

2001 DRAFTING REQUEST

Bill

Received: 11/22/2000

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Jeff Stone (608) 266-8590

By/Representing: tami rongstad

This file may be shown to any legislator: NO

Drafter: phurley

May Contact:

Alt. Drafters:

Subject: Drunk Driving - refusals

Extra Copies: TNF

Pre Topic:

No specific pre topic given

Topic:

Eliminate discovery in improper refusal revocation hearings

Instructions:

redraft AB 666

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>
/?	phurley 12/04/2000	jdye 12/05/2000		_____			
/1			martykr 12/05/2000	_____	lrb_docadmin 12/05/2000	lrb_docadmin 02/21/2001	

FE Sent For:

<END>

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1/?	phurley	11/12/5 JLD	JLD 12/0	Kb 12/5 JMS			

FE Sent For:

<END>

RPN?

Bill Request Form

Legislative Reference Bureau
100 N. Hamilton Street
Legal Section 266-3561

*Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.
Use this form only for bill draft requests. Attach more pages if necessary.*

Date 11-21-00

Legislator, agency, or other person requesting this draft Rep. Jeff Stone

Person submitting request (name and phone number) Tami Rongstad 6-8591

Persons to contact for questions about this draft (names and phone numbers) _____

Describe the problem, including any helpful examples. How do you want to solve the problem?

Eliminate the use of discovery in implied consent revocation hearings

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

* You may attach a marked-up copy of any LRB draft or provide its number (e.g., 1999 LRB-2345/1 or 1997 AB-67). Draft as 1999's AB 666 as passed by the assembly.

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

If yes: Anyone who asks? YES NO
 Any legislator? YES NO

Only the following persons _____

Do you consider this request urgent? YES NO If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person?
YES NO

ASSEMBLY BILL 666 (LRB-2695)

An Act to amend 343.305 (9) (a) (intro.) and 343.305 (9) (am) (intro.) of the statutes; relating to: the right to discovery in implied consent cases involving drunk driving.

2000

01-19. A. Introduced by Representatives Stone, Brandemuehl, Ryba, Ladwig, Hahn, Hundertmark and Vrakas; cosponsored by Senator Huelsman.

01-19. A. Read first time and referred to committee on Highway Safety

593

02-16. A. Public hearing held .

03-01. A. Executive action taken .

03-02. A. Report passage recommended by committee on Highway Safety, Ayes 6, Noes 1

693

03-02. A. Referred to committee on Rules

693

03-21. A. Placed on calendar 3-23-2000 by committee on Rules .

03-23. A. Read a second time

815

03-23. A. Ordered to a third reading

815

03-23. A. Rules suspended

815

03-23. A. Read a third time and passed

815

03-23. A. Ordered immediately messaged

816

03-24. S. Received from Assembly

526

03-24. S. Read first time and referred to committee on Judiciary and Consumer Affairs

527

04-06. S. Failed to concur in pursuant to Senate Joint Resolution 1

583

2001 BILL

1999 ASSEMBLY BILL 666

D-note

12-4-00

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

Regen

- 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 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

Insert 1

goes

before the hearing

ASSEMBLY BILL 666

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:

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

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 arrest under sub. (3) (a) was 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:

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

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

RWF

person who refused to take the test under sub (3)(a)

ASSEMBLY BILL 666

PWF

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
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 5 officer shall issue a copy of the notice of intent to revoke the privilege to the person
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 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.
 18

(END)

Person
 who
 refused to
 take the
 test
 under
 sub. (3)(a)
 16

✓ or refusals occurring

19

Insert #1:

¶ 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 person~~ The law enforcement officer may request the test prior to arrest if a person is suspected ~~to be~~^{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 ~~NO~~
¶

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

LRB-1184/1dn

FJII.....

56

Tami Rongstad:

Please review this draft carefully to ensure that it is consistent with your intent.

As we discussed in our conversation on November 30, 2000, I have redrafted the bill as it passed the Assembly. However, you may want to consider setting a time limit within which a defendant must request the production of witness statements. See s. 345.421 for an example.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1184/1dn
FJH,jld:km

December 5, 2000

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STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

December 5, 2000

MEMORANDUM

To: Representative Stone

From: Peggy J. Hurley, Legislative Attorney

Re: LRB-1184 Eliminate discovery in improper refusal revocation hearings

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-8906 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.