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1983 Assembly Bill 993

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1983 Wisconsin Act 525

AN ACT to amend 343.38 (1) (intro.), 351.03, 351.05, 351.06 and 351.08; and to create 343.10 (1r), 351.02 (1m) and 351.07 of the statutes, relating to issuance of an occupational license to a habitual traffic offender and creating a penalty.

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

SECTION 1. 343.10 (1r) of the statutes is created 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 grants the person's petition as provided in s. 351.07 (1) the court may order the department to issue an occupational license to the person. The order for 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 343.31 (3m).

SECTION 2. 343.38 (1) (intro.) of the statutes is amended to read:

343.38 (1) LICENSE AFTER REVOCATION. (intro.) Except as provided in ss. 343.10 and 343.39 and 351.07, the department shall not issue a license to a person whose operating privilege has been duly revoked unless the period of revocation has expired and such person:

SECTION 3. 351.02 (1m) of the statutes is created 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 to the person pursuant to s. 351.07 (1) 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 to the person pursuant to s. 351.07 (1).

SECTION 4. 351.03 of the statutes is amended to read:

351.03 Secretary to certify copy of conviction record. The secretary shall certify the record of conviction of any person whose record brings him or her within the definition of ~~an a~~ habitual traffic offender or repeat habitual traffic offender, 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 5. 351.05 of the statutes is amended to read:

351.05 (title) Order to show cause; service on person named as habitual traffic offender or repeat habitual traffic offender; procedure where conviction denied. The court in which the petition under s. 351.04 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 ~~an~~ 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 procedure specified in s. 345.09. 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 ~~an~~ 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 6. 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 ~~an~~ a habitual traffic offender or repeat habitual traffic offender, the proceedings shall be dismissed. If the court finds that the person is the same person named in the record and that he or she is ~~an~~ 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. 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.

SECTION 7. 351.07 of the statutes is created to read:

351.07 Review of order; conviction after issuance of occupational license. (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 the court which ordered the revocation for a modification of the order. The person's petition shall include a compelling reason why the person should be granted an occupational license and additional reasons why the court should believe that the person's previous conduct as a traffic offender will not be repeated. The court shall state its reasons for granting or denying the petition on the record. If the court grants the petition, the court shall modify the order of revocation to provide for 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 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) of 2 offenses under s. 351.02 (1) (b) committed within one year following issuance of the occupational 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, the secretary shall proceed under s. 351.03.

(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) 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 8. 351.08 of the statutes is amended to read:

351.08 (title) Operation of motor vehicle by habitual traffic offender or repeat habitual traffic offender prohibited; penalty; enforcement. Any person who is adjudged ~~an~~ 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 under s. 351.06 is in effect shall be fined not to exceed \$1,000 and shall be imprisoned not to exceed 90 days. No portion of the sentence may be suspended, except in a case where operating

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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~~ 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.
