1999 ASSEMBLY BILL 335

May 11, 1999 – Introduced by Representatives VRAKAS, MONTGOMERY, PETROWSKI, STASKUNAS, OLSEN, HUBER, SPILLNER, LA FAVE, STONE, RYBA, CULLEN, MUSSER, RHOADES, BRANDEMUEHL, POWERS, GOETSCH, GROTHMAN, SYKORA, GUNDERSON and ALBERS, cosponsored by Senators HUELSMAN, DARLING, ROESSLER, DRZEWIECKI and GROBSCHMIDT. Referred to Committee on Highway Safety.

1   AN ACT *to amend* 343.305 (9) (a) (intro.), 343.305 (9) (am) (intro.), 343.305 (9) (c)

2   and 343.305 (11) of the statutes; **relating to:** allowing municipal courts to hold

3   refusal hearings.

Analysis by the Legislative Reference Bureau

Under current law, if an operator of a motor vehicle refuses to submit to a test to determine the presence of an intoxicant in the person's breath, blood or urine, the law enforcement officer that requested the test takes possession of the person's driver's license and gives the person a notice that the person's operating privilege will be revoked if the refusal was improper. The notice also informs the person that he or she may request a hearing before a circuit court to determine if the refusal was proper. If the person requests a hearing within ten days after receipt of the notice, current law requires the circuit court to hold a hearing to determine if the refusal was proper. Currently, if the person does not request a hearing or if the circuit court determines that the refusal was not proper, the court revokes the person's operating privilege. This bill allows municipal courts to hold refusal hearings and issue revocation orders based on the results of those hearings.

For further information see the *state and local* 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 (9) (a) (intro.) of the statutes is amended to read:

2   343.305 **(9)** (a) (intro.) If a person refuses to take a test under sub. (3) (a), the

3   law enforcement officer shall immediately take possession of the person's license and

4   prepare a notice of intent to revoke, by court order under sub. (10), the person's

5   operating privilege. If the person was driving or operating a commercial motor

6   vehicle, the officer shall issue an out–of–service order to the person for the 24 hours

7   after the refusal and notify the department in the manner prescribed by the

8   department. The officer shall issue a copy of the notice of intent to revoke the

9   privilege to the person and submit or mail a copy with the person's license to the

10   circuit court for the county in which the arrest under sub. (3) (a) was made or to the

11   municipal court in the municipality in which the arrest was made if the arrest was

12   for a violation of a municipal ordinance under sub. (3) (a) and the municipality has

13   a municipal court. The officer shall also mail a copy of the notice of intent to revoke

14   to the attorney for that municipality or to the district attorney for that county, as

15   appropriate, and to the department. The notice of intent to revoke the person's

16   operating privilege shall contain substantially all of the following information:

17   **SECTION 2.** 343.305 (9) (am) (intro.) of the statutes is amended to read:

18   343.305 **(9)** (am) (intro.) If a person driving or operating or on duty time with

19   respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law

20   enforcement officer shall immediately take possession of the person's license, issue

21   an out–of–service order to the person for the 24 hours after the refusal and notify the

22   department in the manner prescribed by the department, and prepare a notice of

23   intent to revoke, by court order under sub. (10), the person's operating privilege. The

24   officer shall issue a copy of the notice of intent to revoke the privilege to the person

25   and submit or mail a copy with the person's license to the circuit court for the county

1   in which the refusal is made <u>or to the municipal court in the municipality in which</u>

2   <u>the refusal is made if the person's refusal was in violation of a municipal ordinance</u>

3   <u>and the municipality has a municipal court</u>. The officer shall also mail a copy of the

4   notice of intent to revoke to the <u>attorney for that municipality or to the</u> district

5   attorney for that county<u>, as appropriate,</u> and <u>to</u> the department. The notice of intent

6   to revoke the person's operating privilege shall contain substantially all of the

7   following information:

8   **SECTION 3.** 343.305 (9) (c) of the statutes is amended to read:

9   343.305 **(9)** (c) If a law enforcement officer informs the circuit <u>or municipal</u>

10 court that a person has refused to submit to a test under sub. (3) (a) or (am), the court

11 shall be prepared to hold any requested hearing to determine if the refusal was

12 proper. The scope of the hearing shall be limited to the issues outlined in par. (a) 5.

13 or (am) 5. Section 967.055 applies to any hearing under this subsection.

14   **SECTION 4.** 343.305 (11) of the statutes is amended to read:

15   343.305 **(11)** RULES. The department shall promulgate rules under ch. 227

16 necessary to administer this section. The rules shall include provisions relating to

17 the expeditious exchange of information under this section between the department

18 and law enforcement agencies, circuit courts<u>, municipal courts</u> and district

19 attorneys. The rules may not affect any provisions relating to court procedure.

20   **SECTION 5. Initial applicability.**

21   (1) The treatment of section 343.305 (9) (a) (intro.), (am) (intro.) and (c) of the

22 statutes first applies to refusals committed on the effective date of this subsection,

23 but does not preclude the counting of previous suspensions, revocations or

24 convictions for purposes of determining the period that a person's operating privilege

25 is revoked.

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ASSEMBLY BILL 335   SECTION **6**

1   SECTION **6. Effective date.**

2   (1) This act takes effect on the first day of the 4th month beginning after

3   publication.

4   **(END)**