

1987 Senate Bill 213

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1987 Wisconsin Act 40

AN ACT to repeal 343.06 (4) (b), (5) and (6) and 343.09; to renumber 448.03 (5); to consolidate, renumber and amend 343.06 (4) (intro.) and (a); to amend 343.06 (7), 343.16 (2) (a), 343.16 (2) (b) and 448.03 (5) (title); and to create 85.07 (3) (am), 146.82 (3), 343.19 (1m), 343.265 and 448.03 (5) (b) of the statutes, relating to disclosure of health care information affecting a person's ability to operate a motor vehicle and providing for immunity, issuance of drivers' licenses to certain persons subject to medical review, voluntary surrender of drivers' licenses and granting rule-making authority.

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

SECTION 1. 85.07 (3) (am) of the statutes is created to read:

85.07 (3) (am) An assessment of the impact of mental and physical impairments upon the ability of a driver to exercise reasonable control over a motor vehicle.

SECTION 2. 146.82 (3) of the statutes is created to read:

146.82 (3) REPORTS MADE WITHOUT INFORMED CONSENT. Notwithstanding sub. (1), a physician who treats a patient whose physical or mental condition in the physician's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

SECTION 3. 343.06 (4) (intro.) and (a) of the statutes are consolidated, renumbered 343.06 (4) and amended to read:

343.06 (4) To any person whose dependence on alcohol has attained such a degree that it interferes with his or her physical or mental health or social or economic functioning, or who is addicted to the use of controlled substances as defined in s. 161.01 (4), except that the secretary may issue a license if the following conditions are fulfilled: ~~(a) The person submits to an examination, evaluation or treatment in a treatment facility meeting the standards prescribed in s. 51.45 (8) (a), as directed by the secretary, in accordance with s. 343.16 (2); and~~

SECTION 4. 343.06 (4) (b), (5) and (6) of the statutes are repealed.

SECTION 5. 343.06 (7) of the statutes is amended to read:

343.06 (7) To any person who is ~~afflicted with or suffering from any mental or physical disability or disease such as to prevent him from exercising~~ unable to exercise reasonable control over a motor vehicle, as defined by the department by rule.

SECTION 6. 343.09 of the statutes is repealed.

SECTION 7. 343.16 (2) (a) of the statutes, as affected by 1987 Wisconsin Act 3, is amended to read:

343.16 (2) (a) The secretary may require any applicant for a license or any licensed operator to submit to a special examination by such persons or agencies as the secretary may direct to determine incompetency, physical or mental disability, disease or any other condition which might prevent such applicant or licensed person from exercising reasonable and ordinary control over a motor vehicle. When the department requires the applicant to submit to an examination, the applicant shall pay the cost thereof. If the department receives an application for a renewal or duplicate license after voluntary surrender under s. 343.265 or receives a report from a physician under s. 146.82 (3), or if the department has a report of 2 or more arrests within a one-year period for any combination of violations of s. 346.63 (1), or a local ordinance in conformity therewith, or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, the department shall determine, by interview or otherwise, whether the operator should submit to an examination under this subsection. The examination may consist of an assessment. If the examination indicates that education or treatment for a disability, disease or condition concerning the use of alcohol or a controlled substance is appropriate, the department may order a driver safety plan in accordance with s. 343.30 (1q). If there is non-compliance with assessment and the driver safety plan, the department shall suspend the person's oper-

ating privilege in the manner specified in s. 343.30 (1q) (d).

SECTION 8. 343.16 (2) (b) of the statutes is amended to read:

343.16 (2) (b) Whenever the department receives the results of a special examination required under this subsection, the department shall give fair consideration to the recommendation of the examining person or agency together with other evidence in determining if it is in the interest of public safety to issue, renew, deny or cancel a license. If a license is denied or canceled by the department after a special examination as provided in par. (a), such denial or cancellation shall be reviewed by a reviewing board upon written request of the applicant filed with the department within 10 days after receipt of notice of such denial or cancellation. Notice of denial or cancellation shall be in writing and contain specific reasons. The notice shall contain a statement that the applicant has 10 days within which to file a written request with the department for review of the department's decision by the reviewing board. The applicant shall have the right to appear personally before the review board, to present witnesses and additional information, and to be represented by counsel. The department's representative may administer oaths, issue subpoenas for the attendance of witnesses and the production of relevant documents and may require a reexamination of the applicant. No law enforcement officer or other witness produced by the applicant to testify on the applicant's behalf shall be paid a witness fee nor shall any law enforcement officer called to appear for the department be paid any witness fee. A record including the recommendations of the board shall be made of the hearing proceeding. If a license is denied or canceled, the applicant shall be given specific reasons in writing. Review boards shall consist of the department's representative and at least 2 members appointed by the secretary from a list of physicians licensed to practice medicine in this state, recommended by the department of health and social services and the Wisconsin state medical society and from a list of optometrists licensed to practice optometry in this state, recommended by the Wisconsin optometric association. Optometrists shall be limited to reviewing cases concerning vision only. In cases concerning mental disability or disease at least one of the physicians shall have specialized training in psychiatry. In cases concerning seizure disorders at least one of the physicians shall have specialized training in neurology. The members of the board shall receive the per diem and expenses provided in s. 15.08 (7) which shall be charged to the appropriation under s. 20.395 (5) (cq). A decision of the department based on the recommendation of a reviewing board is subject to judicial review under s. 343.40.

SECTION 8m. 343.19 (1m) of the statutes is created to read:

343.19 (1m) If a license issued under this chapter has been surrendered under s. 343.265 and has not expired, the person to whom the license was issued may obtain a duplicate license upon furnishing to the department the applicable information under sub. (1) and complying with the requirements for reissuance of a license after surrender provided under s. 343.265 (2).

SECTION 9. 343.265 of the statutes is created to read:

343.265 Voluntary surrender and reissuance after surrender. (1) The department may accept the voluntary surrender of the operator's license of a person who has a mental or physical disability or disease or a medical condition which prevents or may prevent the person from exercising reasonable control over a motor vehicle if the person's operating privilege is not subject to suspension or revocation for any reason and if either of the following conditions are satisfied:

(a) The person surrenders his or her operator's license to the department within 2 weeks after experiencing an episode resulting from the disability, disease or condition which causes the person to fail to exercise reasonable control over a motor vehicle or which would have caused such a failure if the person had been operating a motor vehicle at the time of the episode.

(b) The person surrenders his or her operator's license to the department within 10 days after the department sends the person by 1st class mail addressed to the person's last-known address a request to submit to a special examination under s. 343.16 (2).

(2) A person whose voluntary surrender of license under sub. (1) has been accepted by the department may apply for a duplicate license under s. 343.19, or, if the person's license has expired during the period of surrender, a renewal license, at any time. Upon receipt of the person's application and the applicable fee under s. 343.21 (1) (c) or (f), the department shall issue or deny the license as provided in this subchapter. The department may require the person to submit to an examination under s. 343.16 (2).

SECTION 10. 448.03 (5) (title) of the statutes is amended to read:

448.03 (5) (title) CIVIL LIABILITY; CERTAIN MEDICAL PROCEDURES AND REPORTS.

SECTION 11. 448.03 (5) of the statutes is renumbered 448.03 (5) (a).

SECTION 12. 448.03 (5) (b) of the statutes is created to read:

448.03 (5) (b) No physician shall be liable for any civil damages for either of the following:

1. Reporting in good faith to the department of transportation under s. 146.82 (3) a patient's name and other information relevant to a physical or mental condition of the patient which in the physician's judgment impairs the patient's ability to exercise reasonable and ordinary control over a motor vehicle.

2. In good faith, not reporting to the department of transportation under s. 146.82 (3) a patient's name and other information relevant to a physical or mental condition of the patient which in the physician's judgment does not impair the patient's ability to exercise reasonable and ordinary control over a motor vehicle.

tion shall submit the rule required under section 343.06 (7) of the statutes, as affected by this act, in final draft form under section 227.15 (1) of the statutes no later than 180 days after the effective date of this subsection.

SECTION 13. Nonstatutory provisions; transportation. (1) **RULE MAKING.** The department of transporta-

SECTION 14. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

(1) **HEALTH AND SOCIAL SERVICES.**

(a) *Medical reviews for driver licensing.*

A	B	C
Statute Sections	References Deleted	References Inserted
15.191 (intro.)	343.09	none

SECTION 15. Initial applicability. (1) **HIGHWAY SAFETY REPORTS.** The treatment of section 85.07 (3)

(am) of the statutes first applies to the report required to be submitted on or before October 15, 1991.

