

2005 DRAFTING REQUEST

Bill

Received: **11/30/2005**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Carol Roessler (608) 266-5300**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Beverages**
Drunk Driving - refusals/testing

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **Sen.Roessler@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Discovery in refusal cases and underage drinking cases

Instructions:

See Attached

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 11/30/2005	jdyer 12/01/2005		_____			S&L
/P1			pgreensl 12/01/2005	_____	lnorthro 12/01/2005		S&L
/1	phurley 01/12/2006	wjackson 02/10/2006	jfrantze 02/10/2006	_____	sbasford 02/10/2006	lnorthro 02/10/2006	

FE Sent For:

<END>

↳ At
Intro.

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/1	phurley 01/12/2006	wjackson 02/10/2006	jfrantze 02/10/2006	_____	sbasford 02/10/2006		

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/?	phurley 11/30/2005	jdyer 12/01/2005		_____			S&L
/P1		1 wj 2/10	pgreensl 12/01/2005	_____	lnorthro 12/01/2005		

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[Handwritten signature]
2/10
<END>

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/?	phurley	PI 12/1 JLD	of pg	12/1 1/1 PS JLD			

FE Sent For:

<END>

4160/P1

AM

JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

11:30
soon

Gen

1 AN ACT ...; relating to: discovery in implied consent cases involving drunken
2 driving and in certain prosecutions for alcohol beverage violations.

Analysis by the Legislative Reference Bureau

✓ **INSERT A**, 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.

✓ **INSERT B**, 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:

3
4
5
6

✓ **INSERT C** →

SECTION 1. 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, neither party is entitled to pretrial discovery

1 in any refusal hearing, except that, if the defendant moves within 30 days after the
2 initial appearance in person or by an attorney and shows cause therefor, the court
3 may order that the defendant be allowed to inspect documents, including lists of
4 names and addresses of witnesses, if available, and to test under s. 804.09, under
5 such conditions as the court prescribes, any devices used by the plaintiff to determine
6 whether a violation has been committed.

7 **SECTION 2.** 343.305 (9) (a) (intro.) of the statutes is amended to read:

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

1 such conditions as the court prescribes, any devices used by the plaintiff to determine
2 whether a violation has been committed. The notice of intent to revoke the person's
3 operating privilege shall contain substantially all of the following information:

History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3425i, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199.

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

5 343.305 (9) (am) (intro.) If a person driving or operating or on duty time with
6 respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law
7 enforcement officer shall immediately take possession of the person's license, issue
8 an out-of-service order to the person for the 24 hours after the refusal and notify the
9 department in the manner prescribed by the department, and prepare a notice of
10 intent to revoke, by court order under sub. (10), the person's operating privilege. The
11 officer shall issue a copy of the notice of intent to revoke the privilege to the person
12 and submit or mail a copy with the person's license to the circuit court for the county
13 in which the refusal is made or to the municipal court in the municipality in which
14 the refusal is made if the person's refusal was in violation of a municipal ordinance
15 and the municipality has a municipal court. The officer shall also mail a copy of the
16 notice of intent to revoke to the attorney for that municipality or to the district
17 attorney for that county, as appropriate, and to the department. Neither party is
18 entitled to pretrial discovery in any refusal hearing, except that ² if the defendant
19 moves within 30 days after the initial appearance in person or by an attorney and
20 shows cause therefor, the court may order that the defendant be allowed to inspect
21 documents, including lists of names and addresses of witnesses, if available, and to
22 test under s. 804.09, under such conditions as the court prescribes, any devices used
23 by the plaintiff to determine whether a violation has been committed. The notice of

1 intent to revoke the person's operating privilege shall contain substantially all of the
2 following information:

History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199.

3 **SECTION 4. Initial applicability.**

4 (1) This act first applies to violations committed or refusals occurring on the
5 effective date of this subsection. ✓

6 (END)

2003 ASSEMBLY BILL 429

July 7, 2003 - Introduced by Representatives STASKUNAS, STONE, HAHN, HUBER, HUNDERTMARK, VUKMIR and BIES, cosponsored by Senator STEPP. Referred to Committee on Highway Safety.

1 AN ACT *to renumber and amend* 343.305 (9) (c); *to amend* 343.305 (9) (a)
2 (intro.) and 343.305 (9) (am) (intro.); and *to create* 343.305 (9) (c) 1. and 2. of
3 the statutes; **relating to:** the right to discovery in implied consent cases
4 involving drunk driving.

Insert A

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.

law enforcement

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

NO A

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.

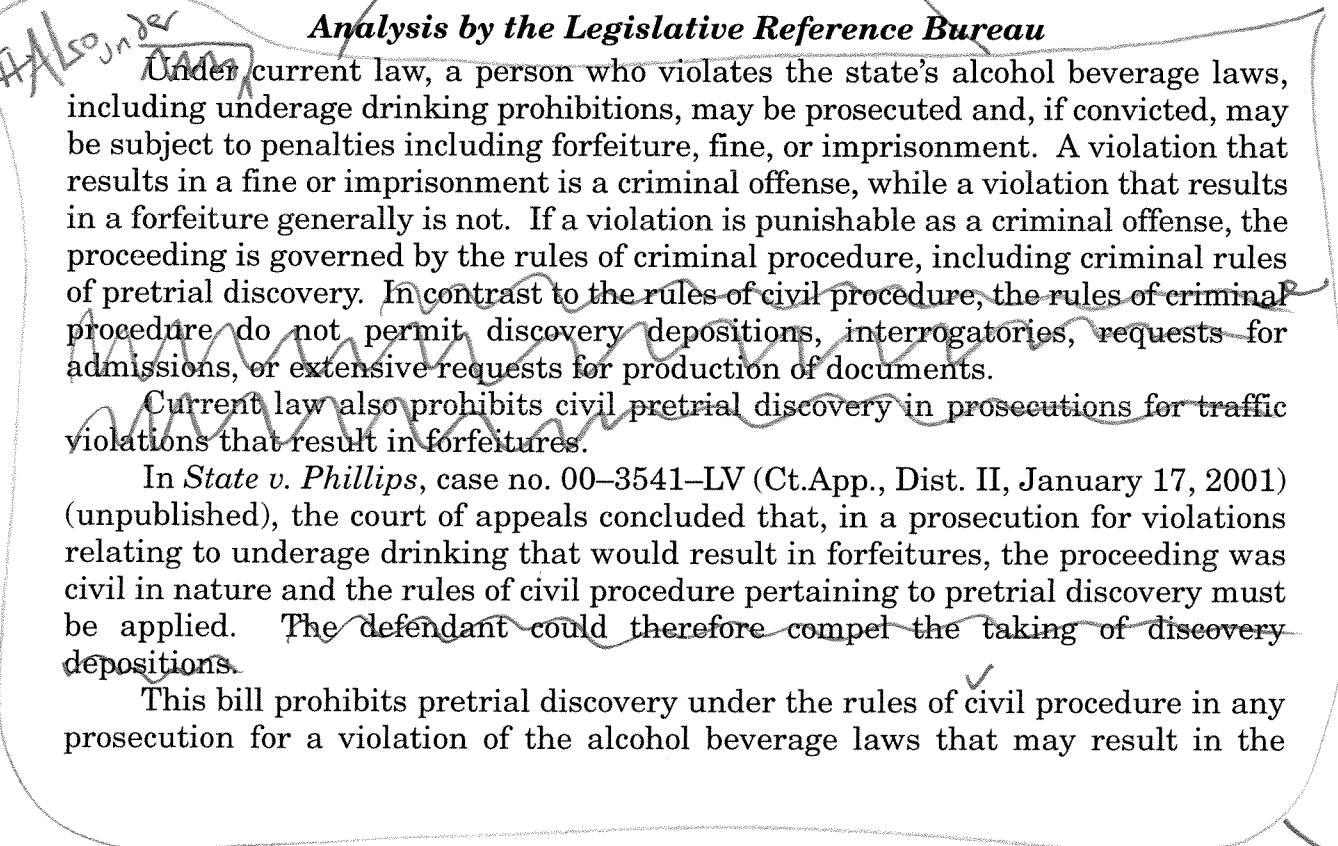
Current law also prohibits civil pretrial discovery in prosecutions for traffic violations that result in forfeitures.

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

Insert B

Also under



ASSEMBLY BILL 487

Insert cont
~~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.~~

Insert
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). x

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, a party may not conduct pretrial discovery
7 under ch. 804 but may conduct pretrial discovery of the same materials and
8 information, and in the same manner, set forth in s. 971.23 as if the matter were a
9 criminal proceeding.

10

(END)

Emery, Lynn

From: Usealman, Kevin
Sent: Thursday, January 26, 2006 2:12 PM
To: Emery, Lynn
Cc: Wagner, Mike
Subject: FW: lrbs

Lynn,

Peggy says these are done, but neither our office or Roessler's have seen them. Do you think you could send me the Assembly version of this and Mike Wagner in Roessler's office the Senate version, both electronically?

Thanks,
Kevin

From: Hurley, Peggy
Sent: Thursday, January 26, 2006 2:09 PM
To: Usealman, Kevin
Subject: RE: lrbs

05-4159 and 05-4160

Senate
Roessler

From: Usealman, Kevin
Sent: Thursday, January 26, 2006 2:07 PM
To: Hurley, Peggy
Subject: lrbs

Peggy, what are the Senate and Assembly LRB #'s for that OWI refusal bill?

Kevin Usealman
Communications and Policy Director
State Representative Mark Gundrum's Office
o: (608) 267-5158
c: (608) 215-0776

Emery, Lynn

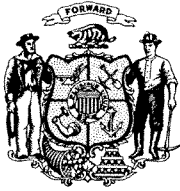
From: Emery, Lynn
Sent: Thursday, January 26, 2006 2:21 PM
To: Wagner, Mike
Subject: LRB 05-4160/1 (attached as requested)

Attachments: 05-41601.pdf



05-41601.pdf (23
KB)

Lynn Emery
Program Assistant
Legislative Reference Bureau
(608) 266-3561



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4160/24

PJH:jld:pg

↑
stays

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Today please

No changes

Regu

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

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

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
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10 department. The officer shall issue a copy of the notice of intent to revoke the
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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
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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:

1 343.305 (9) (am) (intro.) If a person driving or operating or on duty time with
2 respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law
3 enforcement officer shall immediately take possession of the person's license, issue
4 an out-of-service order to the person for the 24 hours after the refusal and notify the
5 department in the manner prescribed by the department, and prepare a notice of
6 intent to revoke, by court order under sub. (10), the person's operating privilege. The
7 officer shall issue a copy of the notice of intent to revoke the privilege to the person
8 and submit or mail a copy with the person's license to the circuit court for the county
9 in which the refusal is made or to the municipal court in the municipality in which
10 the refusal is made if the person's refusal was in violation of a municipal ordinance
11 and the municipality has a municipal court. The officer shall also mail a copy of the
12 notice of intent to revoke to the attorney for that municipality or to the district
13 attorney for that county, as appropriate, and to the department. Neither party is
14 entitled to pretrial discovery in any refusal hearing, except that, if the defendant
15 moves within 30 days after the initial appearance in person or by an attorney and
16 shows cause therefor, the court may order that the defendant be allowed to inspect
17 documents, including lists of names and addresses of witnesses, if available, and to
18 test under s. 804.09, under such conditions as the court prescribes, any devices used
19 by the plaintiff to determine whether a violation has been committed. The notice of
20 intent to revoke the person's operating privilege shall contain substantially all of the
21 following information:

22 **SECTION 6. Initial applicability.**

23 (1) This act first applies to violations committed or refusals occurring on the
24 effective date of this subsection.

25 (END)

Northrop, Lori

From: Roessler, Carol

Sent: Friday, February 10, 2006 3:19 PM

To: LRB.Legal

Subject: Draft Review: LRB 05-4160/1 Topic: Discovery in refusal cases and underage drinking cases

Please Jacket LRB 05-4160/1 for the SENATE.

02/10/2006