

## 2005 SENATE BILL 611

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

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*Analysis by the Legislative Reference Bureau*

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

6             **SECTION 1.** 343.305 (2) of the statutes is amended to read:  
7             343.305 (2) IMPLIED CONSENT. Any person who is on duty time with respect to  
8             a commercial motor vehicle or drives or operates a motor vehicle upon the public  
9             highways of this state, or in those areas enumerated in s. 346.61, is deemed to have  
10            given consent to one or more tests of his or her breath, blood or urine, for the purpose

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1 of determining the presence or quantity in his or her blood or breath, of alcohol,  
2 controlled substances, controlled substance analogs or other drugs, or any  
3 combination of alcohol, controlled substances, controlled substance analogs and  
4 other drugs, when requested to do so by a law enforcement officer under sub. (3) (a)  
5 or (am) or when required to do so under sub. (3) (ar) or (b). Any such tests shall be  
6 administered upon the request of a law enforcement officer. The law enforcement  
7 agency by which the officer is employed shall be prepared to administer, either at its  
8 agency or any other agency or facility, 2 of the 3 tests under sub. (3) (a) ~~or~~ (am), or  
9 (ar), and may designate which of the tests shall be administered first.

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

11 343.305 **(3)** (a) Upon arrest of a person for violation of s. 346.63 (1), (2m) or (5)  
12 or a local ordinance in conformity therewith, or for a violation of s. 346.63 (2) or (6)  
13 or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or upon arrest  
14 subsequent to a refusal under par. (ar), a law enforcement officer may request the  
15 person to provide one or more samples of his or her breath, blood or urine for the  
16 purpose specified under sub. (2). Compliance with a request for one type of sample  
17 does not bar a subsequent request for a different type of sample.

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

19 343.305 **(3)** (ar) If a person is the operator of a vehicle that is involved in an  
20 accident that causes the death of or great bodily harm to any person, and a law  
21 enforcement officer detects any presence of alcohol, a controlled substance, a  
22 controlled substance analog or other drug, or a combination thereof, the law  
23 enforcement officer may request the operator to provide one or more samples of his  
24 or her breath, blood, or urine for the purpose specified under sub. (2). Compliance  
25 with a request for one type of sample does not bar a subsequent request for a different

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

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

7 343.305 (4) INFORMATION. (intro.) At the time that a chemical test specimen is  
8 requested under sub. (3) (a) ~~or~~ (am), or (ar), the law enforcement officer shall read  
9 the following to the person from whom the test specimen is requested:

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

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

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1 that it is able to perform. The agency shall comply with a request made in accordance  
2 with this paragraph.

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

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

9 **SECTION 6m.** 343.305 (8) (b) 2. e. of the statutes is amended to read:

10 343.305 (8) (b) 2. e. ~~Whether~~ If a test was requested under sub. (3) (a), whether  
11 probable cause existed for the arrest.

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

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

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

22 343.305 (9) (a) 1. That prior to a request under sub. (3) (a), the officer had placed  
23 the person under arrest for a violation of s. 346.63 (1), (2m) or (5) or a local ordinance  
24 in conformity therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25 or had requested  
25 the person to take a test under sub. (3) (ar).

