

1999 DRAFTING REQUEST

Bill

Received: 12/30/98

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Robert Goetsch (608) 266-2540

By/Representing: Kent V

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Drunk Driving - alcohol level

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Testing for blood alcohol concentration in accidents involving death or great bodily harm

Instructions:

Same as 97-1918/2

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nelsorp1 12/30/98	gilfokm 12/30/98		_____			S&L
	nelsorp1 01/4/99	chanaman 01/5/99		_____			
/1			jfrantze 01/7/99	_____	lrb_docadmin 01/7/99		S&L
/2	nelsorp1 01/14/99	chanaman 01/14/99	lpaasch 01/15/99	_____	lrb_docadmin 01/15/99	lrb_docadmin 02/22/99	

FE Sent For:

03-04-99

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*JED  
PEN*

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	nelsorp1 01/4/99	chanaman 01/5/99		_____			
/1		<i>cmm 12</i> <i>1/14</i> <i>12-1-14 King</i>	jfrantze 01/7/99	_____	lrb_docadmin 01/7/99		
FE Sent For:			<i>1-15LR</i>	<i>1-15LP</i> <i>IS</i> <b>&lt;END&gt;</b>			

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1?	nelsorp1	emh h 1/4 1-1-4kg	2/1/97	2/1/97 KM			

FE Sent For:

<END>

10

10

D-NOTE

19979 BILL

1 AN ACT <sup>regen cat.</sup> to amend 346.74 (2); and to create 346.71 (2g) and 346.74 (2m) of the  
2 statutes; relating to: testing of blood for alcohol content in motor vehicle  
3 accidents involving a fatality or great bodily harm and providing a penalty.

---

*Analysis by the Legislative Reference Bureau*

Under current law, if a person 14 years of age or older is killed in an accident involving a motor vehicle, his or her blood is tested to determine its alcohol content. The results are forwarded to state agencies to be used for statistical purposes and to the coroner or medical examiner.

This bill requires the testing of the blood of all drivers or operators of motor vehicles involved in an accident that results in a fatality or in great bodily harm at the time of the accident, if the drivers or operators are not tested for purposes of determining if they committed a violation involving intoxicated driving. The law enforcement agency requesting the test is told of the results and includes the results in the accident report. The department of transportation pays for the tests and may use the results for statistical purposes.

The bill also provides that any person who refuses to submit to the blood test may be required to forfeit not more than \$1,000.

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:*

**BILL**

X  
1 SECTION 1. 346.71 (2g) of the statutes is created to read:

2 346.71 (2g) (a) Any person who drives or operates a motor vehicle upon the  
3 public highways of this state, or in those areas enumerated in s. 346.61, is deemed  
4 to have given consent to one or more tests of his or her blood for the purpose of  
5 determining the presence or quantity in his or her blood of alcohol, controlled  
6 substances, controlled substance analogs or other drugs, or any combination of  
7 alcohol, controlled substances, controlled substance analogs and other drugs, when  
8 requested to do so by a law enforcement officer under this subsection. A person who  
9 is unconscious or otherwise not capable of giving consent is presumed to have given  
10 consent to the testing of his or her blood under this subsection. *Testing under this subsection;*  
11 be administered upon the request of a law enforcement officer. *Any such tests*

12 (b) A law enforcement officer at the scene of an accident that involves the  
13 operation of a motor vehicle shall require that a blood specimen of at least 10 cc. be  
14 withdrawn from each driver or operator of a motor vehicle involved in the accident  
15 who was not tested under s. 343.305 (5) if the law enforcement officer knew any of  
16 the following:

17 1. That a person died *a* as a result of the operation of *the* motor vehicle *involved in the* before he  
18 or she was removed from the scene of the accident. *accident*

19 2. That a person suffered great bodily harm, as defined in s. 939.22 (14), as a  
20 result of the operation of *a* the motor vehicle *involved in the accident*

21 (c) The blood specimen shall be withdrawn under par. (b) within 3 hours after  
22 the accident. The coroner or medical examiner, a physician or a qualified person at  
23 the direction of a physician shall withdraw the blood. The blood so drawn shall be  
24 forwarded to a laboratory approved by the department of health and family services  
25 for analysis for the purpose of determining the presence or quantity in the blood of

**BILL**

1 alcohol, controlled substances, controlled substance analogs or other drugs, or any  
 2 combination of alcohol, controlled substances, controlled substance analogs and  
 3 other drugs. The laboratory shall notify the law enforcement agency causing the  
 4 blood to be withdrawn of the results of each analysis. The law enforcement agency  
 5 shall place those results in the law enforcement agency's report regarding the  
 6 accident but the results may not be used as evidence in any criminal trial arising out  
 7 of the accident. The laboratory shall send a copy of the results to the department of  
 8 transportation. The department of transportation shall pay the cost of each analysis  
 9 and keep a record of those results to be used for statistical purposes only. The  
 10 department of transportation may disseminate and make public the cumulative  
 11 results of the analyses without identifying the individuals involved.

12 **SECTION 2.** 346.74 (2) of the statutes is amended to read: ✓

13 346.74 (2) Any person violating s. 346.70 (1), (2) or (3), 346.71 (1), (2) or (3) or  
 14 346.73 may be required to forfeit not less than \$40 nor more than \$200 for the first  
 15 offense and may be required to forfeit not less than \$100 nor more than \$500 for the  
 16 2nd or subsequent conviction within a year.

17 **SECTION 3.** 346.74 (2m) of the statutes is created to read: ✓

18 346.74 (2m) Any person who refuses to allow the withdrawal of his or her blood  
 19 under s. 346.71 (2g) may be required to forfeit not more than \$1,000.

20 **SECTION 4. Initial applicability.**

21 (1) This act first applies to accidents occurring on the effective date of this  
 22 subsection.

23 (END) ✓

*proof  
w/  
stats*



DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1948/2dn

RPN:mfd:afm

cm4/Kg

1529/11

Friday, February 14, 1997

new date

Kent:

As we discussed in our telephone conversations in response to your questions, the content of this bill may be subject to close scrutiny because the bill requires persons to submit to blood testing without their consent. The U.S. Supreme Court considers the taking of blood for the purpose of determining the presence of drugs such as alcohol as a search and therefore subject to the prohibition against unreasonable searches in Amendment IV to the U.S. Constitution. The court has permitted blood tests to determine the presence of drugs such as alcohol in some situations, such as in customs officers and high school athletes, when the court felt that the search was reasonably related to the circumstances that justified the interference. See the pages of the court decisions I sent earlier for more details.

In this bill, the circumstances are related to driving a motor vehicle, a highly regulated behavior, and the reason is to collect information to better address the use of drugs while driving, a major concern of the state. However, the persons being required to submit to the testing are not under suspicion of wrongdoing, so the major intrusion of that person's privacy by the taking of blood may incline the court to find that the search violates Amendment IV. I hesitate to say what the court would say if this issue was litigated.

I have tried to make the bill less subject to a constitutional challenge by adding implied consent language and by prohibiting the use of the information as evidence in any criminal action related to the accident.

Robert P. Nelson  
Senior Staff Counsel  
267-7511

I made a few minor changes in the wording of s. 346:21 (2g) (b) 1. and 2. for clarity. The remainder of this note is the same note I sent to you in the last session.



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1529/1dn  
RPN:cmh&kg:jf

January 7, 1999

Kent:

I made a few minor changes in the wording of s. 346.71 (2g) (b) 1. and 2. for clarity. The remainder of this note is the same note that I sent to you in the last session.

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Senior Staff Counsel  
267-7511

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 1/7/99

To: Representative Goetsch

Relating to LRB drafting number: LRB-1529

**Topic**

Testing for blood alcohol concentration in accidents involving death or great bodily harm

**Subject(s)**

Drunk Driving - alcohol level

1. **JACKET** the draft for introduction \_\_\_\_\_

in the **Senate** \_\_\_\_ or the **Assembly** \_\_\_\_ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** ~~See the changes indicated or attached~~ refer to conversation w/ Kent Veynon (1-13-99) \_\_\_\_\_

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney  
Telephone: (608) 267-7511



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1529/1 <sup>2</sup>  
RPN:cmh&kg:jf  
✓  
stays

1999 BILL

1 *refer out*  
AN ACT *to amend* 346.74 (2); and *to create* 346.71 (2g) and 346.74 (2m) of the  
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The bill also provides that any person who refuses to submit to the blood test may be required to forfeit not more than \$1,000. *x*

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7 ~~of the accident.~~ The laboratory shall send a copy of the results to the department of  
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23 (END)





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