

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:

(cg) "Moving violation" means a violation of ch. 110, of ch. 194 or of chs. 341 to 349 and 351, or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with one or more provisions of ch. 110, of ch. 194 or of chs. 341 to 349 and 351, or the laws of another jurisdiction for which being on duty time with respect to a commercial motor vehicle or driving or operating a motor vehicle is an element of the offense.

(cr) "Occupational license" means an operator's license, issued in accordance with s. 343.10, which confers only limited authorization to operate a motor vehicle and imposes specified restrictions.

(f) "Representative vehicle" means a motor vehicle of the same vehicle class and type that an applicant or permittee for an operator's license operates or intends to operate.

(g) "Resident" means an adult whose one home and customary and principal residence, to which the person has the intention of

returning whenever he or she is absent, is in this state. A child under 18 years of age may qualify as a resident if the child lives in this state and at least one of the child's parents, or the child's guardian, is a resident of this state or the child meets any of the following requirements:

1. Is attending and residing at a full-time boarding school or similar live-in facility located in this state.

2. Is a foreign-exchange student from outside the United States residing with and in the care of a host family.

3. Is residing with and in the care of a relative or other adult acting in the place of a parent, with the consent of the child's parents or legal guardian.

4. Is on active duty with the U.S. armed forces.

(i) "Tank vehicle" means any commercial motor vehicle that is designed to transport a liquid or gaseous materials within a tank that is either permanently or temporarily attached to the commercial motor vehicle or the chassis. In this paragraph, "tank" does not include a portable tank, as defined in 49 CFR 171.8, having a rated capacity under 1,000 gallons. In this paragraph, "liquid" has the meaning given in 49 CFR 171.8.

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; 1989 a. 75, 105; 1991 a. 39.

343.02 Administration of driver license law. (1) The department shall administer and enforce this chapter and may promulgate for that purpose such rules as the secretary considers necessary. Rules promulgated under this chapter may not conflict with and shall be at least as stringent as standards set by the federal commercial motor vehicle safety act, 49 USC 2701 to 2716 and the regulations adopted under that act.

(2) The state of Wisconsin assents to the provisions of the federal law and regulations specified in sub (1). The state of Wisconsin declares its purpose and intent to make provisions to implement and enforce that law and those regulations so as to ensure receipt by this state of any federal highway aids that have been or may be allotted to the state under 23 USC 104 (b) (1), (2), (5) and (6), including all increased and advanced appropriations.

History: 1971 c. 164 s. 83; 1977 c. 29 s. 1654 (7) (a); 1981 c. 390 s. 252; 1989 a. 105.

343.025 Medicare acceptance of assignment; information; report. (2) Beginning in 1991, the department shall annually submit a report to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) concerning the numbers of individuals, by counties in this state, to whom the department distributed explanatory materials under ss. 343.14 (8), 343.20 (2m) and 343.50 (4).

History: 1989 a. 294.

343.03 Classified driver license system. (1) ISSUANCE TO BEGIN BY APRIL 1, 1991. (a) The department shall institute a classified driver license system meeting all federal standards under 49 USC 2701 to 2716 and 49 CFR 383.

(b) The department shall begin issuance of operator's licenses in conformity with the classified driver license system to each licensee upon renewal, reinstatement or initial application by April 1, 1991.

(c) During the transition to a classified driver license system, the department may issue licenses under ch. 343, 1987 stats., as affected by 1989 Wisconsin Act 31, except that no such license shall authorize or be valid for the operation of commercial motor vehicles after March 31, 1992, except as provided in s. 343.055.

(2) AUTHORIZATIONS TO DRIVE SPECIFIC VEHICLE GROUPS. The department shall clearly indicate on each operator's license the class of vehicles that the licensee is authorized to operate. Additional authorization for the licensee to operate a vehicle type described in s. 343.04 (2) shall be shown by an endorsement, clearly indicated on the operator's license. If the authorizations are restricted in any way, the restrictions shall be clearly indicated on the document.

(3) LICENSE VARIANTS. Except for restricted licenses under s. 343.08 or temporary licenses, each operator's license issued by the department shall be in one of the following categories with a descriptive legend displayed on the top front side of the license document:

(a) *Regular license.* The standard license legend is "regular" or a readily recognizable abbreviation thereof. The regular license, without any express endorsements or restrictions as provided in this chapter, authorizes the licensee to operate only "class D" vehicles as described in s. 343.04 (1) (d), except as otherwise provided in this subsection. The license may be endorsed to permit operation of Type 1 motorcycles or school buses. A regular license may be subject to restrictions, including the attachment of a special restrictions card as provided in s. 343.17 (4).

(b) *Commercial driver license.* A license authorizing the operation of "Class A", "Class B" or "Class C" vehicles, including a license issued under s. 343.065, shall be labeled "Commercial Driver License" or "CDL". A commercial driver license may be endorsed to permit the operation of any other class or type of vehicle described in s. 343.04. A commercial driver license may be subject to restrictions, including the attachment of a special restrictions card as provided in s. 343.17 (4).

(c) *Motorcycle only license.* Except as provided in par. (f), a license authorizing only the operation of "Class M" vehicles shall be labeled "Motorcycle Only". A motorcycle only license may not be endorsed to permit the operation of any other class or type of vehicle. The license may be subject to restrictions, including the attachment of a special restrictions card as provided in s. 343.17 (4).

(d) *Special restricted license.* A license issued under s. 343.135 shall be labeled "Special Restricted License" or a readily recognizable abbreviation thereof. The license may authorize the operation of only "Class D" vehicles and may not be endorsed to permit operation of the vehicle types described in s. 343.04 (2). The license may be subject to restrictions in addition to those provided in s. 343.135, including the attachment of a special restrictions card as provided in s. 343.17 (4).

(e) *Occupational license.* A license issued under s. 343.10 authorizing only the operation of motor vehicles other than "Class A", "Class B" or "Class C" vehicles shall be labeled "Occupational License". Licenses issued under s. 343.10 authorizing the operation of "Class A", "Class B" or "Class C" vehicles shall be labeled "CDL-Occupational". An occupational license may authorize the operation of "Class D" or "Class M" vehicles, or both, but may not be endorsed to permit operation of the vehicle types described in s. 343.04 (2). The license may be subject to restrictions in addition to those provided in s. 343.10, including the attachment of a special restrictions card as provided in s. 343.17 (4).

(f) *Probationary license.* If s. 343.085 applies, the license shall be labeled "Probationary" or a readily recognizable abbreviation thereof instead of as provided in par. (a) or (c). This paragraph does not apply to a license authorizing the operation of commercial motor vehicles.

(4) ELIMINATION OF MULTIPLE LICENSES. The department shall not knowingly issue more than one license to a person.

(5) INQUIRIES BEFORE ISSUANCE. Before issuing a license under this chapter, the department shall obtain driver record information from the national registry and commercial driver license information system to determine whether the applicant holds a commercial driver license, or a license that is revoked, suspended or canceled, or is otherwise disqualified. If the applicant is currently licensed in another state, the department shall obtain information on the applicant's license status with the state of licensure before issuing a license.

(6) RELEASE OF RECORDS. The department shall, upon request, provide to the commercial driver license information system and the driver licensing agencies of other states any applicant or driver record information maintained by the department.

(7) NOTIFICATION OF COMMERCIAL DRIVER LICENSE ISSUANCE. The department shall notify the commercial driver license information system within 10 days of an issuance, renewal or reinstatement of a commercial driver license, a commercial driver license upgrade authorizing the operation of a vehicle group not authorized on the prior commercial driver license, and of the surrender of a commercial driver license issued by another state.

(8) DEADLINE FOR LICENSE COMPLIANCE. (a) The department shall ensure that every resident qualified and authorized under this chapter to operate commercial motor vehicles who makes timely application is issued a commercial driver license by April 1, 1992.

(b) Beginning on January 1, 1991, and ending on March 31, 1992, the department may issue a commercial driver license without a driving skills test to an applicant who is eligible for a waiver under this paragraph. An applicant is eligible for a waiver of the driving skills test if he or she certifies and provides proof that he or she is regularly employed in a job requiring operation of a commercial motor vehicle, and has either operated a representative vehicle for which the applicant is seeking a commercial driver license for at least the 2 years preceding the application date or has taken and passed a behind-the-wheel driving skills test adminis-

tered in a representative vehicle by a state with a classified licensing and testing system. The person shall also certify that he or she has not committed any of the conduct described in par. (c) 1. to 5. during the 2-year period immediately preceding the date of application. The department shall determine by rule the degree of operating experience needed to satisfy this requirement and the means by which the applicant shall prove compliance with the requirements of this paragraph.

(c) The department may not waive the driving skills test of any person who fails to provide satisfactory proof of eligibility under par. (b) or who, during the 2 years immediately preceding the date of application, is known from information available to the department to have done any of the following:

1. Held more than one operator's license at a time, except that for the purposes of this subdivision, a school bus or chauffeur license issued under s. 343.12, 1987 stats., or s. 343.125, 1987 stats., shall be counted with a regular license issued by the department as a single license.

2. Had any license or operating privilege revoked, suspended or canceled.

3. Was convicted of a violation listed as a disqualifying offense under s. 343.315 (2) (a) or (e), regardless of whether the person was operating a commercial motor vehicle at the time of the offense. Conviction of 2 or more serious traffic violations under s. 343.315 (2) (f) shall be considered a disqualifying offense for purposes of this subdivision.

4. Was convicted of a violation of a law of this state, or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with a law of this state, or any law of another jurisdiction relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident.

5. Was at fault in any motor vehicle accident.

History: 1989 a. 105; 1991 a. 12, 32, 39.

343.04 Vehicle classifications. (1) **VEHICLE CLASSES.** For purposes of this chapter, motor vehicles are divided into the following classes:

(a) *Class A.* A "Class A" motor vehicle is any combination of vehicles with a gross vehicle weight rating, actual gross weight or registered weight of over 26,000 pounds, if the aggregate total gross vehicle weight rating, actual gross weight or registered weight of the vehicle or vehicles being towed is in excess of 10,000 pounds.

(b) *Class B.* A "Class B" motor vehicle is any single vehicle with a gross vehicle weight rating, actual gross weight or registered weight of over 26,000 pounds, and any such vehicle towing a vehicle or vehicles with an aggregate total gross vehicle weight rating, actual gross weight or registered weight of 10,000 pounds or less.

(c) *Class C.* A "Class C" motor vehicle is any single vehicle with a gross vehicle weight rating, actual gross weight and registered weight of 26,000 pounds or less, including any such vehicle towing a vehicle with a gross vehicle weight rating, actual gross weight and registered weight of less than 10,000 pounds, if any of the following applies:

1. The vehicle is designed to transport 16 or more passengers, including the driver.

2. The vehicle is transporting hazardous materials.

(d) *Class D.* A "Class D" vehicle is any motor vehicle not included in par. (a), (b), (c) or (e).

(e) *Class M.* A "Class M" vehicle is any Type 1 motorcycle.

(2) **VEHICLE TYPES.** For purposes of this chapter, certain vehicles intended to carry school children or other passengers, or having special operating characteristics, are divided into the following vehicle types specified in pars. (a) to (f):

(a) *Hazardous materials transporter.* Hazardous materials transporter vehicles are vehicles transporting hazardous materials.

(b) *Air brakes equipped.* Air brakes equipped vehicles are commercial motor vehicles equipped with a braking system operating fully or partly on the air brake principle.

(c) *Tanks.* Tanks are commercial motor vehicles which are tank vehicles.

(d) *Passenger carrying.* Passenger-carrying vehicles are motor vehicles designed to carry, or actually carrying, 16 or more passengers, including the driver.

(e) *School buses.* All school buses, including those which are commercial motor vehicles.

(f) *Vehicles towing double or triple trailers.* Vehicles towing double or triple trailers are commercial motor vehicles with double or triple trailers.

History: 1989 a. 105.

ISSUANCE, EXPIRATION AND RENEWAL OF LICENSES

343.05 Operators to be licensed; exceptions.

(1) **GENERAL PROVISIONS.** (a) Except as provided in this subsection, no person may at any time have more than one operator's license. This prohibition includes, without limitation, having licenses from more than one state, having licenses under more than one name or birthdate, having an occupational license without having surrendered the revoked or suspended license document, and having more than one license issued for the operation of different types or classes of vehicles.

(b) During the 10-day period beginning on the date on which the person is issued an operator's license, a person may hold more than one operator's license.

(c) A person may have both an operator's license and a duly issued instruction permit allowing restricted operation of a vehicle group not authorized by the license.

(2) **COMMERCIAL MOTOR VEHICLES.** (a) No person may operate a commercial motor vehicle upon a highway in this state unless the person is one of the following:

1. A resident who is at least 18 years of age, who is not disqualified under s. 343.315, who has a valid commercial driver license which is not revoked, suspended, canceled or expired and, for the operation of any vehicle type under s. 343.04 (2), has an endorsement authorizing operation of the vehicle type.

2. A nonresident who has in his or her immediate possession a valid commercial driver license issued to the person in his or her home jurisdiction bearing all endorsements required for the specific class and type of vehicle being operated. A license is not valid under this subdivision if the license is restricted to operation inside the person's home jurisdiction, or if the person is otherwise violating restrictions or exceeding operating authorization stated on the person's license. If the nonresident is operating a commercial motor vehicle in interstate commerce, he or she must be at least 21 years of age.

4. A person with a temporary license under s. 343.10 (4) or 343.305 (8) (a) which expressly authorizes the operation of the applicable class and type of commercial motor vehicle and which is not expired.

(b) This subsection does not apply to a person whose operation of a commercial motor vehicle is subject to waiver under s. 343.055.

(c) A tow truck operator holding a valid commercial driver license who is engaged in the removal of a disabled or wrecked vehicle from the highway or eliminating a hazard is not required to hold an endorsement to his or her commercial driver license regardless of the type of vehicle being towed. This exception to the requirement for an endorsement does not apply to any subsequent towing of the vehicle, including moving the vehicle from one repair facility to another, unless the tow truck operator holds a commercial driver license and is accompanied by a driver who holds the required endorsements.

(3) **NONCOMMERCIAL VEHICLES.** Except as provided in sub. (4):

(a) No person may operate a motor vehicle which is not a commercial motor vehicle upon a highway in this state unless the person possesses a valid operator's license issued to the person by the department which is not revoked, suspended, canceled or expired.

(b) No person may operate a Type 1 motorcycle unless the person possesses a valid operator's license specifically authorizing the operation of Type 1 motorcycles.

(c) 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. A license under this paragraph does not authorize operation of a moped or motor bicycle if the license is revoked, suspended, canceled or expired.

(4) EXEMPTIONS (a) The following are exempt from the licensing requirements of this chapter:

1. A person in the armed services while operating a motor vehicle owned by or leased to the federal government.

2. A person while temporarily operating or moving a farm tractor or implement of husbandry on a highway between fields or between a farm and a field.

3. A person temporarily operating motorized construction equipment designed principally for off-road use, including a motorscraper, backhoe, motorgrader, compacter, excavator, tractor, trencher and bulldozer. This subdivision does not apply to a truck or a construction vehicle designed or equipped for use on a highway or to any vehicle exceeding a speed of 35 miles per hour.

(b) The following are exempt from the licensing requirements of sub. (3):

1. A nonresident who is at least 16 years of age and who has in his or her immediate possession a valid operator's license issued to the person in the person's home jurisdiction.

2. 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.

3. 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.

(c) An exemption under par. (b) 2. or 3. applies only for a period of one year after a nonresident's arrival in the United States.

(5) PENALTIES (a) Any person who violates sub. (1) or (2) shall be:

1. Fined not less than \$200 nor more than \$600 or imprisoned for not more than 6 months or both for the first such violation.

2. Fined not less than \$300 nor more than \$1,000 or imprisoned for not less than 5 days nor more than 6 months or both for the 2nd offense occurring within 3 years.

3. Fined not less than \$1,000 nor more than \$2,000 and imprisoned for not less than 10 days nor more than 6 months for the 3rd or subsequent offense occurring within 3 years.

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

2. A person whose operator's license has expired not more than 3 months before a violation of sub. (3) (a) may be required to forfeit not more than \$100 for the first offense.

(c) Any person who violates sub. (3) (b) or (c) may be required to forfeit not more than \$100.

(6) OTHER OFFENSES; PENALTIES 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 with an operator's license which is revoked or suspended.

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; 1989 a. 87, 105, 359; 1991 a. 32, 39.

Cross-reference: See s. 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.

343.055 Commercial driver license waivers.

(1) OPERATORS WAIVED (a) *General.* Except as provided in subs. (3) and (4) and notwithstanding s. 343.05 (2), operators of certain commercial motor vehicles specified in pars. (b) to (h) or any rule of the department promulgated under sub. (5) are not required to hold commercial driver licenses, if the operator holds a valid operator's license not limited to "Class M" vehicles.

(b) *Fire fighters.* The operator of the commercial motor vehicle including, without limitation, fire trucks, hook and ladder trucks and foam or water transporters, is a person employed by a volunteer or paid fire organization and the person is operating emergency or fire fighting equipment necessary to the preservation of life or property or the execution of emergency government functions and equipped with a siren and warning lamps as provided in ss. 347.25 (1) and 347.38 (4) and the operation is in the routine performance of other duties of the fire organization or in response to an emergency call under s. 346.03 or during the return from a fire or other emergency response.

(c) *Farmers.* The operator of the commercial motor vehicle is a farmer who is using the commercial motor vehicle within 150 miles of the operator's farm to transport agricultural products, farm machinery or farm supplies including transporting hazardous materials or a combination thereof to or from a farm and the commercial motor vehicle is operated and controlled by a farmer and not used in the operations of a common motor carrier or contract motor carrier, as defined in s. 194.01 (1) and (2). In this paragraph, "controlled" means leased or owned; and "farmer" and "leased" have the meanings given in s. 340.01 (18) (b).

(d) *Recreational vehicle operators.* The operator of the commercial motor vehicle is a person operating a motor home, or a vehicle towing a 5th-wheel mobile home or single-unit touring mobile home not exceeding 45 feet in length and the vehicle or combination, including both units of a combination towing vehicle and the 5th-wheel mobile home or mobile home, is both operated and controlled by the person and is transporting only members of the person's family, guests or their personal property. This paragraph does not apply to any transportation for hire or the transportation of any property connected to a commercial activity. In this paragraph, "controlled" means leased or owned.

(h) *Rescue squad members.* The operator of the commercial motor vehicle is a member of a legally organized rescue squad. This paragraph applies only to the operation of authorized emergency vehicles.

(2) DISQUALIFICATIONS NOT APPLICABLE. Notwithstanding s. 343.44, a person disqualified under s. 343.315 may operate a commercial motor vehicle as described in this section if the person holds a valid operator's license issued to the person authorizing the operation of "Class D" vehicles.

(3) VEHICLES TRANSPORTING HAZARDOUS MATERIALS, CARRYING PASSENGERS OR TOWING DOUBLE OR TRIPLE TRAILERS NOT WAIVED. Nothing in this section authorizes the operation of a combination vehicle with double or triple trailers, a vehicle transporting hazardous materials except as provided in sub. (1) (c), or a vehicle carrying or designed to transport the driver and 15 or more

persons, by a person who does not hold a valid operator's license properly endorsed to permit such operation.

(4) **EFFECT OF WAIVERS.** The waivers under this section shall apply to the extent permitted under federal law and shall exempt a person only from the requirement in s. 343.05 (2) to hold a commercial driver license to operate a commercial motor vehicle upon a highway in this state. A commercial motor vehicle operated under this waiver remains a commercial motor vehicle.

(5) **RULES.** As soon as possible after the federal commercial motor vehicle safety act, 49 USC 2701 to 2716, or the regulations adopted under that act permit any commercial driver license waiver, the department shall promulgate rules governing eligibility for the waiver. This subsection applies to waivers not permitted by federal law on May 12, 1992.

History: 1989 a 105; 1991 a 39, 242; 1993 a 19

343.06 Persons not to be licensed. (1) The department shall not issue a license:

(a) 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.

(b) 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.

(c) To any person under age 18 unless the person is enrolled in a school program or high school equivalency program and is not a habitual truant as defined in s. 118.16 (1) (a), has graduated from high school or been granted a declaration of high school graduation equivalency or is enrolled in a home-based private educational program, as defined in s. 115.001 (3g), and has satisfactorily completed a course in driver education in public schools approved by the department of public instruction, or in technical colleges approved by the technical college system board, 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). The department shall not issue a license to any person under the age of 18 authorizing the operation of "Class M" vehicles unless the person has successfully completed a basic rider course approved by the department. The department may, by rule, exempt certain persons from the basic rider course requirement of this paragraph. Applicants for a license under s. 343.08 or 343.135 are exempt from the driver education, basic rider or driver training course requirement. The secretary shall prescribe rules for licensing of schools and instructors to qualify under this paragraph. The driver education course shall be made available to every eligible student in the state. Except as provided under s. 343.16 (1) (c), no operator's license may be issued unless a driver's examination has been administered by the department.

(d) 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, 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 (5).

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

(f) 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.

(g) 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.

(h) 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.

(i) To any person who has been convicted of any offense specified under ss. 940.225, 948.02, 948.025 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 corrections or other responsible supervising agency, after one year has elapsed since the prohibition began, entitles 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.

(j) 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.

(k) To any person who is not a resident.

(2) After March 31, 1992, the department shall not issue a commercial driver license, including a renewal, occupational or reinstated license, to any person during any period of disqualification under s. 343.315 or 49 CFR 383.51 or the law of another jurisdiction in substantial conformity therewith, as the result of one or more disqualifying offenses committed on or after July 1, 1987. Beginning on April 1, 1992, the department shall cancel any commercial driver license known to the department to have been issued to a person who is disqualified, unless the period of disqualification specified in s. 343.315 for the disqualifying offense has already expired.

(3) The department shall not issue a commercial driver license valid for use in interstate commerce to any person who is less than 21 years of age or who does not meet the physical qualifications for drivers contained in 49 CFR 391 or rules of the department concerning qualifications of drivers in interstate commerce.

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; 1989 a 31, 105; 1993 a 16, 227, 363, 399, 491.

Performance of duty delegated to a state road examiner under sub. (7), 1987 stats. [now sub. (1) (e)] 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.

343.065 Intrastate restricted commercial driver license.

(1) If an applicant for a commercial driver license is less than 21 years of age or does not meet the physical qualifications for drivers contained in 49 CFR 391 or an alternative federally approved driver qualification program established by the department by rule but is at least 18 years of age and otherwise qualified under this chapter and the rules of the department, the department may issue the applicant a commercial driver license restricted to authorizing the operation of commercial motor vehicles only within this state and not in interstate commerce.

(2) A commercial driver license issued under this section shall clearly identify that the license does not authorize the operation of commercial motor vehicles outside this state or in interstate commerce.

History: 1989 a. 105

343.07 Instruction permits. (1) REGULAR PERMIT; 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 an operator's license and has passed such knowledge test as the department may require, the department may issue a regular instruction permit. The permit entitles the permittee to operate a motor vehicle, except a commercial motor vehicle, school bus or Type 1 motorcycle, a motor bicycle or a moped, 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, the permittee's parent or guardian who meets the other qualifications of par. (a) or a licensed person 21 years of age or older who meets the other qualifications of par. (a) and who has been designated in writing to accompany the permittee by the permittee's parent or guardian prior to operation of the vehicle by the permittee. 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 the permittee; 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 the permittee's ability to operate a motor vehicle.

(1m) COMMERCIAL MOTOR VEHICLE AND SCHOOL BUS INSTRUCTION PERMITS; ISSUANCE, RESTRICTIONS. Upon application therefor by a person at least 18 years of age who holds a valid operator's license issued under this chapter and who, except for lack of training in the operation of a commercial motor vehicle or school bus, is qualified to obtain authorization for the operation of such vehicle including having passed the applicable knowledge tests, the department may issue an instruction permit for commercial motor vehicle or school bus operation. A permit limited to commercial motor vehicle instructional operation entitles the permittee to operate only a commercial motor vehicle upon the highways. A permit limited to school bus instructional operation entitles the permittee to operate only a school bus upon the highways. Both permits are subject to the following restrictions:

(a) Except as provided in par. (am), the permittee may not operate a commercial motor vehicle or school bus unless accompanied by a qualified instructor or a licensed person 21 years of age or older with a valid license authorizing the person to operate such vehicle, occupying the seating position nearest to the driver. No passengers are allowed in the vehicle, except that when the accompanying operator is a qualified instructor up to 3 other per-

mittees also being trained may occupy seats in the vehicle. The permittee may operate a commercial motor vehicle carrying property under this paragraph.

(am) 1. A permittee may operate a commercial motor vehicle or school bus, other than a vehicle type specified in s. 343.04 (2) (a), (c) or (f), within this state unaccompanied by a qualified instructor or a licensed person 25 years of age or older with at least 2 years of licensed driving experience in a representative vehicle and a valid license authorizing the person to operate such vehicle if the permittee has taken and passed the applicable knowledge tests and all of the following requirements are met:

a. The permittee is operating the vehicle in connection with a driver training course or program approved by the department.

b. The vehicle is being used by the permittee exclusively for driver training purposes and not for the purposes of carrying property or passengers.

c. Direct, uninterrupted audio or audiovisual electronic communication between a qualified instructor and the permittee is maintained at all times the permittee is operating the vehicle.

2. This paragraph shall apply to the extent permitted under federal law.

(b) Unless the permittee is at least 21 years of age, the instruction permit is not valid authorization for operation in interstate commerce and that lack of authorization shall be clearly indicated on the permit.

(c) The permittee may operate a commercial motor vehicle or school bus when accompanied by an authorized license examiner for the purpose of examining his or her ability to operate a commercial motor vehicle or school bus.

(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, MOTOR BICYCLE AND MOPED. (a) Upon application by a person who qualifies for issuance of a license under s. 343.06 (1) (c) and who wishes to qualify for the operation of a Type 1 motorcycle, the department may issue an instruction permit for the operation of "Class M" vehicles.

(b) The permit for Type 1 motorcycle operation shall be valid for 6 months. The department shall issue no more than 3 permits for Type 1 motorcycle operation to a person unless the person has successfully completed a rider course approved by the department. The department may, by rule, exempt certain persons from the rider course requirement of this paragraph. The permit for Type 1 motorcycle operation 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.

(c) The permit for moped and motor bicycle operation shall be valid for 6 months and entitles the permittee to operate a moped or motor bicycle subject to restrictions specified by the department by rule.

(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 technical college system board 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; 1989 a. 87, 105, 359; 1991 a. 12, 269, 316; 1993 a. 16, 24, 399.

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 a 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 the applicant's ability to safely operate the type of vehicle which the applicant is making application for license to operate.

(2) (a) A restricted license issued pursuant to this section is valid only until the licensee secures an operator's license issued pursuant to s. 343.03 or reaches 18 years of age and, except as provided in par. (b), 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.

(b) 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 for hire or in a city having a population of 500,000 or more or to operate a school bus or a commercial motor vehicle, including a farm truck or dual purpose farm truck defined as a commercial motor vehicle, or taxicab.

History: 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1983 a. 223, 227, 243, 270, 538; 1985 a. 65; 1989 a. 105; 1991 a. 316.

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) (a) Any person moving to this state who has been licensed in another jurisdiction for at least 3 years, who presently holds a license, other than an instruction permit, from another jurisdiction

which has not expired for more than 6 months and who has passed the person's 21st birthday is exempt from this section.

(b) Applicants issued a commercial driver license are 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 or any law of a federally recognized American Indian tribe or band in this state in conformity with any of the state traffic laws. 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; 1989 a. 105, 359; 1991 a. 39.

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) **PETITION FOR OCCUPATIONAL LICENSE.** (a) If a person's license or operating privilege is revoked or suspended under this chapter or s. 161.50 and if the person is engaged in an occupation, including homemaking or full-time or part-time study, or a trade making it essential that he or she operate a motor vehicle, the person, after payment of the fee provided in sub. (6), may file a petition setting forth in detail the need for operating a motor vehicle.

(b) The petition shall be in a form established by the department and shall identify the specific motor vehicle that the petitioner seeks authorization to operate, including the vehicle classification and any required endorsements. The petition shall include an explanation of why operating the motor vehicle is essential to the person's livelihood and identify the person's occupation or trade. The petition shall identify the petitioner's employer, and include proof of financial responsibility as specified in s. 343.38 (1) (c) covering the vehicle or vehicles that the petitioner requests authorization to operate. The petition shall identify the hours of operation and routes of travel being requested by the petitioner in accord with the restrictions of sub. (5). The petitioner shall certify whether, to the best of personal knowledge, he or she is disqualified under s. 343.315.

(c) Except as provided in sub. (10), the petition shall be filed with a judge of a circuit court in the county of the petitioner's residence or of a municipal court in the county of the petitioner's residence.

(2) **ELIGIBILITY.** (a) Except as provided in pars. (b) to (e), a person is eligible for an occupational license if the following conditions 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.

3. The person surrenders his or her former operator's license, including any license issued under sub. (10), unless the license is already in the possession of the court or the department.

(b) No occupational license may permit the operation of any motor vehicles for which the petitioner did not hold valid authorization at the time of revocation or suspension of the person's license or operating privilege.

(c) No occupational license permitting the operation of a commercial motor vehicle may be granted to a person during a period of disqualification under s. 343.315.

(d) A person whose operating privilege is revoked under ch. 351 is not eligible for an occupational license except as provided in s. 351.07.

(e) If the court orders a person to submit to and comply with an assessment and driver safety plan and if the person has 2 or more prior convictions, suspensions or revocations, as counted under s. 343.307 (1), no occupational license may be granted until the person has completed the assessment and is complying with the driver safety plan.

(3) **DETERMINATION ON PETITION.** If satisfied that the person is eligible under sub. (2), 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. If the court grants the petition, a copy of the petition and the order for the occupational license shall be forwarded to the department.

(4) **COURT ORDER AND ISSUANCE OF TEMPORARY LICENSE.** If the court grants a petition as provided in sub. (3), the judge may issue a 30-day temporary occupational license to the person on forms provided to the court by the department if 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 affirmance of the appeal, unless another minimum waiting period or immediate eligibility is expressly provided by law.

(5) **RESTRICTIONS AND LIMITATIONS ON OCCUPATIONAL LICENSE.**
(a) *Restrictions.* 1. In addition to any restrictions appearing on the former operator's license of the petitioner, 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. 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 subdivision. 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 subdivision. The order may contain restrictions on the use of alcohol and of controlled substances in violation of s. 161.41.

2. If the petitioner has 2 or more convictions, suspensions or revocations, as counted under s. 343.307 (1), the order for issuance of an occupational license shall prohibit the petitioner from driving or operating a motor vehicle while he or she has a blood alcohol concentration of more than 0.0% by weight of alcohol in the person's blood or more than 0.0 grams of alcohol in 210 liters of that person's breath.

3. If the petitioner has 2 or more prior convictions, suspensions or revocations, as counted under s. 343.307 (1), the order for issuance of an occupational license to a person may restrict the person's operation under the occupational license to vehicles that are equipped with a functioning ignition interlock device as provided under s. 346.65 (6). A person to whom a restriction under this subdivision applies violates that restriction if he or she requests or permits another to blow into an ignition interlock

device or to start a motor vehicle equipped with an ignition interlock device for the purpose of providing the person an operable motor vehicle without the necessity of first submitting a sample of his or her breath to analysis by the ignition interlock device.

(b) *Limitations.* Occupational licenses are subject to the limitations specified in ss. 161.50, 343.30 (1q) (b) and (h), 343.305 (8) (d) and (10) (b) and (em), 343.31 (3m) and 343.32 (1m).

(6) **FEE.** No person may file a petition for an occupational license unless he or she first pays a fee of \$40 to the clerk of the circuit court if the petition is to a judge of the circuit court, to the municipal court if the petition is to a judge of the municipal court or to the department if the petition is to the department under sub. (10). The clerk of the circuit court or the municipal court official shall give the person a receipt and forward the fee to the county or municipal treasurer, respectively. That treasurer shall pay 50% of the fee to the state treasurer under s. 59.20 (8r) and retain the balance for the use of the county or municipality, respectively. The department shall give the person a receipt.

(7) **DEPARTMENT TO ISSUE OCCUPATIONAL LICENSE.** (a) If the department determines that the person is eligible for and has been issued a temporary occupational license under sub. (4), the department may issue an occupational license to the person upon receipt of an order for such a license.

(b) The department shall issue an occupational license as soon as practicable upon receipt of an order for such a license, if the department determines that the petitioner is eligible under sub. (2).

(c) If the court order permits operation of both commercial motor vehicles and noncommercial motor vehicles and the person is disqualified under s. 343.315 but otherwise eligible under sub. (2), the department shall issue an occupational license authorizing operation only of vehicles other than commercial motor vehicles.

(cm) If the order includes the restriction specified in sub. (5) (a) 3., the department shall not issue the occupational license until the person provides evidence satisfactory to the department that any motor vehicle that the person will be permitted to operate has been equipped with a functioning ignition interlock device.

(d) An occupational license issued by the department under this subsection shall be in the form of a photo license and any special restrictions cards under s. 343.17 (4). The license shall clearly indicate that restrictions on a special restrictions card apply and that the special restrictions card is part of the person's license.

(e) 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. If the order permits operation of commercial motor vehicles and the department determines that the petitioner is eligible under sub. (2), the department may impose such conditions and limitations upon the authorization to operate commercial motor vehicles as in the secretary's judgment are necessary in the interest of public safety and welfare, including reexamination of the person's qualifications to operate a commercial motor vehicle or a particular type thereof. The department may limit such authorization to include, without limitation, the operation of particular vehicles, particular kinds of operation and particular traffic conditions.

(f) The expiration date of the occupational license is the date of termination of the period of revocation or suspension as provided by law. The occupational license may be revoked, suspended or canceled before termination of that period. 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.

(8) VIOLATION OF RESTRICTIONS; PENALTIES (a) Any person who violates any restriction of an occupational license, in addition to the immediate revocation of the license:

1. Shall forfeit not less than \$150 nor more than \$600, except as provided in subd. 2.

2. 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.

(b) The 5-year period under par. (a) 2. shall be measured from the dates of the violations which resulted in the convictions.

(9) NOTICE 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.

(10) ADMINISTRATIVE ISSUANCE OF OCCUPATIONAL LICENSE FOR COMMERCIAL MOTOR VEHICLE DRIVERS. (a) If the petitioner's commercial driver license has been suspended or revoked solely for a violation of s. 346.63 (1) and the person was not operating a commercial motor vehicle at the time of the violation, a petition seeking issuance of an occupational license authorizing operation of "Class A", "Class B" or "Class C" vehicles may be filed directly with the department. The petition may also seek authorization to operate "Class D" or "Class M" vehicles.

(am) If the petitioner's commercial driver license has been suspended or revoked under ch. 344, a petition seeking issuance of an occupational license authorizing operation of "Class A", "Class B" or "Class C" vehicles may be filed directly with the department. The petition may not seek authorization to operate "Class D" or "Class M" vehicles.

(b) There shall be no minimum waiting period before the issuance of an occupational license under this subsection authorizing operation of only "Class A", "Class B" or "Class C" vehicles. If the petition also seeks authorization to operate "Class D" or "Class M" vehicles, the department may issue an occupational license if at least 15 days have elapsed since the date of suspension or revocation unless another minimum waiting period or eligibility at any time is provided by law.

(bm) If the petitioner's commercial driver license has been suspended or revoked under s. 343.32 (2), a petition seeking issuance of an occupational license authorizing operation of "Class A", "Class B" or "Class C" vehicles may be filed directly with the department. The petition may also seek authorization to operate "Class D" or "Class M" vehicles. The department may issue an occupational license after at least 15 days have elapsed since the date of suspension or revocation.

(c) If satisfied that the person is eligible under sub. (2), the department shall consider the number and seriousness of prior traffic convictions in determining whether to issue a commercial motor vehicle occupational license and what restrictions to specify.

(d) An occupational license issued under this subsection shall contain all of the restrictions required by sub. (5). The department may also impose such conditions and limitations upon the operation of motor vehicles as in the secretary's judgment are necessary in the interest of public safety and welfare, including reexamination of the person's qualifications to operate a motor vehicle or a particular type thereof. The department may limit such authorization to include, without limitation, the operation of particular motor vehicles, particular kinds of operation and particular traffic conditions.

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; 1989 a. 31, 38, 105, 359; 1991 a. 39, 269, 277.

Court can't impose restrictions on occupational licenses other than those enumerated in sub. (1), 1987 stats. [now sub. (5) (a)] State v. Darling, 143 W (2d) 839, 422 NW (2d) 886 (Ct. App. 1988).

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. Except as provided in s. 343.055, the temporary license shall not be valid authorization for the operation of commercial motor vehicles. The temporary license 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; 1989 a. 105.

343.12 School bus operators to obtain special authorization. (1) (a) No person shall operate a school bus without having first applied for and received authorization from the department in the form of a school bus endorsement to the person's valid operator's license.

(b) A motor bus registered in compliance with s. 341.26 (7) and equipped as provided under ss. 347.25 (2) and 347.44 but not transporting children for any purpose is not a school bus within the meaning of this subsection while being used on a highway for purposes other than those specified in s. 340.01 (56) (a) or (am) if the flashing red warning lights are not used and all markings on the front and rear of the motor bus indicating that it is a school bus are removed or completely concealed.

(2) The department shall issue a school bus endorsement 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.

(d) Notwithstanding ss. 111.321, 111.322 and 111.335, has not been convicted of reckless driving under s. 346.62 or a local ordinance in conformity with s. 346.62 (2) or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.62 (2), operating a motor vehicle while operating privileges are suspended or revoked under s. 343.44 (1) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 343.44 (1) with respect to operation of a motor vehicle while operating privileges are suspended or revoked, any of the offenses enumerated under s. 343.31 (1) or (2), or 2 or more offenses under s. 346.63 (7) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (7), or a conviction under the law of another jurisdiction, as those terms are defined in s. 340.01 (9r) and (41m), respectively, prohibiting reckless or careless driving, as those or substantially similar terms are used in that jurisdiction's laws, or a conviction, suspension or revocation that would be counted under s. 343.307 (2), within the 2-year period immediately preceding the date of application. Upon request of the opera-

tor or school, the department shall certify whether the operator meets this requirement.

(e) Subject to ss. 111.321, 111.322 and 111.335, has not been convicted of a felony or offense against public morals in this state, including a conviction under the law of a federally recognized American Indian tribe or band in this state for an offense which, if the person had been convicted of the offense under the laws of this state, would have constituted a felony or offense against public morals, or in another jurisdiction, 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 the initial issuance of the endorsement, takes and passes a special examination prescribed by the department and administered by the department or by a 3rd-party tester under s. 343.16 (1) (b) to determine his or her ability to safely operate a school bus. The department may renew the endorsement without retesting the licensee, except under sub. (3).

(3) The department may issue a school bus endorsement 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) before issuance of the endorsement and annually takes and passes a physical examination prior to issuance or renewal of the endorsement to determine that the person meets the physical standards established under sub. (2) (g).

(4) (a) Notwithstanding sub. (1), a person may operate a school bus in this state if one or more of the following requirements are met:

1. The person is a nonresident holding a valid commercial driver license with a "P" passenger endorsement and any additional endorsements required by the person's home jurisdiction for the operation of a school bus and the origin or destination of the trip is in another state.

2. The person is a resident of Iowa, Illinois, Michigan or Minnesota and was licensed under s. 343.12 (2) (c), 1987 stats. This subdivision applies only for 2 years after December 20, 1989.

3. The person is a resident of Iowa, Illinois, Michigan or Minnesota and holds a valid operator's license authorizing the operation of a school bus.

(b) The department may, by rule, establish standards for the employment by an employer of a person under par. (a) 3. as an operator of a school bus in this state. The rules may require the person to meet the qualifications contained in sub. (2) or (3) and any rules of the department applicable to residents.

(5) Any person who violates sub. (1) shall be:

(a) Fined not less than \$200 nor more than \$600 and may be imprisoned for not more than 6 months or both for the first such offense.

(b) Fined not less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months for the 2nd offense occurring within 3 years.

(c) Fined not less than \$1,000 nor more than \$2,000 and imprisoned for not less than 10 days nor more than 6 months for the 3rd or subsequent offense occurring within 3 years.

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; 1989 a. 105, 176, 359; 1991 a. 39, 277; 1993 a. 16.

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).

343.13 Restricted licenses. (1) 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.

(2) Notwithstanding sub. (1), the department shall restrict the commercial driver license of any person to prohibit the operation of any motor vehicle equipped with air brakes if the person fails the portion of an examination under s. 343.16 relating to air brakes or the person's driving skills test is conducted in a motor vehicle not equipped with air brakes.

History: 1977 c. 29 s. 1654 (7) (a); 1989 a. 105

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 (2) (d).

(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 license under this paragraph may not be issued to authorize operation of a commercial motor vehicle or a school bus. A special restricted operator's license may be issued only for the following 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 (3) and the holder may affix a decal thereto as provided in s. 343.175 (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 spe-

cific 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; 1989 a. 105.

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 and residence address of the applicant;
- (b) The applicant's date of birth, social security number, 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 of any motor vehicle 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, documentary proof that the applicant is enrolled in a school program or high school equivalency program and is not a habitual truant as defined in s. 118.16 (1) (a), has graduated from high school or been granted a declaration of high school graduation equivalency or is enrolled in a home-based private educational program, as defined in s. 115.001 (3g). For purposes of this paragraph, "documentary proof" means the signature and verification of an adult sponsor as provided in s. 343.15 (1) or the applicant as provided in s. 343.15 (4) (b);

(f) Such further information as the department considers appropriate to identify the applicant, including biometric data, and such information as the department may reasonably require to enable it to determine whether the applicant is by law entitled to the license applied for;

(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 shall comply with s. 157.06 or 343.175 (2);

(h) A certification by the applicant that the motor vehicle in which the person takes the driving skills test is a representative vehicle of the vehicle group that the person operates or expects to operate; and

(i) A certification by the applicant for a commercial driver license that he or she either:

1. Meets all of the driver qualifications contained in either 49 CFR 391 or in an alternative federally approved driver qualification program established by the department by rule. The department may require the applicant to show the medical certificate of physical examination required by 49 CFR 391.43; or

2. Meets all of the driver qualifications for drivers in intrastate commerce as established by the department by rule and is apply-

ing for a commercial driver license valid only in this state for non-interstate operation.

(2m) The forms for application for a license or identification card or for renewal thereof or another form provided by the department shall include a place for an applicant, licensee or identification card holder to designate that his or her name, street address, post-office box number and 9-digit extended zip code may not be disclosed as provided in s. 343.235 or 343.24 (4), a statement indicating the effect of making such a designation and a place for an applicant, licensee or identification card holder who has made a designation under this subsection to reverse the designation.

(3) The department shall, as part of the application process, take a photograph of the applicant to comply with s. 343.17 (3) (a) 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 (3). 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 (3), issue renewal licenses not containing the licensee's photograph which may be valid for a period of 2 years as prescribed in s. 343.17, 1977 stats.; and s. 343.20, 1977 stats. The period between examinations required under s. 343.16 (3) 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 \$1,000 or imprisoned for 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. 343.175. 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 department in writing to remove his or her name from the record.

(8) The department shall annually distribute materials, as provided by the department, explaining the voluntary program that is specified in s. 71.55 (10) (b) to applicants for a license who are aged 65 years or older.

History: 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 124, 360, 447; 1979 c. 306; 1981 c. 20 s. 184r; 1985 a. 227; 1987 a. 27; 1987 a. 403 s. 256; 1989 a. 105, 294, 298, 359; 1991 a. 269; 1993 a. 363.

343.15 Application of persons under 18; liability of sponsors; release from liability; notification of juvenile violation. (1) (a) 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 a stepparent of the applicant or other adult sponsor, as defined by the department by rule. 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.

(b) The adult sponsor under par. (a) shall sign and verify on the application that the person under 18 years of age is enrolled in a school program or high school equivalency program and is not a habitual truant as defined in s. 118.16 (1) (a), has graduated from high school or been granted a declaration of high school graduation equivalency or is enrolled in a home-based private educational program, as defined in s. 115.001 (3g).

(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) (a) 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 specified in this paragraph or in a substantially similar class specified by the department by rule 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.

1. A person who does not have a living parent.
2. A person who does not reside with his or her parents and who is a full-time student or earning a living.
3. A person who is a ward of the state, county or court and who has been placed in a foster home or a treatment foster home or in the care of a religious welfare service.
4. A person who is married and whose spouse is under 18 years of age.

(b) A person who is not required to have an adult sponsor under par. (a) shall sign and verify on the application that he or she is enrolled in a school program or high school equivalency program and is not a habitual truant as defined in s. 118.16 (1) (a), has graduated from high school or been granted a declaration of high school graduation equivalency or is enrolled in a home-based private educational program, as defined in s. 115.001 (3g).

(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. When the secretary suspends or revokes the operating privilege of

a person who is under 18 years of age and who possesses a license and who is required to have a sponsor under this section or when the secretary receives notice that a court has suspended or revoked the operating privilege of such a person, the secretary shall, within 14 days after the suspension or revocation or receipt of the notice of suspension or revocation by the court, respectively, notify the person's sponsor or parents of the suspension or revocation.

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; 1989 a. 105, 244; 1993 a. 162, 363, 446, 491

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 nonsettling 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).

Evidence of sponsors' wealth is not admissible for purposes of assessing punitive damages against underage driver; however, under vicarious liability doctrine, sponsor is liable for payment. *Franz v. Brennan*, 150 W (2d) 1, 440 NW (2d) 562 (1989).

343.16 Examination of applicants; reexamination of licensed persons.

(1) **REQUIRED TESTING OF KNOWLEDGE AND DRIVING SKILLS** (a) *General.* The department shall examine every applicant for an operator's license, including applicants for license renewal as provided in sub. (3), and every applicant for authorization to operate a vehicle class or type for which the applicant does not hold currently valid authorization, other than an instruction permit. Except as provided in sub. (2) (cm) and (e) and s. 343.03 (8) (b) and (c), the examinations of applicants for licenses authorizing operation of "Class A", "Class B", "Class C", "Class D" or "Class M" vehicles shall include both a knowledge test and an actual demonstration in the form of a driving skills test of the applicant's ability to exercise ordinary and reasonable control in the operation of a representative vehicle. The department shall not administer a driving skills test to a person applying for authorization to operate "Class M" vehicles who has failed 2 previous such skills tests unless the person has successfully completed a rider course approved by the department. The department may, by rule, exempt certain persons from the rider course requirement of this paragraph. The driving skills of applicants for endorsements authorizing the operation of commercial motor vehicles equipped with air brakes, the transportation of passengers in commercial motor vehicles or the operation of school buses, as provided in s. 343.04 (2) (b), (d) or (e), shall also be tested by an actual demonstration of driving skills. The department may endorse an applicant's commercial driver license for transporting hazardous materials, or the operation of tank vehicles or vehicles towing double or triple trailers, as described in s. 343.04 (2) (a), (c) or (f), based on successful completion of a knowledge test. In administering the knowledge test, the department shall attempt to accommodate any special needs of the applicant. The knowledge test is not intended to be a test for literacy or English language proficiency. This paragraph does not prohibit the department from requiring an applicant to correctly read and understand highway signs.

(b) *Third-party testing.* The department may contract with a person, including an agency or department of this state or its political subdivisions or another state, or a private employer of commercial motor vehicle drivers, to administer commercial motor vehicle skills tests required by 49 CFR 383.110 to 383.135, examinations required to be administered under s. 343.12 (2) (h) and abbreviated driving skills tests required by sub. (3) (b). The department may not enter into such testing contracts with a private driver training school or other private institution. A contract with a 3rd-party tester shall include all of the following provisions:

1. All tests and examinations conducted by the 3rd-party tester shall be the same as those given by the department.

2. The department, the federal highway administration or its representative may conduct random examinations, inspections and audits of the 3rd-party tester without any prior notice.

3. At least annually, the department shall conduct an on-site inspection of the 3rd-party tester to determine compliance with the contract and with department and federal standards for testing applicants for commercial driver licenses and with department standards for testing applicants for school bus endorsements. At least annually, the department shall also evaluate testing given by the 3rd-party by one of the following means:

a. Department employes shall take the tests and examinations actually administered by the 3rd-party tester as if the department employe were an applicant.

b. The department shall retest a sample of drivers who were examined by the 3rd-party to compare the pass and fail results.

4. Examiners of the 3rd-party tester shall meet the same qualifications and training standards as the department's license examiners to the extent established by the department as necessary to satisfactorily perform the skills tests required by 49 CFR 383.110 to 383.135, examinations required to be administered under s. 343.12 (2) (h) and abbreviated driving skills tests required by sub. (3) (b).

5. The department shall take prompt and appropriate remedial action against the 3rd-party tester in the event that the tester fails to comply with department or federal standards for commercial driver license testing, department standards for school bus endorsement testing or any provision of the contract. Such action may include immediate termination of testing by the 3rd-party tester and recovery of damages.

(c) *Driver education course.* The department may, after consultation with the department of public instruction and the technical college system board, provide for administration of and certification of the results of the test of an applicant's knowledge of the traffic laws and ability to read and understand highway signs in conjunction with a course in driver education specified in this paragraph, by an instructor in that course. The test under this paragraph does not include that part of a driver's examination involving the actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle required for the issuance of a license other than an instruction permit. The test under this paragraph may be administered and certified by an instructor in any of the following:

1. A course in driver education in public schools approved by the department of public instruction.

2. A course in driver education in technical colleges approved by the technical college system board.

3. A course in driver education in nonpublic and private schools that meets the minimum standards set by the department of public instruction.

(2) **TESTING STANDARDS.** (a) *Rules.* The department shall promulgate rules setting testing standards for commercial driver license applicants. The testing standards shall comply with 49 CFR 383.71 to 383.135.

(b) *Specific requirements.* The standards developed by the department under par. (c) shall provide that 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, knowledge of the need for anatomical gifts and the ability to make an anatomical gift through the use of a donor card issued under s. 343.175 (2), 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 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 examination of applicants for authorization to operate 'Class M' vehicles shall test an applicant's knowledge of Type 1 motorcycle safety, including proper eye protection to be worn during hours of darkness. The department may require persons changing their residence to this state from another jurisdiction and persons applying for a reinstated license after termination of a revocation period to take all or parts of the examination required of persons making their first application for an operator'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 representative vehicle in safe operating condition for use in testing ability.

(c) *Standards.* 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.

(cm) *Motorcycle waiver.* The department shall waive the driving skills test of a person applying for authorization to operate "Class M" vehicles if the applicant holds an instruction permit under s. 343.07 (4) and has successfully completed a basic rider course approved by the department.

(d) *Motor bicycle or moped waiver.* 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.

(e) *Farm service industry employe waiver.* To the extent permitted under applicable federal law or regulation, the department may waive any knowledge test and shall waive the commercial driver license driving skills test of a person applying for an "F" endorsement, except as provided under s. 343.16 (5) or (6).

(3) **TESTING UPON RENEWAL.** (a) 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.

(b) The department shall require each applicant for the renewal of an operator's license with an endorsement authorizing the operation of school buses to take and pass the knowledge test under sub. (1) and an abbreviated driving skills test including, but not limited to, pretrip inspection, the loading and unloading of passengers and railroad crossing procedures.

(4) **CONDUCT OF DRIVING SKILLS TEST.** (a) An applicant who holds an expired instruction permit, expired out-of-state license or who seeks to reinstate his or her operating privilege may drive a motor vehicle only when accompanied by an authorized license

examiner for the purpose of examining the applicant's ability to operate a motor vehicle. Such applicant must be driven to and from the examining area by a licensed driver. This exception to the requirement to hold a valid operator's license does not apply to the operation of a commercial motor vehicle. For purposes of examining applicants for a special restricted operator's license under s. 343.135, the department may waive the requirements of this paragraph in any case in which it considers a waiver desirable.

(b) 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 the person's ability to operate a motor vehicle.

(5) MEDICAL OR OTHER SPECIAL EXAMINATIONS. (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 (5) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) or (5), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or (6) 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 section. 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 or 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. Optome-

trists 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.

(6) SPECIAL RETESTING OF LICENSED OPERATIONS (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.

(7) PENALTIES (a) Any person required by or pursuant to this section to submit to an examination who by any means secures the services of another person to appear in that person's 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.

(b) 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; 1989 a. 31, 105, 359; 1991 a. 21, 32, 39, 316; 1993 a. 16, 19, 183, 399

343.17 Contents and issuance of operator's license. (1) **LICENSE ISSUANCE.** The department shall issue an operator's license and endorsements, as applied for, to every qualifying applicant who has paid the required fees.

(2) **LICENSE DOCUMENT.** The license shall be a single document, in one-part, consisting of 2 sides, except as otherwise provided in sub. (4) and s. 343.10 (7) (d). The document shall be, to the maximum extent practicable, tamper proof.

(3) **CONTENTS** (a) The front side of the license document shall include, without limitation, all of the following:

1. The full name, date of birth and residence address of the person.
2. A color photograph of the person.
3. A physical description of the person, including sex, height, weight and hair and eye color, but excluding any mention of race.
4. A unique identifying driver number assigned by the department.

5. A facsimile of the person's signature, or a space upon which the licensee shall immediately write his or her usual signature with a pen and ink on receipt of the license, without which the license is not valid.

6. The classes of vehicles that the person is authorized to operate under par. (c), together with any endorsements or restrictions.

7. The name of this state.

8. The date of issuance of the license.

9. The date of expiration of the license.

10. A space for the sticker under s. 343.175 (3).

11. If the license authorizes the operation of certain commercial motor vehicles, the legend "Commercial Driver License", a readily recognizable abbreviation thereof or "CDL".

12. If the person is not the legal drinking age, as defined in s. 125.02 (8m), at the time of issuance of the license, a distinctive background color for the license document designated by the department that clearly identifies to the public that the person was not the legal drinking age at the time of issuance of the license.

(b) The reverse side of the license shall contain an explanation of any restriction codes or endorsement abbreviations used on the front of the license, in sufficient detail to identify the nature of the restrictions or endorsements to a law enforcement officer of this state or another jurisdiction. Except for a commercial driver license or a license labeled "CDL-Occupational" as described in s. 343.03 (3) (b) and (e), a part of the reverse side of each license shall be printed to serve as a document of gift under s. 157.06 (2) (b) and (c) or a document of refusal to make an anatomical gift under s. 157.06 (2) (i).

(c) The classifications on operator's licenses shall be as follows:

1. Classification "A", which authorizes the operation of "Class A" vehicles as described in s. 343.04 (1) (a). A driver who has passed the knowledge and driving skills tests for operating "Class A" vehicles shall receive a license authorizing the operation of "Class A", "Class B" and "Class C" vehicles if the person possesses any requisite endorsement.

2. Classification "B", which authorizes the operation of "Class B" vehicles as described in s. 343.04 (1) (b). A driver who has passed the knowledge and driving skills tests for operating "Class B" vehicles shall receive a license authorizing the operation of "Class B" and "Class C" vehicles if the person possesses any requisite endorsement.

3. Classification "C", which authorizes the operation of "Class C" vehicles as described in s. 343.04 (1) (c) if the person possesses any requisite endorsement.

4. Classification "D", which authorizes the operation of "Class D" vehicles as described in s. 343.04 (1) (d) if the person possesses any requisite endorsement.

5. Classification "M", which authorizes the operation of Type 1 motorcycles.

(d) The endorsements on operator's licenses shall be as follows:

1g. "F" endorsement, which authorizes a seasonal employe of a farm service industry employer who is eligible for a restricted commercial driver license under applicable federal law or regulation to operate "Class B" and "Class C" vehicles as described in s. 343.04 (1) (b) and (c) for a seasonal period not to exceed 180 days in any calendar year. This endorsement permits the transporting of liquid fertilizers in vehicles or implements of husbandry with total capacities of 3,000 gallons or less, solid fertilizers that are not transported with any organic substance or 1,000 gallons or less of diesel fuel, but no combination of these materials. The endorsement does not permit operation of a commercial motor vehicle beyond 150 miles of the farm service industry employer's place of business or, in the case of custom harvesters, the farm currently being served.

1m. "H" endorsement, which authorizes the driver to operate vehicles transporting hazardous materials.

2. "N" endorsement, which authorizes operating tank vehicles.

3. "P" endorsement, which authorizes operating vehicles designed to carry, or actually carrying, 16 or more passengers including the driver, except this endorsement does not authorize the operation of school buses unless the licensee also holds an "S" endorsement.

4. "S" endorsement, which authorizes operating school buses.

5. "T" endorsement, which authorizes operating commercial motor vehicles with double or triple trailers where the operation of such combination vehicles is permitted.

6. "X" endorsement, which is an optional endorsement that may be used to indicate that the licensee holds both "H" and "N" endorsements.

(e) The standard restriction codes used on commercial driver licenses include:

1. "K" restriction, which restricts a person issued a license under s. 343.065 to operating commercial motor vehicles only within this state and not in interstate commerce.

2. "L" restriction, which prohibits a person from operating commercial motor vehicles equipped with air brakes, as required in s. 343.13 (2).

(4) SPECIAL RESTRICTIONS CARDS. (a) When an operator's license is subject to lengthy special restrictions or other restrictions not described in the standard codes on the front side of the license, the department shall indicate on the license document that the license is subject to restrictions contained on one or more separate special restrictions cards.

(b) A separate special restrictions card shall describe the restrictions, bear the issuance date of the card, specify the identifying driver number of the license to which it applies, and indicate the number and order of special restrictions cards currently issued by the department to the person, in the manner "1 of 2".

(5) NO PHOTOS ON TEMPORARY LICENSES. The temporary licenses issued under ss. 343.10, 343.11 (1) and (3), 343.16 (6) (b) and 343.305 (8) (a) shall be on forms provided by the department and shall contain the information required by sub. (3), except the license is not required to include a photograph of the licensee.

(6) RULES. Subject to subs. (2) and (3), the department shall promulgate rules setting the design and specifications for the license document and subsequent changes thereto.

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; 1989 a. 105, 298; 1991 a. 269; 1993 a. 19.

In sub. (2g) (e), a "conviction under this section" includes an offense under sub. (1). State v. Charles, 180 W (2d) 155, 509 NW (2d) 85 (Ct. App. 1993).

Application of sub. (2) (b) 2 discussed. State v. Muniz, 181 W (2d) 928, 512 NW (2d) 252 (Ct. App. 1994).

A person whose period of suspension resulting from an OWI conviction has ended but who remains suspended due to a failure to complete required alcohol assessment is subject to sub. (2g). State Doyen, 185 W (2d) 635, 518 NW (2d) 521 (Ct. App. 1994).

343.175 Organ donor information. (1) DEPARTMENT TO SOLICIT AND RECORD INFORMATION. As part of every application for an original, duplicate, reinstated, reissued or renewal license or endorsement, the department shall inquire whether the applicant desires to be an organ donor. The department shall record the organ donor response in its file of the person.

(2) DOCUMENT OF GIFT OR REFUSAL. (a) Except as provided in par. (ag), a part of the reverse side of each license shall be printed to serve as a document of gift under s. 157.06 (2) (b) and (c) or a document of refusal to make an anatomical gift under s. 157.06 (2) (i).

(ag) The department shall print a separate document to be issued to all persons issued a commercial driver license or a license labeled "CDL-Occupational" as described in s. 343.03 (3) (b) and (e) and make provisions so that the document may be attached to the reverse side of the license document along one edge. This document shall serve as a document of gift under s.

157.06 (2) (b) and (c) or a document of refusal to make an anatomical gift under s. 157.06 (2) (i).

(ar) If the person desires to be an organ donor, he or she may so indicate in the space provided on the license. The donor may supply information in the space provided on the license, including the specific body parts or organs to be donated, the name of the donee, the purpose for which the gift is made and the physician whom the donor wishes to carry out the appropriate procedures. The anatomical gift described on the license shall be signed by the licensee.

(b) The licensee may revoke or amend his or her gift by crossing out the donor authorization in the space provided on the license or as otherwise prescribed in s. 157.06. The licensee may refuse to make an anatomical gift by so indicating in the space provided on the license or as otherwise prescribed in s. 157.06.

(c) Persons authorizing gifts of their body parts remain subject to s. 157.06.

(3) ORGAN DONOR STICKER. (a) The department shall designate a space on the front side of the license document where the licensee may affix a sticker 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 s. 343.17 (3). The sticker shall be of a distinctive design and supplied to the donor by a nationally recognized organization that enlists donors of body organs or parts for the purposes of transplantation, therapy, medical research or education.

(b) The use of the sticker on the license document is proper and authorized only if the bearer has indicated his or her intent to make body organs or parts available by filling out and carrying a donor card.

History: 1989 a. 105, 298.

343.18 License to be carried; verification of signature. (1) Every licensee shall have his or her license document, including any special restrictions cards issued under s. 343.10 (7) (d) or 343.17 (4), in his or her immediate possession at all times when operating a motor vehicle and shall display the same upon demand from any judge, justice or traffic officer.

(1m) A person charged with violating sub. (1) may not be convicted if he or she produces in court or in the office of the arresting officer a license theretofore issued to the licensee and valid at the time of his or her arrest.

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

(3) (a) Except as provided in pars. (b) and (c), any person who violates sub. (1) shall forfeit not more than \$200.

(b) If the special restrictions card is part of an occupational license issued under s. 343.10, any person who violates sub. (1) is subject to the penalties provided in s. 343.10 (8) and the person's operating privilege shall be revoked under s. 343.31 (3) (h).

(c) If the person is operating a commercial motor vehicle at the time of the violation, any person who violates sub. (1) shall forfeit not less than \$250 nor more than \$2,500.

History: 1989 a. 105; 1991 a. 315.

Is public interest in permitting status check on license following display to officer under (1). State v. Ellenbecker, 159 W (2d) 91, 464 NW (2d) 427 (Ct. App. 1990).

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 or the name or address named in the license or identification card is changed or the condition specified in s. 343.17 (3) (a) 12. no longer applies, 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 or identification card is

being made for a change of address or name or because the condition specified in s. 343.17 (3) (a) 12. no longer applies. 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 \$1,000 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; 1989 a. 105; 1991 a. 39, 269.

343.20 Expiration of licenses. (1) (a) Except as otherwise expressly provided in this chapter, reinstated licenses, probationary licenses issued under s. 343.085 and original licenses other than instruction permits shall expire 2 years from the date of the applicant's next birthday. All other licenses and license endorsements shall expire 4 years after the date of issuance. The department may institute any system of initial license issuance 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 licenses which are valid for any period less than the ordinary effective period of such license. If the department issues a license that is valid for less than the ordinary effective period as authorized by this paragraph, the fees due under s. 343.21 (1) (a), (b) and (d) shall be prorated accordingly.

(c) The department may, by rule, require any person who is issued an operator's license that is valid for a period of more than 2 years to demonstrate continuing qualifications to hold a license under this chapter at 2-year intervals. The rules may include, without limitation, requiring examination under s. 343.16 (6) or requiring current medical certification under s. 343.16 (5). The department rules shall require cancellation or suspension of the license for noncompliance and shall permit surrender of the operator's license under s. 343.265.

(d) The department shall cancel an operator's license that is endorsed for the operation of school buses under s. 343.12 (3), regardless of the license expiration date, if the licensee fails to provide proof to the department of an annual physical examination determining that the person meets the physical standards established under s. 343.12 (2) (g). The licensee may elect to surrender the license under s. 343.265 (1m).

(e) Upon payment in full of the fees required by s. 343.21, the department shall issue to a qualified person an original operator's license that expires 3 years after the person's next birthday, but only if the person meets one of the following requirements:

1. The person is moving to this state, surrenders his or her valid commercial driver license issued by another state and makes application for a commercial driver license in this state.

2. The person is 21 years of age or older and moving to this state, has been licensed in another jurisdiction for at least 3 years and presently holds a valid license, other than an instruction permit, from another jurisdiction which has not expired for more than 6 months.

(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.

(2m) The department shall include with the notice that it mails under sub. (2) information regarding the requirements of s. 347.48

(4) and, for licensees aged 65 years or older, material, as provided by the department, explaining the voluntary program that is specified in s. 71.55 (10) (b).

(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.

(4) Any license issued under this chapter does not expire on the expiration date on the license if, on that expiration date, the licensee is serving in the U.S. armed forces in the Middle East or in the territorial or international waters adjacent to the Middle East as a participant in or in support of Operation Desert Shield or Desert Storm. Any license extended under this subsection expires 30 days after the licensee completes his or her military service in that geographic area as a participant in or in support of those operations. If a license is renewed after an extension under this subsection, the renewal period shall begin on the day after the expiration date on the license.

History: 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1979 c. 306; 1981 c. 20, 42, 71; 1989 a. 31, 105, 294; 1991 a. 13.

343.21 License fees. (1) The following fees, in addition to any driving skills test fee, shall be paid to the department for the issuance, renewal, upgrading and reinstatement of licenses, endorsements and instruction permits:

(a) For the initial issuance of a license authorizing only the operation of "Class D" motor vehicles, \$15.

(am) For the renewal of a license authorizing only the operation of "Class D" motor vehicles, \$10.

(b) For the initial issuance or renewal of authorization to operate "Class M" motor vehicles, \$4 in addition to any other fees due.

(c) For the initial issuance of authorization to operate school buses that are not commercial motor vehicles, \$5.

(d) For the initial issuance or renewal of authorization to operate "Class A", "Class B" or "Class C" motor vehicles, or upgrading an existing regular license which only authorizes the operation of "Class D" motor vehicles, \$32. This fee includes issuance of any "H", "N", "P", "S" or "T" endorsements or "Class D" authorization applied for at the same time for which the applicant is qualified.

(e) For upgrading an existing commercial driver license to add an "H", "N", "P", "S" or "T" endorsement, \$5.

(f) For upgrading an existing commercial driver license to add authorization to operate another class of commercial motor vehicles, \$5.

(g) For removing a "K" restriction against operation of commercial motor vehicles outside this state or in interstate commerce, the same fee as for a duplicate license.

(h) For removing an "L" restriction prohibiting operation of commercial motor vehicles equipped with air brakes, \$5.

(i) For an instruction permit, \$20.

(j) For reinstatement of an operating privilege previously revoked or suspended, \$50.

(k) For an occupational license, \$40.

(L) For a duplicate license, \$4.

(2) (a) In addition to the fees set under sub. (1), any applicant whose application for a permit, license, upgrade or endorsement, taken together with the applicant's currently valid license, if any, requires the department to administer a driving skills test of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle shall pay to the department an examination fee of \$20 for an examination in a commercial motor vehicle other than a school bus and \$10 for an examination in any other vehicle. 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, upgraded license

or endorsement in 3 such tests, then a 2nd examination fee in the same amount 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 \$10 for conducting the special examination requested under s. 121.555 (2) (cm), except that if the examination is in a commercial motor vehicle other than a school bus the fee is \$20. 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 in the same amount 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; 1989 a. 105; 1991 a. 39; 1993 a. 16.

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 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, do one of the following:

(a) 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.

(b) In lieu of applying for a duplicate license or identification card, notify the department in writing of his or her change of address. This paragraph does not apply to persons issued a commercial driver license or a license labeled "CDL-Occupational" as described in s. 343.03 (3) (b) and (e).

(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 and the person applies for a duplicate license or identification card under sub. (2), no fee shall be charged under s. 343.21 (1) (L) or 343.50 (7) for the duplicate license or identification card.

(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; 1989 a. 105; 1991 a. 39.

343.23 Records to be kept by the department.

(1) The department shall maintain a record of every application

for license, permit or endorsement 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

(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, permit or endorsement, a record of reports or abstract of convictions, the status of the licensee's authorization to operate different vehicle groups, a record of any out-of-service orders issued under s. 343.305 (7) (b) or (9) (am) and a record of any reportable accident in which the licensee has been involved, including specification of the type of license and endorsements issued under this chapter under which the licensee was operating at the time of the accident and an indication whether or not the accident occurred in the course of the licensee's employment as a law enforcement officer, fire fighter or emergency medical technician — paramedic or as a person engaged, by an authority in charge of the maintenance of the highway, in highway winter maintenance snow and ice removal during either a storm or cleanup following a storm. 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. The record of suspensions, revocations and convictions that would be counted under s. 343.307 (2) shall be maintained for at least 10 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) shall be maintained for at least 3 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be maintained permanently, except that 5 years after a licensee transfers residency to another state such record may be transferred to another state of licensure of the licensee if that state accepts responsibility for maintaining a permanent record of convictions for disqualifying offenses. 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. For purposes of this subsection, "highway winter maintenance snow and ice removal" includes plowing, sanding, salting and the operation of vehicles in the delivery of those services.

(3) (a) 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.

(b) The department record of a person's conviction for exceeding a posted speed limit shall include the number of miles per hour in excess of the posted speed limit, as reported to the department.

(4) The department shall purge all of the following from the file of a licensee:

(a) 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.

(b) Any record of issuance of an out-of-service order under s. 343.305 (7) (b) or (9) (am) 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 of violating s. 346.63 (7) arising out of that incident or occurrence. In the case of a nonresident, the department shall also inform the state of licensure of the dismissal or finding of innocence.

(5) The department shall maintain the files specified in this section in a form that is appropriate to the form of the records constituting those files.

History: 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1979 c. 331; 1981 c. 178; 1983 a. 74; 1987 a. 3; 1989 a. 31, 105, 133, 359; 1991 a. 277; 1993 a. 65.

343.235 Access to license and identification card records. (1) In this section:

(a) "Agent" means an authorized person who acts on behalf of or at the direction of another person.

(b) "Insurer" has the meaning given in s. 600.03 (27).

(c) "Personal identifier" means a name, street address, post-office box number or 9-digit extended zip code.

(d) "State authority" has the meaning given in s. 19.62 (8).

(2) In providing copies under s. 19.35 (1) (a) of any written information collected or prepared under this chapter which consists in whole or in part of the personal identifiers of 10 or more persons, the department may not disclose a personal identifier of any person who has made a designation under s. 343.14 (2m) or 343.51 (1m) that his or her personal identifiers may not be disclosed as provided in this section.

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

(a) A law enforcement agency, a state authority or a federal governmental agency to perform a legally authorized function.

(b) An insurer authorized to write property and casualty insurance in this state or an agent of the insurer, if the insurer or agent uses the personal identifiers for purposes of issuing or renewing a policy and related underwriting, billing or processing or paying a claim.

(4) (a) The department shall establish by rule a reasonable period for the processing of a designation under s. 343.14 (2m) or 343.51 (1m) and for complying with a designation under sub. (2).

(b) If an unanticipated number of designations results in the department not being able to process with a reasonable effort the designations within the period established by the department by rule under par. (a), the department may determine that the preservation of public welfare necessitates the temporary extension of the period and establish the temporary extension by rule, using the procedure under s. 227.24.

(5) Any person who has received under sub. (3) a personal identifier of any person who has made a designation under s. 343.14 (2m) or 343.51 (1m) shall keep the personal identifier confidential and may not disclose it except for a purpose applicable to that person under sub. (3).

(6) (a) Any person who wilfully discloses a personal identifier in violation of this section may be required to forfeit not more than \$500 for each violation.

(b) Any person who wilfully requests or obtains a personal identifier from the department under this section under false pretenses may be required to forfeit not more than \$500 for each violation.

(c) Paragraphs (a) and (b) do not apply to a legal custodian under s. 19.33 of the department.

History: 1991 a. 269.

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, \$3.

(b) For each computerized search, \$3.

(c) For each search requested by telephone, \$4, or an established monthly service rate determined by the department.

(2m) If the department, in maintaining a computerized operating record system, makes copies of its operating record file data

base, or a portion thereof, on computer tape or other electronic media, copies of the tape or media may be furnished to any person on request. The department shall charge a fee of \$3 for each file of vehicle operators' records contained in the tape or media. Nothing in this subsection requires the department to produce records of particular files or data in a particular format except as those records or data are made by the department for its purposes.

(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.

(4) (a) In this subsection:

1. "Agent" means an authorized person who acts on behalf of or at the direction of another person.

2. "Insurer" has the meaning given in s. 600.03 (27).

3. "Personal identifier" means a name, street address, post-office box number or 9-digit extended zip code.

4. "State authority" has the meaning given in s. 19.62 (8).

(b) In furnishing 10 or more operating records to a person under sub. (1) or (2m), the department may not disclose a personal identifier of any person who has made a designation under s. 343.14 (2m) that his or her personal identifiers may not be released as provided in this subsection.

(c) Paragraph (b) does not apply to any of the following:

1. A law enforcement agency, a state authority or a federal governmental agency to perform a legally authorized function.

2. An insurer authorized to write property and casualty insurance in this state or an agent of the insurer, if the insurer or agent uses the names or addresses for purposes of issuing or renewing a policy and related underwriting, billing or processing or paying a claim.

(d) 1. The department shall establish by rule a reasonable period for the processing of a designation under s. 343.14 (2m) and for complying with a designation under par. (b).

2. If an unanticipated number of designations results in the department not being able to process with a reasonable effort the designations within the period established by the department by rule under subd. 1., the department may determine that the preservation of public welfare necessitates the temporary extension of the period and establish the temporary extension by rule, using the procedure under s. 227.24.

(e) Any person who has received under par. (c) a personal identifier of any person who has made a designation under s. 343.14 (2m) shall keep the personal identifier confidential and may not disclose it except for a purpose applicable to that person under par. (c).

(f) 1. Any person who wilfully discloses a personal identifier in violation of this subsection may be required to forfeit not more than \$500 for each violation.

2. Any person who wilfully requests or obtains a personal identifier from the department under this subsection under false pretenses may be required to forfeit not more than \$500 for each violation.

3. Subdivisions 1. and 2. do not apply to a legal custodian under s. 19.33 of the department.

History: 1975 c. 297 s. 9; Stats. 1975 s. 343.24; 1977 c. 29 s. 1654 (7) (e); 1979 c. 221, 331, 355; 1989 a. 105; 1991 a. 269; 1993 a. 16, 490

343.245 Duties of commercial motor vehicle drivers; employer responsibilities; penalties. (1) DEFINITIONS In this section:

(a) "Employee" means any operator of a commercial motor vehicle who is either directly employed by or under lease to an employer, including a full-time, regularly employed driver, a volunteer driver, a casual, intermittent or occasional driver, a leased driver, and an independent, owner-operator contractor while in the course of operating a commercial motor vehicle.

(b) "Employer" means any person, including the state or a political subdivision thereof, who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

(2) NOTIFICATIONS BY DRIVER (a) *Notification of convictions.*

1. To state. A person, after applying for or receiving a commercial driver license issued by this state, who is convicted of violating in a motor vehicle any law of this state or local ordinance adopted in conformity therewith or a law enacted by a federally recognized American Indian tribe or band in this state which is in conformity with any law of this state, or the law of another jurisdiction, relating to motor vehicle traffic control, other than parking violations, shall notify the department of the conviction in the manner specified by the department within 30 days after the date of conviction.

2. To employers. An employe, after applying for or receiving a commercial driver license issued by this state, who is convicted of violating in a motor vehicle any law of this state or local ordinance adopted in conformity therewith or a law enacted by a federally recognized American Indian tribe or band in this state which is in conformity with any law of this state, or the law of another jurisdiction, relating to motor vehicle traffic control, other than parking violations, shall notify his or her current employer in writing of the conviction within 30 days after the date of conviction.

(b) *Notification of suspensions, revocations and cancellations.*

An employe whose commercial driver license is suspended, revoked or canceled by a state, or who loses the privilege to operate a commercial motor vehicle in any state for any period, including being disqualified from operating a commercial motor vehicle or subject to an out-of-service order, shall notify his or her current employer of that fact before the end of the first business day after the day on which the employe receives notice of the suspension, revocation, cancellation, disqualification or out-of-service order.

(c) *Notification of previous employment.* An applicant for employment as a commercial motor vehicle driver shall provide, at the time of application, information on his or her employment history as a commercial motor vehicle driver as requested by the prospective employer, certified as true and complete by the applicant, including all of the following information for the 10 years preceding the date of application:

1. The names and addresses of any previous employers for which the applicant was a commercial motor vehicle driver.

2. The dates of employment with each employer in subd. 1.

3. The reason for leaving each employer in subd. 1.

(3) EMPLOYER RESPONSIBILITIES (a) Every employer shall request each applicant for employment as a commercial motor vehicle driver to provide the information specified in sub. (2) (c), and no employer may employ as a commercial motor vehicle driver an applicant who refuses or otherwise fails to provide true and complete information.

(b) No employer may knowingly allow, permit or authorize an employe to operate a commercial motor vehicle during any period when the employe:

1. Has had his or her commercial driver license suspended, revoked or canceled by any state;

2. Is disqualified from operating a commercial vehicle;

3. Is subject to an out-of-service order in any state; or

4. Has more than one operator's license, except during the 10-day period beginning on the date on which the employe is issued an operator's license.

(3m) EMPLOYER NOTIFICATION PROGRAM (a) The department shall establish by rule an employer notification program to permit an employer to register the name of an employe and be notified by the department whenever a conviction or suspension, revocation, cancellation, disqualification or out-of-service order is recorded on the operating record of the employe. An employer may withdraw an employe's name from the program at any time.

(b) The department shall establish and collect reasonable fees from employers in the program sufficient to defray the costs of

instituting and maintaining the program, including the registration and withdrawal of employees. The fee for each notification by the department to an employer under par. (a) shall be \$3.

(4) PENALTIES (a) Except as provided in par. (b), any person who violates sub. (2) or (3) shall forfeit not more than \$2,500.

(b) Any person who violates sub. (3) (b) shall be fined not more than \$5,000 or imprisoned for not more than 90 days or both.

History: 1989 a 105; 1991 a 39; 1993 a 16

CANCELLATION, REVOCATION AND SUSPENSION OF LICENSES

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

(1) Whenever the secretary determines that the license or endorsement 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 a particular endorsement; or

(5) Whenever the secretary determines that a person has secured a license or endorsement 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); 1989 a 105, 359

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 (5).

(1m) The department may accept the voluntary surrender of the operator's license of a person who no longer intends to exer-

cise the privilege of operating a vehicle class or type authorized by that license, if the person's operating privilege is not subject to suspension or revocation for any reason. The department may issue a license under sub. (2), omitting the authorizations to operate a vehicle class or type that the person has relinquished.

(2) A person whose voluntary surrender of license under sub. (1) or (1m) 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, 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 (5).

History: 1987 a 40; 1989 a 105

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, whether the offender was operating a commercial motor vehicle at the time of the offense and, if so, whether the offender was transporting hazardous materials. Whenever a person is convicted of exceeding a posted speed limit, the record of conviction forwarded to the department shall include the number of miles per hour in excess of the posted speed limit.

(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, whether the offender was operating a commercial motor vehicle at the time of the offense and, if so, whether the offender was transporting hazardous materials.

(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; 1989 a 105

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's operating privilege has not been 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 court shall revoke the operating privilege of such operator.

(1g) A court may revoke a person's operating privilege upon the person's conviction for violating s. 343.44 (1) or a local ordinance in conformity therewith by operating a motor vehicle while operating privileges are suspended or revoked. A court shall

revoke a person's operating privilege upon the person's conviction for violating s. 343.44 (1) or a local ordinance in conformity therewith by operating a motor vehicle while operating privileges are suspended or revoked if the suspension or revocation was for improperly refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or violating s. 346.63 (2) or (6), 940.09 (1) or 940.25. The revocation shall be for any period not exceeding 6 months.

(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 (5) (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:

1. The court shall suspend or revoke the person's operating privilege under this paragraph according to the number of previous suspensions, revocations or convictions that would be counted under s. 343.307 (1). Suspensions, revocations and convictions arising out of the same incident shall be counted as one. If a person has a conviction, suspension or revocation for any offense that is counted under s. 343.307 (1), that conviction, suspension or revocation shall count as a prior conviction, suspension or revocation under this subdivision.

2. Except as provided in subd. 3. or 4., for the first conviction, suspension or revocation, 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 convictions, suspensions and revocations 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 if he or she has completed the assessment and is complying with the driver safety plan ordered under par. (c).

4. If the number of convictions, suspensions and revocations within a 10-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 if he or she has completed the assessment and is complying with the driver safety plan ordered under par. (c).

5. The 5-year or 10-year period under this paragraph shall be measured from the dates of the refusals or violations which resulted in the suspensions, 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 non-compliance 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.

1m. The person may voluntarily submit to an assessment by an approved public treatment facility, as defined in s. 51.45 (2) (c), and driver safety plan under this paragraph before the conviction. A prosecutor may not use that voluntary submission to justify a reduction in the charge made against the person. Upon notification of the person's submission to the voluntary assessment and driver safety plan, the court may take that voluntary submission into account when determining the person's sentence, and shall suspend the order to submit to assessment pending the person's completion of the voluntary assessment and driver safety plan.

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 a component that makes the person aware of the effect of his or her offense on a victim and a victim's family. 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.

(h) The court or department shall provide that the period of suspension or revocation imposed under this subsection shall be reduced by any period of suspension or revocation previously served under s. 343.305 if the suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63 (1) or (2m) or a local ordinance in conformity therewith arise out of the same incident or occurrence. The court or department shall order that the period of suspension or revocation imposed under this subsection run concurrently with any period of time remaining on a suspension or revocation imposed under s. 343.305 arising 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, 948.025 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 corrections 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.

(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 sus-

pension 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 the occupational license. Such revocation shall be for a period of one year.

(4) Whenever a court or judge suspends or revokes an operating privilege under this section, 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, the restriction shall be endorsed upon the operator's license and notice of the 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 or s. 161.50. When a court revokes, suspends or restricts a child's operating privilege under ch. 48, 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), 125.085 (3) (b) or 125.09 (2) or a local ordinance that strictly conforms to one of those statutes or a law of a federally recognized American Indian tribe or band in this state that 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 (2), (2b) or (2d) 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 not more than one year.
3. For a violation committed within 12 months of 2 or more previous violations, revocation for not more than 2 years.

(bm) If the court imposes a suspension of a person's operating privilege under s. 125.085 (3) (bd), the suspension shall be for 30 to 90 days.

(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; 1989 a. 7, 31, 105, 121, 336; 1991 a. 39, 251, 277, 316; 1993 a. 16, 227, 317.

Section 343.30 (5) does not preclude the suspension of operating privileges by a municipal court under s. 800.09 or 800.095. *City of Milwaukee v. Kilgore*, 185 W (2d) 499, 517 NW (2d) 689 (Ct. App. 1994).

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 ordi-

nance in conformity therewith, or s. 346.63 (2) or (6) or 940.25 or s. 940.09 where the offense involved the use of a vehicle, or if the officer detects any presence of alcohol, a controlled substance or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe that the person is violating or has violated s. 346.63 (7) or a local ordinance in conformity therewith, 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), (2m), (5) or (7) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6), 940.09 (1) 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; 1989 a. 105; 1991 a. 277

Prosecutor's statement that defendant failed preliminary breath test under s. 343.305 (2) (a), 1975 stats. [now s. 343.303] 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).

Preliminary breath test result is not determinative of probable cause to arrest for driving while intoxicated; low test result does not void grounds for arrest. *Dane County v. Sharpee*, 154 W (2d) 515, 453 NW (2d) 508 (Ct. App. 1990).

The bar of preliminary breath tests under this section is limited to proceedings related to arrests for offenses contemplated under this statute including those related to motor vehicles and intoxication. *State v. Beaver*, 181 W (2d) 959, 512 NW (2d) 254 (Ct. App. 1994).

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

(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 is on duty time with respect to a commercial motor vehicle or 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 (am) 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) or (am), 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), (2m) or (5) or a local ordinance in conformity therewith, or for a violation of s. 346.63 (2) or (6) 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). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample.

(am) Prior to arrest, 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) whenever a law enforcement officer detects any presence of alcohol, a controlled substance or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe the person is violating or has violated s. 346.63 (7). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample. For the purposes of this paragraph, "law enforcement officer" includes inspectors in the performance of duties under s. 110.07 (3).

(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), (2m) or (5) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or detects any presence of alcohol, controlled substance or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe the person has violated s. 346.63 (7), one or more samples specified in par. (a) or (am) 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) or (am), 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, a motor vehicle owned by the person may be immobilized, seized and forfeited or equipped with an ignition interlock device if the person has 2 or more prior suspensions, revocations or convictions within a 10-year period that would be counted under s. 343.307 (1) and 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 prohibited alcohol concentration and was driving or operating a motor vehicle, the person will be subject to penalties, the person's operating privilege will be suspended under this section and a motor vehicle owned by the person may be immobilized, seized and forfeited or equipped with an ignition interlock device if the person has 2 or more prior convictions, suspensions or revocations within a 10-year period that would be counted under s. 343.307 (1); 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.

(4m) INFORMATION RELATED TO COMMERCIAL MOTOR VEHICLES. If the person has possession of a commercial motor vehicle license or if the incident giving rise to the request for a sample under sub. (3) (a) or (am) is related to the driving, operating or being on duty time with respect to a commercial motor vehicle, at the time when a sample is requested under sub. (3) (a) or (am), the law enforcement officer shall orally inform the person of all of the following, in addition to the information provided under sub. (4):

(a) That, if one or more tests are taken and the results of any test indicate that the person has an alcohol concentration of 0.04 or more and was driving or operating a commercial motor vehicle, the person will, upon conviction of such offense, be subject to penalties and disqualified from operating a commercial motor vehicle.

(b) That, if one or more tests are taken and the results of any test indicate that the person has any measured alcohol concentration above 0.0 and was driving or operating or on duty time with respect to a commercial motor vehicle, the person will be subject to penalties and issuance of an out-of-service order for the 24 hours following the test.

(c) That, if testing is refused and the person was driving or operating or on duty time with respect to a commercial motor

vehicle, the person will be issued an out-of-service order for the 24 hours following the refusal.

(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) or (am), 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) or (am). 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) or (am). 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) or (am) 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), (2m), (5) or (6) 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), (2m) or (5), or as provided in sub. (3) (am) or (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 assistant or person acting under the direction of a physician.

(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 prohibited alcohol concentration, or alleged to have been driving or operating or on duty time with respect to a commercial motor vehicle while having any measured alcohol concentration above 0.0 or possessing an intoxicating beverage, regardless of its alcohol content, or within 4 hours of having consumed or having been under the influence of an intoxicating beverage, regardless of its alcohol content, or of having an alcohol concentration of 0.04 or more, the results of a test administered in accordance with this section 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 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.

(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) or (am) 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.** (a) If a person submits to chemical testing administered in accordance with this section and any test results indicate a prohibited alcohol concentration, 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.

(b) If a person who was driving or operating or on duty time with respect to a commercial motor vehicle submits to chemical testing administered in accordance with this section and any test results indicate any measured alcohol concentration above 0.0, the law enforcement officer may take possession of the person's license and retain the license for 24 hours. The person may reclaim a seized license in person or request return of the license by mail. The law enforcement officer shall issue a citation for violation of s. 346.63 (7) (a) 1., issue citations for such other violations as may apply and issue an out-of-service order to the person for the 24 hours after the testing, and report both the out-of-service order and the test results to the department in the manner prescribed by the department. If the person is a nonresident, the department shall report issuance of the out-of-service order to the driver licensing agency in the person's home jurisdiction.

(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) (a). 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. This notice of administrative suspension serves as a 30-day temporary license. An administrative suspension under sub. (7) (a) 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.

(am) The law enforcement officer shall provide the person with a separate form for the person to use to request the administrative review under this subsection. The form shall clearly indi-

cate how to request an administrative review and shall clearly notify the person that this form must be submitted within 10 days from the notice date indicated on the form or the person's hearing rights will be deemed waived. The form shall, in no less than 16-point boldface type, be titled: **IMPORTANT NOTICE — RESPOND WITHIN TEN (10) DAYS.**

(b) 1. Within 10 days after the notification under par. (a), or, if the notification is by mail, within 13 days, excluding Saturdays, Sundays and holidays, after the date of the mailing, the person may request, in writing, that the department review the administrative suspension. The review procedure is not subject to ch. 227. The department shall hold the hearing on the matter 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 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 at the administrative hearing unless subpoenaed under s. 805.07, but he or she must submit a copy of his or her report and the results of the chemical test to the hearing examiner.

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) or under subs. (4) and (4m).
- bm. Whether the person had a prohibited alcohol concentration 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 prohibited alcohol concentration.
- e. Whether probable cause existed for the arrest.
- f. Whether the person was driving or operating a commercial motor vehicle when the offense allegedly occurred.

3. The hearing examiner shall conduct the administrative hearing in an informal manner. No testimony given by any witness may be used in any subsequent action or proceeding. The hearing examiner may permit testimony by telephone if the site of the administrative hearing is equipped with telephone facilities to allow multiple party conversations.

4. The hearing examiner shall consider and determine the reliability of all of the evidence presented at the administrative hearing. Statements and reports of law enforcement officers are subject to the same standards of credibility applied to all other evidence presented.

5. If the hearing examiner finds that the criteria for administrative suspension have not been satisfied or that the person did not have a prohibited alcohol concentration 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 prohibited alcohol concentration at the time the offense allegedly occurred, the administrative suspension shall continue regardless of the type of vehicle driven or operated at the time of the violation. The hearing examiner shall notify the person in writing of the hearing decision, of the right to judicial review and of the court's authority to issue a stay of the suspension under par. (c). The administrative suspension is vacated and the person's operating privilege shall be automatically reinstated under s. 343.39 if the hearing examiner fails to mail this notice to the person within 30 days after the date of the notification under par. (a).

(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 (am). If the individual seeks judicial review, he or she must file the request for judicial review with the court within 20 days of the issuance of the hearing examiner's decision. The court shall send a copy of that request to the department. The judicial review shall be conducted at the time of the trial of the underlying offense under s. 346.63. The prosecutor of the underlying offense shall represent the interests of the department.

2. The court shall order that the administrative suspension be either rescinded or sustained and forward its order to the department. The department shall vacate the administrative suspension under sub. (7) unless, within 60 days of the date of the request for judicial review of the administrative hearing decision, the department has been notified of the result of the judicial review or of an order of the court entering a stay of the hearing examiner's order continuing the suspension.

3. Any party aggrieved by the order of a circuit court 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 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.

(9) REFUSALS; NOTICE AND COURT HEARING (a) If a person refuses to take a test under sub. (3) (a), the law enforcement officer shall immediately take possession of the person's license and prepare a notice of intent to revoke, by court order under sub. (10), the person's operating privilege. If the person was driving or operating a commercial motor vehicle, the officer shall issue an out-of-service order to the person for the 24 hours after the refusal and notify the department in the manner prescribed by the department. The officer shall issue a copy of the notice of intent to revoke the privilege to the person and submit or mail a copy with the person's license to the circuit court for the county in which the refusal is made. The officer shall also mail a copy of the notice of intent to revoke to the district attorney for that county and the department. The notice of intent to revoke the person's operating privilege shall contain substantially all of 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), (2m) or (5) or a local ordinance in conformity therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25.

2. That the officer complied with sub. (4) or both subs. (4) and (4m).

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 the person incapable of safely driving, or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of safely driving or having a prohibited alcohol concentration or, if the person was driving or operating a commercial motor vehicle, an alcohol concentration of 0.04 or more and whether the person was lawfully placed under arrest for violation of s. 346.63 (1), (2m) or (5) or a local ordinance in conformity therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25.

b. Whether the officer complied with sub. (4) or both subs. (4) and (4m).

c. Whether the person refused to permit the test. The person shall not be considered 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.

(am) If a person driving or operating or on duty time with respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law enforcement officer shall immediately take possession of the person's license, issue an out-of-service order to the person for the 24 hours after the refusal and notify the department in the manner prescribed by the department, and 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 with the person's license to the circuit court for the county in which the refusal is made. The officer shall also mail a copy of the notice of intent to revoke to the district attorney for that county and the department. The notice of intent to revoke the person's operating privilege shall contain substantially all of the following information:

1. That the officer has issued an out-of-service order to the person for the 24 hours after the refusal, specifying the date and time of issuance.

2. That the officer complied with sub. (4) or both subs. (4) and (4m).

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

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 detected any presence of alcohol, controlled substance or other drug, or a combination thereof, on the person or had reason to believe that the person was violating or had violated s. 346.63 (7).

b. Whether the officer complied with sub. (4) or both subs. (4) and (4m).

c. Whether the person refused to permit the test. The person shall not be considered 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) or (am) 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) or (am), 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. or (am) 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. or (am) 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), (2m), (5) or (7) or a local ordinance in conformity therewith, s. 346.63 (2) or (6), 940.09 (1) 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 suspensions, revocations or convictions that would be counted under s. 343.307 (2). Suspensions, revocations and convictions arising out of the same incident shall be counted as one. If a person has a conviction, suspension or revocation for any offense that is counted under s. 343.307 (2), that conviction, suspension or revocation shall count as a prior conviction, suspension or revocation 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 convictions, suspensions and revocations 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 if he or she has completed the assessment and is complying with the driver safety plan.

4. If the number of convictions, suspensions and revocations in a 10-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 if he or she has completed the assessment and is complying with the driver safety plan.

5. The 5-year or 10-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 (4) 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 a component that makes the person aware of the effect of his or her offense on a victim and a victim's family. 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 non-compliance 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 depart-

ment 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 or department shall provide that the period of suspension or revocation imposed under this subsection or under sub. (7) shall be reduced by any period of suspension or revocation previously served under s. 343.30 (1p) or (1q) if both suspensions or revocations arose out of the same incident or occurrence. The court or department shall order that the period of suspension or revocation imposed under this subsection or sub. (7) run concurrently with any time remaining on a suspension or revocation imposed under s. 343.30 (1p) or (1q) arising out of the same incident or occurrence.

(10m) REFUSALS; SEIZURE, IMMOBILIZATION OR IGNITION INTERLOCK OF A MOTOR VEHICLE. If the person whose operating privilege is revoked under sub. (10) has 2 or more prior convictions, suspensions or revocations, as counted under s. 343.307 (1), within a 10-year period, the procedure under s. 346.65 (6) shall be followed regarding the immobilization or seizure and forfeiture of a motor vehicle owned by the person or the equipping of a motor vehicle owned by the person with an ignition interlock device.

(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 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; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491.

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).

State need not prove that notices were sent to state officers under sub. (3) (b), 1985 stats. [now sub. (9) (a)]. *State v. Polinski*, 96 W (2d) 43, 291 NW (2d) 465 (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 s. 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).

See note to s. 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 sub. (3) (b) 5., 1985 stats. [now sub. (9) (a) 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 sub. (2) (c), 1985 stats [now sub. (3) (b)], "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 sub. (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).

Under sub. (4) (c) accused must be informed of possible penalties, including possible fine, jail sentence and suspension or revocation of operating privileges. *County of Eau Claire v. Resler*, 151 W (2d) 645, 446 NW (2d) 72 (Ct. App. 1989).

Sub. (4) (c) does not conflict with sub. (8) (b) 2. d.; sub. (4) requires that accused be informed of ramifications of any test result of 0.1% or more, not of each one. Whether each test results in threshold BAC can only be challenged at administrative hearing. Any result over 0.1% will cause immediate suspension, but department may consider each result in determining whether suspension continues. *City of Mequon v. Hess*, 158 W (2d) 500, 463 NW (2d) 687 (Ct. App. 1990).

Appeal of oral revocation order under sub. (10) may not be taken under s. 808.03 (1). *State v. Borowski*, 164 W (2d) 730, 476 NW (2d) 316 (Ct. App. 1991).

Evidence of refusal not admissible where defendant not fully informed of consequences in accordance with sub. (4). *State v. Algaier*, 165 W (2d) 515, 478 NW (2d) 292 (Ct. App. 1991).

Substantial compliance with requirements of (4) where defendant was actually informed of all rights and penalties relating to him was sufficient. *State v. Piskula*, 168 W (2d) 135, 483 NW (2d) 250 (Ct. App. 1992).

Sub. (9) (a) requirement that a notice of intent to revoke shall be prepared and served immediately is directory and not mandatory. *State v. Moline*, 170 W (2d) 531, 489 NW (2d) 667 (Ct. App. 1992).

An accused's request under sub. (5) (a) for his or her own test only requires the arresting agency to make the accused available to obtain the test, not to take an active part in obtaining the test. *State v. Vincent*, 171 W (2d) 124, 490 NW (2d) 761 (Ct. App. 1992).

Where officer knows the defendant was licensed as a commercial operator and the ensuing revocation revokes all operating privileges, the commercial operator warnings, under sub. (4), must be given. *State v. Geraldson*, 176 W (2d) 487, 500 NW (2d) 415 (Ct. App. 1993).

Sub. (9) (a) 1 does not require the issuance of a citation before a request is made that the defendant submit to a chemical test. *State v. Sutton*, 177 W (2d) 709, 503 NW (2d) 326 (Ct. App. 1993).

Overstatement of the potential penalties for refusal to submit to a chemical test is substantial compliance with sub. (4) and not grounds for reversing a revocation for refusal. *State v. Sutton*, 177 W (2d) 709, 503 NW (2d) 326 (Ct. App. 1993).

There is no error in informing a driver of all warnings under sub. (4), including those applying to only commercial operators and those applying to only noncommercial operators, regardless of the driver's status. *Village of Elm Grove v. Landowski*, 181 W (2d) 137, 510 NW (2d) 752 (Ct. App. 1993).

Sub. (5) (b) requires a person drawing blood "under the direction of a physician" to have general authorization from the physician rather than a specific order in each case. *State v. Penzkofer*, 184 W (2d) 262, 516 NW (2d) 774 (Ct. App. 1994).

The state's burden of persuasion at a suppression hearing is significantly greater than at a refusal hearing; consequently a defendant is not precluded from relitigating the issue of probable cause at a suppression hearing. *State v. Wille*, 185 W (2d) 673, 518 NW (2d) 325 (Ct. App. 1994).

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 sub. (1), 1985 stats [now sub. (2)] 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.

Under s. 343.305 (1) and (4), 1985 stats, 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 officer has legally restrained by force constitutes refusal to aid an officer under 946.40. 74 Atty. Gen. 123.

Refusal hearing under this section discussed. 77 Atty. Gen. 4.

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).

Wisconsin's new administrative suspension statute. 72 MLR 120 (1988).

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.

Wisconsin's breath testing program. *Booker*. WBB Oct. 1988.

Rethinking Refusal: Wisconsin's Implied Consent Law. *Lotke*. Wis. Law. July 1993.

343.307 Prior convictions, suspensions or revocations to be counted as offenses. (1) The court shall count the following to determine the length of a revocation or suspension under s. 343.30 (1q) (b) and to determine the penalty under s. 346.65 (2):

(a) Convictions for violations under s. 346.63 (1), or a local ordinance in conformity with that section.

(b) Convictions for violations of a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1).

(c) Convictions for violations under s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle.

(d) Convictions under the law of another jurisdiction that prohibits refusal of chemical testing or use of a motor vehicle while intoxicated or under the influence of a controlled substance, or a combination thereof, or with an excess or specified range of alcohol concentration, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction's laws.

(e) Operating privilege suspensions or revocations under the law of another jurisdiction arising out of a refusal to submit to chemical testing.

(f) Revocations under s. 343.305 (10).

(2) The court shall count the following to determine the length of a revocation under s. 343.305 (10) and to determine the penalty under s. 346.65 (2j) and to determine the prohibited alcohol concentration under s. 340.01 (46m):

(a) Convictions for violations under s. 346.63 (1) or (5), or a local ordinance in conformity with either section.

(b) Convictions for violations of a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) or (5).

(c) Convictions for violations under s. 346.63 (2) or (6).

(d) Convictions under the law of another jurisdiction that is in substantial conformity with 49 CFR 383.51 (b) (2) (i) or (ii) or both.

(e) Convictions under the law of another jurisdiction that prohibits refusal of chemical testing or use of a motor vehicle while intoxicated or under the influence of a controlled substance, or a combination thereof, or with an excess or specified range of alcohol concentration, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction's laws.

(f) Operating privilege suspensions or revocations under the law of another jurisdiction arising out of a refusal to submit to chemical testing.

(g) Revocations under s. 343.305 (10).

(h) Convictions for violations under s. 940.09 (1) or 940.25.

(3) If the same elements of the offense must be proven under a local ordinance or under a law of a federally recognized American Indian tribe or band in this state as under s. 346.63 (1) (a) or (b) or both, or s. 346.63 (5), the local ordinance or the law of a federally recognized American Indian tribe or band in this state shall be considered to be in conformity with s. 346.63 (1) (a) or (b) or both, or s. 346.63 (5), for purposes of ss. 343.30 (1q) (b) 1., 343.305 (10) (b) 1. and 346.65 (2) and (2j).

History: 1977 c. 193; 1981 c. 20, 184; 1985 a. 80, 337; 1987 a. 3; 1989 a. 105, 271, 359; 1991 a. 39, 277.

343.31 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 or under a law of a federally recognized American Indian tribe or band in this state which is in conformity with state law:

(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 operation of a vehicle while under the influence of an intoxicant or a controlled substance or a combination of an intoxicant 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 while the person has a prohibited alcohol concentration and which is criminal under s. 346.63 (2).

(ar) Injury by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.1 and which is criminal under s. 346.63 (6).

(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. This paragraph does not apply to a law of a federally recognized American Indian tribe or band in this state.

(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 if the suspension or revocation was for improperly refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or violating s. 346.63 (2) or (6), 940.09 (1) or 940.25.

(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 that person's license or a serious traffic violation by the holder of an occupational license.

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

(1m) The department shall revoke or suspend a person's operating privilege upon receiving a record of conviction showing that the person has been convicted under a law of a federally recognized American Indian tribe or band in this state which is in conformity with s. 346.63 (1).

(2) The department shall revoke or suspend, respectively, the operating privilege of any resident 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 (1g). Such offenses shall include violation of any law of another jurisdiction that prohibits use of a motor vehicle while intoxicated or under the influence of a controlled substance, or a combination thereof, or with an excess or specified range of alcohol concentration, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction's laws. 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. Such suspension or revocation shall not apply to the operation of a commercial motor vehicle by a nonresident who holds a valid commercial driver license issued by another state.

(2m) The department may revoke the operating privilege of any resident upon receiving notice of the conviction of that person of a law of another jurisdiction or a federally recognized American Indian tribe or band in this state for an offense which, if the person had committed the offense in this state and been convicted of the offense under the laws of this state, would have permitted revocation of the person's operating privilege under s. 343.30 (1g). Upon receiving similar notice with respect to a nonresident, the department may revoke the privilege of the nonresident to operate a motor vehicle in this state. The revocation shall not apply to the operation of a commercial motor vehicle by a nonresident who holds a valid commercial driver license issued by another state. A revocation under this subsection shall be for any period not exceeding 6 months.

(3) (a) Except as otherwise provided in this subsection or sub. (2m), 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.

(bm) For any person convicted under a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1):

1. The department shall suspend or revoke the person's operating privilege under this paragraph according to the number of previous suspensions, revocations or convictions that would be counted under s. 343.307 (1). Suspensions, revocations and convictions arising out of the same incident shall be counted as one. If a person has a conviction, suspension or revocation for any offense that is counted under s. 343.307 (1), that conviction, suspension or revocation shall count as a prior conviction, suspension or revocation under this subdivision.

2. Except as provided in subd. 3. or 4., for the first such conviction, the department shall suspend the person's operating privilege for not less than 6 months nor more than 9 months. If an Indian tribal court in this state suspends the person's privilege to operate a motor vehicle on tribal lands for not less than 6 months nor more than 9 months for the conviction specified in par. (bm) (intro.), the department shall impose the same period of suspension. The person is eligible for an occupational license under s. 343.10 at any time.

3. If the number of suspensions, revocations and convictions within a 5-year period equals 2, the department shall revoke the person's operating privilege for not less than one year nor more than 18 months. If an Indian tribal court in this state revokes the person's privilege to operate a motor vehicle on tribal lands for not less than one year nor more than 18 months for the conviction specified in par. (bm) (intro.), the department shall impose the same period of revocation. 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 suspensions, revocations and convictions within a 10-year period equals 3 or more, the department shall revoke the person's operating privilege for not less than 2 years nor more than 3 years. If an Indian tribal court in this state revokes the person's privilege to operate a motor vehicle on tribal lands for not less than 2 years nor more than 3 years for the conviction specified in par. (bm) (intro.), the department shall impose the same period of revocation. 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 or 10-year period under this paragraph shall be measured from the dates of the refusals or violations which resulted in the suspensions, revocations or convictions.

(c) Any person convicted under s. 940.09 of causing the death of another by the 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 if the suspension or revocation was for improperly refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or violating s. 346.63 (2) or (6), 940.09 (1) or 940.25.

(h) Any person subject to s. 343.10 (8) 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 an operator's license under s. 343.06 (1) (i) or whose operator's license was revoked under s. 343.31 (1) (i), 1961 stats., before October 9, 1963, may be granted the license or have his or her operating privileges reinstated upon recommendation of the department of corrections 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; 1989 a. 31, 105; 1991 a. 39, 277, 316; 1993 a. 317

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

343.315 Commercial motor vehicle disqualifications; effects. **(1) GENERAL.** (a) A person who is disqualified under this section or 49 CFR 383.51 or by a determination by the federal highway administration under the federal rules of practice for motor carrier safety contained in 49 CFR 386 that a person is no longer qualified to operate a vehicle under 49 CFR 391 may not operate a commercial motor vehicle during a period of disqualification after March 31, 1992. Any violation of this paragraph shall be punished as provided in s. 343.44 (2m).

(b) An employer may not allow, permit or authorize a driver who is disqualified to operate a commercial motor vehicle during a period of disqualification after March 31, 1992. An employer who knowingly violates this paragraph shall be fined not more than \$5,000 or imprisoned for not more than 90 days or both. An employer who negligently violates this paragraph shall forfeit not more than \$2,500.

(2) DISQUALIFYING OFFENSES. (a) Except as provided in par. (b), a person shall be disqualified from operating a commercial motor vehicle for a one-year period upon a first conviction of any of the following offenses, committed on or after July 1, 1987, while driving or operating a commercial motor vehicle:

1. Section 346.63 (1) (a) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) (a) or the law of another jurisdiction prohibiting driving or operating a motor vehicle while intoxicated or under the influence of alcohol, a controlled substance, or a combination thereof, or under the influence of any drug which renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction's laws.

2. Section 346.63 (1) (b) or (5) (a) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) (b) or (5) (a) or the law of another jurisdiction prohibiting driving or operating a commercial motor vehicle while the person's alcohol concentration is 0.04 or more or with an excess or specified range of alcohol concentration, as those or substantially similar terms are used in that jurisdiction's laws.

3. Section 346.67, 346.68 or 346.69 or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.67, 346.68 or 346.69 or the law of another jurisdiction prohibiting leaving the scene of an accident involving a motor vehicle driven or operated by the person, as those or substantially similar terms are used in that jurisdiction's laws.

4. Using a motor vehicle in the commission of a felony in this state, including a violation of a law of a federally recognized American Indian tribe or band in this state for an offense therein which, if the person had been convicted of the offense under the laws of this state, would have constituted a felony, or in another jurisdiction.

5. Section 343.305 (9) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 343.305 (9) or the law of another jurisdiction prohibiting refusal of a person driving or operating a motor vehicle to submit to chemical testing to determine the person's alcohol concentration or intoxication, as those or substantially similar terms are used in that jurisdiction's laws.

6. Section 346.63 (2) or (6), 940.09 (1) or 940.25 or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (2) or (6), 940.09 (1) or 940.25, or the law of another jurisdiction prohibiting causing or inflicting injury, great bodily harm or death through use of a motor vehicle while intoxicated or under the influence of alcohol, a controlled substance or a combination thereof, or with an alcohol concentration of 0.04 or more or with an excess or specified range of alcohol concentration, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction's laws.

(b) If any of the violations listed in par. (a) occurred in the course of transporting hazardous materials on or after July 1, 1987, the person shall be disqualified from operating a commercial motor vehicle for a 3-year period.

(c) A person shall be disqualified for life from operating a commercial motor vehicle if convicted of 2 or more violations of any of the offenses listed in par. (a), or any combination of those offenses, arising from 2 or more separate incidents. The department shall consider only offenses committed on or after July 1, 1987, in applying this paragraph.

(d) The department may, by rule, establish guidelines and conditions under which a disqualification for life under par. (c) may be reduced to a period of not less than 10 years. The rules shall include standards for a rehabilitation program to be successfully completed by the applicant for reinstatement. If a person is reinstated after successful completion of the rehabilitation pro-

gram and is subsequently convicted of any offense listed in par. (a), the person shall be permanently disqualified for life and ineligible to apply for a reduction of the lifetime disqualification under this paragraph.

(e) A person is disqualified for life from operating a commercial motor vehicle if the person uses a commercial motor vehicle on or after July 1, 1987, in the commission of a felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance. No person who is disqualified under this paragraph is eligible for reinstatement under par. (d).

(f) A person is disqualified for a period of 60 days from operating a commercial motor vehicle if convicted of 2 serious traffic violations, or 120 days if convicted of 3 serious traffic violations, arising from separate occurrences committed within a 3-year period while driving or operating a commercial motor vehicle. The department shall consider only offenses committed on or after November 2, 1989 in applying this paragraph. In this paragraph, "serious traffic violations" means:

1. Violating s. 346.57 (4) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.57 (4) by excessive speeding, or the law of another jurisdiction prohibiting excessive speeding by exceeding the posted speed limit by 15 or more miles per hour as those or substantially similar terms are used in that jurisdiction's law.

2. Violating any state or local law of this state or any law of a federally recognized American Indian tribe or band in this state in conformity with any state law or any law of another jurisdiction relating to motor vehicle traffic control, arising in connection with a fatal accident, other than parking, vehicle weight or vehicle defect violations.

3. Violating s. 346.62 or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.62 or the law of another jurisdiction prohibiting reckless or careless driving of a motor vehicle or driving or operating a motor vehicle with wilful or wanton disregard for the safety of persons or property, as those or substantially similar terms are used in that jurisdiction's law.

4. Violating s. 346.07 (2), 346.08, 346.09, 346.10, 346.13, 346.24 (3) or 346.34 (1) (a) 3. or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.07 (2), 346.08, 346.09, 346.10, 346.13, 346.24 (3) or 346.34 (1) (a) 3. or the law of another jurisdiction prohibiting improper or erratic lane changes or improper passing, or otherwise prohibiting the conduct described in sections 11-304 to 306 and 11-309 of the uniform vehicle code and model traffic ordinance (1987), as those or substantially similar terms are used in that jurisdiction's law.

5. Violating s. 346.14 or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.14 or the law of another jurisdiction prohibiting following a vehicle too closely, or otherwise prohibiting the conduct described in section 11-310 of the uniform vehicle code and model traffic ordinance (1987), as those or substantially similar terms are used in that jurisdiction's law.

(g) A person is disqualified from operating a commercial motor vehicle for the 24-hour period following issuance of a citation for violation of s. 346.63 (7) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (7) or issuance of an out-of-service order for violating 49 CFR 392.5 or the law of another jurisdiction in substantial conformity therewith.

(3) EFFECT OF DISQUALIFICATION. (a) Notwithstanding s. 343.39, if a person's license or operating privilege is revoked or suspended as the result of an offense committed after March 31, 1992, which results in disqualification under sub. (2), the person's authorization to operate a commercial motor vehicle shall not be

reinstated upon expiration of the period of revocation or suspension unless the period of disqualification has also expired. During any period of disqualification in which the person's license or operating privilege is not revoked or suspended, the department may issue an operator's license to the person for the operation of vehicles other than commercial motor vehicles. Upon expiration of the period of disqualification, the person may apply for authorization to operate commercial motor vehicles as provided in s. 343.14.

(b) If a person's license or operating privilege is not otherwise revoked or suspended as the result of an offense committed after March 31, 1992, which results in disqualification under sub. (2) (a) to (f), the department shall immediately cancel the person's license. Upon proper application by the person and payment of a duplicate license fee, the department may issue a separate license authorizing only the operation of vehicles other than commercial motor vehicles. Upon expiration of the period of disqualification, the person may apply for authorization to operate commercial motor vehicles under s. 343.26.

(c) Nothing in this subsection exempts a person from reinstatement fees under s. 343.21 or complying with applicable provisions of s. 343.38.

(d) Disqualifications shall be effective from the date of conviction of the disqualifying offense.

(4) NOTIFICATION. Beginning on April 1, 1992, the department shall send the notice of disqualification by 1st class mail to a person's last-known residence address. This subsection does not apply to disqualifications under sub. (2) (g).

History: 1989 a. 105; 1991 a. 39, 277.

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

(b) Such person has been convicted under state law or under a local ordinance which is in conformity therewith or under a law of a federally recognized American Indian tribe or band in this state which is in conformity with state law of altering the person's license, loaning the person's 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.

(1m) (a) In this subsection, "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.

(b) The secretary shall suspend or revoke a person's operating privilege for not less than 6 months nor more than 5 years whenever notice has been received of the conviction of such person under federal law or the law of a federally recognized American Indian tribe or band in this state or the law of another jurisdiction for any offense therein which, if the person had committed the offense in this state and been convicted of the offense under the laws of this state, would have required suspension or revocation of such person's operating privilege under s. 161.50. The person is eligible for an occupational license under s. 343.10 as follows:

1. For the first such conviction, at any time.

2. For a 2nd conviction within a 5-year period, after the first 60 days of the suspension or revocation period.

3. For a 3rd or subsequent conviction within a 5-year period, after the first 90 days of the suspension or revocation period.

(c) For purposes of counting the number of convictions under par. (b), convictions of any violation of ch. 161 shall be counted and given the effect specified under par. (b). The 5-year period

under this subsection shall be measured from the dates of the violations which resulted in the convictions.

(d) If the person's license or operating privilege is currently suspended or revoked or the person does not currently possess a valid operator's license issued under this chapter, the suspension or revocation under this subsection is effective on the date on which the person is first eligible and applies for issuance, renewal or reinstatement of an operator's license under this chapter.

(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 a habitually reckless or negligent operator of a motor vehicle or to have repeatedly violated any of the state traffic laws, any local ordinance enacted under ch. 349 or any traffic laws enacted by a federally recognized American Indian tribe or band in this state if the tribal traffic laws violated strictly conform to provisions in chs. 341 to 348 or; if the offense occurred on a federal military installation located in this state, any federal law which is in strict conformity with a state traffic law. 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.

(bg) The scale adopted by the secretary shall assign, for each conviction, 6 demerit points for operating a commercial motor vehicle while disqualified, revoked, suspended or out-of-service under s. 343.44.

(bj) The scale adopted by the secretary shall assess, for each conviction, 6 demerit points for a violation of s. 346.63 (6) and 3 demerit points for a violation of s. 346.63 (7) (a) 3. The scale adopted by the secretary shall not assess any demerit points for conviction of a violation of s. 346.63 (5) or (7) (a) 1. or 2.

(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).

(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 this section or

s. 343.30, 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 (2) (b), or any other special examination as required under s. 343.16 (5). 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 (6) (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.

(3) Except as provided in sub. (1m), a revocation under this section may be for any period not exceeding one year unless a different period is specifically prescribed by law.

(4) In adopting rules for weighing traffic convictions by their seriousness under sub. (2), the secretary shall provide by rule for a reduction of up to 3 points if a person shows to the department satisfactory evidence of completion of a rider course approved by the secretary. This subsection applies only to demerit points relating to violations committed before completion of the rider course by a person while driving or operating a Type 1 motorcycle. No person is eligible for more than one point reduction of up to 3 points under this subsection.

(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.

(6) There shall be no minimum waiting period before a petition for issuance of an occupational license under s. 343.10 to a person whose operating privilege has been suspended or revoked under sub. (2) may be considered if the person is otherwise eligible for issuance of an occupational license.

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; 1989 a. 22, 75, 105, 195, 359; 1991 a. 26, 32, 39, 189; 1993 a. 16, 314, 480.

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 suspension or 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 suspend or 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 suspension or revocation of the operating privilege, the operating privilege shall be reinstated without requiring compliance with s. 343.38. If the secretary receives the certificate after suspension of the operating privilege, the operating privilege shall be reinstated automatically.

(3) Whenever suspension or 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 suspend or revoke such operating privilege on the same basis as if the appeal had not been taken, but the period of suspension or revocation shall run from the date of suspension or revocation following the affirmance of the conviction or dropping of the appeal, less any time the operating privilege had been suspended or revoked prior to the receipt by the secretary of the certificate under sub. (2).

(3m) Whenever the suspension or revocation of an operating privilege has been rescinded or withheld because of administrative action, an appeal, or a court order to reopen, stay or vacate a conviction, suspension or revocation, and that suspension or revocation is subsequently reimposed, the period of suspension or revocation so reimposed shall be reduced by the period of suspension or revocation previously served.

(4) If a person whose suspension or 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 the latter conviction, notwithstanding the appeal of either or both convictions.

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

(6) (a) If a court enters an order reopening, vacating or staying a conviction or a suspension or revocation of an operating privilege, the court shall promptly forward a copy of that order to the department.

(b) If there is subsequent court action affecting the order to reopen, vacate or stay, the court shall promptly notify the department of that action.

(7) The department, upon receipt of an order under sub. (6), shall proceed under this section as if an appeal had been taken.

History: 1971 c. 278; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; Sup. Ct. Order, 146 W (2d) xiii (1988); 1989 a. 7, 72.

343.33 Hearing on suspensions and 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 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 department 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 department 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 department 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 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 department shall make findings of fact and shall either let the order of suspension or revocation stand or, upon good cause appearing therefor, rescind the order or modify the period of suspension or revocation.

History: 1977 c. 29 ss. 1460, 1654 (7) (a), (c); 1977 c. 418; 1981 c. 347 s. 80 (2); 1989 a. 72; 1993 a. 16.

343.34 Suspension of licenses. The secretary may suspend operating privileges under this section 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 (7) (b).

History: 1971 c. 164 s. 82; 1975 c. 5; 1977 c. 29 s. 1654 (7) (c); 1977 c. 273; 1989 a. 105; 1991 a. 269.

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 the person's first moving vehicle violation, the court or judge shall, in lieu of a jail sentence, suspend the person's operating privilege for a period of 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.

(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 and payment of the reinstatement fee under s. 343.21 (1) (j), the department shall return the surrendered license.

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

History: 1971 c. 164 s. 83; 1977 c. 29 s. 1654 (7) (a); 1991 a. 39, 189, 316; 1993 a. 16.

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.

(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 of those revocations and suspensions and, upon request, shall forward the list to the sheriff of each county, to the chief of police or the constable, respectively, of each city, village and town 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 certi-

fied 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; 1989 a. 167.

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 that person has obtained a new license when and as provided in this chapter. This subsection applies to a resident of this state even though that person was a nonresident at the time that person's operating privilege was revoked or suspended.

(2) Notwithstanding the privilege conferred on nonresidents by s. 343.05 (4) (b) 1., 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 the nonresident's operating privilege in this state has been reinstated pursuant to the laws of this state. This subsection applies to a nonresident even though the nonresident was a resident of this state at the time the nonresident's operating privilege was revoked or suspended. This section does not limit the operating privilege granted to nonresidents by s. 343.05 (2) (a) 2.

History: 1989 a. 105, 359; 1991 a. 316.

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 the nonresident's 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 SUSPENSION OR 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.

(5) RESTRICTIONS ON LICENSE. If a court has ordered that the person's operating privilege be restricted for a period of time after the revocation period is completed to operating vehicles equipped with an ignition interlock device, the license issued under this section shall include that restriction.

History: 1977 c. 29 s. 1654 (7) (a), (c); 1979 c. 306, 316; 1983 a. 525; 1989 a. 72; 1991 a. 277, 316.

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.

(3) If a court has ordered that the person's operating privilege be restricted for a period of time after the suspension period is completed to operating vehicles equipped with an ignition interlock device, the license shall include that restriction.

History: 1973 c. 90; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1991 a. 39, 277; 1993 a. 16.

Reinstatement under (1) (b) is not retroactive to date of conviction. *State v. Oretun*, 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 that person's 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 that person; or

(d) Violate any of the restrictions placed on that person's license by or pursuant to law; or

(e) Permit any unlawful use of a license issued to that person;

or

(f) Reproduce by any means whatever a copy of a license; or

(g) Deface or alter a license except to endorse 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) Except as provided in sub. (3m), any person who violates sub. (1) shall be:

(a) Fined not less than \$200 nor more than \$600 and may be imprisoned for not more than 6 months or both for the first such violation.

(b) Fined not less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months for the 2nd offense occurring within 3 years.

(c) Fined not less than \$1,000 nor more than \$2,000 and imprisoned for not less than 10 days nor more than 6 months for the 3rd or subsequent offense occurring within 3 years.

(3m) Any person who violates sub. (1) (d) while operating a "Class D" or "Class M" vehicle as described in s. 343.04 (1) (d) and (e), except a school bus, may be required to forfeit not more than \$200 for the first offense, may be fined not more than \$300 and imprisoned for not more than 30 days for the 2nd offense occurring within 3 years, and may be fined not more than \$500 and imprisoned for not more than 6 months for the 3rd or subsequent offense occurring within 3 years. A violation of a local ordinance in conformity with this section shall count as a previous offense.

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; 1989 a. 105; 1991 a. 189, 230.

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 while disqualified, out of service or 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 that person has obtained a new license in this state, including an occupational license, or the person's operating privilege has been reinstated under the laws of this state. No person may operate a commercial motor vehicle while ordered out-of-service as provided in s. 343.305 (7) (b) or (9) (am). No person may operate a commercial motor vehicle after March 31, 1992, while disqualified as provided in s. 343.315.

(2) Except as provided in subs. (2g) and (2m), any person violating this section is subject to the following penalties:

(a) For the first conviction under this section or a local ordinance in conformity with this section within a 5-year period the person may be required to forfeit not more than \$600, except that, if the person's operating privilege was revoked under ch. 351 at the time of the offense, the penalty may be a fine of not more than \$600.

(b) 1. Except as provided in subd. 2., for a 2nd conviction under this section or a local ordinance in conformity with this sec-

tion within a 5-year period, a person may be fined not more than \$1,000 and shall be imprisoned for not more than 6 months.

2. If the revocation or suspension that is the basis of a violation was imposed solely due to a failure to pay a fine or a forfeiture, or was imposed solely due to a failure to pay a fine or forfeiture and one or more subsequent convictions for violating sub. (1), the person may be required to forfeit not more than \$1,000. This subdivision applies regardless of the person's failure to reinstate his or her operating privilege.

(c) 1. Except as provided in subd. 2., for a 3rd conviction under this section or a local ordinance in conformity with this section within a 5-year period, a person may be fined not more than \$2,000 and may be imprisoned for not more than 9 months.

2. If the revocation or suspension that is the basis of a violation was imposed solely due to a failure to pay a fine or a forfeiture, or was imposed solely due to a failure to pay a fine or forfeiture and one or more subsequent convictions for violating sub. (1), the person may be required to forfeit not more than \$2,000. This subdivision applies regardless of the person's failure to reinstate his or her operating privilege.

(d) 1. Except as provided in subd. 2., for a 4th conviction under this section or a local ordinance in conformity with this section within a 5-year period, a person may be fined not more than \$2,000 and may be imprisoned for not more than one year in the county jail.

2. If the revocation or suspension that is the basis of a violation was imposed solely due to a failure to pay a fine or a forfeiture, or was imposed solely due to a failure to pay a fine or forfeiture and one or more subsequent convictions for violating sub. (1), the person may be required to forfeit not more than \$2,000. This subdivision applies regardless of the person's failure to reinstate his or her operating privilege.

(e) 1. Except as provided in subd. 2., for a 5th or subsequent conviction under this section or a local ordinance in conformity with this section within a 5-year period, a person may be fined not more than \$2,500 and may be imprisoned for not more than one year in the county jail.

2. If the revocation or suspension that is the basis of a violation was imposed solely due to a failure to pay a fine or a forfeiture, or was imposed solely due to a failure to pay a fine or forfeiture and one or more subsequent convictions for violating sub. (1), the person may be required to forfeit not more than \$2,500. This subdivision applies regardless of the person's failure to reinstate his or her operating privilege.

(2g) Except as provided in sub. (2m), any person who violates sub. (1) while his or her operating privilege is suspended or revoked for improperly refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or violating s. 346.63 (2) or (6), 940.09 (1) or 940.25, is subject to the following penalties:

(a) For the first conviction under this section or a local ordinance in conformity with this section within a 5-year period the person shall forfeit not less than \$150 nor more than \$600, except that, if the person's operating privilege was revoked under ch. 351 at the time of the offense, the penalty shall be a fine of 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 a 5-year period, the person shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned for not less than 5 days nor more than 6 months.

(c) For a 3rd conviction under this section or a local ordinance in conformity with this section within a 5-year period, the person shall be fined not less than \$1,000 nor more than \$2,000 and shall be imprisoned for 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 a 5-year period, the person shall be fined not less than \$1,500 nor more than \$2,000 and shall be imprisoned for 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 a 5-year period, the 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.

(2m) Any person violating this section while operating a commercial motor vehicle shall:

(a) For the first conviction under this section or a local ordinance in conformity therewith within a 5-year period, be fined not less than \$300 nor more than \$1,000 and imprisoned for not less than 6 days nor more than 10 days.

(b) For a 2nd conviction under this section or a local ordinance in conformity therewith within a 5-year period, be fined not less than \$1,000 nor more than \$2,000 and shall be imprisoned for not less than 30 days nor more than 9 months.

(c) For a 3rd or subsequent conviction under this section or a local ordinance in conformity therewith within a 5-year period, be fined not less than \$1,500 nor more than \$5,000 and shall be imprisoned for not less than 60 days nor more than one year in the county jail.

(2p) The legislature intends that courts use the sentencing option under s. 973.03 (4) whenever appropriate for persons subject to sub. (2) or (2m) to provide cost savings for the state and for local governments. This option shall not be used if the suspension or revocation was for one of the following:

(a) Improperly refusing to take a test under s. 343.305.

(b) Violating s. 346.63 (1) or (5) or a local ordinance in conformity therewith.

(c) Violating s. 346.63 (2) or (6), 940.09 (1) or 940.25.

(2r) For purposes of determining prior convictions under this section, the 5-year period shall be measured from the dates of the violations that resulted in the convictions and each conviction under sub. (2) or (2m) shall be counted. The vehicle operated at the time of the offense shall determine whether the penalties of sub. (2) or (2m) apply.

(2s) Within 30 days after receipt by the department of a report from a law enforcement officer under s. 343.305 (7) or a court order under s. 343.28 of a violation committed by a person operating a commercial motor vehicle while subject to an out-of-service order under s. 343.305 (7) (b) or (9) (am), a traffic officer employed under s. 110.07 may prepare a uniform traffic citation under s. 345.11 for a violation of sub. (1) and serve it on the person. The citation may be served anywhere in this state and shall be served by delivering a copy to the person personally or by leaving a copy at the person's usual place of abode with a person of discretion residing therein or by mailing a copy to the person's last-known residence address. The venue for prosecution may be the county where the alleged offense occurred or in the person's county of residence.

(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.

(4m) In addition to other penalties for violation of this section, if a person has violated this section after his or her operating privilege was revoked as provided in ch. 351, the penalties shall be enhanced by imprisonment and additional fines as provided in s. 351.08. For the purpose of enforcing this subsection, in any case

in which the accused is charged with operating a motor vehicle while his or her license, permit or privilege to operate is suspended or revoked or is charged with operating without a valid license, the court, before hearing the charge, shall determine whether the person is a habitual traffic offender or repeat habitual traffic offender and therefore barred from operating a motor vehicle on the highways of this state.

(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; 1989 a. 12, 105, 336; 1991 a. 39, 64, 189, 277.

See notes to Art. I, sec. 1, and Art. VII, sec. 2, citing *State v. Sittig*, 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.

Under (1), trial court may, in its discretion, order that mandatory sentence of imprisonment be served concurrently with other sentence. *State v. Schultz*, 145 W (2d) 661, 429 NW (2d) 79 (Ct. App. 1988).

Time between violations underlying convictions, not time between convictions, determines whether penalty enhancer in (2) (b) 1. applies. *State v. Walczak*, 157 W (2d) 661, 460 NW (2d) 797 (Ct. App. 1990).

Where prior convictions are used to enhance minimum penalty under (2), collateral attack of prior convictions must be allowed. *State v. Baker*, 169 W (2d) 49, 485 NW (2d) 237 (1992).

Sub. (2) (e) 2. prevents the imposition of criminal penalties against an habitual offender under ch. 351 where the revocation is based solely on a failure to pay a previously imposed forfeiture and subsequent revocations were in turn based solely on a previous failure to pay a forfeiture. *State v. Taylor*, 170 W (2d) 524, 489 NW (2d) 664 (Ct. App. 1992).

Decriminalization of first-offense OAR did not remove the defendant's knowledge of the revocation as an element. *State v. Olson*, 175 W (2d) 628, 498 NW (2d) 661 (1993).

The existence of a basis for revocation or suspension other than, or in conjunction with, failure to pay a fine or forfeiture renders sub. (2) (c) 2. inapplicable. *State v. Biljan*, 177 W (2d) 14, 501 NW (2d) 820 (Ct. App. 1993).

In sub. (2g) (e), a "conviction under this section" includes an offense under sub. (1). *State v. Charles*, 180 W (2d) 155, 509 NW (2d) 85 (Ct. App. 1993).

Application of sub. (2) (b) 2. discussed. *State v. Muniz*, 181 W (2d) 928, 512 NW (2d) 252 (Ct. App. 1994).

A person whose period of suspension resulting from an OWI conviction has as ended but who remains suspended due to a failure to complete required alcohol assessment is subject to sub. (2g). *State. Doyen*, 185 W (2d) 635, 518 NW (2d) 521 (Ct. App. 1994).

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 the person's 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 the person or under the person's 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 the dealer or in the dealer's possession or control on a trial run unless the dealer has been shown the person's valid operator's license, issued by this state or other jurisdiction, before permitting the trial run.

(3) Except as another penalty is provided by s. 343.245 (4) (b), any person violating this section may be required to forfeit not more than \$100.

History: 1971 c. 278; 1989 a. 105, 359.

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 the nonresident's residence.

(2) No person shall rent a motor vehicle, trailer or semitrailer to another until that person 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 or her 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); 1991 a. 316.

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 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 (3). The card may serve as a document of gift under s. 157.06 (2) (b) and (c) and the holder may affix a sticker thereto as provided in s. 343.175 (3). The card may also serve as a document of refusal to make an anatomical gift under s. 157.06 (2) (i). The card shall contain the holder's photograph and, if applicable, comply with the requirement of s. 343.17 (3) (a) 12.

(4) **APPLICATION.** The application for an identification card shall include the information required under s. 343.14 (2) (a) and (b) and (2m), 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 and, for applicants who are aged 65 years or older, material, as provided by the department, explaining the voluntary program that is specified in s. 71.55 (10) (b). 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) **RECORDS AND OTHER INFORMATION.** (a) 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.

(b) The department shall not disclose any record or other information concerning or relating to an applicant or identification card holder to any person other than a court, district attorney, county corporation counsel, city, village or town attorney, law enforcement agency, the applicant or identification card holder or, if the applicant or identification card holder is under 18 years of age, his or her parent or guardian. Persons entitled to receive any record or other information under this paragraph shall not disclose the record or other information to other persons or agencies.

(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 \$1,000.

History: 1977 c. 360, 447; 1979 c. 226, 306; 1981 c. 20 s. 1848r; 1985 a. 29, 98; 1987 a. 27, 304; 1989 a. 105, 294, 298; 1991 a. 86, 269.

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) or any other person with a disability that limits or impairs the ability to walk may request from the department a special identification card that will entitle any motor vehicle, other than a motorcycle, parked by, or under the direction of, the person, or a motor vehicle, other than a motorcycle, 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 person with a disability that limits or impairs the ability to walk. 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.

(1m) The form for application for a special identification card under sub. (1) or another form provided by the department shall include a place for an applicant or special identification card holder who is a natural person to designate that his or her name, street address, post-office box number and 9-digit extended zip code may not be disclosed as provided under s. 343.235, a statement indicating the effect of making such a designation and a place for an applicant or special identification card holder who has made a designation under this subsection to reverse the designation.

(2) (a) 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 may establish an expiration date for any special identification card issued prior to July 1, 1994. Except as provided in par. (b), any special identification card issued after June 30, 1994, shall be valid for 4 years.

(b) 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.

(c) 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 application shall include all of the information required for issuance of a special identification card under sub. (1). The fee for a renewal identification card shall be the fee established by the department under sub. (1). Except as provided in par. (b), each card shall be valid for 4 years.

(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; 1989 a. 304; 1991 a. 240, 269; 1993 a. 16

343.52 Unlawful 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.

(1m) Any person or organization that fraudulently procures, alters or uses a special identification card issued under s. 343.51 or reproduces by any means whatever a special identification card shall forfeit not less than \$200 nor more than \$500.

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

(3) (b) A member of a disabled parking enforcement assistance council under s. 349.145 who observes a violation of this section may prepare a written report indicating that a violation has occurred. The report shall contain, if applicable, the time and

location at which the violation occurred, and any other relevant information relating to the violation.

(c) Within 24 hours after observing the violation, the member may deliver the report to a traffic officer of the political subdivision in which the violation occurred. A report which does not contain all of the information in par. (b) shall nevertheless be delivered and shall be maintained by the political subdivision for statistical purposes.

(d) 1. Within 48 hours after receiving a report containing all of the information in par. (b) and after conducting an investigation, the traffic officer may prepare a uniform traffic citation under s. 345.11 for the violation and may personally serve it upon the person or organization.

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

History: 1979 c. 276; 1981 c. 119; 1985 a. 29; 1993 a. 16, 256

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 technical college 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 technical college system board 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, technical college 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; 1993 a. 399

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 the form and manner prescribed by the department, 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.

(6) No driver school may be licensed unless its approved course of instruction acquaints each student with the hazards

posed by farm machinery and animals on highways and provides instruction in safely dealing with such hazards.

History: 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 273; 1989 a. 31; 1993 a. 455

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 the form and manner prescribed by the department, 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); 1989 a. 31.

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 the 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; 1991 a. 316.

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.

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

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, member, manager 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, member, manager 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 herself 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; 1991 a. 316; 1993 a. 112.

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 the licensee's 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 herself 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; 1991 a. 316.

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 division of hearings and appeals will hold a hearing on the pending denial or revocation. The division of hearings and appeals 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); 1993 a. 16.

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 or she 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; 1991 a. 316.

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.