



## 2003 ASSEMBLY BILL 429

July 7, 2003 - Introduced by Representatives STASKUNAS, STONE, HAHN, HUBER, HUNDERTMARK, VUKMIR and BIES, cosponsored by Senator STEPP. Referred to Committee on Highway Safety.

1     **AN ACT** *to renumber and amend* 343.305 (9) (c); *to amend* 343.305 (9) (a)  
2           (intro.) and 343.305 (9) (am) (intro.); and *to create* 343.305 (9) (c) 1. and 2. of  
3           the statutes; **relating to:** the right to discovery in implied consent cases  
4           involving drunk driving.

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### *Analysis by the Legislative Reference Bureau*

Under current law, if a person is arrested for driving or operating a motor vehicle while under the influence of an intoxicant (OWI), a law enforcement officer may request the person to take a test to determine the amount of alcohol in his or her blood or breath. The law enforcement officer may request the test prior to arrest if a person is suspected of operating or driving a commercial motor vehicle while under the influence of an intoxicant.

If the person refuses to take the test, the officer takes possession of the person's driver's license and prepares a notice of intent to revoke the person's operating privilege. A copy of the notice goes to the person, to the circuit court, and to the district attorney. The notice informs the person of a number of items, including the right to request a court hearing to contest the revocation. The Wisconsin court of appeals, in *State v. Schoepp*, 204 Wis. 2d 266 (1996), held that a person who receives a notice of intent to revoke the person's operating privilege may utilize the full range of discovery procedures under state law before the hearing, including the use of depositions and interrogatories.

This bill prohibits either party's use of discovery in these cases, except that the court may allow the person who allegedly refused to take the test to inspect and test

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the device used to determine the presence of alcohol at the time of the alleged refusal if, within ten days after the alleged refusal, the person who allegedly refused to take the test requests and shows cause for an inspection. Written or voice recorded statements of any witness shall be given to the person who allegedly refused to take the test at the hearing, or, if the person who allegedly refused to take the test shows cause, may be produced before the hearing.

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

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

2           343.305 (9) (a) (intro.) If a person refuses to take a test under sub. (3) (a), the  
3 law enforcement officer shall immediately take possession of the person's license and  
4 prepare a notice of intent to revoke, by court order under sub. (10), the person's  
5 operating privilege. If the person was driving or operating a commercial motor  
6 vehicle, the officer shall issue an out-of-service order to the person for the 24 hours  
7 after the refusal and notify the department in the manner prescribed by the  
8 department. The officer shall issue a copy of the notice of intent to revoke the  
9 privilege to the person and submit or mail a copy with the person's license to the  
10 circuit court for the county in which the arrest under sub. (3) (a) was made. The  
11 officer shall also mail a copy of the notice of intent to revoke to the district attorney  
12 for that county and the department. Except as provided in par. (c), neither party is  
13 entitled to prehearing discovery. This limit on discovery does not affect either party's  
14 right to discovery under s. 971.23 related to any criminal prosecution. The notice of  
15 intent to revoke the person's operating privilege shall contain substantially all of the  
16 following information:

17           **SECTION 2.** 343.305 (9) (am) (intro.) of the statutes is amended to read:

18           343.305 (9) (am) (intro.) If a person driving or operating or on duty time with  
19 respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law

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1 enforcement officer shall immediately take possession of the person's license, issue  
2 an out-of-service order to the person for the 24 hours after the refusal and notify the  
3 department in the manner prescribed by the department, and prepare a notice of  
4 intent to revoke, by court order under sub. (10), the person's operating privilege. The  
5 officer shall issue a copy of the notice of intent to revoke the privilege to the person  
6 and submit or mail a copy with the person's license to the circuit court for the county  
7 in which the refusal is made. The officer shall also mail a copy of the notice of intent  
8 to revoke to the district attorney for that county and the department. Except as  
9 provided in par. (c), neither party is entitled to prehearing discovery. This limit on  
10 discovery does not affect either party's right to discovery under s. 971.23 related to  
11 any criminal prosecution. The notice of intent to revoke the person's operating  
12 privilege shall contain substantially all of the following information:

13 **SECTION 3.** 343.305 (9) (c) of the statutes is renumbered 343.305 (9) (c) (intro.)  
14 and amended to read:

15 343.305 (9) (c) (intro.) If a law enforcement officer informs the circuit court that  
16 a person has refused to submit to a test under sub. (3) (a) or (am), the court shall be  
17 prepared to hold any requested hearing to determine if the refusal was proper. The  
18 scope of the hearing shall be limited to the issues outlined in par. (a) 5. or (am) 5.  
19 Section 967.055 applies to any hearing under this subsection. Prehearing discovery  
20 may be made only under the following circumstances:

21 **SECTION 4.** 343.305 (9) (c) 1. and 2. of the statutes are created to read:

22 343.305 (9) (c) 1. If the person who allegedly refused to take the test under sub.  
23 (3) (a) or (am) moves within 10 days after the alleged refusal and shows cause  
24 therefor, the court may order that the defendant be allowed to inspect and test, under  
25 s. 804.09 and under such conditions as the court prescribes, any devices used by the

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1 law enforcement officer to determine whether a violation or refusal has been  
2 committed, including, without limitation, devices used to determine presence of  
3 alcohol in breath, blood, or urine, and to inspect under s. 804.09 the reports of experts  
4 relating to those devices.

5 2. At the hearing, before a witness testifies, written or voice recorded  
6 statements of the witness, if any, shall be given to the person who allegedly refused  
7 to take the test under sub. (3) (a) or (am). For cause, the court may order the  
8 production of those statements before the hearing.

9 **SECTION 5. Initial applicability.**

10 (1) This act first applies to violations committed or refusals occurring on the  
11 effective date of this subsection.

12 (END)