2007 DRAFTING REQUEST

Bill

Received: **02/01/2007**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Christian Moran (aide)**

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

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - traffic laws**

Extra Copies: **BAB**

Submit via email: **YES**

Requester's email: **Rep.Krusick@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Operating after revocation, while suspended, or without a license; suspension for railroad crossing violations

---

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?				_____			State
/P1	agary 02/09/2007	lkunkel 02/26/2007	pgreensl 02/26/2007	_____ _____	cduerst 02/26/2007		State
/P2	agary 04/02/2007	lkunkel 04/06/2007	pgreensl 04/09/2007	_____ _____	mbarman 04/09/2007		State
/P3	agary	lkunkel	nnatzke	_____	cduerst		State

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	05/29/2007	06/01/2007	06/01/2007	_____	06/01/2007		
/P4	agary 07/10/2007	lkunkel 07/13/2007	nnatzke 07/13/2007	_____ _____	cduerst 07/13/2007		State
/1	agary 09/20/2007	kfollett 09/20/2007	jfrantze 09/20/2007	_____ _____	sbasford 09/20/2007	sbasford 10/26/2007	

FE Sent For: at intro 11/5/07

<END>

2007 DRAFTING REQUEST

Bill

Received: **02/01/2007**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Christian Moran (aide)**

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

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - traffic laws**

Extra Copies: **BAB**

Submit via email: **YES**

Requester's email: **Rep.Krusick@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Operating after revocation, while suspended, or without a license; suspension for railroad crossing violations

---

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?				_____			State
/P1	agary 02/09/2007	lkunkel 02/26/2007	pgreensl 02/26/2007	_____ _____	cduerst 02/26/2007		State
/P2	agary 04/02/2007	lkunkel 04/06/2007	pgreensl 04/09/2007	_____ _____	mbarman 04/09/2007		State
/P3	agary	lkunkel	nnatzke	_____	cduerst		State

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	05/29/2007	06/01/2007	06/01/2007	_____	06/01/2007		
/P4	agary 07/10/2007	lkunkel 07/13/2007	nnatzke 07/13/2007	_____ _____	cduerst 07/13/2007		State
/1	agary 09/20/2007	kfollett 09/20/2007	jfrantze 09/20/2007	_____ _____	sbasford 09/20/2007		

FE Sent For:

<END>

2007 DRAFTING REQUEST

Bill

Received: **02/01/2007**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Christian Moran (aide)**

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

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - traffic laws**

Extra Copies: **BAB**

Submit via email: **YES**

Requester's email: **Rep.Krusick@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Operating after revocation, while suspended, or without a license; suspension for railroad crossing violations

---

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?				_____			State
/P1	agary 02/09/2007	lkunkel 02/26/2007	pgreensl 02/26/2007	_____ _____	cduerst 02/26/2007		State
/P2	agary 04/02/2007	lkunkel 04/06/2007	pgreensl 04/09/2007	_____ _____	mbarman 04/09/2007		State
/P3	agary	lkunkel 11/6f 9/20	nnatzke	_____	cduerst		State

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	05/29/2007	06/01/2007	06/01/2007	_____	06/01/2007		
/P4	agary 07/10/2007	lkunkel 07/13/2007	nnatzke 07/13/2007	_____ _____	cduerst 07/13/2007		

FE Sent For:

<END>

2007 DRAFTING REQUEST

Bill

Received: **02/01/2007**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Christian Moran (aide)**

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

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - traffic laws**

Extra Copies: **BAB**

Submit via email: **YES**

Requester's email: **Rep.Krusick@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Operating after revocation, while suspended, or without a license; suspension for railroad crossing violations

---

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?				_____			State
/P1	agary 02/09/2007	lkunkel 02/26/2007	pgreensl 02/26/2007 _____	_____	cduerst 02/26/2007		State
/P2	agary 04/02/2007	lkunkel 04/06/2007	pgreensl 04/09/2007 _____	_____	mbarman 04/09/2007		State
/P3	agary	lkunkel	nnatzke nwn 7/13	_____ nwn/sh 7/13	cduerst		

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	05/29/2007	06/01/2007	06/01/2007	_____	06/01/2007		

FE Sent For:

<END>

2007 DRAFTING REQUEST

Bill

Received: **02/01/2007**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Christian Moran (aide)**

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

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - traffic laws**

Extra Copies: **BAB**

Submit via email: **YES**

Requester's email: **Rep.Krusick@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Operating after revocation, while suspended, or without a license; suspension for railroad crossing violations

---

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?				_____			State
/P1	agary 02/09/2007	lkunkel 02/26/2007	pgreensl 02/26/2007	_____ _____	cduerst 02/26/2007		State
/P2	agary 04/02/2007	lkunkel 04/06/2007	pgreensl 04/09/2007	_____ _____	mbarman 04/09/2007		
			nwn 6/1	nwn/rs 6/1			

FE Sent For:

<END>

2007 DRAFTING REQUEST

Bill

Received: **02/01/2007**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Christian Moran (aide)**

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

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - traffic laws**

Extra Copies: **BAB**

Submit via email: **YES**

Requester's email: **Rep.Krusick@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Operating after revocation, while suspended, or without a license; suspension for railroad crossing violations

---

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?				_____			State
/P1	agary 02/09/2007	lkunkel 02/26/2007	pgreensl 02/26/2007	4/9	cduerst 02/26/2007		

FE Sent For: /p2 lmk 4/6 4/4 p8 p8 p8

<END>

2007 DRAFTING REQUEST

Bill

Received: **02/01/2007**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Christian Moran (aide)**

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

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - traffic laws**

Extra Copies: **BAB**

Submit via email: **YES**

Requester's email: **Rep.Krusick@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Operating after revocation, while suspended, or without a license; suspension for railroad crossing violations

---

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	agary	/pl/mk 2/23	2/26 PS	~~2/26~~ PS/RS			State

FE Sent For:

<END>

Gary, Aaron

Subject: RE: OAR

-----Original Message-----
From: Gary, Aaron
Sent: Thursday, September 20, 2007 9:35 AM
To: Moran, Christian
Subject: RE: OAR

Hi Christian,
Your response at the bottom makes it easy on me - with this approach, no changes are actually needed to the bill, as the higher monetary penalty provision is currently drafted to supercede the other provision. As a practical matter, I doubt that there would be a 2nd or 3rd offense OWL that is not "knowing."

Aaron

-----Original Message-----
From: Moran, Christian
Sent: Wednesday, September 19, 2007 2:39 PM
To: Gary, Aaron
Subject: RE: OAR

Hi Aaron,

Can you please redraft the OAR bill in introducible form with the one change below? Thanks.

Christian

-----Original Message-----
From: Gary, Aaron
Sent: Thursday, August 30, 2007 5:04 PM
To: Moran, Christian
Subject: RE: OAR

Thanks Christian. Do you want me to redraft it now to make the change below? Also, as part of that redraft, do you want me to include the suggestion from Nancy Rottier?

Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

-----Original Message-----
From: Moran, Christian
Sent: Thursday, August 30, 2007 4:54 PM
To: Gary, Aaron
Subject: OAR

Hi Aaron,

Just wanted to get back to you on what I (hopefully) believe is that last outstanding

issue concerning the OAR draft.

The question in your P/4 d-note was: If a person has prior OWL offenses and causes great bodily harm, should the court apply the higher monetary amounts established as civil forfeitures under this bill or the criminal penalties that include lower monetary amounts and jail time under current s. 343.05 (5) (b) 1.?

We'd like to go with the former: higher monetary amounts established as civil forfeitures under this bill.

Thanks,

Christian

WISCONSIN STATE ASSEMBLY

PEGGY KRUSICK
STATE REPRESENTATIVE

OAR Meeting
Wednesday, January 31 (9 AM to 10 AM)

Participants
Rob Dams (Greendale Police Chief)
John Sobotik (DOT)
Aaron Gary and Brett Balinsky (LRB)
Larry Konopacki (Leg Council)
Krista Ginger (Public Defender)
Nancy Rottier (State Courts)
Karen Loebel (Milwaukee County ADA)
Jim Palmer (WPPA)

Invited
Sens. Lazich, Grothman, Lehman and Taylor
Reps. Stone and Gundrum
Jeff Wiswell (Wisconsin Sheriffs and Deputy Sheriffs Association)

Agenda
1. Review last meeting.

2. Discuss preliminary bill draft.
   - Allows a 2nd OAR to be charged criminally if the first offense was charged under statute or municipal ordinance.

3. Discuss changing the penalty structure set forth in Act 412.
   - Make causing death a felony?
   - Minimum mandatory sentences?
   - Penalty enhancers?

4. Other issues (DOT)
   - Treat all 1st offense OARs the same—either criminalize or decriminalize across the board.

   - Repeal s. 343.31(1)(hm), which requires DMV to revoke the operating privileges of any driver convicted of 4 or more OWS or OAR offenses.

Gary, Aaron

From: Konopacki, Larry
Sent: Wednesday, January 31, 2007 6:16 PM
To: Gary, Aaron
Subject: 1/31/07 OAR/OWS/OWL Meeting Summary

Hello Aaron,

Below is a list of changes to the operating after revocation (OAR), operating while suspended (OWS), and operating without a license (OWL) statutes that were suggested by the group that met in Representative Krusick's office earlier today. Please let me know if you interpreted the intent of the group differently on any of these points.

- The changes included in your draft, LRB-1345/P1, were approved by the group.
- Remove the department's administrative revocation authority for 4th offense OWS under s. 343.31 (1) (hm). Note that there was discussion between group members that may be interpreted in different ways on this recommendation, so it may be useful to emphasize this change in discussion of an eventual draft to ensure that it reflects the intent of the group.
- Change the penalty for the railroad-related offenses which trigger revocation to instead trigger suspension.
- Remove the following clause from s. 343.44 (2) (as): "or if the revocation identified under sub. (1) (b) resulted from an offense that may be counted under s. 343.307 (2),"
- Delete ss. 343.05 (5) (b) 3. and 343.44 (2) (e) through (h).
- Criminalize first offense OAR in which the driver causes damage to property, injury, great bodily injury, or death. (The group did not decide on the severity of these penalties or the increased minimum penalties below at today's meeting)
- Raise the minimum penalties, and the maximum penalties if necessary to accommodate increased minimums, for first offenses of OWL and OWS in which the driver causes damage to property, injury, great bodily injury, or death. These increased minimum penalties should remain civil penalties.
- Raise the minimum penalties, and the maximum penalties if necessary to accommodate increased minimums, for subsequent violations of OWL, OWS and OAR in which the driver causes damage to property, injury, great bodily injury, or death.

Thanks Aaron, and please let me know if this list raises any questions.

Larry Konopacki

Larry Konopacki
(608) 267-0683
Wisconsin Legislative Council

RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman

(Request Made By: ARG) (Date: 2 / 9 / 07)

◯ ☞ Please transfer the drafting file for

2005 LRB _____ to the drafting file

for **2007 LRB** _____

Done MB

☞ The final version of the 2005 draft and the final Request Sheet will copied on yellow paper, and returned to the original 2005 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

☞ For research purposes, because the 2005 draft was incorporated into a 2007 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the 2007 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

--OR--

☒ ☞ Please copy the drafting file for

2007 LRB 1345 / P1 (include the version) and place it in the

drafting file for **2007 LRB** 1791

☞ For research purposes, because the original 2007 draft was incorporated into another 2007 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the new 2007 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

☞ The original drafting file will then returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.

Updated: 08/26/2004

RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman

(Request Made By: ARG) (Date: 2 / 9 / 07)

◯ ☞ Please transfer the drafting file for

2005 LRB _____ to the drafting file

for **2007 LRB** _____

☞ The final version of the 2005 draft and the final Request Sheet will copied on yellow paper, and returned to the original 2005 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

☞ For research purposes, because the 2005 draft was incorporated into a 2007 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the 2007 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

--OR--

⊗ ☞ Please copy the drafting file for

2007 LRB 0408 / P1 (include the version) and place it in the

drafting file for **2007 LRB** 1791

☞ For research purposes, because the original 2007 draft was incorporated into another 2007 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the new 2007 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

☞ The original drafting file will then returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.

Updated: 08/26/2004

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** operating a motor vehicle without a valid driver's license or after suspension or revocation of an operating privilege and providing penalties.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from operating a motor vehicle on the highway during any period in which the person's motor vehicle operating privilege is suspended (operating while suspended or OWS) or revoked (operating after revocation or OAR) or, with limited exceptions, if the person does not possess a valid operator's license issued by the Department of Transportation (DOT) that is not revoked, suspended, canceled, or expired (operating without a license or OWL).

Under current law, a person convicted of OWS must forfeit not less than $50 nor more than $200. In addition, a person convicted of "knowing" OWS may be required to forfeit not more than $200. A person convicted of first–offense OAR must forfeit not more than $2,500 unless the underlying operating privilege revocation was the result of specified alcohol-or controlled substance-related traffic violations. A person convicted of OAR who has a prior conviction in the preceding five–year period under state statutes for OAR (but not under a local ordinance) or for whom the underlying operating privilege revocation was the result of specified alcohol-or controlled substance-related traffic violations must be fined not more than $2,500 or imprisoned for not more than one year or both. Also under current law, as created in 2005 Wisconsin Act 412, a person who, in the course of a knowing OWS violation or OAR violation, causes: (a) damage to the property of another must forfeit $1,000; (b) injury to another person must forfeit $5,000; or (c) great bodily harm or death to

another person is guilty of a Class A misdemeanor, punishable by a maximum fine of $10,000 or a maximum term of imprisonment of nine months or both.

Under current law, with limited exceptions, a person convicted of OWL with respect to a motor vehicle that is not a commercial motor vehicle may be required to forfeit not more than $200 for the first offense, may be fined not more than $300 and imprisoned for not more than 30 days for the second offense occurring within three years, and may be fined not more than $500 and imprisoned for not more than six months for the third or subsequent offense occurring within three years. Under one exception, if the OWL violation results from the person's operator's license being expired for not more than three months and the person has no prior OWL convictions, the person may be required to forfeit not more than $100 for the OWL violation. Under another exception, as created in 2005 Wisconsin Act 412, if, in the course of operating the vehicle knowingly without a valid operator's license or knowingly with an operator's license that has been revoked, suspended, or canceled, the person causes: (a) damage to the property of another, the person must forfeit $1,000; (b) injury to another person, the person must forfeit $5,000; or (c) great bodily harm or death to another person, the person is guilty of a Class A misdemeanor.

This bill provides that a person convicted of first–offense OAR must forfeit not more than $2,500 regardless of the underlying reason for the revocation, and also provides that violation of a local OAR ordinance may be counted for purposes of determining whether a person has any prior OAR conviction. The bill also increases the penalty for a knowing OWS violation to a forfeiture of not less than $100 nor more than $400. The bill also revises the penalties for OWS, OAR, and OWL violations where the person, in the course of the violation, causes damage to the property of another, injury to another person, or great bodily harm or death to another person.

Under the bill, a person convicted of OWS or knowing OWS who, in the course of the violation, causes: (a) damage to the property of another but not death or injury to another person must forfeit not less than $200 nor more than $1,000; (b) injury to another person but not death or great bodily harm must forfeit not less than $1,000 nor more than $5,000; (c) great bodily harm to another person must forfeit not less than $5,000 nor more than $7,500; or (d) the death of another person must forfeit not less than $7,500 nor more than $10,000.

Under the bill, a person convicted of OAR who, in the course of the violation, causes: (a) damage to the property of another but not death or injury to another person must be fined not less than $1,000 nor more than $2,500 or imprisoned for not more than one year in the county jail or both; (b) injury to another person but not death or great bodily harm must be fined not less than $2,500 nor more than $5,000 or imprisoned for not more than one year in the county jail or both; (c) great bodily harm to another person is guilty of a Class I felony, punishable by a maximum fine of $10,000 or a maximum term of imprisonment of three and one–half years or both; or (d) the death of another person is guilty of a Class H felony, punishable by a maximum fine of $10,000 or a maximum term of imprisonment of six years or both.

Under the bill, with limited exceptions, a person who is convicted for an OWL violation knowing that he or she does not possess a valid operator's license and who, in the course of the OWL violation, causes: (a) damage to the property of another but

not death or injury to another person must forfeit not less than $200 nor more than $1,000 if the person has not been convicted of a previous OWL violation within the preceding three years and must be fined not less than $200 nor more than $1,000 or imprisoned for not more than 90 days in the county jail or both if the person has been convicted of a previous OWL violation within the preceding three years; (b) injury to another person but not death or great bodily harm must forfeit not less than $1,000 nor more than $5,000 if the person has not been convicted of a previous OWL violation within the preceding three years and must be fined not less than $1,000 nor more than $5,000 or imprisoned for not more than nine months in the county jail or both if the person has been convicted of a previous OWL violation within the preceding three years; (c) great bodily harm to another person must forfeit not less than $5,000 nor more than $7,500 if the person has not been convicted of a previous OWL violation within the preceding three years and is guilty of a Class A misdemeanor if the person has been convicted of a previous OWL violation within the preceding three years; or (d) the death of another person must forfeit not less than $7,500 nor more than $10,000 if the person has not been convicted of a previous OWL violation within the preceding three years and is guilty of a Class I felony if the person has been convicted of a previous OWL violation within the preceding three years.

Under current law, a court may suspend a person's operating privilege for any period not exceeding six months upon the person's conviction for OAR or OWS or operating a commercial motor vehicle during a period in which the person is disqualified (operating while disqualified or OWD). However, a court must revoke a person's operating privilege, for a period of six months or less, upon the person's conviction for OAR, OWS, or OWD if the person has been convicted of three or more prior violations of OAR, OWS, or OWD within the preceding five–year period. In addition, DOT must administratively revoke a person's operating privilege, for a period of six months unless the court has ordered a revocation for a lesser period, upon receiving a record of conviction showing that the person has been convicted of OAR, OWS, or OWD if the person has been convicted of three or more prior violations of OAR, OWS, or OWD within the preceding five–year period.

This bill eliminates the requirement that DOT administratively revoke a person's operating privilege for a fourth offense OAR, OWS, or OWD, but does not alter any provision relating to court–ordered operating privilege revocation for a fourth offense OAR, OWS, or OWD.

Under current law, a vehicle operator may not drive on or across a railroad crossing while any traffic officer or railroad employee signals to stop, while any warning device signals to stop, or, if any crossbuck sign is maintained at the crossing, while any train occupies or closely approaches the crossing. A vehicle operator may not drive through or around any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed. A court may revoke a person's operating privilege upon the person's first conviction of any of these violations and must revoke the person's operating privilege upon the person's second or subsequent conviction within a five–year period. The revocation is for 6 months.

six

This bill provides for suspension of a person's operating privilege, rather than revocation of the person's operating privilege, for any of these violations.

delete line space

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state*** 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.** 343.05 (5) (a) of the statutes is renumbered 343.05 (5) (am).

2 **SECTION 2.** 343.05 (5) (ag) of the statutes is created to read:

3 343.05 **(5)** (ag) In this subsection, "Great bodily harm" has the meaning given in s. 939.22 (14).

****NOTE: I have inserted a definition of great bodily harm that is consistent with the definition used in ch. 346. I have inserted an identical provision in created s. 343.44 (2) (ad). I have chosen to create "narrow" definitions, applicable only to the particular provisions here, rather than creating a definition in s. 343.01 for all of ch. 343. While it would be easier to create a definition in s. 343.01, it would impact a number of other provisions in ch. 343. Most of these provisions are already tied to the same definition of "great bodily harm" appearing in s. 939.22 (14), but not all of them. I would be happy to move these two defintions of "great bodily harm" in the bill into s. 343.01 if there are no objections to doing so.

4 **SECTION 3.** 343.05 (5) (b) 1. of the statutes is amended to read:

5 343.05 **(5)** (b) 1. Except as provided in ~~subd.~~ subds. 2. ~~or 3.~~, 4., and 5. and sub.
6 (6), any person who violates sub. (3) (a) may be required to forfeit not more than $200
7 for the first offense, may be fined not more than $300 and imprisoned for not more
8 than 30 days for the 2nd offense occurring within 3 years, and may be fined not more
9 than $500 and imprisoned for not more than 6 months for the 3rd or subsequent
10 offense occurring within 3 years. ~~A~~ In this paragraph, a violation of a local ordinance
11 in conformity with this section or a violation of a law of a federally recognized

American Indian tribe or band in this state in conformity with this section shall count as a previous offense.

History: 1971 c. 164 s. 83; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273, 288, 447; 1979 c. 345; 1981 c. 42, 138; 1981 c. 390 s. 252; 1983 a. 243, 534, 535, 538; 1985 a. 65; 1989 a. 87, 105, 359; 1991 a. 32, 39; 1995 a. 113, 269, 347; 1997 a. 237; 2005 a. 412.

SECTION 4. 343.05 (5) (b) 3. a. of the statutes is renumbered 343.05 (5) (b) 4. (intro.) and amended to read:

343.05 **(5)** (b) 4. (intro.) ~~Any~~ Except as provided in subd. 2. and sub. (6), any person who violates sub. (3) (a) knowing that he or she does not possess a valid operator's license, who has not been convicted of a previous violation of sub. (3) (a) within the preceding 3–year period, and who, in the course of ~~operating a motor vehicle which is not a commercial motor vehicle upon a highway in this state knowingly without a valid operator's license issued to the person by the department or knowingly with an operator's license that has been revoked, suspended, or canceled,~~ violating sub. (3) (a), causes damage to the property of another, injury or great bodily harm to another person, or the death of another person, shall be ~~required~~:

a. Required to forfeit not less than $200 nor more than $1,000 if the person causes damage to the property of another but does not cause death or injury to another person.

History: 1971 c. 164 s. 83; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273, 288, 447; 1979 c. 345; 1981 c. 42, 138; 1981 c. 390 s. 252; 1983 a. 243, 534, 535, 538; 1985 a. 65; 1989 a. 87, 105, 359; 1991 a. 32, 39; 1995 a. 113, 269, 347; 1997 a. 237; 2005 a. 412.

SECTION 5. 343.05 (5) (b) 3. b. of the statutes is renumbered 343.05 (5) (b) 4. b. and amended to read:

343.05 **(5)** (b) 4. b. ~~Any person who, in the course of operating a motor vehicle which is not a commercial motor vehicle upon a highway in this state knowingly without a valid operator's license issued to the person by the department or knowingly with an operator's license that has been revoked, suspended, or canceled,~~

1 ~~causes injury to another person shall be required~~ Required to forfeit not less than
2 $1,000 nor more than $5,000 if the person causes injury to another person but the
3 other person does not suffer great bodily harm or death.

History: 1971 c. 164 s. 83; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273, 288, 447; 1979 c. 345; 1981 c. 42, 138; 1981 c. 390 s. 252; 1983 a. 243, 534, 535, 538; 1985 a. 65; 1989 a. 87, 105, 359; 1991 a. 32, 39; 1995 a. 113, 269, 347; 1997 a. 237; 2005 a. 412.

****NOTE: With regard to the cross–references to subd. 2. and sub. (6): under sub. (6) driving with a suspended or revoked license must be dealt with under s. 343.44; under subd. 2., a person operating with a license expired for 3 months or less is only subject to a $100 forfeiture if it is a first offense. I consider existing s. 343.05 (3) (a) and s. 343.05 (5) (b) 3. a. created under Act 412 to be very confusing because a suspended, revoked, canceled, or expired operator's license is not a valid operator's license for purposes of operating a vehicle, so the provision is entirely redundant, in my view. I have therefore made some modifications to the Act 412 language.

4 **SECTION 6.** 343.05 (5) (b) 4. c. and d. of the statutes are created to read:

5 343.05 **(5)** (b) 4. c. Required to forfeit not less than $5,000 nor more than $7,500
6 if the person causes great bodily harm to another person.

7 d. Required to forfeit not less than $7,500 nor more than $10,000 if the person
8 causes the death of another person.

****NOTE: The forfeiture amounts I have included for created s. 343.05 (5) (b) 4. c. and d. are, in part, intended to correlate to some extent to the existing penalty for a violation of s. 343.05 (3) (a) and to the monetary part of the penalties created by 2005 Act 412 for violating s. 343.05 (3) (a).

9 **SECTION 7.** 343.05 (5) (b) 5. (intro.), a., and b. of the statutes are created to read:

10 343.05 **(5)** (b) 5. (intro.) Except as provided in subd. 2. and sub. (6), any person
11 who violates sub. (3) (a) knowing that he or she does not possess a valid operator's
12 license, who has been convicted of a previous violation of sub. (3) (a) within the
13 preceding 3–year period, and who, in the course of violating sub. (3) (a), causes
14 damage to the property of another, injury or great bodily harm to another person, or
15 the death of another person, shall be:

16 a. Fined not less than $200 nor more than $1,000 or imprisoned for not more
17 than 90 days in the county jail or both if the person causes damage to the property
18 of another but does not cause death or injury to another person.

b. Fined not less than $1,000 nor more than $5,000 or imprisoned for not more than 9 months in the county jail or both if the person causes injury to another person but the other person does not suffer great bodily harm or death.

****NOTE: I have chosen the amounts in created s. 343.05 (5) (b) 5. a. and b. in part to loosely correlate to the potential penalties under current law, including those created by 2005 Act 412.

SECTION 8. 343.05 (5) (b) 3. c. of the statutes is renumbered 343.05 (5) (b) 5. c. and amended to read:

343.05 **(5)** (b) ~~4~~ 5. c. ~~Any person who, in the course of operating a motor vehicle which is not a commercial motor vehicle upon a highway in this state knowingly without a valid operator's license issued to the person by the department or knowingly with an operator's license that has been revoked, suspended, or canceled, causes great bodily harm to another person is guilty~~ Guilty of a Class A misdemeanor if the person causes great bodily harm to another person.

History: 1971 c. 164 s. 83; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273, 288, 447; 1979 c. 345; 1981 c. 42, 138; 1981 c. 390 s. 252; 1983 a. 243, 534, 535, 538; 1985 a. 65; 1989 a. 87, 105, 359; 1991 a. 32, 39; 1995 a. 113, 269, 347; 1997 a. 237; 2005 a. 412.

SECTION 9. 343.05 (5) (b) 3. d. of the statutes is renumbered 343.05 (5) (b) 5. d. and amended to read:

343.05 **(5)** (b) 5. d. ~~Any person who, in the course of operating a motor vehicle which is not a commercial motor vehicle upon a highway in this state knowingly without a valid operator's license issued to the person by the department or knowingly with an operator's license that has been revoked, suspended, or canceled, causes the death of another person is guilty~~ Guilty of a Class ~~A misdemeanor~~ I felony if the person causes the death of another person.

History: 1971 c. 164 s. 83; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273, 288, 447; 1979 c. 345; 1981 c. 42, 138; 1981 c. 390 s. 252; 1983 a. 243, 534, 535, 538; 1985 a. 65; 1989 a. 87, 105, 359; 1991 a. 32, 39; 1995 a. 113, 269, 347; 1997 a. 237; 2005 a. 412.

****NOTE: I have chosen the penalties in s. 343.05 (5) (b) 5. c. and d. in part to loosely correlate to the potential penalties under current law, including those created by 2005 Act 412, and also based in part upon proposed penalties contained in 2007 LRB–0408/P1.

SECTION 10. 343.30 (2j) (a) of the statutes is amended to read:

343.30 **(2j)** (a) A court may ~~revoke~~ suspend a person's operating privilege upon the person's first conviction for violating s. 346.44 or 346.62 (2m) and shall ~~revoke~~ suspend a person's operating privilege upon the person's 2nd or subsequent conviction within a 5–year period for violating s. 346.44 or 346.62 (2m). The ~~revocation~~ suspension shall be for a period of 6 months. For purposes of determining prior convictions for purposes of this paragraph, the 5–year period shall be measured from the dates of the violations that resulted in the convictions. Each conviction under s. 346.44 or 346.62 (2m) shall be counted, except that convictions under s. 346.44 and 346.62 (2m) arising out of the same incident or occurrence shall be counted as a single conviction.

History: 1971 c. 213 s. 5; 1971 c. 278; 1973 c. 70, 218; 1975 c. 5; 1975 c. 184 s. 13; 1975 c. 199, 297, 421; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 30, 64, 193, 203; 1979 c. 221, 300, 331, 333, 355; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 17; 1983 a. 74 ss. 23m to 26, 32; 1983 a. 192; 1985 a. 80, 176, 337; 1987 a. 3, 17, 285; 1987 a. 332 s. 64; 1989 a. 7, 31, 105, 121, 336; 1991 a. 39, 251, 277, 316; 1993 a. 16, 227, 317; 1995 a. 27, 77, 269, 338, 401, 425, 448; 1997 a. 35, 84, 135, 237, 283; 1999 a. 32, 109, 143; 2001 a. 15, 16, 38; 2003 a. 30, 80; 2005 a. 277; 2005 a. 443 s. 265; 2005 a. 466.

SECTION 11. 343.31 (1) (hm) of the statutes is repealed.

SECTION 12. 343.44 (2) (a) of the statutes is renumbered 343.44 (2) (ag) 1. and amended to read:

343.44 **(2)** (ag) 1. ~~Any~~ Except as provided in subds. 2. and 3., any person who violates sub. (1) (a) ~~or a local ordinance in conformity therewith~~ shall be required to forfeit not less than $50 nor more than $200.

History: 1971 c. 164 s. 83; 1971 c. 280, 307; 1973 c. 90; 1977 c. 29 s. 1654 (7) (a); 1977 c. 165, 272; 1979 c. 221; 1981 c. 20; 1983 a. 535; 1989 a. 12, 105, 336; 1991 a. 39, 64, 189, 277; 1995 a. 113; 1997 a. 84; 1999 a. 9, 32, 143; 2003 a. 33; 2005 a. 25, 254, 412.

****NOTE: I believe this ordinance language is unnecessary and misleading, so I have stricken it.

SECTION 13. 343.44 (2) (ad) of the statutes is created to read:

343.44 **(2)** (ad) "Great bodily harm" has the meaning given in s. 939.22 (14).

SECTION 14. 343.44 (2) (ag) 2. of the statutes is created to read:

343.44 **(2)** (ag) 2. Except as provided in subd. 3., any person who violates sub. (1) (am) shall be required to forfeit not less than $100 nor more than $400.

****NOTE: The issue of a penalty for violating s. 343.44 (1) (am) was discussed in the "/P1" drafter's note but not at the meeting on January 31. I believe that s. 343.44 (1) (am) should be repealed or a specific penalty for its violation created. I have included a treatment, using an arbitrary penalty amount, for purposes of facilitating discussion on this issue. However, perhaps repeal of the provision would be a preferable approach. For purposes of the "enhancements" under subd. 3., I have treated sub. (1) (a) and (am) identically.

1 **SECTION 15.** 343.44 (2) (ag) 3. c. and d. of the statutes are created to read:

2 343.44 **(2)** (ag) 3. c. Required to forfeit not less than $5,000 nor more than
3 $7,500 if the person causes great bodily harm to another person.

4 d. Required to forfeit not less than $7,500 nor more than $10,000 if the person
5 causes the death of another person.

****NOTE: The forfeiture amounts I have included for created s. 343.44 (2) (ag) 3. c. and d. are, in part, intended to correlate to some extent to the existing penalty for a violation of s. 343.44 (1) (a) and to the monetary part of the penalties created by 2005 Act 412 for violating s. 343.44 (1) (am).

****NOTE: I have expanded what was s. 343.44 (2) (e) to (g) to cover both violations of sub. (1) (a) and (am). Is this consistent with your intent?

6 **SECTION 16.** 343.44 (2) (am) of the statutes is repealed.

7 **SECTION 17.** 343.44 (2) (ar) 2. of the statutes is created to read:

8 343.44 **(2)** (ar) 2. Except as provided in subd. 3., any person who violates sub.
9 (1) (b) shall be fined not more than $2,500 or imprisoned for not more than one year
10 in the county jail or both if the person has been convicted of a previous violation of
11 sub. (1) (b), or of a local ordinance in conformity with sub. (1) (b), within the preceding
12 5–year period.

13 **SECTION 18.** 343.44 (2) (ar) 3. (intro.), a., and b. of the statutes are created to
14 read:

15 343.44 **(2)** (ar) 3. (intro.) Any person who violates sub. (1) (b) and, in the course
16 of the violation, causes damage to the property of another, injury or great bodily harm
17 to another person, or the death of another person, shall be:

a. Fined not less than $1,000 nor more than $2,500 or imprisoned for not more than one year in the county jail or both if the person causes damage to the property of another but does not cause death or injury to another person.

b. Fined not less than $2,500 nor more than $5,000 or imprisoned for not more than one year in the county jail or both if the person causes injury to another person but the other person does not suffer great bodily harm or death.

****NOTE: I have chosen the penalties in s. 343.44 (2) (ar) 3. a. and b. in part to loosely correlate to the potential penalties under current law, including those created by 2005 Act 412.

SECTION 19. 343.44 (2) (b) (intro.) of the statutes is amended to read:

343.44 **(2)** (b) (intro.) ~~Except as provided in pars. (am) and (as), any person who violates sub. (1) (b) or (d) shall be fined not more than $2,500 or imprisoned for not more than one year in the county jail or both.~~ In imposing a sentence under ~~this paragraph, or a local ordinance in conformity with this paragraph,~~ par. (ar) 2. or 3. or (br), the court shall review the record and consider the following:

History: 1971 c. 164 s. 83; 1971 c. 280, 307; 1973 c. 90; 1977 c. 29 s. 1654 (7) (a); 1977 c. 165, 272; 1979 c. 221; 1981 c. 20; 1983 a. 535; 1989 a. 12, 105, 336; 1991 a. 39, 64, 189, 277; 1995 a. 113; 1997 a. 84; 1999 a. 9, 32, 143; 2003 a. 33; 2005 a. 25, 254, 412.

SECTION 20. 343.44 (2) (br) of the statutes is created to read:

343.44 **(2)** (br) Any person who violates sub. (1) (d) shall be fined not more than $2,500 or imprisoned for not more than one year in the county jail or both.

****NOTE: This provision, relating to operating while disqualified, is identical to current law. I have simply moved the language out of s. 343.44 (2) (b) (intro.) into a new paragraph.

SECTION 21. 343.44 (2) (as) of the statutes is renumbered 343.44 (2) (ar) 1. and amended to read:

343.44 **(2)** (ar) 1. ~~Any~~ Except as provided in subds. 2. and 3., any person who violates sub. (1) (b) ~~after July 27, 2005,~~ shall forfeit not more than $2,500~~, except that, if the person has been convicted of a previous violation of sub. (1) (b) within the preceding 5–year period or if the revocation identified under sub. (1) (b) resulted from~~

~~an offense that may be counted under s. 343.307 (2), the penalty under par. (b) shall apply.~~

History: 1971 c. 164 s. 83; 1971 c. 280, 307; 1973 c. 90; 1977 c. 29 s. 1654 (7) (a); 1977 c. 165, 272; 1979 c. 221; 1981 c. 20; 1983 a. 535; 1989 a. 12, 105, 336; 1991 a. 39, 64, 189, 277; 1995 a. 113; 1997 a. 84; 1999 a. 9, 32, 143; 2003 a. 33; 2005 a. 25, 254, 412.

SECTION 22. 343.44 (2) (e) of the statutes is renumbered 343.44 (2) (ag) 3. (intro.) and amended to read:

343.44 **(2)** (ag) 3. (intro.) Any person who violates sub. (1) (a) or (am) and, in the course of ~~a~~ the violation ~~of sub. (1) (am) or (b) or a local ordinance in conformity therewith~~, causes damage to the property of another, injury or great bodily harm to another person, or the death of another person, shall be ~~required~~:

Strike "by"

a. Required to forfeit not less than $200 nor more than $1,000 if the person causes damage to the property of another but does not cause death or injury to another person.

History: 1971 c. 164 s. 83; 1971 c. 280, 307; 1973 c. 90; 1977 c. 29 s. 1654 (7) (a); 1977 c. 165, 272; 1979 c. 221; 1981 c. 20; 1983 a. 535; 1989 a. 12, 105, 336; 1991 a. 39, 64, 189, 277; 1995 a. 113; 1997 a. 84; 1999 a. 9, 32, 143; 2003 a. 33; 2005 a. 25, 254, 412.

****NOTE: I have taken out the reference to local ordinance that is made in s. 343.44 (2) (e), as I believe it is not appropriate.

SECTION 23. 343.44 (2) (f) of the statutes is renumbered 343.44 (2) (ag) 3. b. and amended to read:

343.44 **(2)** (ag) 3. b. ~~Any person who, in the course of a violation of sub. (1) (am) or (b) or a local ordinance in conformity therewith, causes injury to another person shall be required~~ Required to forfeit not less than $1,000 nor more than $5,000 if the person causes injury to another person but the other person does not suffer great bodily harm or death.

History: 1971 c. 164 s. 83; 1971 c. 280, 307; 1973 c. 90; 1977 c. 29 s. 1654 (7) (a); 1977 c. 165, 272; 1979 c. 221; 1981 c. 20; 1983 a. 535; 1989 a. 12, 105, 336; 1991 a. 39, 64, 189, 277; 1995 a. 113; 1997 a. 84; 1999 a. 9, 32, 143; 2003 a. 33; 2005 a. 25, 254, 412.

SECTION 24. 343.44 (2) (g) of the statutes is renumbered 343.44 (2) (ar) 3. c. and amended to read:

343.44 **(2)** (ar) 3. c. ~~Any person who, in the course of a violation of sub. (1) (am) or (b) or a local ordinance in conformity therewith, causes great bodily harm to another person is guilty~~ Guilty of a Class ~~A misdemeanor~~ I felony.

Insert 12-3

History: 1971 c. 164 s. 83; 1971 c. 280, 307; 1973 c. 90; 1977 c. 29 s. 1654 (7) (a); 1977 c. 165, 272; 1979 c. 221; 1981 c. 20; 1983 a. 535; 1989 a. 12, 105, 336; 1991 a. 39, 64, 189, 277; 1995 a. 113; 1997 a. 84; 1999 a. 9, 32, 143; 2003 a. 33; 2005 a. 25, 254, 412.

SECTION 25. 343.44 (2) (h) of the statutes is renumbered 343.44 (2) (ar) 3. d. and amended to read:

343.44 **(2)** (ar) 3. d. ~~Any person who, in the course of a violation of sub. (1) (am) or (b) or a local ordinance in conformity therewith, causes the death of another person is guilty~~ Guilty of a Class ~~A misdemeanor~~ H felony.

Insert 12-8

History: 1971 c. 164 s. 83; 1971 c. 280, 307; 1973 c. 90; 1977 c. 29 s. 1654 (7) (a); 1977 c. 165, 272; 1979 c. 221; 1981 c. 20; 1983 a. 535; 1989 a. 12, 105, 336; 1991 a. 39, 64, 189, 277; 1995 a. 113; 1997 a. 84; 1999 a. 9, 32, 143; 2003 a. 33; 2005 a. 25, 254, 412.

****NOTE: I have chosen the penalties in s. 343.44 (2) (ar) 3. c. and d. in part to loosely correlate to the potential penalties under current law, including those created by 2005 Act 412, and also based in part upon proposed penalties contained in 2007 LRB–0408/P1.

SECTION 26. Initial applicability.

(1) This act first applies to violations committed on the effective date of this subsection, but does not preclude the counting of other violations as prior violations for purposes of sentencing a person.

SECTION 27. Effective date.

(1) This act takes effect on the first day of the 3rd month beginning after publication.

(END)

D-Note

2007–2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

INSERT 12–3:

(no ¶) <u>if the person causes great bodily harm to another person</u>

INSERT 12–8:

(no ¶) <u>if the person causes the death of another person</u>

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1791/P1dn
ARG:...:...
lmk

(date)

ATTN: Christian Moran

Because the text of this draft is entirely different from LRB–0408/P1 and LRB–1345/P1, I have started with a new draft number, as it is easier for me to do so. For guidance on the penalty provisions in this bill, I have looked to current law and the penalties set forth in LRB–0408/P1.

I apologize that this bill is so difficult to read. When statutory provisions are renumbered, they are ordered in the bill by the original provision. Renumbering such provisions creates a statutory continuity from session to session that is desirable, but can make for a very disjointed bill. I would recommend marking and reading the provisions as they will appear in the statutes to make it easier to understand. If you would like, I can provide a document reordering the provisions in this manner.

In preparing this draft, I have attempted to make the statutory OAR provisions a little more coherent and easier to follow. I have repealed s. 343.44 (2) (am), which only applies to violations before May 1, 2002, because I don't believe the provision has any continuing purpose. I have also eliminated the date in s. 343.44 (2) (as). The law as it exists at the time of the violation governs. Typically, when a violation or penalty is changed, we do not insert into the statutory text the date on which the change in law applies; this is the function of the initial applicability provision. Also, repeal of a law does not affect prior violations under that law. See s. 990.04, stats. So the repeal or amendment of provisions in this bill does not affect violations (and the penalty for the violation) committed before the bill's effective date.

Some of the details in this draft were not specifically agreed upon at our meeting on January 31. In these instances, I have inserted details into the draft, such as various penalty amounts, for the sake of facilitating discussion at the next meeting. The creation of a penalty for violating s. 343.44 (1) (am) is treated in this draft for the same purpose. As noted in the draft, repeal of s. 343.44 (1) (am) may be a preferable approach.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261–6926
E–mail: aaron.gary@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1791/P1dn
ARG:lmk:pg

February 26, 2007

ATTN: Christian Moran

Because the text of this draft is entirely different from LRB-0408/P1 and LRB-1345/P1, I have started with a new draft number, as it is easier for me to do so. For guidance on the penalty provisions in this bill, I have looked to current law and the penalties set forth in LRB-0408/P1.

I apologize that this bill is so difficult to read. When statutory provisions are renumbered, they are ordered in the bill by the original provision. Renumbering such provisions creates a statutory continuity from session to session that is desirable, but can make for a very disjointed bill. I would recommend marking and reading the provisions as they will appear in the statutes to make it easier to understand. If you would like, I can provide a document reordering the provisions in this manner.

In preparing this draft, I have attempted to make the statutory OAR provisions a little more coherent and easier to follow. I have repealed s. 343.44 (2) (am), which only applies to violations before May 1, 2002, because I don't believe the provision has any continuing purpose. I have also eliminated the date in s. 343.44 (2) (as). The law as it exists at the time of the violation governs. Typically, when a violation or penalty is changed, we do not insert into the statutory text the date on which the change in law applies; this is the function of the initial applicability provision. Also, repeal of a law does not affect prior violations under that law. See s. 990.04, stats. So the repeal or amendment of provisions in this bill does not affect violations (and the penalty for the violation) committed before the bill's effective date.

Some of the details in this draft were not specifically agreed upon at our meeting on January 31. In these instances, I have inserted details into the draft, such as various penalty amounts, for the sake of facilitating discussion at the next meeting. The creation of a penalty for violating s. 343.44 (1) (am) is treated in this draft for the same purpose. As noted in the draft, repeal of s. 343.44 (1) (am) may be a preferable approach.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

128 N

07-1791 3/27/07

Meeting in Rep. Kreuscher's off.

Sobotik – suggestion

- 343.30 (1) (g) (b) →
  - shall → may suspend / revoke
  - give ct. discretion to suspend / revoke → no longer mandatory
  - yes
  - redraft it to create discretion

- 343.30 →
  - require revocation for OWS w/ property damage, etc.

OWS – death & GBH see next page
- damage, injury →

- injury:

OWS → $1K → $5K becomes $500 → $5K

- 2nd or subseq. OWS causing GBH or death should be criminal w/in 5 yr.
  - must be knowing

→ 2nd or subsequ. w/in 5 yrs. of date of violation

343.05 (5) (b) →

- 2nd offense w/in 3 yrs.
- period : date of conviction vs. date of offense
- offense date

- OWS → GBH, death,
  - revocation – mandatory
  - ~~death~~ – revocation – discret
    - → injury

→ any offense OWS

→ same as K-OWS ?

→ can we put knowing in the penalty instead of making it a separate offense ?

- eliminate IC-OWS as a separate offense
  - but knowing will be in some penalties

- John: for CDL holders, can OWD be different from OAR penalty?

OWS injury: $500 - $5,000

OAR damage: $200 — same w/ OWS
injury: $500
GBH:
death:

2nd offense OWS carry GBH or death →
- same as OAR (not OWL)

Preliminary OAR Draft (LRB-1791/P1) for Discussion Purposes

Act 412 Revisions

Offense	Act 412	LRB-1791/P1		
	K-OWS*, OWL & OAR	OWS, K-OWS, or OWL(1st)	OWL (2 or more)	OAR
Damage	$1,000	$200-$1,000	$200-$1,000 fine and/or up to 90 days	$1,000-$2,500 fine and/or up to 1 yr
Injury	$5,000	$1,000-$5,000	$1,000-$5,000 fine and/or up to 9 mos	$2,500-$5,000 fine or up to 1 yr
Great Bodily Harm	Up to $10,000 fine and/or up to 9 mos	$5,000-$7,500	Up to $10,000 fine and/or up to 9 mos	Up to $10,000 fine and/or up to 3.5 yrs
Death	Up to $10,000 fine and/or up to 9 mos	$7,500-$10,000	Up to $10,000 fine and/or up to 3.5 yrs	Up to $10,000 fine and/or up to 6 yrs

*K-OWS = "Knowing Operating While Suspended"

DOT Provisions

Offense	Current Law	LRB-1791/P1
4th OAR, OWS or OWD w/in 5 yrs	Automatic court ordered revoke and DOT admin revoke.	Eliminates automatic DOT admin revoke. Keeps court ordered revoke.
Illegal railroad crossing	Permissive court ordered revoke for 1st offense. Mandatory court ordered revoke for 2+ offenses.	Suspension for all offenses.
1st OAR	up to $2,500 forfeiture	Up to $2,500 forfeiture (local ordinance counted – see below)
1st OAR(alcohol or drug traffic violation)	Up to $2,500 fine and/or up to 1 yr	
2+ OAR	Up to $2,500 fine and/or up to 1 yr (local ordinance convictions not counted)	Up to $2,500 fine and/or up to 1 year (local ordinance convictions counted)
"Knowing" OWS	up to $200	$100 to $400