

2001 ASSEMBLY BILL 846

February 20, 2002 - Introduced by Representatives SCHOOFF, AINSWORTH and BERCEAU, cosponsored by Senators BURKE and ROESSLER. Referred to Committee on Highway Safety.

1 **AN ACT** *to renumber and amend* 343.303; *to amend* 343.305 (3) (am) and
2 343.305 (4); and *to create* 343.303 (1) (intro.) and 343.303 (1) (c) of the statutes;
3 **relating to:** the standard necessary to request preliminary breath screening
4 tests.

Analysis by the Legislative Reference Bureau

Under current law, a law enforcement officer may request a person to provide a sample of his or her breath for a preliminary breath screening test if the officer has probable cause to believe that the person has driven or operated a motor vehicle while he or she has a prohibited alcohol concentration or while under the influence of an intoxicant, controlled substance, or other drug or the combination of an intoxicant, controlled substance or other drug to a degree that renders him or her incapable of safely driving (OWI).

Also under current law, a law enforcement officer may request a person to provide a sample of his or her breath for a preliminary breath screening test if the person is driving or operating or on duty time with respect to a commercial motor vehicle and the law enforcement officer detects any presence of alcohol, a controlled substance, controlled substance analog, or other drug, or a combination thereof, or the officer has reason to believe that the person is driving or operating or on duty time with respect to a commercial vehicle while having an alcohol concentration above 0.0, or within four hours of consuming or being under the influence of an intoxicating beverage, or while possessing an intoxicating beverage.

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This bill allows a law enforcement officer to request a person to provide a sample of his or her breath for a preliminary breath screening test if the person is driving or operating a motor vehicle and the law enforcement officer detects any presence of alcohol, a controlled substance, controlled substance analog, or other drug, or a combination thereof and the person has three or more OWI-related convictions, or suspensions or revocations of his or her operating privilege.

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

1 **SECTION 1.** 343.303 of the statutes is renumbered 343.303 (1) (a) and amended
2 to read:

3 343.303 (1) (a) ~~If a~~ The law enforcement officer has probable cause to believe
4 that the person is violating or has violated s. 346.63 (1) or (2m) or a local ordinance
5 in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense
6 involved the use of a vehicle, ~~or if the,~~

7 (b) The law enforcement officer detects any presence of alcohol, a controlled
8 substance, controlled substance analog, or other drug, or a combination thereof, on
9 a person driving or operating or on duty time with respect to a commercial motor
10 vehicle or has reason to believe that the person is violating or has violated s. 346.63
11 (7) or a local ordinance in conformity therewith, ~~the officer, prior to an arrest, may~~
12 ~~request the person to provide a sample of his or her breath for a preliminary breath~~
13 ~~screening test using a device approved by the department for this purpose.~~

14 (2) The result of ~~this~~ the preliminary breath screening test under sub. (1) may
15 be used by the law enforcement officer for the purpose of deciding whether or not the
16 person shall be arrested for a violation of s. 346.63 (1), (2m), (5), or (7) or a local
17 ordinance in conformity therewith, or s. 346.63 (2) or (6), 940.09 (1), or 940.25 and
18 whether or not to require or request chemical tests as authorized under s. 343.305
19 (3). The result of the preliminary breath screening test shall not be admissible in any

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1 action or proceeding except to show probable cause for an arrest, if the arrest is
2 challenged, or to prove that a chemical test was properly required or requested of a
3 person under s. 343.305 (3). Following the screening test, additional tests may be
4 required or requested of the driver under s. 343.305 (3). The general penalty
5 provision under s. 939.61 (1) does not apply to a refusal to take a preliminary breath
6 screening test.

7 **SECTION 2.** 343.303 (1) (intro.) of the statutes is created to read:

8 343.303 (1) (intro.) Prior to arrest, a law enforcement officer may request a
9 person to provide a sample of his or her breath for a preliminary breath screening
10 test using a device approved by the department under any of the following
11 circumstances:

12 **SECTION 3.** 343.303 (1) (c) of the statutes is created to read:

13 343.303 (1) (c) The number of convictions under ss. 940.09 (1) and 940.25 in a
14 person's lifetime, plus the total number of suspensions, revocations, and other
15 convictions counted under s. 343.307 (1) within a 10-year period, equals 3 or more
16 and the officer detects any presence of alcohol, a controlled substance, controlled
17 substance analog, or other drug, or a combination thereof, on a person driving or
18 operating a motor vehicle. The 10-year period shall be measured from the dates of
19 the refusals or violations that resulted in the revocation or convictions. If a person
20 has a suspension, revocation, or conviction for any offense under a local ordinance
21 or a state statute of another state that would be counted under s. 343.307 (1), that
22 suspension, revocation, or conviction shall count as a prior suspension, revocation,
23 or conviction under this section.

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

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1 343.305 (3) (am) Prior to arrest, 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) whenever a law enforcement officer detects any
4 presence of alcohol, a controlled substance, a controlled substance analog, or other
5 drug, or a combination thereof, on a person driving or operating or on duty time with
6 respect to a commercial motor vehicle or has reason to believe the person is violating
7 or has violated s. 346.63 (7) or whenever a law enforcement officer detects any
8 presence of alcohol, a controlled substance, a controlled substance analog, or other
9 drug, or a combination thereof, on a person who is driving or operating a motor
10 vehicle and who has a number of convictions under ss. 940.09 (1) and 940.25 in his
11 or her lifetime, plus the total number of suspensions, revocations, and other
12 convictions counted under s. 343.307 (1) within a 10-year period, that equals 3 or
13 more. The 10-year period shall be measured from the dates of the refusals or
14 violations that resulted in the revocations or convictions. If a person has a
15 suspension, revocation, or conviction for any offense under a local ordinance or a
16 state statute of another state that would be counted under s. 343.307 (1), that
17 suspension, revocation, or conviction shall count as a prior suspension, revocation,
18 or conviction under this paragraph. Compliance with a request for one type of sample
19 does not bar a subsequent request for a different type of sample. For the purposes
20 of this paragraph, “law enforcement officer” includes inspectors in the performance
21 of duties under s. 110.07 (3).

22 **SECTION 5.** 343.305 (4) of the statutes is amended to read:

23 343.305 (4) INFORMATION. At the time that a chemical test specimen is
24 requested under sub. (3) (a) or (am), the law enforcement officer shall read the
25 following to the person from whom the test specimen is requested:

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1 “You have either been arrested for an offense that involves driving or operating
2 a motor vehicle while under the influence of alcohol or drugs, or both, or you are
3 suspected of driving or being on duty time with respect to a commercial motor vehicle
4 after consuming an intoxicating beverage or, if you have 3 or more prior refusals or
5 violations relating to operating a motor vehicle while intoxicated, of driving or
6 operating a motor vehicle while under the influence of alcohol or drugs, or both.

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

14 If you take all the requested tests, you may choose to take further tests. You
15 may take the alternative test that this law enforcement agency provides free of
16 charge. You also may have a test conducted by a qualified person of your choice at
17 your expense. You, however, will have to make your own arrangements for that test.

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

21 **SECTION 6. Initial applicability.**

22 (1) This act first applies to violations committed or refusals occurring on the
23 effective date of this subsection, but does not preclude the counting of other
24 convictions, suspensions, or revocations as prior convictions, suspensions, or
25 revocations for purposes of administrative action by the department of

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SECTION 6

1 transportation, sentencing by the court, or revocation or suspension of motor vehicle
2 operating privileges.

3 **SECTION 7. Effective date.**

4 (1) This act takes effect on January 1, 2003.

5 (END)