

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
3 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 II, January 17, 2001) (unpublished), the court of appeals concluded that, in a prosecution for violations relating to underage drinking that would result in forfeitures, the proceeding was civil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

