

2005 Senate Bill 611

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2005 WISCONSIN ACT 413

AN ACT *to amend* 343.305 (2), 343.305 (3) (a), 343.305 (4) (intro.), 343.305 (5) (a), 343.305 (6) (b) 3., 343.305 (8) (b) 2. e., 343.305 (8) (c) 1., 343.305 (9) (a) 1. and 343.305 (9) (c); and *to create* 343.305 (3) (ar) of the statutes; **relating to:** testing of persons involved in certain motor vehicle accidents and providing a penalty.

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

SECTION 1. 343.305 (2) of the statutes is amended to read:

343.305 (2) IMPLIED CONSENT. Any person who is on duty time with respect to a commercial motor vehicle or drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in s. 346.61, is deemed to have given consent to one or more tests of his or her breath, blood or urine, for the purpose of determining 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, when requested to do so by a law enforcement officer under sub. (3) (a) or (am) or when required to do so under sub. (3) (ar) or (b). Any such tests shall be administered upon the request of a law enforcement officer. The law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility, 2 of the 3 tests under sub. (3) (a) ~~or~~ (am), or (ar), and may designate which of the tests shall be administered first.

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

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

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

343.305 (3) (ar) If a 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 a law enforcement officer detects any presence of alcohol, a controlled substance, a controlled substance analog or other drug, or a combination thereof, the law enforcement officer may request the operator to provide one or more samples of his or her breath, blood, or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample. A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this para-

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

graph and one or more samples specified in par. (a) or (am) may be administered to the person. If a person refuses to take a test under this paragraph, he or she may be arrested under par. (a).

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

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

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

343.305 (5) (a) If the person submits to a test under this section, the officer shall direct the administering of the test. A blood test is subject to par. (b). The person who submits to the test is permitted, upon his or her request, the alternative test provided by the agency under sub. (2) or, at his or her own expense, reasonable opportunity to have any qualified person of his or her own choosing administer a chemical test for the purpose specified under sub. (2). If the person has not been requested to provide a sample for a test under sub. (3) (a) ~~or (am), or (ar)~~, the person may request a breath test to be administered by the agency or, at his or her own expense, reasonable opportunity to have any qualified person administer any test specified under sub. (3) (a) ~~or (am), or (ar)~~. The failure or inability of a person to obtain a test at his or her own expense does not preclude the admission of evidence of the results of any test administered under sub. (3) (a) ~~or (am), or (ar)~~. If a person requests the agency to administer a breath test and if the agency is unable to perform that test, the person may request the agency to perform a test under sub. (3) (a) ~~or (am), or (ar)~~ that it is able to perform. The agency shall comply with a request made in accordance with this paragraph.

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

343.305 (6) (b) 3. Have trained technicians, approved by the secretary, test and certify the accuracy of the equipment to be used by law enforcement officers for

chemical analysis of a person's breath under sub. (3) (a) ~~or (am), or (ar)~~ before regular use of the equipment and periodically thereafter at intervals of not more than 120 days; and

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

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

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

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

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

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

SECTION 9. 343.305 (9) (c) of the statutes is amended to read:

343.305 (9) (c) If a law enforcement officer informs the circuit or municipal court that a person has refused to submit to a test under sub. (3) (a) ~~or (am), or (ar)~~, the court shall be prepared to hold any requested hearing to determine if the refusal was proper. The scope of the hearing shall be limited to the issues outlined in par. (a) 5. or (am) 5. Section 967.055 applies to any hearing under this subsection.