

1983 Senate Bill 232

Date of enactment: **May 10, 1984**
Date of publication: **May 18, 1984**

1983 Wisconsin Act 535

AN ACT *to repeal* 343.44 (2) (a) 2; *to renumber and amend* 343.44 (2) (a) 1 and 346.935 (4); *to amend* 146.81 (4), 165.83 (2) (e), 343.05 (3), 343.305 (2) (b), (3) (b) (intro.) and (6) (b), 343.44 (2) (b) to (e), 351.02 (1) (intro.) and (a) (intro.), 351.08, 351.10, 800.02 (5) (intro.), 800.03 (4) and 973.05 (3) (a); and *to create* 346.935 (4) (a), 349.03 (4), 351.02 (1) (a) 8, 895.52, 905.04 (4) (f) and 968.04 (1) (c) of the statutes, *relating to* operating motor vehicles, enforcing motor vehicle laws, issuing warrants, patient health care records, chemical tests for intoxication and providing penalties.

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

SECTION 1. 146.81 (4) of the statutes is amended to read:

146.81 (4) "Patient health care records" means all records related to the health of a patient prepared by or under the supervision of a health care provider, but not those records subject to s. 51.30 or records of tests administered under s. 343.305.

SECTION 2. 165.83 (2) (e) of the statutes is amended to read:

165.83 (2) (e) Obtain and file a copy or detailed description of each arrest warrant issued in this state for the offenses under par. (a) or s. 800.03 (4) but not served because the whereabouts of the person named on the warrant is unknown or because that person has left the state. All available identifying data shall be obtained with the copy of the warrant, including any information indicating that the person named on the warrant may be armed, dangerous or possessed of suicidal tendencies.

SECTION 3. 343.05 (3) of the statutes is amended to read:

343.05 (3) Any person violating sub. (1) ~~may be fined shall forfeit~~ not more than \$100 ~~or imprisoned not more than 6 months or both~~ for the first offense ~~and~~, shall be fined not more than \$100 and imprisoned not less than 5 days nor more than 6 months for the 2nd offense and shall be fined not more than \$100 and imprisoned not less than 10 days nor more than 6 months for the 3rd ~~conviction~~ or subsequent offense within 3 years. A violation of a local ordinance in conformity with this section shall count as a previous offense.

SECTION 4. 343.305 (2) (b), (3) (b) (intro.) and (6) (b) of the statutes are amended to read:

343.305 (2) (b) A law enforcement officer may, upon arrest of ~~and issuance of a citation to~~ a person for violation of s. 346.63 (1) or a local ordinance in conformity therewith, or ~~upon arrest~~ for a violation of s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, request the person to provide one or more samples of his or her breath, blood or urine for the purpose specified under sub. (1).

(3) (b) (intro.) If the person refuses the request of a law enforcement officer to submit to a test under sub. (2), the officer shall immediately prepare a notice of intent to revoke the person's operating privilege, take possession of the person's operator's license, issue a dated receipt and a copy of the notice of intent to revoke the person's operator's license to the operator and submit or mail a copy of the receipt, a copy of the notice of intent to revoke the person's operating privilege and the operator's license to the circuit court for the county in which the refusal is made. The officer shall submit or mail copies of the notice of intent to revoke the person's operating privilege to the department and the district attorney. The notice of intent to revoke the person's operating privilege shall contain the following information:

(6) (b) ~~No~~ A person acting under par. (a) ~~nor~~, the employer of any such person, ~~nor~~ and any hospital where blood is withdrawn ~~may incur any civil or criminal liability for the act if requested by a law enforcement officer to perform it, except for civil liability for negligence in the performance of the act by any such person have immunity from civil or criminal liability under s. 895.52.~~

SECTION 5. 343.44 (2) (a) 1 of the statutes is renumbered 343.44 (2) (a) and amended to read:

343.44 (2) (a) ~~Except as provided in subd. 2, for~~ For the first conviction within 5 years the person shall forfeit not less than \$150 nor more than \$600.

SECTION 6. 343.44 (2) (a) 2 of the statutes is repealed.

SECTION 7. 343.44 (2) (b) to (e) of the statutes are amended to read:

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

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

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

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

SECTION 8. 346.935 (4) of the statutes is renumbered 346.935 (4) (b) and amended to read:

346.935 (4) (b) This section does not apply to passengers in a limousine operated by a chauffeur licensed under s. 343.125 or in a motor bus.

SECTION 9. 346.935 (4) (a) of the statutes is created to read:

346.935 (4) (a) In this subsection:

1. "Chauffeur" has the meaning designated in s. 343.01 (2) (e).
2. "Limousine" means any motor vehicle for charter or hire which is operated by a chauffeur and designed for transporting persons rather than property.

SECTION 10. 349.03 (4) of the statutes is created to read:

349.03 (4) If a violation under s. 343.305 or 346.63 or a local ordinance in conformity with s. 346.63 (1) occurs within a law enforcement officer's jurisdiction, he or she may enforce the violation anywhere in the state.

SECTION 11. 351.02 (1) (intro.) and (a) (intro.) of the statutes are amended to read:

351.02 (1) (intro.) "Habitual traffic offender" means any person, resident or nonresident, whose record, as maintained by the department shows that the person has accumulated the number of convictions for the separate and distinct offenses, regardless of the license under which the person was operating a motor vehicle, ~~under pars. par. (a) and or~~ (b) committed within a 5-year period as follows:

(a) (intro.) Four or more convictions of the following separate and distinct offenses, including any combination thereof, ~~arising out of separate acts:~~

SECTION 12. 351.02 (1) (a) 8 of the statutes is created to read:

351.02 (1) (a) 8. Fleeing or attempting to elude an officer under s. 346.04 (3).

SECTION 12m. 351.08 of the statutes is amended to read:

351.08 Operation of motor vehicle by habitual traffic offender prohibited; penalty; enforcement. Any person who is adjudged an habitual traffic offender under s. 351.06 who is convicted of operating a motor vehicle in this state while the order of the court issued under s. 351.06 is in effect shall be fined not to exceed ~~\$1,000~~ \$5,000 and shall be imprisoned not to exceed ~~90~~ 180 days. No portion of the sentence may be suspended, except in a case where operating was made necessary by a situation of emergency, as determined by the court. Any person imprisoned under this section, on his or her request, may be allowed Huber law work privileges under s. 56.08. For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle while his or her license, permit or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing the charge shall determine whether the person is an habitual traffic offender and therefor barred from operating a motor vehicle on the highways of this state. If the court determines that there is an order in effect revoking the accused's operating privileges under s. 351.06, it shall certify the case to the district attorney.

SECTION 13. 351.10 of the statutes is amended to read:

351.10 Appeals. An appeal to the court of appeals may be taken from any final action or order of a court entered under this chapter in the same manner and form as such an appeal would be noted, perfected and tried in any criminal case, except s. 809.30 (1) (c) does not apply.

SECTION 14. 800.02 (5) (intro.) of the statutes is amended to read:

800.02 (5) **WARRANT FORM.** (intro.) The warrant shall be in the name of the state of Wisconsin, shall be directed to all law enforcement officers in the state, may be addressed to any law enforcement officer in the state, may specify geographical limits for enforcement of the warrant, shall be signed by the municipal judge who authorizes its issuance and shall contain or have attached thereto the following information:

SECTION 15. 800.03 (4) of the statutes is amended to read:

800.03 (4) Notwithstanding sub. (1), a court appearance is required for a violation of a local ordinance in conformity with s. 346.63 (1). If a person fails to make a required appearance under this subsection and the judge issues an arrest warrant, the law enforcement agency which filed the uniform citation and complaint shall file a detailed description of the warrant with the division of law enforcement services of the department of justice.

SECTION 15g. 895.52 of the statutes is created to read:

895.52 Liability exemption; tests for intoxication. (1) In this section, “traffic officer” has the meaning designated in s. 340.01 (70).

(2) Any person withdrawing blood at the request of a traffic officer for the purpose of determining the presence or quantity of alcohol, controlled substances or both is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.

(3) Any employer of the person under sub. (2) or any hospital where blood is withdrawn by that person has the same immunity from liability under sub. (2).

SECTION 15r. 905.04 (4) (f) of the statutes is created to read:

905.04 (4) (f) *Tests for intoxication.* There is no privilege concerning the results of or circumstances surrounding any chemical tests for intoxication or blood alcohol concentration.

SECTION 16. 968.04 (1) (c) of the statutes is created to read:

968.04 (1) (c) A judge may specify geographical limits for enforcement of a warrant.

SECTION 17. 973.05 (3) (a) of the statutes is amended to read:

973.05 (3) (a) In lieu of part or all of a fine imposed by a court, the court may stay the execution of part or all of the sentence and provide that the defendant perform community service work under pars. (b) and (c). The amount of the fine actually paid, if any, shall be used to determine any applicable assessment or surcharge under sub. (1), except that any applicable driver improvement surcharge under s. 346.655 shall be imposed regardless of whether part or all of the sentence has been stayed. If the defendant fails to comply with the community service order, the court shall order the defendant brought before the court for imposition of sentence. If the defendant complies with the community service order, he or she has satisfied that portion of the sentence.

SECTION 18. **Initial applicability.** The creation of section 905.04 (4) (f) of the statutes by this act first applies to communications occurring on the effective date of this act.