

2001 DRAFTING REQUEST

Bill

Received: 02/28/2001

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Joanne Huelsman (608) 266-2635

By/Representing:

This file may be shown to any legislator: NO

Drafter: phurley

May Contact:

Alt. Drafters:

Subject: Drunk Driving - procedures

Extra Copies: TNF, ARG

Pre Topic:

No specific pre topic given

Topic:

Discovery

Instructions:

Draft identical to 01-1184

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 03/05/2001	jdye 03/05/2001		_____			
/1			jfrantze 03/05/2001	_____	lrb_docadmin 03/05/2001	lrb_docadmin 03/14/2001	

FE Sent For:

<END>

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1?	phurley	1 3/5 jld	3/5	Self 3/5			

FE Sent For:

<END>

2678/1
stays

2001 BILL

D-note

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 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

BILL

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:

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

2678
LRB-1184/1dn
PJH/ld/km

December 5, 2000. 3 new
date

Senator Huelsman:

Tami Rongstad

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

no new P

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-2678/1dn
PJH:jld:jf

March 5, 2001

Senator Huelsman:

Please review this draft carefully to ensure that it is consistent with your intent. 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
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Phone: (608) 266-8906
E-mail: peggy.hurley@legis.state.wi.us



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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

STEPHEN R. MILLER
CHIEF

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

March 5, 2001

MEMORANDUM

To: Senator Huelsman

From: Peggy J. Hurley, Legislative Attorney

Re: LRB-2678 Discovery

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.