

2001 ASSEMBLY BILL 216

March 15, 2001 – Introduced by Representatives STONE, VRAKAS, HUNDERTMARK, OTT, BIES, MCCORMICK, LA FAVE, DUFF, STARZYK and TOWNSEND, cosponsored by Senators HUELSMAN, DARLING and ROSENZWEIG. 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.

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 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.

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 person who
15 refused to take the test under sub. (3) (a). For cause, the court may order the
16 production of those statements before the hearing. This limit on discovery does not
17 affect either party's right to discovery under s. 971.23 related to any criminal
18 prosecution. The notice of intent to revoke the person's operating privilege shall
19 contain substantially all of the following information:

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

