in use for business, industrial or residential purposes fronting thereon average more than 200 feet apart.

(b) "Semiurban district" means the territory contiguous to and including any highway where on either side of the highway within any 1,000 feet along such highway the buildings in use for business, industrial or residential purposes fronting thereon average not more than 200 feet apart or where the buildings in use for such purposes fronting on both sides of the highway considered collectively average not more than 200 feet apart.

(2) REASONABLE AND PRUDENT LIMIT. No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. The speed of a vehicle shall be so controlled as may be necessary to avoid colliding with any object, person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and using due care.

(3) CONDITIONS REQUIRING REDUCED SPEED. The operator of every vehicle shall, consistent with the requirements of sub. (2), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding roadway, when passing school children, highway construction or maintenance workers or other pedestrians, and when special hazard exists with regard to other traffic or by reason of weather or highway conditions.

(4) FIXED LIMITS. In addition to complying with the speed restrictions imposed by subs. (2) and (3), no person shall drive

a vehicle at a speed in excess of the following limits unless different limits are indicated by official traffic signs:

(a) 15 miles per hour when passing a schoolhouse at those times when children are going to or from school or are playing within the sidewalk area at or about the school.

(b) 15 miles per hour when passing an intersection properly marked with a "school crossing" sign of a type approved by the department when children are present.

(c) 15 miles per hour when passing a safety zone occupied by pedestrians and at which a public passenger vehicle has stopped for the purpose of receiving or discharging passengers.

(d) 15 miles per hour in any alley.

(e) 25 miles per hour on any highway within the corporate limits of a city or village, other than on highways in outlying districts in such city or village.

(em) 25 miles per hour on any service road within the corporate limits of a city or village unless modified by the authority in charge of the highway.

(f) 35 miles per hour in any outlying district within the corporate limits of a city or village.

(g) 35 miles per hour on any highway in a semiurban district outside the corporate limits of a city or village.

(gm) 65 miles per hour on any freeway for which a limit of 65 miles per hour is provided under federal law, as determined by the department. To the extent so determined, the limit under this paragraph applies to USH 51 and STH 78.

(h) In the absence of any other fixed limits or the posting of limits as required or authorized by law, 55 miles per hour.

(i) 15 miles per hour on any city or village street, except a state trunk highway or connecting highway, within, contiguous to or adjacent to a public park or recreation area when children are going to or from or are playing within such area, when the local authority has enacted an ordinance regulating such traffic and has properly marked such area with official traffic control devices erected at such points as said authority deems necessary and at those points on the streets concerned where persons traversing the same would enter such area from an area where a different speed limit is in effect.

(j) 35 miles per hour on any town road where on either side of the highway within any 1,000 feet along such highway the buildings in use for business, industrial or residential purposes fronting thereon average less than 150 feet apart, provided the town board has adopted an ordinance determining such speed limit and has posted signs at such points as the town board deems necessary to give adequate warning to users of the town road.

(k) 45 miles per hour on any highway designated as a rustic road under s. 83.42.

(5) ZONED AND POSTED LIMITS. In addition to complying with the speed restrictions imposed by subs. (2) and (3), no person shall drive a vehicle in excess of any speed limit established pursuant to law by state or local authorities and indicated by official signs:

(6) CERTAIN STATUTORY LIMITS TO BE POSTED. (a) On state trunk highways and connecting highways and on county trunk highways or highways marked and signed as county trunks, the speed limits specified in sub. (4) (e) and (f) are not effective unless official signs giving notice thereof have been erected by the authority in charge of maintenance of the highway in question. The speed limit specified in sub. (4) (g) and (k) is not effective on any highway unless official signs giving notice thereof have been erected by the authority in charge of maintenance of the highway in question. The signs shall be erected at such points as the authority in charge of maintenance deems necessary to give adequate warning to users of the highway in question, but an alleged failure to post

a highway as required by this paragraph is not a defense to a prosecution for violation of the speed limits specified in sub. (4) (e), (f), (g) or (k), or in an ordinance enacted in conformity therewith, if official signs giving notice of the speed limit have been erected at those points on the highway in question where a person traversing such highway would enter it from an area where a different speed limit is in effect.

(b) The limit specified under sub. (4) (gm) is not effective unless official signs giving notice of the limit have been erected by the department. The department may not erect or maintain such signs unless the department determines that the limit under sub. (4) (gm) is in conformity with the applicable national maximum speed limit.

History: 1973 c. 157; 1975 c. 192, 210; 1977 c. 29 s. 1654 (3), (8) (a); 1977 c. 30, 67, 116, 203, 272; 1987 a. 17, 136.

While (2) is related to (3), it is not limited by (3), and (3) creates a greater duty in respect to speed than (2) does. *Thoreson v. Milwaukee & S Transport Corp.* 56 W (2d) 231, 201 NW (2d) 745.

Court establishes guidelines for prosecution of speeding citations issued on basis of moving speed radar device. *State v. Hanson*, 85 W (2d) 233, 270 NW (2d) 212 (1978).

Prima facie presumption of accuracy applies to stationary radar device. *City of Wauwatosa v. Collett*, 99 W (2d) 522, 299 NW (2d) 620 (Ct App 1980).

Moving radar speed detection device guidelines discussed. *State v. Kramer*, 99 W (2d) 700, 299 NW (2d) 882 (1981).

Actor may claim defense of legal justification if conduct of law enforcement officer causes actor reasonably to believe that violating law is only means of preventing bodily harm to actor or another and causes actor to violate law. *State v. Brown*, 107 W (2d) 44, 318 NW (2d) 370 (1982).

This section does not impose upon driver absolute liability to avoid accidents. *Millonig v. Bakken*, 112 W (2d) 445, 334 NW (2d) 80 (1983).

Presumption of accuracy of moving radar device discussed. Elements of *Hanson/Kramer* criteria explained. *Washington County v. Luedtke*, 135 W (2d) 131, 399 NW (2d) 906 (1987).

346.58 Special speed restrictions for certain vehicles. In addition to complying with other speed restrictions imposed by law, no person shall drive any of the following types of vehicles at a speed in excess of the limits fixed by this section:

(1) 15 miles per hour for any vehicle equipped with metal or solid rubber tires. "Metal tire" means a tire the surface of which in contact with the highway is wholly or partially of metal or other hard, nonresilient material; "solid rubber tire" means a tire made of rubber but not inflated with compressed air.

History: 1973 c. 165; 1975 c. 297; 1983 a. 54.

346.59 Minimum speed regulation. (1) No person shall drive a motor vehicle at a speed so slow as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or is necessary to comply with the law.

(2) The operator of a vehicle moving at a speed so slow as to impede the normal and reasonable movement of traffic shall, if practicable, yield the roadway to an overtaking vehicle whenever the operator of the overtaking vehicle gives audible warning with a warning device and shall move at a reasonably increased speed or yield the roadway to overtaking vehicles when directed to do so by a traffic officer.

History: 1977 c. 100

346.595 Motorcycles and mopeds. Whenever a motorcycle or a moped is operated the following rules apply:

(1) All motor vehicles including motorcycles and mopeds are entitled to the full use of a traffic lane and no vehicle may be driven or operated in such a manner so as to deprive any other vehicle of the full use of a traffic lane. With the consent of both drivers, Type 1 motorcycles may be operated not more than 2 abreast in a single lane, but mopeds may be so operated only where the speed limit is 25 miles per hour or less.

(2) No person shall ride any motorcycle or moped while in a side-saddle position.

(3) No passenger may ride a Type 1 motorcycle who, when properly seated, cannot rest the feet on assigned foot rests or pegs. No passenger may ride on a moped.

(3m) No more than 2 persons may ride on a motorcycle having 2 wheels in tandem during operation unless a sidecar has been attached to the motorcycle as provided in s. 340.01 (32) (a) 1 and the additional passengers are provided with adequate seating within the sidecar.

(4) No passenger shall ride in front of the operator on a motorcycle.

(5) The headlamps on motorcycles shall be lighted whenever the motorcycle is in operation. Motorcycles may be operated to the nearest repair facility for headlamp repair in the event of mechanical or electrical headlamp failure except during hours of darkness. Mopeds shall observe the requirements for lighted headlamps and tail lamps under s. 347.06.

(6) On any road for which the speed limit is more than 25 miles per hour, mopeds shall be operated only when riding single-file in the extreme right-hand lane. No person may operate a moped on any restricted access highway.

History: 1977 c. 288; 1981 c. 52; 1983 a. 243; 1985 a. 65 ss. 20, 29. The provision requiring headlamps to be lighted is constitutional. *Kenosha v. Dosemagen*, 54 W (2d) 269, 195 NW (2d) 462.

346.60 Penalty for violating sections 346.57 to 346.595. (1) Except as provided in sub. (5), any person violating s. 346.59 may be required to forfeit not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within a year.

(2) (a) Except as provided in sub. (5), any person violating s. 346.57 (4) (d) to (g) or (h) or (5) or 346.58 may be required to forfeit not less than \$30 nor more than \$300.

(b) Except as provided in sub. (5), any person violating s. 346.57 (4) (gm) may be required to forfeit not less than \$50 nor more than \$300.

(3) Except as provided in sub. (5), any person violating s. 346.57 (2), (3) or (4) (a) to (c) may be required to forfeit not less than \$40 nor more than \$300 for the first offense and may be required to forfeit not less than \$80 nor more than \$600 for the 2nd or subsequent conviction within a year.

(4) Any person violating s. 346.595 may be required to forfeit not less than \$30 nor more than \$300.

(5) (a) Any operator of a bicycle who violates s. 346.57 may be required to forfeit not more than \$20.

(b) Any operator of a bicycle who violates s. 346.59 may be required to forfeit not more than \$10.

History: 1971 c. 278; 1973 c. 182, 218; 1973 c. 333 ss. 174p, 202 (12); 1973 c. 336; 1977 c. 30 ss. 6, 7; 1983 a. 27; 1987 a. 17.

RECKLESS AND DRUNKEN DRIVING

346.61 Applicability of sections relating to reckless and drunken driving. In addition to being applicable upon highways, ss. 346.62 to 346.64 are applicable upon all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.

Privately owned parking lot was not included under this section. *City of Kenosha v. Phillips*, 142 W (2d) 549, 419 NW (2d) 236 (1988).

346.62 Reckless driving. (1) In this section:

(a) "Bodily harm" has the meaning designated in s. 939.22 (4).

(b) "Great bodily harm" has the meaning designated in s. 939.22 (14).

(c) "Negligent" has the meaning designated in s. 939.25 (2).

(d) "Vehicle" has the meaning designated in s. 939.22 (44).

(2) No person may endanger the safety of any person or property by the negligent operation of a vehicle.

(3) No person may cause bodily harm to another by the negligent operation of a vehicle.

(4) No person may cause great bodily harm to another by the negligent operation of a vehicle.

History: 1987 a. 399.

Judicial Council Note, 1988: The revisions contained in subs. (2) and (3) are intended as editorial, not substantive, as is the substitution of a cross reference to s. 939.25 (2) for the prior definition of a high degree of negligence. New sub. (4) carries forward the crime created by 1985 Wisconsin Act 293 [Bill 191-S].

The fact that defendant was an experienced stock car driver is not a defense to a charge of reckless driving. *State v. Passarelli*, 55 W (2d) 78, 197 NW (2d) 740.

346.63 Operating under influence of intoxicant or other drug. (1) No person may drive or operate a motor vehicle while:

(a) Under the influence of an intoxicant or a controlled substance or a combination of an intoxicant and a controlled substance, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or

(b) The person has a blood alcohol concentration of 0.1% or more by weight of alcohol in that person's blood or 0.1 grams or more of alcohol in 210 liters of that person's breath.

(c) A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b), the offenses shall be joined. If the person is found guilty of both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under ss. 343.30 (1q) and 343.305. Paragraphs (a) and (b) each require proof of a fact for conviction which the other does not require.

(2) (a) It is unlawful for any person to cause injury to another person by the operation of a vehicle while:

1. Under the influence of an intoxicant or a controlled substance or a combination of an intoxicant and a controlled substance, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or

2. The person has a blood alcohol concentration of 0.1% or more by weight of alcohol in that person's blood or 0.1 grams or more of alcohol in 210 liters of that person's breath.

3. A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of subd. 1 or 2 or both for acts arising out of the same incident or occurrence. If the person is charged with violating both subds. 1 and 2 in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of both subds. 1 and 2 for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under ss. 343.30 (1q) and 343.305. Subdivisions 1 and 2 each require proof of a fact for conviction which the other does not require.

(b) In an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or a controlled substance or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of

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safely driving or did not have a blood alcohol concentration described under par. (a) 2.

(2m) If a person has not attained the age of 19, the person may not drive or operate a motor vehicle while he or she has a blood alcohol concentration of more than 0.0% but not more than 0.1% by weight of alcohol in the person's blood or more than 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of that person's breath. One penalty for violation of this subsection is suspension of a person's operating privilege under s. 343.30 (1p). The person is eligible for an occupational license under s. 343.10 at any time. If a person arrested for a violation of this subsection refuses to take a test under s. 343.305, the refusal is a separate violation and the person is subject to revocation of the person's operating privilege under s. 343.305 (10) (em).

(3) In this section:

(a) "Drive" means the exercise of physical control over the speed and direction of a motor vehicle while it is in motion.

(b) "Operate" means the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion.

(4) If a person is convicted under sub. (1) or a local ordinance in conformity therewith, or sub. (2), the court shall proceed under s. 343.30 (1q).

(5) (a) No person may drive or operate a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.1.

(b) A person may be charged with and a prosecutor may proceed upon a complaint based on a violation of par. (a) or sub. (1) (a) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both par. (a) and sub. (1) (a), the offenses shall be joined. Paragraph (a) and sub. (1) (a) each require proof of a fact for conviction which the other does not require. If the person is found guilty of violating both par. (a) and sub. (1) (a) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions. Each conviction shall be reported to the department and counted separately for purposes of suspension or revocation of the operator's license and disqualification.

(6) (a) No person may cause injury to another person by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.1.

(b) A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of par. (a) or sub. (2) (a) 1 or both for acts arising out of the same incident or occurrence. If the person is charged with violating both par. (a) and sub. (2) (a) 1 in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of violating both par. (a) and sub. (2) (a) 1 for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions. Paragraph (a) and sub. (2) (a) 1 each require proof of a fact for conviction which the other does not require.

(c) Under par. (a), the person charged has a defense if it appears by a preponderance of the evidence that the injury would have occurred even if he or she had not been under the influence of an intoxicant or a controlled substance or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or did not have an alcohol concentration described under par. (a).

(7) (a) No person may drive or operate or be on duty time with respect to a commercial motor vehicle under any of the following circumstances:

1. While having any measured alcohol concentration above 0.0.

2. Within 4 hours of having consumed or having been under the influence of an intoxicating beverage, regardless of its alcohol content.

3. While possessing an intoxicating beverage, regardless of its alcohol content. This subdivision does not apply to possession of an intoxicating beverage if the beverage is unopened and is manifested and transported as part of a shipment.

(b) A person may be charged with and a prosecutor may proceed upon complaints based on a violation of this subsection and sub. (1) (a) or (b) or both, or sub. (1) (a) or (5) (a), or both, for acts arising out of the same incident or occurrence. If the person is charged with violating this subsection and sub. (1) or (5), the proceedings shall be joined. If the person is found guilty of violating both this subsection and sub. (1) or (5) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions. This subsection and subs. (1) and (5) each require proof of a fact for conviction which the others do not require. Each conviction shall be reported to the department and counted separately for purposes of suspension or revocation of the operator's license and disqualification.

History: 1971 c. 40 s. 93; 1971 c. 219; 1977 c. 193; 1981 c. 20, 184; 1983 a. 74, 459, 521; 1985 a. 32, 337; 1987 a. 3, 27; 1989 a. 105, 275.

NOTE: For legislative intent see chapter 20, laws of 1981, section 2051 (13). It is no defense that defendant is an alcoholic. *State v. Koller*, 60 W (2d) 755.

Evidence that defendant, found asleep in parked car at 12:53 a.m., had driven to the parking place 14 minutes earlier, was sufficient to support conviction for operating a car while intoxicated "at or about 12:53 a.m." *Monroe County v. Kruse*, 76 W (2d) 126, 250 NW (2d) 375.

Intent to drive or move motor vehicle is not required to find accused guilty of operating vehicle while under influence of intoxicant. *Milwaukee County v. Proegler*, 95 W (2d) 614, 291 NW (2d) 608 (Ct. App. 1980).

Section 346.63 (4), 1979 stats., does not prevent state from introducing corroborating evidence. *State v. Burkman*, 96 W (2d) 630, 292 NW (2d) 641 (1980).

First violation of 346.63 (1), 1979 stats., is not a criminal offense. *State v. Schulz*, 100 W (2d) 329, 302 NW (2d) 59 (Ct. App. 1981).

Court properly instructed jury that it could infer from a breathalyzer reading of .13% that defendant was intoxicated. Alcohol absorption rate discussed. *State v. Vick*, 104 W (2d) 678, 312 NW (2d) 489 (1981).

Previous conviction for drunk driving is penalty enhancer, not element of crime. *State v. McAllister*, 107 W (2d) 532, 319 NW (2d) 865 (1982).

See note to Art. I, sec. 8, citing *State v. Haefer*, 110 W (2d) 381, 328 NW (2d) 894 (Ct. App. 1982).

Sub. (1) (b) is not unconstitutionally vague. *State v. Muehlenberg*, 118 W (2d) 502, 347 NW (2d) 914 (Ct. App. 1984).

See note to 904.03, citing *State v. Hinz*, 121 W (2d) 282, 360 NW (2d) 56 (Ct. App. 1984).

See note to 939.22, citing *State v. Waalen*, 130 W (2d) 18, 386 NW (2d) 47 (1986).

Sub. (1) (b) establishes per se rule that it is violation to operate motor vehicle with specified breath alcohol content, regardless of individual's "partition ratio"; provision is constitutional. *State v. McManus*, 152 W (2d) 113, 447 NW (2d) 654 (1989).

Upon conviction for drunk driving, probation may be granted only pursuant to 972.13 (2) and 973.09. 60 Atty. Gen. 271.

First offense violations of (1) (a) are assimilated under federal Assimilative Crimes Act when committed on federal enclave. *U.S. v. Manning*, 700 F Supp. 1001 (W.D. Wis. 1988).

Offense definition in Wisconsin's impaired driving statutes. Hammer. 69 MLR 165 (1986).

Alcohol and other drugs in Wisconsin drivers: The laboratory perspective. Field. 69 MLR 235 (1986).

Effective use of expert testimony in the defense of drunk driving cases. Olson, WBB December 1981.

The new OMVWI law: Wisconsin changes its approach to the problem of drinking and driving. Hammer, WBB April, May 1982.

346.635 Report arrest or out-of-service order to department. Whenever a law enforcement officer arrests a person for a violation of s. 346.63 (1), (5) or (7), or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, the

officer shall notify the department of the arrest and of issuance of an out-of-service order under s. 343.305 (7) (b) or (9) (am) as soon as practicable.

History: 1981 c. 20; 1989 a. 105.

346.637 Driver awareness program. The department shall conduct a campaign to educate drivers in this state concerning:

(1) The laws relating to operating a motor vehicle and drinking alcohol or using controlled substances or both.

(2) The effects of alcohol or controlled substances or both on a person's ability to operate a motor vehicle.

History: 1981 c. 20.

346.64 Employment of drunken operators. (1) No person who owns or has direct control of a commercial motor vehicle or any vehicle operated upon a highway for the conveyance of passengers for hire shall employ as an operator of such vehicle and retain in the person's employment any person who is addicted to the excessive use of intoxicating liquor or to the use of a controlled substance under ch. 161. In addition to being subject to fine or imprisonment as prescribed by law, such person shall forfeit \$5 for each day such operator is retained in the person's employ.

(2) Upon conviction of an operator of a commercial motor vehicle or any vehicle operated for the conveyance of passengers for hire, for driving or operating such vehicle while under the influence of an intoxicant, the owner or person having direct control of such vehicle shall discharge such operator from such employment. No person shall employ or retain in employment as an operator of a commercial motor vehicle or a vehicle operated upon a highway for the conveyance of passengers for hire any person who has been so convicted within the preceding 6-month period or any person during a period of disqualification under s. 343.315, unless s. 343.055 (2) applies. In addition to being subject to fine or imprisonment as prescribed by law, such person shall forfeit \$5 for each day such operator is retained in the person's employ contrary to the provisions of this subsection.

History: 1971 c. 219; 1989 a. 105, 359.

346.65 Penalty for violating sections 346.62 to 346.64. (1)

Any person who violates s. 346.62 (2):

(a) May be required to forfeit not less than \$25 nor more than \$200, except as provided in par. (b).

(b) May be fined not less than \$50 nor more than \$500 or imprisoned for not more than one year in the county jail or both if the total of convictions under s. 346.62 (2) or a local ordinance in conformity therewith equals 2 or more in a 4-year period. The 4-year period shall be measured from the dates of the violations which resulted in the convictions.

(2) Any person violating s. 346.63 (1):

(a) Shall forfeit not less than \$150 nor more than \$300, except as provided in pars. (b) to (e).

(b) Shall be fined not less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months if the total of revocations under s. 343.305 (10) (b) and convictions under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, equals 2 in a 5-year period, except revocations or convictions arising out of the same incident or occurrence shall be counted as one.

(c) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the total of revocations under s. 343.305 (10) (b) and convictions under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m), 1985

stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, equals 3 in a 5-year period, except that revocations or convictions arising out of the same incident or occurrence shall be counted as one.

(d) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one year in the county jail if the total of revocations under s. 343.305 (10) (b) and convictions under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, equals 4 in a 5-year period, except that revocations or convictions arising out of the same incident or occurrence shall be counted as one.

(e) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 6 months nor more than one year in the county jail if the total of revocations under s. 343.305 (10) (b) and convictions under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, equals 5 or more in a 5-year period, except that revocations or convictions arising out of the same incident or occurrence shall be counted as one.

(2c) In sub. (2) (b) to (e), the 5-year period shall be measured from the dates of the refusals or violations that resulted in the revocation or convictions. If a person has a conviction for any offense under a local ordinance in or a state statute of another state that is in conformity with s. 346.63 (1) (a) or (b) or both, that conviction shall count as a prior conviction under sub. (2) (b) to (e).

(2g) In addition to the authority of the court under s. 973.05 (3) (a) to provide that a defendant perform community service work for a public agency or a nonprofit charitable organization in lieu of part or all of a fine imposed under sub. (2) (b) to (e), the court may provide that a defendant perform community service work for a public agency or a nonprofit charitable organization in lieu of part or all of a forfeiture under sub. (2) (a) or may require a person who is subject to sub. (2) to perform community service work for a public agency or a nonprofit charitable organization in addition to the penalties specified under sub. (2). Notwithstanding s. 973.05 (3) (b), an order may only apply if agreed to by the organization or agency. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the defendant. The issuance or possibility of the issuance of a community service order under this subsection does not entitle an indigent defendant who is subject to sub. (2) (a) to representation by counsel under ch. 977.

(2j) Any person violating s. 346.63 (5):

(a) Shall forfeit not less than \$150 nor more than \$300 except as provided in par. (b) or (c).

(b) Shall be fined not less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months if the total of prior convictions equals 2 in a 5-year period.

(c) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the total of prior convictions equals 3 or more in a 5-year period.

(2m) In imposing a sentence under sub. (2) for a violation of s. 346.63 (1) (b) or (5) or a local ordinance in conformity therewith, the court shall review the record and consider the aggravating and mitigating factors in the matter. If the level

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of the person's blood alcohol level is known, the court shall consider that level as a factor in sentencing. The chief judge of each judicial administrative district shall adopt guidelines, under the chief judge's authority to adopt local rules under SCR 70.34, for the consideration of aggravating and mitigating factors.

(2q) Any person violating s. 346.63 (2m) shall forfeit \$10.

(2r) (a) In addition to the other penalties provided for violation of s. 346.63, a judge may order a defendant to pay restitution under s. 973.20.

(b) This subsection is applicable in actions concerning violations of local ordinances in conformity with s. 346.63.

(2u) (a) Any person violating s. 346.63 (7) shall forfeit \$10.

(b) Upon his or her arrest for a violation of s. 346.63 (7), a person shall be issued an out-of-service order for a 24-hour period by the arresting officer under s. 343.305 (7) (b) or (9) (am).

(c) If a person arrested for a violation of s. 346.63 (7) refuses to take a test under s. 343.305, the refusal is a separate violation and the person is subject to revocation of the person's operating privilege under s. 343.305 (10) (em).

(2w) In determining the number of prior convictions for purposes of sub. (2j), the court shall count revocations under s. 343.305 (10) (b) and convictions under s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle. Revocations under s. 343.305 (10) (b) and convictions arising out of the same incident or occurrence shall be counted as one. The 5-year period shall be measured from the dates of the refusals or violations which resulted in the revocation or convictions. If a person has a conviction for any offense under a local ordinance in conformity with s. 346.63 (1) (a) or (b) or both, or s. 346.63 (5), or under the law of another jurisdiction that is in substantial conformity with 49 CFR 383.51 (b) (2) (i) or (ii) or both, or that prohibits refusal of chemical testing or use of a motor vehicle while intoxicated or under the influence of a controlled substance, or a combination thereof, or with an excess or specified range of alcohol concentration, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction's laws, that conviction shall count as a prior conviction under this section.

(3) Any person violating s. 346.62 (3) or 346.63 (2) or (6) shall be fined not less than \$300 nor more than \$2,000 and may be imprisoned not less than 30 days nor more than one year in the county jail.

(4) Any person violating s. 346.64 may be fined not less than \$50 nor more than \$500 or imprisoned not more than 6 months or both.

(5) Any person violating s. 346.62 (4) shall be fined not less than \$600 nor more than \$2,000 and may be imprisoned for not less than 90 days nor more than 18 months.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271.

Penalty provisions of (2) (a) are mandatory and apply to violations committed prior to conviction for 1st offense within 5-year period. *State v. Banks*, 105 W (2d) 32, 313 NW (2d) 67 (1981).

See note to Art. I, sec. 7, citing *State v. Novak*, 107 W (2d) 31, 318 NW (2d) 364 (1982).

State has exclusive jurisdiction over second offense for drunk driving. *County of Walworth v. Rohner*, 108 W (2d) 713, 324 NW (2d) 682 (1982).

Under (3), fine is mandatory but jail sentence is discretionary. *State v. McKenzie*, 139 W (2d) 171, 407 NW (2d) 274 (Ct. App. 1987).

Term of probation with condition of 30-day confinement in county jail is inadequate to meet mandatory imprisonment requirement of (2) (c). *State v. Meddaugh*, 148 W (2d) 204, 435 NW (2d) 269 (Ct. App. 1988).

Where person is charged under 346.63 (1) as second offense, charge may not be reduced to violation as first offense and court may not sentence under 346.65 (2) (a) 1. Department must treat this as second offense for purposes of revocation under 343.31 (1) (b). 69 Atty. Gen. 47.

Uncounseled civil forfeiture conviction may provide basis for criminal penalties for subsequent offense. *Schindler v. Clerk of Circuit Court*, 715 F (2d) 341 (1983).

346.655 Driver improvement surcharge. (1) On or after July 1, 1988, if a court imposes a fine or a forfeiture for a violation of s. 346.63 (1) or (5), or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, it shall impose a driver improvement surcharge in an amount of \$250 in addition to the fine or forfeiture, penalty assessment and jail assessment.

(2) (a) Except as provided in par. (b), the clerk of court shall collect and transmit the amount to the county treasurer as provided in s. 59.395 (5). The county treasurer shall then make payment to the state treasurer as provided in s. 59.20 (5) (b).

(b) If the forfeiture is imposed by a municipal court, the court shall transmit the amount to the treasurer of the county, city, town or village, and that treasurer shall make payment to the state treasurer as provided in s. 66.12 (1) (b).

(3) All moneys collected from the driver improvement surcharge shall be deposited by the state treasurer in s. 20.435 (6) (hx).

History: 1981 c. 20; 1981 c. 314; 1983 a. 27 s. 2202 (20); 1985 a. 29, 337; 1987 a. 3, 27, 399; 1989 a. 31, 105.

See note to 345.47, citing 73 Atty. Gen. 24.

ACCIDENTS AND ACCIDENT REPORTS

346.66 Applicability of sections relating to accidents and accident reporting. In addition to being applicable upon highways, ss. 346.67 to 346.70 are applicable upon all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof. These sections do not apply to accidents involving only snowmobiles, all-terrain vehicles or vehicles propelled by human power or drawn by animals.

History: 1971 c. 277; 1985 a. 29.

346.67 Duty upon striking person or attended or occupied vehicle. (1) The operator of any vehicle involved in an accident resulting in injury to or death of any person or in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the following requirements:

(a) He shall give his name, address and the registration number of the vehicle he is driving to the person struck or to the operator or occupant of or person attending any vehicle collided with; and

(b) He shall, upon request and if available, exhibit his operator's license to the person struck or to the operator or occupant of or person attending any vehicle collided with; and

(c) He shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

Violation of this section is felony. *State ex rel. McDonald v. Douglas Cty. Cir. Ct.* 100 W (2d) 569, 302 NW (2d) 462 (1981).

Elements of duty under this section discussed. *State v. Lloyd*, 104 W (2d) 49, 310 NW (2d) 617 (Ct. App. 1981).

Failure to stop and render aid to multiple victims of single accident may result in multiple charges without multiplicity defects arising. *State v. Hartnek*, 146 W (2d) 188, 430 NW (2d) 361 (Ct. App. 1988).

346.68 Duty upon striking unattended vehicle. The operator of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the operator and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck, a written notice giving the name and address of the operator and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

Driver's knowledge of collision with unattended vehicle need not be proved under this section. 68 Atty. Gen. 274.

346.69 Duty upon striking property on or adjacent to highway. The operator of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's license and shall make report of such accident when and as required in s. 346.70.

346.70 Duty to report accident. (1) IMMEDIATE NOTICE OF ACCIDENT. The operator of a vehicle involved in an accident resulting in injury to or death of any person, any damage to state or other government-owned property, except a state or other government-owned vehicle, to an apparent extent of \$200 or more or total damage to property owned by any one person or to a state or other government-owned vehicle to an apparent extent of \$500 or more shall immediately by the quickest means of communication give notice of such accident to the police department, the sheriff's department or the traffic department of the county or municipality in which the accident occurred or to a state traffic patrol officer. In this subsection, "injury" means injury to a person of a physical nature resulting in death or the need of first aid or attention by a physician or surgeon, whether or not first aid or medical or surgical treatment was actually received; "total damage to property owned by one person" means the sum total cost of putting the property damaged in the condition it was before the accident, if repair thereof is practical, and if not practical, the sum total cost of replacing such property. For purposes of this subsection if any property which is damaged is held in a form of joint or multiple ownership, the property shall be considered to be owned by one person.

(2) WRITTEN REPORT OF ACCIDENT. Unless a report is made under sub. (4) by a law enforcement agency, within 10 days after an accident of the type described in sub. (1), the operator of a vehicle involved in the accident shall forward a written report of the accident to the department. The department may accept or require a report of the accident to be filed by an occupant or the owner in lieu of a report from the operator. Every accident report required to be made in writing shall be made on the appropriate form approved by the department and shall contain all of the information required therein unless not available. The report shall include information sufficient to enable the department to determine whether the requirements for deposit of security under s. 344.14 are inapplicable by reason of the existence of insurance or other exceptions specified in ch. 344.

(3) WHO TO REPORT WHEN OPERATOR UNABLE. Whenever the operator of a vehicle is physically incapable of giving the notice and making the report required by subs. (1) and (2), the owner of the vehicle involved in the accident shall give the notice and make the report required by subs. (1) and (2). If the owner of the vehicle is physically or mentally incapable of

giving the notice and making the report required by subs. (1) and (2), and if there was another occupant in the vehicle at the time of the accident capable of giving the notice and making the report, the occupant shall give the notice and make the report.

(3m) DUTY OF DEPARTMENT WITH RESPECT TO ACCIDENT REPORTS. (a) The department may require any operator, occupant or owner of a vehicle involved in an accident of which report must be made as provided in s. 346.70 to file supplemental reports whenever the original report is insufficient in the opinion of the department and may require witnesses of accidents to render reports to the department.

(b) The department shall tabulate and may analyze all accident reports and shall publish annually or at more frequent intervals statistical information based thereon as to the number and circumstances of traffic accidents.

(c) The department shall prepare and supply at its own expense to police departments, coroners, sheriffs and other suitable agencies or individuals, forms for accident reports required to be made to the department. The report forms shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicles involved.

(4) POLICE AND TRAFFIC AGENCIES TO REPORT. (a) Every law enforcement agency investigating or receiving a report of a traffic accident as described in sub. (1) shall forward a report of the accident to the department within 10 days after the date of the accident.

(b) The reports shall be made on a uniform traffic accident report form prescribed by and supplied by the secretary in sufficient quantities to meet the requirements of the department and the law enforcement agency.

(f) Notwithstanding s. 346.73, any person may with proper care, during office hours, and subject to such orders or regulations as the custodian thereof prescribes, examine or copy such uniform traffic accident reports, including supplemental or additional reports, statements of witnesses, photographs and diagrams, retained by local authorities, the state traffic patrol or any other investigating law enforcement agency.

(g) The department, upon request of local enforcement agencies, shall make available to them compilations of data obtained from such reports.

(h) Every law enforcement agency investigating or receiving a report of a traffic accident as described in sub. (1) shall forward a copy of the report of the accident to the county traffic safety commission or to the person designated to maintain spot maps under s. 83.013 (1) (a) in the county where the accident occurred when the accident occurred on a county or town road or on a city or village street where the population of the city or village is less than 5,000. For traffic accidents occurring within a city or village with a population of 5,000 or more, the law enforcement agency investigating or receiving a report shall forward a copy of the report of the accident to the city or village where the accident occurred.

(5) FALSIFYING REPORTS. No person shall falsely make and file any accident report or knowingly make a false statement in any accident report which is filed pursuant to this section.

History: 1975 c. 240, 381; 1977 c. 29 ss. 1486, 1654 (7) (a), (c); 1977 c. 100; 1979 c. 99; 1981 c. 20, 133, 314; 1985 a. 29; 1987 a. 211.

A county sheriff's department is not a consumer reporting agency subject to the fair credit reporting act for reports under (4). However, the federal trade commission has taken an opposite position: 63 Atty. Gen. 364.

346.71 Coroners or medical examiners to report; require blood specimen. (1) Every coroner or medical examiner shall, on or before the 10th day of each month, report in writing any accident involving a motor vehicle occurring within the coroner's or medical examiner's jurisdiction result-

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ing in the death of any person during the preceding calendar month. If the accident involved an all-terrain vehicle, the report shall be made to the department of natural resources and shall include the information specified by that department. If the accident involved any other motor vehicle, the report shall be made to the department and shall include the information specified by the department. The coroner or medical examiner of the county where the death occurs, if the accident occurred in another jurisdiction, shall, immediately upon learning of the death, report it to the coroner or medical examiner of the county where the accident occurred, as provided in s. 979.01 (1).

(2) In cases of death involving a motor vehicle in which the decedent was the operator of a motor vehicle, a pedestrian 14 years of age or older or a bicycle operator 14 years of age or older and who died within 6 hours of the time of the accident, the coroner or medical examiner of the county where the death occurred shall require that a blood specimen of at least 10 cc. be withdrawn from the body of the decedent within 12 hours after his or her death, by the coroner or medical examiner or by a physician so designated by the coroner or medical examiner or by a qualified person at the direction of the physician. All funeral directors shall obtain a release from the coroner or medical examiner of the county where the accident occurred as provided in s. 979.01 (4) prior to proceeding with embalming any body coming under the scope of this section. The blood so drawn shall be forwarded to a laboratory approved by the department of health and social services for analysis of the alcoholic content of the blood specimen. The coroner or medical examiner causing the blood to be withdrawn shall be notified of the results of each analysis made and shall forward the results of each such analysis to the department of health and social services. If the death involved a motor vehicle, the department shall keep a record of all such examinations to be used for statistical purposes only and the department shall disseminate and make public the cumulative results of the examinations without identifying the individuals involved. If the death involved an all-terrain vehicle, the department of natural resources shall keep a record of all such examinations to be used for statistical purposes only and the department of natural resources shall disseminate and make public the cumulative results of the examinations without identifying the individuals involved.

(3) In a case of death involving a motor vehicle in which the accident and the death occur in different counties, the county where the death occurs may charge the county where the accident occurs a reasonable fee for withdrawing the blood specimen from the body of the decedent as required under sub. (2).

History: 1973 c. 272; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1983 a. 485; 1985 a. 29; 1987 a. 302.

Coroner's blood test records under (2) aren't confidential. Test results are presumptively accurate. *Staples v. Glienke*, 142 W (2d) 19, 416 NW (2d) 920 (Ct. App. 1987).

Under 346.71 (2), Stats. 1969, blood test records of the coroner are not confidential. The admissibility of such records is limited by 979.20 (3) 59 Atty. Gen. 226.

346.72 Garages to keep record of repairs of accident damage. The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident shall keep a record of the date such vehicle is brought in and the nature of the repair, the name and address of the owner, and the make, year and registration number of the vehicle. Such record shall be kept in the place of business during business hours and shall be open to inspection by any traffic officer. Shop records normally kept by garages and repair shops are adequate for

the purpose of this section if they contain the information specified in this section.

346.73 Accident reports not to be used in trial. (2) Notwithstanding s. 346.70 (4) (f), written accident reports required to be filed with the department or with a county or municipal authority shall not be used as evidence in any judicial trial, civil or criminal, arising out of an accident, except that such reports may be used as evidence in any administrative proceeding conducted by the department. The department shall furnish upon demand of any person who has or claims to have made such a report, or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department solely to prove a compliance or a failure to comply with the requirement that such a report be made to the department.

History: 1971 c. 253; 1977 c. 29 s. 1654 (7) (a).

346.74 Penalty for violating sections 346.67 to 346.73. (1) Any person violating s. 346.72 may be required to forfeit not less than \$20 nor more than \$40 for the first offense and may be required to forfeit not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within a year.

(2) Any person violating s. 346.70 (1), (2) or (3), 346.71 or 346.73 may be required to forfeit not less than \$40 nor more than \$200 for the first offense and may be required to forfeit not less than \$100 nor more than \$500 for the 2nd or subsequent conviction within a year.

(3) Any person violating s. 346.68 or 346.69 may be required to forfeit not more than \$200.

(4) Any person violating s. 346.70 (5) may be required to forfeit not less than \$25 nor more than \$50.

(5) Any person violating any provision of s. 346.67:

(a) Shall be fined not less than \$300 nor more than \$1,000 or imprisoned not more than 6 months or both if the accident did not involve death or injury to a person.

(b) Shall be fined not less than \$300 nor more than \$5,000 or imprisoned not less than 10 days nor more than one year or both if the accident involved injury to a person but the person did not suffer great bodily harm.

(c) May be fined not more than \$10,000 or imprisoned not more than 2 years or both if the accident involved injury to a person and the person suffered great bodily harm.

(d) May be fined not more than \$10,000 or imprisoned not more than 5 years or both if the accident involved death to a person.

(e) Is guilty of a felony if the accident involved death or injury to a person.

History: 1971 c. 278; 1973 c. 218; 1981 c. 20, 70

BICYCLES AND PLAY VEHICLES

346.77 Responsibility of parent or guardian for violation of bicycle and play vehicle regulations. No parent or guardian of any child shall authorize or knowingly permit such child to violate any of the provisions of ss. 346.78 to 346.804 and 347.489.

History: 1983 a. 243 s. 66

346.78 Play vehicles not to be used on roadway. No person riding upon any play vehicle may attach the same or himself or herself to any vehicle upon a roadway or go upon any roadway except while crossing a roadway at a crosswalk.

History: 1983 a. 243

346.79 Special rules applicable to bicycles. Whenever a bicycle is operated upon a highway, bicycle lane or bicycle way the following rules apply:

(1) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(2) (a) Except as provided in par. (b), no bicycle may be used to carry or transport more persons at one time than the number for which it is designed.

(b) In addition to the operator, a bicycle otherwise designed to carry only the operator may be used to carry or transport a child seated in an auxiliary child's seat or trailer designed for attachment to a bicycle if the seat or trailer is securely attached to the bicycle according to the directions of the manufacturer of the seat or trailer.

(3) No person operating a bicycle shall carry any package, bundle or article which prevents the operator from keeping at least one hand upon the handle bars.

(4) No person riding a bicycle shall attach himself or his bicycle to any vehicle upon a roadway.

(5) No person may ride a moped or motor bicycle with the power unit in operation upon a bicycle way.

History: 1973 c. 182; 1977 c. 288; 1983 a. 243; 1985 a. 298

Discussion of number of persons who can operate a single bicycle 61 Atty. Gen. 360.

346.80 Riding bicycle on roadway. (1) Unless preparing to make a left turn, every person operating a bicycle upon a roadway carrying 2-way traffic shall ride as near as practicable to the right edge of the unobstructed traveled roadway, including operators who are riding 2 abreast where permitted under sub. (2). On one-way roadways, the operator of the bicycle shall ride as near as practicable to the right edge or left edge of the unobstructed traveled roadway, including operators who are riding 2 abreast where permitted under sub. (2). Every person operating a bicycle upon a roadway shall exercise due care when passing a standing vehicle or one proceeding in the same direction, allowing a minimum of 3 feet between the bicycle and the vehicle.

(2) Persons riding bicycles upon a roadway shall ride single file on all roadways which have center lines or lane lines indicated by painting or other markings and in all unincorporated areas. On roadways not divided by painted or other marked center lines or lane lines, bicycle operators may ride 2 abreast in incorporated areas.

(4) No person may operate a bicycle or moped upon a roadway where a sign is erected indicating that bicycle or moped riding is prohibited.

(5) Except as provided in ss. 346.23, 346.24, 346.37 and 346.38, every rider of a bicycle shall, upon entering on a highway, yield the right-of-way to motor vehicles.

History: 1973 c. 182; 1977 c. 208, 288; 1979 c. 197; 1985 a. 69

346.802 Riding bicycle on bicycle lane. (1) (a) Unless 2-way traffic is authorized under par. (b), every person operating a bicycle upon a bicycle lane shall ride in the same direction in which vehicular traffic on the lane of the roadway nearest the bicycle lane is traveling.

(b) The governing body of any city, town, village or county may authorize 2-way traffic on any portion of a roadway which it has set aside as a bicycle lane. Appropriate traffic signs shall be installed on all bicycle lanes open to 2-way traffic.

(2) (a) Unless otherwise provided under par. (b), a person operating a bicycle may enter or leave a bicycle lane only at intersections or at driveways adjoining the bicycle lane.

(b) A person may leave a bicycle lane at any point by dismounting from the bicycle and walking it out of the lane. A person may enter a bicycle lane at any point by walking his bicycle into the lane and then mounting it.

(3) Every person operating a bicycle upon a bicycle lane shall exercise due care and give an audible signal when passing a bicycle rider proceeding in the same direction.

(4) Every operator of a bicycle entering a bicycle lane shall yield the right-of-way to all bicycles in the bicycle lane. Upon leaving a bicycle lane, the operator of a bicycle shall yield the right-of-way to all vehicles and pedestrians.

History: 1973 c. 182.

346.803 Riding bicycle on bicycle way. (1) Every person operating a bicycle upon a bicycle way shall:

(a) Exercise due care and give an audible signal when passing a bicycle rider or a pedestrian proceeding in the same direction.

(b) Obey each traffic signal or sign facing a roadway which runs parallel and adjacent to a bicycle way.

(2) Every person operating a bicycle upon a bicycle way open to 2-way traffic shall ride on the right side of the bicycle way.

(3) Every operator of a bicycle entering a bicycle way shall yield the right-of-way to all bicycles and pedestrians in the bicycle way.

History: 1973 c. 182.

346.804 Riding bicycle on sidewalk. When local authorities under s. 346.94 (1) permit bicycles on the sidewalk, every person operating a bicycle upon a sidewalk shall yield the right-of-way to any pedestrian and shall exercise due care and give an audible signal when passing a bicycle rider or pedestrian proceeding in the same direction.

History: 1973 c. 182.

346.82 Penalty for violating sections 346.77 to 346.804. (1) Any person violating ss. 346.77, 346.79 (1) to (3) or 346.80 to 346.804 may be required to forfeit not more than \$20.

(2) Any person violating s. 346.78 or 346.79 (4) may be required to forfeit not less than \$10 nor more than \$20 for the first offense and not less than \$25 nor more than \$50 for the 2nd or subsequent conviction within a year.

History: 1971 c. 278; 1973 c. 182; 1983 a. 243

MISCELLANEOUS RULES

346.87 Limitations on backing. The operator of a vehicle shall not back the same unless such movement can be made with reasonable safety.

346.88 Obstruction of operator's view or driving mechanism. (1) No person shall drive a vehicle when it is so loaded or when there are in the front seat such number of persons, or any persons so situated, as to obstruct the view of the operator to the front or to the sides or as to interfere with the operator having free use of both hands and feet to the operating mechanisms or controls of the vehicle.

(2) No passenger in a vehicle shall ride in such a position as to interfere with the operator's view ahead or to the sides or to interfere with the operator's control of the operating mechanism of the vehicle.

(3) (a) No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon the front windshield, front side wings, side windows in the driver's compartment or rear window of such vehicle other than a certificate or other sticker issued by order of a governmental agency. Such permitted sticker shall not cover more than 15 square inches of glass surface and shall be placed in the lower left-hand corner of the windshield; the left corner being on the driver's left when seated behind the wheel.

(b) No person shall drive any motor vehicle upon a highway with any object so placed or suspended in or upon

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the vehicle so as to obstruct the driver's clear view through the front windshield.

(c) No person shall drive any motor vehicle upon a highway so loaded or with any object so placed or suspended in or upon the vehicle so as to obstruct the driver's clear vision through the rear window unless such vehicle is equipped with an outside rear view mirror meeting the requirements of s. 347.40.

(d) Signal lamps used by authorized emergency vehicles shall not be considered a violation of this section.

(4) The windshield, side wings and side and rear windows of a motor vehicle shall be kept reasonably clean at all times.

346.89 Inattentive driving. (1) No person while driving a motor vehicle shall be so engaged or occupied as to interfere with the safe driving of such vehicle.

(2) No person shall drive any motor vehicle equipped with any device for visually receiving a television broadcast when such device is located in the motor vehicle at any point forward of the back of the operator's seat or when such device is visible to the operator while driving the motor vehicle.

346.90 Following emergency vehicle. The operator of any vehicle other than one on official business shall not follow an authorized emergency vehicle responding to a call or alarm closer than 500 feet or drive into or park his or her vehicle within the block where, or within 300 feet of the driveway entrance or similar point of access to a driveway or road on which, fire apparatus has stopped in response to an alarm. The personal vehicles of members of a volunteer fire department answering the alarm are considered on official business.

History: 1975 c. 253, 421.

346.91 Crossing fire hose. No person without the consent of the fire department official in command may drive a vehicle over any unprotected hose of a fire department when such hose is laid down on any street or private driveway to be used at any fire or alarm of fire.

History: 1985 a. 187.

346.92 Illegal riding. (1) No person shall drive a vehicle when any person other than an employe engaged in the necessary discharge of his duty is upon any portion thereof not designed or intended for the use of passengers.

(2) No person other than an employe engaged in the necessary discharge of his duty shall ride upon any portion of a vehicle not designed or intended for the use of passengers.

(3) This section does not apply to persons riding within truck bodies in spaces intended for merchandise or to the operator of any such vehicle.

346.93 Intoxicants in vehicle; underage persons. (1) No underage person, as defined under s. 125.02 (20m), may knowingly possess, transport or have under his or her control any alcohol beverage in any motor vehicle unless the person is employed by a brewer, an alcohol beverage licensee, wholesaler, retailer, distributor, manufacturer or rectifier and is possessing, transporting or having such beverage in a motor vehicle under his or her control during his or her working hours and in the course of employment, as provided under s. 125.07 (4) (bm).

(2) In addition to any other penalty prescribed by law, any violation of this section by an underage person driving or operating or on duty time with respect to a commercial motor vehicle shall be punished under s. 346.65 (2u).

History: 1971 c. 213 s. 5; 1983 a. 74; 1985 a. 28; 1989 a. 105.

This section discussed. 66 Atty. Gen. 215

346.935 Intoxicants in motor vehicles. (1) No person may drink alcohol beverages in any motor vehicle when the vehicle is upon a highway.

(2) No person may possess on his or her person, in a privately owned motor vehicle upon a public highway, any bottle or receptacle containing alcohol beverages if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed.

(3) The owner of a privately owned motor vehicle, or the driver of the vehicle if the owner is not present in the vehicle, shall not keep, or allow to be kept in the motor vehicle when it is upon a highway any bottle or receptacle containing alcohol beverages if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed. This subsection does not apply if the bottle or receptacle is kept in the trunk of the vehicle or, if the vehicle has no trunk, in some other area of the vehicle not normally occupied by the driver or passengers. A utility compartment or glove compartment is considered to be within the area normally occupied by the driver and passengers.

(4) (a) In this subsection:

1. "Chauffeur" means a person employed full time or on a regular basis, including leased drivers, for the principal purpose of operating a motor vehicle.

2. "Limousine" means any motor vehicle for charter or hire which is operated by a chauffeur and designed for transporting persons rather than property.

(b) This section does not apply to passengers in a limousine or in a motor bus if the vehicle is operated by a chauffeur holding a valid license and endorsements authorizing operation of the vehicle as provided in ch. 343 and is in compliance with any local ordinance or regulation adopted under s. 349.24.

(5) In addition to any other penalty prescribed by law, any violation of this section by an operator of a commercial motor vehicle shall be punished under s. 346.65 (2u).

History: 1975 c. 297 s. 16; Stats. 1975 s. 346.935; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 535; 1985 a. 332 s. 253; 1989 a. 105.

346.94 Miscellaneous prohibited acts. (1) **DRIVING ON SIDEWALK.** The operator of a vehicle shall not drive upon any sidewalk area except at a permanent or temporarily established driveway unless permitted to do so by the local authorities.

(2) **RACING.** No operator of a motor vehicle shall participate in any race or speed or endurance contest upon any highway.

(4) **THROWING MISSILE IN VEHICLE.** No person shall throw any missile, circular or pamphlet at the occupants of any vehicle or throw or place any missile, circular or pamphlet in or on any vehicle, whether or not the vehicle is occupied.

(5) **PLACING INJURIOUS SUBSTANCE ON HIGHWAY.** No person shall place or cause to be placed upon a highway any foreign substance which is or may be injurious to any vehicle or part thereof.

(7) **SPILLING LOADS OF WASTE OR FOREIGN MATTER.** The operator of every vehicle transporting waste or foreign matter on the highways of this state shall provide adequate facilities to prevent such waste or foreign matter from spilling on or along the highways.

(8) **TRANSPORTING PERSONS IN MOBILE HOMES OR BOATS.** Except as provided in sub. (8m), no person may operate a motor vehicle towing any mobile home or boat on a trailer upon a highway when any person is in such mobile home or boat.

(8m) TRANSPORTING PERSONS IN FIFTH-WHEEL MOBILE HOMES. (a) No person may operate a motor vehicle towing a fifth-wheel mobile home upon a highway when any person under the age of 12 years is in the fifth-wheel mobile home unless one person 16 years of age or older is also in the fifth-wheel mobile home.

(b) No person may operate a motor vehicle towing a fifth-wheel mobile home upon a highway with any person in such mobile home unless the fifth-wheel mobile home is equipped with a two-way communications system in proper working order and capable of providing voice communications between the operator of the towing vehicle and any occupant of the fifth-wheel mobile home.

(9) ALIGHTING FROM OR BOARDING MOVING VEHICLE. No person shall alight from or board any vehicle when such vehicle is in motion.

(10) CLINGING TO MOVING VEHICLE. No person riding upon a motor bicycle, moped or motorcycle may attach the same or himself or herself to any other moving vehicle upon a highway except when the motor bicycle, moped or motorcycle is incapacitated and being towed. A tow device attached to a towed motor bicycle, moped or motorcycle shall be attached so that an operator of the towed vehicle may release the tow device at any time.

(11) TOWING SLEDS, ETC. No person shall operate any vehicle or combination of vehicles upon a highway when such vehicle or combination of vehicles is towing any toboggan, sled, skis, bicycle, skates or toy vehicle bearing any person.

(12) DRIVING ON BICYCLE LANE OR BICYCLE WAY. No operator of a motor vehicle may drive upon a bicycle lane or bicycle way except to enter a driveway or to enter or leave a parking space located adjacent to the bicycle lane or bicycle way. Persons operating a motor vehicle upon a bicycle lane or bicycle way shall yield the right-of-way to all bicycles within the bicycle lane or bicycle way.

(13) ABANDONED MOTOR VEHICLES. No person may cause a motor vehicle to be abandoned, within the meaning of s.

342.40 (1), on or along any highway or on any public or private property.

(14) USE OF FLASHING BLUE LIGHTS ALONG HIGHWAYS. Except as provided in ss. 346.03 (3) and 347.25 (1m) and (1s), no person may maintain or operate any device equipped with a flashing, oscillating or rotating blue light within 100 feet of a highway if the light is visible from the highway and if the department or the local authority responsible for maintaining the highway determines that motorists would believe the light was the warning light of a police vehicle. This subsection does not apply to airport lights.

(15) TOWING BY BUSES OR HUMAN SERVICE VEHICLES. No person may operate a school bus or a human service vehicle over any public highway of this state with any trailer or semitrailer attached.

History: 1973 c. 182, 314; 1975 c. 320; 1977 c. 68; 1983 a. 56, 175, 243, 538; 1989 a. 335

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

(2) Any person violating s. 346.89 (1), 346.93 or 346.94 (2), (4) or (7) may be required to forfeit not less than \$20 nor more than \$400.

(2m) Any person violating s. 346.935 may be required to forfeit not more than \$100.

(3) Any person violating s. 346.94 (5) or (14) shall be required to forfeit \$50 for each offense.

(4) Any person violating s. 346.94 (8) or (8m) may be required to forfeit not to exceed \$20 for the first offense or not to exceed \$50 for each subsequent offense.

(5) Any person violating s. 346.94 (13) may be required to forfeit not more than \$200.

History: 1971 c. 278; 1973 c. 182, 314, 336; 1975 c. 297, 320; 1977 c. 68; 1983 a. 56, 175, 538; 1989 a. 335 s. 89