

1969 Senate Bill 219

Date published:
February 14, 1970

CHAPTER 383, LAWS OF 1969

AN ACT to amend 343.10 (1) and (3), 343.126 (1) (intro.), 343.31 (1) (intro.) and (b), 343.32 (2), 349.06 and 885.235 (1) (intro.); and to create 343.30 (1q), 343.305, 345.115, 346.65 (2m) and 885.235 (2a) of the statutes, relating to chemical tests for intoxication, implied consent and providing penalties.

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

SECTION 1. 343.10 (1) and (3) of the statutes are amended to read:

343.10 (1) If a person has had his chauffeur's license revoked he may file a petition with the ~~commissioner~~ *administrator* for a limited chauffeur's license under s. 343.126. If a person has had his license revoked under s. 343.30 (1q) or 343.31 (1) (b), (c) (d) or (e) and if such person is engaged in an occupation or trade making it essential that he operate a motor vehicle, he may after complying with sub. (2) file with a judge of a court of record or of a municipal justice court in the county of residence a verified petition setting forth in detail his need for operating a motor vehicle. Thereupon, if the petitioner has not been convicted of any offense requiring the revocation or suspension of his license or resulting in an order revoking or suspending his license within the 18-month period immediately preceding the present conviction, the judge may order the ~~commissioner~~ *administrator* to issue an occupational license to such person. The order for issuance of an occupational license shall contain definite restrictions as to hours of the day, not to exceed 12, 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 place of employment, in addition to operation permitted under the chauffeur's license. The court may permit travel to and from church but such order shall specify the hours during which such travel is to be permitted. A copy of the petition and the order for the occupational license shall be forwarded to the department. No order for an occupational license shall be issued until at least ~~90~~ 30 days have elapsed, since the date of conviction or, in the case of an appeal which is subsequently dropped or affirmed, until at least ~~90~~ 30 days have elapsed since the date of revocation following the dropping or affirmance of the appeal. *If a certificate of insurance issued by the insuring company or an agent of the insuring company is submitted to the court, the court may issue a 30-day temporary occupational license. Such license shall be on forms provided to the court by the division.*

(3) The ~~department~~ *division* shall issue an occupational license upon receipt of a court order for such a license if at least ~~90~~ 30 days have elapsed since the conviction or, in the case of an appeal which is subsequently dropped or affirmed, if at least ~~90~~ 30 days have elapsed since the date of revocation following the dropping or affirmance of the appeal and if proof of the financial responsibility of the owners of all vehicles which the holder of the occupational license will be permitted to operate has been furnished as specified in s. 343.38 (1) (c).

SECTION 2. 343.126 (1) (intro.) of the statutes is amended to read:

343.126 (1) (intro.) When at least ~~90~~ 30 days of a period for which a person's chauffeur's license has been revoked have elapsed or, in the case of an appeal which is subsequently dropped or affirmed, if at least ~~90~~ 30 days have elapsed since the date of revocation following the dropping or affirmance of the appeal, the ~~commissioner~~ *administrator* may, upon application therefor accompanied by a filing fee of \$5, issue a limited chauffeur's license to such person if:

SECTION 3. 343.30 (1q) of the statutes is created to read:

343.30 (1q) A court shall revoke the operating privilege of a person for a period of not less than 90 days nor more than 6 months upon such persons first conviction for violating s. 346.63 (1) (a) except that the court shall revoke the operating privilege of a person who refuses to take a test under s. 343.305 for a period not less than one year upon such person's first conviction for violating s. 346.63 (1) (a).

SECTION 4. 343.305 of the statutes is created to read:

343.305 SUSPENSION OF LICENSE ON REFUSAL TO SUBMIT TO CHEMICAL TESTS FOR INTOXICATION. (1) Any person who drives

or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in s. 346.61, shall be deemed to have given consent to a chemical test of his breath, blood or urine, for the purpose of determining the alcoholic content of his blood if arrested and issued a citation for driving or operating a motor vehicle while under the influence of an intoxicant in violation of s. 346.63 (1) (a). The test shall be administered upon the request of a traffic officer. The law enforcement agency by which the officer is employed shall be prepared to administer 2 of the aforesaid 3 tests and may designate which of the aforesaid tests shall be administered. The blood test shall not be the first test administered by the agency. A person who is unconscious or otherwise incapacitated is presumed not to have withdrawn his consent under this subsection.

(2) (a) If a person is arrested and issued a citation for driving or operating a motor vehicle while under the influence of an intoxicant the arresting officer shall inform him:

1. That he is deemed to have consented to a chemical test under sub. (1);
2. That if he refuses to submit to the test he shall have his driving privilege suspended for a period of 60 days as provided in sub. (7);
3. That conviction of a violation of s. 346.63 (1) (a) after refusal shall carry an additional mandatory penalty of 2 days in jail to be served on nonworking days and a mandatory one-year revocation; and
4. That in addition to the test designated by the law enforcement agency under sub. (1), he may have an additional test as provided in sub. (4).

(b) If the person refuses the request of a traffic officer to submit to a chemical test, no test shall be given, but the traffic officer shall prepare a written report of the refusal and have it delivered within 5 days to a court of record in the county in which the person resides or in the county in which the arrest was made. He shall promptly deliver a copy to the person requested to take such test. The report shall contain the following information:

1. That the person at the time he was requested to submit to a test was under arrest for driving or operating a motor vehicle while under the influence of an intoxicant;
2. That the person refused to submit to a test;
3. That such person was informed of the consequences of his refusal to submit to the test; and
4. That such person was informed of his rights under subs. (4) and (5) (a).
5. That the refusal of the person to submit to a test was unreasonable.

(3) An individual who performs a chemical analysis of breath, blood or urine under sub. (1) or (4) shall prepare and sign a written report of the findings of the test which shall include the identification of the traffic officer or person upon whose request the test was administered. He shall promptly transmit a copy thereof to the law enforcement agency and the person from whose breath, blood or urine the analysis is made.

(4) In addition to a chemical test of the breath, blood or urine administered upon the request of a traffic officer, a person arrested for driving or operating a motor vehicle while under the influence of an intoxicant shall be permitted upon his request the alternative test provided by the agency under sub. (1) or, at his own expense, reasonable opportunity to have any qualified person of his own choosing administer a chemical test for the purpose of determining the alcoholic content of his blood. The failure or inability of a person to obtain a test at his own expense shall not preclude the admission of evidence relating to a test taken upon the request of a traffic officer.

CHAPTER 383

1290

(5) (a) Blood may be withdrawn from the person arrested for the purpose of determining its alcoholic content only by a physician or by one acting under the directions of a physician.

(b) No physician, or other person acting under the directions of a physician, withdrawing blood for the purpose of determining its alcoholic content, nor the employer of anyone withdrawing blood for such purpose, shall incur any civil or criminal liability for such act when requested by a traffic officer to perform it, except for civil liability for negligence in its performance.

(6) At the trial of any civil or criminal action, suit 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, the amount of alcohol in the person's breath, blood or urine is admissible on the issue of intoxication and shall be given effect as set forth in s. 885.235.

(7) (a) Upon receipt of the report of the traffic officer as required in sub. (2), the court shall promptly give notice in writing by registered mail to the reported person of the intention of the division to suspend the reported person's operating privilege for a period of 60 days and that he is given 60 days from the date thereof in which to request a hearing under this section.

(b) If the reported person fails to make the request within 60 days, or makes a written waiver prior to this time, the court shall order the administrator to suspend the person's operating privilege for 60 days.

(c) If the reported person requests a hearing within the 60 days, the court shall set a time and place for the hearing, with notice to the person. Requests for hearing as herein provided shall go to the head of the docket wherein filed. The hearing shall be transcribed and shall be limited to the issues stated in sub. (2) (b). Nothing in this subsection shall prohibit the person from introducing evidence on his own behalf to establish the reasonableness of his refusal to submit to a chemical test provided under s. 343.305 (1). At the close of the hearing or within 10 days thereafter, the court shall determine whether or not the conditions of sub. (2) (b) have been complied with. If the conditions of sub. (2) (b) have been complied with, the court shall direct the administrator to suspend the operating privilege of such person for a period of 60 days. If the conditions of sub. (2) (b) have not been complied with, the court shall order that the report be dismissed and that no action be taken on the driving privilege. Nothing in this subsection shall preclude the prosecution for violation of s. 346.63 (1) (a).

(d) If upon the trial of the charge of driving a motor vehicle while under the influence of an intoxicant in violation of s. 346.63 (1) (a) the charge is dismissed or the person is found not guilty, the court shall order the administrator to immediately reinstate the operating privilege if suspended under this subsection. The courts shall advance requests for trials under s. 346.63 (1) (a) to the head of the docket.

(8) After the expiration of the 60 day suspension period, the operating privilege shall be returned by the division as provided in s. 343.39, unless within that period he has had his driving or operating privilege revoked, suspended or canceled pursuant to law.

(9) (a) Chemical analyses of the person's blood or urine to be considered valid under this section shall have been performed according to methods approved by the laboratory of hygiene and by an individual possessing a valid permit to perform such analyses issued by the department of health and social services. The department shall approve laboratories for the purpose of performing chemical analyses of blood or urine for alcohol and shall develop and administer a program for regular monitoring of laboratories performing blood and urine alcohol analyses. A list of ap-

proved 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 each sheriff's department in this state with an ample supply of urine and blood specimen containers to permit all law enforcement officers to comply with the requirements of this act.

(b) The division of motor vehicles 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 traffic officers in the chemical analysis of a person's breath; 2. Certify the qualifications and competence of individuals to conduct such analysis; 3. Have trained technicians, approved by the administrator, test and certify the accuracy of the equipment to be used by traffic officers for chemical analysis of a person's breath before regular use of such equipment and periodically thereafter at intervals of not more than 60 days; and 4. Issue permits to individuals according to their qualifications.

SECTION 5. 343.31 (1) (intro.) and (b) of the statutes are amended to read:

343.31 (1) (intro.) The commissioner shall forthwith revoke a person's operating privilege upon receiving a record of conviction showing that such person has been convicted of any of the following offenses under a state law or under a local ordinance which is in conformity therewith, except that if a person licensed as a chauffeur was convicted for operation of a motor vehicle while under the influence of intoxicating liquor and such person was not operating a vehicle as a chauffeur at the time of such offense, only his regular license shall be revoked as provided in this section ~~but his chauffeur's license shall be suspended for 15 days:~~

(b) *Upon the 2nd or any subsequent conviction for operation of a motor vehicle while under the influence of an intoxicating liquor or a narcotic or dangerous drug.*

SECTION 5m. 343.32 (2) of the statutes is amended to read:

343.32 (2) The ~~commissioner~~ administrator may suspend or revoke a person's privilege if such person appears by the records of the ~~department~~ division to be an habitually reckless or negligent operator of a motor vehicle or to have repeatedly violated any of the state traffic laws or any local ordinance which is in conformity therewith. For the purpose of determining when to suspend or revoke an operating privilege under this subsection, the ~~commissioner~~ administrator 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. When an operator accumulates more than 6 demerit points required for suspension or revocation of an operating privilege or has been involved in 2 or more accidents in a one-year period where the accident report indicates that such person may have been causally negligent, the ~~commissioner~~ administrator may require such operator to present himself at an examining station for ~~group counseling or personal interview or re-examination pursuant to s. 343.16 (1) (a) 1~~ driver improvement counseling, consisting of either group or individual counseling, reexamination or both. If federal funds are available, the administrator may require any person who has had his operating privilege suspended or revoked, whether such suspension or revocation is the result of action under s. 343.30 or 343.32, or conviction for an offense which requires mandatory revocation under s. 343.31 to participate in such counseling, reexamination or both. Such reexamination may consist of all or part of the tests specified in s. 343.16 (1) (a) 1, or any other special examination as required under s. 343.16 (2). Upon conclusion of such counseling, interview and examination, the ~~commissioner~~ administrator shall take action as authorized at conclusion

CHAPTER 383

1292

of other examinations under s. 343.16 (3) (a). In exercising the authority to suspend or revoke an operating privilege, the ~~commissioner~~ administrator may suspend such privilege only when the operator has not had his operating privilege suspended or revoked previously, except under s. 343.30 (2) or 344.14 (1), or when his present demerit point accumulation is not more than 25% above the demerit point accumulation set for suspension or revocation. In all other cases under this section, the ~~commissioner~~ administrator shall revoke the operating privilege of such operator. In regard to convictions which are not by themselves grounds for mandatory revocation of a license, such rule shall provide that demerit points accumulated when a person is not operating a vehicle as a chauffeur shall not be counted against his chauffeur's license but such rule may provide that demerit points accumulated by a person when operating a vehicle as a chauffeur shall be counted against his regular license. When a person who has had his regular license revoked continues to operate as a private operator and who also has a chauffeur's license and is convicted of any traffic violation, 12 demerit points shall be assigned against his chauffeur's license.

SECTION 6. 345.115 of the statutes is created to read:

345.115 ARREST FOR OPERATION UNDER THE INFLUENCE OF INTOXICANT; ACCIDENT INVOLVED. A law enforcement officer may, in addition to the powers under s. 954.03, make an arrest and issue a citation to any driver of a vehicle involved in an accident when, based upon personal investigation, the officer has reasonable grounds to believe that the person has violated s. 346.63 (1) (a).

SECTION 7. 346.65 (2m) of the statutes is created to read:

346.65 (2m) If imprisonment is not imposed under sub. (2) for a first offense, any person who violates s. 346.63 (1) (a) and has refused to take a test under s. 343.305 shall be imprisoned for 2 days. Such imprisonment shall be served in a manner which would not conflict with such person's employment.

SECTION 8. 349.06 of the statutes is amended to read:

349.06 Except for the suspension or revocation of motor vehicle operator's licenses and, regulations imposing penalties for operating a motor vehicle upon a highway without a license or while a license is revoked, suspended, canceled or expired or regulations enacted in conformity with s. 346.63 (1) (a), any local authority may enact and enforce any traffic regulation which is in strict conformity with chs. 341 to 348 but the penalty for violation of any of its provisions shall be limited to a forfeiture. No citation for violating local traffic regulations in conformity with s. 346.63 (1) (a) shall be issued after the effective date of this amendment (1969).

SECTION 9. 885.235 (1) (intro.) of the statutes is 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 while when operating or handling driving a motor vehicle, or while handling a firearm, evidence of the amount of alcohol in such person's blood at the time in question as shown by chemical analysis of a sample of his breath, blood, or urine or saliva is admissible on the issue of whether he was under the influence of an intoxicant if such sample was taken within 2 hours after the event to be proved. Such chemical analysis shall be given effect as follows without requiring any expert testimony as to its effect.

SECTION 10. 885.235 (2a) of the statutes is created to read:

885.235 (2a) The concentration of alcohol in 2100 cubic centimeters of deep lung or alveolar breath shall be prima facie to be equal to the concentration of alcohol in 1 cubic centimeter of blood when equilibrium has been reached.

SECTION 11. This act shall take effect on May 1, 1970.

Approved February 3, 1970.