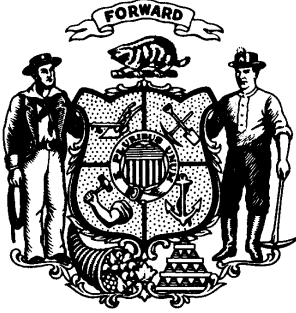


State of Wisconsin



2025 Assembly Bill 856

Date of enactment:
Date of publication*:

2025 WISCONSIN ACT

AN ACT *to repeal* 23.33 (4p) (a) 3., 23.335 (12) (f) 3., 30.684 (1) (c), 343.305 (3) (ar), 343.305 (3) (b) and 350.104 (1) (c); *to amend* 23.33 (4p) (a) 2. b., 23.33 (4p) (c) 1., 23.33 (4p) (e) 3., 23.33 (13) (b) 2., 23.33 (13) (b) 3., 23.335 (12) (f) 2. b., 23.335 (12) (h) 3., 23.335 (23) (c) 2., 23.335 (23) (c) 3., 30.684 (1) (b) 2., 30.684 (3) (a), 30.684 (5) (c), 30.80 (6) (a) 2., 30.80 (6) (a) 3., 30.80 (6) (a) 4., 30.80 (6) (a) 5., 343.305 (2), 343.305 (3) (a), 343.305 (4), 343.305 (5) (a), 343.305 (5) (b), 343.305 (6) (b) 3., 343.305 (8) (c) 1., 343.305 (9) (a) 1., 343.305 (9) (c), 350.104 (1) (b) 2., 350.104 (3) (a), 350.104 (5) (c), 350.11 (3) (a) 2. and 350.11 (3) (a) 3.; *to repeal and recreate* 343.305 (3) (title) of the statutes; **relating to:** repealing unconstitutional provisions related to operating while intoxicated.

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

SECTION 1. 23.33 (4p) (a) 2. b. of the statutes is amended to read:

23.33 (**4p**) (a) 2. b. That a refusal to provide a sample or to submit to a chemical test constitutes a violation under par. (e) and is subject to the same penalties and procedures as a violation of sub. (4c) (a) 1.

SECTION 2. 23.33 (4p) (a) 3. of the statutes is repealed.

SECTION 3. 23.33 (4p) (c) 1. of the statutes is amended to read:

23.33 (**4p**) (c) 1. 'Additional chemical test.' If a person is arrested for a violation of the intoxicated operation of an all-terrain vehicle or utility terrain vehicle law or is the operator of an all-terrain vehicle or utility terrain vehicle involved in an accident resulting in great bodily harm to or the death of someone and if the person is requested to provide a sample or to submit to a test under par. (a) 1., the person may request the test facility to administer the additional chemical test specified under par. (b) 3. or, at his or her own expense, reasonable op-

portunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis.

SECTION 4. 23.33 (4p) (e) 3. of the statutes is amended to read:

23.33 (**4p**) (e) 3. Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required under par. (a) 2. or whether the request and information was unnecessary under par. (a) 3.

SECTION 5. 23.33 (13) (b) 2. of the statutes is amended to read:

23.33 (**13**) (b) 2. Except as provided under subd. 3., a person who violates sub. (4c) (a) 1., 2., or 2m. or (~~4p~~) (~~e~~) and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated operation of an all-terrain vehicle or utility terrain vehicle law or the refusal law shall be fined not less than \$300 nor more than \$1,100 and shall be imprisoned not less than 5 days nor more than 6 months.

SECTION 6. 23.33 (13) (b) 3. of the statutes is amended to read:

* 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."

23.33 (13) (b) 3. A person who violates sub. (4c) (a) 1., 2., or 2m. ~~or (4p) (e)~~ and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated operation of an all-terrain vehicle or utility terrain vehicle law ~~or refusal law~~ shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

SECTION 6c. 23.335 (12) (f) 2. b. of the statutes is amended to read:

23.335 (12) (f) 2. b. That a refusal to provide a sample or to submit to a chemical test constitutes a violation under par. (h) and is subject to ~~the same penalties and procedures as a violation of par. (a)~~ a forfeiture under sub. (23) (c) 1.

SECTION 6g. 23.335 (12) (f) 3. of the statutes is repealed.

SECTION 6n. 23.335 (12) (h) 3. of the statutes is amended to read:

23.335 (12) (h) 3. Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required under par. (f) 2. ~~or whether the request and information was unnecessary under par. (f) 3.~~

SECTION 6r. 23.335 (23) (c) 2. of the statutes is amended to read:

23.335 (23) (c) 2. Except as provided under subs. 3. and 4., a person who violates sub. (12) (a) 1., 2., or 2m. ~~or (h)~~ and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated operation of an off-highway motorcycle law shall be fined not less than \$300 nor more than \$1,100 and shall be imprisoned not less than 5 days nor more than 6 months.

SECTION 6w. 23.335 (23) (c) 3. of the statutes is amended to read:

23.335 (23) (c) 3. Except as provided in subd. 4., a person who violates sub. (12) (a) 1., 2., or 2m. ~~or (h)~~ and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated operation of an off-highway motorcycle law shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

SECTION 7. 30.684 (1) (b) 2. of the statutes is amended to read:

30.684 (1) (b) 2. That a refusal to provide a sample or to submit to a chemical test constitutes a violation under sub. (5) and is subject to ~~the same penalties and procedures as a violation of s. 30.681 (1) (a);~~ and

SECTION 8. 30.684 (1) (c) of the statutes is repealed.

SECTION 9. 30.684 (3) (a) of the statutes is amended to read:

30.684 (3) (a) *Additional chemical test.* If a person is arrested for a violation of the intoxicated boating law ~~or is the operator of a motorboat involved in an accident resulting in great bodily harm to or the death of someone~~ and if the person is requested to provide a sample or to submit to a test under sub. (1) (a), the person may request the test facility to administer the additional chemical test specified under sub. (2) (c) or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis.

SECTION 10. 30.684 (5) (c) of the statutes is amended to read:

30.684 (5) (c) Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required under sub. (1) (b) ~~or whether the request and information was unnecessary under sub. (1) (e).~~

SECTION 11. 30.80 (6) (a) 2. of the statutes is amended to read:

30.80 (6) (a) 2. A person who violates s. 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) ~~or the refusal law~~ and who, within 5 years prior to the arrest for the current violation, was convicted one time previously under the intoxicated boating law or the refusal law shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned for not less than 5 days nor more than 6 months.

SECTION 12. 30.80 (6) (a) 3. of the statutes is amended to read:

30.80 (6) (a) 3. A person who violates s. 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) ~~or the refusal law~~ and who, within 5 years prior to the arrest for the current violation, was convicted 2 times previously under the intoxicated boating law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned for not less than 30 days nor more than one year in the county jail.

SECTION 13. 30.80 (6) (a) 4. of the statutes is amended to read:

30.80 (6) (a) 4. A person who violates s. 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) ~~or the refusal law~~ and who, within 5 years prior to the arrest for the current violation, was convicted 3 times previously under the intoxicated boating law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned for not less than 60 days nor more than one year in the county jail.

SECTION 14. 30.80 (6) (a) 5. of the statutes is amended to read:

30.80 (6) (a) 5. A person who violates s. 30.681 (1)

(a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) ~~or the refusal law~~ and who, within 5 years prior to the arrest for the current violation, was convicted 4 or more times previously under the intoxicated boating law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned for not less than 6 months nor more than one year in the county jail.

SECTION 15. 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 16. 343.305 (3) (title) of the statutes is repealed and recreated to read:

343.305 (3) (title) REQUEST FOR TESTS.

SECTION 17. 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 18. 343.305 (3) (ar) of the statutes is repealed.

SECTION 19. 343.305 (3) (b) of the statutes is repealed.

SECTION 20. 343.305 (4) of the statutes is amended to read:

343.305 (4) INFORMATION. At the time that a chem-

ical 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:

“You have either been arrested for an offense that involves driving or operating a motor vehicle ~~while under the influence of~~ after using alcohol or drugs, or both, ~~or you are the operator of a vehicle that was involved in an accident that caused the death of, great bodily harm to, or substantial bodily harm to a person;~~ or you are suspected of driving or being on duty time with respect to a commercial motor vehicle after ~~consuming an intoxicating beverage~~ using alcohol or drugs, or both.

This law enforcement agency now wants to test one or more samples of your breath, blood or urine to determine the concentration of alcohol or drugs in your system. If any test shows more alcohol in your system than the law permits while driving or a detectable amount of a restricted controlled substance, your operating privilege will be suspended. If you refuse ~~to take any test that this agency requests~~ any requested test, your operating privilege will be revoked and you will be subject to other penalties. The test results or the fact that you refused testing can be used against you in court.

If you take all the requested tests, you may also choose to take ~~further tests~~. ~~You may take~~ the alternative test that this law enforcement agency provides free of charge. You ~~also~~ may also have a test conducted by a qualified person of your choice at your expense. You, however, will have to make your own arrangements for that test.

If you have a commercial driver license or were operating a commercial motor vehicle, other consequences may result from positive test results or from refusing testing, such as being placed out of service or disqualified.”

SECTION 21. 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 22. 343.305 (5) (b) of the statutes is amended to read:

343.305 (5) (b) Blood may be withdrawn from the person arrested for violation of s. 346.63 (1), (2), (2m), (5), or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1), (2m), or (5), or as provided in sub. (3) (am) ~~or (b)~~ to determine the presence or quantity of alcohol, a controlled substance, a controlled substance analog, or any other drug, or any combination of alcohol, controlled substance, controlled substance analog, and any other drug in the blood only by a physician, registered nurse, medical technologist, physician assistant, phlebotomist, or other medical professional who is authorized to draw blood, or person acting under the direction of a physician.

SECTION 23. 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 24. 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 25. 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),² or (5) or a local ordinance in conformity therewith or s. 346.63 (2) or (6),

940.09 (1),² or 940.25 ~~or had requested the person to take a test under sub. (3) (ar)~~.

SECTION 26. 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.

SECTION 27. 350.104 (1) (b) 2. of the statutes is amended to read:

350.104 (1) (b) 2. That a refusal to provide a sample or to submit to a chemical test constitutes a violation under sub. (5) and is subject to ~~the same penalties and procedures as a violation of s. 350.101 (1) (a)~~.

SECTION 28. 350.104 (1) (c) of the statutes is repealed.

SECTION 29. 350.104 (3) (a) of the statutes is amended to read:

350.104 (3) (a) *Additional chemical test.* If a person is arrested for a violation of the intoxicated snowmobiling law ~~or is the operator of a snowmobile involved in an accident resulting in great bodily harm to or the death of someone~~ and if the person is requested to provide a sample or to submit to a test under sub. (1) (a), the person may request the test facility to administer the additional chemical test specified under sub. (2) (c) or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis.

SECTION 30. 350.104 (5) (c) of the statutes is amended to read:

350.104 (5) (c) Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required under sub. (1) (b) ~~or whether the request and information was unnecessary under sub. (1) (c)~~.

SECTION 31. 350.11 (3) (a) 2. of the statutes is amended to read:

350.11 (3) (a) 2. Except as provided under subd. 3., a person who violates s. 350.101 (1) (a), (b), or (bm) ~~or 350.104 (5)~~ and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated snowmobiling law or the refusal law shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

SECTION 32. 350.11 (3) (a) 3. of the statutes is amended to read:

350.11 (3) (a) 3. A person who violates s. 350.101 (1) (a), (b), or (bm) ~~or 350.104 (5)~~ and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxi-

cated snowmobiling law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.
