



2005 ASSEMBLY BILL 752

October 13, 2005 - Introduced by Representatives WIECKERT, ZEPNICK, MOLEPSKE, BERCEAU, TOWNSEND, OWENS, McCORMICK and OTT, cosponsored by Senators LEIBHAM, ROESSLER and DARLING. Referred to Committee on Criminal Justice and Homeland Security.

1 **AN ACT to amend** 343.305 (2), 343.305 (3) (a), 343.305 (4) (intro.), 343.305 (5) (a),
2 343.305 (6) (b) 3., 343.305 (8) (c) 1., 343.305 (9) (a) 1. and 343.305 (9) (c); and **to**
3 **create** 343.305 (3) (ar) of the statutes; **relating to:** mandatory testing of
4 persons involved in certain motor vehicle accidents and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, any person who is on duty time with respect to a commercial motor vehicle or drives or operates a motor vehicle on any public highway is deemed to have given consent to one or more tests of his or her breath, blood, or urine, for the purpose of determining the presence or quantity in his or her blood or breath, of alcohol, controlled substances, controlled substance analogs, or other drugs, or any combination of alcohol, controlled substances, controlled substance analogs, and other drugs, when requested to do so by a law enforcement officer.

A law enforcement officer may request that a person be tested if the officer arrests a person for operating a vehicle while intoxicated or if the officer detects the presence of alcohol, controlled substances, controlled substance analogs, or other drugs, or any combination thereof, on the person. Further, if a person is unconscious or otherwise incapable of consenting to a test, and if the officer has probable cause to suspect that the person was operating a vehicle while intoxicated, current law deems that the person has consented to testing his or her breath, blood, or urine.

Under this bill, a person who operates a vehicle that is involved in an accident that results in the death of or injury to any person may be requested to take a test for the presence or quantity in his or her blood or breath, of alcohol, controlled

ASSEMBLY BILL 752

substances, controlled substance analogs, or other drugs, or any combination of alcohol, controlled substances, controlled substance analogs, and other drugs. A person who refuses to do so may be arrested for operating while intoxicated.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

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

2 343.305 (2) IMPLIED CONSENT. Any person who is on duty time with respect to
3 a commercial motor vehicle or drives or operates a motor vehicle upon the public
4 highways of this state, or in those areas enumerated in s. 346.61, is deemed to have
5 given consent to one or more tests of his or her breath, blood or urine, for the purpose
6 of determining the presence or quantity in his or her blood or breath, of alcohol,
7 controlled substances, controlled substance analogs or other drugs, or any
8 combination of alcohol, controlled substances, controlled substance analogs and
9 other drugs, when requested to do so by a law enforcement officer under sub. (3) (a)
10 or (am) or when required to do so under sub. (3) (ar) or (b). Any such tests shall be
11 administered upon the request of a law enforcement officer. The law enforcement
12 agency by which the officer is employed shall be prepared to administer, either at its
13 agency or any other agency or facility, 2 of the 3 tests under sub. (3) (a) ~~or~~, (am), or
14 (ar), and may designate which of the tests shall be administered first.

15 **SECTION 2.** 343.305 (3) (a) of the statutes is amended to read:

16 343.305 (3) (a) Upon arrest of a person for violation of s. 346.63 (1), (2m) or (5)
17 or a local ordinance in conformity therewith, or for a violation of s. 346.63 (2) or (6)
18 or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or upon arrest

ASSEMBLY BILL 752

1 subsequent to a refusal under par. (ar), a law enforcement officer may request the
2 person to provide one or more samples of his or her breath, blood or urine for the
3 purpose specified under sub. (2). Compliance with a request for one type of sample
4 does not bar a subsequent request for a different type of sample.

5 **SECTION 3.** 343.305 (3) (ar) of the statutes is created to read:

6 343.305 (3) (ar) 1. The legislature finds that there is a high correlation between
7 motor vehicle accidents that cause death or injury and impairment due to alcohol or
8 a restricted controlled substance, that it is often difficult to assess whether the
9 operator of a vehicle involved in the accident is impaired by alcohol or a restricted
10 controlled substance, that it is important to public safety and welfare to identify,
11 prosecute, and deter those who would operate a vehicle while impaired, and that it
12 is important that a person who is wrongfully accused of operating a vehicle while
13 impaired be able to use reliable testing methods to defend himself or herself. The
14 legislature intends that the requirements of this paragraph remediate these
15 findings.

16 2. If a person is the operator of a vehicle that is involved in an accident that
17 causes the death of any person or causes any person to be transported from the site
18 of the accident for the purpose of receiving medical treatment or attention, a law
19 enforcement officer may request the operator to provide one or more samples of his
20 or her breath, blood, or urine for the purpose specified under sub. (2). Compliance
21 with a request for one type of sample does not bar a subsequent request for a different
22 type of sample. A person who is unconscious or otherwise not capable of withdrawing
23 consent is presumed not to have withdrawn consent under this paragraph and one
24 or more samples specified in par. (a) or (am) may be administered to the person.

ASSEMBLY BILL 752**SECTION 3**

1 3. If a person refuses to take a test under this paragraph, he or she may be
2 arrested under par. (a).

3 **SECTION 4.** 343.305 (4) (intro.) of the statutes is amended to read:

4 343.305 (4) INFORMATION. (intro.) At the time that a chemical test specimen is
5 requested under sub. (3) (a) ~~or~~ (am), or (ar), the law enforcement officer shall read
6 the following to the person from whom the test specimen is requested:

7 **SECTION 5.** 343.305 (5) (a) of the statutes is amended to read:

8 343.305 (5) (a) If the person submits to a test under this section, the officer shall
9 direct the administering of the test. A blood test is subject to par. (b). The person who
10 submits to the test is permitted, upon his or her request, the alternative test provided
11 by the agency under sub. (2) or, at his or her own expense, reasonable opportunity
12 to have any qualified person of his or her own choosing administer a chemical test
13 for the purpose specified under sub. (2). If the person has not been requested to
14 provide a sample for a test under sub. (3) (a) ~~or~~ (am), or (ar), the person may request
15 a breath test to be administered by the agency or, at his or her own expense,
16 reasonable opportunity to have any qualified person administer any test specified
17 under sub. (3) (a) ~~or~~ (am), or (ar). The failure or inability of a person to obtain a test
18 at his or her own expense does not preclude the admission of evidence of the results
19 of any test administered under sub. (3) (a) ~~or~~ (am), or (ar). If a person requests the
20 agency to administer a breath test and if the agency is unable to perform that test,
21 the person may request the agency to perform a test under sub. (3) (a) ~~or~~ (am), or (ar)
22 that it is able to perform. The agency shall comply with a request made in accordance
23 with this paragraph.

24 **SECTION 6.** 343.305 (6) (b) 3. of the statutes is amended to read:

ASSEMBLY BILL 752

1 343.305 (6) (b) 3. Have trained technicians, approved by the secretary, test and
2 certify the accuracy of the equipment to be used by law enforcement officers for
3 chemical analysis of a person's breath under sub. (3) (a) ~~or~~, (am), or (ar) before regular
4 use of the equipment and periodically thereafter at intervals of not more than 120
5 days; and

6 **SECTION 7.** 343.305 (8) (c) 1. of the statutes is amended to read:

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

15 **SECTION 8.** 343.305 (9) (a) 1. of the statutes is amended to read:

16 343.305 (9) (a) 1. That prior to a request under sub. (3) (a), the officer had placed
17 the person under arrest for a violation of s. 346.63 (1), (2m) or (5) or a local ordinance
18 in conformity therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25 or had requested
19 the person to take a test under sub. (3) (ar) 2.

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

21 343.305 (9) (c) If a law enforcement officer informs the circuit or municipal
22 court that a person has refused to submit to a test under sub. (3) (a) ~~or~~, (am), or (ar),
23 the court shall be prepared to hold any requested hearing to determine if the refusal

ASSEMBLY BILL 752

SECTION 9

1 was proper. The scope of the hearing shall be limited to the issues outlined in par.

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

3 (END)