

1989 Senate Bill 11

Date of enactment: **March 28, 1989**

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## 1989 WISCONSIN ACT 7

AN ACT *to repeal* 757.69 (1m); *to renumber and amend* 343.305 (8) (b) 3; *to amend* 343.30 (1q) (h), 343.305 (8) (a), 343.305 (8) (b) 1, 343.305 (8) (c) 1, 343.305 (8) (c) 2, 343.305 (8) (c) 3, 343.305 (8) (c) 5, 343.305 (10) (g), 343.325 (title), 343.325 (2) and (3) and 343.325 (4) and (5); and *to create* 343.305 (8) (am), 343.305 (8) (b) 3 and 4, 343.325 (3m) and 343.325 (6) and (7) of the statutes, **relating to:** suspension, revocation or cancellation of a motor vehicle operator's license.

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

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

343.30 (1q) (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 ~~imposed~~ 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.

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

343.305 (8) (a) The law enforcement officer shall notify the person of the administrative suspension under sub. (7). 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. ~~The notice shall include a form for the person to use to request~~

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

**SECTION 1w.** 343.305 (8) (am) of the statutes is created to read:

343.305 (8) (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 indicate 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.

**SECTION 2.** 343.305 (8) (b) 1. of the statutes is amended to read:

343.305 (8) (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. If the offense allegedly occurred in the county of Milwaukee, Waukesha or Dane, the department shall refer the matter to the office of the commissioner of trans-

portation and the office of the commissioner of transportation shall hold the hearing on the matter. The department shall hold the hearing on the matter if the offense allegedly occurred in any other county. Hearings by the department shall be held 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 or the office of the commissioner of transportation, respectively, 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 the hearing officer he or she must have submit a copy of the officer's his or her report and the results of the chemical test to the hearing examiner.

**SECTION 3.** 343.305 (8) (b) 3. of the statutes is renumbered 343.305 (8) (b) 5. and amended to read:

343.305 (8) (b) 5. If the hearing examiner finds that the criteria for administrative suspension have not been satisfied or that the person did not have a blood alcohol concentration of 0.1% or more 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 blood alcohol concentration of 0.1% or more at the time the offense allegedly occurred, the administrative suspension shall continue. 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).

**SECTION 4.** 343.305 (8) (b) 3. and 4. of the statutes are created to read:

343.305 (8) (b) 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.

**SECTION 5.** 343.305 (8) (c) 1. of the statutes is amended to read:

343.305 (8) (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 by a court commissioner authorized to review the determination as provided in s. 757.69 (1m).~~ If the review is by the court and the person submits a petition for prompt review, the court shall conduct the review as expeditiously as possible to minimize the impact upon the individual of any delay. If the individual does not submit a petition for prompt review, the court shall conduct the review in conjunction with the trial or sentencing for the action. If the review is by a court commissioner and the person submits a petition for prompt review, the court commissioner shall conduct the review as expeditiously as possible. The judicial review is limited to the issues specified in par. (b) 2.. 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 (1) or (2m). The prosecutor of the underlying offense shall represent the interests of the department.

**SECTION 6.** 343.305 (8) (c) 2. of the statutes is amended to read:

343.305 (8) (c) 2. The court ~~or court commissioner~~ shall order that the administrative suspension be either rescinded or sustained. ~~The court or court commissioner shall and~~ file its order with the department ~~within 14 days after the hearing. 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.~~

**SECTION 7.** 343.305 (8) (c) 3. of the statutes is amended to read:

343.305 (8) (c) 3. Any party aggrieved by the order of a circuit court ~~or a court commissioner~~ 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.

**SECTION 8.** 343.305 (8) (c) 5. of the statutes is amended to read:

343.305 (8) (c) 5. If any court ~~or court commissioner~~ 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).

**SECTION 9.** 343.305 (10) (g) of the statutes is amended to read:

343.305 (10) (g) The court or department shall provide that the period of suspension or revocation imposed

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under this subsection or under sub. (7) shall be reduced by any period of suspension or revocation previously ~~imposed~~ 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.

**SECTION 10.** 343.325 (title) of the statutes is amended to read:

**343.325 (title) Courts to report appeals; when appeal stays suspension or revocation.**

**SECTION 11.** 343.325 (2) and (3) of the statutes are amended to read:

343.325 (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.

(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.

**SECTION 12.** 343.325 (3m) of the statutes is created to read:

343.325 (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.

**SECTION 13.** 343.325 (4) and (5) of the statutes are amended to read:

343.325 (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 such convictions, 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.

**SECTION 14.** 343.325 (6) and (7) of the statutes are created to read:

343.325 (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.

**SECTION 15.** 757.69 (1m) of the statutes is repealed.

**SECTION 16. Nonstatutory provisions.** (1) Any person for whom a suspension or revocation has been imposed under section 343.30 (1q) of the statutes prior to the effective date of this subsection who has not completed serving any suspension or revocation that arose out of the same incident or occurrence that resulted in the suspension or revocation under section 343.30 (1q) (h) of the statutes may petition the department of transportation to have that suspension or revocation recomputed on the basis of section 343.30 (1q) (h) of the statutes, as affected by this act. The department of transportation shall adjust the suspension or revocation accordingly.

(2) Any person for whom a suspension or revocation has been imposed under section 343.305 (7) or (10) of the statutes prior to the effective date of this subsection who has not completed serving any suspension or revocation that arose out of the same incident or occurrence that resulted in the suspension or revocation under section 343.305 (7) or (10) of the statutes may petition the department of transportation to have that suspension or revocation recomputed on the basis of section 343.305 (10) (g) of the statutes, as affected by this act. The department of transportation shall adjust the suspension or revocation accordingly.

(3) Any person for whom a suspension or revocation has been reimposed under any of the circumstances described under section 343.325 (3m) of the statutes, as created by this act, prior to the effective date of this subsection who has not completed serving that reimposed suspension or revocation may petition the department of transportation to have that reimposed suspension or revocation recomputed on the basis of section 343.325 (3m) of the statutes, as created by this act. The department of transportation shall adjust the reimposed suspension or revocation accordingly.

**SECTION 17. Initial applicability.** (1) The treatment of section 343.30 (1q) (h) of the statutes first applies to suspensions or revocations imposed under section

343.30 (1q) of the statutes on the effective date of this subsection.

(2) The treatment of section 343.305 (10) (g) of the statutes first applies to suspensions or revocations imposed under section 343.305 (7) or (10) of the statutes on the effective date of this subsection.

(3) The treatment of section 343.325 (3m) of the statutes first applies to suspensions or revocations reimposed

on the effective date of this subsection.

(4) The treatment of sections 343.305 (8) (b) 1. and 4. and (c) 1. to 3. and 5., 343.325 (2), (3), (4), (5), (6) and (7) and 757.69 (1m) of the statutes, the renumbering and amendment of section 343.305 (8) (b) 3. of the statutes and the creation of section 343.305 (8) (b) 3 of the statutes first apply to offenses committed on the effective date of this subsection.

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