State of Wisconsin

Date of enactment:
2025 Senate Bill 678 Date of publication*:

2025 WISCONSIN ACT

AN ACT ***to amend*** 23.33 (4g) (title), 23.33 (4g) (a), 23.33 (4g) (b), 23.33 (4g) (c), 23.335 (12) (e) (title), 23.335 (12) (e) 1., 23.335 (12) (e) 2., 23.335 (12) (e) 3., 30.682 (title), 30.682 (1), 30.682 (2), 30.682 (3), 343.303, 350.102 (title), 350.102 (1), 350.102 (2) and 350.102 (3); ***to create*** 23.33 (4g) (e), 23.335 (12) (e) 5., 30.682 (5) and 350.102 (5) of the statutes; **relating to:** the use of oral fluids for preliminary screening of a person suspected of operating a vehicle while intoxicated.

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

SECTION 1m. 23.33 (4g) (title) of the statutes is amended to read:

23.33 **(4g)** (title) PRELIMINARY ~~BREATH~~ SCREENING TEST.

SECTION 2m. 23.33 (4g) (a) of the statutes is amended to read:

23.33 **(4g)** (a) *Requirement.* A person shall provide a sample of his or her breath <u>or oral fluids, or both,</u> for a preliminary ~~breath~~ screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated operation of an all-terrain vehicle or utility terrain vehicle law and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

SECTION 3m. 23.33 (4g) (b) of the statutes is amended to read:

23.33 **(4g)** (b) *Use of test results.* A law enforcement officer may use the results of a preliminary ~~breath~~ screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated operation of an all-terrain vehicle or utility terrain vehicle law or for the purpose of deciding whether or not to request a chemical test under sub. (4p). Following the preliminary ~~breath~~ screening test, chemical tests may be required of the person under sub. (4p).

SECTION 4m. 23.33 (4g) (c) of the statutes is amended to read:

23.33 **(4g)** (c) *Admissibility.* The result of a preliminary ~~breath~~ screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to show that a chemical test was properly required of a person under sub. (4p).

SECTION 4r. 23.33 (4g) (e) of the statutes is created to read:

23.33 **(4g)** (e) *Use of oral fluids sample.* A law enforcement officer may collect and retain a sample of a person's oral fluids only to the extent necessary to perform a preliminary screening test under this subsection and shall destroy the sample, or return the sample to the person, after conducting the preliminary screening test. A law enforcement officer may not collect or retain a sample of a person's oral fluids under this subsection for any purpose other than a preliminary screening test.

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* Section 991.11, WISCONSIN STATUTES: 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."

SECTION 5m. 23.335 (12) (e) (title) of the statutes is amended to read:

23.335 **(12)** (e) (title) *Preliminary ~~breath~~ screening.*

SECTION 6m. 23.335 (12) (e) 1. of the statutes is amended to read:

23.335 **(12)** (e) 1. A person shall provide a sample of his or her breath or oral fluids, or both, for a preliminary ~~breath~~ screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated operation of an off-highway motorcycle law and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

SECTION 7m. 23.335 (12) (e) 2. of the statutes is amended to read:

23.335 **(12)** (e) 2. A law enforcement officer may use the results of a preliminary ~~breath~~ screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated operation of an off-highway motorcycle law or for the purpose of deciding whether or not to request a chemical test under par. (f). Following the preliminary ~~breath~~ screening test, chemical tests may be required of the person under par. (f).

SECTION 8m. 23.335 (12) (e) 3. of the statutes is amended to read:

23.335 **(12)** (e) 3. The result of a preliminary ~~breath~~ screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to show that a chemical test was properly required of a person under par. (f).

SECTION 8r. 23.335 (12) (e) 5. of the statutes is created to read:

23.335 **(12)** (e) 5. A law enforcement officer may collect and retain a sample of a person's oral fluids only to the extent necessary to perform a preliminary screening test under this paragraph and shall destroy the sample, or return the sample to the person, after conducting the preliminary screening test. A law enforcement officer may not collect or retain a sample of a person's oral fluids under this paragraph for any purpose other than a preliminary screening test.

SECTION 9m. 30.682 (title) of the statutes is amended to read:

30.682 (title) **Preliminary ~~breath~~ screening test.**

SECTION 10m. 30.682 (1) of the statutes is amended to read:

30.682 **(1)** REQUIREMENT. A person shall provide a sample of his or her breath or oral fluids, or both, for a preliminary ~~breath~~ screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated boating law and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

SECTION 11m. 30.682 (2) of the statutes is amended to read:

30.682 **(2)** USE OF TEST RESULTS. A law enforcement officer may use the results of a preliminary ~~breath~~ screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated boating law or for the purpose of deciding whether or not to request a chemical test under s. 30.684. Following the preliminary ~~breath~~ screening test, chemical tests may be required of the person under s. 30.684.

SECTION 12m. 30.682 (3) of the statutes is amended to read:

30.682 **(3)** ADMISSIBILITY. The result of a preliminary ~~breath~~ screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to show that a chemical test was properly required of a person under s. 30.684.

SECTION 12r. 30.682 (5) of the statutes is created to read:

30.682 **(5)** USE OF ORAL FLUIDS SAMPLE. A law enforcement officer may collect and retain a sample of a person's oral fluids only to the extent necessary to perform a preliminary screening test under this section and shall destroy the sample, or return the sample to the person, after conducting the preliminary screening test. A law enforcement officer may not collect or retain a sample of a person's oral fluids under this section for any purpose other than a preliminary screening test.

SECTION 13m. 343.303 of the statutes is amended to read:

343.303 Preliminary ~~breath~~ screening test. If a law enforcement officer has probable cause to believe that the person is violating or has violated s. 346.63 (1) or (2m) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25 or s. 940.09 where the offense involved the use of a vehicle, or if the officer detects any presence of alcohol, a controlled substance, controlled substance analog or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe that the person is violating or has violated s. 346.63 (7) or a local ordinance in conformity therewith, the officer, prior to an arrest, may request the person to provide a sample of his or her breath or oral fluids, or both, for a preliminary ~~breath~~ screening test using a device approved by the department for this purpose. The result of this preliminary ~~breath~~ screening test may be used by the law enforcement officer for the purpose of deciding whether or not the person shall be arrested for a violation of s. 346.63 (1), (2m), (5) or (7) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6), 940.09 (1) or 940.25 and whether or

not to require or request chemical tests as authorized under s. 343.305 (3). The result of the preliminary ~~breath~~ screening test shall not be admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to prove that a chemical test was properly required or requested of a person under s. 343.305 (3). Following the screening test, additional tests may be required or requested of the driver under s. 343.305 (3). The general penalty provision under s. 939.61 (1) does not apply to a refusal to take a preliminary ~~breath~~ screening test. A law enforcement officer may collect and retain a sample of a person's oral fluids only to the extent necessary to perform a preliminary screening test under this section and shall destroy the sample, or return the sample to the person, after conducting the preliminary screening test. A law enforcement officer may not collect or retain a sample of a person's oral fluids under this section for any purpose other than a preliminary screening test.

SECTION 14m. 350.102 (title) of the statutes is amended to read:

350.102 (title) **Preliminary ~~breath~~ screening test.**

SECTION 15m. 350.102 (1) of the statutes is amended to read:

350.102 **(1)** REQUIREMENT. A person shall provide a sample of his or her breath or oral fluids, or both, for a preliminary ~~breath~~ screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated snowmobiling law and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

SECTION 16m. 350.102 (2) of the statutes is amended to read:

350.102 **(2)** USE OF TEST RESULTS. A law enforcement officer may use the results of a preliminary ~~breath~~ screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated snowmobiling law or for the purpose of deciding whether or not to request a chemical test under s. 350.104. Following the preliminary ~~breath~~ screening test, chemical tests may be required of the person under s. 350.104.

SECTION 17m. 350.102 (3) of the statutes is amended to read:

350.102 **(3)** ADMISSIBILITY. The result of a preliminary ~~breath~~ screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to show that a chemical test was properly required of a person under s. 350.104.

SECTION 17r. 350.102 (5) of the statutes is created to read:

350.102 **(5)** USE OF ORAL FLUIDS SAMPLE. A law enforcement officer may collect and retain a sample of a person's oral fluids only to the extent necessary to perform a preliminary screening test under this section and shall destroy the sample, or return the sample to the person, after conducting the preliminary screening test. A law enforcement officer may not collect or retain a sample of a person's oral fluids under this section for any purpose other than a preliminary screening test.