



2007 ASSEMBLY BILL 357

May 29, 2007 - Introduced by Representatives GUNDRUM, STASKUNAS, A. OTT, LOTHIAN, HINES, J. OTT, MURSAU, TOWNSEND, BERCEAU and PETROWSKI, cosponsored by Senator LEIBHAM. Referred to Committee on Judiciary and Ethics.

- 1 **AN ACT to amend** 343.305 (8) (c) 1. and 343.305 (8) (c) 2. of the statutes; **relating**
2 **to:** judicial review of an administrative suspension of driving privileges.

Analysis by the Legislative Reference Bureau

Under current law, if a person is suspected of operating a vehicle while intoxicated, under the influence of an intoxicant, or with a prohibited amount of alcohol or a controlled substance in his or her blood (OWI-related offenses), he or she may be required by a law enforcement officer to submit to chemical testing to determine whether the person is operating a vehicle with a prohibited alcohol concentration or a detectable amount of a controlled substance in his or her blood. If the chemical test indicates a prohibited alcohol concentration or a detectable amount of a controlled substance in the person's blood, then the law enforcement officer takes possession of the person's driver's license and forwards it to the Department of Transportation (DOT). The DOT suspends the person's driving privilege for a period of six months.

Current law allows the person to request an administrative hearing to determine whether the person's operating privilege was properly suspended. If the conclusions of the administrative hearing are not acceptable to the person, current law allows the person to have the determination reviewed by the court that is hearing the OWI-related offense, at the same time the court conducts the trial of the OWI-related offense.

Further, current law requires DOT to vacate the administrative suspension of the person's operating privilege unless, within 60 days of the date of the request for judicial review of the administrative hearing decision, DOT has been notified of the

ASSEMBLY BILL 357

result of the judicial review or of an order of the court entering a stay of the hearing examiner's order continuing the suspension.

Under this bill, the court that hears the OWI-related offense may, but need not, review the result of the administrative hearing at the time it hears the OWI-related offense. Further, this bill requires DOT to sustain the administrative suspension of the person's driving privilege unless it receives notification that a court has rescinded the suspension.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 343.305 (8) (c) 1. of the statutes is amended to read:

2 343.305 (8) (c) 1. An individual aggrieved by the determination of the hearing
3 examiner may have the determination reviewed by the court hearing the action
4 relating to the applicable violation listed under sub. (3) (a), (am), or (ar). If the
5 individual seeks judicial review, he or she must file the request for judicial review
6 with the court within 20 days of the issuance of the hearing examiner's decision. The
7 court shall send a copy of that request to the department. The judicial review shall
8 may be conducted at the time of the trial of the underlying offense under s. 346.63.
9 The prosecutor of the underlying offense shall represent the interests of the
10 department.

11 **SECTION 2.** 343.305 (8) (c) 2. of the statutes is amended to read:

12 343.305 (8) (c) 2. The court shall order that the administrative suspension be
13 either rescinded or sustained and forward its order to the department. The
14 department shall ~~vacate~~ sustain the administrative suspension under sub. (7)
15 unless, ~~within 60 days of the date of the request for judicial review of the~~
16 ~~administrative hearing decision,~~ the department has been notified of the result of the

