



2009 SENATE BILL 303

September 23, 2009 - Introduced by Senators GROTHMAN, RISSER, LEHMAN, OLSEN, TAYLOR and DARLING, cosponsored by Representatives LEMAHIEU, MASON, MURSAU, TOWNSEND, BROOKS, VOS, KNODL, PETERSEN, SPANBAUER, A. OTT, LOTHIAN, GUNDERSON, NASS, BIES, ZIEGELBAUER and BALLWEG. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT to renumber and amend** 343.305 (3) (ar); **to amend** 343.305 (4); and
2 **to create** 343.305 (3) (ar) 2. of the statutes; **relating to:** requesting a person
3 who operates a vehicle that is involved in an accident that causes death or
4 injury to submit to a test for intoxication.

Analysis by the Legislative Reference Bureau

Under current, a law enforcement officer generally may request a person to submit to having his or her breath, blood, or urine tested to determine 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 (test for intoxication) when the person is arrested for operating a vehicle while intoxicated. However, an officer may request a test for intoxication prior to arrest if the person is operating a commercial motor vehicle or is the operator of a vehicle that is involved in an accident that causes the death of or great bodily harm to a person and, in either circumstance, the officer detects the presence of alcohol or another drug.

Under this bill, if the person is the operator of a vehicle that is involved in an accident that causes any injury to any person and an officer detects the presence of alcohol or another drug, the officer may request the person to submit to a test for intoxication before he or she arrests the person. If the person is the operator of a vehicle that is involved in an accident that causes the death of or great bodily harm to any person and the officer reasonably believes that the person violated any state or local traffic law, the officer may request the person to submit to a test for

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intoxication before he or she arrests the person, regardless of whether the officer detects the presence of alcohol or another drug.

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 (3) (ar) of the statutes is renumbered 343.305 (3) (ar) 1. and
2 amended to read:

3 343.305 **(3)** (ar) 1. If a person is the operator of a vehicle that is involved in an
4 accident that causes the death of or great bodily harm injury to any person, and a law
5 enforcement officer detects any presence of alcohol, a controlled substance, a
6 controlled substance analog or other drug, or a combination thereof, the law
7 enforcement officer may request the operator to provide one or more samples of his
8 or her breath, blood, or urine for the purpose specified under sub. (2). Compliance
9 with a request for one type of sample does not bar a subsequent request for a different
10 type of sample. A person who is unconscious or otherwise not capable of withdrawing
11 consent is presumed not to have withdrawn consent under this paragraph
12 subdivision and one or more samples specified in par. (a) or (am) may be administered
13 to the person. If a person refuses to take a test under this paragraph subdivision,
14 he or she may be arrested under par. (a).

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

16 343.305 **(3)** (ar) 2. If a person is the operator of a vehicle that is involved in an
17 accident that causes the death of or great bodily harm to any person and the law
18 enforcement officer has reason to believe that the person violated any state or local
19 traffic law, the 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

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1 with a request for one type of sample does not bar a subsequent request for a different
2 type of sample. A person who is unconscious or otherwise not capable of withdrawing
3 consent is presumed not to have withdrawn consent under this subdivision and one
4 or more samples specified in par. (a) or (am) may be administered to the person. If
5 a person refuses to take a test under this subdivision, he or she may be arrested
6 under par. (a).

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

8 343.305 (4) INFORMATION. At the time that a chemical test specimen is
9 requested under sub. (3) (a), (am), or (ar), the law enforcement officer shall read the
10 following to the person from whom the test specimen is requested:

11 “You have either been arrested for an offense that involves driving or operating
12 a motor vehicle while under the influence of alcohol or drugs, or both, or you are the
13 operator of a vehicle that was involved in an accident that caused the death of or
14 injury to a person, or you are suspected of driving or being on duty time with respect
15 to a commercial motor vehicle after consuming an intoxicating beverage.

16 This law enforcement agency now wants to test one or more samples of your
17 breath, blood or urine to determine the concentration of alcohol or drugs in your
18 system. If any test shows more alcohol in your system than the law permits while
19 driving, your operating privilege will be suspended. If you refuse to take any test that
20 this agency requests, your operating privilege will be revoked and you will be subject
21 to other penalties. The test results or the fact that you refused testing can be used
22 against you in court.

23 If you take all the requested tests, you may choose to take further tests. You
24 may take the alternative test that this law enforcement agency provides free of

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1 charge. You also may have a test conducted by a qualified person of your choice at
2 your expense. You, however, will have to make your own arrangements for that test.

3 If you have a commercial driver license or were operating a commercial motor
4 vehicle, other consequences may result from positive test results or from refusing
5 testing, such as being placed out of service or disqualified.”

6 (END)