

2005 ASSEMBLY BILL 1023

February 14, 2006 – Introduced by Representatives GUNDRUM, ZIEGELBAUER and MURSAU, cosponsored by Senator ROESSLER. Referred to Committee on Judiciary.

1 **AN ACT** *to renumber* 125.14 (6); *to amend* 343.305 (9) (a) (intro.) and 343.305
2 (9) (am) (intro.); and *to create* 125.14 (6) (title) and 125.14 (6) (b) of the statutes;
3 **relating to:** discovery in implied consent cases involving drunken driving and
4 in certain prosecutions for alcohol beverage violations.

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 law enforcement 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 the court may allow the person who allegedly refused to take the test to inspect

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documents, including lists of names and addresses of witnesses, and to test any devices used by the plaintiff to determine whether a violation has been committed.

Also 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 *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.

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 imposition of a forfeiture, except that the court may allow the defendant to inspect documents, including lists of names and addresses of witnesses, and to test any devices used by the plaintiff to determine whether a violation has been committed.

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:

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

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

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

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

5 125.14 **(6)** (b) *Discovery*. In a prosecution for a violation of this chapter that may
6 result in the imposition of a forfeiture, neither party is entitled to pretrial discovery
7 in any refusal hearing, except that, if the defendant moves within 30 days after the
8 initial appearance in person or by an attorney and shows cause therefor, the court
9 may order that the defendant be allowed to inspect documents, including lists of
10 names and addresses of witnesses, if available, and to test under s. 804.09, under

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1 such conditions as the court prescribes, any devices used by the plaintiff to determine
2 whether a violation has been committed.

3 **SECTION 4.** 343.305 (9) (a) (intro.) of the statutes is amended to read:

4 343.305 (9) (a) (intro.) If a person refuses to take a test under sub. (3) (a), the
5 law enforcement officer shall immediately take possession of the person's license and
6 prepare a notice of intent to revoke, by court order under sub. (10), the person's
7 operating privilege. If the person was driving or operating a commercial motor
8 vehicle, the officer shall issue an out-of-service order to the person for the 24 hours
9 after the refusal and notify the department in the manner prescribed by the
10 department. The officer shall issue a copy of the notice of intent to revoke the
11 privilege to the person and submit or mail a copy with the person's license to the
12 circuit court for the county in which the arrest under sub. (3) (a) was made or to the
13 municipal court in the municipality in which the arrest was made if the arrest was
14 for a violation of a municipal ordinance under sub. (3) (a) and the municipality has
15 a municipal court. The officer shall also mail a copy of the notice of intent to revoke
16 to the attorney for that municipality or to the district attorney for that county, as
17 appropriate, and to the department. Neither party is entitled to pretrial discovery
18 in any refusal hearing, except that, if the defendant moves within 30 days after the
19 initial appearance in person or by an attorney and shows cause therefor, the court
20 may order that the defendant be allowed to inspect documents, including lists of
21 names and addresses of witnesses, if available, and to test under s. 804.09, under
22 such conditions as the court prescribes, any devices used by the plaintiff to determine
23 whether a violation has been committed. The notice of intent to revoke the person's
24 operating privilege shall contain substantially all of the following information:

25 **SECTION 5.** 343.305 (9) (am) (intro.) of the statutes is amended to read:

