2001 ASSEMBLY BILL 487

August 31, 2001 – Introduced by Representatives Gundrum, Friske, Bies, Krawczyk, Ott, McCormick, Albers, Duff, Ladwig, Townsend, Grothman and Stone, cosponsored by Senators Kanavas and Huelsman. Referred to Committee on Judiciary.

- 1 AN ACT to renumber and amend 125.14 (6); and to create 125.14 (6) (title) and
- 2 125.14 (6) (b) of the statutes; **relating to:** pretrial discovery in prosecutions for alcohol beverage violations.

Analysis by the Legislative Reference Bureau

Under current law, a person who violates the state's alcohol beverage laws, including underage drinking prohibitions, may be prosecuted and, if convicted, may be subject to penalties including forfeiture, fine, or imprisonment. A violation that results in a fine or imprisonment is a criminal offense, while a violation that results in a forfeiture generally is not. If a violation is punishable as a criminal offense, the proceeding is governed by the rules of criminal procedure, including criminal rules of pretrial discovery. In contrast to the rules of civil procedure, the rules of criminal procedure do not permit discovery depositions, interrogatories, requests for admissions, or extensive requests for production of documents.

Current law also prohibits civil pretrial discovery in prosecutions for traffic violations that result in forfeitures.

In *State v. Phillips*, case no. 00–3541–LV (Ct.App., Dist. II, January 17, 2001) (unpublished), the court of appeals concluded that, in a prosecution for violations relating to underage drinking that would result in forfeitures, the proceeding was civil in nature and the rules of civil procedure pertaining to pretrial discovery must be applied. The defendant could therefore compel the taking of discovery depositions.

This bill prohibits pretrial discovery under the rules of civil procedure in any prosecution for a violation of the alcohol beverage laws that may result in the

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imposition of a forfeiture. In a forfeiture proceeding, pretrial discovery may only be conducted to the extent it would be available under the rules of criminal procedure if the matter were a criminal proceeding. Thus, in a prosecution for a violation of the alcohol beverage laws that may result in the imposition of a forfeiture, no party may conduct a discovery deposition or serve written interrogatories.

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:

Section 1. 125.14 (6) (title) of the statutes is created to read:

2 125.14 **(6)** (title) Procedure.

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3 **Section 2.** 125.14 (6) of the statutes is renumbered 125.14 (6) (a).

SECTION 3. 125.14 (6) (b) of the statutes is created to read:

125.14 **(6)** (b) *Discovery.* In a prosecution for a violation of this chapter that may result in the imposition of a forfeiture, a party may not conduct pretrial discovery under ch. 804 but may conduct pretrial discovery of the same materials and information, and in the same manner, set forth in s. 971.23 as if the matter were a criminal proceeding.

10 (END)