

**1999 DRAFTING REQUEST**

**Bill**

Received: **10/19/98**

Received By: **nelsorp1**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Statz**

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Alt. Drafters:

Subject: **Drunk Driving - procedures**

Extra Copies:

**Topic:**

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

**Instructions:**

See Attached

**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>
/1	nelsorp1 10/19/98	gilfokm 10/20/98	martykr 10/22/98	_____	lrb_docadmin 10/22/98		
/2	nelsorp1 10/28/98	gilfokm 10/29/98	martykr 10/30/98	_____	lrb_docadmin 10/30/98		

FE Sent For:

<END>

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/1	nelsorp1 10/19/98	gilfokm 10/20/98	martykr 10/22/98	_____	lrb_docadmin 10/22/98		

FE Sent For:

*km 10/29*  
*HH 10/30*  
 km 30  
 <END>

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1?	nelsorp1	1-10-20 King	km 10/21	<u>qs</u> <u>km</u>	10/21		

FE Sent For:

<END>

STAT. LANG.

# W D A A

SCOTT HORNE, PRESIDENT  
333 VINE STREET-ROOM 100  
LA CROSSE, WI 54601-3200

STAT 2

## WISCONSIN DISTRICT ATTORNEYS ASSOCIATION

*Paul E. Bucher, Vice President*  
*Gery J. Schuster, Secretary-Treasurer*  
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*Mary E. Burke*  
*Amy K. Fuelleman*  
*Suzanne Morse*

October 2, 1998

Governor Tommy Thompson  
State Capitol, Room 115 East  
PO Box 7863  
Madison WI 53703

RE: Discovery Procedures in Implied Consent Hearings

Dear Governor Thompson:

On behalf of the Executive Board of the Wisconsin District Attorney's Association, I am requesting that your next budget include a provision which would restrict discovery in implied consent hearings. This proposal has received the unanimous support of the Board and has a substantial fiscal impact on prosecutors throughout the state.

Our proposal is a response to State v. Schoepp, 204 Wis.2d 266, 554 N.W.2d 236 (Ct. App., 1996). Under current law, if a person arrested for driving a motor vehicle while under the influence of an intoxicant (OWI) refused 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 (an "implied consent hearing") to contest the license revocation. In State v. Schoepp, *supra*, the court of appeals 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 contained under Chapter 804, including the use of depositions and interrogatories prior to the hearing.

CHRIS HANEWICZ, EXECUTIVE DIRECTOR

P.O. Box 1702

MADISON, WI 53701

(608) 527-5960

Governor Tommy Thompson  
Page 2  
October 2, 1998

This court opinion has the potential to have a major fiscal impact on offices throughout the state and upon the Attorney General's Office. In some instances, city attorneys have refused to represent officers at deposition hearings. As a result, the District Attorney's Office is forced to attend the depositions. In one particular case, three separate police officers have been deposed. With respect to the Attorney General's Office, they may be required to represent the State Patrol, as well as other state law enforcement agencies in any deposition arising out of an implied consent hearing.

As you know, the State of Wisconsin has taken a very aggressive approach to the drunken driving laws. However, this court opinion, in conjunction with the personnel shortage problems experienced throughout the state, will provide a substantial disincentive for the vigorous prosecution of violations of the implied consent law.

Our proposal would limit either party's right to discovery, except that at the hearing, before a witness testifies, a person who refused to take the test has the right to receive a copy of any written or recorded statement of the witness. Under certain circumstances, the bill would also allow the court to order the production of those statements prior to the hearing. Specifically, our proposal would be to amend sections 343.305(9)(a) and 343.305(9)(am):

343.305(9)(a)(intro.) If a person refuses to take a test under sub. (3)(a), the law enforcement officer shall immediately take possession of the person's license and prepare a notice of intent to revoke, by court order under sub. (10), the person's operating privilege. If the person was driving or operating a commercial motor vehicle, the officer shall issue an out-of-service order to the person for the 24 hours after the refusal and notify the department in the manner prescribed by the department. The officer shall issue a copy of the notice of intent to revoke the privilege to the person and submit or mail a copy with the person's license to the circuit court for the county in which the refusal is made. The officers shall also mail a copy of the notice of intent to revoke to the district attorney for that county and the department. Neither party is entitled to prehearing discovery, except that at the refusal hearing, before a witness testifies, written or voice recorded statements of the witness, if any, shall be given to the defendant. This limit on discovery does not affect either parties right to discovery under s. 971.23 related to any criminal prosecution. The notice of intent to revoke the person's operating privilege shall contain substantially all of the following information:

343.305(9)(am)(intro.) If a person driving or operating or on duty time with respect to a commercial motor vehicle refuses a test under sub. (3)(am), the law enforcement officer shall immediately take possession of the person's license, issue an out-of-service order to


Governor Tommy Thompson  
Page 3  
October 2, 1998

the person for the 24 hours after the refusal and notify the department in the manner prescribed by the department, and prepare a notice of intent to revoke, by court order under sub. (10), the person's operating privilege. The officers shall issue a copy of the notice of intent to revoke the privilege to the person and submit or mail a copy with the person's license to the circuit court for the county in which the refusal is made. The officer shall also mail a copy of the notice of intent to revoke to the district attorney for that county and the department. Neither party is entitled to prehearing discovery, except that at the refusal hearing, before a witness testifies, written or voice recorded statements of the witness, if any, shall be given to the defendant. For cause, the court may order the production of those statements before the hearing. This limit on discovery does not affect either party's right to discovery under s. 971.23 related to any criminal prosecution. The notice of intent to revoke the person's operating privilege shall contain substantially all of the following information:

The proposal is patterned after section 343.421 which restricts discovery in actions for violations of other statutory traffic regulations.

Thank you for your continued support for the district attorneys offices throughout Wisconsin and your consideration of this request.

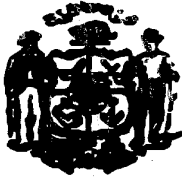
Very truly yours,



Scott L. Horne  
District Attorney for La Crosse County  
President of the Executive Board of the  
Wisconsin District Attorney's Association

SLH/kw

c: Mark Bugher, Department of Administration  
Stuart Morse, State Prosecutor's Office



State of Wisconsin  
1997 - 1998 LEGISLATURE

LRB-2696/1  
RPN:mfd:hmb

1997 BILL

1 **AN ACT to amend 343.305 (9) (a) (intro.) and 343.305 (9) (am) (intro.); and to**  
2 **create 343.305 (9) (a) 4m. and 343.305 (9) (am) 4m. of the statutes; relating**  
3 **to: limiting discovery in certain cases involving refusal to submit to alcohol**  
4 **testing.**

***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 limits either party's right to discovery, 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 to order the production of those statements before the hearing. Under the bill, the notice of intent to revoke the person's operating privilege must inform the person that neither party has a right to discovery related to the refusal

1997 - 1998 Legislature

- 2 -

LRB-2696/1.  
RPN:mfd:hmb**BILL**

hearing other than the person's right to receive a copy of any witness' written or voice recorded statement before the witness testifies at the hearing.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*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 refusal is made. The officer shall also mail**  
11 **a copy of the notice of intent to revoke to the district attorney for that county and the**  
12 **department. Neither party is entitled to prehearing discovery except that at the**  
13 **refusal hearing, before a witness testifies, written or voice recorded statements of the**  
14 **witness, if any, shall be given to the defendant. For cause, the court may order the**  
15 **production of those statements before the hearing. This limit on discovery does not**  
16 **affect either party's right to discovery under s. 771.23 related to any criminal**  
17 **prosecution. The notice of intent to revoke the person's operating privilege shall**  
18 **contain substantially all of the following information:**

**SECTION 2. 343.305 (9) (a) 4m. of the statutes is created to read:**



1997 - 1998 Legislature

- 3 -

LRB-2096-1  
RPN:mfd:hmb  
SECTION 2**BILL**

1           343.305 (9) (a) 4m. That neither party has a right to prehearing discovery  
2 related to the refusal hearing, except that at the hearing, before a witness testifies,  
3 the person has the right to receive a copy of any written or voice recorded statement  
4 of the witness.

5           **SECTION 3.** 343.305 (9) (am) (intro.) of the statutes is amended to read:

6           343.305 (9) (am) (intro.) If a person driving or operating or on duty time with  
7 respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law  
8 enforcement officer shall immediately take possession of the person's license, issue  
9 an out-of-service order to the person for the 24 hours after the refusal and notify the  
10 department in the manner prescribed by the department, and prepare a notice of  
11 intent to revoke, by court order under sub. (10), the person's operating privilege. The  
12 officer shall issue a copy of the notice of intent to revoke the privilege to the person  
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14 in which the refusal is made. The officer shall also mail a copy of the notice of intent  
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19 statements before the hearing. This limit on discovery does not affect either party's  
20 right to discovery under s. 971.23 related to any criminal prosecution. The notice of  
21 intent to revoke the person's operating privilege shall contain substantially all of the  
22 following information:

23           **SECTION 4.** 343.305 (9) (am) 4m. of the statutes is created to read:

24           343.305 (9) (am) 4m. That neither party has a right to prehearing disc  
25 related to the refusal hearing, except that at the hearing, before a witness tes

1997 - 1998 Legislature

- 4 -

LRB-2696/1  
RPN:mfd:hmh  
SECTION 4

**BILL**

1 the person has the right to receive a copy of any written or voice recorded statement  
2 of the witness.

3 **SECTION 5. Initial applicability.**

4 (1) This act first applies to violations committed on the effective date of this  
5 subsection.

6 (END)



9007  
State of Wisconsin  
1999 - 2000 LEGISLATURE  
D-Note

LRB-0598/1

RPN...  
Kg

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

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT <sup>Don't Gen Cat</sup>; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

✓  
TRANSPORTATION

DRIVERS AND MOTOR VEHICLES

Insert an L →

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 3 privilege to the person and submit or mail a copy with the person's license to the  
 4 circuit court for the county in which the arrest under sub. (3) (a) was made. The  
 5 officer shall also mail a copy of the notice of intent to revoke to the district attorney  
 6 for that county and the department. <sup>(insert 2-5) ✓</sup> The notice of intent to revoke the person's  
 operating privilege shall contain substantially all of the following information:

↓  
 insert  
 2-7

History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290.

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 17 in which the refusal is made. The officer shall also mail a copy of the notice of intent  
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 19 intent to revoke the person's operating privilege shall contain substantially all of the  
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21 (END)

*P-Note*

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

LRB-0598/1dn

RPN...  
Kg

The request included a copy of LRB-2696 from the 1997-98 session. The language in the letter accompanying the request from the district attorney association did not include all of the specific language in LRB-2696. I was not sure if I should follow the letter's language or the draft's language. Since the draft includes everything, I used that as the base document. The differences between the letter and the draft, which are included in this draft, are as follows:

1. In s. 343.305 (9) (a) (intro.), the letter left out the sentence added in the middle of the new language that reads: "For cause, the court may order the production of those statements before the hearing." That same sentence was left in the new language added to s. 343.305 (9) (am) (intro.), which makes me think the association wanted to include that language in both places.

2. The letter does not include the created language in s. 343.305 (9) (a) 4m. and (am) 4m., which requires that the notice of intent to revoke the person's operating privilege include language telling the party that neither party has the right to prehearing discovery.

Robert P. Nelson  
Senior Legislative Attorney  
267-7511



1997 BILL

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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 ~~limits~~ either party's right to discovery, 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 to order the production of those statements before the hearing. Under the bill, the notice of intent to revoke the person's operating privilege must inform the person that neither party has a right to discovery related to the refusal

prohib. ts  
insert  
and.

, for cause,

**BILL**

Insert  
and.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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✓ -  
Insert  
2-5

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✓  
Insert  
2-7

**BILL**

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 25 related to the refusal hearing, except that at the hearing, before a witness testifies,

Insert  
2-9 ✓

Insert  
2-18

Insert  
2-20



**BILL**

**SECTION 4**

4m.

1 the person has the right to receive a copy of any written or voice recorded statement  
2 of the witness.

and (am) (intro.) and 4m. of the statute

14/10/97  
2:20

3 <sup>9350</sup> SECTION ~~B.~~ Initial applicability <sup>transportation</sup>  
4 ~~This act~~ <sup>The treatment of section 343.305 (9)(a) (intro.) and 4m.</sup> first applies to violations committed on the effective date of this  
5 subsection.

6 (END)

CS Implied consent hearings discovery.

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

LRB-0598/1dn  
RPN:kg:km

October 21, 1998

The request included a copy of LRB-2696 from the 1997-98 session. The language in the letter accompanying the request from the district attorney association did not include all of the specific language in LRB-2696. I was not sure if I should follow the letter's language or the draft's language. Since the draft includes everything, I used that as the base document. The differences between the letter and the draft, which are included in this draft, are as follows:

1. In s. 343.305 (9) (a) (intro.), the letter left out the sentence added in the middle of the new language that reads: "For cause, the court may order the production of those statements before the hearing." That same sentence was left in the new language added to s. 343.305 (9) (am) (intro.), which makes me think the association wanted to include that language in both places.
2. The letter does not include the created language in s. 343.305 (9) (a) 4m. and (am) 4m., which requires that the notice of intent to revoke the person's operating privilege include language telling the party that neither party has the right to prehearing discovery.

Robert P. Nelson  
Senior Legislative Attorney  
267-7511

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

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

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. Under the bill, the notice of intent to revoke the person's operating privilege must inform the person that neither party has a right to discovery related to the

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

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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) (a) 4m. of the statutes is created to read:~~

20           ~~343.305 (9) (a) 4m. That neither party has a right to prehearing discovery~~  
21 ~~related to the refusal hearing, except that at the hearing, before a witness testifies,~~

1 ~~the person has the right to receive a copy of any written or voice recorded statement~~  
2 ~~of the witness.~~

3 SECTION 3. 343.305 (9) (am) (intro.) of the statutes is amended to read:

4 343.305 (9) (am) (intro.) If a person driving or operating or on duty time with  
5 respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law  
6 enforcement officer shall immediately take possession of the person's license, issue  
7 an out-of-service order to the person for the 24 hours after the refusal and notify the  
8 department in the manner prescribed by the department, and prepare a notice of  
9 intent to revoke, by court order under sub. (10), the person's operating privilege. The  
10 officer shall issue a copy of the notice of intent to revoke the privilege to the person  
11 and submit or mail a copy with the person's license to the circuit court for the county  
12 in which the refusal is made. The officer shall also mail a copy of the notice of intent  
13 to revoke to the district attorney for that county and the department. Neither party  
14 is entitled to prehearing discovery, except that at the refusal hearing, before a  
15 witness testifies, written or voice recorded statements of the witness, if any, shall be  
16 given to the defendant. For cause, the court may order the production of those  
17 statements before the hearing. This limit on discovery does not affect either party's  
18 right to discovery under s. 971.23 related to any criminal prosecution. The notice of  
19 intent to revoke the person's operating privilege shall contain substantially all of the  
20 following information:

21 ~~SECTION 4. 343.305 (9) (am) 4m. of the statutes is created to read:~~

22 ~~343.305 (9) (am) 4m. That neither party has a right to prehearing discovery~~  
23 ~~related to the refusal hearing, except that at the hearing, before a witness testifies,~~  
24 ~~the person has the right to receive a copy of any written or voice recorded statement~~  
25 ~~of the witness.~~





5004  
State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0598/1  
RPN:kg:km

3

D-Note

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

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT <sup>Don't  
Sen. Act.</sup> 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. Under the bill, the notice of intent to revoke the person's operating privilege must inform the person that neither party has a right to discovery related to the

refusal hearing other than the person's right to receive a copy of any witness' written or voice recorded statement before the witness testifies at 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) (a) 4m. of the statutes is created to read:

20           343.305 (9) (a) 4m. That neither party has a right to prehearing discovery  
21 related to the refusal hearing, except that at the hearing, before a witness testifies,



1 the person has the right to receive a copy of any written or voice recorded statement  
2 of the witness.

3 **SECTION 3.** 343.305 (9) (am) (intro.) of the statutes is amended to read:

4 343.305 (9) (am) (intro.) If a person driving or operating or on duty time with  
5 respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law  
6 enforcement officer shall immediately take possession of the person's license, issue  
7 an out-of-service order to the person for the 24 hours after the refusal and notify the  
8 department in the manner prescribed by the department, and prepare a notice of  
9 intent to revoke, by court order under sub. (10), the person's operating privilege. The  
10 officer shall issue a copy of the notice of intent to revoke the privilege to the person  
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16 given to the defendant. For cause, the court may order the production of those  
17 statements before the hearing. This limit on discovery does not affect either party's  
18 right to discovery under s. 971.23 related to any criminal prosecution. The notice of  
19 intent to revoke the person's operating privilege shall contain substantially all of the  
20 following information:

21 **SECTION 4.** 343.305 (9) (am) 4m. of the statutes is created to read:

22 343.305 (9) (am) 4m. That neither party has a right to prehearing discovery  
23 related to the refusal hearing, except that at the hearing, before a witness testifies,  
24 the person has the right to receive a copy of any written or voice recorded statement  
25 of the witness.



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

LRB-0598/2dn  
RPN:kg:km

October 29, 1998

This draft removes the changes in the notice, as requested.

Robert P. Nelson  
Senior Legislative Attorney  
267-7511



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0598/2  
RPN:kg:km

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

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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

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*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. (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

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:

16 **SECTION 9350. Initial applicability; transportation.**

17 (1) IMPLIED CONSENT HEARINGS DISCOVER. The treatment of section 343.305 (9)  
18 (a) (intro.) and (am) (intro.) of the statutes first applies to violations committed on  
19 the effective date of this subsection.

20 (END)