

2005 SENATE BILL 611

February 20, 2006 – Introduced by Senator LAZICH, cosponsored by Representatives STONE, KRUSICK, TOWNSEND, JESKEWITZ, OWENS, AINSWORTH, LEMAHIEU and OTT. Referred to Committee on Judiciary, Corrections and Privacy.

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

Analysis by the Legislative Reference Bureau

Under current law, any person who is on duty time with respect to a commercial motor vehicle or drives or operates a motor vehicle on any public highway 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.

A law enforcement officer may request that a person be tested if the officer arrests a person or has probable cause to believe the person can be arrested for operating a vehicle while intoxicated or if the person is the operator of a commercial motor vehicle and the officer detects the presence of alcohol, controlled substances, controlled substance analogs, or other drugs, or any combination thereof, on the person. Further, if a person is unconscious or otherwise incapable of consenting to a test, and if the officer has probable cause to suspect that the person was operating a vehicle while intoxicated, current law deems that the person has consented to testing his or her breath, blood, or urine.

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Under this bill, a person who operates a vehicle that is involved in an accident that results in the death of or great bodily harm to any person may be requested to take a test for 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 if an officer detects on the person the presence of any of those substances. A person who refuses to do so may be arrested for operating while intoxicated.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

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

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

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

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

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

9 343.305 (3) (ar) If a person is the operator of a vehicle that is involved in an
10 accident that causes the death of or great bodily harm to any person, and a law
11 enforcement officer detects any presence of alcohol, a controlled substance, a
12 controlled substance analog or other drug, or a combination thereof, the law
13 enforcement officer may request the operator to provide one or more samples of his
14 or her breath, blood, or urine for the purpose specified under sub. (2). Compliance
15 with a request for one type of sample does not bar a subsequent request for a different
16 type of sample. A person who is unconscious or otherwise not capable of withdrawing
17 consent is presumed not to have withdrawn consent under this paragraph and one
18 or more samples specified in par. (a) or (am) may be administered to the person. If
19 a person refuses to take a test under this paragraph, he or she may be arrested under
20 par. (a).

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

22 343.305 (4) INFORMATION. (intro.) At the time that a chemical test specimen is
23 requested under sub. (3) (a) or (am), or (ar), the law enforcement officer shall read
24 the following to the person from whom the test specimen is requested:

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

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1 343.305 (5) (a) If the person submits to a test under this section, the officer shall
2 direct the administering of the test. A blood test is subject to par. (b). The person who
3 submits to the test is permitted, upon his or her request, the alternative test provided
4 by the agency under sub. (2) or, at his or her own expense, reasonable opportunity
5 to have any qualified person of his or her own choosing administer a chemical test
6 for the purpose specified under sub. (2). If the person has not been requested to
7 provide a sample for a test under sub. (3) (a) ~~or~~, or (ar), the person may request
8 a breath test to be administered by the agency or, at his or her own expense,
9 reasonable opportunity to have any qualified person administer any test specified
10 under sub. (3) (a) ~~or~~, or (ar). The failure or inability of a person to obtain a test
11 at his or her own expense does not preclude the admission of evidence of the results
12 of any test administered under sub. (3) (a) ~~or~~, or (ar). If a person requests the
13 agency to administer a breath test and if the agency is unable to perform that test,
14 the person may request the agency to perform a test under sub. (3) (a) ~~or~~, or (ar)
15 that it is able to perform. The agency shall comply with a request made in accordance
16 with this paragraph.

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

18 343.305 (6) (b) 3. Have trained technicians, approved by the secretary, test and
19 certify the accuracy of the equipment to be used by law enforcement officers for
20 chemical analysis of a person's breath under sub. (3) (a) ~~or~~, or (ar) before regular
21 use of the equipment and periodically thereafter at intervals of not more than 120
22 days; and

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

24 343.305 (8) (c) 1. An individual aggrieved by the determination of the hearing
25 examiner may have the determination reviewed by the court hearing the action

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1 relating to the applicable violation listed under sub. (3) (a) ~~or~~, (am), or (ar). If the
2 individual seeks judicial review, he or she must file the request for judicial review
3 with the court within 20 days of the issuance of the hearing examiner's decision. The
4 court shall send a copy of that request to the department. The judicial review shall
5 be conducted at the time of the trial of the underlying offense under s. 346.63. The
6 prosecutor of the underlying offense shall represent the interests of the department.

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

8 343.305 (9) (a) 1. That prior to a request under sub. (3) (a), the officer had placed
9 the person under arrest for a violation of s. 346.63 (1), (2m) or (5) or a local ordinance
10 in conformity therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25 or had requested
11 the person to take a test under sub. (3) (ar).

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

13 343.305 (9) (c) If a law enforcement officer informs the circuit or municipal
14 court that a person has refused to submit to a test under sub. (3) (a) ~~or~~, (am), or (ar),
15 the court shall be prepared to hold any requested hearing to determine if the refusal
16 was proper. The scope of the hearing shall be limited to the issues outlined in par.
17 (a) 5. or (am) 5. Section 967.055 applies to any hearing under this subsection.

18 (END)