

2011 DRAFTING REQUEST

Bill

Received: **02/16/2012**

Received By: **emueller**

Wanted: **As time permits**

Companion to LRB:

For: **Transportation**

By/Representing: **John Sobotik**

May Contact:

Drafter: **emueller**

Subject: **Drunk Driving - other
Transportation - driver licenses**

Addl. Drafters:

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **John.Sobotik@dot.wi.gov**

Carbon copy (CC:) to: **Sen.Lazich@legis.wisconsin.gov
Paul.Nilsen@dot.wi.gov**

Pre Topic:

No specific pre topic given

Topic:

Compliance with federal occupational licensing restrictions.

Instructions:

Same as 11-4133/P1 with modifications per email.

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>
/?	emueller 02/29/2012	wjackson 02/29/2012		_____			State
/1			jmurphy 02/29/2012	_____	lparisi 02/29/2012	lparisi 02/29/2012	

FE Sent For:

*at intro
3-15-12*

<END>

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/?	emueller	1 Wlj 2/29	jm 2/29	Wlj dm			
1	EMM 2/29/12						

FE Sent For:

<END>

Jacket
for Rep.
Van Rooy

Mueller, Eric

From: Nilsen, Paul - DOT [Paul.Nilsen@dot.wi.gov]
Sent: Wednesday, February 29, 2012 2:15 PM
To: Mueller, Eric; Sobotik, John - DOT
Cc: Krieser, Steven - DOT
Subject: RE: Draft review: LRB 11-4133/P1 Topic: Compliance with federal occupational licensing restrictions.
Yes, please, thanks Eric. Would you please handle as quickly as you are able? Please provide a cc to Sen Lazich, as before. Thanks.

From: Mueller, Eric [mailto:Eric.Mueller@legis.wisconsin.gov]
Sent: Wednesday, February 29, 2012 2:14 PM
To: Sobotik, John - DOT
Cc: Nilsen, Paul - DOT; Krieser, Steven - DOT
Subject: RE: Draft review: LRB 11-4133/P1 Topic: Compliance with federal occupational licensing restrictions.

John,

If you want, since I'm aware that you have a copy of the draft, I can enter a new request with DOT as the requestor and provide a draft with your requested changes.

Eric Mueller
Attorney, Legislative Reference Bureau
Phone: (608)261-7032
eric.mueller@legis.wisconsin.gov

From: Sobotik, John - DOT [mailto:John.Sobotik@dot.wi.gov]
Sent: Wednesday, February 29, 2012 2:04 PM
To: Mueller, Eric
Cc: Nilsen, Paul - DOT; Krieser, Steven - DOT
Subject: FW: Draft review: LRB 11-4133/P1 Topic: Compliance with federal occupational licensing restrictions.
Importance: High

The exec assistant here, Steve Krieser, needs to know what is happening with this drafting request. Can you fill us in, please?

I will be out of the office this afternoon, so a reply to all will reach him directly. Thanks, Eric.

- John

From: Krieser, Steven - DOT
Sent: Wednesday, February 29, 2012 1:33 PM
To: Krieser, Steven - DOT; Sobotik, John - DOT
Cc: Nilsen, Paul - DOT; Thiel, Jim - DOT
Subject: RE: Draft review: LRB 11-4133/P1 Topic: Compliance with federal occupational licensing restrictions.
Importance: High

Please – I need an update on this urgently. Thanks!

From: Krieser, Steven - DOT
Sent: Tuesday, February 28, 2012 4:48 PM
To: Sobotik, John - DOT
Cc: Nilsen, Paul - DOT; Thiel, Jim - DOT
Subject: RE: Draft review: LRB 11-4133/P1 Topic: Compliance with federal occupational licensing restrictions.

Has the redrafted /1 with our changes been completed? I have an Assembly member willing to introduce the bill, but I need the draft – urgently. Thanks!

From: Sobotik, John - DOT
Sent: Wednesday, February 22, 2012 1:41 PM
To: Krieser, Steven - DOT
Cc: Nilsen, Paul - DOT; Thiel, Jim - DOT
Subject: FW: Draft review: LRB 11-4133/P1 Topic: Compliance with federal occupational licensing restrictions.

From: Mueller, Eric [mailto:Eric.Mueller@legis.wisconsin.gov]
Sent: Wednesday, February 22, 2012 1:29 PM
To: Sobotik, John - DOT
Subject: RE: Draft review: LRB 11-4133/P1 Topic: Compliance with federal occupational licensing restrictions.

John,

I'd like to hold off on the amendment for the time being. The /P1 draft cannot be introduced, so at least another draft will need to be prepared before introduction. I believe the Senator is okay with the change you're requesting, but I haven't heard back on any other final draft changes.

Eric Mueller
 Attorney, Legislative Reference Bureau
 Phone: (608)261-7032
 eric.mueller@legis.wisconsin.gov

From: Sobotik, John - DOT [mailto:John.Sobotik@dot.wi.gov]
Sent: Wednesday, February 22, 2012 1:20 PM
To: Mueller, Eric
Subject: RE: Draft review: LRB 11-4133/P1 Topic: Compliance with federal occupational licensing restrictions.

I've been asked to request the draft amendment to do that. If they actually do this, we want to be sure that it fixes the problem. I have a high expectation that the draft with preceding 5-years would do the trick, but we cannot know with any certainty, and there isn't time to ask at this point.

We know they accepted the language currently in our statutes.

Thanks.

- john

From: Mueller, Eric [mailto:Eric.Mueller@legis.wisconsin.gov]
Sent: Wednesday, February 22, 2012 11:44 AM
To: Sobotik, John - DOT

Subject: RE: Draft review: LRB 11-4133/P1 Topic: Compliance with federal occupational licensing restrictions.

John,

I used the language because I thought it was a little more clear, but if you're more comfortable with the language already being used in the statutes, that's understandable.

Eric Mueller
 Attorney, Legislative Reference Bureau
 Phone: (608)261-7032
 eric.mueller@legis.wisconsin.gov

From: Sobotik, John - DOT [mailto:John.Sobotik@dot.wi.gov]
Sent: Wednesday, February 22, 2012 11:40 AM
To: Mueller, Eric
Subject: RE: Draft review: LRB 11-4133/P1 Topic: Compliance with federal occupational licensing restrictions.
Importance: High

Eric:

I should have asked this in this e-mail. Did you get some feedback from the feds or someone suggesting that the "previous 5-year period" will satisfy them? If that is the case, I definitely want to tell my management.

- John

From: Sobotik, John - DOT
Sent: Wednesday, February 22, 2012 11:32 AM
To: Mueller, Eric - LEGIS
Subject: FW: Draft review: LRB 11-4133/P1 Topic: Compliance with federal occupational licensing restrictions.
Importance: High

Eric:

Can you please draft a simple amendment to this draft for WisDOT. The 5-year period language is inconsistent with the federal statute and federal regulation. We would like an amendment to conform to the same language we have used elsewhere in the statutes, "in a 5-year period." We know that the feds are happy with that language.

The "previous 5 years" is not the same, and neither the federal statute nor regulation uses the "previous 5-year" statement. The intent here is to conform to federal law, so WisDOT would prefer language that conforms to the federal law more exactly.

Amend Page 2, line 1: counted under s. 343.307 (1), within ~~the previous~~ any 5 years year period, until the restrictions are

We believe this would be consistent with other statutes interpreting and implementing the same federal statute, 23 USC 164. For example:

343.305(10)(b)3.

3. Except as provided in subd. 4m., if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations counted under s. 343.307 (2) within a 10-year period, equals 2, the court shall revoke the person's operating privilege for 2 years. After the first 90 days of the revocation period or, if the total number of convictions, suspensions, and revocations counted under this subdivision within any 5-year period equals 2 or more, after one year of the revocation period has elapsed, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan.

343.305(10)(b)4.

4. Except as provided in subd. 4m., if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations counted under s. 343.307 (2), equals 3 or more, the court shall revoke the person's operating privilege for 3 years. After the first 120 days of the revocation period or, if the total number of convictions, suspensions, and revocations counted under this subdivision within any 5-year period equals 2 or more, after one year of the revocation period has elapsed, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan.

343.31(3)(bm)3.

3. Except as provided in subd. 4m., if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 2, the department shall revoke the person's operating privilege for not less than one year nor more than 18 months. If an Indian tribal court in this state revokes the person's privilege to operate a motor vehicle on tribal lands for not less than one year nor more than 18 months for the conviction specified in par. (bm) (intro.), the department shall impose the same period of revocation. After the first 60 days of the revocation period or, if the total number of convictions, suspensions, and revocations counted under this subdivision within any 5-year period equals 2 or more, after one year of the revocation period has elapsed, the person is eligible for an occupational license under s. 343.10.

343.31(3m)(a)

(a) Any person who has his or her operating privilege revoked under sub. (3) (c) or (f) is eligible for an occupational license under s. 343.10 after the first 120 days of the revocation period, except that if the total number of convictions, suspensions, or revocations for any offense that is counted under s. 343.307 (1) within any 5-year period equals 2 or more, the person is eligible for an occupational license under s. 343.10 after one year of the revocation period has elapsed.

343.31(3m)(b)

(b) Any person who has his or her operating privilege revoked under sub. (3) (e) is eligible for an occupational license under s. 343.10 after the first 60 days of the revocation period, except that if the total number of convictions, suspensions, or revocations for any offense that is counted under s. 343.307 (1) within any 5-year period equals 2 or more, the person is eligible for an occupational license under s. 343.10 after one year of the revocation period has elapsed.

Apparently Senator Lazich is introducing or has introduced 11-4133/P1. I can't see it on the legislature's web site yet, so I don't know the bill number, but that would be what we are trying to amend.

Thank you.

John Sobotik

From: LRB.Legal [mailto:LRB-LegalServices@legis.wisconsin.gov]
Sent: Monday, February 20, 2012 2:05 PM
To: Sobotik, John - DOT
Subject: Draft review: LRB 11-4133/P1 Topic: Compliance with federal occupational licensing restrictions.

Draft Requester: Mary Lazich

Following is the PDF version of draft LRB 11-4133/P1 and drafter's note.

Sobotik, John - DOT

Subject: FW: 23 U.S.C. s. 164

Eric:

I have been told that you are going to attempt to draft a bill to comply with the occupational licensing restrictions that must be applied to federal OWI repeat offenders under that statute. To that end, I've been asked to brief you on the occupational licensing requirements of 23 USC s. 164.

As you know, I personally believe that the interpretation of the law NHTSA has applied to Wisconsin is incorrect; I believe Wisconsin meets the requirements of 23 U.S.C. s. 164. Here is the U.S. Code provision and the applicable regulation. You will see that the regulation has not been modified to deal with the new occupational licensing provision in the federal statute.



USCODE-2009-title CFR-2010-title23-v
23-chap1-sec1... 01-part1275...

Below, I am providing copies of the various correspondence we exchanged with NHTSA. You can read these over and try to discern their issues for yourself. From my point of view, they seem to have problems with (1) people driving as part of their employment, (2) people going to church, and (3) stay-at-home mothers/fathers (whom they don't consider to be doing any kind of "work.")

There are no regs interpreting this new provision of s. 164. The statute itself provides that states must insure that drivers receive certain treatment or they will have 3% of their federal highway money moved between accounting lines:

23 U.S. C. s. 164(a)(2) Fiscal year 2003 and fiscal years thereafter.--On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).

Which begs the question, what is a "repeat intoxicated driver law?" This is answered in the definitions.

23 U.S.C. s. 164 (a)(5) Repeat intoxicated driver law.--The term "repeat intoxicated driver law" means a State law that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall--

(A) Receive.--

(i) a driver's license suspension for not less than 1 year; or

(ii) a combination of suspension of all driving privileges for the first 45 days of the suspension period followed by a reinstatement of limited driving privileges for the purpose of getting to and from work, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual;

Applying that law, here is NHTSA's initial review of Wisconsin law.



USDOT s164
-12-10 internal me..

And here is a letter about that review. We did hold the conference requested, and at the conclusion of the conference, we thought NHTSA's concerns were addressed. The e-mail attached is a follow-up to that telephone conference.



letter to feds on
23USCs164 co...



sobotik 5-20-10
email to Witte...

The next thing that happened (and that I did not know happened until months later) is that NHTSA began withholding monies from Wisconsin despite the fact that no determination of noncompliance had been made



Oct 2010 notice of
apportionme...

3 months later, we then received informal word that NHTSA was going to find us in noncompliance. Bill Bremmer, who was writing to me, was the FHWA safety engineer for Wisconsin. He dealt with all highway safety issues for the state from a federal perspective. He is now retired.



2011-01-05 email
from bill bre...

Indeed, we were found in noncompliance. Now, NHTSA dropped the issues with our driver safety plan driving. They also avoided mentioning their objection to our allowing operation to and from church in so many words. Now, they said simply that driving must be limited to driving only TO certain places. They also chastise WisDOT for not implementing any changes in our program.



WI Transfer Notice
rev.pdf

We appealed this determination.



3-10-2011 WisDOT
23usc164 appe...

The appeal was rejected and a new logic for the sanction was arrived at in the final determination. This determination reverts to the criticizing the state for permitting operation for work purposes that is not to or from a specific location, for considering homemaking to be an occupation and allowing homemakers to drive on occupational licenses, and for permitting drivers to use their occupational licenses to go to church.

One paragraph in particular is telling:

To comply with Section 164, the repeat offender with a restricted occupational license may continue driving to or from work, but not as work (i.e., not occupational driving). Additionally, the locations to which a person may drive would have to be limited to those specifically enumerated in Federal statute. The Federal statute is prescriptive and does not afford discretion to the agencies to waive these requirements.



2011 23USC164
Noncompliance ru...

We then tried another angle on this, recertifying our law, and making it clear that Wisconsin drivers "receive" what federal law requires. This did not succeed.



WI 2011 23usc164 .0-20-2011 Email to
Signed Certif... Bremmer.pd...

They basically ignored the certification. They provided no analysis whatsoever with their response.



12-21-2011 NHTSA
Section 164 C...

I think this sums up where we are and why.

So, what we need is are a couple bill drafts that will address the concerns raised by NHTSA.

Here are my thoughts...

(1) If the Secretary determines that the following restrictions on occupational licenses are needed to prevent a transfer of funds under 23 USC 164, the Dept. shall impose the following additional restrictions on drivers who have committed 2 or more OWI offenses in any 5-year period:

- May not drive as part of their employment
- May not drive to church
- May not drive for homemaking duties

(2) Another way:

- Secretary may impose restrictions on federal repeaters necessary to avoid sanctions under 23 USC s. 164.

- John Sobotik

(3) Use federal language to describe restrictions.

John Sobotik

Assistant General Counsel
Wisconsin Department of Transportation
4802 Sheboygan Avenue
P.O. Box 7910
Madison, WI 53707

Fax: 608 267 6734
john.sobotik@wi.gov



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-4133/PT 4132/1
EVM:cjs:rs

EWJ

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RMNR

INSERT

In 2/29/12

Today

Regen

1 AN ACT to create 343.10 (5m) of the statutes; relating to: limitations on the use
2 of an occupational license.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

INS - Analysis

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 343.10 (5m) of the statutes is created to read:
4 343.10 (5m) FEDERAL LIMITATIONS ON OCCUPATIONAL LICENSE. Notwithstanding
5 subs. (1) (a) and (5) (a) 1., if the secretary determines that the imposition of the
6 restrictions is necessary to avoid a transfer of funds under 23 USC 164, the secretary
7 may impose the following restrictions on the use of occupational licenses issued to
8 persons who have 2 or more prior convictions, suspensions, or revocations, as

hyphenate
5-year

1 counted under s. 343.307 (1), within ~~the previous~~ ^{any} 5 years, until the restrictions are
2 no longer necessary to avoid a transfer of funds under 23 USC 164:

3 (a) The license may not permit operation of a motor vehicle for the person's
4 occupation other than to drive to or from work.

5 (b) The license may not permit operation of a motor vehicle for the occupation
6 of homemaking.

7 (c) The license may not permit travel to or from church.

8 **SECTION 2. Initial applicability.**

9 (1) This act first applies to occupational licenses held on the effective date of
10 this subsection.

11 (END)

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4132/?ins
EVM:.....

1 INS-Analysis

Under current law, with certain exceptions and limitations, a person may apply to the Wisconsin Department of Transportation (WDOT) for an occupational license if the person's operating privilege is revoked or suspended for various specified offenses and the person is engaged in an occupation, including homemaking, trade, or study, making it essential that he or she operate a motor vehicle. The occupational license must contain definite restrictions as to hours of the day, hours per week, type of occupation, and areas or routes of travel which are permitted under the occupational license. The occupational license may allow travel to and from church.

Current federal law requires a state to enact and enforce a repeat intoxicated driver law that meets certain requirements. Among the requirements is that, as a minimum penalty, persons convicted of a second or subsequent offense for driving while intoxicated may receive a reinstatement of "limited driving privileges for the purpose of getting to and from work, school, or an alcohol treatment program." Failure to meet the federal repeat intoxicated driver law requirements subjects the state to a transfer of 3 percent of federal funds apportioned to the state for federal-aid highways to the state's apportionment of funds for certain highway safety programs. In September 2011, the U.S. Department of Transportation determined that Wisconsin is not in compliance with federal repeat intoxicated driver law requirements and ordered a transfer of funds.

This bill allows the secretary of ~~WDDT~~ ^{transportation}, if he or she determines that the imposition of restrictions is necessary to avoid a transfer of funds due to noncompliance with federal repeat intoxicated driver law requirements, to impose restrictions on the use of an occupational license by a person who has 2 or more driving while intoxicated offenses in any ~~5 year~~ ^{5 year} period, until the restrictions are no longer necessary to avoid a transfer of funds. Under this bill the secretary may restrict use of an occupational license for: 1) occupational travel other than to or from work; 2) occupational travel for the occupation of homemaking; and 3) travel to or from church.

five-year

STET

State

*

*

(P)