

1985 Assembly Bill 426

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1985 Wisconsin Act 71

AN ACT *to amend* 343.10 (1r), 343.126 (1) (intro.) and (a), 343.15 (5), 351.02 (1) (c), 351.02 (1m), 351.03, 351.04, 351.05, 351.06, 351.07 and 351.08; and *to create* 343.126 (1m), 351.025, 351.027 and 351.07 (1m) of the statutes, *relating to* habitual traffic offenders.

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

SECTION 1. 343.10 (1r) of the statutes, as affected by 1985 Wisconsin Act (Senate Bill 85), is amended to read:

343.10 (1r) If a person has had his or her license revoked as a habitual traffic offender under ch. 351 and the person has complied with sub. (2) and s. 351.07 (1), if the ~~court judge~~ grants the person's petition as provided in s. 351.07 (1) ~~the court may judge shall issue an order authorizing~~ the department to issue an occupational license to the person. The order ~~for authorizing the~~ issuance of an occupational license shall contain definite restrictions as to hours of the day, not to exceed 12, hours per week, not to exceed 60, type of occupation and areas or routes of travel to be permitted under the license. The order may permit travel to and from church but the order shall specify the hours during which the travel is to be permitted. The license shall be on forms provided to the court by the department. Occupational licenses are subject to the limitations specified in ss. 343.30 (1q) (b), 343.305 (9) (b) and (em) and 343.31 (3m).

SECTION 2. 343.126 (1) (intro.) and (a) of the statutes are amended to read:

343.126 (1) (intro.) ~~When~~ Except as provided in sub. (1m), when at least 15 days of a period for which a person's chauffeur's license has been revoked or suspended have elapsed or, in the case of an appeal which is subsequently dropped or affirmed, if at least 15 days have elapsed since the date of revocation or suspension following the dropping or affirmance of the appeal, the secretary may, upon application therefor accompanied by a filing fee of \$5, issue a limited chauffeur's license to the person if:

(a) ~~Such~~ The person's livelihood depends upon his or her employment as a licensed chauffeur; and

SECTION 3. 343.126 (1m) of the statutes is created to read:

343.126 (1m) Upon receipt of an order under s. 351.07 (1m) (a) authorizing the issuance of a limited chauffeur's license and payment of a fee of \$5, the secretary may issue a limited chauffeur's license to a person whose operating privilege has been revoked as a habitual traffic offender under s. 351.02. The secretary may impose conditions and limitations upon a limited chauffeur's license under this subsection as provided in sub. (2).

SECTION 4. 343.15 (5) of the statutes is amended to read:

343.15 (5) When a citation for a moving traffic violation, under chs. 341 to 349 or under a local ordinance in conformity therewith, is issued to or a ~~petition is filed under s. 351.04 against~~ notice of revocation under s. 351.027 is sent to a person who is under 18 years of age and required to have a sponsor under this section, the issuing or filing agency shall,

within 7 days, notify the person's sponsor or parents of the violation or notice.

SECTION 5. 351.02 (1) (c) of the statutes is amended to read:

351.02 (1) (c) The offenses under pars. (a) and (b) are deemed to include offenses under any valid ordinance enacted by a local authority under s. 349.06 which are in strict conformity with the offenses under pars. (a) and (b) ~~and, any federal law, law of another state or valid ordinance enacted by the local authority of another state~~ which is in strict conformity with the offenses under pars. (a) and (b) and any law of another state or valid ordinance enacted by the local authority of another state which is in strict conformity with the offenses under par. (a).

SECTION 6. 351.02 (1m) of the statutes is amended to read:

351.02 (1m) "Repeat habitual traffic offender" means any person, resident or nonresident, whose record as maintained by the department shows that the person has been convicted of 2 offenses under sub. (1) (b) committed within one year following issuance of an occupational license or limited chauffeur's license to the person pursuant to s. 351.07 (4) ~~or~~ whose record as maintained by the department shows that the person has been convicted of one offense under sub. (1) (a) or 4 offenses under sub. (1) (b) committed within 3 years following issuance of an occupational license or limited chauffeur's license to the person pursuant to s. 351.07 (4) , regardless of the license under which the person was operating a motor vehicle.

SECTION 7. 351.025 of the statutes is created to read:

351.025 Revocation. (1) The secretary shall revoke a person's operating privilege for a period of 5 years upon receipt of a record of conviction which brings the person within the definition of a habitual traffic offender or repeat habitual traffic offender.

(2) (a) The revocation is effective on the date the department mails the notice of revocation, except as provided in par. (b).

(b) If the person's operating privilege is currently suspended or revoked, the revocation under this chapter is effective on the date the person surrendered his or her operator's license for the current suspension or revocation or the date of the conviction in sub. (1), whichever is later.

SECTION 8. 351.027 of the statutes is created to read:

351.027 Hearing on revocations. (1) Whenever the secretary under authority of s. 351.025 revokes a person's operating privilege, the secretary shall immediately notify the person in writing of the revocation and of the person's right to a hearing on the revocation as provided in sub. (2). The department shall send the notice by 1st class mail to the address most recently provided to the department by the person.

(2) If the person denies that he or she is a habitual traffic offender or repeat habitual traffic offender, the person may file with the circuit court for the county in which the person resides or, in the case of a nonresident, with the circuit court for Dane county a petition for a hearing and determination by the court that the person is not a habitual traffic offender or repeat habitual traffic offender. The scope of the hearing shall be limited to whether or not the person is the same person named in the record and whether or not the person was convicted of each offense shown by the record. The clerk of the court in which the petition is filed shall forward a copy of the petition to the secretary.

SECTION 9. 351.03 of the statutes is amended to read:

351.03 Secretary to certify copy of conviction record. The Upon receipt of the copy of the petition under s. 351.027, the secretary shall certify the record of conviction of any person whose record brings him or her within the definition of a habitual traffic offender or repeat habitual traffic offender, to the court and to the district attorney of the county in which the person resides or to the attorney general if the person is not a resident of this state. The certified record shall be prima facie evidence that the person named therein was duly convicted by the court wherein the conviction or finding was made, of each offense shown by the record. If the person denies any of the facts as stated in the record, he or she shall have the burden of proving that the fact is false.

SECTION 10. 351.04 of the statutes is amended to read:

351.04 (title) District attorney or attorney general to represent secretary. The district attorney for the county in which the person resides, ~~upon receiving who receives the certified copy of record from the secretary under s. 351.03, shall file a petition in the circuit court for the county in which the person resides represent the secretary at the hearing under s. 351.027.~~ In the case of nonresidents, the attorney general shall file the petition in the circuit court for Dane county represent the secretary at the hearing.

SECTION 11. 351.05 of the statutes is amended to read:

351.05 (title) Habitual traffic offender or repeat habitual traffic offender determination by the court. The court in which the petition under s. 351.04 ~~351.027~~ is filed shall ~~enter an order to show cause incorporating the certified record and directed to the person named therein, stating why he or she should not be barred from operating a motor vehicle in this state. A copy of the order to show cause, together with the record and a statement explaining the effects of being adjudged a habitual traffic offender or repeat habitual traffic offender, shall be served on the person named therein as prescribed for the service of a summons under ch. 801. Service on any nonresident may be made by service upon the secretary using the proce-~~

~~sure specified in s. 345.09~~ determine whether the person is a habitual traffic offender or repeat habitual traffic offender. If the person denies he or she was convicted or found in violation of any offense necessary for a holding that he or she is a habitual traffic offender or repeat habitual traffic offender, and if the court is not able to make the determination on the evidence before it, the court may certify the decision of the issue to the court in which the conviction or finding of violation was made. The court to which the certification was made shall conduct a hearing to determine the issue and send a certified copy of its final order determining the issue to the court in which the petition was filed.

SECTION 12. 351.06 of the statutes is amended to read:

351.06 Order of court. If the court finds that the person before it is not the same person named in the record or that he or she is not a habitual traffic offender or repeat habitual traffic offender, ~~the proceedings shall be dismissed~~ court shall order the secretary to reinstate the person's Wisconsin operating privilege. If the court finds that the person is the same person named in the record and that he or she is a habitual traffic offender or repeat habitual traffic offender, the court shall ~~order the person's Wisconsin operating privilege revoked for a period of 5 years and shall require surrender to the court of any Wisconsin licenses then held by the person deny the person's petition for a determination that the person is not a habitual traffic offender or repeat habitual traffic offender.~~ The clerk of the court shall file a copy of the order or denial of the petition with the department which shall become a part of the records of the department.

SECTION 13. 351.07 of the statutes is amended to read:

351.07 (title) Occupational license; limited chauffeur's license; conviction after issuance. (1) A person whose operating privilege has been revoked under this chapter as a habitual traffic offender may, after 2 years of the period of revocation have elapsed, petition a judge of the circuit court for the county in which ordered the revocation the person resides for a modification of the an order authorizing the issuance of an occupational license. The person's petition shall include a compelling reason why the person should be granted an occupational license and additional reasons why the ~~court~~ judge should believe that the person's previous conduct as a traffic offender will not be repeated. The ~~court~~ judge shall state ~~its~~ his or her reasons for granting or denying the petition on the record. If the ~~court~~ judge grants the petition, the ~~court~~ judge shall ~~modify the order of revocation to provide for issue an order authorizing the issuance of an occupational license to the person under s. 343.10 (1r).~~ The clerk of the court shall file a copy of ~~a modified the~~ the order with the department, which shall become a part of the records of the department.

(2) (a) Upon conviction of a person who is issued an occupational license as provided by sub. (1) or a limited chauffeur's license as provided by sub. (1m) and s. 343.126 (1m) of 2 offenses under s. 351.02 (1) (b) committed within one year following issuance of the occupational license or limited chauffeur's license or of one offense under s. 351.02 (1) (a) or 4 offenses under s. 351.02 (1) (b) committed within 3 years following issuance of the occupational license or limited chauffeur's license, the secretary shall proceed under s. ~~351.03~~ 351.025.

(b) In lieu of the otherwise applicable penalties for the commission of the offenses enumerated in s. 351.02 (1) (a) and (b), a person who is issued an occupational license as provided by sub. (1) or limited chauffeur's license as provided by sub. (1m) and s. 343.126 (1m) and who is convicted of an offense under s. 351.02 (1) (a) or (b) as provided in par. (a) may be required to pay not more than 200% of the maximum forfeiture or fine applicable to the offense or may be imprisoned for not more than 2 times the maximum period of imprisonment applicable to the offense or both.

SECTION 14. 351.07 (1m) of the statutes is created to read:

351.07 (1m) (a) A person whose operating privilege has been revoked under this chapter as a habitual traffic offender may, after 2 years of the period of revocation have elapsed, petition a judge of the circuit court for the county in which the person resides for an order authorizing the issuance of a limited chauffeur's license under s. 343.126 (1m). The person's petition shall include a compelling reason why the person should be granted a limited chauffeur's license and additional reasons why the judge should believe that the person's previous conduct as a traffic offender will not be repeated. No petition under this subsection may be granted unless the person's livelihood depends upon his or her employment as a licensed chauffeur and the person furnishes proof of financial responsibility as provided in s. 343.126 (1) (b). The judge shall state his or her reasons for granting or denying the petition on the record. If the judge grants the petition, the judge shall issue an order authorizing the secretary to issue the person a limited chauffeur's license under s. 343.126 (1m). The clerk of the court shall file a copy of the order with the department, which shall become a part of the records of the department.

(b) Notwithstanding ss. 351.02 (1) (c) and 351.07 (1), 1983 stats., par. (a) and sub. (1), if the operating privilege of a person has been revoked under this

chapter prior to the effective date of this paragraph [revisor inserts date], on the basis of convictions under the law of another state or valid ordinance enacted by the local authority of another state for moving violations, exclusive of such convictions for violations in strict conformity with any moving violation under s. 351.02 (1) (a), the person may proceed under sub. (1) or par. (a), or both, at any time. This paragraph does not apply to a person whose driving record shows that the person has, within the 5-year period preceding the revocation, accumulated the number of convictions under s. 351.02 (1) (a) or (b) or a valid ordinance enacted by a local authority under s. 349.06 which is in strict conformity with the offenses under s. 351.02 (1) (a) or (b) or a federal law which is in conformity with s. 351.02 (1) (a) or (b), or any combination thereof, which brings the person within the definition of a habitual traffic offender.

(c) Paragraph (b) does not apply after 2 years after the effective date of this paragraph [revisor inserts date].

SECTION 15. 351.08 of the statutes is amended to read:

351.08 Operation of motor vehicle by habitual traffic offender or repeat habitual traffic offender prohibited; penalty; enforcement. Any person who is ~~adjudged a habitual traffic offender or repeat habitual traffic offender under s. 351.06~~ who is convicted of operating a motor vehicle in this state while the ~~order of the court issued revocation under s. 351.06~~ this chapter is in effect shall, in addition to any penalty imposed under s. 343.44, be fined not to exceed \$5,000 and ~~shall be imprisoned not to exceed 180 days~~. No portion of the sentence may be suspended, except in a case where operating was made necessary by a situation of emergency, as determined by the court. Any person imprisoned under this section, on his or her request, may be allowed Huber law work privileges under s. 56.08. For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle while his or her license, permit or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing the charge shall determine whether the person is a habitual traffic offender or repeat habitual traffic offender and therefor barred from operating a motor vehicle on the highways of this state. ~~If the court determines that there is an order in effect revoking the accused's operating privileges under s. 351.06, it shall certify the case to the district attorney.~~