2005 DRAFTING REQUEST

Senate Amendment (SA-SB592)

Received: **03/06/2006**

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: **Drunk Driving - alcohol level**

Extra Copies:

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:

Alcohol hearings

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	phurley 03/06/2006	lkunkel 03/06/2006	rschluet 03/06/2006	_____ _____	sbasford 03/06/2006	sbasford 03/06/2006	

FE Sent For:

<END>

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/1	phurley	1 lmk 3/6					

FE Sent For:

<END>

Hurley, Peggy

From: Wagner, Mike
Sent: Monday, March 06, 2006 1:53 PM
To: Hurley, Peggy
Subject: FW: SB 592

Attachments: LRB 05-4160_1 analysis 2-20-06.pdf

LRB 05-4160_1
analysis 2-20-06...

Here's the memo from DOT...he suggests two options...my thought is whatever takes less to do (so probably suggestion two)...if we go with that, will that fix the flaw that John is talking about?

Thanks,

Mike Wagner
Office of Sen. Roessler

CORRESPONDENCE MEMORANDUM

Wisconsin Department of Transportation

DT1175 97

Date: February 20, 2006

To: DOA Fiscal Estimate

From: John J. Sobotik, Asst. General Counsel

Subject: Technical Memo

Section 3 of AB 1023 proposes to create s. 125.14 (6) (b), Stats., 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 in any refusal hearing, except that, if the defendant moves within 30 days after the initial appearance in person or by an attorney and shows cause therefor, the court may order that the defendant be allowed to inspect documents, including lists of names and addresses of witnesses, if available, and to test under s. 804.09, under such conditions as the court prescribes, any devices used by the plaintiff to determine whether a violation has been committed.

If the basic aim of this provision is to eliminate discovery in underage alcohol cases, this amendment would not accomplish that aim. There is, in fact, no such thing as a "refusal" case in an underage alcohol context. Under current law, if a juvenile refuses chemical testing, no sanction could be applied to that individual. Accordingly, there is no need for legislation regarding underage alcohol refusal cases.

Peggy Hurley at LRB advised me that the purpose of this provision was to prohibit discovery in underage alcohol enforcement actions as it is prohibited in traffic cases. To that end, I suggest this provision be replaced with a proposed new provision modeled on s. 345.421, Stats.

For example, s. 345.421 could be copied and inserted into Ch. 125 along these lines:

> Discovery. Neither party is entitled to pretrial discovery except that if the defendant moves within 10 days after the alleged violation and shows cause therefor, the court may order that the defendant be allowed to inspect and test under s. 804.09 and under such conditions as the court prescribes, any devices used by the plaintiff to determine whether a violation has been committed, including without limitation, devices used to determine presence of alcohol in breath or body fluid ~~or to measure speed~~, and may inspect under s. 804.09 the reports of experts relating to those devices. (The reference to speed devices is struck because the only devices at issue in underage alcohol cases are the alcohol measurement devices.)

Alternatively, the legislature could amend Ch. 345 to make its procedures apply in underage alcohol enforcement proceedings or amend s. 345.421 to prohibit discovery in those proceedings as well as in traffic proceedings generally.

In any event, the reference to refusal proceedings in section 3 of the bill appears to result in an unintended result.

2005 – 2006 LEGISLATURE

LRBa2679/1
PJH:...:...

SENATE AMENDMENT ,

TO 2005 SENATE BILL 592

At the locations indicated, amend the bill as follows:

1. Page 2, line 7: delete "in any refusal hearing".

(END)