

**ASSEMBLY BILL 273 (LRB -1687)**

An Act to amend 343.305 (9) (a) (intro.), 343.305 (9) (am) (intro.), 343.305 (9) (c), 343.305 (11), 800.04 (1) (d) and 800.07 of the statutes; relating to: allowing municipal courts to hold refusal hearings. (FE)

**2003**

07-07.	A.	Introduced by Representatives <b>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</b> ; cosponsored by Senators <b>S. Fitzgerald and Wirch.</b>	
04-18.	A.	Read first time and referred to committee on Judiciary .....	161
06-12.	A.	Public hearing held.	
06-18.	A.	Fiscal estimate received.	
06-19.	A.	Executive action taken.	
07-07.	A.	Report passage recommended by committee on Judiciary, Ayes 7, Noes 0 .....	300
07-07.	A.	Referred to committee on Rules .....	300
10-30.	A.	Placed on calendar 11-5-2003 by committee on Rules.	
11-05.	A.	Read a second time .....	490
11-05.	A.	Ordered to a third reading .....	490
11-05.	A.	Rules suspended .....	490
11-05.	A.	Read a third time and <b>passed</b> .....	490
11-05.	A.	Ordered immediately messaged .....	490
11-06.	S.	Received from Assembly .....	471
11-06.	S.	Read first time and referred to committee on Judiciary, Corrections and Privacy .....	471

**2004**

01-23.	S.	Public hearing held.	
01-23.	S.	Executive action taken.	
01-30.	S.	Report concurrence recommended by committee on Judiciary, Corrections and Privacy, Ayes 5, Noes 0 ....	585
01-30.	S.	Available for scheduling.	
03-09.	S.	Placed on calendar 3-10-2004 by committee on Senate Organization.	
03-11.	S.	Placed on calendar 3-11-2004 by committee on Senate Organization.	
03-11.	S.	Read a second time.	
03-11.	S.	Ordered to a third reading.	
03-11.	S.	Rules suspended.	
03-11.	S.	Read a third time and <b>concurred in.</b>	
03-11.	S.	Ordered immediately messaged.	

**2003  
ENROLLED BILL**

03en A B-273

**ADOPTED DOCUMENTS:**

Orig     Engr         SubAmdt     

03 - 1687/1

Amendments to above (if none, write "NONE"): none

Corrections - show date (if none, write "NONE"): none

Topic relate

3/12/04  
Date

John D. Leman  
Enrolling Drafter

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## 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.

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### *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.

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*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.

**ASSEMBLY BILL 273****SECTION 5**

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.**

