

## CHAPTER 343

## OPERATORS' LICENSES

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## GENERAL PROVISIONS

**343.01 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.

(2) In this chapter and ch. 344 the following words and phrases have the designated meanings:

(a) "Chauffeur" means every person, including the vehicle owner, who is employed for the principal purpose of operating a motor vehicle or when one of the principal duties is the operation of a truck for a major portion of the full working week, and every person who operates a motor vehicle while in use as a public carrier of persons or property for hire, except that a person is not a chauffeur within the meaning of this paragraph solely because the person:

1. Is engaged in operating or employed for the principal purpose of operating a motor vehicle in connection with providing funeral services; or

2. Is engaged in operating or employed for the principal purpose of operating a school bus, or a motor bus transporting children or school groups to or from a private school or to or from points designated by such private school; or

3. Is engaged in operating a farm truck or a dual purpose farm truck and is either the owner or lessee of the truck or a member of the owner's or lessee's immediate family or an employe of the owner or lessee not employed primarily for the purpose of operating the truck; or

4. Is engaged in operating or employed for the principal purpose of operating a motor truck having a registered gross weight of not more than 16,000 pounds transporting unprocessed farm products.

5. Is engaged in operating an automobile or light truck and is a student employed part time for drop-off or delivery purposes and is not carrying for hire.

6. Is engaged in operating or employed for the principal purpose of operating a motor truck having a registered gross weight of not more than 24,000 pounds transporting perishable fresh fruits or vegetables for canning or freezing within this state, provided the person is not less than 18 years of age.

7. Is engaged in operating, or employed for the purpose of operating, a taxicab.

8. Is licensed under s. 343.12 and operating a motor vehicle painted in accordance with s. 347.44 (1).

(b) "Conviction" or "convicted" means that the court of original jurisdiction has made an adjudication of guilt, including such an adjudication made on a plea of no contest. It is immaterial that an appeal has been taken. "Conviction" or "convicted" also includes:

1. A forfeiture of deposit under ss. 345.26 and 345.37, which forfeiture has not been vacated;

2. A stipulation of no contest pursuant to s. 345.27;

3. An adjudication of having violated a local ordinance enacted under ch. 349;

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4. A finding by a court assigned to exercise jurisdiction under ch. 48 of a violation of chs. 341 to 349 and 351 or a local ordinance enacted under ch. 349.

(c) "License" means any authority to operate a motor vehicle granted pursuant to this chapter, including temporary and restricted licenses, chauffeurs' licenses and instruction permits, unless the context clearly indicates a different or more restricted meaning.

(d) "Other jurisdiction" or "another jurisdiction" means any state other than Wisconsin and includes the District of Columbia, the commonwealth of Puerto Rico and any territory or possession of the United States and any province of the Dominion of Canada.

(e) "Record of conviction" means the report of conviction furnished to the department as required by this chapter, including a report of a forfeiture of deposit, stipulation of no contest, adjudication of ordinance violation or finding of a court assigned to exercise jurisdiction under ch. 48 as specified in par. (a).

**History:** 1971 c. 164 s. 83; 1971 c. 278; 1977 c. 29 s. 1654 (7) (a); 1977 c. 449; 1979 c. 110 s. 60 (6); 1979 c. 333 s. 5; 1981 c. 390 ss. 186, 252; 1983 a. 189, 223, 227, 270, 480, 538.

**343.02 Administration of operators' license law.** The department shall administer and enforce this chapter.

**History:** 1971 c. 164 s. 83; 1977 c. 29 s. 1654 (7) (a); 1981 c. 390 s. 252.

### ISSUANCE, EXPIRATION AND RENEWAL OF LICENSES

**343.05 Operators to be licensed; exceptions.** (1) (a) Except as provided in sub. (2), no person may operate a motor vehicle upon a highway in this state unless the person has a license issued to him or her by the department, which license is not revoked, suspended, canceled or expired. A valid chauffeur's license satisfies the requirements of this section only when the licensee is operating a vehicle in the performance of his or her duties as chauffeur.

(b) Except as provided in sub. (2), no person may operate a Type 1 motorcycle unless the person possesses a valid operator's license which has been specifically endorsed for motorcycle operation or an operator's license restricted to operation of a Type 1 motorcycle.

(c) Except as provided in sub. (2), no person may operate a moped or motor bicycle unless the person possesses a valid operator's license or a special restricted operator's license issued under s. 343.135 or a restricted license issued under s. 343.08.

(1a) Section 343.44 and the penalties thereunder shall apply in lieu of this section to any person operating a motor vehicle upon a highway in this state when such person's license is revoked or suspended.

(2) The following are exempt from the licensing requirements of this chapter:

(a) Any person in the armed services while operating a motor vehicle owned by or leased to the United States government.

(b) Any person while operating any farm tractor or implement of husbandry temporarily operated or moved on a highway.

(c) Any nonresident who is at least 16 years of age and who has in his immediate possession a valid license issued to him in his home jurisdiction.

(d) Any nonresident of the United States who holds an international driving permit or a valid operator's license issued by a country which is a signatory to either the 1943 regulation of inter-American automotive traffic or the 1949 Geneva convention on road traffic.

(e) Any nonresident of the United States who holds an international driving permit or a valid operator's license issued by West Germany, Mexico or Switzerland or by any other nation having a reciprocal agreement with the United States concerning driving privileges.

(f) Exemptions under pars. (d) and (e) shall be for a period of one year only.

(3) (a) 1. Except as provided in subd. 2, any person violating sub. (1) (a) may be required to forfeit not more than \$200 for the first offense, may be fined not more than \$300 and imprisoned not more than 30 days for the 2nd offense and may be fined not more than \$500 and imprisoned not more than 6 months for the 3rd or subsequent offense within 3 years. A violation of a local ordinance in conformity with this section shall count as a previous offense.

2. A person whose operator's license has expired within 3 months after the renewal date of the license may be required to forfeit not more than \$100 for the first offense.

(b) Any person violating sub. (1) (b) or (c) may be required to forfeit not more than \$100.

**History:** 1971 c. 164 s. 83; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273, 288, 447; 1979 c. 345; 1981 c. 42, 138; 1981 c. 390 s. 252; 1983 a. 243, 534, 535, 538; 1985 a. 65.

**Cross Reference:** See 343.37 for limitations on nonresident operators. "Highway" means entire width between boundary lines of every public road, i.e. entire right-of-way. In Interest of E.J.H. 112 W (2d) 439, 334 NW (2d) 77 (1983).

See note to 347.485, citing 58 Atty. Gen. 17.

Under (1), a driver's license, indorsed for motor-driven cycle operation, is not required for operation of a motor-driven cycle on private property. 64 Atty. Gen. 79.

**343.06 Persons not to be licensed.** The department shall not issue a license:

(1) To any person whose operator's license or nonresident's operating privilege was withheld, suspended, revoked or canceled under the provisions of the law in effect prior to September 1, 1941, unless such person complies with the requirements of this chapter relative to obtaining a license or restoration of operating privileges after suspension, revocation or cancellation.

(2) To any person whose operating privilege has been suspended or revoked or is subject to immediate mandatory suspension or revocation under this chapter, except as otherwise expressly provided in this chapter.

(3) To any person under age 18 unless the person has satisfactorily completed a course in driver education in public schools approved by the department of public instruction, or in vocational, technical and adult education schools approved by the board of vocational, technical and adult education, or in nonpublic and private schools which meet the minimum standards set by the department of public instruction, or has satisfactorily completed a substantially equivalent course in driver training approved by the department and given by a school licensed by the department under s. 343.61, or has satisfactorily completed a substantially equivalent course in driver education or training approved by another state and has attained the age of 16, except as provided in s. 343.07 (1). Applicants for a license under s. 343.08 or 343.135 are exempt from the driver education or driver training course requirement. The secretary shall prescribe rules for licensing of schools and instructors to qualify under this section. The driver education course shall be made available to every eligible student in the state. No operator's license may be issued unless a driver's examination has been administered by the department.

(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 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).

(7) To any person who is unable to exercise reasonable control over a motor vehicle, as defined by the department by rule.

(8) To any person who is required by this chapter to take an examination, unless such person takes and successfully passes such examination. Deaf persons otherwise qualified under this chapter to receive a license shall be issued such license in the discretion of the secretary.

(9) To any person who is required under the motor vehicle financial responsibility laws of this state to furnish proof of financial responsibility, and who has not furnished such proof in the manner prescribed by statute and any lawful rules of the department pertaining thereto.

(10) To any person when the secretary has good cause to believe that the operation of a motor vehicle on the highways by such person will be inimical to the public safety or welfare.

(11) To any person who has been convicted of any offense specified under ss. 940.225, 948.02 and 948.07 or adjudged delinquent under ch. 48 for a like or similar offense, when the sentencing court makes a finding that issuance of a license will be inimical to the public safety and welfare. The prohibition against issuance of a license to the offenders shall apply immediately upon receipt of a record of the conviction and the court finding by the secretary, for a period of one year or until discharge from any jail or prison sentence or any period of probation or parole with respect to the offenses specified, whichever date is the later. Receipt by the offender of a certificate of discharge from the department of health and social services or other responsible supervising agency shall, after one year has elapsed since the prohibition began, entitle the holder to apply for an operator's license. The applicant may be required to present the certificate of discharge to the secretary if the latter deems it necessary.

(12) To any person applying for his or her first license or identification card or for a reinstated license in this state unless the person has submitted satisfactory proof of his or her name and date and place of birth.

**History:** 1971 c. 40 s. 93; 1971 c. 154 s. 79 (3); 1971 c. 219; 1975 c. 184 s. 13; 1975 c. 421; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 41, 238, 273, 360, 447; 1983 a. 17, 243; 1985 a. 202; 1987 a. 40, 122; 1987 a. 332 s. 64; 1987 a. 403.

**NOTE:** Sub. (11) is shown as amended by 1987 Wis. Act 332, s. 64, eff. 7-1-89. Act 332 deleted "944.12" and added "948.02 and 948.07".

Performance of duty delegated to a state road examiner under (7) is within rule of civil immunity as matter of law. *Lifer v. Raymond*, 80 W (2d) 503, 259 NW (2d) 537.

The offering of driver education courses by public schools is optional rather than mandatory; but if offered, all qualified students must be allowed to participate. The state superintendent may require private schools to consent to on-site inspections for compliance verification as a condition of approval granted those schools under that section. 59 Atty. Gen. 27.

**343.07 Instruction permits. (1) ISSUANCE, RESTRICTIONS.** Upon application therefor by a person at least 15 years and 6 months of age who, except for age or lack of training in the operation of a motor vehicle, is qualified to obtain a license, the department may issue an instruction permit. The permit entitles the permittee to operate a motor vehicle, except a Type 1 motorcycle, upon the highways, subject to the following restrictions:

(a) If the permittee is at least 16 years of age, the permittee shall not operate a motor vehicle unless accompanied by a qualified instructor, or a licensed person with at least 2 years of licensed driving experience, who presently holds a valid license, occupying the seat beside the permittee. No other passengers are allowed in the vehicle except as provided in par. (c) or (cm).

(b) A permittee under the age of 16 is restricted to operation of a motor vehicle only while accompanied by a qualified instructor, or his parent or guardian who meets the other qualifications of par. (a). Upon reaching the age of 16, the permittee gains the privilege of any other permittee.

(c) If the licensed accompanying operator is a qualified instructor and the vehicle used for instruction by the school is equipped with dual controls, up to 3 other persons may occupy seats in the motor vehicle other than the front seat.

(cm) If the permittee is at least 16 years of age, in addition to the licensed accompanying operator, one other licensed person 25 years of age or more with at least 2 years' driving experience may occupy a seat in the motor vehicle other than the front seat.

(d) The permittee shall not operate a motor vehicle during the hours of darkness unless accompanied by:

1. A licensed person 25 years of age or more, with at least 2 years' licensed driving experience, occupying the seat beside him; or

2. A qualified instructor.

(e) The permittee may operate a motor vehicle when accompanied by an authorized license examiner for the purpose of examining his ability to operate a motor vehicle.

(2) **TRAINING CERTIFICATE REQUIRED.** Except for persons who qualify for a license under s. 343.08, the department shall not issue an instruction permit to anyone under 18 years of age, unless it has a certificate from the applicant's qualified instructor to the effect that the applicant is enrolled in an approved driver education and training course for the purpose of the practice driving phase.

(3) **DURATION; CANCELLATION.** An instruction permit shall be valid for 6 months except that it may be canceled upon receipt of information, by the secretary, of noncompletion or unsatisfactory completion of a driver education and training course by a permittee under the age of 18.

(4) **INSTRUCTION PERMITS; TYPE 1 MOTORCYCLE.** (a) Upon application by a person who qualifies for issuance of a license under s. 343.06 (3) and who wishes to qualify for the operation of a Type 1 motorcycle, the department may issue a special instruction permit for motorcycle operation.

(b) The permit shall be valid for 6 months and entitles the permittee to operate a Type 1 motorcycle subject to the following restrictions:

1. No passenger may accompany the permittee except that a person with at least 2 years of licensed driving experience and whose license is endorsed for Type 1 motorcycle operation may ride as a passenger-instructor.

2. The permittee may not operate a Type 1 motorcycle during hours of darkness unless accompanied by a licensed person 25 years of age or more and meeting the requirements of subd. 1.

(5) **DEFINITION.** In this section, "qualified instructor" means a person employed by a public or private school, holding an operator's license and meeting the teaching certification standards of the department of public instruction or the board of vocational, technical and adult education to teach driver education, or an instructor of a school licensed under s. 343.61, or a teacher or student teacher in a driver education course for teachers conducted by an institution of higher education.

(6) **SPECIAL INSTRUCTIONAL PERMITS.** This section does not apply to instructional permits issued under s. 343.075.

**History:** 1971 c. 164; 1973 c. 199; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 128, 273; 1979 c. 345; 1983 a. 243; 1985 a. 65, 202; 1987 a. 122.

Although the liability of a passenger-teacher for the negligence of his student driver has generally been based on principles of agency, the passenger's liability may also arise from violation of an independent duty to supervise and control the automobile based upon his agreement, as an experienced driver, to instruct and supervise an inexperienced driver, as required by 343.07, for the

protection of third persons on the highway. *Hoelt v. Friedel*, 70 W (2d) 1022, 235 NW (2d) 918.

**343.075 Instructional permits for applicants for special restricted operators' licenses.** The department may require an applicant for a special restricted operator's license under s. 343.135 to first obtain an instructional permit if the department deems it advisable. The department shall determine the requirements for issuance of an instructional permit under this section and the restrictions, if any, on such permits.

**History:** 1979 c. 345.

**343.08 Restricted licenses for persons under 18 years of age. (1)** Upon application therefor, the department may issue a restricted license to a person who is at least 14 and less than 18 years of age if the following conditions, in addition to any others specified in this chapter, are fulfilled:

(a) The department must be satisfied that it is necessary for the applicant to operate an automobile, farm truck, dual purpose farm truck, Type 1 motorcycle powered with an engine of not more than 125 cubic centimeters displacement, Type 2 motorcycle, moped or motor bicycle owned and registered by the applicant's parent or guardian or a farm truck leased to the applicant's parent or guardian.

(b) The applicant, accompanied by his parent or guardian, must have appeared in person before an examining officer with a certificate of birth to show that the applicant is at least 14 years of age.

(c) The applicant must have passed an examination as specified in s. 343.16, including a test of his ability to safely operate the type of vehicle which he is making application for license to operate.

(2) A restricted license issued pursuant to this section is valid only until the licensee secures a regular operator's license or reaches 18 years of age and entitles the licensee to operate an automobile, farm truck, dual purpose farm truck, Type 1 motorcycle powered with an engine of not more than 125 cubic centimeters displacement, Type 2 motorcycle, moped or motor bicycle owned and registered by the licensee's parent or guardian or a farm truck leased to the licensee's parent or guardian or any combination of these vehicles, depending on the restrictions placed by the department on the particular license. A license issued pursuant to this section does not authorize the licensee to operate any such vehicle during hours of darkness or to operate a vehicle in a city having a population of 500,000 or more or to operate a commercial motor truck, motor bus or taxicab.

**History:** 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1983 a. 223, 227, 243, 270, 538; 1985 a. 65.

**343.085 Probationary licenses to new drivers. (1)** Except as provided in sub. (2), the department shall issue a probationary license to all applicants for an original license. The probationary license shall remain in effect during the entire period of the first issuance of the original license.

(2) Any person moving to this state who has been licensed in another jurisdiction for at least 3 years, who presently holds a license from another jurisdiction which has not expired for more than 6 months and who has passed his 21st birthday is exempt from this section.

(3) The secretary may suspend a person's operating privilege under this section when such person has been assigned sufficient demerit points after conviction for traffic violations to require suspension under the rule adopted under sub. (5) and either holds a license issued under this section or by age comes under this section. The secretary may revoke such a person's operating privilege under this section if such person has a previous suspension under this section.

(4) The secretary may require that a person be continued on probationary status beyond the period of first issuance if such person appears by the records of the department to have repeatedly violated any of the state traffic laws or any local ordinance in conformity therewith. A person may not be continued on probationary status due to a suspension under s. 343.30 (6).

(5) For the purpose of determining when to suspend or to continue a person on probationary status, the secretary may determine and adopt by rule a method of weighing traffic convictions by their seriousness and may change such weighted scale from time to time as experience or the accident frequency in the state makes necessary or desirable. Such scale may be weighted differently for this licensee than the scale used to determine revocations under s. 343.32.

**History:** 1971 c. 204; 1977 c. 29 s. 1654 (7) (a), (c); 1979 c. 306; 1979 c. 331 ss. 59, 72; 1981 c. 314.

See note to 343.32, citing *Best v. State*, 99 W (2d) 495, 299 NW (2d) 604 (Ct. App. 1980).

**343.10 Occupational licenses. (1) (a) *Petition for limited chauffeur's license.*** If the chauffeur's license of a person is revoked or suspended, he or she may file a petition with the department for a limited chauffeur's license under s. 343.126.

(b) *Petition for occupational license.* If a person's license or operating privilege is revoked or suspended under this chapter and if the person is engaged in an occupation, including full-time or part-time study, or a trade making it essential that he or she operate a motor vehicle, the person, after complying with sub. (2), may file with a judge of a circuit court in the county of his or her residence or of a municipal court in the county of his or her residence a petition setting forth in detail the need for operating a motor vehicle.

(c) *Conditions for issuance of occupational license.* Upon receipt of a petition under par. (b), the judge may order the department to issue an occupational license to the person if the conditions under subs. 1 and 2 are satisfied:

1. Except for a revocation or suspension that arose out of the same incident or occurrence for which the person's license or operating privilege is currently revoked or suspended, the person's license or operating privilege was not revoked or suspended previously under this chapter within the one-year period immediately preceding the present revocation or suspension.

2. The person files proof of financial responsibility as specified under s. 343.38 (1) (c) covering all vehicles for which the person seeks permission to operate.

(d) *Conditions for issuance of temporary occupational license.* Upon receipt of a petition under par. (b), the judge may issue a 30-day temporary occupational license to the person on forms provided to the court by the department if the conditions under par. (c) are satisfied and at least 15 days have elapsed since the date of revocation or suspension, or, in the case of an appeal which is subsequently dismissed or affirmed, at least 15 days have elapsed since the date of revocation or suspension following the dismissal or affirmation of the appeal.

(e) *Restrictions.* 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 which are permitted under the license. If the person holds a valid chauffeur's license at the time of filing the petition, the order for issuance shall contain restrictions permitting operation of a motor vehicle by the person only for travel between the licensee's place of residence and his or her place of employment, in addition to operation permitted under the chauffeur's license. The order may permit travel to and from church during

specified hours if the travel does not exceed the restrictions as to hours of the day and hours per week in this paragraph. The order may permit travel necessary to comply with a driver safety plan ordered under s. 343.30 (1q) or 343.305 if the travel does not exceed the restrictions as to hours of the day and hours per week in this paragraph.

(f) *Considerations in issuance.* The judge shall consider the number and seriousness of prior traffic convictions in determining whether to order the issuance of an occupational license and what restrictions to specify. A copy of the petition and the order for the occupational license shall be forwarded to the department.

(g) *Limitations.* Occupational licenses are subject to the limitations specified in ss. 343.30 (1q) (b), 343.305 (8) (d) and (10) (b) and (em) and 343.31 (3m).

(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 judge grants the person's petition as provided in s. 351.07 (1) the judge shall issue an order authorizing the department to issue an occupational license to the person. An occupational license issued under this subsection is subject to the restrictions and limitations specified in sub. (1).

(2) No person may file a petition for an occupational license unless he or she first pays a fee of \$40 to the county treasurer if the petition is to a judge of the circuit court or to the municipal treasurer if the petition is to a judge of the municipal court. The treasurer shall give the person a receipt and shall forward 50% of the fee to the department for deposit in the transportation fund. The treasurer shall forward the remainder of the fee to the clerk of the circuit court or municipal court, respectively.

(3) (a) The department shall issue an occupational license as soon as practicable upon receipt of an order for such a license if the conditions for issuance under sub. (1) (c) are satisfied.

(b) If the department determines that the person is eligible for and has been issued a temporary occupational license under sub. (1) (d), the department may issue an occupational license to the person upon receipt of an order for such a license.

(4) The occupational license issued by the department shall contain such restrictions as are ordered by the judge. In addition to such restrictions an occupational license authorizes the licensee to operate a motor vehicle not to exceed 12 hours per day and then only when such operation is an essential part of the licensee's occupation or trade. An occupational license is valid from the date of issuance until termination of the period of revocation or suspension, as provided by law, unless the occupational license is revoked, suspended or canceled prior to termination of that period.

(5) An occupational license is not renewable when it expires. If an occupational license expires and is not revoked, suspended or canceled, the licensee may obtain a new license upon that expiration but only if he or she complies with the conditions specified in s. 343.38. Revocation, suspension or cancellation of an occupational license has the same effect as revocation, suspension or cancellation of any other license.

(6) Any person who violates any restriction of an occupational license, in addition to the immediate revocation of the license:

(a) Shall forfeit not less than \$150 nor more than \$600, except as provided in par. (b).

(b) Shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned not more than 6 months, if the number of convictions under this section equals 2 or more in a 5-year period.

(6m) The 5-year period under sub. (6) shall be measured from the dates of the violations which resulted in the convictions.

(7) The department shall inform a person whose operating privilege has been revoked or suspended under this chapter of his or her right to petition the court for issuance of an occupational license under this section.

**History:** 1973 c. 90, 218; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 193; 1979 c. 102, 316, 355; 1981 c. 20; 1983 a. 27, 525, 526; 1985 a. 32 s. 3; 1985 a. 71, 337; 1987 a. 3.

Court can't impose restrictions on occupational licenses other than those enumerated in (1). *State v. Darling*, 143 W (2d) 839, 422 NW (2d) 886 (Ct. App. 1988).

Temporary occupational licenses may be issued only after 30 days from the date of conviction. 60 Atty. Gen. 364.

#### 343.11 Temporary license for persons previously licensed in another state. (1)

The department shall not issue a license to a person previously licensed in another jurisdiction unless such person surrenders to the department all valid operator's licenses possessed by the person issued by any other jurisdiction, which surrender operates as a cancellation of the surrendered licenses insofar as the person's privilege to operate a motor vehicle in this state is concerned. When such applicant surrenders the license to the department, the department shall issue a receipt therefor, which receipt shall constitute a temporary license to operate a motor vehicle for a period not to exceed 60 days if the applicant meets the standard required for eyesight and, in the opinion of the examiner, is not a dangerous hazard to the applicant and other users of the highways. Such receipt shall be surrendered to the examiner for cancellation by the department if the 3rd attempt at the driving test is failed and the applicant shall be required to secure a temporary instruction permit for further practice driving.

(2) Upon the expiration of 30 days following the application, the department shall return all surrendered licenses to the issuing department together with information that the licensee is now licensed in this state or has been refused a license by this state, whichever the case may be.

(3) Except as provided in sub. (1), the department may issue a receipt to any applicant for a license, which receipt shall constitute a temporary license to operate a motor vehicle while the application for license is being processed. Such temporary license shall be valid for a period not to exceed 30 days.

**History:** 1971 c. 204; 1975 c. 64; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273.

#### 343.12 School bus operators to obtain special license. (1)

No person shall operate a school bus without having first applied for and received a school bus operator's license.

(2) The department shall issue a school bus operator's license to a person only if such person meets all of the following requirements:

(a) Subject to sub. (3), is at least 18 years and not more than 70 years of age.

(c) Holds a valid operator's license issued under this chapter or in the case of residents of the states of Iowa, Illinois, Michigan and Minnesota holds a valid operator's license issued by the state of residence.

(d) Subject to ss. 111.321, 111.322 and 111.335, has not been convicted of reckless driving under s. 346.62, any of the offenses enumerated under s. 346.63 (1) or under s. 346.63 (1m), 1985 stats., or any of the offenses enumerated under s. 343.31 (1), within the 2-year period immediately preceding the date of application.

(e) Subject to ss. 111.321, 111.322 and 111.335, has not been convicted of a felony or offense against public morals within the past 5 years.

(f) Has sufficient use of both hands and the foot normally employed to operate the foot brake and foot accelerator correctly and efficiently. Such use may be substantiated by competent medical proof submitted by the applicant.

(g) Has passed the physical examination required. Physical standards to be met may be established by the department.

(h) Prior to issuance of the license and prior to renewal of the license, takes and passes a special examination prescribed and administered by the department to determine his or her ability to safely operate a school bus.

(3) The department may issue a school bus operator's license to a person who is more than 70 years of age if the person meets the requirements specified in sub. (2) (c) to (f) and (h) and annually takes and passes a physical examination prior to issuance or renewal of the license to determine that the person meets the physical standards established under sub. (2) (g).

(4) Any person violating sub. (1) may be required to forfeit not more than \$100.

**History:** 1971 c. 213 s. 5; 1973 c. 174, 218; 1975 c. 19, 199; 1977 c. 29 s. 1654 (7) (a); 1977 c. 125; 1977 c. 193 s. 17; 1977 c. 273, 418, 447; 1981 c. 71; 1981 c. 334 s. 25 (1); 1983 a. 175, 459, 480; 1985 a. 337; 1987 a. 3.

Standards under 343.12 (2) (g) are not exempt from requirements under 111.34 (2) (b). Bothum v. Department of Transp., 134 W (2d) 378, 396 NW (2d) 785 (Ct. App. 1986).

#### 343.124 Human service vehicle operator requirements.

(1) No person may operate a human service vehicle for compensation in excess of an allowance to defray vehicle operating costs unless the person has a valid chauffeur's license or a valid school bus operator's license.

(2) Any person violating sub. (1) may be required to forfeit not more than \$100.

**History:** 1983 a. 175 ss. 21, 22, 24; Stats. 1983 s. 343.124.

**343.125 Chauffeurs to obtain special license.** (1) No person shall operate a motor vehicle as a chauffeur upon any highway in this state unless such person holds a valid chauffeur's license issued to the person by the department pursuant to this section or s. 343.126.

(2) No person shall hire any person to operate a motor vehicle as chauffeur unless such employe is duly licensed as required by sub. (1).

(3) Any person violating sub. (1) or (2) may be required to forfeit not more than \$100.

(4) The department shall issue a chauffeur's license to a person whether or not he or she holds a valid operator's license, but only if such person:

(a) Is at least 18 years of age; and

(b) Except as otherwise provided, takes and passes a special examination which indicates a practical knowledge of the construction, mechanism and operation of motor vehicles and a sufficient knowledge of the traffic laws of the state and other needful qualifications, including physical qualifications, to enable the person to drive with safety. It shall be the general policy of the department not to require such examination for renewal of a chauffeur's license prior to the expiration thereof.

(5) The department may not refuse to consider an applicant for a chauffeur's license solely because the applicant has experienced an episode of altered consciousness or loss of body control.

**History:** 1971 c. 164 s. 83; 1973 c. 218; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1981 c. 42; 1983 a. 12.

**343.126 Limited chauffeur's license after revocation or suspension.** (1) 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) The person's livelihood depends upon his or her employment as a licensed chauffeur; and

(b) Proof of financial responsibility covering all vehicles which the applicant will be permitted to operate has been furnished as specified in s. 343.38 (1) (c).

(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).

(2) The secretary may impose such conditions and limitations upon such limited chauffeur's license as in the secretary's judgment are necessary in the interest of public safety and welfare, including reexamination as to the chauffeur's qualifications. Such license may be limited to the operation of particular vehicles, to particular classes of operation and to particular conditions of traffic.

**History:** 1971 c. 164 s. 82; 1977 c. 29 s. 1654 (7) (c); 1977 c. 273; 1979 c. 221; 1983 a. 526; 1985 a. 71.

**343.13 Restricted licenses.** The department upon issuing any license pursuant to this chapter may, whenever good cause appears, impose restrictions suitable to the licensee's operating ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate, or such other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

**History:** 1977 c. 29 s. 1654 (7) (a).

**343.135 Special restricted operator's license. (1) ISSUANCE.** (a) Except as provided in par. (b), upon application therefor, the department shall issue a special restricted operator's license to any person who meets the following requirements:

1. Is at least 14 years of age and is physically disabled or is at least 16 years of age.

2. Does not possess a valid operator's license issued under this chapter.

3. Pays the required fee.

4. Has passed an examination which includes a test of the applicant's eyesight, ability to read and understand highway signs regulating, warning and directing traffic, knowledge of the traffic laws and an actual demonstration of ability to exercise ordinary and reasonable control in the operation of the vehicle for which the special restricted license is to be issued. An applicant shall furnish the motor vehicle he or she will be operating for use in testing his or her ability to operate the vehicle. The department may waive the demonstration of ability to exercise ordinary and reasonable control in the operation of a moped or motor bicycle as provided in s. 343.16 (1) (f).

(b) The department may not issue a special restricted license to a person whose operating privilege is suspended or revoked.

(2) SCOPE. (a) A special restricted operator's license may be issued only for the specific vehicle or type of vehicle described

on the license. A special restricted operator's license may be issued only for the following types of vehicles:

1. Motor bicycles or mopeds; or
2. Specially designed vehicles having a maximum speed of 35 miles per hour which the department authorizes to be operated on the highway.

(b) If a special restricted operator's license is issued for operation of a vehicle described in par. (a) 2, the vehicle may be operated only by the following persons:

1. The holder of the restricted license.
2. A person licensed under this chapter who operates the vehicle for the limited purposes of repairing or testing the vehicle.

(3) **DESIGN OF LICENSE.** The special restricted license shall be of the same size and general design of the operator's license, except that it shall bear the words "SPECIAL RESTRICTED LICENSE". The information on the license shall be the same as specified under s. 343.17 (1) and the holder may affix a decal thereto as provided in s. 343.17 (3). All restrictions imposed under sub. (6) shall be listed on the license or on an attachment thereto.

(4) **PHYSICAL REQUIREMENTS.** The department may set such physical standards as it deems necessary for eligibility for licensing under this section. The standards shall include a vision standard.

(5) **EXAMINATION.** The department may require an applicant to submit to a medical examination to determine whether the applicant meets the standards set under sub. (4). The applicant shall pay the cost of any such examination.

(6) **RESTRICTIONS.** The department may impose such restrictions as it deems necessary on any license issued under this section. Such restrictions may include, but are not limited to, the type of vehicle, special equipment, time of day of operation, and specific geographic areas and streets or routes of travel. A vehicle operated under this section shall display a slow moving vehicle emblem as required under s. 347.245.

(7) **EXPIRATION; RENEWAL.** A special restricted operator's license issued under this section shall expire 2 years after the date of issuance. Within 90 days prior to the expiration of a license, the holder of the restricted license may renew the license by paying the required fee and passing the examination under sub. (1) (a) 4.

**History:** 1979 c. 345; 1981 c. 138; 1983 a. 243.

**343.14 Application for license.** (1) Every application to the department for a license or identification card or for renewal thereof shall be made upon the appropriate form furnished by the department and shall be accompanied by the required fee.

(2) The forms for application shall be determined by the department and shall include:

- (a) The full name, residence and business address and occupation of the applicant;
- (b) The applicant's date of birth, color of eyes, color of hair, sex, height, weight and race;
- (c) A statement as to whether the applicant has heretofore been licensed as an operator or chauffeur and, if so, when and by what jurisdiction;
- (d) Whether any previous license or operating privilege has ever been suspended or revoked or whether application has ever been refused and, if so, the date and place of such suspension, revocation or refusal;

(e) If the application is made by a person under 18 years of age, the signature of an adult sponsor as provided in s. 343.15 (1);

(f) Such further information as the department may reasonably require to enable it to determine whether the applicant is by law entitled to the license applied for; and

(g) A question as to whether the applicant wishes to include his or her name as a donor of an anatomical gift in the record of potential donors maintained by the department. The form shall indicate the following:

1. The applicant is not required to respond to the question under this paragraph in order to obtain a license.

2. The purpose of maintaining the record of potential donors is to facilitate the determination of whether a person is a potential donor in the event of his or her death.

3. An affirmative response to the question under this paragraph does not in itself authorize an anatomical gift. To authorize an anatomical gift, an applicant may comply with s. 157.06 (4) or 343.17 (1) (b).

(3) The department shall, as part of the application process, take a photograph of the applicant to comply with s. 343.17 (2). Except where specifically exempted by statute or by rule of the department, no application may be processed without the photograph being taken. In the case of renewal licenses, the photograph shall be taken once every 4 years, and shall coincide with the appearance for examination which is required under s. 343.16 (1) (a) 2. The department may make provision for issuance of a license without a photograph if the applicant is stationed outside the state in military service and in specific situations where the department deems such action appropriate.

(4) In instituting the photograph license system the department may, for the purpose of gaining a uniform rate of renewals involving photographs and examinations required under s. 343.16 (1) (a) 2, issue renewal licenses not containing the licensee's photograph which may be valid for a period of 2 years as prescribed in ss. 343.17, 1977 stats., and s. 343.20, 1977 stats. The period between examinations required under s. 343.16 (1) (a) 2 may be changed when necessary to conform such examinations to the renewal date of the person's operator's license. The fees for the nonphoto licenses issued under s. 343.17, 1977 stats., and s. 343.20, 1977 stats., shall be the fees in effect on the date before January 1, 1982.

(4m) The department shall develop designs for licenses and identification cards which are resistant to tampering and forgery no later than January 1, 1989. Licenses and identification cards issued on or after January 1, 1989, shall incorporate the designs required under this subsection.

(5) Any person who uses a false or fictitious name in any application for a license or identification card or knowingly makes a false statement or knowingly conceals a material fact or otherwise commits a fraud in any such application may be fined not more than \$100 or imprisoned not more than 6 months or both.

(6) The department shall disseminate information to applicants for a license relating to the anatomical donation opportunity available under s. 343.17 (1) (b). The department shall maintain a record of applicants who respond in the affirmative to the question under sub. (2) (g). In the event of the death of a person, at the request of a law enforcement officer or other appropriate person, as determined by the department, the department shall examine its record of potential donors and shall advise the law enforcement officer or other person as to whether a decedent is recorded as a potential donor.

(7) A person may notify the department in writing at any time if he or she wishes to include his or her name in the record of potential donors maintained by the department. A donor who revokes his or her gift and who has requested that his or her name be included in the record shall request the

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department in writing to remove his or her name from the record.

**History:** 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 124, 360, 447; 1979 c. 306; 1981 c. 20 s. 1848r; 1985 a. 227; 1987 a. 27; 1987 a. 403 s. 256.

**343.15 Application of persons under 18; liability of sponsors; release from liability; notification of juvenile violation.** (1) Except as provided in sub. (4), the application of any person under 18 years of age for a license shall be signed and verified by either of the applicant's parents, or if neither parent has custody, then by the person or guardian having such custody or by the applicant's foster parent or by the applicant's employer. The application shall be signed and verified before a traffic officer, a duly authorized agent of the department or a person duly authorized to administer oaths.

(2) (a) In this subsection, "custody" does not mean joint legal custody as defined in s. 767.001 (1).

(b) Any negligence or wilful misconduct of a person under the age of 18 years when operating a motor vehicle upon the highways is imputed to the parents where both have custody and either parent signed as sponsor, otherwise, it is imputed to the adult sponsor who signed the application for such person's license. The parents or the adult sponsor is jointly and severally liable with such operator for any damages caused by such negligent or wilful misconduct.

(3) Any adult who signed the application of a person under the age of 18 years for a license may thereafter file with the department a verified written request that the license of such minor be canceled. Within 10 days after the receipt of such request the department shall cancel the license. When the license has been so canceled, the adult who signed the application and the parents or guardian of such minor is relieved from the liability which otherwise would be imposed under sub. (2) by reason of having signed such application, or being a parent or guardian, insofar as any negligence or wilful misconduct on the part of the minor while operating a motor vehicle subsequent to the cancellation concerned.

(4) The department may issue a license to a person who is under 18 years of age even though an adult sponsor has not signed the application for license if such person is in one of the classes specifically enumerated herein and if a certificate of insurance to the effect that such person is covered by a motor vehicle policy of liability insurance meeting the requirements of s. 344.33 has been filed with the department. Such policy may be canceled or terminated only after notice as provided in s. 344.34.

(a) A person who does not have a living parent.

(b) A person who does not reside at home and who is earning a living.

(c) A person who is a ward of the state, county or court and who has been placed in a foster home or in the care of a religious welfare service.

(d) A person who is married and whose spouse is under 18 years of age.

(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 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.

**History:** 1971 c. 45; 1971 c. 213 s. 5; 1971 c. 223; 1973 c. 90; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 273; 1979 c. 215, 333, 338, 355; 1985 a. 71; 1987 a. 355.

Summary judgment in favor of an insurer was properly denied when the basis for the insured's liability was sponsorship of driver's license and the policy excluded vehicles used in any business or occupation of any insured, because the son was not an insured and the truck was not being used in the business or occupation of the father. *Biesiadny v. Henningfeld*, 65 W (2d) 88, 221 NW (2d) 690.

Pierringer release of minor did not bar plaintiff's action under (2) against sponsor. *Swanigan v. State Farm Ins. Co.* 99 W (2d) 179, 299 NW (2d) 234 (1980).

Pierringer release of minor barred action under (2) against sponsor by non-settling defendants. *Jackson v. Ozaukee County*, 111 W (2d) 462, 331 NW (2d) 338 (1983).

Stepmother who signed application as sponsor was "parent" under this section. *Ynocencio v. Fesko*, 114 W (2d) 391, 338 NW (2d) 461 (1983).

Sub. (2) is constitutional. *Mikaelian v. Woyak*, 121 W (2d) 581, 360 NW (2d) 706 (Ct. App. 1984).

**343.16 Examination of applicants; reexamination of licensed persons.** (1) (a) The department shall examine every applicant for an operator's license, subject to the following general policy:

1. The examination for persons making their first application for an operator's license shall include a test of the applicant's eyesight, ability to read and understand highway signs regulating, warning and directing traffic, knowledge of the traffic laws, including s. 346.26, understanding of fuel-efficient driving habits and the relative costs and availability of other modes of transportation, and an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle. The test of knowledge of the traffic laws shall include at least 10 questions on the provisions of ss. 343.30 (1q), 343.303 to 343.31 and 346.63 to 346.655, relating to the operation of a motor vehicle and the consumption of alcohol beverages. The test of knowledge may also include questions on the social, medical and economic effects of alcohol and other drug abuse. The department may require persons changing their residence to this state from another jurisdiction, persons applying for a reinstated license after termination of a revocation period and any person who has received more than 6 demerit points under s. 343.32 (2) at any time since the last renewal unless during the preceding year the person has participated in the driver improvement program under s. 343.32 (2), to take all or parts of the examination required of persons making their first application for a driver's license. Any applicant who is required to give an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle shall furnish a vehicle in safe operating condition for use in testing ability.

2. In addition to those examinations specified in subd. 1, the department shall examine every applicant for the renewal of an operator's license once every 4 years. The department may institute a method of selecting the date of renewal so that such examination shall be required for each applicant for renewal of a license to gain a uniform rate of examinations. The examination shall consist of a test of eyesight. The department shall make provisions for giving such examinations at examining stations in each county to all applicants for an operator's license. The person to be examined shall appear at the examining station nearest the person's place of residence or at such time and place as the department designates in answer to an applicant's request. In lieu of examination, the applicant may present or mail to the department a report of examination of the applicant's eyesight by an ophthalmologist, optometrist or physician licensed to practice medicine. The report shall be based on an examination made not more than 3 months prior to the date it is submitted. The report shall be on a form furnished and in the form required by the department. The department shall decide whether, in each case, the eyesight reported is sufficient to meet the current eyesight standards.

(am) The secretary shall develop new and revised standards to govern driver license examinations and reexaminations, taking into consideration any federal standards or requirements which may apply. A public hearing shall be held before a joint session of the senate and assembly



committees having jurisdiction over transportation matters, as determined by the speaker of the assembly and the president of the senate, to review such proposed standards. Such standards shall enter into effect only upon approval as a joint resolution by a majority of the members of the assembly and of the senate.

(b) An applicant who holds an expired instruction permit, expired out-of-state license or who seeks to reinstate his operating privilege may drive a motor vehicle only when accompanied by an authorized license examiner for the purpose of examining his ability to operate a motor vehicle. Such applicant must be driven to and from the examining area by a licensed driver.

(c) The department shall examine every applicant for a license to operate a Type 1 motorcycle. The examination shall test an applicant's knowledge of Type 1 motorcycle safety, including but not limited to proper eye protection to be worn during hours of darkness.

(d) More than one authorized operator's license examiner or supervisor may ride with any licensed operator or applicant for an operator's license for the purpose of examining his ability to operate a motor vehicle.

(e) For purposes of examining applicants for a special restricted operator's license under s. 343.135, the department may waive the requirements of par. (b) in any case in which it deems a waiver desirable.

(f) The department may promulgate rules authorizing a license examiner to waive the operating skill examination of a person applying for a license to operate a motor bicycle or moped if the applicant has the physical ability to operate the vehicle safely. The rules shall ensure that the applicant demonstrates knowledge of the traffic laws necessary for the safe operation of the vehicle.

(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 or optometrist 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 noncompliance with assessment and the driver safety plan, the department shall suspend the person's operating privilege in the manner specified in s. 343.30 (1q) (d).

(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 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 and a list of optometrists licensed to practice optometry in this state. 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.

(c) All reports, records or information furnished by or on behalf of an applicant or licensed operator under this subsection are confidential and shall be for the sole use of the department, the applicant or licensed driver, the review board and the courts in administering this section and are not admissible as evidence for any other purpose in any civil or criminal action. The applicant or licensed driver may give informed written consent for release of this information to others.

(d) Nothing in this subsection shall be interpreted to require the release of this information which was obtained under a pledge of confidentiality and such a clear pledge was made in order to obtain the information and was necessary to obtain the information.

(3) (a) Whenever the secretary has good cause to believe that a licensed operator is incompetent or otherwise not qualified to be licensed, the secretary may, upon written notice of at least 5 days to the licensee, require the licensee to submit to an examination including all or part of the tests specified in sub. (1). Upon the conclusion of such examination the secretary shall take such action as is appropriate under this chapter, including cancellation of the license or permitting the licensee to retain the license subject to such restrictions as the secretary may order or without restrictions.

(b) Whenever the department requires an examination for renewal of an operator's license, it shall issue a receipt at the time of request for appearance for such examination which receipt shall constitute a temporary license to operate a motor vehicle for not to exceed 60 days pending such examination.

(4) Any person required by or pursuant to this section to submit to an examination who by any means secures the

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services of another person to appear in his place to take such examination may be fined not less than \$100 nor more than \$200 or imprisoned not more than 6 months or both.

(5) Any person who appears for an examination under this section in the place of another person required to take such examination may be fined not less than \$100 nor more than \$200 or imprisoned not more than 6 months or both for the first offense and may be fined not less than \$200 nor more than \$500 or imprisoned not more than one year in county jail or both for the second or each subsequent offense thereafter.

**History:** 1971 c. 164 s. 83; 1973 c. 90, 176; 1975 c. 36, 199; 1977 c. 29 ss. 1456, 1654 (7) (a), (c); 1977 c. 273, 418; 1979 c. 34 ss. 1067m, 2102 (52) (a); 1979 c. 221, 345; 1981 c. 20; 1983 a. 74, 243, 534, 538; 1985 a. 65, 337; 1987 a. 3, 40, 215.

**343.17 Contents and issuance of license.** (1) (a) The department shall issue to every applicant qualifying and who has paid the required fee a license as applied for. The license shall be in one-part and consist of 2 sides. The front side shall bear a distinguishing number assigned to the licensee, the date of expiration of the license, the full name, date of birth and residence address and a brief description of the licensee, and either a facsimile of the licensee's signature or a space upon which the licensee shall write his or her usual signature with pen and ink immediately upon receipt of the license. No license is valid until it has been so signed, unless the facsimile signature of the licensee appears on the license. The brief description of the licensee may not include any mention of race.

(b) A part of the license shall be printed to serve as an authorized donor's card under s. 157.06 (4) (b). If the licensee desires to be a donor he or she may so indicate in the space provided on the license. The donor may also supply any of the following specific information in the space provided on the license including specific body parts or organs to be donated, the name of the donee, the purpose for which the gift is made and the surgeon or physician who should carry out the appropriate procedures. The space provided on the license shall be signed by the licensee in the presence of 2 adult witnesses who must sign the license in the donor's presence. The license may also contain printed license restrictions as required by the department.

(c) The licensee may revoke or amend his or her gift according to s. 157.06 (6). Any donor under par. (b) who revokes his or her gift shall cross out the authorization on his or her license. The donor amending his or her gift shall apply for a duplicate license according to s. 343.21 (1) (f).

(d) Persons authorizing gifts of their body parts remain subject to s. 157.06 except where modified by this section.

(2) The various types of licenses issued by the department under this chapter shall be in such form or so designed, colored or marked that each type may readily be distinguished from the others and, except for licenses issued under ss. 343.08, 343.10, 343.12, 343.125 and 343.126, shall contain the licensee's photograph. Licenses issued under s. 343.07 may contain the licensee's photograph. If the license is subject to restrictions, they shall be shown on the license or by an attachment to the license.

(3) (a) The licensee may affix a sticker on the license in the space provided, which indicates that the licensee is a potential donor of body organs or parts for the purposes of transplantation, therapy, medical research or education. The sticker shall not be larger than one-half inch in diameter and shall not conceal any of the contents required by subs. (1) and (2). Such sticker shall be of a distinctive design and supplied to the donor by a nationally recognized organization which enlists donors of body organs or parts for the purpose of transplantation, therapy, medical research or education.

(b) The use of the sticker on the motor vehicle operator's license is proper or authorized only if the bearer has indicated his or her intent to make body organs or parts available by filling out the space provided on the license or by carrying a duly signed and witnessed donor card other than the backside of the license as authorized by s. 157.06.

(4) Subject to the requirements under sub. (1) (a), the department shall promulgate by rule the design and specifications for photo licenses issued under sub. (2). The department shall promulgate by rule any subsequent change to the design or specifications for photo licenses.

**History:** 1971 c. 140; 1977 c. 29 s. 1654 (7) (a); 1977 c. 124, 272; 1979 c. 89, 306, 355; 1981 c. 20; 1985 a. 316 s. 25.

**343.18 License to be carried; verification of signature.** (1) Every licensee shall have his license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand from any judge, justice or traffic officer. However, no person charged with violating this section shall be convicted if he produces in court or in the office of the arresting officer a license theretofore issued to him and valid at the time of his arrest.

(2) For the purpose of verifying the signature on a license, any judge, justice or traffic officer may require the licensee to write his signature in the presence of such officer.

**343.19 Duplicate licenses or identification cards.** (1) If a license issued under this chapter or an identification card issued under s. 343.50 is lost or destroyed, the person to whom the license or identification card was issued may obtain a duplicate thereof or substitute therefor upon furnishing proof satisfactory to the department of name, date and place of birth and that the license or identification card has been lost or destroyed or that application for a duplicate license is required under s. 343.22. If the original license or identification card is found it shall immediately be transmitted to the department. Duplicates of nonphoto licenses shall be issued as nonphoto licenses.

(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).

(2) Any person who knowingly makes a false statement in an application for a duplicate license or identification card or who fails to return the original to the department upon finding it or who fails to comply with any other requirement of this section may be fined not more than \$100 or imprisoned for not more than 6 months or both.

**History:** 1973 c. 218; 1977 c. 29 s. 1654 (7) (a); 1977 c. 360, 447; 1979 c. 306; 1981 c. 20 s. 1848r; 1987 a. 27, 40.

**343.20 Expiration of licenses.** (1) Except as otherwise expressly provided in this chapter, chauffeur's licenses and school bus operator's licenses issued under s. 343.12 (3) shall expire one year after the date of issuance, original licenses, school bus operator's licenses and reinstated licenses shall expire 2 years after the date of issuance and other licenses shall expire 4 years after the date of issuance. The department may institute any system of license renewals which it deems advisable for the purpose of gaining a uniform rate of renewals. In order to put such a system into operation, the department may issue original licenses which are valid for any fraction of a year in excess of the ordinary effective period of such license and may issue a renewal operator's license from an application made after expiration of the previous license

which shall expire 4 years after the date of expiration of such previous license.

(1m) In instituting the system of license renewal the department may, for the purpose of gaining a uniform rate of renewals involving examinations required under s. 343.16 (1) (a) 2, issue renewal licenses which may be valid for a period of 2 years as prescribed in s. 343.20, 1977 stats. The fees for the licenses issued under this subsection shall be the fees in effect prior to January 1, 1982.

(2) The department shall mail to the last-known address of a licensee at least 30 days prior to the expiration of the license a notice of the date upon which such license must be renewed. Failure to receive notice to renew such license shall not be a defense to a charge of operating a motor vehicle without a valid operator's license.

(3) Any person who holds a valid license and who is unable to make a renewal application within the period declared by the department, due to serving with any branch of the armed services, may apply for a renewal of the license at any time during such service or within 6 months after the date of discharge from such services.

**History:** 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1979 c. 306; 1981 c. 20, 42, 71.

**343.21 License fees. (1)** The following fees shall be paid to the department for the issuance, renewal, validation and reinstatement of licenses and instruction permits:

(a) For the issuance of an instruction permit, \$15.

(b) For the issuance of an original license, other than a chauffeur's license, \$9; for an original school bus operator's license other than a school bus operator's license issued under s. 343.12 (3), \$6.50. No fee may be charged for issuance of a restricted license under s. 343.08.

(ba) For the issuance of a chauffeur's license, \$6.

(bm) For the issuance of an original school bus operator's license under s. 343.12 (3), \$3.25.

(c) For the renewal of a license, \$9, except that \$6 shall be charged for renewal of a chauffeur's license and \$4 for renewal of a school bus operator's license other than a school bus operator's license under s. 343.12 (3).

(cm) For renewal of a school bus operator's license issued under s. 343.12 (3), \$2.

(d) For the reinstatement of a license after cancellation, \$20.

(e) For the reinstatement of a license previously revoked, \$50.

(f) For the issuance of a duplicate license, \$4.

(h) For the validation of a current operator's license for operation of a Type 1 motorcycle, \$4.

(j) For the reinstatement of a license previously suspended, \$50.

(2) (a) In addition to the fees set for the issuance of the licenses enumerated under sub. (1) (b), (ba), (bm) and (e), there shall be paid to the department an examination fee of \$5. Payment of the examination fee entitles the applicant to not more than 3 tests of the applicant's ability to exercise reasonable control in the operation of a motor vehicle. If the applicant does not qualify for issuance of a license in 3 such tests, then a 2nd examination fee of \$5 shall be paid, which payment entitles the applicant to not more than 3 additional tests.

(b) The operator shall pay to the department an examination fee of \$5 for conducting the special examination requested under s. 121.555 (2) (cm). Payment of the examination fee entitles the person to not more than 3 tests of the person's ability to safely operate the vehicle proposed to be used under s. 121.555 (1) (a). If the applicant does not pass the examination for safe operation of the vehicle in 3 such

tests, then a 2nd examination fee of \$5 shall be paid, which payment entitles the person to not more than 3 additional tests.

**History:** 1973 c. 90, 309; 1975 c. 5; 1977 c. 29 ss. 1459, 1654 (7) (a); 1977 c. 273; 1979 c. 221, 306; 1981 c. 20, 71; 1983 a. 243; 1985 a. 29, 65; 1987 a. 3, 358.

**343.22 Notice of change of address or name. (1)** Whenever any person, after applying for or receiving a license not containing a photograph under this chapter, moves from the address named in the application or in the license issued to him or her or is notified by the local authorities or by the postal authorities that the address so named has been changed, the person shall within 10 days thereafter notify the department in writing of his or her old and new address and of the number of any license then held by the person. The holder of the license shall endorse the new address on his or her present license and need not apply for a duplicate.

(2) Whenever any person, after applying for or receiving a license containing a photograph under this chapter, or an identification card under s. 343.50, moves from the address named in the application or in the license or identification card issued to him or her, the person shall, within 10 days thereafter, apply for a duplicate license or identification card showing on the application the correct name and address. The licensee or identification card holder shall return the current license or identification card to the department along with the application for duplicate. If the licensee also holds any license not containing a photograph, the licensee shall endorse the new address on the license as provided in sub. (1).

(2m) Whenever any person, after applying for or receiving a license containing a photograph under this chapter, or an identification card under s. 343.50, is notified by the local authorities or by the postal authorities that the address named in the application or in the license or identification card issued to him or her has been changed, the person shall, within 10 days thereafter, apply for a duplicate license or identification card showing on the application the correct name and address. The licensee or identification card holder shall return the current license or identification card to the department along with the application for duplicate. If the licensee also holds any license not containing a photograph, the licensee shall endorse the new address on the license as provided in sub. (1). Notwithstanding ss. 343.21 (1) (f) and 343.50 (7), no fee shall be charged for a duplicate license or identification card issued under this subsection.

(3) When the name of a licensee or identification card holder is changed, such person shall, within 10 days thereafter, apply for a duplicate license or identification card showing the correct name and address. The licensee or identification card holder shall return the current license or identification card to the department along with the application for a duplicate. If the licensee holds more than one type of license under this chapter, the licensee shall return all such licenses to the department along with one application and fee for a duplicate license for which the licensee may be issued a duplicate of each such license.

(4) Any person who fails to comply with any of the requirements of this section may be required to forfeit not more than \$50.

**History:** 1973 c. 129, 218, 336; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273, 360, 447; 1979 c. 306; 1981 c. 20 s. 1848r; 1985 a. 14.

**343.23 Records to be kept by the department. (1)** The department shall file every application for license received by it and shall maintain suitable indices containing:

(a) All applications denied and on each thereof note the reason for such denial;

(b) All applications granted; and

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(c) The name of every licensee whose license has been suspended, revoked or canceled by the department and note thereon the reason for such action.

(2) The department shall maintain a file for each licensee containing the application for license, a record of reports or abstract of convictions, and a record of any reportable accident in which the licensee has been involved, including the type of license issued under this chapter under which the licensee was operating at the time of the accident. This information must be filed by the department so that the complete operator's record is available for the use of the secretary in determining whether operating privileges of such person shall be suspended, revoked, canceled or withheld in the interest of public safety. Such reports and records may be cumulative beyond the period for which a license is granted, but the secretary, in exercising the power of revocation granted under s. 343.32 (2) may consider only those reports and records entered during the 4-year period immediately preceding the exercise of such power of revocation.

(3) The department shall maintain a file, for each person convicted of a violation as defined by s. 343.30 (6) (a), containing a record of reports of convictions of violations as defined by s. 343.30 (6) (a) and suspensions and revocations under s. 343.30 (6). The department may purge the record of any such conviction 24 months after it is reported.

(4) The department shall purge from the file of a licensee any record of an administrative suspension upon receipt of a report from the court hearing the action arising out of the same incident or occurrence that the action has been dismissed or the person has been found innocent of the charge arising out of that incident or occurrence.

**History:** 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1979 c. 331; 1981 c. 178; 1983 a. 74; 1987 a. 3.

**343.24 Department to furnish operating record.** (1) The department shall upon request furnish any person an abstract of the operating record of any person. The abstract shall be certified if certification is requested. Such abstract is not admissible in evidence in any action for damages or criminal proceeding arising out of a motor vehicle accident.

(2) The department shall charge the following fees for conducting searches of vehicle operators' records:

(a) For each file search, \$2.

(b) For each computerized search, \$2.

(c) For each search requested by telephone, \$3, or an established monthly service rate determined by department.

(3) The department shall not disclose information concerning or related to a violation as defined by s. 343.30 (6) to any person other than a court, district attorney, county corporation counsel, city, village or town attorney, law enforcement agency or the minor who committed the violation or his or her parent or guardian.

**History:** 1975 c. 297 s. 9; Stats. 1975 s. 343.24; 1977 c. 29 s. 1654 (7) (e); 1979 c. 221, 331, 355.

### CANCELLATION, REVOCATION AND SUSPENSION OF LICENSES

**343.25 Cancellation of licenses.** The secretary shall cancel a license:

(1) Whenever he determines that the license was issued upon an application which contains a false statement as to any material matter; or

(2) Within 10 days after receiving a written request from a person who signed the application of a person under 18 years of age, or a notice of cancellation or termination of insurance, as provided in s. 343.15; or

(3) When the license is held by a person under 18 years of age and the secretary receives satisfactory evidence of the

death of the adult who signed the application for the license; or

(4) When the person holding the license falls into one of the classes of persons to whom the law prohibits issuance of a license; or

(5) Whenever the secretary determines that a person has secured a license by hiring or permitting another to appear in the person's place to take an examination; or

(6) Whenever the secretary determines that a license has been altered and returned for cancellation under s. 343.43 (2); or

(7) When a person who has been ordered to submit to an examination under s. 343.16 or to appear for either group or individual counseling or examination under s. 343.32 (2) fails or refuses to do so. Such cancellation shall continue until compliance with the order has been made or the order is rescinded.

**History:** 1975 c. 5, 199; 1977 c. 29 s. 1654 (7) (c).

When a demand for surrender and cancellation of a driver's license is made under this section or statutes incorporated therein by reference, the department should identify the particular provision relied on. Where the driver had had 3 lapses into unconsciousness within 6 months, his license could be canceled without a hearing. *Gleason v. Dept. of Transportation*, 61 W (2d) 562, 213 NW (2d) 74.

**343.26 License after cancellation.** Any person whose license has been canceled, whether the license has been canceled by the secretary or stands canceled as a matter of law, may apply for a new license at any time. Upon receipt of the application and the required fee, the department shall issue or refuse issuance of the license as upon an original application. The department may, but need not, require the applicant to submit to an examination as provided in s. 343.16.

**History:** 1977 c. 29 s. 1654 (7) (a), (c).

**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).

**History:** 1987 a. 40.

**343.27 Accused to be instructed as to mandatory revocation and demerit point provisions.** (1) (a) Whenever a person is charged with a violation of law which requires upon conviction that the operating privilege be revoked, the en-

forcement officer, city or village attorney or district attorney handling the case shall inform the person that a plea of guilty or no contest or a forfeiture of deposit under ch. 345 will result in revocation and shall require the person to sign a statement of having been so informed. One copy of the statement shall be given to the defendant, except where the statement and deposit are mailed under s. 345.25, and one copy shall be filed with the court.

(b) If the conviction will result in the person's operator's record being charged with demerit points as established by rule under s. 343.32 (2), the officer or attorney shall inform the person that a plea of guilty or no contest or a forfeiture of deposit under ch. 345 will result in the operator's record being charged with demerit points as prescribed by the rules and shall inform the person of the number of points which is cause for revocation of an operating privilege.

(2) (a) Before taking the plea of a person charged with a violation of law which requires upon conviction that the person's operating privilege be revoked or that the person's operator's record be charged with demerit points as established by rule under s. 343.32 (2), the presiding judge or municipal judge shall inform the defendant that conviction will result in the operating privilege being revoked or the record being charged with points, including a statement as to the number of points which is cause for revocation.

(b) No deposit shall be forfeited on a charge concerning which a statement must be filed with the court under sub. (1), unless the statement has been filed, but this shall not be construed to prevent revocation authorized by law on the basis of forfeiture of deposit or plea of guilty or no contest in a court in another jurisdiction even though the person in question was not given notice as provided in this section.

(c) Whenever a person has been convicted in this state on the basis of a forfeiture of deposit or a plea of guilty or no contest and the person was not informed as required by this section, the person may, within 60 days after being notified of the revocation of the operating privilege, petition the court for reopening the judgment and for an opportunity to defend on the merits and the court shall so order. The order automatically reinstates the revoked operating privilege.

(3) Whenever a person is charged with a violation of law which requires upon conviction that the operating privilege be revoked or that the operator's record be charged with demerit points as established by rule under s. 343.32 (2), the official authorized to receive the stipulation of no contest shall inform the offender before accepting the stipulation that it will result in the person's operating privilege being revoked or the person's record being charged with points, including a statement as to the number of points which is cause for revocation, and shall require the person to sign a statement of having been so informed. The statement shall be a part of or attached to the stipulation of no contest.

**History:** 1971 c. 278; 1985 a. 332.

Failure to inform accused under (1) prior to administration of breathalyzer test did not constitute denial of due process or illegal search and seizure. *Milwaukee County v. Proegler*, 95 W (2d) 614, 291 NW (2d) 608 (Ct. App. 1980).

Defendant, convicted of operating an automobile without the owner's consent, did not establish denial of due process in automatic revocation of his driver's license, where he does not show that he was not given notice, hearing and opportunity to present evidence. *Nusberger v. Div. of Motor Vehicles*, 352 F Supp. 515.

**343.28 Courts to report convictions and forward licenses to the department.** (1) Whenever a person is convicted of a moving traffic violation under chs. 341 to 349 or under a local ordinance enacted under ch. 349, the clerk of the court in which the conviction occurred, or the justice, judge or magistrate of a court not having a clerk, shall, as provided in s. 345.48, forward to the department the record of such conviction. The record of conviction forwarded to the department

shall state whether the offender was involved in an accident at the time of the offense and whether the offender was operating as a private person or as a chauffeur at the time of the offense.

(2) Whenever a person is convicted of any offense for which s. 343.31 makes mandatory the revocation by the secretary of such person's operating privilege, the court in which the conviction occurred shall require the surrender to it of any license then held by such person. The clerk of the court, or the justice, judge or magistrate if the court has no clerk, shall, as provided in s. 345.48, forward to the department the record of conviction and any surrendered licenses. The record of conviction forwarded to the department shall state whether the offender was involved in an accident at the time of the offense and whether the offender was operating as a private person or as a chauffeur at the time of the offense.

(3) If a person is convicted of committing a violation as defined by s. 343.30 (6) (a), the clerk of the court, or the justice, judge or magistrate if the court has no clerk, shall, as provided in s. 345.48, forward to the department the record of conviction and any surrendered licenses.

(4) Any person who fails to comply with any provision of this section relative to forwarding records of convictions to the department may be fined not more than \$100 or imprisoned not more than 6 months or both.

**History:** 1971 c. 278; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1979 c. 331.

**343.30 Suspension and revocation by the courts.** (1) A court may suspend or revoke a person's operating privilege for any period not exceeding one year upon such person's conviction in such court of violating any of the state traffic laws or any local ordinance enacted under ch. 349. In exercising the authority to suspend or revoke an operating privilege, the court may suspend such privilege only when the operator has not had his operating privilege suspended or revoked previously, except under s. 344.14 (1), or when his present demerit point accumulation is not more than 25% above the demerit point accumulation set for suspension or revocation. In all other cases under this section, the court shall revoke the operating privilege of such operator.

(1n) A court shall suspend the operating privilege of a person for a period of 15 days upon the person's conviction by the court of exceeding the applicable speed limit as established by s. 346.57 (4) (gm) or (h), by 25 or more miles per hour. If the conviction makes the person subject to revocation under s. 343.32 or suspension or revocation under s. 343.085, the court shall immediately suspend the license, taking possession of the license and shall forward it to the department which shall proceed to act as authorized under s. 343.32 or 343.085, but any revocation or suspension by the secretary shall date from the day the court took possession of the license.

(1p) Notwithstanding sub. (1), a court shall suspend the operating privilege of a person for 3 months upon the person's conviction by the court for violation of s. 346.63 (2m) or a local ordinance in conformity therewith.

(1q) (a) If a person is convicted under s. 346.63 (1) or a local ordinance in conformity therewith, the court shall proceed under this subsection. If a person is convicted under s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, the court shall proceed under pars. (c) and (d). If a person is referred by the department acting under s. 343.16 (2) (a), the department shall proceed under pars. (c) and (d) without the order of the court.

(b) For persons convicted under s. 346.63 (1) or a local ordinance in conformity therewith:

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1. The court shall suspend or revoke the person's operating privilege under this paragraph according to the number of previous improper refusals under s. 343.305 (9) (d) or convictions under s. 346.63 (1), or a local ordinance in conformity therewith, or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle. Refusals and convictions arising out of the same incident shall be counted as one. If a person has a conviction for any offense under a local ordinance in or a state statute of another state which is in conformity with s. 346.63 (1) (a) or (b) or both, that conviction shall count as a prior conviction under this subdivision.

2. Except as provided in subd. 3 or 4, for the first such conviction, the court shall suspend the person's operating privilege for not less than 6 months nor more than 9 months. The person is eligible for an occupational license under s. 343.10 at any time.

3. If the number of refusals and convictions within a 5-year period equals 2, the court shall revoke the person's operating privilege for not less than one year nor more than 18 months. After the first 60 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

4. If the number of refusals and convictions within a 5-year period equals 3 or more, the court shall revoke the person's operating privilege for not less than 2 years nor more than 3 years. After the first 90 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

5. The 5-year period under this paragraph shall be measured from the dates of the refusals or violations which resulted in the revocations or convictions.

6. The court may not issue a temporary occupational license under s. 343.10 (1) to a person under this subsection before he or she is eligible for an occupational license.

(c) 1. Except as provided in subd. 1. a or b, the court shall order the person to submit to and comply with an assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for examination of the person's use of alcohol or controlled substances and development of a driver safety plan for the person. The court shall notify the department of transportation of the assessment order. The court shall notify the person that noncompliance with assessment or the driver safety plan will result in license suspension until the person is in compliance. The assessment order shall:

a. If the person is a resident, refer the person to an approved public treatment facility in the county in which the person resides. The facility named in the order may provide for assessment of the person in another approved public treatment facility. The order shall provide that if the person is temporarily residing in another state, the facility named in the order may refer the person to an appropriate treatment facility in that state for assessment and development of a driver safety plan for the person satisfying the requirements of that state.

b. If the person is a nonresident, refer the person to an approved public treatment facility in this state. The order shall provide that the facility named in the order may refer the person to an appropriate treatment facility in the state in which the person resides for assessment and development of a driver safety plan for the person satisfying the requirements of that state.

c. Require a person who is referred to a treatment facility in another state under subd. 1. a or b to furnish the department written verification of his or her compliance from the agency which administers the assessment and driver safety plan program. The person shall provide initial verification of compliance within 60 days after the date of his or her conviction. The requirement to furnish verification of com-

pliance may be satisfied by receipt by the department of such verification from the agency which administers the assessment and driver safety plan program.

2. The department of health and social services shall establish standards for assessment procedures and the driver safety plan programs by rule. The department of health and social services shall establish by rule conflict of interest guidelines for providers.

3. Prior to developing a plan which specifies treatment, the facility shall make a finding that treatment is necessary and appropriate services are available. The facility shall submit a report of the assessment and the driver safety plan within 14 days to the county department under s. 51.42, the plan provider, the department of transportation and the person, except that upon request by the facility and the person, the county department may extend the period for assessment for not more than 20 additional workdays. The county department shall notify the department of transportation regarding any such extension.

(d) The assessment report shall order compliance with a driver safety plan. The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The driver safety plan may include treatment for the person's misuse, abuse or dependence on alcohol or controlled substances, or attendance at a school under s. 345.60, or both. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. A driver safety plan under this paragraph shall include a termination date consistent with the plan which shall not extend beyond one year. The county department under s. 51.42 shall assure notification of the department of transportation and the person of the person's compliance or noncompliance with assessment and with treatment. The school under s. 345.60 shall notify the department, the county department under s. 51.42 and the person of the person's compliance or noncompliance with the requirements of the school. Nonpayment of the assessment fee is noncompliance with the court order. If the department is notified of any noncompliance, it shall suspend the person's operating privilege until the county department under s. 51.42 or the school under s. 345.60 notifies the department that the person is in compliance with assessment or the driver safety plan. The department shall notify the person of the suspension, the reason for the suspension and the person's right to a review. A person may request a review of a suspension based upon failure to comply with a driver safety plan within 10 days of notification. The review shall be handled by the subunit of the department of transportation designated by the secretary. The issues at the review are limited to whether the driver safety plan, if challenged, is appropriate and whether the person is in compliance with the assessment order or the driver safety plan. The review shall be conducted within 10 days after a request is received. If the driver safety plan is determined to be inappropriate, the department shall order a reassessment and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If the person is determined to be in compliance with the assessment or driver safety plan, and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If there is no decision within the 10-day period, the department shall issue an order reinstating the person's operating privilege until the review is completed, unless the delay is at the request of the person seeking the review.

(e) Notwithstanding par. (c), if the court finds that the person is already covered by an assessment or is participating in a driver safety plan or has had evidence presented to it by a county department under s. 51.42 that the person has recently completed assessment, a driver safety plan or both, the court

is not required to make an order under par. (c). This paragraph does not prohibit the court from making an order under par. (c), if it deems such an order advisable.

(f) The department may make any order which the court is authorized or required to make under this subsection if the court fails to do so.

(g) If a person licensed as a chauffeur is convicted of a violation of s. 346.63 (1) or a local ordinance in conformity therewith and the person was not operating a vehicle as a chauffeur at the time of violation, his or her chauffeur's license shall not be suspended or revoked under this subsection.

(h) The court shall provide that the period of suspension or revocation imposed under this subsection be reduced by any period of suspension or revocation previously imposed under s. 343.305 if the suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63 (1) or a local ordinance in conformity therewith arise out of the same incident or occurrence. The court may modify an occupational license authorized under s. 343.305 (8) (d) in accordance with this subsection.

(2d) A court may suspend or revoke a person's operating privilege upon conviction of any offense specified under ss. 940.225, 948.02 and 948.07, if the court finds that it is inimical to the public safety and welfare for the offender to have operating privileges. The suspension or revocation shall be for one year or until discharge from prison or jail sentence or probation or parole with respect to the offenses specified, whichever date is later. Receipt of a certificate of discharge from the department of health and social services or other responsible supervising agency, after one year has elapsed since the suspension or revocation, entitles the holder to reinstatement of operating privileges. The holder may be required to present the certificate to the secretary if the secretary deems necessary.

NOTE: Sub. (2d) is shown as amended by 1987 Wis. Act 332, s. 64, eff. 7-1-89. Act 332 deleted "944.12" and added "948.02 and 948.07".

(2m) A court may suspend a person's operating privilege upon such person's first conviction for violating s. 346.93 and may revoke a person's operating privilege upon such person's second or subsequent conviction for violating s. 346.93. Such suspension or revocation shall be for a period of not less than 30 days nor more than one year.

(3) The judge who ordered the issuance of an occupational license may revoke such license whenever the judge, upon the facts, does not see fit to permit the licensee to retain his occupational license. Such revocation shall be for a period of one year.

(4) Whenever a court or judge suspends or revokes an operating privilege, the court or judge shall immediately take possession of any suspended or revoked license and shall forward it as provided in s. 345.48 to the department together with the record of conviction and notice of suspension or revocation. Whenever a court or judge restricts the operating privilege of a person such restriction shall be endorsed upon the operator's license and notice of such restriction forwarded to the department.

(5) No court may suspend or revoke an operating privilege except as authorized by this chapter or ch. 48, 345 or 351. When a court revokes, suspends or restricts a child's operating privilege under s. 48.17 (2), 48.34 (7) or (8), 48.342 (1), 48.343 (2) or 48.345 (2) the department of transportation shall not disclose information concerning or relating to the revocation, suspension or restriction to any person other than a court, district attorney, county corporation counsel, city, village or town attorney, law enforcement agency, or the minor whose operating privilege is revoked, suspended or

restricted, or his or her parent or guardian. Persons entitled to receive this information shall not disclose the information to other persons or agencies.

(6) (a) In this subsection, "violation" means a violation of s. 125.07 (4) (a) or (b), 125.08 (3) (b) or 125.09 (2) or a local ordinance which strictly conforms to one of those statutes.

(b) If a court imposes suspension or revocation of a person's operating privilege under s. 48.344 or 125.07 (4) (c), the suspension or revocation imposed shall be one of the following:

1. For a first violation, suspension for 30 to 90 days.

2. For a violation committed within 12 months of a previous violation, suspension for one year.

3. For a violation committed within 12 months of 2 or more previous violations, revocation for 2 years.

(c) Except as provided by par. (d), the suspension or revocation of the operating privilege under this subsection shall commence on the date of disposition.

(d) If the person subject to suspension or revocation under this subsection does not hold a valid license under this chapter other than a license under s. 343.07 or 343.08 on the date of disposition, the suspension or revocation under par. (b) shall commence on the date that such a license would otherwise be reinstated or issued after the person applies and qualifies for issuance or 2 years from the date of disposition, whichever occurs first.

(e) If a court suspends or revokes an operating privilege or license under this subsection, it shall immediately take possession of the license and forward it to the department, together with notice of the suspension or revocation.

History: 1971 c. 213 s. 5; 1971 c. 278; 1973 c. 70, 218; 1975 c. 5; 1975 c. 184 s. 13; 1975 c. 199, 297, 421; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 30, 64, 193, 203; 1979 c. 221, 300, 331, 333, 355; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 17; 1983 a. 74 ss. 23m to 26, 32; 1983 a. 192; 1985 a. 80, 176, 337; 1987 a. 3, 17, 285; 1987 a. 332 s. 64.

Suspension or revocation of operating privilege under (1) applies to both the regular driver's license and to the chauffeur's license. 63 Atty. Gen. 240.

**343.303 Preliminary breath screening test.** If a law enforcement officer has probable cause to believe that the person is violating or has violated s. 346.63 (1) or (2m) or a local ordinance in conformity therewith, or s. 346.63 (2) or 940.25 or s. 940.09 where the offense involved the use of a vehicle, the officer, prior to an arrest, may request the person to provide a sample of his or her breath for a preliminary breath screening test using a device approved by the department for this purpose. The result of this preliminary breath screening test may be used by the law enforcement officer for the purpose of deciding whether or not the person shall be arrested for a violation of s. 346.63 (1) or (2m) or a local ordinance in conformity therewith, or s. 346.63 (2), 940.09 or 940.25 and whether or not to require or request chemical tests as authorized under s. 343.305 (3). The result of the preliminary breath screening test shall not be admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to prove that a chemical test was properly required or requested of a person under s. 343.305 (3). Following the screening test, additional tests may be required or requested of the driver under s. 343.305 (3). The general penalty provision under s. 939.61 (1) does not apply to a refusal to take a preliminary breath screening test.

History: 1981 c. 20; 1985 a. 32 s. 3; 1985 a. 337; 1987 a. 3.

**343.305 Tests for intoxication; administrative suspension and court-ordered revocation. (1) DEFINITIONS.** In this section:

(a) "Blood alcohol concentration of 0.1% or more" means a blood alcohol concentration of 0.1% or more by weight of

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alcohol in a person's blood or 0.1 grams or more of alcohol in 210 liters of a person's breath.

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

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

(2) **IMPLIED CONSENT.** Any person who drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in s. 346.61, is deemed to have given consent to one or more tests of his or her breath, blood or urine, for the purpose of determining the presence or quantity in his or her blood or breath, of alcohol, controlled substances, a combination of alcohol and controlled substances, other drugs or a combination of alcohol and other drugs when requested to do so by a law enforcement officer under sub. (3) (a) or when required to do so under sub. (3) (b). Any such tests shall be administered upon the request of a law enforcement officer. The law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility, 2 of the 3 tests under sub. (3) (a), and may designate which of the tests shall be administered first.

(3) **REQUESTED OR REQUIRED.** (a) Upon arrest of a person for violation of s. 346.63 (1) or (2m) or a local ordinance in conformity therewith, or for a violation of s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, a law enforcement officer may request the person to provide one or more samples of his or her breath, blood or urine for the purpose specified under sub. (2).

(b) A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person has violated s. 346.63 (1) or (2m) or a local ordinance in conformity therewith, or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, one or more tests under par. (a) may be administered to the person.

(c) This section does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

(4) **INFORMATION.** At the time a chemical test specimen is requested under sub. (3) (a), the person shall be orally informed by the law enforcement officer that:

(a) He or she is deemed to have consented to tests under sub. (2);

(b) If testing is refused, the person's operating privilege will be revoked under this section;

(c) If one or more tests are taken and the results of any test indicate that the person has a blood alcohol concentration of 0.1% or more, the person will be subject to penalties and the person's operating privilege will be suspended under this section; and

(d) After submitting to testing, the person tested has the right to have an additional test made by a person of his or her own choosing.

(5) **ADMINISTERING THE TEST; ADDITIONAL TESTS.** (a) If the person submits to a test under this section, the officer shall direct the administering of the test. A blood test is subject to par. (b). The person who submits to the test is permitted, upon his or her request, the alternative test provided by the agency under sub. (2) or, at his or her own expense, reasonable opportunity to have any qualified person of his or her own choosing administer a chemical test for the purpose specified under sub. (2). If the person has not been requested to provide a sample for a test under sub. (3) (a), the person may request a breath test to be administered by the agency or,

at his or her own expense, reasonable opportunity to have any qualified person administer any test specified under sub. (3) (a). The failure or inability of a person to obtain a test at his or her own expense does not preclude the admission of evidence of the results of any test administered under sub. (3) (a). If a person requests the agency to administer a breath test and if the agency is unable to perform that test, the person may request the agency to perform a test under sub. (3) (a) that it is able to perform. The agency shall comply with a request made in accordance with this paragraph.

(b) Blood may be withdrawn from the person arrested for violation of s. 346.63 (1), (2) or (2m) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1) or (2m), or as provided in sub. (3) (b) to determine the presence or quantity of alcohol, a controlled substance, a combination of alcohol and a controlled substance, any other drug or a combination of alcohol and any other drug in the blood only by a physician, registered nurse, medical technologist, physician's assistant or person acting under the direction of a physician.

**NOTE:** Sub. (5) (b) is shown as affected by 1987 Wis. Act 399, eff. 3-1-89, by deleting the reference to s. 350.10 (3).

(c) A person acting under par. (b), the employer of any such person and any hospital where blood is withdrawn by any such person have immunity from civil or criminal liability under s. 895.53.

(d) At the trial of any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have been driving or operating a motor vehicle while under the influence of an intoxicant or a controlled substance or a combination of alcohol and a controlled substance, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, or having a blood alcohol concentration of 0.1% or more, the results of a test administered under sub. (3) or this subsection are admissible on the issue of whether the person was under the influence of an intoxicant or a controlled substance or a combination of alcohol and a controlled substance, under the influence of any other drug to a degree which renders him or her incapable of safely driving or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or any issue relating to the person's blood alcohol concentration. Test results shall be given the effect required under s. 885.235.

(6) **REQUIREMENTS FOR TESTS.** (a) Chemical analyses of blood or urine to be considered valid under this section shall have been performed substantially according to methods approved by the laboratory of hygiene and by an individual possessing a valid permit to perform the analyses issued by the department of health and social services. The department of health and social services shall approve laboratories for the purpose of performing chemical analyses of blood or urine for alcohol or controlled substances and shall develop and administer a program for regular monitoring of the laboratories. A list of approved laboratories shall be provided to all law enforcement agencies in the state. Urine specimens are to be collected by methods specified by the laboratory of hygiene. The laboratory of hygiene shall furnish an ample supply of urine and blood specimen containers to permit all law enforcement officers to comply with the requirements of this section.

**Revisor's Note, 1988:** The amendment of par. (a) by 1987 Wis. Act 399, section 443an, is not shown as it has no effect. The language is from 1987 Wis. Act 3, section 30, which was repealed and recreated by section 29 of the same Act, eff. 1-1-88.



(b) The department of transportation shall approve techniques or methods of performing chemical analysis of the breath and shall:

1. Approve training manuals and courses throughout the state for the training of law enforcement officers in the chemical analysis of a person's breath;

2. Certify the qualifications and competence of individuals to conduct the analysis;

3. Have trained technicians, approved by the secretary, test and certify the accuracy of the equipment to be used by law enforcement officers for chemical analysis of a person's breath under sub. (3) (a) before regular use of the equipment and periodically thereafter at intervals of not more than 120 days; and

4. Issue permits to individuals according to their qualifications.

(c) For purposes of this section, if a breath test is administered using an infrared breath-testing instrument:

1. The test shall consist of analyses in the following sequence: one adequate breath sample analysis, one calibration standard analysis, and a 2nd, adequate breath sample analysis.

2. A sample is adequate if the instrument analyzes the sample and does not indicate the sample is deficient.

3. Failure of a person to provide 2 separate, adequate breath samples in the proper sequence constitutes a refusal.

(d) The department of transportation may promulgate rules pertaining to the calibration and testing of preliminary breath screening test devices.

**(7) CHEMICAL TEST; ADMINISTRATIVE SUSPENSION.** If a person submits to chemical testing administered in accordance with this section and any test results indicate a blood alcohol concentration of 0.1% or more, the law enforcement officer shall report the results to the department and take possession of the person's license and forward it to the department. The person's operating privilege is administratively suspended for 6 months.

**(8) CHEMICAL TEST; ADMINISTRATIVE SUSPENSION; ADMINISTRATIVE AND JUDICIAL REVIEW.** (a) The law enforcement officer shall notify the person of the administrative suspension under sub. (7). The notice shall advise the person that his or her operating privilege will be administratively suspended and that he or she has the right to obtain administrative and judicial review under this subsection. The notice shall include a form for the person to use to request administrative review under this subsection. This notice of administrative suspension serves as a 30-day temporary license. An administrative suspension under sub. (7) becomes effective at the time the 30-day temporary license expires. The officer shall submit or mail a copy of the notice to the department.

(b) 1. Within 10 days after the notification under par. (a), the person may request, in writing, that the department review the administrative suspension. The review procedure is not subject to ch. 227. If the offense allegedly occurred in the county of Milwaukee, Waukesha or Dane, the department shall refer the matter to the office of the commissioner of transportation and the office of the commissioner of transportation shall hold the hearing on the matter. The department shall hold the hearing on the matter if the offense allegedly occurred in any other county. Hearings by the department shall be held in the county in which the offense allegedly occurred or at the nearest office of the department if the offense allegedly occurred in a county in which the department does not maintain an office. The department or the office of the commissioner of transportation, respectively, shall hold a hearing regarding the administrative suspension within 30 days after the date of notification under par. (a).

The person may present evidence and may be represented by counsel. The arresting officer need not appear, but the hearing officer must have a copy of the officer's report and the results of the chemical test.

2. The administrative hearing under this paragraph is limited to the following issues:

a. The correct identity of the person.

b. Whether the person was informed of the options regarding tests under this section as required under sub. (4).

bm. Whether the person had a blood alcohol concentration of 0.1% or more at the time the offense allegedly occurred.

c. Whether one or more tests were administered in accordance with this section.

d. If one or more tests were administered in accordance with this section, whether each of the test results for those tests indicate the person had a blood alcohol concentration of 0.1% or more.

e. Whether probable cause existed for the arrest.

3. If the hearing examiner finds that the criteria for administrative suspension have not been satisfied or that the person did not have a blood alcohol concentration of 0.1% or more at the time the offense allegedly occurred, the examiner shall order that the administrative suspension of the person's operating privilege be rescinded without payment of the fee under s. 343.21 (1) (j). If the hearing examiner finds that the criteria for administrative suspension have been satisfied and that the person had a blood alcohol concentration of 0.1% or more at the time the offense allegedly occurred, the administrative suspension shall continue.

(c) 1. An individual aggrieved by the determination of the hearing examiner may have the determination reviewed by the court hearing the action relating to the applicable violation listed under sub. (3) (a) or by a court commissioner authorized to review the determination as provided in s. 757.69 (1m). If the review is by the court and the person submits a petition for prompt review, the court shall conduct the review as expeditiously as possible to minimize the impact upon the individual of any delay. If the individual does not submit a petition for prompt review, the court shall conduct the review in conjunction with the trial or sentencing for the action. If the review is by a court commissioner and the person submits a petition for prompt review, the court commissioner shall conduct the review as expeditiously as possible. The judicial review is limited to the issues specified in par. (b) 2.

2. The court or court commissioner shall order that the administrative suspension be either rescinded or sustained. The court or court commissioner shall file its order with the department within 14 days after the hearing.

3. Any party aggrieved by the order of a circuit court or a court commissioner under subd. 2 may appeal to the court of appeals. Any party aggrieved by the order of a municipal court under subd. 2 may appeal to the circuit court for the county where the offense allegedly occurred.

4. A request for judicial review under this subsection does not stay any administrative suspension order.

5. If any court or court commissioner orders under this subsection that the administrative suspension of the person's operating privilege be rescinded, the person need not pay the fee under s. 343.21 (1) (j).

(d) A person who has his or her operating privilege administratively suspended under this subsection is eligible for an occupational license under s. 343.10 at any time.

(e) If the operating privilege of a person licensed as a chauffeur is administratively suspended under this subsection and the person was not driving or operating a vehicle as a

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chauffeur at the time of violation, his or her chauffeur's license shall not be administratively suspended under this subsection.

(9) REFUSALS; NOTICE AND COURT HEARING. (a) In addition to the requirements under subs. (1) to (8), if a person refuses to take a test under sub. (3) (a), the law enforcement officer shall immediately prepare a notice of intent to revoke, by court order under sub. (10), the person's operating privilege. The officer shall issue a copy of the notice of intent to revoke the privilege to the person and submit or mail a copy to the circuit court for the county in which the refusal is made, the district attorney for that county and the department. The notice of intent to revoke the person's operating privilege shall contain substantially the following information:

1. That prior to a request under sub. (3) (a), the officer had placed the person under arrest and issued a citation, if appropriate, for a violation of s. 346.63 (1) or (2m) or a local ordinance in conformity therewith or s. 346.63 (2), 940.09 or 940.25.

2. That the officer complied with sub. (4).

3. That the person refused a request under sub. (3) (a).

4. That the person may request a hearing on the revocation within 10 days by mailing or delivering a written request to the court whose address is specified in the notice. If no request for a hearing is received within the 10-day period, the revocation period commences 30 days after the notice is issued.

5. That the issues of the hearing are limited to:

a. Whether the officer had probable cause to believe the person was driving or operating a motor vehicle while under the influence of alcohol, a controlled substance or a combination of both, 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 alcohol and any other drug to a degree which renders him or her incapable of safely driving or having a blood alcohol concentration of 0.1% or more and whether the person was lawfully placed under arrest for violation of s. 346.63 (1) or (2m) or a local ordinance in conformity therewith or s. 346.63 (2), 940.09 or 940.25.

b. Whether the officer complied with sub. (4).

c. Whether the person refused to permit the test.

d. The person shall be deemed not to have refused the test if it is shown by a preponderance of evidence that the refusal was due to a physical inability to submit to the test due to a physical disability or disease unrelated to the use of alcohol, controlled substances or other drugs.

6. That, if it is determined that the person refused the test, there will be an order for the person to comply with assessment and a driver safety plan.

(b) The use of the notice under par. (a) by a law enforcement officer in connection with the enforcement of this section is adequate process to give the appropriate court jurisdiction over the person.

(c) If a law enforcement officer informs the circuit court that a person has refused to submit to a test under sub. (3) (a), the court shall be prepared to hold any requested hearing to determine if the refusal was proper. The scope of the hearing shall be limited to the issues outlined in par. (a) 5. Section 967.055 applies to any hearing under this subsection.

(d) At the close of the hearing, or within 5 days thereafter, the court shall determine the issues under par. (a) 5. If all issues are determined adversely to the person, the court shall proceed under sub. (10). If one or more of the issues is determined favorably to the person, the court shall order that no action be taken on the operating privilege on account of the person's refusal to take the test in question. This section does not preclude the prosecution of the person for violation

of s. 346.63 (1) or (2m) or a local ordinance in conformity therewith, s. 346.63 (2), 940.09 or 940.25.

(10) REFUSALS; COURT-ORDERED REVOCATION. (a) If the court determines under sub. (9) (d) that a person improperly refused to take a test or if the person does not request a hearing within 10 days after the person has been served with the notice of intent to revoke the person's operating privilege, the court shall proceed under this subsection. If no hearing was requested, the revocation period shall begin 30 days after the date of the refusal. If a hearing was requested, the revocation period shall commence 30 days after the date of refusal or immediately upon a final determination that the refusal was improper, whichever is later.

(b) 1. The court shall revoke the person's operating privilege under this paragraph according to the number of previous improper refusals under sub. (9) (d) or convictions under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle. Refusals and convictions arising out of the same incident shall be counted as one. If a person has a conviction for any offense under a local ordinance in or a state statute of another state which is in conformity with s. 346.63 (1) (a) or (b) or both, that conviction shall count as a prior conviction under this subdivision.

2. Except as provided in subd. 3 or 4, for the first improper refusal, the court shall revoke the person's operating privilege for one year. After the first 30 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

3. If the number of refusals and convictions in a 5-year period equals 2, the court shall revoke the person's operating privilege for 2 years. After the first 90 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

4. If the number of refusals and convictions in a 5-year period equals 3 or more, the court shall revoke the person's operating privilege for 3 years. After the first 120 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

5. The 5-year period under this paragraph shall be measured from the dates of the refusals or violations which resulted in revocations or convictions.

6. The court may not order a temporary occupational license under s. 343.10 (1) to a person under this subsection before he or she is eligible for an occupational license.

(c) 1. Except as provided in subd. 1. a or b, the court shall order the person to submit to and comply with an assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for examination of the person's use of alcohol or controlled substances and development of a driver safety plan for the person. The court shall notify the person and the department of transportation of the assessment order. The court shall also notify the person that noncompliance with assessment or the driver safety plan will result in license suspension until the person is in compliance. The assessment order shall:

a. If the person is a resident, refer the person to an approved public treatment facility in the county in which the person resides. The facility named in the order may provide for assessment of the person in another approved public treatment facility. The order shall provide that if the person is temporarily residing in another state, the facility named in the order may refer the person to an appropriate treatment facility in that state for assessment and development of a driver safety plan for the person satisfying the requirements of that state.

b. If the person is a nonresident, refer the person to an approved public treatment facility in this state. The order shall provide that the facility named in the order may refer the person to an appropriate treatment facility in the state in which the person resides for assessment and development of a driver safety plan for the person satisfying the requirements of that state.

c. Require a person who is referred to a treatment facility in another state under subd. 1. a or b to furnish the department written verification of his or her compliance from the agency which administers the assessment and driver safety plan program. The person shall provide initial verification of compliance within 60 days after the date of his or her conviction. The requirement to furnish verification of compliance may be satisfied by receipt by the department of such verification from the agency which administers the assessment and driver safety plan program.

2. The department of health and social services shall establish standards for assessment procedures and the driver safety plan programs by rule. The department of health and social services shall establish by rule conflict of interest guidelines for providers.

3. Prior to developing a plan which specifies treatment, the facility shall make a finding that treatment is necessary and appropriate services are available. The facility shall submit a report of the assessment and the driver safety plan within 14 days to the county department under s. 51.42, the plan provider, the department of transportation and the person, except that upon request by the facility and the person, the county department may extend the period for assessment for not more than 20 additional workdays. The county department shall notify the department of transportation regarding any such extension.

(d) The assessment report shall order compliance with a driver safety plan. The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The driver safety plan may include treatment for the person's misuse, abuse or dependence on alcohol or controlled substances, attendance at a school under s. 345.60, or both. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. A driver safety plan under this paragraph shall include a termination date consistent with the plan which shall not extend beyond one year. The county department under s. 51.42 shall assure notification of the department of transportation and the person of the person's compliance or non-compliance with assessment and treatment. The school under s. 345.60 shall notify the department, the county department under s. 51.42 and the person of the person's compliance or noncompliance with the requirements of the school. Nonpayment of the assessment fee is noncompliance with the court order. If the department is notified of noncompliance, it shall suspend the person's operating privilege until the county department under s. 51.42 or the school under s. 345.60 notifies the department that the person is in compliance with assessment or the driver safety plan. The department shall notify the person of the suspension, the reason for the suspension and the person's right to a review. A person may request a review of a suspension based upon failure to comply with a driver safety plan within 10 days of notification. The review shall be handled by the subunit of the department of transportation designated by the secretary. The issues at the review are limited to whether the driver safety plan, if challenged, is appropriate and whether the person is in compliance with the assessment order or the driver safety plan. The review shall be conducted within 10 days after a request is received. If the driver safety plan is determined to be inappropriate, the department shall order a

reassessment and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If the person is determined to be in compliance with the assessment or driver safety plan, and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If there is no decision within the 10-day period, the department shall issue an order reinstating the person's operating privilege until the review is completed, unless the delay is at the request of the person seeking the review.

(e) Notwithstanding par. (c), if the court finds that the person is already covered by an assessment or is participating in a driver safety plan or has had evidence presented to it by a county department under s. 51.42 that the person has recently completed assessment, a driver safety plan or both, the court is not required to make an order under par. (c). This paragraph does not prohibit the court from making an order under par. (c), if it deems such an order advisable.

(em) One penalty for improperly refusing to submit to a test for intoxication regarding a person arrested for a violation of s. 346.63 (2m) or a local ordinance in conformity therewith is revocation of the person's operating privilege for 6 months. After the first 15 days of the revocation period, the person is eligible for an occupational license under s. 343.10. Any such improper refusal or revocation for the refusal does not count as a prior refusal or a prior revocation under this section or ss. 343.30 (1q), 343.307 and 346.65 (2). The person shall not be required to submit to and comply with any assessment or driver safety plan under pars. (c) and (d).

(f) The department may make any order which the court is authorized or required to make under this subsection if the court fails to do so.

(g) The court shall provide that the period of revocation imposed under this subsection be reduced by any period of suspension or revocation previously imposed under s. 343.30 (1q) if both suspensions or revocations arose out of the same incident or occurrence.

**(11) RULES.** The department shall promulgate rules under ch. 227 necessary to administer this section. The rules shall include provisions relating to the expeditious exchange of information under this section between the department, the office and law enforcement agencies, circuit courts and district attorneys. The rules may not affect any provisions relating to court procedure.

**History:** 1987 a. 3, 27, 399.

See note to Art. I, sec. 8, citing *State v. Driver*, 59 W (2d) 35, 207 NW (2d) 850.

The implied consent law must be liberally construed to effectuate its policies, since it was intended to facilitate the taking of tests for intoxication and not to inhibit the ability of the state to remove drunken drivers from the highway. *Scales v. State*, 64 W (2d) 485, 219 NW (2d) 286.

Miranda warnings are not required when an arrested driver is asked to submit to a test for intoxication under the implied consent statute. *State v. Bunders*, 68 w (2d) 129, 227 NW (2d) 727.

Neither 885.235 (1) nor 946.75 affords driver right to counsel prior to submitting to intoxication test. Driver is obliged to take test promptly or to refuse it promptly. *State v. Neitzel*, 95 W (2d) 191, 289 NW (2d) 828 (1980).

See note to 343.27, citing *Milwaukee County v. Proegler*, 95 W (2d) 614, 291 NW (2d) 608 (Ct. App. 1980).

State need not prove that notices were sent to state officers under (3) (b). *State v. Polinski*, 96 W (2d) 43, 291 NW (2d) 465 (1980).

Prosecutor's statement that defendant failed preliminary breath test under (2) (a) was improper, but evidence that defendant refused to take breathalyzer test was relevant and constitutionally admissible. *State v. Albright*, 98 W (2d) 663, 298 NW (2d) 196 (Ct. App. 1980).

Where driver consented to officer's request to test breath, but officer decided to test urine instead, driver's refusal to test urine justified revocation of driver's license. *State v. Pawlow*, 98 W (2d) 703, 298 NW (2d) 220 (Ct. App. 1980).

State need not affirmatively prove compliance with administrative code procedures as foundation for admission of breathalyzer test. *City of New Berlin v. Wertz*, 105 W (2d) 670, 314 NW (2d) 911 (Ct. App. 1981).

Where driver pled guilty to underlying OWI charge, charge of refusing test under 343.305, 1979 stats., was properly dismissed as unnecessary. *State v. Brooks*, 113 W (2d) 347, 335 NW (2d) 354 (1983).

Breathalyzer approved in administrative code has prima facie presumption of accuracy. *State v. Dwinell*, 119 W (2d) 305, 349 NW (2d) 739 (Ct. App. 1984).

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See note to 345.421, citing *State v. Ehlen*, 119 W (2d) 451, 351 NW (2d) 503 (1984).

Judge's erroneous exclusion of defendant's explanation for refusal to test blood was not harmless error. *State v. Bolstad*, 124 W (2d) 576, 370 NW (2d) 257 (1985).

At revocation hearing under (3) (b) 5, state need not establish to reasonable certainty that defendant was actual driver of vehicle stopped by police. Probable cause standard satisfies due process. *State v. Nordness*, 128 W (2d) 15, 381 NW (2d) 300 (1986).

Phrase in (2) (c), "not capable of withdrawing consent," must be construed narrowly and applied infrequently. *State v. Disch*, 129 W (2d) 225, 385 NW (2d) 140 (1986).

Under facts of case, state's refusal to provide alternative blood alcohol test did not violate due process. *State v. McCrossen*, 129 W (2d) 277, 385 NW (2d) 161 (1986).

Arresting officer need not inform accused that test refusal could be used against accused at trial. *State v. Crandall*, 133 W (2d) 251, 394 NW (2d) 905 (1986).

Mental disorder cannot justify test refusal unless severe enough that driver is deemed under (3) (b) not to have refused at all. *State v. Hagaman*, 133 W (2d) 381, 395 NW (2d) 617 (Ct. App. 1986).

Implied consent law does not prevent state from obtaining chemical test evidence by alternative constitutional means. *State v. Zielke*, 137 W (2d) 39, 403 NW (2d) 427 (1987).

Where a law enforcement officer has reasonable grounds to believe that an unconscious person is guilty of driving while intoxicated, a blood sample may be taken, and the test results are admissible in evidence and may not be excluded by the trial court. 59 Atty. Gen. 183.

Implied consent law discussed. 62 Atty. Gen. 174.

Method by which a law enforcement agency may provide 2 tests for blood alcohol content under (1) discussed. The agency is not required to actually own or physically possess the testing devices. 63 Atty. Gen. 119.

This section, as affected by ch. 193, laws of 1977, does not vest in municipal courts the power to conduct hearings to determine the reasonableness of a refusal to submit to chemical tests to determine blood alcohol levels. 67 Atty. Gen. 185.

Driver cannot be asked to take test under (2) (am) unless there has been a lawful arrest. 67 Atty. Gen. 314.

Under 343.305 (1) and (4), hospital personnel must administer test and report results at request of officer, subject to penalty under 946.40. 68 Atty. Gen. 209.

Federal law requiring confidentiality of patient records has no application to the taking of a blood sample under this section. 73 Atty. Gen. 45.

Law enforcement officer may use physical restraint, subject to constitutional limitations, in order to draw legally justified blood sample. Refusal by health professional to comply with law enforcement officer's authorized request to take blood sample from person whom office has legally restrained by force constitutes refusal to aid an officer under 946.40. 74 Atty. Gen. 123.

Refusal hearing under this section discussed. OAG 2-88.

Massachusetts implied consent law which mandates suspension of license for refusal to take breath-analysis test did not violate Due Process Clause. *Mackey v. Montrym*, 443 US 1 (1979).

Admission into evidence of defendant's refusal to submit to blood-alcohol test did not deny right against self-incrimination. *South Dakota v. Neville*, 459 US 553 (1983).

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

Technical problems corrected: Operating while intoxicated. Hancock and Maassen. WBB Apr. 1987.

**343.307 Prior convictions to be counted.** For purposes of counting the number of refusals, revocations and convictions under s. 343.30 (1q), 343.305 (9) (d) or (10) or 346.65 (2) on and after July 1, 1978, convictions for violations under s. 346.63 (1), or a local ordinance in conformity therewith or a local ordinance in or a state statute of another state 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, refusals under s. 343.305 (9) (d) and revocations under s. 343.305 (10) prior to and after the treatment of any of those sections by chapter 193, laws of 1977, shall be counted and given the effect specified under s. 343.30 (1q), 343.305 (9) (d) or (10) or 346.65 (2) on and after July 1, 1978. If the same elements of the offense must be proved under a local ordinance or state statute of another state as under s. 346.63 (1) (a) or (b) or both, the local ordinance or state statute of the other state shall be considered to be in conformity with s. 346.63 (1) (a) or (b) or both for purposes of ss. 343.30 (1q) (b) 1, 343.305 (10) (b) 1 and 346.65 (2) (b) and (c).

**History:** 1977 c. 193; 1981 c. 20, 184; 1985 a. 80, 337; 1987 a. 3. Minnesota's drunken driving statute was not in conformity with 346.63 (1). *State v. Mattson*, 140 W (2d) 24, 409 NW (2d) 138 (Ct. App. 1987).

**343.31 Mandatory revocation or suspension of licenses after certain convictions.** (1) The department shall revoke a

person's operating privilege upon receiving a record of conviction showing that the person has been convicted of any of the following offenses under a state law or under a local ordinance which is in conformity therewith, except that if a person licensed as a chauffeur was convicted for operation of a motor vehicle while under the influence of an intoxicant or controlled substance or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving and the person was not operating a vehicle as a chauffeur at the time of the offense, only his or her regular license shall be revoked as provided in this section:

(a) Homicide or great bodily harm resulting from the operation of a motor vehicle and which is criminal under s. 346.62 (4), 940.06, 940.09, 940.10 or 940.25.

(am) Injury by the negligent operation of a vehicle while under the influence of an intoxicant or a controlled substance, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or while the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in that person's blood or 0.1 grams or more of alcohol in 210 liters of that person's breath and which is criminal under s. 346.63 (2).

(b) Upon the 2nd or any subsequent conviction for operation of a motor vehicle while under the influence of an intoxicant or controlled substance or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, in accordance with the order of the court.

(c) Any felony in the commission of which a motor vehicle is used.

(d) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in death of or personal injury to another or in serious property damage.

(e) Perjury or the making of a false affidavit or the making of a false statement or certification to the department under this chapter or any other law relating to the ownership or operation of motor vehicles.

(f) Operating a motor vehicle while operating privileges are suspended or revoked.

(g) Operating a motor vehicle without having furnished proof of financial responsibility when proof of financial responsibility is required.

(h) Violation of a restriction on his license or a serious traffic violation by the holder of an occupational license.

(i) Knowingly fleeing or attempting to elude a traffic officer.

(2) The department shall revoke or suspend, respectively, the operating privilege of any resident of this state upon receiving notice of the conviction of such person in another jurisdiction for an offense therein which, if committed in this state, would have been cause for revocation or suspension under this section or under s. 343.30 (1q). Upon receiving similar notice with respect to a nonresident, the department shall revoke or suspend, respectively, the privilege of the nonresident to operate a motor vehicle in this state.

(3) (a) Except as otherwise provided in this subsection, all revocations or suspensions under this section shall be for a period of one year.

(b) If the suspension results from a first conviction of operation of a motor vehicle while under the influence of an intoxicant or controlled substance or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving and the conviction occurs in another jurisdiction, the period of suspension shall be 6 months.

(c) Any person convicted under s. 940.09 of negligent operation or handling of a motor vehicle shall have his or her operating privilege revoked for 5 years.

(d) Any person convicted of knowingly fleeing or attempting to elude a traffic officer shall have his or her operating privilege revoked as follows:

1. If the offense did not result in bodily harm to another or damage to the property of another, for 6 months.

2. If the offense results in bodily harm to another or causes damage to the property of another, as provided in par. (a).

3. If the offense results in great bodily harm to another, for 2 years.

4. If the offense results in the death of another, for 5 years.

(e) Any person convicted under s. 346.63 (2) shall have his or her operating privilege revoked for not less than one year nor more than 2 years.

(f) Any person convicted under s. 940.25 shall have his or her operating privilege revoked for 2 years.

(g) Any person convicted for operating a motor vehicle while operating privileges are suspended or revoked shall have his or her operating privilege revoked for 6 months.

(h) Any person subject to s. 343.10 (6) shall have his or her operating privilege revoked for 6 months.

(i) If a person is convicted for a violation of s. 346.67 where the accident involved great bodily harm, the period of revocation is 2 years.

(j) If a person is convicted for a violation of s. 346.67 where the accident involved death, the period of revocation is 5 years.

**(3m)** (a) Any person who has his or her operating privilege revoked under sub. (3) (c) or (f) may apply for an occupational license under s. 343.10 after the first 120 days of the revocation period.

(b) Any person who has his or her operating privilege revoked under sub. (3) (e) may apply for an occupational license under s. 343.10 after the first 60 days of the revocation period.

**(4)** Any person denied a motor vehicle operator's license under s. 343.06 (11) or whose motor vehicle operator's license was revoked under s. 343.31 (1) (i), 1961 stats., prior to October 9, 1963, may be granted such license or reinstated his operating privileges upon recommendation of the department of health and social services or other responsible agency having supervision of the applicant, and approval of the court in which the applicant was convicted of the offense upon which the revocation or suspension was based.

**History:** 1971 c. 219; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 193, 447; 1979 c. 221; 1981 c. 20, 70; 1983 a. 192 s. 304; 1983 a. 459; 1985 a. 80, 82; 1985 a. 293 s. 3; 1987 a. 3, 399.

The court cannot waive the revocation ordered by the division of motor vehicles. 62 Atty. Gen. 31.

See note to 346.65, citing 69 Atty. Gen. 47.

**343.32 Other grounds for revocation of licenses. (1)** The secretary shall revoke a person's operating privilege whenever one or more of the following conditions exist:

(a) A record of conviction has been received showing that such person has been convicted under a state law or under a local ordinance enacted under ch. 349 of a traffic violation

which is a cause of an accident resulting in the death of another.

(b) Such person has been convicted under state law or under a local ordinance which is in conformity therewith of altering his license, loaning his license to another or unlawfully or fraudulently using or permitting an unlawful or fraudulent use of a license.

(c) Notice has been received of the conviction of such person in another jurisdiction for an offense therein which, if committed in this state, would have required revocation of such person's operating privilege under this subsection.

(d) Revocation is required under ch. 344.

**(2)** (a) The secretary may suspend or revoke a person's operating privilege if the person appears by the records of the department to be an habitually reckless or negligent operator of a motor vehicle or to have repeatedly violated any of the state traffic laws or any local ordinance enacted under ch. 349. For the purpose of determining when to suspend or revoke an operating privilege under this subsection, the secretary may determine and adopt by rule a method of weighing traffic convictions by their seriousness and may, subject to the limitations in this subsection, change such weighted scale as experience or the accident frequency in the state makes necessary or desirable.

(b) The scale adopted by the secretary shall assign, for each conviction, 3 demerit points for exceeding the lawful speed limit by 10 or less miles per hour, 4 demerit points for exceeding the lawful speed limit by more than 10 but less than 20 miles per hour or 6 demerit points for exceeding the lawful speed limit by 20 or more miles per hour. Except as provided in s. 343.085 (5), the scale adopted by the secretary may not assign more demerit points for a subsequent conviction for exceeding the lawful speed limit than the number of demerit points specified for the conviction in this paragraph.

(bm) 1. The scale adopted by the secretary may not assess any demerit points for operating a motor vehicle without a valid operator's license in the operator's immediate possession in violation of s. 343.18 (1).

2. The scale adopted by the secretary may not assess more than 2 demerit points for operating a motor vehicle with a defective or improper speedometer in violation of s. 347.41.

(br) The scale adopted by the secretary may not assess any demerit points for modifying the height of a vehicle in violation of s. 347.455.

(bt) The scale adopted by the secretary may not assess any demerit points for a violation of s. 347.48 (2m) (b), (c) or (d) or (4) (a). This paragraph does not apply after June 30, 1989; or the first day of the first month commencing after the secretary of transportation certifies to the governor and the revisor of statutes that state mandatory safety belt usage laws meeting the criteria under 49 CFR 571.208 S4.1.5 have been enacted which would, with the inclusion of 1987 Wisconsin Act 132, be applicable to not less than two-thirds of the population of the United States, based on the 1980 federal census of population; whichever is earlier.

(bu) The scale adopted by the secretary may not assess any demerit points for a violation of s. 347.48 (4) (a). This paragraph applies after June 30, 1989; or the first day of the first month commencing after the secretary of transportation certifies to the governor and the revisor of statutes that state mandatory safety belt usage laws meeting the criteria under 49 CFR 571.208 S4.1.5 have been enacted which would, with the inclusion of 1987 Wisconsin Act 132, be applicable to not less than two-thirds of the population of the United States, based on the 1980 federal census of population; whichever is earlier.

(c) In order for the secretary to suspend or revoke an operating privilege under this subsection, the operator must have accumulated 12 demerit points in any 12-month period.

(d) When an operator accumulates more than 6 demerit points or has been involved in 2 or more accidents in a one-year period where the accident report indicates that the person may have been causally negligent, the secretary may require the operator to report to an examining station for driver improvement counseling, consisting of either group or individual counseling, reexamination or both.

(e) The secretary may require any person who has had his or her operating privilege suspended or revoked, whether the suspension or revocation is the result of action under s. 343.30 or 343.32, or conviction for an offense which requires mandatory revocation under s. 343.31 to participate in driver improvement counseling, consisting of either group or individual counseling, reexamination or both.

(f) A reexamination required under par. (d) or (e) may consist of all or part of the tests specified in s. 343.16 (1) (a) 1, or any other special examination as required under s. 343.16 (2). Upon conclusion of the counseling, interview and examination, the secretary shall take action as authorized at the conclusion of other examinations under s. 343.16 (3) (a).

(g) In exercising the authority to suspend or revoke an operating privilege under this section, the secretary may suspend such privilege only when the operator has not had his or her operating privilege suspended or revoked previously, except under s. 344.14 (1), or when the operator's present demerit point accumulation is not more than 25% above the demerit point accumulation set for suspension or revocation. In all other cases under this section, the secretary shall revoke the operating privilege of the operator.

(h) In regard to convictions which are not by themselves grounds for mandatory revocation of a license, the rule adopted under par. (a) shall provide that demerit points accumulated when a person is not operating a vehicle as a chauffeur may not be counted against the chauffeur's license but such rule may provide that demerit points accumulated by a person when operating a vehicle as a chauffeur shall be counted against the regular license. When a person who has had his or her regular license revoked continues to operate as a private operator and the person also has a chauffeur's license and is convicted of any traffic violation, 12 demerit points shall be assigned against the person's chauffeur license.

(3) A revocation under this section may be for any period not exceeding one year unless a different period is specifically prescribed by law.

(4) A revocation based on the condition stated in sub. (1) (d) shall affect only the person's operator's license and shall not operate to revoke the person's chauffeur's license or affect his operating privilege thereunder.

(5) In adopting rules for weighing traffic convictions by their seriousness under sub. (2), the secretary also may provide by rule for a reduction of points if a person shows to the department satisfactory evidence of completion of a course of instruction in traffic safety, defensive driving or similar course or driver improvement counseling approved by the secretary.

**History:** 1971 c. 42, 278, 281; 1973 c. 90; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1979 c. 221; 1981 c. 31, 216, 327; 1987 a. 24, 132.

State's failure to promulgate standards for determining length of suspension denied due process. *Best v. State*, 99 W (2d) 495, 299 NW (2d) 604 (Ct. App. 1980).

**343.325 Courts to report appeals; when appeal stays revocation.** (1) If a person files a notice of appeal from a conviction the clerk of the court in which such conviction occurred, or the judge of a court not having a clerk, shall:

(a) Promptly forward to the department a certificate stating that such appeal has been taken; and

(b) If the appeal is subsequently dropped, promptly certify such fact to the department; and

(c) Upon determination of the appeal by the appellate court, promptly certify such decision to the department.

(2) Notwithstanding ss. 343.31 and 343.32 and except as otherwise provided in sub. (4), the secretary shall not revoke a person's operating privilege on the basis of a conviction if the secretary receives from the court in which the conviction occurred a certificate stating that an appeal from the conviction has been taken. If the secretary receives such certificate after revocation of the operating privilege, the operating privilege shall be reinstated without requiring compliance with s. 343.38.

(3) Whenever revocation of an operating privilege has been withheld as provided in sub. (2) and the department receives notice that the conviction in question has been affirmed on appeal or that the appeal has been dropped, the secretary shall revoke such operating privilege on the same basis as if the appeal had not been taken, but the period of revocation shall run from the date of revocation following the affirmance of the conviction or dropping of the appeal.

(4) If a person, whose revocation was stayed pursuant to sub. (2), is convicted of an offense for which revocation is mandatory under s. 343.31, during the pendency of the appeal of the original conviction, the secretary shall forthwith revoke such person's operating privilege on account of such convictions, notwithstanding the appeal of either or both convictions.

(5) This section shall not prevent revocation of an operating privilege if there are grounds for revocation other than the conviction in question.

**History:** 1971 c. 278; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; Sup. Ct. Order, eff. 1-1-89.

**343.33 Hearing on revocations.** (1) Whenever the department under authority of s. 343.32 or 343.34 revokes or suspends a person's operating privilege, the department shall immediately notify such person thereof in writing and upon his or her request shall afford him or her an opportunity for a hearing on the revocation or suspension unless the department is satisfied from the records and information in its possession that a hearing is not warranted. If the department is not so satisfied and the person requests a hearing, the department shall refer the matter to the office of the commissioner of transportation which shall hold a hearing as soon as practicable and in any event within 20 days after receipt of the request therefor. If the person requesting the hearing is a resident of this state, the office of the commissioner of transportation shall fix the place of the hearing as close as practicable to the applicant's residence and in no event shall it be set for a place not in the county of the applicant's residence or a county contiguous thereto without the consent of the applicant. If the applicant is a nonresident, the office of the commissioner of transportation shall determine the place of the hearing. Any person who fails without cause to appear at the time and place specified in the notice served on him or her forfeits the right to a hearing.

(2) Upon the hearing the office of the commissioner of transportation or its hearing examiner may administer oaths, issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. No law enforcement officer or other witness produced by the person who has requested a hearing to testify on his or her behalf shall be paid a witness

fee by the department or office of the commissioner of transportation nor shall any law enforcement officer called to appear for the department be paid any witness fee. All testimony shall be taken and transcribed.

(3) Upon completion of the hearing, the office of the commissioner of transportation shall make findings of fact and shall either let the order of revocation stand or, upon good cause appearing therefor, rescind the order of revocation or modify the period of revocation.

**History:** 1977 c. 29 ss. 1460, 1654 (7) (a), (c); 1977 c. 418; 1981 c. 347 s. 80 (2).

**343.34 Suspension of licenses.** In addition to suspensions authorized under ch. 344, the secretary may suspend operating privileges under the following circumstances:

(1) Whenever the secretary is satisfied that a person has violated a restriction on the license and that it is in the interests of public safety to suspend the license, the secretary shall suspend such license for a period not exceeding one year unless the violation is cause for revocation.

(2) When a person has been convicted under s. 343.16 (5).

**History:** 1971 c. 164 s. 82; 1975 c. 5; 1977 c. 29 s. 1654 (7) (c); 1977 c. 273.

**343.345 Suspension for juvenile's failure to pay forfeiture.**

(1) If a person under the age of 18 fails to pay the forfeiture imposed by a court for his first moving vehicle violation, the court or judge shall in lieu of a jail sentence, suspend the person's operating privilege for a period not less than 30 days nor more than 90 days. The time set by the court for payment of the forfeiture shall not exceed 30 days. If the person pays the forfeiture after suspension under this section, the suspension shall be reduced to the minimum period of 30 days.

(2) If a court or judge suspends an operating privilege under this section, the court or judge shall immediately take possession of the suspended license and shall forward it to the department together with the notice of suspension, which shall clearly state that the suspension was for failure to pay a forfeiture imposed by the court. If the forfeiture is paid during a period of suspension the court or judge shall immediately notify the department. Upon receipt of such notice, the department shall return the license when the minimum period of suspension has passed.

(3) If a person operates a motor vehicle during a period of suspension under this section, he shall be proceeded against under s. 343.44.

**History:** 1971 c. 164 s. 83; 1977 c. 29 s. 1654 (7) (a).

**343.35 Surrender of licenses upon cancellation, revocation or suspension.** (1) The department may order any person whose operating privilege has been canceled, revoked or suspended to surrender his or her license or licenses to the department. The department may order any person who is in possession of a canceled, revoked or suspended license of another to surrender the license to the department.

(2) Any person who fails to surrender a license as required by this section may be required to forfeit not more than \$100.

(3) The secretary or an appointed agent may take possession of any license required to be surrendered to the department or may direct any traffic officer to take possession thereof and return it to the department.

**History:** 1971 c. 278; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1985 a. 29.

**343.36 Department to distribute suspension and revocation lists and nonresidents' records of conviction.** (1) Whenever the operating privilege of a resident of this state is canceled, revoked or suspended or an application for license denied, the department forthwith shall forward the name and address of such person to the sheriff and county traffic department of the county in which such person resides and to

the police department of the municipality wherein such person resides.

(2) Once each month, the department shall compile a list of the names and addresses of all residents of this state whose operating privileges were revoked or suspended during the preceding month and the periods thereof and shall forward such list to the sheriff of each county, to the chief of police of each city and to all county traffic officers.

(3) Upon receiving a record of conviction showing that a nonresident operator of a motor vehicle has been convicted in this state of an offense which is grounds for revocation or suspension under the laws of this state, the department shall forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

**History:** 1977 c. 29 s. 1654 (7) (a); 1977 c. 273.

**343.37 No operation under foreign license during revocation or suspension.** (1) An operator's license or permit issued by another jurisdiction does not authorize a resident of this state whose operating privilege has been revoked or suspended pursuant to the laws of this state to operate a motor vehicle in this state until he has obtained a new license when and as provided in this chapter. This subsection applies to a resident of this state even though he was a nonresident at the time his operating privilege was revoked or suspended.

(2) Notwithstanding the privilege conferred on nonresidents by s. 343.05 (2) (c), a nonresident whose operating privilege has been revoked or suspended pursuant to the laws of this state is not authorized to operate a motor vehicle in this state under an operator's license or permit issued by another jurisdiction until his operating privilege in this state has been reinstated pursuant to the laws of this state. This subsection applies to a nonresident even though he was a resident of this state at the time his operating privilege was revoked or suspended.

**343.38 License after revocation or suspension; reinstatement of nonresident's operating privilege.** (1) LICENSE AFTER REVOCATION. Except as provided in ss. 343.10, 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:

(a) Files with the department an application for license together with the required fee; and

(b) If the secretary so prescribes, passes an examination including the tests specified in s. 343.16 or such parts thereof as the secretary may require; and

(c) Unless 3 years have elapsed since the expiration of the period of revocation, files with the department proof of financial responsibility in the amount, form and manner specified in ch. 344. Such proof of financial responsibility shall be maintained at all times during such 3-year period when the license is in effect. No such proof shall be required for a vehicle subject to the requirements of s. 121.53, 194.41 or 194.42 or a vehicle owned by or leased to the United States, this state or any county or municipality of this state.

(2) REINSTATEMENT OF NONRESIDENT'S OPERATING PRIVILEGE AFTER REVOCATION BY WISCONSIN. A nonresident's operating privilege revoked pursuant to the laws of this state is reinstated as a matter of law when the period of revocation has expired and such nonresident:

(a) Obtains a valid operator's license in the jurisdiction of his residence; and

(b) Files proof of financial responsibility in this state in the manner and for the period required of residents of this state whose operating privileges have been revoked.

**(3) REINSTATEMENT AFTER SUSPENSION.** Except as provided in s. 343.10, the department shall not issue a license to a person whose operating privilege has been duly suspended while the suspension remains in effect. Upon the expiration of the period of suspension, the person's operating privilege is automatically reinstated as provided in s. 343.39.

**(4) FIRST ISSUANCE OF LICENSE IN WISCONSIN AFTER REVOCATION BY ANOTHER STATE.** The department may issue an operator's license to a person moving to this state whose operating privileges have been previously suspended or revoked in another state when their operating privilege has been reinstated in that state and the following conditions have been met:

(a) When the period of suspension or revocation required by law for conviction for the same traffic violation in this state has terminated.

(b) Acceptable proof of financial responsibility has been filed.

(c) Application for a Wisconsin operator's license has been made.

(d) Any required examination has been passed.

(e) The fees required for the issuance of an original license have been paid.

**History:** 1977 c. 29 s. 1654 (7) (a), (c); 1979 c. 306, 316; 1983 a. 525.

**343.39 When operating privilege automatically reinstated.** (1) An operating privilege is automatically reinstated under any of the following circumstances:

(a) When, in the case of a suspended operating privilege, the period of suspension has terminated and the reinstatement fee specified in s. 343.21 (1) (j) has been paid to the department.

(b) When, in the case of a revocation or suspension based on a conviction, the conviction is reversed, set aside or vacated. This paragraph applies whether or not the conviction occurred in this state and whether or not the conviction was cause for revocation or suspension only when considered in connection with the person's previous operating record.

(c) Whenever any other provision of law provides for automatic reinstatement.

(2) Whenever a person's operating privilege is automatically reinstated, the department shall forthwith notify such person thereof and shall return any surrendered and unexpired license in its possession. If the license expired during the period of revocation or suspension, such person may renew the license at the standard renewal fee at any time within 30 days after the reinstatement of the operating privilege.

**History:** 1973 c. 90; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273.

Reinstatement under (1) (b) is not retroactive to date of conviction. *State v. Orethun*, 84 W (2d) 487, 267 NW (2d) 318 (1978).

**343.40 Judicial review of suspension, revocation, cancellation or denial of license.** The denial or cancellation of a license or the revocation or suspension of an operating privilege is subject to judicial review in the manner provided in ch. 227 for the review of administrative decisions.

**History:** 1977 c. 43, 187.

#### UNLAWFUL PRACTICES RELATIVE TO LICENSES

**343.43 Unlawful use of license.** (1) No person shall:

(a) Represent as valid any canceled, revoked, suspended, fictitious or fraudulently altered license; or

(b) Sell or lend his license to any other person or knowingly permit the use thereof by another; or

(c) Represent as one's own any license not issued to him; or

(d) Violate any of the restrictions placed on his license by or pursuant to law; or

(e) Permit any unlawful use of a license issued to him; or  
(f) Reproduce by any means whatever a copy of a license;  
or

(g) Deface or alter a license except for endorsement of a change of address authorized by s. 343.22 (1) or (2).

(2) Whenever a license or identification card which appears to be altered is displayed to a law enforcement officer, agent of the secretary or the court, that person shall take possession of the license or identification card and return it to the department for cancellation. A notation of change of address properly indorsed on the license under s. 343.22 shall not of itself be reason to consider the license altered.

(3) (a) Unless a different penalty is specifically prescribed, any person who violates any provision of sub. (1) may be fined not more than \$100 or imprisoned not more than 6 months or both.

(b) A person who violates sub. (1) (d) may be required to forfeit not more than \$100.

**History:** 1975 c. 5, 199; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 360, 447; 1979 c. 306; 1981 c. 20 s. 1848r; 1983 a. 36, 534.

Conviction of representing as valid a fraudulently altered driver's license reversed where the license was shown to a traffic officer on request and it appeared defendant had altered his birth date so as to be able to go into a bar. *State v. Scholwin*, 57 W (2d) 764.

**343.435 License not to be used as security.** (1) No person may require or accept an operator's license, chauffeur's license, occupational license, instructional permit or any other license or permit issued under this chapter as security.

(2) Any person violating this section may be required to forfeit not less than \$20 nor more than \$100.

(3) This section does not apply to the action by a state, county, city, village or town of requiring or accepting a license or permit when such action is authorized by some other provision of law.

**History:** 1983 a. 355.

**343.44 Driving after license revoked or suspended.** (1) No person whose operating privilege has been duly revoked or suspended pursuant to the laws of this state shall operate a motor vehicle upon any highway in this state during such suspension or revocation or thereafter before filing proof of financial responsibility or before he has obtained a new license in this state or his operating privilege has been reinstated under the laws of this state. No person whose regular license has been duly revoked or suspended pursuant to the laws of this state, but whose chauffeur's license is still valid, shall operate a motor vehicle upon any highway in this state other than as a chauffeur before he has obtained a new license or has had his license reinstated under the laws of this state.

(2) Any person violating this section:

(a) For the first conviction within 5 years the person shall forfeit not less than \$150 nor more than \$600.

(b) For a 2nd conviction under this section or a local ordinance in conformity with this section within 5 years, a person shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned not less than 10 days nor more than 6 months.

(c) For a 3rd conviction under this section or a local ordinance in conformity with this section within 5 years, a person shall be fined not less than \$1,000 nor more than \$2,000 and shall be imprisoned not less than 30 days nor more than 9 months.

(d) For a 4th conviction under this section or a local ordinance in conformity with this section within 5 years, a person shall be fined not less than \$1,500 nor more than \$2,000 and shall be imprisoned not less than 60 days nor more than one year in the county jail.



(e) For a 5th or subsequent conviction under this section or a local ordinance in conformity with this section within 5 years, a person shall be fined not less than \$2,000 nor more than \$2,500 and shall be imprisoned for not less than 6 months nor more than one year in the county jail.

(3) Refusal to accept or failure to receive an order of revocation or suspension mailed by 1st class mail to such person's last-known address shall not be a defense to the charge of driving after revocation or suspension. If the person has changed his or her address and fails to notify the department as required in s. 343.22 then failure to receive notice of revocation or suspension shall not be a defense to the charge of driving after revocation or suspension.

(4) In addition to other penalties for violation of this section, if a person has violated this section with respect to a motor vehicle which he or she is the owner, the court may order the vehicle impounded. The court may determine the manner and period of impoundment. The cost of keeping the vehicle constitutes a lien on the vehicle.

(5) If a motor vehicle impounded under sub. (4) is subject to a security agreement or lease contract, the vehicle shall be released by the court to the lessor or secured creditor upon the filing of an affidavit by the lessor or secured creditor that the security agreement or lease contract is in default and shall be delivered to the lessor or secured creditor upon payment of the accrued cost of keeping the motor vehicle.

**History:** 1971 c. 164 s. 83; 1971 c. 280, 307; 1973 c. 90; 1977 c. 29 s. 1654 (7) (a); 1977 c. 165, 272; 1979 c. 221; 1981 c. 20; 1983 a. 535.

See notes to Art. I, sec. 1, and Art. VII, sec. 2, citing State v. Stittig, 75 W (2d) 497, 249 NW (2d) 770.

This section does not impose on drivers strict criminal liability. Among other elements of offense, state must prove that defendant had cause to believe license might be revoked or suspended. State v. Collova, 79 W (2d) 473, 255 NW (2d) 581.

See note to 889.18, citing State v. Mullis, 81 W (2d) 454, 260 NW (2d) 696. See note to 973.05, citing 71 Atty. Gen. 41.

Local governments can prohibit first acts of operating after revocation or suspension, but second offense will not be crime. 71 Atty. Gen. 132.

See note to 351.08, citing 75 Atty. Gen. 106.

**343.45 Permitting unauthorized person to drive.** (1) No person shall cause or knowingly permit his child or ward under 18 years of age to operate a motor vehicle upon any highway in violation of this chapter or when such minor is not authorized under this chapter to operate a motor vehicle.

(2) No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be operated upon any highway in violation of this chapter or by a person who is not authorized under this chapter to operate a motor vehicle. No dealer as defined in s. 340.01 (11) (intro.) but including the persons specified in s. 340.01 (11) (a), (b), (c) and (d), shall permit any person to operate any motor vehicle owned by him or in his possession or control on a trial run unless he has been shown the person's valid operator's or chauffeur's license (issued by this state or other jurisdiction) before permitting the trial run.

(3) Any person violating this section may be required to forfeit not more than \$100.

**History:** 1971 c. 278.

Parent's unrestricted entrustment of motorcycle to minor child constituted negligence. Kempf v. Boehrig, 95 W (2d) 435, 290 NW (2d) 563 (Ct. App. 1980).

**343.46 Duty of persons renting vehicles to another.** (1) No person shall rent a motor vehicle, trailer or semitrailer to another unless the person who is to operate such rented vehicle is duly licensed under this chapter or, in the case of a nonresident, is duly licensed under the laws of the jurisdiction of his residence.

(2) No person shall rent a motor vehicle, trailer or semitrailer to another until he has inspected the license of the person who is to operate the vehicle and has compared and

verified the signature thereon with the signature of such person written in his presence.

(3) Every person renting a motor vehicle, trailer or semitrailer to another shall keep a record of the registration number of the motor vehicle so rented or, in the case of a trailer or semitrailer, the registration number of the motor vehicle to which such trailer or semitrailer is to be attached, the name and address of the person who is to operate such rented vehicle, the number of the license of such person and the date when and place where such license was issued. Such record shall be open to inspection by any traffic officer or employe of the department.

(4) Any person violating this section may be required to forfeit not more than \$100.

**History:** 1971 c. 278; 1977 c. 29 s. 1654 (7) (a).

## IDENTIFICATION CARDS

**343.50 Identification cards.** (1) **ISSUANCE.** The department shall issue to every qualified applicant, who has paid the required fee, an identification card as provided in this section.

(2) **WHO MAY APPLY.** Any resident of this state who is at least 16 years of age and who does not possess a valid operator's license which contains the resident's photograph issued under this chapter may apply to the department for an identification card pursuant to this section. The card is not a license for purposes of this chapter and is to be used for identification purposes only.

(3) **DESIGN AND CONTENTS OF CARD.** The card shall be the same size as an operator's license but shall be of a design which is readily distinguishable from the design of an operator's license and bear upon it the words "IDENTIFICATION CARD ONLY". The information on the card shall be the same as specified under s. 343.17 (1) and the holder may affix a sticker thereto as provided in s. 343.17 (3). The card shall contain the holder's photograph.

(4) **APPLICATION.** The application for an identification card shall include the information required under s. 343.14 (2) (a) and (b) and such further information as the department may reasonably require to enable it to determine whether the applicant is entitled by law to an identification card. The department shall, as part of the application process, take a photograph of the applicant to comply with sub. (3). No application may be processed without the photograph being taken. Misrepresentations are punishable as provided in s. 343.14 (5).

(5) **VALID PERIOD; FEES.** The fee for an original card and for the reinstatement of an identification card after cancellation under sub. (10) shall be \$4. The card shall be valid for the succeeding period of 4 years from the applicant's next birthday after the date of issuance.

(6) **RENEWALS.** At least 30 days prior to the expiration of the card, the department shall mail a renewal application to the last-known address of each identification card holder. The fee for a renewal identification card shall be \$4, which card shall be valid for 4 years.

(7) **DUPLICATE.** The fee for a duplicate card is \$3.

(8) **CURRENT RECORDS.** The department shall maintain current records of all identification card holders under this section in the same manner as required under s. 343.23 for operator's licenses.

(9) **SURRENDER OF CARDS OR OTHER LICENSES.** If a person who has an identification card issued under this section subsequently obtains an operator's license which contains the person's photograph under this chapter, the person shall surrender the identification card to the department when applying for the operator's license. If a person who applies

for an identification card under this section has an operator's license which contains the person's photograph issued by another jurisdiction, the person shall surrender that license to the department when applying for an identification card under this section.

**(10) CANCELLATION.** The department shall cancel an identification card:

(a) Whenever the department determines that the card was issued upon an application which contains a false statement as to any material matter; or

(b) Whenever the department determines that an identification card has been altered and returned for cancellation under s. 343.43 (2).

**(11) SURRENDER OF CARD UPON CANCELLATION.** The department may order any person whose identification card has been canceled to surrender the card to the department. The department may take possession of any identification card required to be canceled or may direct any traffic officer to take possession thereof and return it to the department.

**(12) UNLAWFUL USE.** No person may:

(a) Represent as valid any canceled, fictitious or fraudulently altered identification card;

(b) Sell or lend his or her identification card to any other person or knowingly permit the use thereof by another;

(c) Represent as one's own, any identification card not issued to him or her;

(d) Permit any unlawful use of an identification card issued to him or her;

(e) Reproduce by any means whatever an identification card; or

(f) Deface or alter an identification card.

**(13) PENALTY.** Any person who fails to comply with an order under sub. (11) or who violates sub. (12) may be required to forfeit not more than \$100.

**History:** 1977 c. 360, 447; 1979 c. 226, 306; 1981 c. 20 s. 1848r; 1985 a. 29, 98; 1987 a. 27, 304.

### 343.51 Special identification cards for physically disabled.

**(1)** Any person who qualifies for registration plates of a special design under s. 341.14 (1), (1a), (1m), (1q) or (1r) (a), any person who is temporarily physically disabled by any physical condition which renders the person unable to walk or unable to walk without great difficulty, or any organization that regularly transports such a person, may request from the department a special identification card which will entitle any motor vehicle parked by, or under the direction of, the person, or a motor vehicle operated by or on behalf of the organization when used to transport such a person, to parking privileges under s. 346.50 (2), (2a) and (3). The department shall issue the card at a fee to be determined by the department, upon submission by the applicant, if the applicant is an individual rather than an organization, of a statement from a physician licensed to practice medicine in any state, from a chiropractor licensed to practice chiropractic in any state or from a Christian Science practitioner residing in this state and listed in the Christian Science journal that the person is a physically disabled person within the meaning of this section. The physician's, chiropractor's or practitioner's statement shall state whether the disability is permanent or temporary and, if temporary, the opinion of the physician, chiropractor or practitioner as to the duration of the disability. The department shall issue the card upon application by an organization on a form prescribed by the department if the department believes that the organization meets the requirements under this subsection.

**(2)** The department shall prescribe the form and size of identification cards issued under this section and shall promulgate rules regarding the issuance and use of the cards.

The identification cards shall be designed and displayed so as to enable law enforcement officers to determine that the vehicle, when parked, is entitled to parking privileges under s. 346.50 (2), (2a) and (3), but shall not be unnecessarily conspicuous when the vehicle is operated. The department shall issue special identification cards which are valid for limited periods of time if the physician's statement required by sub. (1) indicates that the applicant's disability is temporary.

**(3)** The department shall disseminate information to all applicants for a special identification card under sub. (1) relating to the parking privileges granted under s. 346.50 (2), (2a) or (3) and their right to request enforcement of s. 346.505.

**History:** 1979 c. 276; 1981 c. 119, 255; 1985 a. 87 s. 5; 1985 a. 202, 332; 1987 a. 19.

### 343.52 Improper use of special identification cards. (1)

Any person or organization who does any of the following may be required to forfeit not more than \$200:

(a) Lends to another a special identification card issued under s. 343.51, knowing that the person borrowing the card is not authorized by law to use it; or

(b) Displays a special identification card issued under s. 343.51 upon a vehicle which is not authorized by law to have the card displayed thereon.

**(2)** The department shall cancel the special identification card of any person or organization who improperly uses a card as described in sub. (1). The department may order a person or organization whose identification card has been canceled to surrender the card to the department. The department may take possession of any identification card required to be canceled or may direct any traffic officer to take possession thereof and return it to the department.

**History:** 1979 c. 276; 1981 c. 119; 1985 a. 29.

## LICENSING OF DRIVER SCHOOLS AND INSTRUCTORS

### 343.60 Definitions. In ss. 343.60 to 343.73:

**(1)** "Driver school" means the business of giving instruction, for compensation, in the driving of motor vehicles, except that it does not include a high school or vocational, technical and adult education school which teaches driver training as part of its regular school program and whose course of study in driver training has been approved by the department of public instruction or board of vocational, technical and adult education and it does not include an institution of higher learning which teaches driver training as part of its teacher training program.

**(2)** "Fraudulent practices" includes, but is not limited to:

(a) Any conduct or representation tending to give the impression that a license to operate a motor vehicle or any other license, registration or service granted by the secretary or department may be obtained by any means other than the means prescribed by law or by furnishing or obtaining the same by illegal or improper means; or

(b) The requesting, accepting, exacting or collecting of money for such purpose.

**(3)** "Instructor" means any person who gives instruction in the driving of a motor vehicle, except a person who is employed as a full time instructor by a high school, vocational, technical and adult education school or institution of higher learning as provided in sub. (1).

**(4)** "Place of business" means the location at which the driver school is conducted.

**History:** 1971 c. 154 s. 79 (2); 1977 c. 29 s. 1654 (7) (a), (c); 1983 a. 189.

**343.61 License required for driver school; fee.** (1) No person shall conduct a driver school without being licensed therefor by the department.

(2) Application for a driver school license shall be made in writing, shall contain such information as is required by the department and shall be accompanied by the required fee.

(3) The required fee for any driver school license, or for any annual renewal thereof, is \$25.

(4) If the application for a driver school license is approved by the department and the required fee paid, the applicant shall be granted a license and shall be issued a license certificate. The licensee shall display such certificate in the licensee's place of business.

(5) A driver school license expires at the end of the calendar year, for which it is granted.

**History:** 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 273.

**343.62 License required for instructor; fee.** (1) No person holding a driver school license shall employ any person as an instructor unless such person is licensed by the department to act as such instructor. No person, including the person holding the driver school license, shall act as an instructor in such school unless such person is licensed by the department to act as such instructor.

(2) Application for an instructor's license, shall be made in writing, shall contain such information as is required by the department and shall be accompanied by the required fee.

(3) The required fee for any instructor's license, or for any annual renewal thereof, is \$5.

**History:** 1977 c. 29 s. 1654 (7) (e).

**343.63 Examination of applicants for instructor's license.** All applicants for an original instructor's license shall be examined, and other applicants may be examined, by the department as follows:

(1) A written and oral test shall be completed by the applicant and shall be designed to evaluate the applicant's knowledge of instruction procedures, motor vehicle and traffic laws, safety equipment requirements and functions of essential automotive equipment. The applicant must receive a score of at least 80 per cent.

(2) The applicant must pass a road test not less than 5 miles long, which shall include driving maneuvers and parking involved in typical traffic situations. The passing score of the applicant must exceed the minimum standard set for obtaining an operator's license by the state.

(3) Except for an applicant for an instructor's license which is restricted to classroom instruction, the applicant must pass a psychophysical test with the following grades:

(a) Visual acuity—20/40 in either eye and at least 20/100 in the other eye, with or without corrective glasses, as measured in the Snellen type test;

(b) Color perception—ability to perceive and distinguish colors commonly used to regulate and control traffic;

(c) Depth perception—20 per cent stereopsis, using the ortho-rater depth perception test built into the road sign identification target.

(d) Field of vision—lateral range of at least 85 per cent or more from a focus line to each eye;

(e) Reaction time—at least 50/100 second, using portable brake reaction test, or 75/100 second when using detonator method; and

(f) Hearing—adequate hearing with or without corrective help.

(4) The applicant shall submit with his or her application a statement completed by a registered physician showing that in the physician's judgment the applicant is physically fit to teach driving.

(5) Except for a license which is restricted to classroom instruction, no license shall be issued to an applicant who has suffered an amputation or loss of the full use of either upper limb or loss of the natural use of the foot normally employed to operate the foot brake and foot accelerator.

(5m) The department may issue an instructor's license which is restricted to classroom instruction to an applicant who does not otherwise qualify for a license because of a test result under sub. (3) or because the applicant has suffered an amputation or loss of the full use of either upper limb or loss of the natural use of the foot normally employed to operate the foot brake and foot accelerator, as specified in sub. (5).

(6) Applicants who fail to pass a satisfactory examination after 2 successive attempts shall not be reexamined until one year has elapsed since the date of the last examination.

**History:** 1977 c. 29 s. 1654 (7) (a); 1987 a. 261.

**343.64 Denial of driver school license.** The secretary may deny the application of any person for a driver school license on a determination that:

(1) Such applicant has made a material false statement or concealed a material fact in his application;

(2) Such applicant or any officer, director, partner or other person directly interested in the business was a former holder of a license granted under s. 343.61 or was directly interested in another driver school which held a license under s. 343.61 and which license was revoked or suspended;

(3) Subject to ss. 111.321, 111.322 and 111.335, the applicant or any officer, director, stockholder, partner or any person directly interested in the business has been convicted of a felony, unless the person so convicted has been duly pardoned;

(4) The applicant has failed to furnish satisfactory evidence of fitness;

(5) Such applicant does not have a place of business as required by s. 343.72 (5);

(6) Such applicant is not the true owner of the school; or

(7) The application is not accompanied by a copy of a standard liability insurance policy in the amount of \$50,000 for personal injury to, or death of any one person and subject to said limit for any one person, \$100,000 for personal injury to, or death of any number of persons involved in any one accident, and \$10,000 for property damage in any one accident, suffered or caused by reason of the negligence of the applicant or any agent or employe of the applicant.

**History:** 1977 c. 29 s. 1654 (7) (c); 1977 c. 125, 273; 1981 c. 334 s. 25 (1); 1981 c. 380, 391.

**343.65 Denial of instructor's license.** The secretary may deny the application of any person for an instructor's license on a determination that:

(1) Such applicant has made a material false statement or concealed a material fact in connection with the application; or

(2) The applicant has failed to furnish satisfactory evidence of the facts required of the applicant, has not held a license to drive a motor vehicle within this state for the past year, has not had a driving record satisfactory to the secretary, or, subject to ss. 111.321, 111.322 and 111.335, has been convicted of a felony and has not been duly pardoned.

**History:** 1977 c. 29 s. 1654 (7) (c); 1977 c. 125, 272, 273; 1981 c. 334 s. 25 (1); 1981 c. 380, 391.

**343.66 Revocation or suspension of driver school license.** The secretary may suspend or revoke any driver school license issued under s. 343.61 or refuse to issue a renewal thereof if:

(1) The licensee has made a material false statement or concealed a material fact in connection with the application for a license or the renewal thereof;

(2) Subject to ss. 111.321, 111.322 and 111.335, the licensee or any partner or officer of the licensee has been convicted of a felony;

(3) The licensee has failed to comply with any of the requirements of ss. 343.60 to 343.72;

(4) The licensee or any partner or officer of such licensee has been guilty of fraud or fraudulent practices in relation to the business conducted under the license, or guilty of inducing another person to resort to fraud or fraudulent practices in relation to securing for himself or another the license to drive a motor vehicle;

(5) Subject to ss. 111.321, 111.322 and 111.335, the licensee has knowingly employed, as an instructor, a person who has been convicted of a felony or has retained such a person in such employ after knowledge of his or her conviction; or

(6) The licensee has failed to maintain satisfactory insurance to meet damage claims in the amounts specified by s. 343.64 (7).

**History:** 1977 c. 29 s. 1654 (7) (c); 1977 c. 125; 1981 c. 334 s. 25 (1); 1981 c. 380, 391.

#### 343.67 Revocation or suspension of instructor's license.

The secretary may suspend or revoke any instructor's license issued under s. 343.62 or refuse to issue a renewal thereof if:

(1) The licensee has made a material false statement or concealed a material fact in connection with his application for the license or any renewal thereof;

(2) Subject to ss. 111.321, 111.322 and 111.335, the licensee has been convicted of a felony;

(3) The licensee has failed to comply with any of the requirements of ss. 343.60 to 343.72; or

(4) The licensee has been guilty of fraud or fraudulent practices in relation to securing for himself or another a license to drive a motor vehicle.

**History:** 1977 c. 29 s. 1654 (7) (c); 1977 c. 125; 1981 c. 334 s. 25 (1); 1981 c. 380, 391.

**343.68 Renewal no bar to revocation of license.** In reviewing the renewal of a license, the secretary may deny or delay such renewal for causes and violations as prescribed by ss. 343.64 to 343.72 occurring during any prior license period.

**History:** 1977 c. 29 s. 1654 (7) (c).

#### 343.69 Hearings on license denials and revocations.

Before the department denies an application for a driver school license or instructor's license or revokes any such license, the department shall notify the applicant or licensee of the pending action and that the office of the commissioner of transportation will hold a hearing on the pending denial or revocation. The office of the commissioner of transportation shall send notice of the hearing by registered or certified mail to the last-known address of the licensee or applicant, at least 10 days prior to the date of the hearing.

**History:** 1977 c. 29 ss. 1461, 1654 (7) (a), (c); 1977 c. 418; 1981 c. 347 s. 80 (2)

**343.70 Loss or surrender of licenses.** (1) If any driver school or instructor's license is lost, it shall be reissued by the department upon application therefor accompanied by satisfactory proof of loss and a fee of \$1.

(2) If a driver school or instructor's license is suspended or revoked, the licensee shall surrender all licenses to the department and no portion of the license fee shall be refunded.

**History:** 1977 c. 29 s. 1654 (7) (a).

**343.71 Driver schools to maintain records.** Every licensed driver school shall maintain the following records:

(1) A permanently bound book with pages consecutively numbered setting forth the name and address of every person given lessons, lectures, tutoring, instructions of any kind or any services relating to instructions in the operation of motor vehicles;

(2) A record showing the date, type and duration of all lessons, lectures, tutoring, instructions or other services relating to instructions in the operation of motor vehicles, and this record shall include the name of the instructor giving such lessons or instructions and identification of the vehicle in which any road lesson is given, including type of transmission;

(3) A file containing a duplicate copy of every agreement entered into between the school and every person given lessons, lectures, instructions or other services relating to instructions in the operation of motor vehicles. No person shall be given lessons, lectures, tutoring or other services relating to instructions in the operation of motor vehicles until a written agreement in a form approved by the department has been executed by both the school and the student. The student shall be given the original, while the school shall retain and preserve the carbon duplicate thereof.

**History:** 1977 c. 29 s. 1654 (7) (a).

#### 343.72 Rules for conducting driver schools; prohibited practices.

(1) No licensee may agree to give refresher lessons, unless the student states that he has had previous driving experience.

(2) No licensee shall agree to give unlimited driver's lessons, nor represent or agree, orally or in writing or as a part of an inducement to sign any agreement, to give instructions until an operator's license is obtained.

(3) No agreement shall contain a "no refund" clause, but may contain the following: "The school will not refund any tuition or part of tuition if the school is ready, willing and able to fulfill its part of the agreement".

(4) All records of agreement must include the following statement: "This constitutes the entire agreement between the school and the student and no verbal statement or promises will be recognized".

(5) The licensee shall have a specific place of business described in the license. No licensee shall establish its headquarters within 1,500 feet of a department office where licenses are issued, nor within 1,500 feet of any headquarters where official road tests are given, and locations shall be filed with the department as part of the license application. Any change in address must be reported to and approved by the department.

(6) All licensees must ascertain from state license examiners the route over which road tests are given, and no licensee may instruct in those areas.

(7) Licensees shall not publish, advertise or intimate that a license is guaranteed or assured. The display of a sign such as "License Secured Here" is forbidden.

(8) A driver school may display on its premises only a sign reading: "This School is Licensed by the State of Wisconsin".

(9) Except as provided by sub. (8), the use of the word "Wisconsin", "State" or the name of the city in which the school is located, in any sign, firm name or other medium of advertising is prohibited.

(10) All driver training cars used by the school must be identified by a sign on the rear of the vehicle stating that it is a driver school vehicle.

(11) All driver training cars must be registered with the department with a brief description of each, including the make, model, registration number and type of transmission.

**(12)** All driver training cars shall be equipped with approved dual controls so that the instructor can stop the car promptly. The department may inspect these cars at its discretion.

**History:** 1977 c. 29 s. 1654 (7) (a), (e); 1981 c. 314.

**343.73 Penalty.** Any person who violates ss. 343.60 to 343.72 may be fined not less than \$25 nor more than \$100 or imprisoned not more than 30 days for each offense.

**History:** 1971 c. 278; 1973 c. 218.

**343.75 Control group testing by department.** The department may exempt certain persons from one or more of the

mandatory requirements of this chapter to establish a test group in order to compare this group with a group of persons not exempted from any of the mandatory requirements of this chapter. After comparing these 2 groups, the department shall determine what effect, if any, that a particular mandatory requirement may have on highway safety in this state. The department shall submit any findings in this regard to the secretary who shall include them in the report required under s. 15.04 (1) (d).

**History:** 1977 c. 29 s. 1654 (7) (e); 1977 c. 196 s. 131; 1977 c. 273; 1981 c. 390 s. 252.