



2003 ASSEMBLY BILL 273

April 18, 2003 - Introduced by Representatives VRAKAS, GROTHMAN, MONTGOMERY, McCORMICK, M. LEHMAN, LADWIG, HINES, HAHN, AINSWORTH, KRAWCZYK, GUNDERSON, BIES, ALBERS, STONE, VAN ROY, PETROWSKI, KAUFERT, SERATTI, FRISKE, HUBER and J. LEHMAN, cosponsored by Senators S. FITZGERALD and WIRCH. Referred to Committee on Judiciary.

1 **AN ACT to amend** 343.305 (9) (a) (intro.), 343.305 (9) (am) (intro.), 343.305 (9)
2 (c), 343.305 (11), 800.04 (1) (d) and 800.07 of the statutes; **relating to:** allowing
3 municipal courts to hold 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.

Currently, if a person charged with violating an ordinance that prohibits drunk driving wants the case transferred to the circuit court for a jury trial, the person pleads not guilty in the municipal court, pays the appropriate fee, and requests a jury trial. The municipal court then transfers the case to the circuit court in the county where the violation occurred for a jury trial. Under this bill, if that person has also requested a hearing regarding his or her refusal to submit to testing to determine the

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amount of alcohol in his or her blood, that refusal hearing is transferred to the circuit court that will be conducting the drunk driving ordinance violation jury trial.

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

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1 an out-of-service order to the person for the 24 hours after the refusal and notify the
2 department in the manner prescribed by the department, and prepare a notice of
3 intent to revoke, by court order under sub. (10), the person's operating privilege. The
4 officer shall issue a copy of the notice of intent to revoke the privilege to the person
5 and submit or mail a copy with the person's license to the circuit court for the county
6 in which the refusal is made or to the municipal court in the municipality in which
7 the refusal is made if the person's refusal was in violation of a municipal ordinance
8 and the municipality has a municipal court. The officer shall also mail a copy of the
9 notice of intent to revoke to the attorney for that municipality or to the district
10 attorney for that county, as appropriate, and to the department. The notice of intent
11 to revoke the person's operating privilege shall contain substantially all of the
12 following information:

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

14 343.305 (9) (c) If a law enforcement officer informs the circuit or municipal
15 court that a person has refused to submit to a test under sub. (3) (a) or (am), the court
16 shall be prepared to hold any requested hearing to determine if the refusal was
17 proper. The scope of the hearing shall be limited to the issues outlined in par. (a) 5.
18 or (am) 5. Section 967.055 applies to any hearing under this subsection.

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

20 343.305 (11) RULES. The department shall promulgate rules under ch. 227
21 necessary to administer this section. The rules shall include provisions relating to
22 the expeditious exchange of information under this section between the department
23 and law enforcement agencies, circuit courts, municipal courts, attorneys who
24 represent municipalities, and district attorneys. The rules may not affect any
25 provisions relating to court procedure.

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1 **SECTION 5.** 800.04 (1) (d) of the statutes is amended to read:

2 800.04 (1) (d) If a defendant charged with the violation of an ordinance which
3 is in conformity with s. 346.63 (1) or (5) pleads not guilty and within 10 days after
4 entry of the plea requests a jury trial and pays the required fees, the municipal judge
5 shall promptly transmit all papers and fees in the cause to the clerk of the circuit
6 court of the county where the violation occurred for a jury trial under s. 345.43. The
7 plea of not guilty and request for jury trial may be made by mail. If the person refused
8 to take a test under s. 343.305 (3) and requested a hearing under s. 343.305 (9) to
9 determine if the person's refusal was proper, the papers and fees involved in that
10 action shall be transferred to the same circuit court, which shall conduct the refusal
11 hearing. The amount of deposit set out in the citation shall accompany the mailed
12 request. Upon receipt of the request, the circuit court shall set a time for trial. Any
13 deposit made personally or by mail is forfeited upon nonappearance at the time set
14 for trial. The required fee for a jury is prescribed in s. 814.61 (4).

15 **SECTION 6.** 800.07 of the statutes is amended to read:

16 **800.07 Discovery in municipal court.** Neither party is entitled to pretrial
17 discovery in any action in municipal court, including refusal hearings held by a
18 municipal court under s. 343.305 (9), except that if the defendant moves within 30
19 days after the initial appearance in person or by an attorney and shows cause
20 therefor, the court may order that the defendant be allowed to inspect documents,
21 including lists of names and addresses of witnesses, if available, and to test under
22 s. 804.09, under such conditions as the court prescribes, any devices used by the
23 plaintiff to determine whether a violation has been committed.

24 **SECTION 7. Initial applicability.**

