CHAPTER 346

RULES OF THE ROAD

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SUBCHAPTER I

GENERAL PROVISIONS

346.01 Words and phrases defined. (1) Words and phrases defined in s. 340.01 are used in the same sense in this chapter unless a different definition is specifically provided.

(1m) In this chapter, in addition to the meaning given in s. 340.01 (22), "highway" includes a private road or driveway that is subject to an agreement for traffic regulation enforcement under s. 349.03 (5).

(2) In this chapter, notwithstanding s. 340.01 (42), "owner" means, with respect to a vehicle that is registered, or is required to be registered, by a lessee of the vehicle under ch. 341, the lessee of the vehicle for purposes of vehicle owner liability under ss. 346.175, 346.195, 346.205, 346.452, 346.457, 346.465, 346.485, 346.505 (3), 346.675, and 346.945.

History: 1997 a. 27; 2003 a. 209; 2005 a. 411; 2009 a. 129.

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 or shoulder of a highway 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.

(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 ss. 346.03 and 346.215 (2).

(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, 346.215 (3), 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 AND UTILITY TERRAIN VEHICLES. The operator of an all−terrain vehicle or a utility 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, 346.215 (3), 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.

(12) APPLICABILITY TO ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES. An electric personal assistive mobility device shall be considered a vehicle for purposes of ss. 346.04 to 346.10, 346.12, 346.13, 346.15, 346.16, 346.18, 346.19, 346.20, 346.215 (3), 346.23 to 346.28, 346.31 to 346.35, 346.37 to 346.40, 346.44, 346.46, 346.47, 346.48, 346.50 to 346.55, 346.57, 346.59, 346.62, 346.65 (5m), 346.67 to 346.70, 346.78, 346.80, 346.87, 346.88, 346.90, 346.91, and 346.94 (4), (5), (9), and (10), except those provisions which by their express terms apply only to motor vehicles or which by their very nature would have no application to electric personal assistive mobility devices.

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; 1995 a. 138; 2001 a. 90; 2009 a. 46; 2011 a. 208.

While sub. (4) (a) provides that provisions in ch. 346 that apply to bicycles also apply to motor bicycles, nothing in sub. (4) (a) provides that provisions that do not apply to bicycles also do not apply to motor bicycles. State v. Koeppen, 2014 WI App 94, 356 Wis. 2d 812, 854 N.W.2d 849, 13−2539.

State, county, and tribal jurisdiction to regulate traffic on streets in housing projects that have been built and are maintained by the Winnebago Tribe on tribal lands is discussed. 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, when responding to but not upon returning from a fire alarm, when transporting an organ for human transplantation, or when transporting medical personnel for the purpose of performing human organ harvesting or transplantation immediately after the transportation, may exercise the privileges set forth in this section, but subject to the conditions stated in subs. (2) to (5m).

(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.

(2m) Notwithstanding s. 346.94 (20), a law enforcement officer, a fire fighter, or emergency medical personnel may open and leave open any door of an authorized emergency vehicle when the vehicle is stopped, standing, or parked and the person is performing official duties.

(3) The exemptions granted by sub. (2) (b), (c) and (d) apply only when the operator of the emergency vehicle is giving a 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, and also an audible signal by means of a siren or exhaust whistle, except as otherwise provided in sub. (4) or (4m).

(4) Except as provided in sub. (4m), 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.

(4m) A law enforcement officer operating a police vehicle that is a bicycle is not required to comply with the requirements of sub. (3) relative to the giving of audible and visual signals.

(5) The exemptions granted the operator of an authorized emergency vehicle by this section do not relieve such operator from the duty to drive or ride 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.

(5m) The privileges granted under this section apply to the operator of an authorized emergency vehicle under s. 340.01 (3) (dg) or (dh) only if the operator has successfully completed a safety and training course in emergency vehicle operation that is taken at a technical college under ch. 38 or that is approved by the department and only if the vehicle being operated is plainly marked, in a manner prescribed by the department, to identify it as an authorized emergency vehicle under s. 340.01 (3) (dg) or (dh).

(6) Every law enforcement agency that uses authorized emergency vehicles shall provide written guidelines for its officers and employees 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. Each law enforcement agency shall review its written guidelines by June 30 of each even−numbered year and, if considered appropriate by the law enforcement agency, shall revise those guidelines.

History: 1983 a. 56; 1985 a. 82, 143; 1987 a. 126; 1995 a. 36; 1997 a. 88; 2007 a. 20; 2011 a. 184; 2015 a. 102.

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

An officer who decides to engage in pursuit is immune from liability for the decision under s. 893.80, but may be subject to liability under sub. (5) for negligently operating a motor vehicle during the chase. A city that has adopted a policy that complies with sub. (6) is immune from liability for injuries resulting from high speed chases. A policy that considered the severity of the crime only in terms of when to strike a vehicle or use road blocks did not comply with sub. (6). Estate of Cavanaugh v. Andrade, 202 Wis. 2d 290, 550 N.W.2d 103 (1996), 94−0192.

In order to comply with this section and lawfully proceed through a red stop signal, an authorized emergency vehicle must slow down as may be necessary for safe operation, have given both a visual and an audible signal, and have proceeded with due regard under the circumstances for the safety of all persons. Brown v. Acuity, A Mutual Insurance Company, 2013 WI 60, 348 Wis. 2d 603, 833N.W.2d 96, 11−0583.

Reading compliance with subs. (2) (b) and (3) as meeting the due regard standard of sub. (5) ignores the language of sub. (5). Sub. (5) explicitly states that the duty of due regard exists notwithstanding the other exemptions or privileges in this section. The duty of "due regard under the circumstances" is a ministerial duty for purposes of determining immunity under s. 893.80. Legue v. City of Racine, 2014 WI 92, 357 Wis. 2d 250, 849 N.W.2d 837, 12−2499.

A private ambulance that is an authorized emergency vehicle usually kept in a given county pursuant to s. 340.01 (3) (i) may not avail itself of the provisions of sub. (2) when proceeding unsolicited to the scene of an accident or medical emergency in an adjacent county. 77 Atty. Gen. 214.

A claim of excessive force in the course of making a seizure of the person is properly analyzed under the 4th amendment's objective reasonableness standard. A police officer's attempt to terminate a dangerous high−speed car chase that threatens the lives of innocent bystanders does not violate the 4th amendment, even when it places the fleeing motorist at risk of serious injury or death. Scott v. Harris, 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

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.

(2t) No operator of a vehicle, after having received a visible or audible signal to stop his or her vehicle from a traffic officer or marked police vehicle, shall knowingly resist the traffic officer by failing to stop his or her vehicle as promptly as safety reasonably permits.

(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 willful 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 the operator increase the speed of the operator's vehicle or extinguish the lights of the vehicle in an attempt to elude or flee.

(4) Subsection (2t) is not an included offense of sub. (3), but a person may not be convicted of violating both subs. (2t) and (3) for acts arising out of the same incident or occurrence.

History: 1991 a. 316; 2001 a. 109.

That an officer was driving a vehicle equipped with red lights and siren was insufficient to prove that vehicle was "marked" under sub. (3). State v. Oppermann, 156 Wis. 2d 241, 456 N.W.2d 625 (Ct. App. 1990).

The knowledge requirement in sub. (3) applies only to fleeing or attempting to elude an officer. The statute does not require the operator of a fleeing vehicle to actually interfere with or endanger identifiable vehicles or persons; he or she need only drive in a manner that creates a risk or likelihood of that occurring. State v. Sterzinger, 2002 WI App 171, 256 Wis. 2d 925, 649 N.W.2d 677, 01−1440.

In sub. (3), "willful" modifies "disregard." In that context, "willful" requires a subjective understanding by the defendant that a person known by the defendant to be a traffic officer has directed the defendant to take a particular action, and with that understanding, the defendant chose to act in contravention of the officer's direction. Either willful or wanton disregard is sufficient to result in a statutory violation. An act done "willfully" does not require a showing of personal hate or ill will. Sub. (3) does not provide a good faith exception to compliance. State v. Hanson, 2012 WI 4, 338 Wis. 2d 243, 808 N.W.2d 390, 08−2759.

Under both the statute and the pattern jury instructions, there are 3 methods by which the statutory requirements under sub. (3) for knowingly fleeing or attempting to elude a traffic officer, can be satisfied: 1) by increasing the speed of the vehicle; 2) by extinguishing the lights of the vehicle, or 3) by willful or wanton disregard of the signal so as to interfere with or endanger the officer, vehicles, or pedestrians. State v. Beamon, 2013 WI 47, 347 Wis. 2d 559, 830 N.W.2d 681, 10−2003.

An unmarked police vehicle displaying red and blue lights is not a marked vehicle for purposes of sub. (2). Section 346.19, regarding the requirements on the approach

of an emergency vehicle, is the proper statute to invoke when the proof requirements for fleeing under this section are not met. 76 Atty. Gen. 214.

SUBCHAPTER II

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 or U−turn under circumstances in which the rules relating to left turns or U−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 pavement markings 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.

(g) If the vehicle is a wide implement of husbandry, as defined in s. 347.24 (3) (a), being operated in compliance with any applicable requirement under s. 347.24 (3), 347.245 (1), or 347.25 (2g), and the vehicle is operated as much as practicable on the right half of the roadway and in the right−hand lane of a 3−lane highway, a portion of the vehicle may extend over the center of the roadway into any lane intended for travel in the opposite direction and may extend into any passing lane of a 3−lane highway. A wide implement of husbandry operated as described in this paragraph is subject to any restriction under ss. 346.06, 346.09 (2) and (3), and 346.59.

(1m) Notwithstanding sub. (1), any person operating a bicycle or electric personal assistive mobility device may ride on the shoulder of a highway unless such riding is prohibited by the authority in charge of the maintenance of the highway.

(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 or U−turn at an intersection or a left turn into a private road or driveway, and except as provided in s. 346.072.

History: 1995 a. 138; 2001 a. 15, 90; 2009 a. 97; 2013 a. 377; 2015 a. 124.

Cross−reference: See s. 346.59 for minimum speed regulation and duty of slow drivers.

The defendant was driving on the wrong side of the road under this section when he momentarily crossed the center of the road. State v. Popke, 2009 WI 37, 317 Wis. 2d 118, 765 N.W.2d 569, 08−0446.

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:

(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 and shall not increase the speed of the vehicle until completely passed by the overtaking vehicle.

History: 1971 c. 208; 1985 a. 301 s. 4; 1991 a. 316; 1997 a. 32; 2013 a. 365.

346.072 Passing stopped emergency or roadside service vehicles. (1g) In this section, "emergency or roadside service vehicle" means any of the following:

(a) An authorized emergency vehicle giving visual signal.

(b) A tow truck flashing red lamps, as required by s. 347.26 (6) (b).

(c) Any road machinery or motor vehicle used in highway construction or maintenance displaying the lights specified in s. 347.23 (1) (a) or (b) or, with respect to a motor vehicle, displaying the lights specified in s. 347.26 (7).

(d) Any vehicle of a public utility, telecommunications carrier, or cooperative association described in s. 347.26 (9) displaying one or more flashing amber lamps as provided in s. 347.26 (9).

(1m) If an emergency or roadside service vehicle is parked or standing on or within 12 feet of a roadway, the operator of a motor vehicle approaching the emergency or roadside service vehicle shall proceed with due regard for all other traffic and shall do either of the following:

(a) Move the motor vehicle into a lane that is not the lane nearest the parked or standing emergency or roadside service vehicle and continue traveling in that lane until safely clear of the emergency or roadside service vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching motor vehicle and if the approaching motor vehicle may change lanes safely and without interfering with any vehicular traffic.

(b) Slow the motor vehicle, maintaining a safe speed for traffic conditions, and operate the motor vehicle at a reduced speed until completely past the emergency or roadside service vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching motor vehicle or if the approaching motor vehicle may not change lanes safely and without interfering with any vehicular traffic.

(2) In addition to any penalty imposed under s. 346.17 (2), any person violating this section shall have his or her operating privilege suspended as provided in s. 343.30 (1o).

History: 2001 a. 15; 2013 a. 291.

346.075 Overtaking and passing bicycles, electric personal assistive mobility devices, and motor buses. (1) The operator of a motor vehicle overtaking a bicycle or electric personal assistive mobility device 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 or electric personal assistive mobility device, and shall maintain clearance until safely past the overtaken bicycle or electric personal assistive mobility device.

(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; 2001 a. 90.

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 the movement in safety and only if the operator can do so while remaining on either the roadway or a paved shoulder, and then only under the following conditions:

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

History: 1991 a. 316; 2009 a. 97.

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 pavement marking, to the left of the center of the roadway. Except as provided in sub. (3) (b) and s. 346.05 (1) (g), in no case shall the 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) (a) Except as provided in par. (b), 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.

(b) The operator of a vehicle may drive on the left side of the center of a roadway on any portion thereof which has been designated a no−passing zone, as described in par. (a), to overtake and pass, with care, any vehicle, except an implement of husbandry or agricultural commercial motor vehicle, traveling at a speed less than half of the applicable speed limit at the place of passing.

(4) Other provisions of this section notwithstanding, the operator of a vehicle may 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 or U−turn.

History: 2009 a. 97; 2011 a. 73; 2013 a. 377; 2015 a. 124.

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 is designated in the direction of travel by a traffic control signal, stop sign, yield sign or sign that warns traffic of existing or potentially hazardous conditions on or adjacent to the roadway.

(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; 1999 a. 80.

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 the 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.

History: 1991 a. 316.

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) Except as provided in sub. (4), 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 the operator is driving without first ascertaining that such movement can be made with safety to other vehicles approaching from the rear.

(2) Except as provided in s. 346.05 (1) (g), upon a 2−way roadway which is divided into 3 lanes the operator of a vehicle may not drive in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and the center lane is clear of traffic within a safe distance, or in preparation for a left turn or U−turn, or where the 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 the allocation.

(3) Notwithstanding sub. (2), but subject to sub. (4), 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.

(4) Upon a 2−way roadway with at least 2 lanes for travel in each direction, a wide implement of husbandry, as defined in s. 347.24 (3) (a), that is being operated in compliance with any applicable requirement under s. 347.24 (3), 347.245 (1), or 347.25 (2g), and that is being operated as much as practicable within a single lane may, to the extent necessary, extend into another lane intended for travel in the same direction if it does not impede other vehicles approaching from the rear.

(5) Notwithstanding sub. (1), the operator of a vehicle or combination of vehicles with a total length of not less than 40 feet or a total width of not less than 10 feet may, with due regard for all other traffic, deviate from the lane in which the operator is driving

to the extent necessary to approach and drive through a roundabout.

History: 1991 a. 316; 2009 a. 97; 2013 a. 377; 2015 a. 139.

In calculating the time required to safely execute deviation from traffic lane or turn at intersection driver must consider condition of highway. Thompson v. Howe, 77 Wis. 2d 441, 253 N.W.2d 59 (1977).

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 a 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 Insurance Co. v. Avis Rent−A−Car, 62 Wis. 2d 643, 215 N.W.2d 439 (1974).

This section does not impose an absolute liability upon drivers to avoid accidents. Millonig v. Bakken, 112 Wis. 2d 445, 334 N.W.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 constructed to substantially impede crossing by vehicular traffic, the operator of a vehicle shall drive only to the right of the space or barrier and no operator of a vehicle shall drive over, across, or within the 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 or making a U−turn may drive across a paved dividing space or a physical barrier not constructed to impede crossing by vehicular traffic, unless the crossing is prohibited by signs erected by the authority in charge of the maintenance of the highway.

History: 2009 a. 97.

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.

(am) Notwithstanding s. 349.105 and except as provided in par. (b), no person riding an electric personal assistive mobility device may go upon any expressway or freeway when official signs have been erected prohibiting persons specified in par. (a) from using the expressway or freeway.

(ar) Notwithstanding s. 349.105, no person operating an off−road utility vehicle or a lightweight utility vehicle, as defined in s. 346.94 (21) (a) 2., may go upon any expressway or freeway when official signs have been erected prohibiting persons specified in par. (a) from using the expressway or freeway, except that a lightweight utility vehicle may cross such an expressway or freeway.

(b) A pedestrian or other person under par. (a) or (am) 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; 2001 a. 90; 2003 a. 192; 2009 a. 157.

Cross−reference: See s. 59.84 (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) Except as provided in sub. (5), any person violating s. 346.04 (1) or (2), 346.06, 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), 346.072, 346.08, 346.09, 346.10 (2) to (4), 346.11, 346.13 (2) or 346.14 to 346.16 may be required to forfeit not less than $30 nor more than $300.

(2m) Any person violating s. 346.10 (1) shall forfeit not less than $60 nor more than $600.

(2t) Any person violating s. 346.04 (2t) may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(3) (a) Except as provided in par. (b), (c) or (d), any person violating s. 346.04 (3) is guilty of a Class I felony.

(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 is guilty of a Class H felony.

(c) If the violation results in great bodily harm, as defined in s. 939.22 (14), to another, the person is guilty of a Class F felony.

(d) If the violation results in the death of another, the person is guilty of a Class E felony.

(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.

(5) If an operator of a vehicle violates s. 346.04 (1) or (2) where persons engaged in work in a highway maintenance or construction area or in a utility work area are at risk from traffic, any applicable minimum and maximum forfeiture specified in sub. (1) for the violation shall be doubled.

History: 1971 c. 278; 1973 c. 182; 1977 c. 208; 1981 c. 324; 1983 a. 27; 1985 a. 82; 1993 a. 189, 198; 1997 a. 32, 88, 237, 277, 283; 2001 a. 15, 109.

346.175 Vehicle owner's liability for fleeing a traffic officer. (1) (a) Subject to s. 346.01 (2), the owner of a vehicle involved in a violation of s. 346.04 (2t) or (3) for fleeing a traffic officer shall be presumed liable for the violation as provided in this section.

(b) Notwithstanding par. (a), no owner of a vehicle involved in a violation of s. 346.04 (2t) or (3) for fleeing a traffic officer may be convicted under this section if the person operating the vehicle or having the vehicle under his or her control at the time of the violation has been convicted for the violation under this section or under s. 346.04 (2t) or (3).

(2) A traffic officer may proceed under sub. (3) instead of pursuing the operator of a motor vehicle who flees after being given a visual or audible signal by the officer or marked police vehicle.

(3) (a) Within 72 hours after observing the violation, the traffic officer shall investigate the violation and may prepare a uniform traffic citation under s. 345.11 for the violation and, within 96 hours after observing the violation, any traffic officer employed by the authority issuing the citation 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. Service under this paragraph may be made by any traffic officer employed by the authority issuing the citation and shall be performed within 96 hours after the violation was observed.

(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. Service under this paragraph shall be performed by posting the certified mail within 96 hours after the violation was observed.

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

(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 employed by the authority issuing the citation with the name and address of the person operating the vehicle or having the vehicle under his or her control at the time of the violation and sufficient information for the officer to determine that probable cause does not exist to believe that the owner of the vehicle was operating the vehicle at the time of the violation, then the owner of the vehicle shall not be liable under this section or under s. 346.04 (2t) or (3).

(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 employed by the authority issuing the citation with the information required under s. 343.46 (3), then the lessee and not the lessor shall be liable under this section or under s. 346.04 (2t) or (3).

(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 being operated by or was under the control of any person on a trial run, and if the dealer provides a traffic officer employed by the authority issuing the citation with the name, address and operator's license number of the person operating the vehicle, then that person, and not the dealer, shall be liable under this section or under s. 346.04 (2t) or (3).

(5) Notwithstanding the penalty otherwise specified under s. 346.17 (2t) or (3) for a violation of s. 346.04 (2t) or (3):

(a) A vehicle owner or other person found liable under this section for a violation of s. 346.04 (2t) or (3) shall be required to forfeit not less than $300 nor more than $1,000.

(b) Imposition of liability under this section shall not result in suspension or revocation of a person's operating license under s. 343.30 or 343.31, nor shall it result in demerit points being recorded on a person's driving record under s. 343.32 (2) (a).

History: 1993 a. 189; 1997 a. 27; 2001 a. 109.

346.177 Railroad crossing improvement surcharge for vehicles illegally passing at railroad crossings. **(1)** Whenever a court imposes a forfeiture under s. 346.17 (2m) for a violation of s. 346.10 (1), the court shall also impose a railroad crossing improvement surcharge under ch. 814 equal to 50 percent of the amount of the forfeiture.

(2) If a forfeiture is suspended in whole or in part, the railroad crossing improvement surcharge shall be reduced in proportion to the suspension.

(3) If any deposit is made for an offense to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the railroad crossing improvement surcharge under this section. If the deposit is forfeited, the amount of the railroad crossing improvement surcharge shall be transmitted to the secretary of administration under sub. (4). If the deposit is returned, the amount of the railroad crossing improvement surcharge shall also be returned.

(4) The clerk of the circuit court shall collect and transmit to the county treasurer the railroad crossing improvement surcharge as required under s. 59.40 (2) (m). The county treasurer shall then pay the secretary of administration as provided in s. 59.25 (3) (f) 2. The secretary of administration shall deposit all amounts received under this subsection in the transportation fund to be appropriated under s. 20.395 (2) (gj).

History: 1997 a. 237; 2003 a. 33, 139, 326.

SUBCHAPTER III

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, 346.215, 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 OR MAKING A U−TURN AT INTERSECTION. The operator of a vehicle within an intersection intending to turn to the left or make a U−turn shall yield the right−of−way to any vehicle approaching from the opposite direction.

(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 the operator 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.

(8) ROUNDABOUT. (a) The operator of a vehicle shall yield the right−of−way to any vehicle or combination of vehicles with a total length of not less than 40 feet or a total width of not less than 10 feet when approaching or driving through a roundabout at approximately the same time or so closely as to constitute a hazard

of collision and, if necessary, shall reduce speed or stop in order to so yield.

(b) If 2 vehicles or combinations of vehicles each having a total length of not less than 40 feet or a total width of not less than 10 feet approach or drive through a roundabout at approximately the same time or so closely as to constitute a hazard of collision, the operator of the vehicle or combination of vehicles on the right shall yield the right−of−way to the vehicle or combination of vehicles on the left and, if necessary, shall reduce speed or stop in order to so yield.

History: 1979 c. 210; 1987 a. 25, 28; 1991 a. 316; 1993 a. 490; 2009 a. 46, 97; 2015 a. 139.

A driver who makes a left turn that 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 Wis. 2d 513, 187 N.W.2d 138 (1971).

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.

History: 1993 a. 490.

This section, regarding the requirements on the approach of an emergency vehicle, is the proper statute to invoke when the proof requirements for fleeing under s. 346.04 are not met. 76 Atty. Gen. 214.

346.195 Owner's liability for vehicle failing to yield the right−of−way to an authorized emergency vehicle. **(1)** Subject to s. 346.01 (2), the owner of a vehicle involved in a violation of s. 346.19 (1) for failing to yield the right−of−way to an authorized emergency vehicle shall be liable for the violation as provided in this section.

(2) The operator of an authorized emergency vehicle who observes a violation of s. 346.19 (1) for failing to yield the right−of−way to an authorized emergency vehicle 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, motor truck, motor bus, motorcycle or other type of vehicle.

(3) Within 24 hours after observing the violation, the operator of the authorized emergency vehicle may deliver the report to a traffic officer of the county or municipality in which the violation occurred. A report that 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) and after investigating the violation, 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.

2. That 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. In such case, the person operating the vehicle and not the owner shall be charged under this section.

3. That 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). In such case, the lessee and not the lessor shall be charged under this section.

4. That 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 the dealer provides a traffic officer with the name, address and operator's license number of the person operating the vehicle. In such case, the person operating the vehicle, and not the dealer, shall be charged under this section.

History: 1995 a. 121; 1997 a. 27; 1999 a. 80.

346.20 Right−of−way of funeral processions and military convoys. **(1)** Except as provided in sub. (4), the operator of a vehicle not in a funeral procession or military convoy shall yield the right−of−way at an intersection to vehicles in a funeral procession or military convoy when vehicles comprising such procession have their headlights lighted.

(2) The operator of a vehicle not in a funeral procession shall not drive the 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.

(4) (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.

History: 1977 c. 43; 1991 a. 73, 316; 1993 a. 490.

346.205 Owner's liability for vehicle failing to yield the right−of−way to a funeral procession. **(1)** Subject to s. 346.01 (2), the owner of a vehicle involved in a violation of s. 346.20 (1) for failing to yield the right−of−way to a funeral procession shall be liable for the violation as provided in this section.

(2) The operator of a lead vehicle or a motorcycle escort in a funeral procession who observes a violation of s. 346.20 (1) for failing to yield the right−of−way to a funeral procession may pre-

pare 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, motor truck, motor bus, motorcycle or other type of vehicle.

(3) Within 24 hours after observing the violation, the operator of the lead vehicle or motorcycle escort may deliver the report to a traffic officer of the county or municipality in which the violation occurred. A report that 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.

2. 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.

3. 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.

4. 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: 1991 a. 73; 1993 a. 490; 1997 a. 27; 1999 a. 80.

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.

History: 1993 a. 490.

346.215 Emergency vehicles operated as escorts and rights−of−way related to escorted vehicles. (1) In this section, "emergency vehicle" means an authorized emergency vehicle as defined in s. 340.01 (3) (a), (c), (dm), (e), (f), (g), (h), or (i).

(2) (a) Except as provided in par. (b), and notwithstanding s. 346.03 (1) and (4), the operator of an emergency vehicle escorting any vehicle or procession of vehicles may exercise the privileges specified in s. 346.03 (2) (b) if the operator of the emergency vehicle is giving visual signal as described in s. 346.03 (3). The operator of the emergency vehicle under this subsection is not required to give an audible signal as described in s. 346.03 (3). This subsection applies only if the vehicle, or in the case of a procession of vehicles the entire procession, is escorted by at least 2 emergency vehicles, at least one of which is leading the vehicle or procession of vehicles and at least one of which is at the rear of the vehicle or procession of vehicles, and only if the requirement under sub. (4) is satisfied. Notwithstanding ss. 346.18 (3), 346.37 (1) (c) 1., and 346.46 (1) and (2), any operator of a vehicle being escorted under this subsection may accompany these emergency vehicles as they proceed past any red or stop signal or stop sign in accordance with the privileges specified in this subsection.

(b) The operator of an emergency vehicle escorting a vehicle or procession of vehicles, and the operator of any vehicle being escorted, shall yield the right−of−way in accordance with s. 346.19 upon the approach of an authorized emergency vehicle giving an audible signal by siren.

(3) Except as provided in sub. (2) (b), the operator of a vehicle other than an escorted vehicle or escorting emergency vehicle shall yield the right−of−way at an intersection to an escorted vehicle or escorting emergency vehicle and shall not, except when authorized to do so by a traffic officer, drive between these escorting and escorted vehicles.

(4) The privileges specified in sub. (2) (a) do not apply to the operator of an emergency vehicle unless, prior to escorting any vehicle as provided under sub. (2) (a), the employer of the operator of the emergency vehicle has provided written guidelines for its employees regarding the escorting of vehicles under this section.

History: 2009 a. 46; 2013 a. 313.

346.22 Penalty for violating sections 346.18 to 346.21. (1) (a) Except as provided in par. (b), (c), (d), or (e), any person violating s. 346.18, 346.20 (1), or 346.215 (2) (b) or (3) 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.

(b) If an operator of a vehicle violates s. 346.18 (6) where persons engaged in work in a highway maintenance or construction area or in a utility work area are at risk from traffic, any applicable minimum and maximum forfeiture specified in par. (a), (c), (d), or (e) for the violation shall be doubled.

(c) If a person violates s. 346.18 and the violation results in bodily harm, as defined in s. 939.22 (4), to another, the person shall forfeit $200.

(d) If a person violates s. 346.18 and the violation results in great bodily harm, as defined in s. 939.22 (14), to another, the person shall forfeit $500.

(e) If a person violates s. 346.18 and the violation results in death to another, the person shall forfeit $1,000.

(2) Any person violating s. 346.19 or 346.20 (4) (a) may be required to forfeit not less than $30 nor more $300.

(3) Any person violating s. 346.20 (2), (3) or (4) (b) or (c) 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.

(3m) A vehicle owner or other person found liable under s. 346.195 may be required to forfeit not less than $30 nor more than $300. Imposition of liability under s. 346.195 shall not result in suspension or revocation of a person's operating license under s. 343.30, and shall not result in demerit points being recorded on a person's driving record under s. 343.32 (2) (a).

(4) A vehicle owner or other person found liable under s. 346.205 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. Imposition of liability under s. 346.205 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).

History: 1971 c. 278; 1983 a. 27; 1991 a. 73; 1993 a. 198; 1995 a. 121; 1997 a. 277; 2005 a. 466; 2009 a. 46; 2011 a. 173.

SUBCHAPTER IV

RESPECTIVE RIGHTS AND DUTIES OF DRIVERS, PEDESTRIANS, BICYCLISTS, AND RIDERS OF ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES

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 or electric personal assistive mobility device 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 signal or a pedestrian signal authorizing crossing and in all other cases pedestrians, bicyclists, and riders of electric personal assistive mobility devices 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, bicyclist, or rider of an electric personal assistive mobility device crossing in the crosswalk on a green signal or a pedestrian signal authorizing crossing 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, bicyclist, or rider of an electric personal assistive mobility device 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 signal or a pedestrian signal authorizing crossing in the favor of the pedestrian, bicyclist, or rider of an electric personal assistive mobility device.

History: 1979 c. 36; 1985 a. 69; 2001 a. 90; 2015 a. 104.

The rules for pedestrian right−of−way are different in this section and s. 346.24, In order for the motorist to have a duty to yield under s. 346.24, the pedestrian must be crossing within the crosswalk and not have entered in such a manner as to make it difficult for the motorist to yield. The requirements under this section, however, are that the pedestrian be crossing or have started to cross on a "Walk" light. The burden on the motorist is more absolute under this section than under s. 346.24. Schoenauer v. Wendinger, 49 Wis. 2d 415, 182 N.W.2d 441 (1971).

Pedestrians have the right−of−way on a green light only where there are no pedestrian control signals. City of Hartford v. Godfrey, 92 Wis. 2d 815, 286 N.W.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 or electric personal assistive mobility device 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, bicyclist, or rider of an electric personal assistive mobility device 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, bicyclist, or rider of an electric personal assistive mobility device 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; 2001 a. 90.

The rules for pedestrian right−of−way are different in this section and s. 346.23, In order for the motorist to have a duty to yield under s. 346.23, the pedestrian must be crossing within the crosswalk and not have entered in such a manner as to make it difficult for the motorist to yield. The requirements under this section, however, are that the pedestrian be crossing or have started to cross on a "Walk" light. The burden on the motorist is more absolute under this section than under s. 346.23. Schoenauer v. Wendinger, 49 Wis. 2d 415, 182 N.W.2d 441 (1971).

346.25 Crossing at place other than crosswalk. Every pedestrian, bicyclist, or rider of an electric personal assistive mobility device 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; 2001 a. 90.

Section 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 & Suburban Transport Corp. 56 Wis. 2d 231, 201 N.W.2d 745 (1972).

This section does not apply to bicyclists operating on the roadway and only applies to bicyclists acting as pedestrians by operating on sidewalks and within crosswalks. Chernetski v. American Family Mutual Insurance Co. 183 Wis. 2d 68, 515 N.W.2d 283 (Ct. App. 1994)

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 service animal, as defined in s. 106.52 (1) (fm), 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 service animal, as defined in s. 106.52 (1) (fm), 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 service animal 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; 2005 a. 354.

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 the operator is notified of their presence by flagmen or warning signs.

History: 1991 a. 316; 1993 a. 490.

346.28 Pedestrians to walk on left side of highway; pedestrians, bicyclists, and riders of electric personal assistive mobility devices 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, bicyclists, and riders of electric personal assistive mobility devices on sidewalks as required by s. 346.47.

History: 1985 a. 69; 1987 a. 259; 2001 a. 90.

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 or electric personal assistive mobility device 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) 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.

(4) Any person violating s. 346.27 may be required to forfeit not less than $60 nor more than $600.

History: 1971 c. 278; 1983 a. 27; 1985 a. 69; 1993 a. 198; 2001 a. 90.

SUBCHAPTER V

TURNING AND STOPPING AND REQUIRED SIGNALS

346.31 Required position and method of turning at intersections. (1) TURNS INDICATED BY PAVEMENT MARKINGS. Where state or local authorities have placed pavement markings 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 pavement markings 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 AND U−TURNS. Except as otherwise provided in sub. (4), left turns at intersections shall be made as follows:

(a) The approach for a left turn or U−turn shall be made in the 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 or U−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 AND U−TURNS ON 3−LANE HIGHWAYS. On a 2−way highway having an uneven number of lanes the approach for a left turn or U−turn shall be made in the center lane, 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.

History: 2009 a. 97; 2015 a. 124.

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 U−turns. (1) The operator of a vehicle may not make a U−turn upon a highway at any of the following places:

(a) At any intersection at which traffic is being controlled by a traffic officer unless instructed by the officer to make a U−turn.

(b) In mid−block on any street in a business district, except where the highway is a divided highway and where the U−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 U−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 a U−turn have been erected by the authority in charge of the maintenance of the highway.

(e) Upon a curve or upon the approach to or near the crest of a grade on any undivided highway where the vehicle cannot be seen by the driver of any other vehicle within 500 feet approaching from any direction.

(f) At any place where a U−turn cannot be made safely or without interfering with other traffic.

(1m) The operator of a vehicle shall exercise due care when making a U−turn upon a highway and shall only make a U−turn when the movement can be made safely and without interfering with other traffic.

(2) The operator of a vehicle may not back the vehicle at an intersection controlled by an official traffic control device for the purpose of making a U−turn.

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

History: 1971 c. 203; 1991 a. 316; 2009 a. 97.

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.

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 the movement, no person may turn any vehicle without giving an appropriate signal in the manner provided in s. 346.35. A person making a U−turn shall use the same signal used to indicate a left turn. When given by the operator of a vehicle other than a bicycle or electric personal assistive mobility device, the signal shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning. The operator of a bicycle or electric personal assistive mobility device shall give the signal continuously during not less than the last 50 feet traveled before turning. A signal by the hand and arm need not be given continuously

if the hand is needed in the control or operation of the bicycle or electric personal assistive mobility device.

(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; 1995 a. 138; 2001 a. 90; 2009 a. 97.

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

Sub. (1) (b) states that a driver must use a turn signal in "the event that any other traffic may be affected." The defendant did not violate this statute when he made a left turn without using his signal when there was no oncoming or following traffic or pedestrians present when he turned. State v. Anagnos, 2011 WI App 118, 337 Wis. 2d 57, 805 N.W.2d 722, 10−1812.

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, except signals by the operator of a bicycle, who may use either hand and arm, shall be given from the left side of the vehicle in the following manner and shall indicate as follows:

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

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

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

History: 2009 a. 97; 2011 a. 73.

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 or electric personal assistive mobility device violating ss. 346.31 to 346.35 may be required to forfeit not more than $20.

History: 1971 c. 278; 1977 c. 208; 2001 a. 90.

SUBCHAPTER VI

TRAFFIC SIGNS, SIGNALS, AND PAVEMENT 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, make a U−turn, or turn right or left unless a sign at such place prohibits the turning maneuver, 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 the signal is exhibited.

2. Pedestrians, and persons who are riding bicycles or electric personal assistive mobility devices 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.* Except as provided in par. (e) and s. 346.39 (2), 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 pavement marking and shall remain standing until green or other signal permitting movement is shown.

2. No pedestrian, bicyclist, or rider of an electric personal assistive mobility device 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. Vehicular traffic in the leftmost right−turn lane of a roadway that provides 2 right−turn lanes may make a right turn on a red signal into a lawfully available lane that is 2nd to the rightmost lane for traffic moving to the right. Except for a vehicle turning right from the leftmost right−turn lane of a roadway that provides 2 right−turn lanes, no turn may be made on a red signal if lanes of moving traffic are crossed. No turn may be made on a red signal if a sign at the intersection prohibits the turn on a red signal. In making a turn on a red signal vehicular traffic shall yield the right−of−way to pedestrians, bicyclists, and riders of electric personal assistive mobility devices lawfully within a crosswalk, to operators of vehicles making a lawful U−turn, and to other traffic lawfully using the intersection.

4. Notwithstanding subd. 1., a motorcycle, moped, motor bicycle, or bicycle facing a red signal at an intersection may, after stopping as required under subd. 1. for not less than 45 seconds, proceed cautiously through the intersection before the signal turns green if no other vehicles are present at the intersection to actuate the signal and the operator of the motorcycle, moped, motor bicycle, or bicycle reasonably believes the signal is vehicle actuated. The operator of a motorcycle, moped, motor bicycle, or bicycle proceeding through a red signal under this subdivision shall yield the right−of−way to any vehicular traffic, pedestrian, bicyclist, or rider of an electric personal assistive mobility device proceeding through a green signal at the intersection or lawfully within a crosswalk or using the intersection. This subdivision does not affect any authorization for a bicyclist under subd. 2.

(d) *Green arrow.* 1. Vehicular traffic facing a green arrow signal may enter the intersection to make the movement indicated by the arrow but shall yield the right−of−way to pedestrians, bicyclists, and riders of electric personal assistive mobility devices lawfully within a crosswalk and to other traffic lawfully using the intersection. Vehicular traffic facing a left turn arrow may make a U−turn unless a sign prohibits U−turns. When the green arrow signal indicates a right or left turn traffic shall cautiously enter the intersection.

2. No pedestrian, bicyclist, or rider of electric personal assistive mobility device facing such signal shall enter the roadway unless he or she can do so safely and without interfering with any vehicular traffic.

(e) *Flashing yellow arrow.* 1. Vehicular traffic facing a flashing yellow arrow signal may cautiously enter the intersection to make the movement indicated by the arrow but shall yield the right−of−way to pedestrians, bicyclists, and riders of electric personal assistive mobility devices lawfully within a crosswalk and to other traffic lawfully using the intersection. Vehicular traffic facing a left turn arrow may make a U−turn unless a sign prohibits U−turns.

2. No pedestrian, bicyclist, or rider of an electric personal assistive mobility device 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 pavement marking indicating where the stop shall be made, but in the absence of any such sign or pavement marking the stop shall be made at the signal.

(3) If a traffic control signal suffers a loss of power or otherwise malfunctions so that the traffic control signal does not exhibit any color of light, vehicular traffic, pedestrians, and persons riding bicycles or electric personal assistive mobility devices shall proceed at the traffic control signal as if the traffic control signal were an official stop sign and shall comply with the requirements applicable under ss. 346.18 (1) and (3) and 346.46 (1), (2), and (4), unless otherwise directed by a traffic officer.

History: 1975 c. 23; 1979 c. 152; 1985 a. 69; 1993 a. 490; 2001 a. 90; 2005 a. 466; 2009 a. 97; 2015 a. 42, 74, 124, 136.

346.38 Pedestrian control signals. (1) WALK. A pedestrian, or a person riding a bicycle or electric personal assistive mobility device in a manner which is consistent with the safe use of the crossing by pedestrians, facing a pedestrian signal authorizing crossing 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, bicyclist, or electric personal assistive mobility device rider.

(2) DON'T WALK. No pedestrian, bicyclist, or rider of an electric personal assistive mobility device may start to cross the roadway or other vehicular crossing in the direction of a pedestrian signal limiting crossing, regardless of whether the signal is steady or flashing, but any pedestrian, bicyclist, or rider of an electric personal assistive mobility device who has partially completed crossing on the pedestrian signal authorizing crossing may proceed to a sidewalk or safety zone while a pedestrian signal limiting crossing is showing.

History: 1975 c. 229, 421; 1979 c. 36; 1985 a. 69; 2001 a. 90; 2015 a. 104.

Pedestrians have the right−of−way on a green light only where there are no pedestrian control signals. City of Hartford v. Godfrey, 92 Wis. 2d 815, 286 N.W.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). Subject to s. 346.37 (1) (e), 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.

History: 2015 a. 74.

Sub. (2) imposes a greater duty of care on a driver proceeding through an intersection with a flashing yellow light than on a driver proceeding where an intersection is not so controlled. Sabinasz v. Milwaukee & Suburban Transport Corp. 71 Wis. 2d 218, 238 N.W.2d 99 (1975).

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, pavement 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 may place or maintain, and no public authority may permit upon any highway, any traffic control device bearing any advertising, except that a federal or fluorescent yellow flag, not less than 20 inches nor more than 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; 2009 a. 88; 2015 a. 124.

Cross−reference: See also s. Trans 200.04, Wis. adm. code.

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 66.0429 (2) or intentionally interfere with the effective operation of such sign or signal.

History: 1985 a. 194; 1987 a. 205; 1999 a. 150 s. 672.

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. or 3., 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 or electric personal assistive mobility device violating s. 346.37, 346.38 or 346.39 may be required to forfeit not more than $20.

3. If an operator of a vehicle violates s. 346.37 or 346.39 where persons engaged in work in a highway maintenance or construction area or in a utility work area are at risk from traffic, any applicable minimum and maximum forfeiture specified in subd. 1. for the violation shall be doubled.

(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; 1993 a. 198; 1997 a. 277; 2001 a. 90.

SUBCHAPTER VII

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 employee 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 or railroad track equipment is approaching the operator may proceed.

(c) If any crossbuck sign specified under s. 192.29 (5) (a) is maintained at the crossing, while any railroad train or railroad track equipment occupies the crossing or approaches so closely to the crossing as to constitute a hazard of collision.

(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.

History: 1991 a. 316; 2005 a. 95; 2011 a. 101.

346.445 Limitations on pedestrians crossing railroad tracks. (1) No pedestrian may enter or cross a railroad crossing under any of the following circumstances:

(a) While a traffic officer or railroad employee signals to stop.

(b) While a warning device signals to stop, except that if the pedestrian after stopping and investigating finds that no railroad train or railroad track equipment is approaching, the pedestrian may proceed.

(c) If any crossbuck sign specified under s. 192.29 (5) (a) is maintained at the crossing, while a railroad train or railroad track equipment occupies the crossing or approaches so closely to the crossing as to constitute a hazard of collision.

(2) No pedestrian may cross through, around, over, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

(3) No pedestrian may cross through or around or climb over or under a railroad train or railroad track equipment while the railroad train or railroad track equipment occupies a railroad crossing.

History: 2013 a. 219.

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 a classification of marking or placarding that requires the vehicle to stop.

(d) Every cargo tank motor vehicle, whether loaded or empty, used for the transportation of any liquid having a flashpoint below 200 degrees Fahrenheit, as determined by the test method approved for that product by ASTM International.

(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).

(f) Every vehicle transporting a building, as defined in s. 348.27 (12m) (a) 1.

(g) Every cargo tank motor vehicle, whether loaded or empty, transporting a commodity under exemption in accordance with 49 CFR part 107, subpart B.

(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 railroad train or railroad track equipment, and shall not proceed until such precautions have been taken and until the 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 railroads 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. These rules shall identify classifications of markings or placarding that, consistent with federal regulations, when required on a vehicle also require the vehicle to stop as provided in sub. (1) (c).

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); 1993 a. 16, 123; 2005 a. 250; 2011 a. 101, 247; 2015 a. 55, 186; s. 35.17 correction in (1) (d).

346.452 Owner's liability for vehicle illegally crossing at a railroad crossing. (1) Subject to s. 346.01 (2), the owner of a vehicle involved in a violation of s. 346.44 or 346.45 shall be liable for the violation as provided in this section.

(2) A railroad employee who observes a violation of s. 346.44 or 346.45 may prepare a written report indicating that a violation has occurred. If possible, the report shall contain the following information:

(a) The violation alleged.

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

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

(d) 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 railroad employee 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 of 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 of the information in sub. (2) and after verifying the information provided under sub. (2) (c) and (d), 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.

(d) In addition to serving the person with the citation under par. (a), (b), or (c), the serving agency shall include a notice that informs the person that he or she may petition the court for a change of venue; of the court costs required for petitioning for a change of venue; and of the procedures for petitioning the court for a change of venue.

(4m) The venue for the action shall be in the county where the violation occurred, except that the venue shall be in the county where the person is a resident if he or she is a resident of the state and he or she petitions the court for a change of venue to his or her county of residence.

(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.

2. 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.

3. 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.

4. 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: 2003 a. 209.

346.455 Vehicles to stop at fire station. (1) The operator of a motor vehicle approaching an authorized emergency vehicle shall stop not less than 30 feet from that vehicle and shall remain stopped, if all of the following apply:

(a) The authorized emergency vehicle is about to be or is being driven backwards into a driveway entrance to a fire station.

(b) The authorized emergency vehicle is giving visual signal by means of at least one flashing, oscillating or rotating red light or by a member of the fire department or fire patrol standing on the roadway in a position that is visible to approaching traffic and directing traffic to stop.

(2) The operator of a motor vehicle required to stop under sub. (1) shall remain stopped until a member of the fire department or fire patrol directs the operator to proceed or until the visual signal under sub. (1) (b) is terminated and all members of the fire department or fire patrol have left the roadway.

History: 1995 a. 424.

346.457 Owner's liability for vehicle illegally passing fire truck. (1) Subject to s. 346.01 (2), the owner of a vehicle involved in a violation of s. 346.455 (1) or (2) shall be liable for the violation as provided in this subsection.

(2) A member of the fire department or fire patrol who observes a violation of s. 346.455 (1) or (2) may prepare a written report indicating that a violation has occurred. The report shall contain the following information:

(a) The time and 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, motor truck, motor bus, motorcycle or other type of vehicle.

(3) Within 24 hours after observing the violation, the member of the fire department or fire patrol 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 sub. (2) may nevertheless be delivered and shall be maintained by the political subdivision for statistical purposes.

(4) (a) Within 48 hours after receiving a report containing all of the information in sub. (2) and after conducting an investigation, 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.

(b) If with reasonable diligence the owner of the vehicle cannot be served under par. (a) 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 is not a defense to a violation of s. 346.455 (1) or (2) that the owner of the vehicle was not in control of the vehicle at the time of the violation.

(b) The following are defenses to a violation of s. 346.455 (1) or (2):

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.

2. That 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. In such a case, that person and not the owner shall be charged with the violation.

3. That 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). In such a case, the lessee and not the lessor shall be charged with the violation.

4. That 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 a person on a trial run and the dealer provides a traffic officer with the name, address and operator's license number of that person. In such a case, that person and not the dealer shall be charged with the violation.

History: 1995 a. 424; 1997 a. 27; 1999 a. 80.

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 the vehicle immediately before crossing such line.

(b) If there is no clearly marked stop line, the operator shall stop the 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, the operator shall, before entering the intersection, stop the vehicle at such point as will enable the operator 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 the vehicle immediately before crossing a clearly marked stop line. If there is no clearly marked stop line, the operator shall stop the vehicle not less than 15 nor more than 50 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; 1991 a. 316; 2009 a. 65.

A violation of sub. (1) constitutes negligence per se, but a violation may be excused through the application of the emergency doctrine, which provides that a person faced with an emergency that the person did not create is not negligent for failing to avoid the threatened disaster if compelled to act instantly. Totsky v. Riteway Bus Service, Inc. 2000 WI 29, 233 Wis. 2d 371, 607 N.W.2d 637, 97−0530.

346.465 Owner's liability for vehicle illegally crossing controlled school crossing. (1) Subject to s. 346.01 (2), 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, 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; 1997 a. 27; 1999 a. 80.

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 immediately 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, bicyclist, or rider of an electric personal assistive mobility device, 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; 2001 a. 90.

346.475 Human service vehicles; loading or unloading children with disabilities. No person who operates a human service vehicle may stop to load or unload passengers who are children with disabilities 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; 1997 a. 164.

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

2. Except as provided in par. (b), the operator of a school bus equipped with flashing red and amber warning lights as specified in s. 347.25 (2) shall do all of the following when stopping to load or unload pupils or other authorized passengers:

a. Actuate the flashing amber warning lights at least 300 feet before stopping in a 45 miles per hour or greater speed zone or at least 100 feet before stopping in a less than 45 mile per hour speed zone.

b. At the point of loading or unloading, bring the bus to a stop, extinguish the flashing amber warning lights, and actuate the flashing red warning lights.

c. After loading or unloading is completed and persons who must cross the highway are safely across, extinguish the flashing red warning lights.

3. Where the curb and sidewalk are laid on one side of the road only, the operator shall use the flashing red or flashing red and

amber warning lights when loading or unloading passengers from either side.

(b) School bus operators shall not use the flashing red or amber 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 or amber 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 or amber 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 or amber warning lights 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 or amber 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; 2013 a. 96.

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

346.485 Owner's liability for vehicle illegally passing school bus. (1) Subject to s. 346.01 (2), 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, 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; 1997 a. 27; 1999 a. 80.

346.49 Penalty for violating ss. 346.44 to 346.485. (1) (a) Unless otherwise provided in par. (b) or (c), any person violating s. 346.46 (1), (2m) or (4) 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 or electric personal assistive mobility device violating s. 346.46 (1), (2m) or (4) may be required to forfeit not more than $20.

(c) If an operator of a vehicle violates s. 346.46 (1) where persons engaged in work in a highway maintenance or construction area or in a utility work area are at risk from traffic, any applicable minimum and maximum forfeiture specified in par. (a) for the violation shall be doubled.

(1g) (a) Unless otherwise provided in par. (b), any person violating s. 346.46 (3) shall forfeit not less than $40 nor more than $80 for the first offense and not less than $100 nor more than $200 for the 2nd or subsequent conviction within a year.

(b) Any operator of a bicycle or electric personal assistive mobility device violating s. 346.46 (3) shall forfeit not more than $40.

(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) Any person violating s. 346.455 or 346.48 may be required to forfeit not less than $30 nor more than $300.

(2m) (a) Unless otherwise provided in par. (b), any person violating s. 346.44 may be required to forfeit not more than $1,000 for the first offense and not more than $3,000 for the 2nd or subsequent conviction within 3 years.

(am) Any person violating s. 346.45 shall forfeit not less than $60 nor more than $600 for the first offense and not less than $180 nor more than $1,800 for the 2nd or subsequent conviction within 3 years.

(b) Any operator of a bicycle or electric personal assistive mobility device violating s. 346.44 may be required to forfeit not less than $100 nor more than $250 for the first offense and not less than $225 nor more than $750 for the 2nd or subsequent conviction within 3 years.

(c) Any person violating s. 346.445 may be required to forfeit not less than $100 nor more than $250 for the first offense and not less than $225 nor more than $750 for the 2nd or subsequent conviction within 3 years.

(2r) (a) A vehicle owner or other person found liable under s. 346.452 with respect to a violation of s. 346.44 may be required to forfeit not more than $1,000 for the first offense and not more than $3,000 for the 2nd or subsequent conviction within 3 years, except that, if the vehicle involved in the violation was a bicycle, the bicycle owner or other person may be required to forfeit not less than $100 nor more than $250 for the first offense and not less than $225 nor more than $750 for the 2nd or subsequent conviction within 3 years.

(b) A vehicle owner or other person found liable under s. 346.452 with respect to a violation of s. 346.45 shall forfeit not less than $60 nor more than $600 for the first conviction and not less than $180 nor more than $1,800 for the 2nd or subsequent conviction within 3 years.

(c) Imposition of liability under s. 346.452 shall not result in suspension or revocation of a person's operating license under s. 343.30 or 343.31, nor shall it result in demerit points being recorded on a person's driving record under s. 343.32 (2) (a).

(3) A vehicle owner or other person found liable under s. 346.485 or 346.457 may be required to forfeit not less than $30 nor more than $300. Imposition of liability under s. 346.485 or 346.457 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; 1993 a. 198; 1995 a. 424; 1997 a. 135, 237, 277; 2001 a. 90; 2003 a. 209; 2013 a. 219.

346.495 Railroad crossing improvement surcharge. (1) (a) If a court imposes a forfeiture under s. 346.49 (1g) or (2m) (a), (am), (b), or (c) for a violation of s. 346.44, 346.445, 346.45, or 346.46 (3), the court shall also impose a railroad crossing improvement surcharge under ch. 814 equal to 50 percent of the amount of the forfeiture.

(b) If a court imposes a forfeiture under s. 346.49 (2r) with respect to a violation of s. 346.44 or 346.45, the court shall also impose a railroad crossing improvement surcharge equal to 50 percent of the amount of the forfeiture.

(2) If a forfeiture is suspended in whole or in part, the railroad crossing improvement surcharge shall be reduced in proportion to the suspension.

(3) If any deposit is made for an offense to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the railroad crossing improvement surcharge under this section. If the deposit is forfeited, the amount of the railroad crossing improvement surcharge shall be transmitted to the secretary of administration under sub. (4). If the deposit is returned, the amount of the railroad crossing improvement surcharge shall also be returned.

(4) The clerk of the circuit court shall collect and transmit to the county treasurer the railroad crossing improvement surcharge as required under s. 59.40 (2) (m). The county treasurer shall then pay the secretary of administration as provided in s. 59.25 (3) (f) 2. The secretary of administration shall deposit all amounts received under this subsection in the transportation fund to be appropriated under s. 20.395 (2) (gj).

History: 1997 a. 135, 237; 2003 a. 33, 139, 209, 326, 327; 2013 a. 219.

SUBCHAPTER VIII

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 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), a telecommunications carrier, as defined in s. 196.01 (8m), 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.

(1m) In subs. (2) and (2a), the terms "municipal" and "municipally" include county.

(2) Except as provided in sub. (3m), a motor vehicle bearing a special registration plate issued under s. 341.14 (1) 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) Except as provided in sub. (3m), a motor vehicle bearing special registration plates issued under s. 341.14 (1a), (1e), (1m), or (1q) or a motor vehicle 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.

(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) Except as provided in sub. (3m), a vehicle bearing special registration plates issued under s. 341.14 (1), (1a), (1e), (1m), or (1q) or a motor vehicle 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 person with a physical disability is exempt from s. 346.505 (2) (a) or any ordinance in conformity therewith prohibiting parking, stopping, or standing upon any portion of a street, highway, or parking facility reserved for persons with physical disabilities 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).

(3m) (a) In this subsection, "motor vehicle used by a physically disabled person" has the meaning given in s. 346.503 (1).

(b) The city council of a 1st or 2nd class city may enact an ordinance imposing a 3−hour or less limitation on parking of a motor vehicle used by a physically disabled person upon any portion of a street, highway or parking facility reserved by the city for physically disabled persons by official traffic signs indicating the restriction if the following conditions are complied with:

1. Before enactment, the city council seeks the advice and recommendation of a disabled parking council of at least 7 members established by an ordinance of the city or, if the city has established a disabled parking enforcement assistance council under s. 349.145, by that council, and holds a public hearing on the proposal. The majority of the members of any disabled parking council shall be appointed by the city council from among those residents of the city to whom or on whose behalf the department has issued a special registration plate under s. 341.14 (1) to (1q) or a special identification card under s. 343.51.

2. The ordinance may apply to not more than one−third of the number of spaces reserved by the city for use by a motor vehicle used by a physically disabled person, and no time limitation may be imposed on a reserved space in a parking facility unless an adjacent space without any such time limitation is reserved for use by a motor vehicle used by a physically disabled person. The ordinance shall require that the disabled parking council or, if applicable, the disabled parking enforcement assistance council give advice and make a recommendation on the location of such reserved spaces.

3. The official traffic sign for such reserved spaces shall include information on the applicable time limitation for use by a motor vehicle used by a physically disabled person.

4. The ordinance may not impose a penalty for a violation of the ordinance that is greater than the penalty for violation of any ordinance of the city imposing time limitations on parking upon any portion of a street, highway or parking facility.

5. The ordinance shall require the city to submit a report by December 31 of each odd−numbered year to the council on physical disabilities under s. 46.29 (1) (fm) on implementation and administration of the ordinance, including an evaluation of the effectiveness of time limitations imposed by the ordinance. With respect to spaces reserved by the city for use by a motor vehicle used by a physically disabled person upon any portion of a street, highway or parking facility, the report shall include the total number of spaces; the total number of spaces in a parking facility and the number of those spaces that are subject to a time limitation, and the duration of any such limitation; and the total number of spaces upon a street or highway and the number of those spaces that are subject to a time limitation, and the duration of any such limitation.

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; 1991 a. 239; 1993 a. 256, 496; 1995 a. 422; 1997 a. 92; 2001 a. 103; 2009 a. 246; 2013 a. 359.

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), or (1q) or a motor vehicle 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 percent 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.

(ag) Notwithstanding s. 101.13 (2) (a) and (d), the requirement under par. (a) applies to any owner or lessee of any public building or place of employment, and to any owner or lessee of any parking facility that offers parking to the public, with respect to any parking area initially constructed, or reconstructed, resurfaced, or seal coated, on or after May 27, 1976.

(am) If the number of the parking spaces reserved under par. (a) or (e) is at least 4 but less than 20, at least one of these reserved parking spaces shall have an access aisle immediately adjacent to the parking space to provide entry to and exit from vehicles by persons with physical disabilities. If the number of the parking spaces reserved under par. (a) or (e) is 20 or more, at least 10 percent of these reserved parking spaces shall have an access aisle immediately adjacent to the parking space to provide entry to and exit from vehicles by persons with physical disabilities. The access aisle shall be at least 96 inches wide and clearly marked. This paragraph applies only to parking areas that are initially constructed, or reconstructed, resurfaced, or seal coated, after August 1, 2014, and that have adequate clearance for lift van access.

(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 employees, the employer shall, at the request of a physically disabled employee, reserve a parking space for the employee 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 percent 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 safety and professional services 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.

(2e) The owner or lessee subject to the requirements of sub. (1m) shall keep the parking spaces reserved for vehicles designated under sub. (1m) or (2m) clear of snow and ice in a timely manner and make other reasonable efforts to ensure that the spaces are available for use by a motor vehicle used by a physically disabled person.

(2m) (a) 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) (b) and (c) for use by a motor vehicle used by a physically disabled person. An owner or lessee reserving spaces under this paragraph shall post official traffic signs indicating that the spaces are reserved.

(b) If the number of parking spaces reserved under par. (a) is at least 4 but less than 20, at least one of these reserved parking spaces shall have an access aisle immediately adjacent to the parking space to provide entry to and exit from vehicles by persons with physical disabilities. If the number of the parking spaces reserved under par. (a) is 20 or more, at least 10 percent of these reserved parking spaces shall have an access aisle immediately adjacent to the parking space to provide entry to and exit from vehicles by persons with physical disabilities. The access aisle shall be at least 96 inches wide and clearly marked. This paragraph applies only to parking areas that are initially constructed, or reconstructed, resurfaced, or seal coated, after August 1, 2014, and that have adequate clearance for lift van access.

(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). If the reserved parking space has an adjacent access aisle required under sub. (1m) (am) or (2m) (b), the official traffic sign shall also identify the reserved parking space as "lift van accessible only" and shall comply with the manual of uniform traffic control devices adopted by the department under s. 84.02 (4) (e).

(4) The department, after consulting with the department of safety and professional services, shall promulgate rules governing the design, size, and installation of the official traffic signs required under sub. (2) or (2m) (a).

(5) (b) A member of a disabled parking enforcement assistance council under s. 349.145 who observes a violation of this section may prepare a written report indicating that a violation has occurred. The report shall contain the time and location at which the violation occurred and any other relevant information relating to the violation.

(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) and after conducting an investigation, the traffic officer may prepare a uniform traffic citation under s. 345.11 for the violation and may personally serve it upon the owner or lessee.

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

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; 1993 a. 256; 1995 a. 27 ss. 6415, 6416, 9116 (5); 2009 a. 246; 2011 a. 32; 2013 a. 327, 359.

Cross−reference: See also s. Trans 200.07, Wis. adm. code.

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) (a) Except for a motor vehicle used by a physically disabled person as defined under s. 346.503 (1) and except as provided in sub. (4) (a), 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), or (1q) or a special identification card issued under s. 343.51 or vehicles 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.

(b) 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 so as to obstruct, block or otherwise limit the use of 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), or (1q) or a special identification card issued under s. 343.51 or vehicles 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.

(c) Notwithstanding par. (b), 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 that is clearly marked as and intended to be an access aisle to provide entry to and exit from vehicles by persons with physical disabilities and which is immediately adjacent to 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), or (1q) or a special identification card issued under s. 343.51 or vehicles 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 person with a physical disability.

(3) (a) Subject to s. 346.01 (2), 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), or any person who observes a violation of sub. (2) (c), 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, motor truck, motor bus, motorcycle or other type of vehicle.

(c) Within 24 hours after observing the violation, the member or other person 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) and after conducting an investigation, 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.

(4) (a) A taxicab operator may stop the taxicab on that portion of a street, highway, or parking facility reserved, as described in sub. (2) (a), for vehicles used by persons with physical disabilities if all of the following apply:

1. The taxicab is stopped to load a passenger who has been issued a special identification card under s. 343.51.

2. At the time the passenger under subd. 1. arranged for transportation by taxicab, the passenger notified the taxicab service of the identification number appearing on the passenger's special identification card.

3. At the time the passenger under subd. 1. is loaded into the taxicab, the passenger presents to the taxicab operator the passenger's special identification card.

4. At the time the taxicab operator stops to load the passenger under subd. 1., there is no suitable, available loading zone for loading the passenger.

(b) Along with the special identification card presented under par. (a) 3., at the time the passenger under par. (a) 1. is loaded into the taxicab, the passenger shall present to the taxicab operator a letter from the department issued with the passenger's special identification card.

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; 1993 a. 256, 490; 1997 a. 27, 92; 1999 a. 80; 2009 a. 246; 2015 a. 362.

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 flashing red warning 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; 2013 a. 96.

The graded, but unfinished, bed of a highway lane under construction is not a "roadway" under s. 340.01 (54). Burg v. Cincinnati Casualty Insurance Co. 2002 WI 76, 254 Wis. 2d 36, 645 N.W.2d 880, 00−3258.

346.52 Stopping prohibited in certain specified places. (1) No person may 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, pavement marking, or parking meter.

(d) On a sidewalk or sidewalk area, except when parking on the sidewalk or sidewalk area is clearly indicated by official traffic signs, pavement markings, or parking meters.

(e) Alongside or opposite any highway excavation or obstruction when stopping or standing at that place 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 pavement markings.

(g) Within 15 feet of the driveway entrance to a fire station or directly across the highway from a fire station 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, towns or cities when the village or town 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, or to the parking of vehicles on the near side of highways adjacent to schoolhouses authorized by s. 349.13 (1j).

History: 1979 c. 325; 1983 a. 59; 1989 a. 71; 1993 a. 246; 1997 a. 159; 1999 a. 85; 2015 a. 124.

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.

History: 1999 a. 85.

The trial court erred in finding a truck driver, who parked on a highway for the purpose of unloading sewage into a manhole, negligent as a matter of law and refusing to submit the question of practicality to the jury. Nelson v. Travelers Insurance Co. 80 Wis. 2d 272, 259 N.W.2d 48 (1977).

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 pavement markings, 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 pavement markings, vehicles may be parked only as indicated by the signs or pavement markings.

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

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

2. Up to 3 Type 1 motorcycles or mopeds may be parked in a parking space where a parking meter has been installed unless the space is restricted by official traffic sign or pavement markings to a single motorcycle or moped. The operator of each Type 1 motorcycle or moped 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 pavement markings.

(e) Except as provided in par. (cm) and s. 349.13 (6), for the purpose of parking, mopeds and electric personal assistive mobility devices shall be considered bicycles. Except as provided in s. 349.13 (6), where possible without impeding the flow of pedestrian traffic, a bicycle, moped, or electric personal assistive mobility device may be parked on a sidewalk. Except as provided in s. 349.13 (6), a bicycle, moped, or electric personal assistive mobility device 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; 1995 a. 138; 1999 a. 85; 2001 a. 90; 2011 a. 73; 2015 a. 124.

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 ss. 167.31 (4) (co) and 346.54.

(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; 1991 a. 77, 189; 1995 a. 422.

346.56 Penalty for violating sections 346.503 to 346.55. (1) (a) Except as provided in sub. (1g), 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.

(1g) Any person violating s. 346.503 (2e) shall forfeit not less than $20 nor more than $40 for the first offense. For a 2nd or subsequent conviction within 3 years, a person shall forfeit not less than $50 nor more than $100.

(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. 346.51 or 346.55 (1) may be required to forfeit not less than $30 nor more than $300.

(4) Any person violating s. 346.505 (2) shall forfeit not less than $150 nor more than $300.

History: 1971 c. 278; 1977 c. 418; 1979 c. 288; 1981 c. 157; 1983 a. 27, 77; 1987 a. 260; 1993 a. 256; 1995 a. 422; 2013 a. 326.

SUBCHAPTER IX

SPEED RESTRICTIONS

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

(ag) "Expressway" means a state trunk highway that, as determined by the department, has 4 or more lanes of traffic physically separated by a median or barrier and that gives preference to through traffic by utilizing interchanges or limiting at−grade access to selected public roads and public driveways.

(am) "Freeway" means a state trunk highway that has 4 or more lanes of traffic physically separated by a median or barrier and that gives preference to through traffic by limiting access to interchanges only.

(ar) "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, sanitation 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) Fifteen 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) Fifteen miles per hour when passing an intersection or other location properly marked with a "school crossing" sign of a type approved by the department when any of the following conditions exists:

1. Any child is present.

2. A school crossing guard is within a crosswalk at the intersection or the other location or, if no crosswalk exists, is in the roadway at the intersection or the other location.

3. A school crossing guard is placing in or removing from the roadway at or near the intersection or the other location a temporary sign or device that guides, warns, or regulates traffic.

(c) Fifteen 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) Fifteen miles per hour in any alley.

(e) Twenty−five 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) Twenty−five 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) Thirty−five miles per hour in any outlying district within the corporate limits of a city or village.

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

(gm) 1. Except as provided in subd. 2., 65 miles per hour on any expressway.

2. Seventy miles per hour on any freeway, including freeways that are a part of the national system of interstate and defense highways, and on any portion of an expressway that gives preference to through traffic by utilizing interchanges only.

(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) Fifteen miles per hour on any street or town road, 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 or town roads concerned where persons traversing the same would enter such area from an area where a different speed limit is in effect.

(j) Thirty−five 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) Forty−five 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.

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; 1993 a. 246; 1995 a. 318; 1997 a. 35; 2001 a. 47; 2013 a. 39; 2015 a. 19.

While sub. (2) is related to sub. (3), it is not limited by sub. (3). Sub. (3) creates a greater duty in respect to speed than sub. (2) does. Thoreson v. Milwaukee & Suburban Transport Corp. 56 Wis. 2d 231, 201 N.W.2d 745 (1972).

Judicial notice may be taken of the reliability of the underlying principles of radar that employs the Doppler effect to determine speed. A prima facie presumption of accuracy of moving radar will be accorded upon competent testimony of the operating officer of required facts. State v. Hanson, 85 Wis. 2d 233, 270 N.W.2d 212 (1978).

A prima facie presumption of accuracy applies to stationary radar devices. City of Wauwatosa v. Collett, 99 Wis. 2d 522, 299 N.W.2d 620 (Ct. App. 1980).

The application of the *Hanson* requirements is discussed. State v. Kramer, 99 Wis. 2d 700, 299 N.W.2d 882 (1981).

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

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

The presumption of the accuracy of moving radar is discussed. The elements of the *Hanson/Kramer* criteria are explained. Washington County v. Luedtke, 135 Wis. 2d 131, 399 N.W.2d 906 (1987).

346.58 Special speed restrictions for certain vehicles. **(1)** In this section:

(a) "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.

(b) "Solid rubber tire" means a tire made of rubber but not inflated with compressed air.

(2) In addition to complying with other speed restrictions imposed by law, no person may drive any vehicle equipped with metal tires or solid rubber tires at a speed in excess of 15 miles per hour. This subsection does not apply to operation of a bicycle.

History: 1973 c. 165; 1975 c. 297; 1983 a. 54; 1999 a. 85; 2009 a. 276; 2011 a. 73.

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 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; 2013 a. 365.

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. City of Kenosha v. Dosemagen, 54 Wis. 2d 269, 195 N.W.2d 462 (1972).

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. (3m) or (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. (3m) or (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. (3m) or (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.

(3m) (a) If an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area or in a utility work area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture specified in sub. (2) or (3) for the violation shall be doubled.

(b) If an operator of a vehicle violates s. 346.57 (2) to (5) when children are present in a zone designated by "school" warning signs as provided in s. 118.08 (1), any applicable minimum and maximum forfeiture specified in sub. (2) or (3) for the violation shall be doubled.

(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 or electric personal assistive mobility device who violates s. 346.57 may be required to forfeit not more than $20.

(b) Any operator of a bicycle or electric personal assistive mobility device 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; 1993 a. 198; 1995 a. 44; 1997 a. 277, 325; 2001 a. 90; 2013 a. 39.

SUBCHAPTER X

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, all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of 4 or more units for the 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. Sections 346.62 to 346.64 do not apply to private parking areas at farms or single−family residences.

History: 1995 a. 127.

A privately owned parking lot was not included under this section. City of Kenosha v. Phillips, 142 Wis. 2d 549, 419 N.W.2d 236 (1988).

A parking lot for patrons of a business is held out for the use of the public under this section. City of LaCrosse v. Richling, 178 Wis. 2d 856, 505 N.W.2d 448 (Ct. App. 1993).

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), except that for purposes of sub. (2m) "vehicle" has the meaning given in s. 340.01 (74).

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

(2m) No person may recklessly endanger the safety of any person by driving a vehicle on or across a railroad crossing in violation of s. 346.44 (1) or through, around or under any crossing gate or barrier at a railroad crossing in violation of s. 346.44 (2).

(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; 1997 a. 135.

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]

That the defendant was an experienced stock car racer was not a defense to a charge of reckless driving. State v. Passarelli, 55 Wis. 2d 78, 197 N.W.2d 740.

Sub. (4) is not unconstitutionally irrational. State v. King, 187 Wis. 2d 547, 523 N.W.2d 159 (Ct. App. 1994).

This section may be applied to a corporation. State v. Steenberg Homes, Inc. 223 Wis. 2d 511, 589 N.W.2d 668 (Ct. App. 1998), 98−0104.

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, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, 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

(am) The person has a detectable amount of a restricted controlled substance in his or her blood.

(b) The person has a prohibited alcohol concentration.

(c) A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a), (am), or (b) for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a), (am), or (b), the offenses shall be joined. If the person is found guilty of any combination of par. (a), (am), or (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), (am), and (b) each require proof of a fact for conviction which the others do not require.

(d) In an action under par. (am) that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma−hydroxybutyric acid, or delta−9−tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma−hydroxybutyric acid, or delta−9−tetrahydrocannabinol.

(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, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, 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 prohibited alcohol concentration.

3. The person has a detectable amount of a restricted controlled substance in his or her blood.

(am) A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a) 1., 2., or 3. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a) 1., 2., or 3. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of any combination of par. (a) 1., 2., or 3. 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. Paragraph (a) 1., 2., and 3. each require proof of a fact for conviction which the others do not require.

(b) 1. 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, a controlled substance, a controlled substance analog 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, did not have a prohibited alcohol concentration described under par. (a) 2., or did not have a detectable amount of a restricted controlled substance in his or her blood.

2. In an action under par. (a) 3. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma−hydroxybutyric acid, or delta−9−tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma−hydroxybutyric acid, or delta−9−tetrahydrocannabinol.

(2m) If a person has not attained the legal drinking age, as defined in s. 125.02 (8m), the person may not drive or operate a motor vehicle while he or she has an alcohol concentration of more than 0.0 but not more than 0.08. 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 0.08.

(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 0.08.

(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, a controlled substance, a controlled substance analog 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 an 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; 1991 a. 277; 1995 a. 436, 448; 1997 a. 27, 252; 1999 a. 85; 2003 a. 30, 97; 2013 a. 224; 2015 a. 371.

NOTE: For legislative intent see chapter 20, laws of 1981, section 2051 (13).

It is no defense that the defendant is an alcoholic. State v. Koller, 60 Wis. 2d 755, 210 N.W.2d 770 (1973).

Evidence that the defendant, found asleep in parked car, had driven to the parking place 14 minutes earlier, was sufficient to support a conviction for operating a car while intoxicated. Monroe County v. Kruse, 76 Wis. 2d 126, 250 N.W.2d 375 (1977).

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

The court properly instructed the jury that it could infer from a subsequent breathalyzer reading of .13 percent that the defendant was intoxicated at the time of the stop. Alcohol absorption is discussed. State v. Vick, 104 Wis. 2d 678, 312 N.W.2d 489 (1981).

A previous conviction for operating while intoxicated is a penalty enhancer, not an element of the crime. State v. McAllister, 107 Wis. 2d 532, 319 N.W.2d 865 (1982). But as to operating with a prohibited blood alcohol count, see the note to State v. Ludeking, 195 Wis. 2d 132, 536 N.W.2d 392 (Ct. App. 1995), 94−1527.

Videotapes of sobriety tests were properly admitted to show the physical manifestation of the defendant driver's intoxication. State v. Haefer, 110 Wis. 2d 381, 328 N.W.2d 894 (Ct. App. 1982).

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

The trial court abused its discretion by excluding from evidence a blood alcohol chart produced by the department of transportation showing the amount of alcohol burned up over time. State v. Hinz, 121 Wis. 2d 282, 360 N.W.2d 56 (Ct. App. 1984).

The definitions of "under the influence" in this section and in s. 939.22 are equivalent. State v. Waalen, 130 Wis. 2d 18, 386 N.W.2d 47 (1986).

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

First offender OMVWI prosecution is a civil offense, and jeopardy does not attach to prevent a subsequent criminal prosecution. State v. Lawton, 167 Wis. 2d 461, 482 N.W.2d 142 (Ct. App. 1992).

Because there is no privilege under s. 905.04 (4) (f) for chemical tests for intoxication, results of a test taken for diagnostic purposes are admissible in an OMVWI trial without patient approval. City of Muskego v. Godec, 167 Wis. 2d 536, 482 N.W.2d 79 (1992).

When a municipal court found the defendant guilty of OWI and dismissed a blood alcohol count charge without finding guilt, the defendant's appeal of the OWI conviction under s. 800.14 (1) did not give the circuit court jurisdiction to hear the BAC charge absent an appeal of the dismissal. Town of Menasha v. Bastian, 178 Wis. 2d 191, 503 N.W.2d 382 (Ct. App. 1993).

Prior convictions are an element of sub. (1) (b) and evidence of the convictions is required regardless of potential prejudice. State v. Ludeking, 195 Wis. 2d 132, 536 N.W.2d 392 (Ct. App. 1995), 94−1527.

Failure to timely notify a person of the right to an alternative blood alcohol test does not affect the presumption of the validity of a properly given blood test and is not grounds for suppressing the test results. County of Dane v. Granum, 203 Wis. 2d 252, 551 N.W.2d 859 (Ct. App. 1996), 95−3470.

A request to perform field sobriety tests does not convert an otherwise lawful investigatory stop into an arrest requiring probable cause. County of Dane v. Campshure, 204 Wis. 2d 27, 552 N.W.2d 876 (Ct. App. 1996), 96−0474.

Immobility of a vehicle does not preclude a finding that the vehicle was being operated. Movement is not necessary for operation. State v. Modory, 204 Wis. 2d 538, 555 N.W.2d 399 (Ct. App. 1996), 96−0241.

Criminal prosecution for operating a motor vehicle with a prohibited blood alcohol content subsequent to administrative suspension of a driver's operating privileges does not constitute multiple punishment and double jeopardy. State v. McMaster, 206 Wis. 2d 30, 556 N.W.2d 673 (1996), 95−1159.

Evidence of a refusal that follows an inadequate warning under s. 343.305 (4) violates due process, but admission is subject to harmless error analysis. State v. Schirmang, 210 Wis. 2d 324, 565 N.W.2d 225 (Ct. App. 1997), 96−2008.

A defendant's refusal to submit to a field sobriety test is not protected by the right against self−incrimination and is admissible as evidence. State v. Mallick, 210 Wis. 2d 427, 565 N.W.2d 245 (Ct. App. 1997), 96−3048.

While prior convictions are an element of a violation of sub. (1) (b), admitting evidence of that element may not be proper. Admitting any evidence of prior convictions and submitting the element of the defendant's status as a prior offender to the jury when the defendant admitted to the element was an erroneous exercise of discretion. State v. Alexander, 214 Wis.2d 628, 571 N.W.2d 662 (1997), 96−1973.

Prosecution under both sub. (1) (a) and (b) does not violate double jeopardy because there can only be one conviction and one punishment. Dual prosecution also does not violate due process. State v. Raddeman, 2000 WI App 190, 238 Wis. 2d 628, 618 N.W.2d 258, 00−0143.

A warrantless blood draw is permissible when: 1) the blood is taken to obtain evidence of intoxication from a person lawfully arrested; 2) there is a clear indication that evidence of intoxication will be produced; 3) the method used is reasonable and performed in a reasonable manner; and 4) the arrestee presents no reasonable objection. State v. Thorstad, 2000 WI App 199, 238 Wis. 2d 666, 618 N.W.2d 240, 99−1765.

A department of transportation driving record abstract presented at a preliminary examination to show prior convictions was sufficient to establish probable cause of prior offenses. State v. Lindholm, 2000 WI App 225, 239 Wis. 2d 167, 619 N.W.2d 267, 99−2298.

Sub. (1), operating while intoxicated and with a prohibited alcohol count, is not a lesser included offense of sub. (2) (a), injury−related operating while intoxicated and with a prohibited alcohol count. State v. Smits, 2001 WI App 45, 241 Wis. 2d 374, 626 N.W.2d 42, 00−1158.

That a person agreed to a breath test, but not a blood test, did not render police insistence on a blood test unreasonable. State v. Wodenjak, 2001 WI App 216, 247 Wis. 2d 554, 634 N.W.2d 867, 00−3419.

By consenting to the taking of a blood sample, the defendant also consented to the chemical analysis of the sample. Those are not separate events for warrant requirement purposes. State v. VanLaarhoven, 2001 WI App 275, 248 Wis. 2d 881, 637 N.W.2d 411, 01−0222.

Probation is permitted under s. 973.09 (1) (d) for 4th and subsequent OWI violations, as long as the probation requires confinement for at least the mandatory minimum time period under this section. State v. Eckola, 2001 WI App 295, 249 Wis. 2d 276, 638 N.W.2d 903, 01−1044.

The analysis of blood taken in a warrantless nonconsensual draw, constitutional under *Krajewski,* is the examination of evidence obtained pursuant to a valid search and not a second search requiring a warrant. State v. Riedel, 2003 WI App 18, 259 Wis. 2d 921, 656 N.W.2d 789, 02−1772.

Evidence from a warrantless nonconsensual blood draw is admissible when: 1) the blood is drawn to obtain evidence of intoxication from a person lawfully arrested for a drunk−driving related violation; 2) there is a clear indication that the blood draw will produce evidence of intoxication; 3) the method used to take the blood sample is reasonable and performed in a reasonable manner; and 4) the arrestee presents no reasonable objection to the blood draw. In the absence of an arrest, probable cause to believe blood currently contains evidence of a drunk−driving−related violation satisfies the first and second prong. State v. Erickson, 2003 WI App 43, 260 Wis. 2d 279, 659 N.W.2d 407, 01−3367.

A DOT certified driving transcript was admissible evidence that established the defendant's repeater status as an element of the PAC offense beyond a reasonable doubt. State v. Van Riper, 2003 WI App 237, 267 Wis. 2d 759, 672 N.W.2d 156, 03−0385.

Field sobriety tests are not scientific tests but are observational tools that law enforcement officers commonly use to assist them in discerning various indicia of intoxication, the perception of which is necessarily subjective. The procedures an officer employs in determining probable cause for intoxication go to the weight of the evidence, not its admissibility. City of West Bend v. Wilkens, 2005 WI App 36, 278 Wis. 2d 643, 693 N.W.2d 324, 04−1871.

The per se ban on driving or operating a motor vehicle with a detectable amount of a restricted controlled substance in one's blood under sub. (1) (am) bears a reasonable and rational relationship to the goal of regulating the safety of roadways and is not fundamentally unfair such that there is a due process violation, nor does the statute offend principles of equal protection. State v. Smet, 2005 WI App 263, 288 Wis. 2d 525, 709 N.W.2d 474, 05−0690.

A defendant was not operating a vehicle under this section by merely sitting in the driver's seat of a parked vehicle, although the engine was running, when the uncontested evidence showed that the defendant was not the person who left the engine running, had never physically manipulated or activated the controls necessary to put the vehicle in motion, and there was no circumstantial evidence that the defendant recently operated the vehicle, while another person had operated the vehicle. Village of Cross Plains v. Haanstad, 2006 WI 16, 288 Wis. 2d 573, 709 N.W.2d 447, 04−2232.

Weaving within a single traffic lane does not alone give rise to the reasonable suspicion necessary to conduct an investigative stop of a vehicle. The reasonableness of a stop must be determined based on the totality of the facts and circumstances. State v. Post, 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634, 05−2778.

Circumstantial evidence may be used to prove operation of a motor vehicle. While the motor in this case was not running, the keys were in the ignition and the parking and dash lights were on. Even absent a running motor, the jury was entitled to consider the circumstantial evidence to determine how and when the car arrived where it did and whether it was the defendant who operated it. State v. Mertes, 2008 WI App 179, 315 Wis. 2d 756, 762 N.W.2d 813, 07−2757.

Although evidence of intoxicant usage, such as odors, an admission, or containers, ordinarily exists in drunk driving cases and strengthens the existence of probable cause, such evidence is not required. The totality of the circumstances is the test. State v. Lange, 2009 WI 49, 317 Wis. 2d 383, 766 N.W.2d 551, 08−0882.

The legislature meant to make the crime of operating a motor vehicle with a prohibited alcohol concentration (PAC) one that requires a person to have the PAC at the time he or she drove or operated the motor vehicle. A defendant who has two countable OWI convictions at the time of arrest has a BAC limit of 0.08 percent. Accordingly, the state could not properly charge him with a PAC based on a blood alcohol content (BAC) of 0.048 percent. The circuit court properly dismissed the charge of fourth offense PAC although a 3rd OWI conviction was entered subsequent to the arrest. State v. Sowatzke, 2010 WI App 81, 326 Wis. 2d 227, 784 N.W.2d 700, 09−1990.

A "motor bicycle" as defined in s. 340.01 (30) is a "motor vehicle" as defined in s. 340.01 (35) and used in sub. (1), at least when the motor bicycle being operated is self−propelled, rather than pedaled. State v. Koeppen, 2014 WI App 94, 356 Wis. 2d 812, 854 N.W.2d 849, 13−2539.

In light of *Missouri v. McNeely*, the holding in *State v. Bohling*, 173 Wis. 2d 529, that the rapid dissipation of alcohol alone constitutes an exigent circumstance sufficient for law enforcement officers to order a warrantless investigatory blood draw, is no longer an accurate interpretation of the 4th amendment's protection against unreasonable searches and seizures. The rapid dissipation of alcohol alone no longer constitutes a per se exigent circumstance. Exigent circumstances, sufficient to justify a warrantless investigatory blood draw of a drunk−driving suspect, are to be determined on a case−by−case totality of the circumstances analysis. State v. Kennedy, 2014 WI 132, 359 Wis. 2d 454, 856 N.W.2d 834, 12−0523.

Under the facts and circumstances of this case, the deputy reasonably responded to an accident, secured the scene, investigated the matter, and ultimately was left with a very narrow time frame in which the defendant's blood could be drawn so as to produce reliable evidence of intoxication. This sort of "now or never" moment is the epitome of an exigent circumstance justifying a warrantless blood draw. State v. Tullberg, 2014 WI 134, 359 Wis. 2d 421, 857 N.W.2d 120, 12−1593.

Operation of a motor vehicle with a detectable amount of a restricted controlled substance in the blood under sub. (1) (am) is a strict liability offense that does not require scienter and is constitutional. State v. Weissinger, 2015 WI 42, 362 Wis. 2d 1, 863 N.W.2d 592, 13−1737.

A court of appeals' decision remanding the case to the circuit court with instructions to enter an amended judgment of conviction for operating with a prohibited alcohol content (PAC) as a 7th offense and impose sentence for a 7th offense violated the defendant's right to due process after the defendant entered a knowing, intelligent, and voluntary guilty plea to operating with a PAC as a 6th offense. Because a 7th offense carries a greater range of punishment than does a 6th offense, the court of appeals' remedy rendered the plea unknowing, unintelligent, and involuntary. State v. Chamblis, 2015 WI 53, 362 Wis. 2d 370, 864 N.W.2d 806, 12−2782.

Natural metabolization of alcohol in the bloodstream does not present a per se exigency that justifies an exception to the warrant requirement for nonconsensual blood testing in all drunk−driving cases. Consistent with general 4th amendment principles, exigency in this context must be determined case by case based on the totality of the circumstances. Missouri v. McNeely, 569 U.S. ___, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013).

First offense violations of sub. (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.

Double Jeopardy: A New Tool in the Arsenal of Drunk Driving Defenses. Sines & Ekman. Wis. Law. Dec. 1995.

Wisconsin's New OWI Law. Mishlove & Stuckert. Wis. Law. June 2010.

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, using controlled substances or controlled substance analogs, or using any combination of alcohol, controlled substances and controlled substance analogs.

(2) The effects of alcohol, controlled substances or controlled substance analogs, or the use of them in any combination, on a person's ability to operate a motor vehicle.

History: 1981 c. 20; 1995 a. 448.

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 or controlled substance analog under ch. 961. 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; 1995 a. 448.

346.65 Penalty for violating sections 346.62 to 346.64. (1) Except as provided in sub. (5m), 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 or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.62

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

1. Shall forfeit not less than $150 nor more than $300, except as provided in subds. 2. to 5. and par. (f).

2. Except as provided in pars. (bm) and (f), shall be fined not less than $350 nor more than $1,100 and imprisoned for not less than 5 days nor more than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10−year period, equals 2, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.

3. Except as provided in pars. (cm), (f), and (g), shall be fined not less than $600 nor more than $2,000 and imprisoned for not less than 45 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 3, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.

4. Except as provided in pars. (dm), (f), and (g), is guilty of a Class H felony and shall be fined not less than $600 and imprisoned for not less than 60 days if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 4, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.

5. Except as provided in pars. (f) and (g), is guilty of a Class G felony and shall be fined not less than $600 and imprisoned for not less than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations and other convictions counted under s. 343.307 (1), equals 5 or 6, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

6. Except as provided in par. (f), is guilty of a Class F felony if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 7, 8, or 9, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one. The court shall impose a bifurcated sentence under s. 973.01 and the confinement portion of the bifurcated sentence imposed on the person shall be not less than 3 years.

7. Except as provided in par. (f), is guilty of a Class E felony if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 10 or more except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one. The court shall impose a bifurcated sentence under s. 973.01 and the confinement portion of the bifurcated sentence imposed on the person shall be not less than 4 years.

(bm) In any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10−year period, equals 2, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (am) 2., but the period of imprisonment shall be not less than 5 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 5 nor more than 7 days. A person may be sentenced under this paragraph or under par. (cm) or (dm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.

(cm) In any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) equals 3, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (am) 3., but the period of imprisonment shall be not less than 45 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 14 days. A person may be sentenced under this paragraph or under par. (bm) or (dm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.

(dm) In any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) equals 4, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (am) 4., but the period of imprisonment shall be not less than 60 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 29 days. A person may be sentenced under this paragraph or under par. (bm) or (cm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.

(f) 1. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (1), the person shall be fined not less than $350 nor more than $1,100 and imprisoned for not less than 5 days nor more than 6 months, except as provided in subd. 2.

2. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (1), the applicable minimum and maximum fines and imprisonment under par. (am) 2. to 7. for the conviction are doubled. An offense under s. 346.63 (1) that subjects a person to a penalty under par. (am) 3., 4., 5., 6., or 7. when there is a minor passenger under 16 years of age in the motor vehicle is a felony and the place of imprisonment shall be determined under s. 973.02.

(g) 1. If a person convicted had an alcohol concentration of 0.17 to 0.199, the applicable minimum and maximum fines under par. (am) 3. to 5. are doubled.

2. If a person convicted had an alcohol concentration of 0.20 to 0.249, the applicable minimum and maximum fines under par. (am) 3. to 5. are tripled.

3. If a person convicted had an alcohol concentration of 0.25 or above, the applicable minimum and maximum fines under par. (am) 3. to 5. are quadrupled.

(2c) In sub. (2) (am) 2., 3., 4., 5., 6., and 7., the time period shall be measured from the dates of the refusals or violations that resulted in the revocation or convictions. If a person has a suspension, revocation, or conviction for any offense under a local ordinance or a state statute of another state that would be counted under s. 343.307 (1), that suspension, revocation, or conviction shall count as a prior suspension, revocation, or conviction under sub. (2) (am) 2., 3., 4., 5., 6., and 7.

(2e) If the court determines that a person does not have the ability to pay the costs and fine or forfeiture imposed under sub. (2) (am), (f), or (g), the court may reduce the costs, fine, and forfeiture imposed and order the person to pay, toward the cost of the assessment and driver safety plan imposed under s. 343.30 (1q) (c), the difference between the amount of the reduced costs and

fine or forfeiture and the amount of costs and fine or forfeiture imposed under sub. (2) (am), (f), or (g).

(2g) (a) 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) (am) 2., 3., 4., and 5., (f), and (g) and except as provided in par. (ag), 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) (am) 1. 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).

(ag) If the court determines that a person does not have the ability to pay a fine imposed under sub. (2) (am) 2., 3., 4., or 5., (f), or (g), the court shall require the defendant to perform community service work for a public agency or a nonprofit charitable organization in lieu of paying the fine imposed or, if the amount of the fine was reduced under sub. (2e), in lieu of paying the remaining amount of the fine. Each hour of community service performed in compliance with an order under this paragraph shall reduce the amount of the fine owed by an amount determined by the court.

(am) Notwithstanding s. 973.05 (3) (b), an order under par. (a) or (ag) may apply only 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) (am) 1. to representation by counsel under ch. 977.

(b) The court may require a person ordered to perform community service work under par. (a) or (ag), or under s. 973.05 (3) (a) if that person's fine resulted from violating s. 346.63 (2), 940.09 (1) or 940.25, to participate in community service work that demonstrates the adverse effects of substance abuse or of operating a vehicle while under the influence of an intoxicant or other drug, including working at an alcoholism treatment facility approved under s. 51.45, an emergency room of a general hospital or a driver awareness program under s. 346.637. The court may order the person to pay a reasonable fee, based on the person's ability to pay, to offset the cost of establishing, maintaining and monitoring the community service work ordered under this paragraph. If the opportunities available to perform community service work are fewer in number than the number of defendants eligible under this subsection, the court shall, when making an order under this paragraph, give preference to defendants who were under 21 years of age at the time of the offense. All provisions of par. (am) apply to any community service work ordered under this paragraph.

(c) If there was a minor passenger under 16 years of age in the motor vehicle or commercial motor vehicle at the time of the violation that gave rise to the conviction, the court may require a person ordered to perform community service work under par. (a) or (ag), under s. 973.05 (3) (a) if that person's fine resulted from violating s. 346.63 (2), (5) (a) or (6) (a), 940.09 (1) or 940.25, or under s. 973.05 (3) (a) if that person's fine resulted from violating s. 346.63 (1) (am) and the motor vehicle that the person was driving or operating was a commercial motor vehicle, to participate in community service work that benefits children or that demonstrates the adverse effects on children of substance abuse or of operating a vehicle while under the influence of an intoxicant or other drug. The court may order the person to pay a reasonable fee, based on the person's ability to pay, to offset the cost of establishing, maintaining and monitoring the community service work ordered under this paragraph.

(d) With respect to imprisonment under sub. (2) (am) 2., the court shall ensure that the person is imprisoned for not less than 5 days or ordered to perform not less than 30 days of community service work under s. 973.03 (3) (a).

(2i) In addition to the authority of the court under sub. (2g) and s. 973.05 (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to s. 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1), or 940.25, to visit a site that demonstrates the adverse effects of substance abuse or of operating a vehicle while under the influence of an intoxicant or other drug, including an alcoholism treatment facility approved under s. 51.45 or an emergency room of a general hospital in lieu of part or all of any forfeiture imposed or in addition to any penalty imposed. The court may order the defendant to pay a reasonable fee, based on the person's ability to pay, to offset the costs of establishing, maintaining, and monitoring the visits ordered under this subsection. The court may order a visit to the site only if agreed to by the person responsible for the site. If the opportunities available to visit sites under this subsection are fewer than the number of defendants eligible for a visit, the court shall, when making an order under this subsection, give preference to defendants who were under 21 years of age at the time of the offense. The court shall ensure that the visit is monitored. A visit to a site may be ordered for a specific time and a specific day to allow the defendant to observe victims of vehicle accidents involving intoxicated drivers. If it appears to the court that the defendant has not complied with the court order to visit a site or to pay a reasonable fee, the court may order the defendant to show cause why he or she should not be held in contempt of court. 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 an order under this subsection does not entitle an indigent defendant who is subject to sub. (2) (am) 1. to representation by counsel under ch. 977.

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

1. Shall forfeit not less than $150 nor more than $300 except as provided in subd. 2. or 3. or par. (d).

2. Except as provided in pars. (bm) and (d), 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 number of prior convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspension, and revocations counted under s. 343.307 (2) within a 10−year period, equals 2.

3. Except as provided in pars. (cm), (cr), and (d), shall be fined not less than $600 nor more than $2,000 and imprisoned for not less than 45 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations counted under s. 343.307 (2), equals 3 or more.

(bm) In any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10−year period, equals 2, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (am) 2., but the period of imprisonment shall be not less than 5 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 5 nor more than 7 days. A person may be sentenced under this paragraph or under par. (cm) or (cr) or sub. (2) (bm), (cm), or (dm) or (3r) once in his or her lifetime.

(cm) In any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the per-

son's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) equals 3, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (am) 3., but the period of imprisonment shall be not less than 45 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 14 days. A person may be sentenced under this paragraph or under par. (bm) or (cr) or sub. (2) (bm), (cm), or (dm) or (3r) once in his or her lifetime.

(cr) In any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) equals 4, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (am) 3., but the period of imprisonment shall be not less than 60 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 29 days. A person may be sentenced under this paragraph or under par. (bm) or (cm) or sub. (2) (bm), (cm), or (dm) or (3r) once in his or her lifetime.

(d) If there was a minor passenger under 16 years of age in the commercial motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (5), the applicable minimum and maximum forfeitures, fines, or imprisonment under par. (am) 1., 2., or 3. for the conviction are doubled. An offense under s. 346.63 (5) that subjects a person to a penalty under par. (am) 3. when there is a minor passenger under 16 years of age in the commercial motor vehicle is a felony and the place of imprisonment shall be determined under s. 973.02.

(2m) (a) In imposing a sentence under sub. (2) for a violation of s. 346.63 (1) (am) or (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 amount of alcohol in the person's blood or urine or the amount of a restricted controlled substance in the person's blood is known, the court shall consider that amount 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.

(b) The court shall consider a report submitted under s. 51.49 (2) (d) when imposing a sentence under sub. (2), (2q), or (3m).

(2q) Any person violating s. 346.63 (2m) shall forfeit $200. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under 346.63 (2m), the person shall be fined $400.

(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 convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus other suspensions, revocations and convictions counted under s. 343.307 (2). Revocations, suspensions and convictions arising out of the same incident or occurrence shall be counted as one. The time period shall be measured from the dates of the refusals or violations which resulted in the revocation, suspension or convictions. If a person has a conviction under s. 940.09 (1) or 940.25 in the person's lifetime, or another suspension, revocation or conviction for any offense that is counted under s. 343.307 (2), that suspension, revocation or conviction shall count as a prior suspension, revocation or conviction under this section.

(3) Except as provided in sub. (5m), any person violating s. 346.62 (3) shall be fined not less than $300 nor more than $2,000 and may be imprisoned for not less than 30 days nor more than one year in the county jail.

(3m) Except as provided in sub. (3p), (3r), or (3t), any person violating s. 346.63 (2) or (6) shall be fined not less than $300 nor more than $2,000 and shall be imprisoned for not less than 30 days nor more than one year in the county jail. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and maximum fines or periods of imprisonment for the conviction are doubled and the place of imprisonment shall be determined under s. 973.02.

(3p) Any person violating s. 346.63 (2) or (6) is guilty of a Class H felony if the person has one or more prior convictions, suspensions, or revocations, as counted under s. 343.307 (1). If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony and the applicable maximum fines or periods of imprisonment for the conviction are doubled.

(3r) Subject to sub. (3t), in any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, any person violating s. 346.63 (2) or (6) shall be fined the same as under sub. (3m), but the period of imprisonment shall be not less than 30 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 15 days. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and maximum fines or periods of imprisonment for the conviction are doubled and the place of imprisonment shall be determined under s. 973.02. A person may be sentenced under this subsection or under sub. (2) (bm) or (cm) or (2j) (bm) or (cm) once in his or her lifetime. This subsection does not apply to a person sentenced under sub. (3p).

(3t) If the person injured was an adult who was in the vehicle operated by the person violating s. 346.63 (2) or (6), the court may impose a sentence that is less than the minimum sentence required under sub. (3m) if the court finds that the best interest of the community will be served and the public will not be harmed by the sentence, and the court places the reasons for imposing a sentence that is less than the minimum sentence required under sub. (3m) on the record.

(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.

(4m) Except as provided in sub. (5m), any person violating s. 346.62 (2m) shall forfeit not less than $300 nor more than $1,000.

(4r) (a) If a court imposes a forfeiture under sub. (4m) for a violation of s. 346.62 (2m), the court shall also impose a railroad crossing improvement surcharge under ch. 814 equal to 50 percent of the amount of the forfeiture.

(b) If a forfeiture is suspended in whole or in part, the railroad crossing improvement surcharge shall be reduced in proportion to the suspension.

(c) If any deposit is made for an offense to which this subsection applies, the person making the deposit shall also deposit a sufficient amount to include the railroad crossing improvement surcharge under this subsection. If the deposit is forfeited, the amount of the railroad crossing improvement surcharge shall be transmitted to the secretary of administration under par. (d). If the deposit is returned, the amount of the railroad crossing improvement surcharge shall also be returned.

(d) The clerk of the circuit court shall collect and transmit to the county treasurer the railroad crossing improvement surcharge as required under s. 59.40 (2) (m). The county treasurer shall then pay the secretary of administration as provided in s. 59.25 (3) (f) 2. The secretary of administration shall deposit all amounts received under this paragraph in the transportation fund to be appropriated under s. 20.395 (2) (gj).

(5) Except as provided in sub. (5m), any person violating s. 346.62 (4) is guilty of a Class I felony.

(5m) If an operator of a vehicle violates s. 346.62 (2) to (4) where persons engaged in work in a highway maintenance or construction area or in a utility work area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture or fine specified in sub. (1), (3), (4m), or (5) for the violation shall be doubled.

(7) A person convicted under sub. (2) (am) 2., 3., 4., 5., 6., or 7. or (2j) (am) 2. or 3. shall be required to remain in the county jail for not less than a 48−consecutive−hour period.

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; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326; 2005 a. 149, 317, 389; 2007 a. 97, 111; 2009 a. 100, 180; 2011 a. 258; 2013 a. 39, 224; 2015 a. 55, 371.

Cross−reference: For suspension or revocation of operating privileges upon convictions for OWI see s. 343.30.

Penalty provisions of sub. (2) are mandatory and apply to subsequent violations committed prior to a conviction for the 1st offense. State v. Banks, 105 Wis. 2d 32, 313 N.W.2d 67 (1981).

When the accused was represented by counsel in proceedings leading to the 2nd conviction, but not the first, there was no violation of the right to counsel precluding incarceration for the 2nd conviction since the first offense was a civil forfeiture case. State v. Novak, 107 Wis. 2d 31, 318 N.W.2d 364 (1982).

The state has exclusive jurisdiction over 2nd offense for drunk driving. It is criminal and may not be prosecuted as an ordinance violation. County of Walworth v. Rohner, 108 Wis. 2d 713, 324 N.W.2d 682 (1982). But see City of Eau Claire v. Booth, 2016 WI 65, ___ Wis. 2d ___, 882 N.W.2d 738, 15−0869.

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

Probation with a condition of 30−days' confinement in the county jail is inadequate to meet the mandatory imprisonment requirement of sub. (2) (c) [now sub. (2) (am) 3.]. State v. Meddaugh, 148 Wis. 2d 204, 435 N.W.2d 269 (Ct. App. 1988).

An OWI conviction in another state need not be under a law with the same elements as the Wisconsin statute to be counted as a prior conviction. State v. White, 177 Wis. 2d 121, 501 N.W.2d 463 (Ct. App. 1993).

A judgment entered in municipal court against a defendant for what is actually a second or subsequent offense is void. The state may proceed against the defendant criminally regardless of whether the judgment in municipal court is vacated. City of Kenosha v. Jensen, 184 Wis. 2d 91, 516 N.W.2d 4 (Ct. App. 1994).

The general requirements for establishing prior criminal offenses in s. 973.12 are not applicable to the penalty enhancement provisions for drunk driving offenses under sub. (2). There is no presumption of innocence accruing to the defendant as to prior convictions, but the accused must have an opportunity to challenge the existence of the prior offense. State v. Wideman, 206 Wis. 2d 91, 556 N.W.2d 737 (1996), 95−0852.

Sub. (2) is primarily a penalty enhancement statute. When a prior conviction is determined to be constitutionally defective, that conviction cannot be relied on for either charging or sentencing a present offense. State v. Foust, 214 Wis. 2d 568, 570 N.W.2d 905 (Ct. App. 1997), 97−0499.

A trial court cannot accept guilty pleas to both a second and a third offense OWI, and then apply the increased penalties of third offense OWI to the second offense conviction at sentencing. There must be a conviction before the graduated penalties can be used. State v. Skibinski, 2001 WI App 109, 244 Wis. 2d 229, 629 N.W.2d 12, 00−1278.

A defendant convicted of a second or subsequent OWI is subject to the penalty enhancements provided for in both sub. (2) and s. 939.62, if the application of each enhancer is based on a separate and distinct prior conviction or convictions. State v. Delaney, 2003 WI 9, 259 Wis. 2d 77, 658 N.W.2d 416, 01−1051.

Nothing in sub. (2m) (a) prohibits chief judges from linking the aggravating and mitigating factors with an appropriate sentence within the broader range of sentences allowed under this section when adopting guidelines for their districts. A court may refer to the guidelines when sentencing under s. 346.63 (1) (a), but as the guidelines specifically only apply to s. 343.63 (1) (b) and (5), it is inappropriate for a court to apply the guidelines as the sole basis for its sentence in a s. 346.63 (1) (a) case. That the various judicial districts have different guidelines and defendants may receive different sentences based on where the crime was committed does not make guidelines adopted under sub. (2m) (a) unconstitutional. State v. Jorgensen, 2003 WI 105, 264 Wis. 2d 157, 667 N.W.2d 318, 01−2690.

The proper time to determine the number of a defendant's prior OWI convictions for sentence enhancement purposes is at sentencing, regardless of whether some convictions may have occurred after a defendant committed the present offense. State v. Matke, 2005 WI App 4, 278 Wis. 2d 403, 692 N.W.2d 265, 03−2278.

Although the defendant's Michigan and Wisconsin convictions stemmed from one continuous stint of driving, they arose from two separate incidents — one incident in Michigan and one incident in Wisconsin. Because the extraterritorial jurisdiction exceptions in Wisconsin and Michigan were not applicable to the defendant's separate convictions in Wisconsin and Michigan, each state had jurisdiction only over his act of driving while intoxicated within each state's own boundaries. State v. Holder, 2011 WI App 116, 337 Wis. 2d 79, 803 N.W.2d 82, 09−2952.

The elements of an underlying first−offense OWI need not be proven to a jury beyond a reasonable doubt in a criminal proceeding for a subsequent OWI violation. State v. Verhagen, 2013 WI App 16, 346 Wis. 2d 196, 827 N.W.2d 891, 11−2033.

A circuit court lacks competency but retains subject matter jurisdiction when the court enters a civil forfeiture judgment under a municipal ordinance for a first−offense OWI that factually should have been criminally charged as a second−offense OWI under sub. (2) due to an undiscovered prior countable conviction. Unlike defects in subject matter jurisdiction, challenges to circuit court competency may be forfeited. In this case, the defendant forfeited the right to challenge a 1992 first−offense OWI judgment by failing to timely raise the challenge. City of Eau Claire v. Booth, 2016 WI 65, ___ Wis. 2d ___, 882 N.W.2d 738, 15−0869.

When a person is charged under s. 346.63 (1) with a 2nd offense, the charge may not be reduced to a first offense and the court may not sentence under sub. (2) (a) 1. [now sub. (2) (a) 1m.]. The department of transportation must treat this as a 2nd offense for purposes of revocation. 69 Atty. Gen. 47.

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

New Law's 'Get Tough' Provisions Fall Short of the Mark. Pangman & Mutschler. Wis. Law. Feb. 1993.

Targeting the Repeat Offender. Emerson & Maasen. Wis. Law. Feb. 1993.

Wisconsin's New OWI Law. Mishlove & Stuckert. Wis. Law. June 2010.

346.655 Driver improvement surcharge. (1) 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 under ch. 814 in an amount of $435 in addition to the fine or forfeiture, plus costs, fees, and other surcharges imposed under ch. 814.

(2) (a) Except as provided in par. (b), the clerk of court shall collect and transmit the amount under sub. (1) to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment of 49.7 percent of the amount to the secretary of administration as provided in s. 59.25 (3) (f) 2.

(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 of 49.7 percent of the amount to the secretary of administration as provided in s. 66.0114 (1) (bm). The treasurer of the city, town, or village shall transmit the remaining 50.3 percent of the amount to the treasurer of the county.

(3) (a) Except as provided in par. (b), all moneys collected from the driver improvement surcharge that are transmitted to the county treasurer under sub. (2) (a) or (b), except the amounts that the county treasurer is required to transmit to the secretary of administration under sub. (2) (a) or (b), shall be retained by the county treasurer and disbursed to the county department under s. 51.42 for services under s. 51.42 for drivers referred through assessment.

(b) If a person receives treatment from an approved tribal treatment facility, as defined in s. 51.01 (2c), in accordance with a driver safety plan under s. 343.30 (1q) (d), the county treasurer shall transmit the amount collected from the person's driver improvement surcharge except the amounts that the treasurer is

required to transmit to the secretary of administration under sub. (2) (a) or (b), to the facility for treatment services for drivers referred through assessment.

(4) Any person who fails to pay a driver improvement surcharge imposed under sub. (1) is subject to s. 343.30 (1z).

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; 1991 a. 39; 1993 a. 16; 1995 a. 27, 201; 1997 a. 27; 1999 a. 109; 1999 a. 150 s. 672; 2001 a. 16, 104; 2003 a. 30, 33, 139, 326; 2007 a. 111; 2009 a. 100; 2013 a. 20, 246.

Imprisonment or suspension of a license under s. 345.47 (1) (a) and (b) does not eliminate the liability of a defendant for payment of a surcharge under this section. 73 Atty. Gen. 24.

346.657 Safe ride program surcharge. (1) 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 safe ride program surcharge under ch. 814 in an amount of $50 in addition to the fine or forfeiture, plus costs, fees, and other surcharges imposed under ch. 814.

(2) (a) Except as provided in par. (b), the clerk of court shall collect and transmit the amount under sub. (1) to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration as provided in s. 59.25 (3) (f) 2.

(b) If the forfeiture is imposed by a municipal court, the court shall transmit the amount under sub. (1) to the treasurer of the county, city, town, or village, and that treasurer shall make payment to the secretary of administration as provided in s. 66.0114 (1) (bm).

(3) Any person who fails to pay a driver improvement surcharge imposed under sub. (1) is subject to s. 343.30 (1z).

History: 2015 a. 55.

SUBCHAPTER XI

ACCIDENTS AND ACCIDENT REPORTS

346.66 Applicability of sections relating to accidents and accident reporting. (1) (a) 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, all premises provided by employers to employees for the use of their motor vehicles, and all premises provided to tenants of rental housing in buildings of 4 or more units for the 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.

(b) Except as provided in sub. (2), ss. 346.67 to 346.70 do not apply to private parking areas at farms or single−family residences.

(c) Sections 346.67 to 346.70 do not apply to accidents involving only snowmobiles, all−terrain vehicles, utility terrain vehicles, off−highway motorcycles, as defined in s. 23.335 (1) (q), that were being operated off the highways, as defined in s. 23.335 (1) (y), or vehicles propelled by human power or drawn by animals.

(2) (a) Sections 346.67, 346.68, and 346.69 apply to the operator of a vehicle that, whether by operator intention or lack of control, departs a highway or premises described in sub. (1) (a) immediately prior to an accident if the accident does not occur on real property owned or leased by the operator.

(b) Sections 346.675 and 346.70 apply to an accident described in par. (a).

History: 1971 c. 277; 1985 a. 29; 1995 a. 127; 2009 a. 62; 2011 a. 208; 2015 a. 170.

The test for whether a premises is held out to the public is whether on any given day, potentially any resident of the community with a driver's license and access to a motor vehicle could use the premises in an authorized manner. State v. Carter, 229 Wis. 2d 200, 598 N.W.2d 619 (Ct. App. 1999), 98−1688.

346.665 Definition. In ss. 346.67 to 346.72, notwithstanding s. 340.01 (42), "owner" means, with respect to a vehicle that is registered, or required to be registered, by a lessee of the vehicle under ch. 341, the lessee of the vehicle.

History: 1997 a. 27.

346.67 Duty upon striking person or attended or occupied vehicle. (1) The operator of a vehicle involved in an accident shall reasonably investigate what was struck and if the operator knows or has reason to know that the accident resulted in injury or death of a person or in damage to a vehicle that is driven or attended by a person, the operator shall stop the vehicle he or she is operating as close to the scene of the accident as possible and remain at the scene of the accident until the operator has done all of the following:

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

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

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

(2) Any stop required under sub. (1) shall be made without obstructing traffic more than is necessary.

(3) A prosecutor is not required to allege or prove that an operator knew that he or she collided with a person or a vehicle driven or attended by a person in a prosecution under this section.

History: 1991 a. 316; 1997 a. 258; 2015 a. 319.

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

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

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

A "person injured" in sub. (1) (c) includes a person who is fatally injured. A subsequent determination of instantaneous death does not absolve a person of the duty to investigate whether assistance is possible. State v. Swatek, 178 Wis. 2d 1, 502 N.W.2d 909 (Ct. App. 1993).

"Accident" in sub. (1) means an unexpected, undesirable event and may encompass intentional conduct. By including intentional conduct within the definition, the reporting requirements do not infringe on the 5th amendment privilege against self−incrimination. State v. Harmon, 2006 WI App 214, 296 Wis. 2d 861, 723 N.W. 2d 732, 05−2480.

"Accident" in the context of sub. (1) includes, at a minimum, the operator's loss of control of the vehicle that results in a collision. Because the defendant's loss of control of the vehicle occurred on the highway, even though the resulting collision occurred off the highway, she was "involved in an accident" "upon a highway" within the meaning of sub. (1) and s. 346.02 (1). State v. Dartez, 2007 WI App 126, 301 Wis. 2d 499, 731 N.W.2d 340, 06−1845.

Sub. (1) requires an operator of a vehicle to identify him or herself as the operator of the vehicle. State v. Wuteska, 2007 WI App 157, 303 Wis. 2d 646, 735 N.W.2d 574, 06−2248.

346.675 Vehicle owner's liability for failing to stop at the scene of an accident. (1) Subject to s. 346.01 (2), the owner of a vehicle operated in the commission of a violation of s. 346.67 (1), 346.68, or 346.69 shall be liable for the violation as provided in this section.

(2) Any person who observes a violation of s. 346.67 (1), 346.68, or 346.69 may, within 24 hours after observing the violation, report the violation to a traffic officer of the county or municipality in which the violation occurred. If possible, the report shall contain the following information:

(a) A description of the violation alleged.

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

(c) The vehicle registration number and color of all vehicles involved in the violation.

(d) Identification of each vehicle involved in the violation as an automobile, station wagon, motor truck, motor bus, motorcycle, or other type of vehicle.

(e) If the violation included damage to property other than a vehicle, a description of such property.

(3) (a) Within 72 hours after receiving a report containing all of the information in sub. (2), the traffic officer may investigate the violation and, after verifying the information provided under sub. (2) (c) to (e) and determining that there is probable cause to believe that a violation of s. 346.67 (1), 346.68, or 346.69 has occurred, may prepare a uniform traffic citation under s. 345.11 and personally serve it upon the owner of the vehicle being operated in the commission of the violation of s. 346.67 (1), 346.68, or 346.69.

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

(4) (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.

2. If the owner of the vehicle, including a lessee specified in subd. 3., or a person on a trial run specified in subd. 4. provides a traffic officer with the name and address of the person operating the vehicle at the time of the violation and sufficient information for the officer to determine that probable cause does not exist to believe that the owner of the vehicle was operating the vehicle at the time of the violation, then the person operating the vehicle shall be charged under s. 346.67 (1), 346.68, or 346.69 and the owner, including a lessee, or person on a trial run shall not be charged under this section.

3. Subject to subd. 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.

4. Subject to subd. 2., 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 authorized to operate the vehicle on the trial run, then this person, and not the dealer, shall be charged under this section.

5. That another person has been convicted under s. 346.67 (1), 346.68, or 346.69 for the violation of s. 346.67 (1), 346.68, or 346.69 specified in sub. (1).

History: 2005 a. 411.

346.68 Duty upon striking unattended vehicle. The operator of any vehicle which collides with any vehicle which is unattended shall immediately stop and 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 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. Any such stop shall be made without obstructing traffic more than is necessary.

History: 1997 a. 258.

A driver's knowledge of a collision with an 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 the operator's name and address and of the registration number of the vehicle the operator is driving and shall upon request and if available exhibit his or her operator's license and shall make report of such accident when and as required in s. 346.70.

History: 1991 a. 316.

346.70 Duty to report accident; assistance following accident. (1) IMMEDIATE NOTICE OF ACCIDENT. The operator or occupant 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 $1,000 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.

(1m) LAW ENFORCEMENT CONTACT AND INVOLVEMENT FOLLOWING AN ACCIDENT. (a) 1. No person in the business of towing, recovery, or repair of motor vehicles may contract for retrieval, recovery, or removal from the scene of a traffic accident described in sub. (1) of any motor vehicle that has sustained damage unless the person notifies, or has been contacted by, a law enforcement agency prior to retrieval, recovery, or removal of the vehicle.

2. This paragraph does not apply with respect to removal of a motor vehicle from the roadway at the scene of an accident if such removal is necessary to avoid imminent danger to motorists or other persons.

(b) No person may knowingly assist an operator or occupant of a motor vehicle involved in an accident as described in sub. (1) to flee the scene of the accident unless the accident has, or the person is advised that the accident has, first been reported to a law enforcement agency, except to provide medical assistance.

(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 making the report required by sub. (2), and if there was another occupant in the vehicle at the time of the accident capable of making the report, the occupant shall 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 this section 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 or an automated format for accident reports required to be made to the department. Any report forms and automated format 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 an original written report of the accident or a report of the accident in an automated format 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 or in an automated format prescribed by the secretary. The uniform traffic accident report form shall be 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 street where the population of the city, village or town 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.

(i) Whenever a law enforcement officer investigates or receives a report of a traffic accident subject to sub. (1), in which the operator of any vehicle involved in the accident displays a driver's license issued by the federal department of state or otherwise claims immunities or privileges under 22 USC 254a to 258a with respect to the operator's violation of any state traffic law or any local traffic law enacted by any local authority in accordance with s. 349.06, the officer shall do all of the following:

1. As soon as practicable, contact the diplomatic security command center of the office of foreign missions, diplomatic motor vehicle office, within the federal department of state, to verify the status and immunity, if any, of the driver claiming diplomatic immunity.

2. Within 10 days after the date of the accident, forward a copy of the report of the accident, at no charge, to the diplomatic security command center of the office of foreign missions, diplomatic motor vehicle office, within the federal department of state.

(5) FALSIFYING REPORTS. No person shall falsely make and file or transmit any accident report or knowingly make a false statement in any accident report which is filed or transmitted 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; 1993 a. 246, 437; 1995 a. 113; 2001 a. 27; 2005 a. 253; 2009 a. 276; 2011 a. 256.

Cross−reference: See also ch. Trans 100, Wis. adm. code.

Items subject to examination under sub. (4) (f) may not be withheld by the prosecution under the common law rule that investigative material may be withheld from a criminal defendant. State ex rel. Young v. Shaw, 165 Wis. 2d 276, 477 N.W.2d 340 (Ct. App. 1991).

The police department was allowed to release unredacted copies of accident reports requested by a newspaper pursuant to the "state law" exception to the federal Driver's Privacy Protection Act, which allows disclosure of personal information from state motor vehicle records for any other use specifically authorized under the law of the state that holds the record, if such use is related to the operation of a motor vehicle or public safety. Sub. (4) (f) specifically mandates that law enforcement agencies provide the public with access to uniform traffic accident reports. That is a use specifically authorized under Wisconsin law and is related to the operation of a motor vehicle or public safety. New Richmond News v. City of New Richmond, 2016 WI App 43, ___ Wis. 2d ___, ___ N.W.2d ___, 14−1938.

A county sheriff's department is not a consumer reporting agency subject to the fair credit reporting act for reports under sub. (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 resulting in the death of any person during the preceding calendar month. If the accident involved an all−terrain vehicle or utility 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 an off−highway motorcycle, as defined in s. 23.335 (1) (q), operated off the highways, as defined in s. 23.335 (1) (y), the report shall be made to the department of natural resources and the department of transportation and shall include the information specified by each department. If the accident involved any other motor vehicle, the report shall be made to the department of transportation and shall include the information specified by that 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 or electric personal assistive mobility device 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 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 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, a utility terrain vehicle, or an off−highway motorcycle, as defined in s. 23.335 (1) (q), that was being operated off the highways, as defined in s. 23.335 (1) (y), 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; 1995 a. 27 s. 9126 (19); 2001 a. 90; 2007 a. 20 s. 9121 (6) (a); 2011 a. 208; 2015 a. 170.

Coroners' blood test records under sub. (2) are not confidential. Test results are presumptively accurate. Staples v. Glienke, 142 Wis. 2d 19, 416 N.W.2d 920 (Ct. App. 1987).

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. Notwithstanding s. 346.70 (4) (f), accident reports required to be filed with or transmitted to the department or 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); 1993 a. 437.

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 (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.

(2g) Any operator of a vehicle, and any occupant of a vehicle who is at least 16 years of age, who violates s. 346.70 (1) may be required to forfeit not less than $200 nor more than $500 for the first offense and may be required to forfeit not less than $300 nor more than $500 for the 2nd or subsequent conviction within a year.

(2r) Any person violating s. 346.70 (1m) may be required to forfeit not less than $40 nor more than $200.

(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 (1):

(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) May be fined not more than $10,000 or imprisoned for not more than 9 months or both if the accident involved injury to a person but the person did not suffer great bodily harm.

(c) Is guilty of a Class E felony if the accident involved injury to a person and the person suffered great bodily harm.

(d) Is guilty of a Class D felony if the accident involved death to a person.

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

(6) (a) A vehicle owner or other person found liable under s. 346.675 with respect to a violation of s. 346.67 (1) may be required to forfeit not more than $1,000.

(b) A vehicle owner or other person found liable under s. 346.675 with respect to a violation of s. 346.68 or 346.69 may be required to forfeit not more than $100.

(c) Imposition of liability under s. 346.675 shall not result in suspension or revocation of a person's operating privilege under s. 343.30 or 343.31, nor shall it result in demerit points being recorded on a person's driving record under s. 343.32 (2) (a).

History: 1971 c. 278; 1973 c. 218; 1981 c. 20, 70; 1997 a. 258, 283; 2001 a. 109; 2003 a. 74; 2005 a. 411; 2011 a. 256.

Although sub. (5) (b) establishes a maximum of 9 months' imprisonment for a violation of s. 346.67 (1) when the accident involves injury to a person but not great bodily harm, and offenses punishable by a maximum period of incarceration of less than one year are ordinarily classified as misdemeanors under ss. 939.60 and 973.02, sub. (5) (e) states that a violation of s. 346.67 (1) is "a felony if the accident involved death or injury to a person." Any inconsistency is resolved by the principle that when two statutes relate to the same subject matter, the more specific language controls, in this case the language providing that the offense is a felony. State v. Brandt, 2009 WI App 115, 321 Wis. 2d 84, 772 N.W.2d 674, 08−0550.

SUBCHAPTER XII

BICYCLES, ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES, 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; 2001 a. 90.

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 herself or his or her 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; 1991 a. 316.

Sub. (2) is violated when 2 persons ride on a single bicycle designed for one person to which an additional seat, but no footrests or handgrips, has been added. 61 Atty. Gen. 360.

346.80 Riding bicycle or electric personal assistive mobility device on roadway. (1) In this section, "substandard width lane" means a lane that is too narrow for a bicycle or electric personal assistive mobility device and a motor vehicle to travel safely side by side within the lane.

(2) (a) Any person operating a bicycle or electric personal assistive mobility device upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as close as practicable to the right−hand edge or curb of the unobstructed traveled roadway, including operators who are riding 2 or more abreast where permitted under sub. (3), except:

1. When overtaking and passing another vehicle proceeding in the same direction.

2. When preparing for a left turn or U−turn at an intersection or a left turn into a private road or driveway.

3. When reasonably necessary to avoid unsafe conditions, including fixed or moving objects, parked or moving vehicles, pedestrians, animals, surface hazards or substandard width lanes that make it unsafe to ride along the right−hand edge or curb.

(b) Notwithstanding par. (a), any person operating a bicycle or electric personal assistive mobility device upon a one−way highway having 2 or more lanes available for traffic may ride as near the left−hand edge or curb of the roadway as practicable.

(c) Any person operating a bicycle or electric personal assistive mobility device upon a roadway shall exercise due care when passing a standing or parked vehicle or a vehicle proceeding in the same direction and, when passing a standing or parked vehicle that is a school bus that is not displaying flashing red warning lights as provided in s. 346.48 (1) or a motor bus, shall allow a minimum of 3 feet between the bicycle or electric personal assistive mobility device and the vehicle.

(3) (a) Persons riding bicycles or electric personal assistive mobility devices upon a roadway may ride 2 abreast if such operation does not impede the normal and reasonable movement of traffic. Bicycle or electric personal assistive mobility device operators riding 2 abreast on a 2−lane or more roadway shall ride within a single lane.

(b) Persons riding bicycles upon a roadway may not ride more than 2 abreast except upon any path, trail, lane or other way set aside for the exclusive use of bicycles and electric personal assistive mobility devices.

(4) No person may operate a bicycle, electric personal assistive mobility device, or moped upon a roadway where a sign is erected indicating that bicycle, electric personal assistive mobility device, 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 or electric personal assistive mobility device 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; 1995 a. 138; 2001 a. 90; 2009 a. 22, 97.

346.803 Riding bicycle or electric personal assistive mobility device on bicycle way. (1) Every person operating a bicycle or electric personal assistive mobility device upon a bicycle way shall:

(a) Exercise due care and give an audible signal when passing a bicycle or electric personal assistive mobility device 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 or electric personal assistive mobility device 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 or electric personal assistive mobility device entering a bicycle way shall yield the right−of−way to all bicycles and pedestrians in the bicycle way.

(4) Except as provided in s. 349.236 (1) (bm), a person may operate an electric personal assistive mobility device upon any bicycle path.

History: 1973 c. 182; 2001 a. 90.

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 or electric personal assistive mobility device rider or a pedestrian proceeding in the same direction.

History: 1973 c. 182; 2001 a. 90.

346.805 Riding electric personal assistive mobility device on sidewalk. Except as provided in ss. 346.94 (18) (a) 2. and 349.236 (1) (b), a person may operate an electric personal assistive mobility device upon any sidewalk. Every person operating an electric personal assistive mobility device upon a sidewalk shall yield the right−of−way to any pedestrian or bicyclist and shall exercise due care and give an audible signal when passing a bicycle or other electric personal assistive mobility device or a pedestrian proceeding in the same direction.

History: 2001 a. 90.

346.82 Penalty for violating sections 346.77 to 346.805. (1) Any person violating ss. 346.77, 346.79 (1) to (3), or 346.80 to 346.805 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; 2001 a. 90; 2003 a. 321.

SUBCHAPTER XIII

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 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.

Sub. (3) (a) creates an absolute prohibition on "any sign, poster or other nontransparent material upon the front windshield . . ." By contrast, sub. (4) states: "The windshield, side wings and side and rear windows of a motor vehicle shall be kept reasonably clean at all times." There is "no reason why the legislature would choose to ban oil change stickers, often no more than one or two square inches in size and placed in a top corner of a windshield, but require that same area of a windshield be only 'reasonably' clean." Instead, sub. (3) (a) is interpreted to prohibit the attachment of signs, posters, and other items of a similar nature to the front windshield of a motor vehicle. State v. Houghton, 2015 WI 79 364 Wis. 2d 234, 868 N.W.2d 143, 13−1581.

Sub. (3) (b), which requires that an object obstruct a driver's clear view to be a violation, does not mean that every object in a driver's clear view is a violation. Rather, sub. (3) (b) requires a material obstruction, even if minor, in order to be considered a violation of the statute. State v. Houghton, 2015 WI 79 364 Wis. 2d 234, 868 N.W.2d 143, 13−1581.

346.89 Inattentive driving. (1) No person while driving a motor vehicle may be engaged or occupied with an activity, other than driving the vehicle, that interferes or reasonably appears to interfere with the person's ability to drive the vehicle safely.

(3) (a) No person may drive, as defined in s. 343.305 (1) (b), any motor vehicle while composing or sending an electronic text message or an electronic mail message.

(b) This subsection does not apply to any of the following:

1. The operator of an authorized emergency vehicle.

2. The use of any device whose primary function is transmitting and receiving emergency alert messages and messages related to the operation of the vehicle or an accessory that is integrated into the electrical system of a vehicle, including a global positioning system device.

3. An amateur radio operator who holds a valid amateur radio operator's license issued by the federal communications commission when he or she is using dedicated amateur radio 2−way radio communication equipment and observing proper amateur radio operating procedures.

4. The use of a voice−operated or hands−free device if the driver of the motor vehicle does not use his or her hands to operate the device, except to activate or deactivate a feature or function of the device.

(4) (a) Subject to sub. (3), no person who holds a probationary license issued under s. 343.085, or an instruction permit issued under s. 343.07, may drive, as defined in s. 343.305 (1) (b), any motor vehicle while using a cellular or other wireless telephone, except to report an emergency.

(b) 1. In this paragraph:

a. "Commercial motor vehicle" has the meaning given in 49 CFR 390.5.

b. "Drive" means the exercise of physical control over the speed and direction of a motor vehicle while it is in motion or is temporarily stationary because of traffic, a traffic control device, or other momentary delay.

c. "Mobile telephone" has the meaning given in 49 CFR 390.5.

2. Subject to sub. (3), except to report an emergency to law enforcement officials or other emergency service providers, no person may drive any commercial motor vehicle while using a hand−held mobile telephone in any the following manners:

a. Using at least one hand to hold a mobile telephone or any connected accessory to conduct a voice communication.

b. Dialing or answering a mobile telephone by pressing more than a single button.

c. Reaching for a mobile telephone in a manner that requires the driver to maneuver so that he or she is no longer in a seated driving position.

(4m) No person may drive, as defined in s. 343.305 (1) (b), any motor vehicle while using a cellular or other wireless telephone, including using the telephone for a purpose other than communication, where persons engaged in work in a highway maintenance or construction area or in a utility work area are at risk from traffic, except to report an emergency. This subsection does not apply to the use of a voice−operated or hands−free device if the driver of the motor vehicle does not use his or her hands to operate the device, except to activate or deactivate a feature or function of the device.

(5) Subject to subs. (3) and (6), no person while driving a motor vehicle, other than an authorized emergency vehicle, a commercial motor vehicle described in s. 340.01 (8), or a tow truck, may operate or be in a position to directly observe any electronic device located within the vehicle that is activated and that is providing entertainment primarily by visual means. This subsection does not prohibit a person from using a cellular telephone for purposes of verbal communication.

(6) Subsection (5) does not apply to any of the following:

(a) Any global positioning system device.

(b) The display by any device of information related to the operation, navigation, condition, radio, or safety of the vehicle or that is intended to be used to enhance the driver's view forward, behind, or to the sides of a motor vehicle.

(c) The display by any device of information related to traffic, road, or weather conditions.

(d) Any device in a vehicle that permits the vehicle driver to monitor vehicle occupants seated rearward of the driver.

(e) Any device installed or mounted, either permanently or temporarily, in the vehicle that, with respect to the vehicle operator, functions as provided in par. (a), (b), (c), or (d) while simultaneously providing entertainment visible only from passenger seats of the vehicle.

History: 2009 a. 220; 2011 a. 164; 2013 a. 350; 2015 a. 123, 308.

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 training exercise, scene of an emergency, or alarm of emergency.

History: 1985 a. 187; 2005 a. 144.

346.915 Following snowplows. (1) In this section, "snowplow" means a vehicle that is operated by a person employed by or on behalf of an authority in charge of the maintenance of the highway to perform highway winter maintenance snow and ice removal, including plowing, salting, and sanding, during either a storm or cleanup following a storm and which is using lamps described in s. 347.26 (7).

(2) (a) The operator of any vehicle that is not a snowplow may not follow a snowplow closer than the following distances, if the snowplow is engaged in highway winter maintenance snow and ice removal, as described in sub. (1), and is using lamps described in s. 347.26 (7):

1. Two hundred feet upon any highway having a posted speed limit of more than 35 miles per hour.

2. Seventy−five feet upon any highway having a posted speed limit of 35 miles per hour or less.

(b) Paragraph (a) does not apply when overtaking and passing a snowplow, but the fact that the operator of any vehicle follows the snowplow more closely than permitted by par. (a) for one mile or more or follows more closely than permitted by par. (a) when the snowplow is moving at the maximum speed limit is prima facie evidence that the operator of such following vehicle is violating par. (a).

(c) Paragraph (a) does not apply to a snowplow that is stopped or standing in the highway.

(3) The operator of any vehicle that is not a snowplow and that approaches from the rear any snowplow that is engaged in highway winter maintenance snow and ice removal, as described in sub. (1), and is using lamps described in s. 347.26 (7) and that is stopped at an intersection shall stop not less than 20 feet from the snowplow and remain stopped until the snowplow resumes motion.

History: 2001 a. 34; 2009 a. 255; 2011 a. 260.

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

(2) No person other than an employee engaged in the necessary discharge of the employee's 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.

History: 1991 a. 316.

346.922 Transporting children in cargo areas of motor trucks. (1) Notwithstanding s. 346.92, no person may operate upon a highway a motor truck having a gross weight of 10,000 pounds or less when any child under the age of 16 years is in an open cargo area of the motor truck.

(2) Subsection (1) does not apply to any of the following:

(a) A person operating a farm truck in conjunction with farm operations.

(b) A person operating a motor truck in a parade sanctioned by a local municipality.

(c) A person operating a motor truck for the purpose of transporting licensed deer hunters during the authorized deer hunting season with firearms.

History: 1995 a. 420.

This section is a safety statute intended to prevent any and all harms that could result from a child being transported in the open cargo area of a vehicle, including those resulting from a child's immature decision to jump from the cargo area of a moving vehicle. A destaging area of a parade falls under the exception under sub. (2) (b) for parades sanctioned by local municipalities. Nunez v. American Family Mutual Insurance, 2003 WI App 35, 260 Wis. 2d 377, 659 N.W.2d 171, 02−1041.

346.923 Human service vehicles; minimum operator qualifications. Notwithstanding ss. 111.321, 111.322, and 111.335, no person may operate a human service vehicle transporting any passenger unless all of the following apply:

(1) The operator possesses a valid operator's license issued under ch. 343 or by another jurisdiction that authorizes the operation of the human service vehicle.

(6) The operator holds a valid school bus endorsement under s. 343.12 or the operator meets the requirements specified under s. 343.12 (7) and (8) and any rule established by the department under s. 343.12 (7) and (8).

(8) The operator has, within the 2 previous years, been fully trained in the proper use of all passenger restraint systems available in the human service vehicle.

History: 2003 a. 297, 327; 2005 a. 147.

346.924 Transporting buildings on highways. No person may operate a vehicle transporting a building, as defined in s. 348.27 (12m) (a) 1., on a highway unless all of the following apply:

(1) The vehicle is a commercial motor vehicle and the person holds a valid commercial driver license.

(2) The vehicle is operated under a valid motor carrier certificate or license of authority issued under ch. 194 or under applicable federal law, and all insurance requirements applicable to the vehicle under s. 194.41 or federal law are satisfied.

History: 2005 a. 250.

346.925 Operation of agricultural machinery by youthful operators. (1) No person may direct or permit a child under the age of 16 years to operate a farm tractor or self−propelled implement of husbandry on the highway unless the child has been certified under s. 36.25 (32) (a) 2. as successfully completing a tractor and machinery operation safety training course that is equivalent to the requirements, other than age, specified under 29 CFR part 570.70 to 570.72.

(2) Subsection (1) does not apply to operation of a farm tractor or self−propelled implement of husbandry on the highway on a course that is perpendicular to the direction of the highway.

History: 1993 a. 455; 1995 a. 194; 1997 a. 178.

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, brewpub, 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).

(2f) Except as provided in sub. (2g), any person violating this section may have his or her operating privilege suspended under s. 343.30 (6) (b) 1.

(2g) Any person violating this section may be required to forfeit not less than $20 nor more than $400 and shall have his or her operating privilege:

(a) For a violation committed within 12 months of one previous violation, suspended under s. 343.30 (6) (b) 2.

(b) For a violation committed within 12 months of 2 or more previous violations, suspended under s. 343.30 (6) (b) 3.

History: 1971 c. 213 s. 5; 1983 a. 74; 1985 a. 28; 1989 a. 105; 1999 a. 109; 2007 a. 20.

346.935 Intoxicants in motor vehicles. (1) No person may drink alcohol beverages or inhale nitrous oxide while he or she is 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 or nitrous oxide 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 or released.

(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 or nitrous oxide 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 or released. 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 compart-

ment 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 who possess any bottle or receptacle containing alcohol beverages that has been opened, on which the seal has been broken or the contents of which have been partially removed or released 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; 1997 a. 336.

346.94 Miscellaneous prohibited or restricted acts. **(1)** DRIVING ON SIDEWALK. Except as authorized in s. 23.33 (4) (f) or when the sidewalk is an all−terrain vehicle route, as defined in s. 23.33 (1) (c) or an off−highway motorcycle route, as defined in s. 23.335 (1) (u), the operator of a vehicle may 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) MISSILES, CIRCULARS OR PAMPHLETS. 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. This subsection does not apply to any person who places on a vehicle educational material relating to the parking privileges of physically disabled persons if the person has a good faith belief that the vehicle is violating state or local law on parking for motor vehicles used by the physically disabled and the educational material has been approved by the council on physical disabilities as provided under s. 46.29 (1) (em).

(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, RECREATIONAL VEHICLES, OR BOATS. Except as provided in sub. (8m), no person may operate a motor vehicle towing any mobile home, recreational vehicle, or boat on a trailer upon a highway when any person is in such mobile home, recreational vehicle, or boat.

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

(b) No person may operate a motor vehicle towing a fifth−wheel recreational vehicle upon a highway with any person in such recreational vehicle unless the fifth−wheel recreational vehicle 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 recreational vehicle.

(8s) TRANSPORTING PERSONS IN BUILDINGS. No person may operate a vehicle transporting a building, as defined in s. 348.27 (12m) (a) 1., on a highway if any person is in the building.

(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, to merge into a bicycle lane before turning at an intersection, 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 and electric personal assistive mobility devices 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 (1m) or (4) (b) 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 HUMAN SERVICE VEHICLES. No person may operate a school bus that is not equipped with a side exit or side emergency exit windows suitable to provide an exit for pupils in an emergency or a human service vehicle over any public highway of this state with any trailer or semitrailer attached.

(16) RADIOS OR OTHER ELECTRIC SOUND AMPLIFICATION DEVICES. (a) Except as provided in s. 347.38 (1), no person may operate or park, stop or leave standing a motor vehicle while using a radio or other electric sound amplification device emitting sound from the vehicle that is audible under normal conditions from a distance of 75 or more feet, unless the electric sound amplification device is being used to request assistance or warn against an unsafe condition.

(b) This subsection does not apply to any of the following:

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.

2. The operator of a vehicle of a public utility. In this paragraph, public utility means any corporation, company, individual, or association which furnishes products or services to the public, and which is regulated under ch. 195 or 196, including railroads, telecommunications, or telegraph companies and any company furnishing or producing heat, light, power, or water.

3. The operator of a vehicle that is being used for advertising purposes.

4. The operator of a vehicle that is being used in a community event or celebration, procession or assemblage.

5. The activation of a theft alarm signal device.

6. The operator of a motorcycle being operated outside of a business or residence district.

7. A local authority that has enacted an ordinance in conformity with s. 349.135.

(17) IN−LINE SKATES ON ROADWAY. (a) A person riding upon in−line skates may go upon any roadway under the jurisdiction of a local authority, subject to any restrictions specified by municipal ordinance enacted under s. 349.235.

(b) Any person riding upon in−line skates upon any roadway shall ride in a careful and prudent manner and with due regard under the circumstances for the safety of all persons using the roadway.

(c) Notwithstanding any other provision of this subsection or s. 349.235, no person riding upon in−line skates may attach the in−line skates or himself or herself to any vehicle upon a roadway or, except while crossing a roadway at a crosswalk, go upon any roadway under the jurisdiction of the department.

(18) ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES ON ROADWAYS AND SIDEWALKS. (a) 1. Except as otherwise prohibited in this chapter, a person may operate an electric personal assistive mobility device upon any roadway or sidewalk that is under the jurisdiction of the department.

2. Except as provided in s. 349.236 (1) (c), the department may by rule prohibit electric personal assistive mobility devices upon any roadway under its jurisdiction for which the speed limit is more than 25 miles per hour, and may by rule prohibit such devices upon any sidewalk under its jurisdiction. This subdivision does not apply upon any sidewalk at a permanent or temporarily established driveway.

(b) A person may operate an electric personal assistive mobility device upon any roadway under the jurisdiction of a local authority, subject to any prohibitions specified by municipal ordinance enacted under s. 349.236.

(19) OFF−ROAD UTILITY VEHICLES ON ROADWAY. (a) A person may operate an off−road utility vehicle upon any roadway that has a speed limit of 35 miles per hour or less. This paragraph applies only if the person operating the off−road utility vehicle is employed by, or under contract with, the state or a local governmental unit, as defined in s. 19.42 (7u), and the off−road utility vehicle is being used for the state or local governmental purpose of collecting residential or commercial solid waste, landscaping, or performing incidental street maintenance, and is operated on a highway for a distance not to exceed one half mile.

(b) No person may operate an off−road utility vehicle upon any highway that has a speed limit of more than 35 miles per hour.

(20) OPENING MOTOR VEHICLE DOOR ON HIGHWAY. (a) No person may open any door of a motor vehicle located on a highway without first taking due precaution to ensure that his or her act will not interfere with the movement of traffic or endanger any other person or vehicle.

(b) The operator of a motor vehicle located on a highway may not permit any person under 16 years of age to open any door of the motor vehicle without the operator first taking due precaution to ensure that opening the door will not interfere with the movement of traffic or endanger any other person or vehicle.

(21) LIGHTWEIGHT UTILITY VEHICLES ON HIGHWAYS. (a) In this subsection:

1. "Agricultural operations" includes transporting farm implements, equipment, supplies, or products on a farm or between farms.

2. "Lightweight utility vehicle" has the meaning given in s. 23.33 (11m) (a) 2., except that the term does not include a device that is equipped with a seat designed to be straddled by the operator.

NOTE: Section 23.33 (11m) was repealed by 2009 Wis. Act 175.

(b) 1. Notwithstanding s. 23.33 (11m), a person may operate in the conduct of agricultural operations a lightweight utility vehicle on a highway, including any roadway or, notwithstanding ss. 346.05 (1) and 346.08, any shoulder of a highway, to cross the highway or to travel on the highway.

NOTE: Section 23.33 (11m) was repealed by 2009 Wis. Act 175.

2. Any person operating a lightweight utility vehicle on a highway shall exercise due care and, as far as is practicable, avoid interfering with the movement of traffic.

3. Any person operating a lightweight utility vehicle upon any roadway shall operate as close as practicable to the right−hand edge or curb of the unobstructed roadway.

(c) Except as provided in par. (b) and s. 23.33 (11m), no person may operate a lightweight utility vehicle on a highway.

NOTE: Section 23.33 (11m) was repealed by 2009 Wis. Act 175.

(22) LOW−SPEED VEHICLES OPERATED ON HIGHWAYS. (a) Except as provided in par. (b) and s. 349.26, a person may operate a low−speed vehicle on any highway that has a speed limit of 35 miles per hour or less and that is under the jurisdiction, for maintenance purposes, of a municipality or county.

(b) 1. Paragraph (a) applies to the operation of a low−speed vehicle on a connecting highway only if the connecting highway has a speed limit of 25 miles per hour or less or the municipality or county with jurisdiction has adopted a valid ordinance under s. 349.26 (2).

2. Subject to subd. 3., par. (a) applies to an intersection where the highway under the jurisdiction of the municipality or county crosses a state trunk highway or connecting highway only if the state trunk highway or connecting highway has a speed limit at the intersection of 35 miles per hour or less and traffic at the intersection is controlled by traffic control signals.

3. Paragraph (a) does not apply to an intersection where the highway under the jurisdiction of the municipality or county crosses an expressway, as defined in s. 346.57 (1) (ag), or freeway, as defined in s. 346.57 (1) (am), or a controlled−access highway designated under s. 83.027 or 84.25.

(c) No person may operate a low−speed vehicle on any highway except as authorized under this subsection or s. 349.26 (2).

(d) No person may operate a low−speed vehicle at a speed in excess of 25 miles per hour.

(23) COMMERCIAL QUADRICYCLES. (a) In this subsection:

1. "Alcohol beverages" has the meaning given in s. 125.02 (1).

2. "Fermented malt beverages" has the meaning given in s. 125.02 (6).

(b) No driver of a commercial quadricycle may consume alcohol while the commercial quadricycle is occupied by passengers.

(c) No person may drive a commercial quadricycle while the person has an alcohol concentration of more than 0.02.

(d) No person may drive a commercial quadricycle occupied by passengers after 10:30 p.m. or after any earlier time established by ordinance under s. 349.18 (1) (d).

(e) No person may drive a commercial quadricycle on which any alcohol beverages other than fermented malt beverages are carried or consumed. No person may drive a commercial quadricycle on which any alcohol beverages are sold, including delivery on the commercial quadricycle of alcohol beverages previously sold by a caterer.

(f) No person may possess on, or carry onto, a commercial quadricycle more than 36 fluid ounces of fermented malt beverages.

(g) Upon conviction of a driver of a commercial quadricycle for a violation of this subsection, the court shall enter an order permanently prohibiting the person from driving a commercial quadricycle. No person may drive a commercial quadricycle in violation of such an order.

History: 1973 c. 182, 314; 1975 c. 320; 1977 c. 68; 1983 a. 56, 175, 243, 538; 1989 a. 335; 1991 a. 83, 87; 1993 a. 260; 1995 a. 131, 138, 216, 373; 1997 a. 27; 2001 a. 90; 2003 a. 26, 192; 2005 a. 118, 250; 2007 a. 11; 2009 a. 22, 157, 311, 367; 2013 a. 106; 2015 a. 117, 170; s. 35.17 correction in (16) (b) 2.

An ordinance adopting sub. (4) in its entirety violated the constitutional guarantee of free speech. Deida v. City of Milwaukee, 176 F. Supp. 2d 859 (2001).

346.945 Vehicle owner's liability for radios or other electric sound amplification devices. (1) (a) Subject to s. 346.01 (2), the owner of a vehicle involved in a violation of s.

346.94 (16) shall be presumed liable for the violation as provided in this section.

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

(2) Any member of the public who observes a violation of s. 346.94 (16) 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 motor vehicle involved in the violation.

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

(3) (a) 1. Within 24 hours after observing the violation, a member of the public may deliver a report containing all of the information in sub. (2) to a traffic officer of the county or municipality in which the violation occurred. A report which does not contain all of the information in sub. (2) shall nevertheless be delivered and shall be maintained by the county or municipality for statistical purposes.

2. Within 48 hours after receiving a report containing all of the information in sub. (2), the traffic officer shall investigate the violation and may prepare a uniform traffic citation under s. 345.11 and, within 72 hours after receiving such report, any traffic officer employed by the authority issuing the citation 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 who is at least 14 years of age and who shall be informed of the contents thereof. Service under this paragraph may be made by any traffic officer employed by the authority issuing the citation and shall be performed within 72 hours after a report containing all of the information in sub. (2) was delivered to a traffic officer under par. (a) 1.

(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. Service under this paragraph shall be performed by posting the certified mail within 72 hours after a report containing all of the information in sub. (2) was delivered to a traffic officer under par. (a) 1. Except for owners who live outside of the jurisdiction of the issuing authority, service under this paragraph may not be performed unless service under pars. (a) and (b) has been attempted.

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

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

(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 employed by the authority issuing the citation with the information required under s. 343.46 (3), then the lessee and not the lessor shall be liable under this section or under s. 346.94 (16).

(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 being operated by or was under the control of any person on a trial run, and if the dealer provides a traffic officer employed by the authority issuing the citation with the name, address and operator's license number of the person operating the vehicle or having the vehicle under his or her control on a trial run, then that person, and not the dealer, shall be liable under this section or under the applicable provision of s. 346.94 (16).

(5) Notwithstanding s. 346.94 (16) (b) 6., this section does not apply to the operation of a motorcycle.

History: 1995 a. 373; 1997 a. 27; 1999 a. 80.

346.95 Penalty for violating sections 346.87 to 346.94.

(1) Any person violating s. 346.87, 346.88, 346.89 (4), (4m), or (5), 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) or (3) (a) 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. 346.923, 346.925, or 346.94 (8), (8m), or (8s) may be required to forfeit not more than $20 for the first offense and not more than $50 for each subsequent offense.

(5) Any person violating s. 346.94 (13) or (21) may be required to forfeit not more than $200.

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

(5g) A vehicle owner or other person found liable under s. 346.945 may be required to forfeit not less than $40 nor more than $80 for the first offense and not less than $100 nor more than $200 for the 2nd or subsequent conviction within a year. Imposition of liability under s. 346.945 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).

(6) Any person violating s. 346.94 (17) or (18) 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.

(7) Any person violating s. 346.922 may be required to forfeit not less than $10 nor more than $25 for the first offense and not less than $25 nor more than $200 for a 2nd or subsequent conviction within 3 years.

(8) Any person violating s. 346.94 (19) may be required to forfeit not less than $30 nor more than $300.

(9) Any person violating s. 346.924 may be required to forfeit not less than $500 nor more than $5,000. Each violation constitutes a separate offense.

(10) (a) Any person who violates s. 346.94 (20) (b) and any person 16 years of age or older who violates s. 346.94 (20) (a) 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) No forfeiture may be assessed for a violation of s. 346.94 (20) (a) if the violator is less than 16 years of age when the offense occurs.

(11) Any person violating s. 346.94 (22) (c) or (d) may be required to forfeit not more than $200.

(12) (a) Any person violating s. 346.94 (23) (b), (c), (d), (e), or (f) may be required to forfeit not less than $200 nor more than $500.

(b) Any person violating s. 346.94 (23) (g) may be required to forfeit not less than $1,000 nor more than $2,000.

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; 1991 a. 83; 1993 a. 260, 455; 1995 a. 194, 373, 420; 1999 a. 109; 2001 a. 90; 2003 a. 192, 297, 327; 2005 a. 250; 2009 a. 22, 157, 220, 311; 2011 a. 164; 2013 a. 106, 350; 2015 a. 308.