

1999 DRAFTING REQUEST

Bill

Received: **04/5/99**

Received By: **nelsorpl**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Dyck**

This file may be shown to any legislator: NO

Drafter: **nelsorpl**

May Contact:

Alt. Drafters:

Subject: **Drunk Driving - procedures**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Discovery in implied consent hearings

Instructions:

See LRB-0598, ss 2748, 2749 and 9350 (6) of budget yank #205

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
I?	nelsorp 1 04/15/99	jgeller 04/15/99		_____			
/1			martykr 04/16/99	_____	lrb-docadmin 04/16/99	lrb-docadmin 05/17/99	

FE Sent For:

<END>

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/?	nelsorp 1	1/4/99 jug	1/4/99	Ch 4/15			

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<END>

D-Note
SOON

JLg

DOA:.....Statz - Discovery procedure in implied consent hearings

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

1999 BILL

gen cat.

the right to discovery in implied consent cases involving drunk driving

1 AN ACT...; relating to: ~~the budget.~~

Analysis by the Legislative Reference Bureau

TRANSPORTATION

DRIVERS AND MOTOR VEHICLES

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

bill allows the court, for cause, to order the production of those statements before the hearing.

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. (1o), 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

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 rehear or discover, 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:

Fix component
 Fix component

16 → SECTION [#] 9350. Initial applicability ^A transportation

17 → (1) ~~IMPLIED CONSENT HEARINGS DISCOVERY~~ The treatment of section 343.305(9)

18 ~~(a) (intro.) and (am) (intro.) of the statute~~ first applies to violations committed on
 19 the effective date of this subsection.

20 (END)

D-Note

Dyck - This draft corresponds to York # 205.

RPN

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2695/1dn
RPN:jlg&kg:km

April 15, 1999

Dyck -

This draft corresponds to Yank #205.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-75 11

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 4/16/99

To: Legislative Fiscal Bureau

Relating to LRB drafting number: LRB-2695

Topic

Discovery in implied consent hearings

285

Subject(s)

Drunk Driving - procedures

OK OK

1. **JACKET** the draft for introduction _____
in the Senate _____ or the Assembly (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney
Telephone: (608) 267-75 11