

May 1986 Spec. Sess.
Senate Bill 1

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1985 Wisconsin Act 337

AN ACT to repeal 125.07 (4) (a) 2; to amend 85.07 (5), 121.555 (2) (c) 5, 125.02 (8m), 125.06 (10), 125.07 (1) (a) 1 and 2, 125.07 (3) (a) 9, 125.07 (3) (a) 10, 125.07 (4) (b), 125.07 (4) (bm) 6, 343.10 (1), 343.10 (1r), 343.12 (2) (d), 343.16 (2) (a), 343.30 (1q) (a), 343.30 (1q) (b) 1, 343.30 (1q) (b) 2 to 5, 343.30 (1q) (g), 343.30 (1q) (h), 343.303, 343.305 (title), 343.305 (2) (b), 343.305 (2) (c), 343.305 (3) (a) 2, 343.305 (3) (b) 1, 343.305 (3) (b) 5. a, 343.305 (5), 343.305 (6) (a), 343.305 (7), 343.305 (8), 343.305 (9) (a), 343.305 (9) (b) 1, 343.305 (9) (b) 2 to 5, 343.307, 345.24, 345.60 (3), 346.63 (2m), 346.65 (2) (b) and (c), 346.655 (1), 351.02 (1) (a) 3, 885.235 (1) (intro.) and (b), 885.235 (4), 949.08 (2) (e) and 967.055 (2); and to create 85.07 (6), 343.30 (1q) (b) (intro.), 343.30 (1q) (bn), 343.305 (6m), (6p), (6x) and (6z), 346.63 (1m), 346.65 (2g), 346.65 (2m), 885.235 (1) (d) to (f) and 885.235 (5) (am) of the statutes, relating to: raising the legal drinking age to 21; operating motor vehicles, blood alcohol concentration and operating privileges; chemical tests for intoxication; performance of community service by persons who operate a motor vehicle while under the influence of an intoxicant, drugs or both; occupational licenses; underage persons on premises with alcohol beverages licenses; permitting certain underage persons to consume intoxicating liquor; providing for studies; and providing penalties.

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

SECTION 1. 85.07 (5) of the statutes is amended to read:

85.07 (5) ACCIDENT REPORT REQUIRED. The department shall submit to the legislature, by January 1, ~~1989~~ 1987, a report on the number of traffic accidents in this state involving drivers 18 to 19 years of age, comparing the statistics for the period between July 1, 1980, and June 30, 1984, with the statistics for the period between July 1, 1984, and ~~June 30, 1988~~ August 31, 1986. The department shall attempt to ascertain, using standard analytic techniques, the impact of the change in the legal drinking age, ~~as defined under s. 125.02 (8m) to 19~~, the impact of the enactment of s. 346.63 (2m) on the accident rates for 18-year-old and 19-year-old drivers and the impact of the 21-year age distinction for border-state residents on enforcement procedures and accident rates during the time periods covered by the report, and the impact of similar policies on the accident rates in other states, and shall include this information in the report. This ~~section subsection~~ does not apply after January 1, ~~1989~~ 1987.

SECTION 2. 85.07 (6) of the statutes is created to read:

85.07 (6) DRINKING AGE STUDY. The department shall study the impact of raising the legal drinking age to 21 and report the results of its study to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) by January 1, 1988, 1989, 1990 and 1991. All other state agencies shall cooperate with the department in conducting the study. The department shall study the effect of the change in the drinking age on all of the following:

(a) Motor vehicle accident and fatality rates for persons 16 to 26 years of age including blood alcohol content and time and location of accidents.

(b) Alcohol and other drug use by persons 10 to 21 years of age.

(c) Per capita alcohol beverages consumption in this state.

(d) Arrests and other enforcement actions by law enforcement agencies and universities related to alcohol and other drug use by persons 12 to 26 years of age.

(e) Referrals and admissions of persons 12 to 21 years of age to alcohol treatment programs and facilities.

(f) Alcohol and other drug related utilization of crisis services and suicide rates of persons 12 to 21 years of age.

SECTION 3. 121.555 (2) (c) 5 of the statutes is amended to read:

121.555 (2) (c) 5. May not be a person convicted of reckless driving under s. 346.62, operating a motor vehicle while under the influence of an intoxicant or of a controlled substance under s. 346.63 (1), a violation of s. 346.63 (1m) or any of the offenses enumerated under s. 343.31 (1), within a 2-year period. Upon request of the operator or school, the department shall certify whether the operator meets this requirement.

SECTION 4. 125.02 (8m) of the statutes is amended to read:

125.02 (8m) "Legal drinking age" means ~~19~~ 21 years of age.

SECTION 5. 125.06 (10) of the statutes is amended to read:

125.06 (10) RAFFLES. The awarding of alcohol beverages in original, unopened packages, containers or bottles as a prize, in a raffle conducted by an organization licensed to conduct the raffle under ch. 163, to any person ~~19 years of~~ who has attained the legal drinking age or older.

SECTION 6. 125.07 (1) (a) 1 and 2 of the statutes are amended to read:

125.07 (1) (a) 1. No person may procure for, sell, dispense or give away any ~~fermented malt~~ alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age, ~~or procure for, sell, dispense or give away any intoxicating liquor to any underage person.~~

2. No licensee or permittee may sell, vend, deal or traffic in ~~fermented malt~~ alcohol beverages to or with any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age, ~~or sell, vend, deal or traffic in intoxicating liquor to or with any underage person.~~

SECTION 7. 125.07 (3) (a) 9 of the statutes, as created by 1985 Wisconsin Act 28, is amended to read:

125.07 (3) (a) 9. ~~An 18-year-old~~ A person who is at least 18 years of age and who is working under a contract with the licensee, permittee or corporate agent to provide entertainment for customers on the premises.

SECTION 8. 125.07 (3) (a) 10 of the statutes, as created by 1985 Wisconsin Act 221, is amended to read:

125.07 (3) (a) 10. An underage person who enters or remains ~~in a room~~ on Class "B" or "Class B" licensed premises on a date specified by the licensee or permittee during times when no alcohol beverages are consumed, sold or given away. During those times, the licensee, the agent named in the license if the licensee is a corporation or a person who has an operator's license shall be on the premises unless all alcohol beverages are stored in a locked portion of the premises. ~~An underage person may enter and remain on Class "B" or "Class B" premises under this subdivision only if the municipality which issued the Class "B" or "Class B" license adopts an ordinance permitting underage persons to enter and remain on the premises as provided in this subdivision and the law enforcement agency responsible for enforcing the ordinance issues to the Class "B" or "Class B" licensee a written authorization permitting underage persons to be present under this subdivision on the date specified in the authorization. Before issuing the authorization, the law enforcement agency shall make a determination that the presence of underage persons on the licensed premises will not endanger their health, welfare or safety or that of other members of the community. The licensee shall obtain a separate authorization for each date on which underage persons will be present on the premises. The licensee shall notify the local law enforcement agency, in advance, of the times underage persons will be allowed on the premises under this subdivision.~~

SECTION 9. 125.07 (4) (a) 2 of the statutes, as affected by 1985 Wisconsin Act 28, is repealed.

SECTION 10. 125.07 (4) (b) of the statutes, as affected by 1985 Wisconsin Act 28, is amended to read:

125.07 (4) (b) Except as provided in par. (bm), any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age who knowingly possesses or consumes ~~fermented malt~~ alcohol beverages is guilty of a violation.

SECTION 11. 125.07 (4) (bm) 6 of the statutes, as created by 1985 Wisconsin Act 28, is amended to read:

125.07 (4) (bm) 6. A campus, if the underage person is at least 18 years of age and is under the immediate supervision of a person 19 years of age or older who has attained the legal drinking age.

SECTION 12. 343.10 (1) of the statutes is amended to read:

343.10 (1) If a person has had his or her chauffeur's license revoked or suspended he or she may file a petition with the department for a limited chauffeur's license under s. 343.126. If a person has had his or her license revoked or suspended under this chapter and if the person is engaged in an occupation or trade making it essential that he or she operate a motor vehicle, the person may after complying with sub. (2) file with a judge of a court of record in the county of his or her residence or of a municipal court in the county of his or her residence a petition setting forth in detail the need for operating a motor vehicle. Thereupon, if the petitioner has not had his or her license revoked or suspended under this chapter within the one-year period immediately preceding the present revocation or suspension, the judge may order the department to issue an occupational license to the person. The order for issuance of an occupational license shall contain definite restrictions as to hours of the day, not to exceed 12, hours per week, not to exceed 60, type of occupation and areas or routes of travel to be permitted under the license. If the petitioner holds a valid chauffeur's license at the time of filing petition the order for issuance shall further restrict operation under the occupational license to travel only between the licensee's place of residence and his or her place of employment, in addition to operation permitted under the chauffeur's license. The order may permit travel to and from church but the order shall specify the hours during which the travel is to be permitted. The order may permit travel necessary to comply with a driver safety plan ordered under s. 343.30 (1q) or 343.305. The number and seriousness of prior traffic convictions shall be considered in determining whether or when an occupational license shall be issued. A copy of the petition and the order for the occupational license shall be forwarded to the department. If a certificate of insurance issued by the insurer or an agent of the insurer is submitted to the court and at least 15 days have elapsed since the date of suspension or revocation or, in the case of an appeal which is subsequently dismissed or affirmed, until at least 15 days have elapsed since the date of revocation or suspension following the dismissal or affirmance of the appeal, the court may issue a 30-day temporary occu-

pational license. The license shall be on forms provided to the court by the department. Occupational licenses are subject to the limitations specified in ss. 343.30 (1q) (b) and (bn), 343.305 (9) (b) and (em) and 343.31 (3m).

SECTION 13. 343.10 (1r) of the statutes, as affected by 1985 Wisconsin Acts 32 and 71, is amended to read:

343.10 (1r) If a person has had his or her license revoked as a habitual traffic offender under ch. 351 and the person has complied with sub. (2) and s. 351.07 (1), if the judge grants the person's petition as provided in s. 351.07 (1) the judge shall issue an order authorizing the department to issue an occupational license to the person. The order authorizing the issuance of an occupational license shall contain definite restrictions as to hours of the day, not to exceed 12, hours per week, not to exceed 60, type of occupation and areas or routes of travel to be permitted under the license. The order may permit travel to and from church but the order shall specify the hours during which the travel is to be permitted. ~~The license shall be on forms provided to the court by the department. Occupational licenses are subject to the limitations specified in ss. 343.30 (1q) (b), 343.305 (9) (b) and (em) and 343.31 (3m).~~

SECTION 14. 343.12 (2) (d) of the statutes is amended to read:

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

SECTION 15. 343.16 (2) (a) of the statutes is amended to read:

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

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

SECTION 16. 343.30 (1q) (a) of the statutes is amended to read:

343.30 (1q) (a) If a person is convicted under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m), the court shall proceed under this subsection. If a person is convicted under s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, the court shall proceed under pars. (c) and (d). If a person is referred by the department acting under s. 343.16 (2) (a), the department shall proceed under pars. (c) and (d) without the order of the court.

SECTION 17. 343.30 (1q) (b) (intro.) of the statutes is created to read:

343.30 (1q) (b) (intro.) For persons convicted under s. 346.63 (1) or a local ordinance in conformity therewith:

SECTION 18. 343.30 (1q) (b) 1 of the statutes, as affected by 1985 Wisconsin Act 80, is amended to read:

343.30 (1q) (b) 1. The court shall ~~suspend or~~ revoke the person's operating privilege under this paragraph according to the number of previous improper refusals or sets of high test results under s. 343.305 (8) or convictions under s. 346.63 (1), or a local ordinance in conformity therewith, or s. 346.63 (1m) or (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle. Refusals or sets of high test results and convictions arising out of the same incident shall be counted as one. If a person has a conviction for any offense under a local ordinance in or a state statute of another state which is in conformity with s. 346.63 (1) (a) or (b) or both, that conviction shall count as a prior conviction under this subdivision.

SECTION 19. 343.30 (1q) (b) 2 to 5 of the statutes are amended to read:

343.30 (1q) (b) 2. Except as provided in subd. 3 or 4, for the first such conviction, the court shall ~~suspend~~ revoke the person's operating privilege for ~~not less than 3 months nor more than 6 months.~~ After the first 15 days of the revocation period, the person is eligible for an occupational license under s. 343.10 at any time.

3. If the number of refusals, sets of high test results and convictions within a 5-year period equals 2, the court shall revoke the person's operating privilege for ~~not less than 6 months nor more than one year.~~ After the first ~~30~~ 60 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

4. If the number of refusals, sets of high test results and convictions within a 5-year period equals 3 or more, the court shall revoke the person's operating privilege for ~~not less than one year nor more than 2 years.~~ After the first ~~60~~ 90 days of the revocation per-

iod, the person is eligible for an occupational license under s. 343.10.

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

SECTION 20. 343.30 (1q) (bn) of the statutes is created to read:

343.30 (1q) (bn) For persons convicted under s. 346.63 (1m):

1. The court shall revoke the person's operating privilege under this paragraph according to the number of previous improper refusals under s. 343.305 (8) or convictions under s. 346.63 (1), or a local ordinance in conformity therewith, or s. 346.63 (1m) or (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle. Refusals and convictions arising out of the same incident shall be counted as one. If a person has a conviction for any offense under a local ordinance in or a state statute of another state which is in conformity with s. 346.63 (1) (a) or (b) or both, that conviction shall count as a prior conviction under this subdivision.

2. Except as provided in subd. 3 or 4, for the first such conviction, the court shall revoke the person's operating privilege for not less than 6 months nor more than one year. After the first 30 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

3. If the number of refusals and convictions 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 2 years. After the first 60 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

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

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

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

SECTION 21. 343.30 (1q) (g) of the statutes is amended to read:

343.30 (1q) (g) If a person licensed as a chauffeur is convicted of a violation of s. 346.63 (1) or a local ordinance in conformity therewith or s. 346.63 (1m) and the person was not operating a vehicle as a chauffeur at the time of violation, his or her chauffeur's license shall not be suspended or revoked under this subsection.

SECTION 22. 343.30 (1q) (h) of the statutes is amended to read:

343.30 (1q) (h) The court shall provide that the period of ~~suspension or~~ revocation imposed under this subsection be reduced by any period of suspension or revocation previously imposed under s. 343.305 if the suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63 (1) or a local ordinance in conformity therewith or s. 346.63 (1m) arise out of the same incident or occurrence.

SECTION 23. 343.303 of the statutes, as affected by 1985 Wisconsin Act 32, is amended to read:

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 a local ordinance in conformity therewith, or s. 346.63 (1m), (2) or (2m) or 940.25 or s. 940.09 where the offense involved the use of a vehicle, the officer, prior to an arrest, may request the person to provide a sample of his or her breath for a preliminary breath screening test using a device approved by the department for this purpose. The result of this preliminary breath screening test may be used by the law enforcement officer for the purpose of deciding whether or not the person shall be arrested for a violation of s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m), (2) or (2m), 940.09 or 940.25 and whether or not to require chemical tests as authorized under s. 343.305 (2) (b). 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 of a person under s. 343.305 (2) (b) or (c). Following the screening test, additional tests may be required of the driver under s. 343.305 (2) (b) or (c). The general penalty provision under s. 939.61 (1) does not apply to a refusal to take a preliminary breath screening test.

SECTION 24. 343.305 (title) of the statutes is amended to read:

343.305 (title) Tests for intoxication; procedure for revocation of operating privilege.

SECTION 25. 343.305 (2) (b) of the statutes, as affected by 1985 Wisconsin Act 32, is amended to read:

343.305 (2) (b) A law enforcement officer may, upon arrest of a person for violation of s. 346.63 (1) or a local ordinance in conformity therewith, or for a violation of s. 346.63 (1m), (2) or (2m) 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).

SECTION 26. 343.305 (2) (c) of the statutes, as affected by 1985 Wisconsin Acts 32 and 64, is amended to read:

343.305 (2) (c) A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person has violated s. 346.63

(1) or a local ordinance in conformity therewith, or s. 346.63 (1m), (2) or (2m) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, one or more tests may be administered to the person.

SECTION 27. 343.305 (3) (a) 2 of the statutes is amended to read:

343.305 (3) (a) 2. That if he or she refuses to submit to any such test or takes one or more tests and the results of each test indicate that the person had a blood alcohol concentration of 0.2% or more, his or her operating privilege shall be revoked under sub. (9); and

SECTION 28. 343.305 (3) (b) 1 of the statutes, as affected by 1985 Wisconsin Act 32, is amended to read:

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

SECTION 29. 343.305 (3) (b) 5. a of the statutes, as affected by 1985 Wisconsin Act 32, is amended to read:

343.305 (3) (b) 5. a. Whether the officer had probable cause to believe the person was driving or operating a motor vehicle while under the influence of alcohol, a controlled substance or a combination of both, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of alcohol and any other drug to a degree which renders him or her incapable of safely driving or having a blood alcohol concentration of 0.1% or more or 0.2% or more, as applicable, and whether the person was lawfully placed under arrest for violation of s. 346.63 (1) or a local ordinance in conformity therewith or s. 346.63 (1m), (2) or (2m), 940.09 or 940.25.

SECTION 30. 343.305 (5) of the statutes, as affected by 1985 Wisconsin Acts 32 and 64, is amended to read:

343.305 (5) In addition to a test administered upon the request of a law enforcement officer under sub. (2) (b) or required under sub. (2) (c), a person who was the operator of a motor vehicle involved in an accident resulting in great bodily harm or death to any person or a person arrested for a violation of s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m), (2) or (2m) or 940.25, or s. 940.09 if the offense involved the use of a vehicle, shall be permitted, upon his or her request, the alternative test provided by the agency under sub. (1) 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. (1). If a person has been arrested for such a violation and he or she has not been requested to provide a sample for a test under sub. (2) (b), 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. (2) (b). The failure or inability of a person to obtain a test at his or her own expense shall not preclude the admission of evidence of the results of any test administered under sub. (2) (b). 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. (2) (b) that it is able to perform. The agency shall comply with a request made in accordance with this subsection.

SECTION 31. 343.305 (6) (a) of the statutes, as affected by 1985 Wisconsin Act 64, is amended to read:

343.305 (6) (a) Blood may be withdrawn from the person arrested for violation of s. 30.68 (1), 346.63 (1), (1m), (2) or (2m), 350.10 (3) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1) or 350.10 (3), or as provided in sub. (2) (c) to determine the presence or quantity of alcohol or controlled substance or a combination of alcohol and a controlled substance in the blood only by a physician, registered nurse, medical technologist, physician's assistant or person acting under the direction of a physician.

SECTION 32. 343.305 (6m), (6p), (6x) and (6z) of the statutes are created to read:

343.305 (6m) If the person takes one or more tests administered under this section and the results of each test indicate the person had a blood alcohol concentration of 0.2% or more, the department shall, as soon as is practicable, 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 arrest is made. The department shall submit or mail copies of the notice of intent to revoke the person's operating privilege to the district attorney. The notice of intent to revoke the person's operating privilege shall contain the following information:

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

(b) That the officer complied with sub. (3) (a).

(c) That the person took one or more tests administered under this section and the results of each test indicate the person had a blood alcohol concentration of 0.2% or more.

(d) 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.

(e) That the issues of the hearing are limited to:

1. Whether the officer had probable cause to believe the person was driving or operating a motor vehicle while under the influence of alcohol, a controlled substance or a combination of both, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of alcohol and any other drug to a degree which renders him or her incapable of safely driving or having a blood alcohol concentration of 0.1% or more or 0.2% or more, as applicable, and whether the person was lawfully placed under arrest for violation of s. 346.63 (1) or a local ordinance in conformity therewith or s. 346.63 (1m), (2) or (2m), 940.09 or 940.25.

2. Whether the officer complied with sub. (3) (a).

3. Whether the person took one or more tests administered under this section and the results of each test indicate the person had a blood alcohol concentration of 0.2% or more.

4. Whether the tests were administered in accordance with this section.

(f) That, if it is determined that the person took one or more tests administered under this section and the results of each test indicate the person had a blood alcohol concentration of 0.2% or more, there will be an order for the person to comply with assessment and a driver safety plan.

(6p) The receipt given the operator shall clearly state the date of the last test and shall serve as a driving permit for 30 days from the date of the last test. If further proceedings or hearings on the issues under sub. (6m) are necessary, the court shall certify the receipt for additional periods, not to exceed 30 days, until there is a final determination of whether the person's operating privilege shall be revoked under this section.

(6x) The use of the notice under sub. (6m) by the department in connection with the enforcement of this section is adequate process to give the appropriate court jurisdiction over the person.

(6z) (a) For persons arrested on and after January 1, 1989, there shall be no revocations or other proceedings under this section on the basis of high test results. The department shall not proceed under sub. (6m) against any such person. Prior revocations on the basis of high test results shall continue to count for the purposes of sub. (9) (b) and ss. 343.30 (1q) (b) and 346.65 (2) (b) and (c).

(b) Paragraph (a) does not apply to revocations and other proceedings relating to improper refusals.

SECTION 33. 343.305 (7) of the statutes is amended to read:

343.305 (7) 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 influ-

ence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, or having a blood alcohol concentration of 0.1% or more or 0.2% or more, as applicable, the results of a test administered under sub. (2) (b) or (c) or (5) 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 or under the combined influence of an intoxicant and any other drug. Test results shall be given the effect required under s. 885.235.

SECTION 34. 343.305 (8) of the statutes, as affected by 1985 Wisconsin Acts 32 and 64, is amended to read:

343.305 (8) (a) If a law enforcement officer informs the circuit court that a person has refused to submit to a test under sub. (2) (b), 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 sub. (3) (b) 5. If the department informs the circuit court that a person has taken one or more tests administered under this section and the results of each test indicate the person had a blood alcohol concentration of 0.2% or more, the court shall be prepared to determine if the department's allegations are true. The scope of the hearing shall be limited to the issues outlined in sub. (6m). At any hearing limited to the issues outlined in sub. (6m), the officer who placed the person under arrest shall either be present or submit a deposition. Section 967.055 applies to any hearing under this subsection.

(b) At the close of the hearing, or within 5 days thereafter, the court shall determine the issues under sub. (3) (b) 5 or (6m), as applicable. If all issues are determined adversely to the person, the court shall proceed under sub. (9). 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 or the person's test results. This section does not preclude the prosecution of the person for violation of s. 346.63 (1) or a local ordinance in conformity therewith, s. 346.63 (1m), (2) or (2m), 940.09 or 940.25.

SECTION 35. 343.305 (9) (a) of the statutes is amended to read:

343.305 (9) (a) If the court determines under sub. (8) that a person improperly refused to take a test or that a person's test results all indicated a blood alcohol concentration of 0.2% or more, as applicable, 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 or the date of the last

test, as applicable. If a hearing was requested, the revocation period shall commence 30 days after the date of refusal or the date of the last test, as applicable, or immediately upon a final determination that the refusal was improper or that a person's test results all indicated a blood alcohol concentration of 0.2% or more, as applicable, whichever is later.

SECTION 36. 343.305 (9) (b) 1 of the statutes, as affected by 1985 Wisconsin Act 80, is amended to read:

343.305 (9) (b) 1. The court shall revoke the person's operating privilege under this paragraph according to the number of previous improper refusals or sets of high test results under sub. (8) or convictions under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m) or (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle. Refusals or sets of high test results and convictions arising out of the same incident shall be counted as one. If a person has a conviction for any offense under a local ordinance in or a state statute of another state which is in conformity with s. 346.63 (1) (a) or (b) or both, that conviction shall count as a prior conviction under this subdivision.

SECTION 37. 343.305 (9) (b) 2 to 5 of the statutes are amended to read:

343.305 (9) (b) 2. Except as provided in subd. 3 or 4, for the first improper refusal or set of high test results, the court shall revoke 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.

3. If the number of refusals, sets of high test results and convictions in a 5-year period equals 2, the court shall revoke the person's operating privilege for one year. After the first 60 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

4. If the number of refusals, sets of high test results and convictions in a 5-year period equals 3 or more, 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.

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

SECTION 38. 343.307 of the statutes, as affected by 1985 Wisconsin Act 80, is amended to read:

343.307 Prior convictions to be counted. For purposes of counting the number of refusals, sets of high test results, revocations and convictions under s. 343.30 (1q), 343.305 (8) or (9) or 346.65 (2) or (2m) on and after July 1, 1978, convictions for violations under s. 346.63 (1), or a local ordinance in conformity therewith or a local ordinance in or a state statute of another state in conformity therewith, or s. 346.63 (1m) or (2) or 940.25, or s. 940.09 where the offense

involved the use of a vehicle, prior to and after the treatment of any of those sections by chapter 193, laws of 1977, shall be counted and given the effect specified under s. 343.30 (1q), 343.305 (8) or (9) or 346.65 (2) or (2m) on and after July 1, 1978. If the same elements of the offense must be proved under a local ordinance or state statute of another state as under s. 346.63 (1) (a) or (b) or both, the local ordinance or state statute of the other state shall be considered to be in conformity with s. 346.63 (1) (a) or (b) or both for purposes of ss. 343.30 (1q) (b) 1 and (bn) 1, 343.305 (9) (b) 1 and 346.65 (2) (b) and (c) and (2m) (b).

SECTION 39. 345.24 of the statutes is amended to read:

345.24 Officer's action after arrest for driving under influence of intoxicant. A person arrested under s. 346.63 or an ordinance in conformity therewith or s. 346.63 (1m) or (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under s. 343.305 (2) (b) shows that there is 0.05% or less by weight of alcohol in the person's blood or 0.05 grams or less of alcohol in 210 liters of the person's breath, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

SECTION 40. 345.60 (3) of the statutes is amended to read:

345.60 (3) In addition to other penalties provided by law for violation of s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m) or (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, the convicted person may be required under s. 343.30 (1q) to attend, for a certain number of school days, a school under sub. (1).

SECTION 41. 346.63 (1m) of the statutes is created to read:

346.63 (1m) No person may drive or operate a motor vehicle while the person has a blood alcohol concentration of 0.2% or more by weight of alcohol in that person's blood or 0.2 grams or more of alcohol in 210 liters of that person's breath.

SECTION 42. 346.63 (2m) of the statutes, as affected by 1985 Wisconsin Act 32, is amended to read:

346.63 (2m) If a person has not attained the legal drinking age, as defined in s. 125.02 (8m) of 19, the person may not drive or operate a motor vehicle while he or she has a blood alcohol concentration of more than 0.0% but not more than 0.1% by weight of alcohol in the person's blood or more than 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of that person's breath. The only penalty for violation of this subsection is suspension of a person's operating privilege under s. 343.30 (1p). Notwithstanding s. 343.10 (1), for the first offense under this subsection, the person is eligible for an occupational license under s. 343.10 (1) at any time. If a person arrested for a viola-

tion of this subsection refuses to take a test under s. 343.305, the refusal is a separate violation and the person is subject to revocation of the person's operating privilege under s. 343.305 (9) (em).

SECTION 43. 346.65 (2) (b) and (c) of the statutes, as affected by 1985 Wisconsin Act 80, are amended to read:

346.65 (2) (b) Shall be fined not less than \$300 nor more than \$1,000 and imprisoned not less than 5 days nor more than 6 months if the total of revocations under s. 343.305 and convictions under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m) or (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, equals 2 in a 5-year period, except that revocations or convictions arising out of the same incident or occurrence shall be counted as one. The 5-year period shall be measured from the dates of the refusals, last test results or violations which resulted in the revocation or convictions. If a person has a conviction for any offense under a local ordinance in or a state statute of another state which is in conformity with s. 346.63 (1) (a) or (b) or both, that conviction shall count as a prior conviction under this paragraph.

(c) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the total of revocations under s. 343.305 and convictions under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m) or (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, equals 3 or more in a 5-year period, except that revocations or convictions arising out of the same incident or occurrence shall be counted as one. The 5-year period shall be measured from the dates of the refusals, last test results or violations which resulted in the revocation or convictions. If a person has a conviction for any offense under a local ordinance in or a state statute of another state which is in conformity with s. 346.63 (1) (a) or (b) or both, that conviction shall count as a prior conviction under this paragraph.

SECTION 44. 346.65 (2g) of the statutes is created to read:

346.65 (2g) In addition to the forfeiture under sub. (2) (a), the court shall order a person who is subject to sub. (2) (a) to perform 20 hours of community service work for a public agency or a nonprofit charitable organization. An order may only apply if agreed to by the defendant and the organization or agency. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.

SECTION 45. 346.65 (2m) of the statutes is created to read:

346.65 (2m) Any person violating s. 346.63 (1m):

(a) Shall be fined not less than \$300 nor more than \$1,000, except as provided in pars. (b) and (c).

(b) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 5 days nor more than 6 months if the total of revocations under s. 343.305 and convictions under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m) or (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, equals 2 in a 5-year period, except that revocations or convictions arising out of the same incident or occurrence shall be counted as one. The 5-year period shall be measured from the dates of the refusals or violations which resulted in the revocation or convictions.

(c) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the total of revocations under s. 343.305 and convictions under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m) or (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, equals 3 or more in a 5-year period, except that revocations or convictions arising out of the same incident or occurrence shall be counted as one. The 5-year period shall be measured from the dates of the refusals or violations which resulted in the revocation or convictions.

SECTION 46. 346.655 (1) of the statutes, as affected by 1985 Wisconsin Act 29, is amended to read:

346.655 (1) On or after October 1, 1985, if a court imposes a fine or a forfeiture for a violation of s. 346.63 (1), or a local ordinance in conformity therewith, or s. 346.63 (1m) or (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, it shall impose a driver improvement surcharge in an amount of \$200 in addition to the fine or forfeiture and penalty assessment.

SECTION 47. 351.02 (1) (a) 3 of the statutes is amended to read:

351.02 (1) (a) 3. Driving or operating a motor vehicle in violation of s. 346.63 (1), (1m) or (2).

SECTION 48. 885.235 (1) (intro.) and (b) of the statutes are amended to read:

885.235 (1) (intro.) In any action or proceeding in which it is material to prove that a person was under the influence of an intoxicant or had a blood alcohol concentration of 0.1% or more or 0.2% or more when operating or driving a motor vehicle, or while handling a firearm, evidence of the amount of alcohol in the person's blood at the time in question, as shown by chemical analysis of a sample of the person's blood or urine or evidence of the amount of alcohol in the person's breath, is admissible on the issue of whether he or she was under the influence of an intoxicant or had a blood alcohol concentration of 0.1% or more or 0.2% or more if the sample was taken within 3 hours after the event to be proved. The chemical analysis

shall be given effect as follows without requiring any expert testimony as to its effect:

(b) The fact that the analysis shows that there was more than 0.05% but less than 0.1% by weight of alcohol in the person's blood or more than 0.05 grams but less than 0.1 grams of alcohol in 210 liters of the person's breath is relevant evidence on the issue of intoxication or blood alcohol concentration of 0.1% or more but is not to be given any prima facie effect.

SECTION 49. 885.235 (1) (d) to (f) of the statutes are created to read:

885.235 (1) (d) The fact that the analysis shows that there was 0.15% or less by weight of alcohol in the person's blood or 0.15 grams of alcohol or less in 210 liters of the person's breath is prima facie evidence that the person did not have a blood alcohol concentration of 0.2% or more.

(e) The fact that the analysis shows that there was more than 0.15% but less than 0.2% by weight of alcohol in the person's blood or more than 0.15 grams but less than 0.2 grams of alcohol in 210 liters of the person's breath is relevant evidence on the issue of blood alcohol concentration of 0.2% or more but is not to be given any prima facie effect.

(f) The fact that the analysis shows that there was 0.2% or more by weight of alcohol in the person's blood or 0.2 grams or more of alcohol in 210 liters of the person's breath is prima facie evidence that he or she had a blood alcohol concentration of 0.2% or more.

SECTION 50. 885.235 (4) of the statutes is amended to read:

885.235 (4) The provisions of this section relating to the admissibility of chemical tests for intoxication or blood alcohol concentration shall not be construed as limiting the introduction of any other competent evidence bearing on the question of whether or not a person was under the influence of an intoxicant, ~~had a blood alcohol concentration of 0.1% or more or had a blood alcohol concentration in the range specified in s. 346.63 (2m) or had any particular blood alcohol concentration or a blood alcohol concentration within any particular range.~~

SECTION 51. 885.235 (5) (am) of the statutes is created to read:

885.235 (5) (am) "Blood alcohol concentration of 0.2% or more" means a blood alcohol concentration of 0.2% or more by weight of alcohol in a person's blood or 0.2 grams or more of alcohol in 210 liters of a person's breath.

SECTION 52. 949.08 (2) (e) of the statutes is amended to read:

949.08 (2) (e) Is an adult passenger in the offender's vehicle and the crime involved is specified in s. 346.63 (2) or 940.25 and the passenger knew the offender was under the influence of an intoxicant, a controlled substance or both or had a blood alcohol concentration of 0.1% or more, as defined in s. 885.235 (5) (a). This

paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30, 940.305, 940.31 or 940.32.

SECTION 53. 967.055 (2) of the statutes is amended to read:

967.055 (2) DISMISSING OR AMENDING CHARGE. Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or amend a charge under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m) or (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall apply to the court. The application shall state the reasons for the proposed amendment or dismissal. The court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public's interest in deterring the operation of motor vehicles by persons who are under the influence of an intoxicant, a controlled substance or both, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving.

SECTION 54. **Nonstatutory provisions.** (1) CURRENT LICENSE HOLDER. Any person under the age of 21 years who, on September 1, 1986, holds a valid license or permit issued under chapter 125 of the statutes may continue to hold the license or permit. The license or permit may not be revoked and renewal of the license or permit may not be denied solely because the person has not attained the age of 21 years.

(2) DRINKING AGE STUDY. The legislative council is requested to study the impact of raising the legal drinking age to 21 and report the results of its study to the legislature by January 1, 1988, 1989, 1990 and 1991. All other state agencies shall cooperate with the legislative council in conducting the study. The council is requested to study the effect of the change in the drinking age on all of the following:

(a) Motor vehicle accident and fatality rates for persons 16 to 26 years of age including blood alcohol content and time and location of accidents.

(b) Alcohol and other drug use by persons 10 to 21 years of age.

(c) Per capita alcohol beverages consumption in this state.

(d) Arrests and other enforcement actions by law enforcement agencies and universities related to alcohol and other drug use by persons 12 to 26 years of age.

(e) Referrals and admissions of persons 12 to 21 years of age to alcohol treatment programs and facilities.

(f) Alcohol and other drug related utilization of crisis services and suicide rates of persons 12 to 21 years of age.

(3) COURT-ORDERED REVOCATION STUDY. The legislative council is requested to study the provisions of

1985 Wisconsin Act (this act) relating to court-ordered revocations on the basis of the results of chemical tests for intoxication. The legislative council is requested to report its findings and recommendations to the legislature on or before January 1, 1988.

SECTION 55. Initial applicability. (1) The treatment of section 125.02 (8m) of the statutes by this act first applies to persons who attain the age of 19 years after August 31, 1986.

(2) The treatment of sections 121.555 (2) (c) 5, 343.10 (1) and (1r), 343.12 (2) (d), 343.16 (2) (a), 343.30 (1q) (a), (b) (intro.) and 1 to 5, (bn), (g) and (h), 343.303, 343.305 (title), (2) (b) and (c), (3) (a) 2, (b) 1 and 5. a, (5), (6) (a), (6m), (6p), (6x), (6z), (7), (8) and (9) (a) and (b) 1 to 5, 343.307, 345.24, 345.60 (3), 346.63 (1m), 346.65 (2) (b) and (c) and (2m), 346.655 (1), 351.02 (1) (a) 3, 885.235 (1) (intro.), (b) and (d) to (f), (4) and (5) (am), 949.08 (2) (e) and 967.055 (2) of

the statutes by this act applies to offenses and arrests occurring on or after January 1, 1987, but does not preclude the counting of other offenses as prior offenses for sentencing a person.

SECTION 56. Effective dates. (1) Except as provided in subsection (2), this act takes effect on September 1, 1986.

(2) The treatment of sections 121.555 (2) (c) 5, 343.10 (1) and (1r), 343.12 (2) (d), 343.16 (2) (a), 343.30 (1q) (a), (b) (intro.) and 1 to 5, (bn), (g) and (h), 343.303, 343.305 (title), (2) (b) and (c), (3) (a) 2, (b) 1 and 5. a, (5), (6) (a), (6m), (6p), (6x), (6z), (7), (8) and (9) (a) and (b) 1 to 5, 343.307, 345.24, 345.60 (3), 346.63 (1m), 346.65 (2) (b) and (c) and (2m), 346.655 (1), 351.02 (1) (a) 3, 885.235 (1) (intro.), (b) and (d) to (f), (4) and (5) (am), 949.08 (2) (e) and 967.055 (2) of the statutes and SECTION 55 (2) of this act take effect on January 1, 1987.