

## 1999 ASSEMBLY BILL 666

January 19, 2000 – Introduced by Representatives STONE, BRANDEMUEHL, RYBA, LADWIG, HAHN, HUNDERTMARK and VRAKAS, cosponsored by Senator HUELSMAN. Referred to Committee on Highway Safety.

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

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### *Analysis by the Legislative Reference Bureau*

Under current law, if a person arrested for driving or operating a motor vehicle while under the influence of an intoxicant (OWI) refuses to take a test to determine the amount of alcohol in his or her blood or breath, the law enforcement officer who requested the test takes possession of the person's license. The law enforcement officer then prepares a notice of intent to revoke the person's operating privilege and gives a copy of the notice 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, including the use of depositions and interrogatories.

This bill prohibits either party's use of discovery in these cases, except that at the hearing, before a witness testifies, the person who refuses to take the test has the right to receive a copy of any written or voice recorded statement of the witness. The

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bill allows the court, for cause, to order the production of those statements 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. Neither party is entitled to prehearing  
13 discovery, except that at the refusal hearing, before a witness testifies, written or  
14 voice recorded statements of the witness, if any, shall be given to the defendant. For  
15 cause, the court may order the production of those statements before the hearing.  
16 This limit on discovery does not affect either party's right to discovery under s. 971.23  
17 related to any criminal prosecution. The notice of intent to revoke the person's  
18 operating privilege shall contain substantially all of the following information:

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

20           343.305 **(9)** (am) (intro.) If a person driving or operating or on duty time with  
21 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. Neither party  
9 is entitled to prehearing discovery, except that at the refusal hearing, before a  
10 witness testifies, written or voice recorded statements of the witness, if any, shall be  
11 given to the defendant. For cause, the court may order the production of those  
12 statements before the hearing. This limit on discovery does not affect either party's  
13 right to discovery under s. 971.23 related to any criminal prosecution. The notice of  
14 intent to revoke the person's operating privilege shall contain substantially all of the  
15 following information:

**SECTION 3. Initial applicability.**

16 (1) This act first applies to violations committed on the effective date of this  
17 subsection.  
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19 (END)