

2007 DRAFTING REQUEST

Bill

Received: 01/04/2007

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Peggy Krusick (608) 266-1733

By/Representing:

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Transportation - driver licenses

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

Instructions:

Clean up s. 343.44 (2) (as) re local ordinance priors; overlap of inconsistent 2005 Act 412 penalties; as discussed at January 4 meeting in Krusick office

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>
/?				_____			S&L
/P1	agary 01/04/2007	wjackson 01/16/2007	pgreensl 01/17/2007	_____	sbasford 01/17/2007		

FE Sent For:

<END>

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/?	agary	/pl WLj 1/16	1/17 ps	1/17 sent			S&L

FE Sent For:

<END>

soon

WLj

in 1/4

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Note

Gen Cat

- 1 AN ACT relating to: operating a motor vehicle after revocation or while
- 2 disqualified.

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 revoked (OAR) or during which the person is disqualified from operating a commercial motor vehicle (OWD). Subject to a "first offense" exception, a person convicted of OAR on or after May 1, 2002, must be fined not more than \$2,500 or imprisoned for not more than one year or both. Under the "first offense" exception, if the person committed the OAR offense after July 27, 2005, the person has no prior conviction in the preceding five-year period under state statutes for OAR, and the underlying operating privilege revocation was not the result of specified alcohol or controlled substance-related traffic violations, the person must forfeit not more than \$2,500. A person convicted of OWD also must be fined not more than \$2,500 or imprisoned for not more than one year or both. Also under current law, local authorities may enact traffic regulations in strict conformity with state law that are punishable by forfeiture.

This bill narrows the "first offense" penalty exception for a person convicted of OAR so that the exception applies only if the person has no prior conviction in the preceding five-year period for OAR under state statutes or under local ordinances. The bill also clarifies that no local ordinance violation is available for OAR or OWD when the penalty for the violation under state law is a fine or imprisonment or both.

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

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

7 SECTION ~~#~~ 343.44 (2) (as) of the statutes is amended to read:

8 343.44 (2) (as) Any person who violates sub. (1) (b) after July 27, 2005, shall
9 forfeit not more than \$2,500, except that, if the person has been convicted of a
10 previous violation of sub. (1) (b) or of a local ordinance in conformity with sub. (1) (b)
11 within the preceding 5-year period or if the revocation identified under sub. (1) (b)
12 resulted from an offense that may be counted under s. 343.307 (2), the penalty under
13 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.

14 SECTION 3. Initial applicability.

15 (1) This act first applies to offenses committed on the effective date of this
16 subsection.

17 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1345/P1dn
ARG:.....

ATTN: Christian Moran

Please review the attached draft carefully to ensure that it is consistent with your intent. The attached draft reflects certain "clean-up" items related to operating after revocation (OAR), as discussed at our meeting on January 4.

The attached draft does not treat s. 343.44 (2) (e) to (h), created in 2005 Wisconsin Act 412 (SB-626). As discussed at the meeting on January 4, the interplay between s. 343.44 (2) (e) to (h) and s. 343.44 (2) (as) and (b) is odd, but the statutes are not technically inconsistent. Under s. 343.44 (2) (as) and (b), the penalty for most first offense OAR convictions is a mandatory forfeiture (non-criminal) of \$0 to \$2,500. The penalty for other OAR convictions is a mandatory fine (criminal) of \$0 to \$2,500 or imprisonment ^{for} of not more than one year or both. However, under the new provisions created in Act 412, a person who causes property damage in the course of committing OAR must forfeit \$1,000. A person who causes personal injury in the course of committing OAR must forfeit \$5,000. A person who causes great bodily harm or death in the course of committing OAR must be fined from \$0 to \$10,000 or imprisoned for up to nine months or both. As you can see, Act 412 removes the sentencing discretion of the judge and ^{*} ~~also~~ creates a possibility that a lower penalty might be imposed under created s. 343.44 (2) (e) to (h) (in terms of monetary payment, length of incarceration, and civil versus criminal status) for OAR involving property damage, personal injury, or death than might otherwise be imposed for OAR not involving property damage, personal injury, or death if the sentencing judge exercises his or her discretion to impose a penalty near the maximum allowed under s. 343.44 (2) (as) and (b). I have not attempted to address this issue in the attached draft, as it does not lend itself to a simple solution. However, you may wish to consider the interplay of these various penalties.

I am also uncertain what to make of s. 343.44 (2) (e) to (h) as it relates to s. 343.44 (1) (am), also created in Act 412, as s. 343.44 (1) (am), related to knowingly operating while suspended (knowing OAS), does not seem to have any separate penalty provision within s. 343.44. (It seems to apply within this section only when the knowing OAS offense is accompanied by property damage, personal injury, or death. I assume the offense itself would be punished by forfeiture of up to \$200 under the general penalty provision in s. 939.61)

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

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-1345/P1dn
ARG:wlj:pg

January 17, 2007

ATTN: Christian Moran

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State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1345/01
ARG:wlj:pg

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 1 AN ACT to amend 343.44 (2) (as) and 343.44 (2) (b) (intro.) of the statutes;
2 relating to: operating a motor vehicle after revocation or while disqualified.

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 revoked (OAR) or during which the person is disqualified from operating a commercial motor vehicle (OWD). Subject to a "first offense" exception, a person convicted of OAR on or after May 1, 2002, must be fined not more than \$2,500 or imprisoned for not more than one year or both. Under the "first offense" exception, if the person committed the OAR offense after July 27, 2005, the person has no prior conviction in the preceding five-year period under state statutes for OAR, and the underlying operating privilege revocation was not the result of specified alcohol or controlled substance-related traffic violations, the person must forfeit not more than \$2,500. A person convicted of OWD also must be fined not more than \$2,500 or imprisoned for not more than one year or both. Also under current law, local authorities may enact traffic regulations in strict conformity with state law that are punishable by forfeiture.

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