

2013 DRAFTING REQUEST

Bill

Received: 12/11/2012 Received By: emueller
Wanted: As time permits Same as LRB:
For: Josh Zepnick (608) 266-1707 By/Representing: Steven Peters
May Contact: Drafter: emueller
Subject: Drunk Driving - other Addl. Drafters:
Transportation - motor vehicles
Transportation - traffic laws Extra Copies: ARG, PJH

Submit via email: YES
Requester's email: Rep.Zepnick@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Impoundment of registration plates for certain operating while intoxicated offenses.

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>
/?	emueller 1/4/2013	kfollett 1/7/2013	jmurphy 1/7/2013	_____			
/P1	emueller 3/14/2013			_____	mbarman 1/7/2013		State S&L Crime
/1		kfollett 3/18/2013	jfrantze 3/18/2013	_____	srose 3/18/2013	srose 9/3/2013	State S&L

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required
Crime

FE Sent For:

at intro
10/18

<END>

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/P1		1/15/13 3/18	ph 3/18	_____	mbarman 1/7/2013	_____	State S&L Crime
/1	EVM 3/14/13			_____		_____	

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/?	emueller	PI/SGF		JF			State
PI	EVW 1/4/13-	117		PIH 4/1/13			S&L Crime

FE Sent For:

<END>

Mueller, Eric

From: Brown, Chadwick
Sent: Tuesday, December 11, 2012 2:17 PM
To: Gary, Aaron
Cc: Mueller, Eric
Subject: FW: Whiskey Plates

Gentlemen,

Below is an email that Larry sent to the Zepnick office. This was the background from which I discussed the issue with Steven. In going through the MN Statute, the only issue Steven was not sure on was whether to go with 2nd offense or 3rd. He said he would like to look at it as 2nd offense like MN, then maybe discuss later if that needed changed.

Let me know if there is anything else you need from me.

Thanks,

Chad

Chadwick Brown
Staff Attorney
Wisconsin Legislative Council
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PO Box 2536
Madison, WI 53701-2536
(608) 266-0922
cbrown@legis.wisconsin.gov

From: Konopacki, Larry
Sent: Thursday, October 11, 2012 10:41 AM
To: Steven Peters (steven.michael.peters@gmail.com); Rep.Zepnick
Subject: Whiskey Plates

Hi Steve and Rep. Zepnick,

We talked a couple weeks ago about your idea to draft a Minnesota-style "Whiskey Plates" bill and a bill to require driver license cards to indicate convicted drunk drivers. Here are some initial thoughts to get us started:

Registration Plates

A few states appear to require, or have/are considering requiring, certain drunk driving offenders to display special registration plates on their vehicles. In Minnesota, certain offenders are required to attach special plates to all of their cars, and regular plates may generally not be re-issued for 1 year thereafter or until the violator is re-issued a driver license, whichever is longer (this is called "plate impoundment"). The offenses that this applies to include:

- 2nd offense drunk driving within 10 years
- BAC of at least twice the legal limit
- a child under 16 (and more than 36 months younger than the offender) in the vehicle, or

- drunk driving when the driver's license was already suspended (under the MN law like our habitual traffic offender law) at the time of the offense.

Minnesota law also requires plate impoundment for a vehicle not owned by the offender, if it was the vehicle driven during an offense (called the "innocent owner") although there are ways to have this requirement lifted in certain circumstances.

A copy of the Minnesota law is attached:



<https://www.re...>

Some of the questions that you will want to answer for draft legislation include:

- To what types of offenses would you like this to apply?
- How long should offenders be subject to this restriction?
- Who should pay the cost of the temporary plates, re-issuance of regular plates after the impoundment ends, and re-issuance of destroyed plates if the violator is acquitted or the case is otherwise dropped? Note that other states appear to generally levy these costs on the violator. WI has a plate design that might allow a sticker to be added to the offender's existing plate to save cost. (although this might be hard to enforce).

Also, note that it appears that, at least in Minnesota, the courts have said that this type of a license plate cannot be the sole reason why a driver is pulled over – the police still need to meet constitutional requirements requiring a reasonable basis to stop a vehicle.

For a summary of other states' laws and legislative proposals over the last few years, see:

<http://www.ncsl.org/issues-research/transport/special-plates-for-drunk-driving-offenders.aspx>

Here are a couple of other articles that I found on this topic that you may be interested to see:

<http://www.netquote.com/auto-insurance/special-license-plates-for-drunk-drivers.aspx>

<http://online.wsj.com/article/SB10001424052748704520504576162402821321860.html>

Driver License

The issuance of a driver license which displays information about a past drunk driving conviction would involve some of the same considerations, although it should be a simpler bill than the registration plate legislation because a violator only has one driver license and "innocent owners" will not be affected. You would simply have to decide what you would like to be displayed on the license (DOT would probably express some limitations about what is possible), for what offenses you would like to require this, how long it would be required, etc.

Thanks, and please let me know how you would like to proceed, and let me know if there is anything else I can do.

Larry

Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

169A.60 ADMINISTRATIVE IMPOUNDMENT OF PLATES.

Subdivision 1. **Definitions.** (a) As used in this section, the following terms have the meanings given in this subdivision.

(b) "Family or household member" has the meaning given in section 169A.63, subdivision 1.

(c) "Motor vehicle" means a self-propelled motor vehicle other than a motorboat in operation or an off-road recreational vehicle.

(d) "Plate impoundment violation" includes:

(1) a violation of section 169A.20 (driving while impaired) or 169A.52 (license revocation for test failure or refusal), or an ordinance from this state or a statute or ordinance from another state in conformity with either of those sections, that results in the revocation of a person's driver's license or driving privileges, within ten years of a qualified prior impaired driving incident;

(2) a license disqualification under section 171.165 (commercial driver's license disqualification) resulting from a violation of section 169A.52 within ten years of a qualified prior impaired driving incident;

(3) a violation of section 169A.20 or 169A.52 while having an alcohol concentration of twice the legal limit or more as measured at the time, or within two hours of the time, of the offense;

(4) a violation of section 169A.20 or 169A.52 while having a child under the age of 16 in the vehicle if the child is more than 36 months younger than the offender; or

(5) a violation of section 171.24 (driving without valid license) by a person whose driver's license or driving privileges have been canceled or denied under section 171.04, subdivision 1, clause (10) (persons not eligible for driver's license, inimical to public safety).

(e) "Violator" means a person who was driving, operating, or in physical control of the motor vehicle when the plate impoundment violation occurred.

[See Note.]

Subd. 2. **Plate impoundment violation; impoundment order.** (a) The commissioner shall issue a registration plate impoundment order when:

(1) a person's driver's license or driving privileges are revoked for a plate impoundment violation; or

(2) a person is arrested for or charged with a plate impoundment violation described in subdivision 1, paragraph (d), clause (5).

(b) The order must require the impoundment of the registration plates of the motor vehicle involved in the plate impoundment violation and all motor vehicles owned by, registered, or leased in the name of the violator, including motor vehicles registered jointly or leased in the name of the violator and another. The commissioner shall not issue an impoundment order for the registration plates of a rental vehicle, as defined in section 168.041, subdivision 10, or a vehicle registered in another state.

Subd. 3. **Notice of impoundment.** An impoundment order is effective when the commissioner or a peace officer acting on behalf of the commissioner notifies the violator or the registered owner of the motor vehicle of the intent to impound and order of impoundment. The

notice must advise the violator of the duties and obligations set forth in subdivision 6 (surrender of plates) and of the right to obtain administrative and judicial review. The notice to the registered owner who is not the violator must include the procedure to obtain new registration plates under subdivision 8. If mailed, the notice and order of impoundment is deemed received three days after mailing to the last known address of the violator or the registered owner.

Subd. 4. Peace officer as agent for notice of impoundment. On behalf of the commissioner, a peace officer issuing a notice of intent to revoke and of revocation for a plate impoundment violation shall also serve a notice of intent to impound and an order of impoundment. On behalf of the commissioner, a peace officer who is arresting a person for or charging a person with a plate impoundment violation described in subdivision 1, paragraph (d), clause (5), shall also serve a notice of intent to impound and an order of impoundment. If the vehicle involved in the plate impoundment violation is accessible to the officer at the time the impoundment order is issued, the officer shall seize the registration plates subject to the impoundment order. The officer shall destroy all plates seized or impounded under this section. The officer shall send to the commissioner copies of the notice of intent to impound and the order of impoundment and a notice that registration plates impounded and seized under this section have been destroyed.

Subd. 5. Temporary permit. If the motor vehicle is registered to the violator, the officer shall issue a temporary vehicle permit that is valid for seven days when the officer issues the notices under subdivision 4. If the motor vehicle is registered in the name of another, the officer shall issue a temporary vehicle permit that is valid for 45 days when the notices are issued under subdivision 3. The permit must be in a form determined by the registrar and whenever practicable must be posted on the left side of the inside rear window of the vehicle. A permit is valid only for the vehicle for which it is issued.

Subd. 6. Surrender of plates. Within seven days after issuance of the impoundment notice, a person who receives a notice of impoundment and impoundment order shall surrender all registration plates subject to the impoundment order that were not seized by a peace officer under subdivision 4. Registration plates required to be surrendered under this subdivision must be surrendered to a Minnesota police department, sheriff, or the State Patrol, along with a copy of the impoundment order. A law enforcement agency receiving registration plates under this subdivision shall destroy the plates and notify the commissioner that they have been destroyed. The notification to the commissioner shall also include a copy of the impoundment order.

Subd. 7. Vehicle not owned by violator. A violator may file a sworn statement with the commissioner within seven days of the issuance of an impoundment order stating any material information relating to the impoundment order, including that the vehicle has been sold or destroyed, and supplying the date, name, location, and address of the person or entity that purchased or destroyed the vehicle. The commissioner shall rescind the impoundment order if the violator shows that the impoundment order was not properly issued.

Subd. 8. Reissuance of registration plates. (a) The commissioner shall rescind the impoundment order of a person subject to an order under this section, other than the violator, if:

(1) the violator had a valid driver's license on the date of the plate impoundment violation and the person files with the commissioner an acceptable sworn statement containing the following information:

(i) that the person is the registered owner of the vehicle from which the plates have been impounded under this section;

- (ii) that the person is the current owner and possessor of the vehicle used in the violation;
- (iii) the date on which the violator obtained the vehicle from the registered owner;
- (iv) the residence addresses of the registered owner and the violator on the date the violator obtained the vehicle from the registered owner;
- (v) that the person was not a passenger in the vehicle at the time of the plate impoundment violation; and
- (vi) that the person knows that the violator may not drive, operate, or be in physical control of a vehicle without a valid driver's license; or

(2) the violator did not have a valid driver's license on the date of the plate impoundment violation and the person made a report to law enforcement before the violation stating that the vehicle had been taken from the person's possession or was being used without permission.

(b) A person who has failed to make a report as provided in paragraph (a), clause (2), may be issued special registration plates under subdivision 13 for a period of one year from the effective date of the impoundment order. Following this period, the person may apply for regular registration plates.

(c) If the order is rescinded, the owner shall receive new registration plates at no cost, if the plates were seized and destroyed.

Subd. 9. Administrative review. (a) At any time during the effective period of an impoundment order, a person may request in writing a review of the impoundment order by the commissioner. On receiving a request, the commissioner or the commissioner's designee shall review the order, the evidence upon which the order was based, and any other material information brought to the attention of the commissioner, and determine whether sufficient cause exists to sustain the order. The commissioner shall report in writing the results of the review within 15 days of receiving the request. The review provided in this subdivision is not subject to the contested case provisions of the Administrative Procedure Act in sections 14.001 to 14.69. As a result of this review, the commissioner may authorize the issuance at no cost of new registration plates to the registered owner of the vehicle if the registered owner's license or driving privileges were not revoked as a result of the plate impoundment violation.

(b) Review under this subdivision must take place, if possible, at the same time as any administrative review of the person's license revocation under section 169A.53 (administrative and judicial review of license revocation).

Subd. 10. Petition for judicial review. (a) Within 30 days following receipt of a notice and order of impoundment under this section, a person may petition the court for review. The petition must include proof of service of a copy of the petition on the commissioner. The petition must include the petitioner's date of birth, driver's license number, and date of the plate impoundment violation, as well as the name of the violator and the law enforcement agency that issued the plate impoundment order. The petition must state with specificity the grounds upon which the petitioner seeks rescission of the order for impoundment. The petition may be combined with any petition filed under section 169A.53 (administrative and judicial review of license revocation).

(b) Except as otherwise provided in this section, the judicial review and hearing are governed by section 169A.53 and must take place at the same time as any judicial review of the person's license revocation under section 169A.53. The filing of the petition does not stay the

impoundment order. The reviewing court may order a stay of the balance of the impoundment period if the hearing has not been conducted within 60 days after filing of the petition upon terms the court deems proper. The court shall order either that the impoundment be rescinded or sustained, and forward the order to the commissioner. The court shall file its order within 14 days following the hearing.

(c) In addition to the issues described in section 169A.53, subdivision 3 (judicial review of license revocation), the scope of a hearing under this subdivision is limited to:

(1) if the impoundment is based on a plate impoundment violation described in subdivision 1, paragraph (d), clause (3) or (4), whether the peace officer had probable cause to believe the violator committed the plate impoundment violation and whether the evidence demonstrates that the plate impoundment violation occurred; and

(2) for all other cases, whether the peace officer had probable cause to believe the violator committed the plate impoundment violation.

(d) In a hearing under this subdivision, the following records are admissible in evidence:

(1) certified copies of the violator's driving record; and

(2) certified copies of vehicle registration records bearing the violator's name.

Subd. 11. **Rescission of revocation and dismissal or acquittal; new plates.** If:

(1) the driver's license revocation that is the basis for an impoundment order is rescinded; and

(2) the charges for the plate impoundment violation have been dismissed with prejudice or the violator has been acquitted of the plate impoundment violation;

then the registrar of motor vehicles shall issue new registration plates for the vehicle at no cost, when the registrar receives an application that includes a copy of the order rescinding the driver's license revocation and either the order dismissing the charges or the judgment of acquittal.

Subd. 12. **Charge for reinstatement of plates in certain situations.** When the registrar of motor vehicles reinstates a person's registration plates after impoundment for reasons other than those described in subdivision 11, the registrar shall charge the person \$50 for each vehicle for which the registration plates are being reinstated.

Subd. 13. **Special registration plates.** (a) At any time during the effective period of an impoundment order, a violator or registered owner may apply to the commissioner for new registration plates, which must bear a special series of numbers or letters so as to be readily identified by traffic law enforcement officers. The commissioner may authorize the issuance of special plates if:

(1) the violator has a qualified licensed driver whom the violator must identify;

(2) the violator or registered owner has a limited license issued under section 171.30;

(3) the registered owner is not the violator and the registered owner has a valid or limited driver's license;

(4) a member of the registered owner's household has a valid driver's license; or

(5) the violator has been reissued a valid driver's license.

(b) The commissioner may not issue new registration plates for that vehicle subject to plate impoundment for a period of at least one year from the date of the impoundment order. In addition, if the owner is the violator, new registration plates may not be issued for the vehicle unless the person has been reissued a valid driver's license in accordance with chapter 171.

(c) A violator may not apply for new registration plates for a vehicle at any time before the person's driver's license is reinstated.

(d) The commissioner may issue the special plates on payment of a \$50 fee for each vehicle for which special plates are requested.

(e) Paragraphs (a) to (d) notwithstanding, the commissioner must issue upon request new registration plates for a vehicle for which the registration plates have been impounded if:

(1) the impoundment order is rescinded;

(2) the vehicle is transferred in compliance with subdivision 14; or

(3) the vehicle is transferred to a Minnesota automobile dealer licensed under section 168.27, a financial institution that has submitted a repossession affidavit, or a government agency.

Subd. 14. Sale of vehicle subject to impoundment order. (a) A registered owner may not sell or transfer a motor vehicle during the time its registration plates have been ordered impounded or during the time its registration plates bear a special series number, unless:

(1) the sale is for a valid consideration;

(2) the transferee and the registered owner are not family or household members;

(3) the transferee signs an acceptable sworn statement with the commissioner attesting that:

(i) the transferee and the violator are not family or household members;

(ii) the transferee understands that the vehicle is subject to an impoundment order; and

(iii) it is a crime under section 169A.37 to file a false statement under this section or to allow the previously registered owner to drive, operate, or be in control of the vehicle during the impoundment period; and

(4) all elements of section 168A.10 (transfer of interest by owner) are satisfied.

(b) If the conditions of paragraph (a) are satisfied, the registrar may transfer the title to the new owner upon proper application and issue new registration plates for the vehicle.

Subd. 15. Acquiring another vehicle. If the violator applies to the commissioner for registration plates for any vehicle during the effective period of the plate impoundment, the commissioner shall not issue registration plates unless the violator qualifies for special registration plates under subdivision 13 and unless the plates issued are special plates as described in subdivision 13.

Subd. 16. Fees credited. Fees collected from the sale or reinstatement of license plates under this section must be paid into the state treasury and credited one-half to the vehicle services operating account in the special revenue fund specified in section 299A.705 and one-half to the general fund.

Subd. 17. Plate impoundment; penalty. Criminal penalties for violating this section are governed by section 169A.37.

Subd. 18. **Stop of vehicles bearing special plates.** The authority of a peace officer to stop a vehicle bearing special plates is governed by section 168.0422.

History: 2000 c 478 art 1 s 36; 1Sp2001 c 8 art 12 s 9-11; 1Sp2003 c 2 art 9 s 15,16; 2004 c 235 s 1,2; 2005 c 136 art 18 s 5,6; 1Sp2005 c 6 art 2 s 36; 2006 c 260 art 2 s 13,14; 2010 c 366 s 9

NOTE: The amendment to subdivision 1 by Laws 2010, chapter 366, section 9, is effective July 1, 2011. Laws 2010, chapter 366, section 9, the effective date.



fl

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RMNR

LPS: check spacing throughout

In 1/4/13

By End of Mar 1/7

gen

- 1 **AN ACT** ...; **relating to:** impoundment of motor vehicle registration plates for
- 2 certain operating while intoxicated and other offenses and providing a penalty.

Analysis by the Legislative Reference Bureau

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

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 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 **SECTION 1.** 341.66 of the statutes [✓] is created to read:
- 4 **341.66 Administrative impoundment of registration plates. (1)**
- 5 **DEFINITIONS.** In this section [✓]:
- 6 (a) "Close associate" means any of the following:

- 1 1. A parent, stepparent, or guardian.
- 2 2. A person related by blood, marriage, or adoption who is a brother, sister,
- 3 stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent,
- 4 great-grandparent, great-uncle, or great-aunt.
- 5 3. A person residing together with another.
- 6 4. A person who regularly associates and communicates with another outside
- 7 of a workplace setting.

 ****NOTE: I changed the defined term from "family or household member" because, given the definition, the term seemed misleading. Let me know if you want any changes.

8 (b) "Impoundment violation" means:

- 9 1. A violation subject to counting under s. 343.307 (2) under any of the following
10 circumstances:
 - 11 a. Within 10 years of a prior conviction, suspension, or revocation counted
12 under s. 343.307 (2).
 - 13 b. If the violator had an alcohol concentration of more than twice the prohibited
14 alcohol concentration.
 - 15 c. If a minor passenger under 16 years of age and more than 36 months younger
16 than the violator was in the vehicle at the time of the violation.
- 17 2. A violation of s. 343.05 by a person to whom s. 343.06 (1) (h) applies.

 ****NOTE: The violations included within the Minnesota plate impoundment statute do not exactly correspond to violations under Wisconsin law. This definition includes existing Wisconsin violations that are counted as prior OWI offenses for certain purposes under Wisconsin law and that roughly correspond to Minnesota violations covered by the Minnesota impoundment statute. Please review the coverage carefully to ensure this draft covers the violations you intend to cover and does not cover violations you do not intend to cover. Notably, Minnesota's statute covers operating boats, ATVs, and snowmobiles while intoxicated, none of which are generally counted in Wisconsin statutes governing motor vehicle OWI.

 ****NOTE: Also, Minnesota's plate impoundment violation definition appears limited to offenses resulting in a driver's license revocation or CDL disqualification. The Wisconsin violations used in the draft would allow some offenses that result in driver's license suspensions to count as violations.

1 (c) "Violator" means a person who was driving or operating a motor vehicle
2 when an impoundment violation occurred.

3 (2) IMPOUNDMENT ORDER. (a) The department shall issue a registration plate
4 impoundment order when any of the following occurs:

- 5 1. A person's operator's license is revoked for an impoundment violation.
- 6 2. A person is arrested for or charged with an impoundment violation under
7 sub. (1) (b) 2.

8 (b) Except as provided in par. (c), the impoundment order shall require the
9 impoundment of the registration plates of the motor vehicle involved in the
10 impoundment violation and of any other motor vehicle owned by, or registered or
11 leased in the name of, the violator.

12 (c) An impoundment order may not require the impoundment of the
13 registration plates of any of the following:

- 14 1. A rental vehicle that is leased in the name of the violator and is part of a fleet
15 of two or more motor vehicles that are rented for periods of 30 days or less.
- 16 2. A vehicle registered in another state.

****NOTE: I have placed the responsibility for registration plate impoundment with the Department of Transportation. Please let me know if this is not what you intend.

****NOTE: Also, it is not entirely clear to me how long an impoundment order may remain in effect. Do you want to clearly specify a limit?

17 (3) NOTICE OF IMPOUNDMENT. (a) An impoundment order under sub. (2) is
18 effective when the department provides the violator or registered owner of the motor
19 vehicle with a notice of the department's intent to impound the vehicle's registration
20 plates and the registration plate impoundment order. If mailed, the order of
21 impoundment is effective 3 days after mailing to the last-known address of the
22 violator or registered owner.

****NOTE: To provide additional clarity, I have at several points in the draft set dates for taking actions based on the effective date of the impoundment order rather than the date on which the notice is received. Let me know if you want any changes.

1 (b) The notice under par. (a) shall include information regarding the
2 requirements of sub. (4), the procedure to obtain new registration plates under sub.
3 (5), the right to obtain administrative review under sub. (6), and the right to obtain
4 judicial review under sub. (7).

5 (c) If a notice and order under par. (a) are provided to a registered owner other
6 than the violator, the department shall also provide a temporary vehicle permit for
7 the vehicle that is valid for 45 days. The permit shall be in a form determined by the
8 department and, whenever practicable, shall be posted on the left side of the inside
9 rear window of the vehicle.

10 (d) 1. If a law enforcement officer arrests a person for an impoundment
11 violation under sub. (1) (b) 2., the officer shall provide the person with a notice of the
12 department's intent to impound the vehicle's registration plates and a registration
13 plate impoundment order. If the vehicle involved in the violation is accessible to the
14 officer at the time of providing the impoundment order, the officer shall seize and
15 destroy the vehicle's registration plates.

16 2. The officer shall provide the department with copies of the notice and the
17 order under this paragraph and, if registration plates have been seized and
18 destroyed under this paragraph, a notice that the registration plates impounded
19 under this paragraph have been destroyed.

****NOTE: This subsection revises and combines subs. 3., 4., and 5. of the provided material. Paragraphs (a) and (b) include the material from subd. 3, par. (c) from subd. 4, and par. (d) from subd. 5. The most significant difference from the provided material is omission of some of the material contained in subs. 4. and 5. The Minnesota statute specifically references a law enforcement officer's issuance of a revocation of the person's operator's license at the time of the delivery of the impoundment order. In Wisconsin, operator's license revocation does not take place until after an administrative hearing. This draft links impoundment with revocation, therefore, a law enforcement officer will not generally be issuing an impoundment order. Also, because this draft does not

4.

seven

X implement immediate delivery of impoundment orders, the 7 day temporary permit is omitted. The 45 day temporary permit for non-violator owners, however, is retained in par. (c). Also, this section does retain the immediate impoundment of the plates of a person who commits an impoundment violation under sub. (1) (b) 2. because a person under that provision is not licensed. Please let me know if you would like to deal with this in another way. For example, do you want to decouple revocation and impoundment? Do you want to implement immediate revocation of operating privilege for certain offenses?

1 (4) SURRENDER OF REGISTRATION PLATES. (a) Except as provided in par. (c), not
2 more than 7 days after an impoundment order under sub. (2) becomes effective, a
3 person subject to the order shall surrender all registration plates subject to the order
4 that were not seized under sub. (3) (d). The registration plates shall be surrendered
5 to a law enforcement agency together with a copy of the impoundment order.

6 (b) A law enforcement agency that receives registration plates under par. (a)
7 shall destroy the plates and provide the department with a copy of the impoundment
8 order and a notification that the plates have been destroyed.

9 (c) A violator may file a sworn statement with the department not more than
10 7 days after an impoundment order under sub. (2) becomes effective, providing any
11 material information relating to the impoundment order. If the violator states that
12 the vehicle has been sold or destroyed, he or she shall supply the date, name, location,
13 and address of the person or entity that purchased or destroyed the vehicle.

14 (d) The department shall rescind the impoundment order if the department
15 determines that the impoundment order was not properly issued or if it finds that
16 the vehicle has been sold or destroyed and is no longer available for use by the
17 violator.

X ***NOTE: Subsection (4) contains the material in subd. 6. and 7. of the provided material. I revised subd. 6 of the provided material to provide additional clarity regarding standards and timeframes. Do you want to be more specific about to whom plates must be surrendered? Perhaps, DOT could specify in its order how plates should be surrendered. S

***NOTE: Also, do you wish to specify further the procedure under par. (c)? For example, this draft does not specifically state what happens if the department determines that the violator's statement is of no import.

1 (5) RECISSION OF IMPOUNDMENT ORDER. (a) The department shall rescind an
2 impoundment order under sub. (2) that was provided to a registered owner other
3 than the violator if any of the following apply:

4 1. The violator possessed a valid operator's license on the date of the
5 impoundment violation and the owner files with the department a sworn statement,
6 in a form prescribed by the department, containing all of the following:

7 a. A statement that the owner is the registered owner of the vehicle from which
8 registration plates have been impounded under this section.

9 b. A statement that the owner is the current owner and possessor of the vehicle
10 used in the violation.

11 c. The date on which the violator obtained the vehicle from the owner.

12 d. The residence addresses of the owner and the violator on the date that the
13 violator obtained the vehicle from the owner.

14 e. A statement that the owner was not a passenger in the vehicle at the time
15 of the impoundment violation.

16 f. A statement that the owner knows that the violator may not drive or operate
17 a motor vehicle without a valid operator's license.

18 2. The violator did not possess a valid operator's license on the date of the
19 impoundment violation and the owner made a report to a law enforcement agency
20 before the impoundment violation stating that the vehicle had been taken from the
21 person's possession or was being used without permission.

****NOTE: This provision would allow recission of a non-violator owner's plate
impoundment when the violator is unlicensed only if: 1) the car is, essentially, stolen; and
2) a report of the theft is made before the impoundment violation occurs. Persons who
do not become aware that their vehicle is stolen in a timely fashion may, therefore, be
subject to impoundment.

1 (b) The department may issue special registration plates under sub. (10) to a
2 registered owner, other than the violator, if the violator did not possess a valid
3 operator's license and the owner did not make a report under par. (a) 2. The plates
4 shall be valid for a period of one year from the effective date of the impoundment
5 order under sub. (2). After this period, the owner may apply for another registration
6 plate under this chapter.

7 (c) If registration plates were seized and destroyed and the impoundment order
8 is rescinded, the owner shall receive new registration plates, of the same kind as were
9 impounded under this section, at no cost.

10 (6) ADMINISTRATIVE REVIEW. (a) At any time during the effective period of an
11 impoundment order under sub. (2), a person subject to the order may request, in
12 writing, a review of the order. Upon receiving a request for review, the department
13 shall review the order, the evidence upon which the order was based, and any other
14 material information and determine whether sufficient cause exists to sustain the
15 order. The department shall provide a written decision not more than 15 days after
16 receiving the request.

17 (b) If a registered owner's operator's license was not revoked as a result of the
18 plate impoundment violation, the department may authorize the issuance of new
19 registration plates to the owner at no cost.

20 (c) The department's decision under this section is not subject to review under
21 ch. 227.

***NOTE: This draft omits subd. 9. (b) of the provided material. License revocation decisions in Wisconsin are not generally made by DOT. Thus, revocation and impoundment review will not generally be easily combined.

***NOTE: Also, you may wish to review par. (b). This provision appears to authorize a reissuance for a fairly broad group, potentially the entire group of non-violator owners. Do you want this to apply only to situations where the violator's license was not revoked?

1 (7) JUDICIAL REVIEW. (a) Not later than 30 days after an impoundment order
 2 under sub. (2) becomes effective, a person may petition for judicial review of the
 3 order. The petition must state with specificity the grounds upon which the petitioner
 4 seeks rescission of the order for impoundment. The petition must include all of the
 5 following:

- 6 ~~8~~ 1. Proof of service of a copy of the petition on the department.
- 7 2. The petitioner's date of birth.
- 8 3. The petitioner's operator's license number.
- 9 4. The date of the plate impoundment violation.
- 10 5. The name of the violator.
- 11 6. The name of the law enforcement agency that issued the plate impoundment
 12 order.

13 (b) The filing of a petition under this subsection does not stay the impoundment
 14 order. The reviewing court may order a stay of the balance of the impoundment
 15 period if the hearing has not been conducted within 60 days after filing of the
 16 petition.

17 (c) The scope of a hearing under this subdivision is limited to:

- 18 1. If the impoundment order is based on an impoundment violation under sub.
 19 (1) (a) 1. b. or c., whether the law enforcement officer had probable cause to believe
 20 the violator committed the impoundment violation and whether the evidence
 21 demonstrates that the plate impoundment violation occurred.
- 22 2. If the impoundment order is not based on an impoundment violation under
 23 sub. (1) (a) 1. b. or c., whether the law enforcement officer had probable cause to
 24 believe the violator committed the plate impoundment violation.

★

(d) In a hearing under this subsection, all of the following records are admissible evidence:

- 1. Certified copies of the violator's driving record.
- 2. Certified copies of vehicle registration records bearing the violator's name.

(e) The court shall order either that the impoundment be rescinded or sustained, and forward the order to the department. The court shall file its order not more than 14 days after the hearing.

***NOTE: Similar to the treatment of sub. (6), sub. (7) of this draft omits the provisions regarding combining procedures contained in subd. 10. of the provided material. In some cases, judicial review of administrative revocations can probably be treated together. These can probably be handled jointly under existing court rules. In most cases, however, operator's license revocation will be part of a criminal sentencing.

8

(8) RESCISSION OF REVOCATION AND DISMISSAL. If the charge for the impoundment violation that is the basis for an impoundment order under sub. (2) is dismissed with prejudice and the applicant's operator's license revocation is rescinded, upon application, the department shall issue new registration plates, of the same kind as were impounded under this section, for the motor vehicle at no cost if the applicant provides a copy of the order rescinding the operator's license revocation and the order dismissing the charge that is the basis for the impoundment order.

***NOTE: This section is slightly different from subd. 11. of the provided material because acquittal in Wisconsin will generally mean that no revocation, and therefore no impoundment, occurs.

15

(9) CHARGE FOR REINSTATEMENT OF PLATES IN CERTAIN SITUATIONS. When the department reinstates a person's registration plates after impoundment for a reason other than described in sub. (8), the department shall charge the person \$50 for each vehicle for which the registration plates are being reinstated.

***NOTE: Please review the dollar amount to be sure the charge reflects your intent.

1 (10) SPECIAL REGISTRATION PLATES. (a) At any time during the effective period
2 of an impoundment order, a violator or owner may apply to the department for special
3 registration plates that bear a special series of numbers or letters so as to be readily
4 identified by traffic officers. The department may issue the plates if any of the
5 following apply: *ies*

6 1. The violator has a qualified licensed driver. The violator must identify the
7 driver to qualify under this subdivision.

****NOTE: Do you want to provide additional information regarding, or a definition
of, "qualified licensed driver?"

8 2. The violator or registered owner possesses a valid occupational license issued
9 under s. 343.10.

10 3. The registered owner is not the violator and the registered owner possesses
11 a valid operator's license.

12 4. A member of the registered owner's household possesses a valid operator's
13 license.

14 5. The violator has been reissued a valid operator's license.

15 (b) The department may not issue registration plates other than special plates
16 for a vehicle subject to an impoundment order under sub. (2) for a period of one year
17 from the date of the order. If the owner is the violator, the department may not issue
18 registration plates unless the person has been reissued a valid operator's license.

19 (c) A violator may not apply for registration plates for a vehicle before the
20 person's operating privilege is reinstated.

21 (d) The department shall charge a fee of \$50 for each vehicle for which special
22 plates are requested.

****NOTE: Please review the dollar amount to be sure the charge reflects your
intent.

1 (e) Notwithstanding pars. (a) to (d), the department shall issue upon request
 2 registration plates other than special plates for a vehicle for which the registration
 3 plates have been impounded if any of the following apply: *ies*

4 1. The impoundment order is rescinded.

5 2. The vehicle is transferred under sub. (11).

6 3. The vehicle is transferred to a licensed automobile dealer, a financial
 7 institution that has submitted a repossession affidavit, or a government agency.

8 (11) SALE OF VEHICLE SUBJECT TO IMPOUNDMENT ORDER. A registered owner may
 9 not sell or transfer a motor vehicle during the time its registration plates have been
 10 ordered impounded or during the time its registration plates bear a special series of
 11 numbers or letters, unless all of the following apply:

12 (a) The sale is for a valid consideration.

13 (b) The transferee and the registered owner are not close associates.

14 (c) The transferee provides a sworn statement in a form prescribed by the
 15 department stating all of the following:

16 1. That the transferee and the violator are not close associates.

17 2. That the transferee understands that the vehicle is subject to an
 18 impoundment order.

19 3. That the transferee understands that it is a crime to file a false statement
 20 or to allow the previously registered owner to drive, operate, or be in control of the
 21 vehicle during the impoundment period.

****NOTE: Sub. (11) omits the material in subd. 14. (a) (4) and (b) because these
 provisions appear superfluous. Nothing in this section appears to permit transfers of
 motor vehicles that are otherwise unlawful or otherwise permit title transfers that do not
 comply with existing title transfer procedures.

1 (12) ACQUIRING ANOTHER VEHICLE. Except as provided in sub. (10), the
2 department may not issue registration plates for which a violator applies during the
3 effective period of the registration plate impoundment under this section.

4 *****NOTE: This draft omits subd. 16 of the provided material regarding
5 apportionment of fees collected under the impoundment program. Unless specified
6 otherwise, money collected under the provisions created by this draft would go to the
7 Transportation Fund. Would you like to provide otherwise?

8 (13) PENALTIES. (a) No person may do any of the following:

9 1. Fail to comply with an impoundment order under sub. (2) to which the person
10 is subject.

11 2. File a false statement under sub. (4) (c), (5), or (11) (c).

12 3. Operate a motor vehicle on highway when the vehicle is subject to an
13 impoundment order under sub. (2), unless special plates have been issued for the
14 vehicle under sub. (10).

15 4. Fail to notify the department of the impoundment order under sub. (2) when
16 requesting new plates.

17 5. If the person is subject to an impoundment order under sub. (2), drive or
18 operate a motor vehicle during the impoundment period, unless the vehicle has
19 special plates issued under sub. (10), and the person possesses a valid operator's
20 license.

21 6. If the person is a transferee of a motor vehicle who has signed a sworn
22 statement under sub. (11) (c), allow the previously registered owner to drive or
23 operate the vehicle during the impoundment period.

24 (b) Any person who violates par. (a) is guilty of a misdemeanor.

25 *****NOTE: Each of the offenses described here is a generic misdemeanor. Under s.
26 939.61, these offenses are punishable by a fine of up to \$500 or imprisonment for up to
27 30 days or both. Please let me know if you would like to specify a different penalty for any
28 or all of the violations.

X X

****NOTE: This draft omits subd. 18. of the provided material as ^gsuperfluous. The provision would specify that a law enforcement officer may stop a vehicle bearing special registration plates for the purpose of determining whether the driver is operating the vehicle lawfully under a valid operator's license. If such a stop is permitted by the constitution, there is nothing in state law that prohibits the stop.

because I believe the provision is

1

(END)

Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

PI
LRB-0803/?dn
EVM:...

Date

ATTN: Rep. Josh Zepnick

Please review the attached draft carefully to ensure that it is consistent with your intent. The draft does not precisely replicate the Minnesota statutes you provided, primarily because Wisconsin's OWI law differs in several respects from Minnesota's OWI law. This draft has, for the most part, adapted the provided language to existing Wisconsin OWI law. Please let me know if you would rather take the approach of making more extensive changes to Wisconsin OWI law to more closely match the effect of the provided Minnesota language. In addition, I have noted specific concerns with notes in the text of the draft. Please review these to ensure the draft meets your intent.

fix
Also, it is possible that similar results to those of this draft could be reached in a more streamlined fashion by adapting existing Wisconsin law. For example, under s. 341.63, stats., DOT may suspend vehicle registrations and under s. 341.63 (3), stats., upon suspending a registration, may order return of the vehicle's plates. These provisions could be modified to achieve your objectives. For example, upon receiving notice of a conviction for certain offenses (the "impoundment violations" in this draft), DOT could suspend the registration of the vehicle involved and order the return of the plates or order law enforcement to seize the plates. The registration could remain suspended until special plates were issued. You may wish to contact DOT for information on how current procedures could be adapted to your objectives.

Please let me know if you would like any changes made to the attached draft or if you have any questions.

Eric V. Mueller
Legislative Attorney
Phone: (608) 261-7032
E-mail: eric.mueller@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0803/P1dn
EVM:kjf:jm

January 7, 2013

ATTN: Rep. Josh Zepnick

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(Note)
State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0803/ED 11
EVM:kjf:jm

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

(RMR)

(INSERTS)

(In 3/14/13)

(Soon)

(Regen)

1 AN ACT *to create* 341.66 of the statutes; **relating to:** impoundment of motor
2 vehicle registration plates for certain operating while intoxicated and other
3 offenses and providing a penalty.

Analysis by the Legislative Reference Bureau

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

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 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:

4 SECTION 1. 341.66 of the statutes is created to read:
5 **341.66 Administrative impoundment of registration plates. (1)**
6 DEFINITIONS. In this section:

(INS-Analysis)

1 (a) "Close associate" means any of the following:

2 1. A parent, stepparent, or guardian.

3 2. A person related by blood, marriage, or adoption who is a brother, sister,
4 stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent,
5 great-grandparent, great-uncle, or great-aunt.

6 3. A person residing together with another.

7 4. A person who regularly associates and communicates with another outside
8 of a workplace setting.

****NOTE: I changed the defined term from "family or household member" because,
given the definition, the term seemed misleading. Let me know if you want any changes.

9 (b) "Impoundment violation" means:

10 1. A violation subject to counting under s. 343.307 (2) under any of the following
11 circumstances:

12 a. Within 10 years of a prior conviction, suspension, or revocation counted
13 under s. 343.307 (2).

14 b. If the violator had an alcohol concentration of more than twice the prohibited
15 alcohol concentration.

16 c. If a minor passenger under 16 years of age and more than 36 months younger
17 than the violator was in the vehicle at the time of the violation.

18 2. A violation of s. 343.05 by a person to whom s. 343.06 (1) (h) applies.

****NOTE: The violations included within the Minnesota plate impoundment
statute do not exactly correspond to violations under Wisconsin law. This definition
includes existing Wisconsin violations that are counted as prior OWI offenses for certain
purposes under Wisconsin law and that roughly correspond to Minnesota violations
covered by the Minnesota impoundment statute. Please review the coverage carefully to
ensure this draft covers the violations you intend to cover and does not cover violations
you do not intend to cover. Notably, Minnesota's statute covers operating boats, ATVs,
and snowmobiles while intoxicated, none of which are generally counted in Wisconsin
statutes governing motor vehicle OWI.

****NOTE: Also, Minnesota's plate impoundment violation definition appears
limited to offenses resulting in a driver's license revocation or CDL disqualification. The

Wisconsin violations used in the draft would allow some offenses that result in driver's license suspensions to count as violations.

1 (c) "Violator" means a person who was driving or operating a motor vehicle
2 when an impoundment violation occurred.

3 (2) IMPOUNDMENT ORDER. (a) The department shall issue a registration plate
4 impoundment order when any of the following occurs:

5 1. A person's ~~operator's license~~^{operating privilege} is revoked for an impoundment violation.

6 2. A person is arrested for or charged with an impoundment violation under
7 sub. (1) (b) 2.

8 (b) Except as provided in par. (c), the impoundment order shall require the
9 impoundment of the registration plates of the motor vehicle involved in the
10 impoundment violation and of any other motor vehicle owned by, or registered or
11 leased in the name of, the violator.

12 (c) An impoundment order may not require the impoundment of the
13 registration plates of any of the following:

14 1. A rental vehicle that is leased in the name of the violator and is part of a fleet
15 of 2 or more motor vehicles that are rented for periods of 30 days or less.

16 2. A vehicle registered in another state.

***NOTE: I have placed the responsibility for registration plate impoundment with the Department of Transportation. Please let me know if this is not what you intend.

***NOTE: Also, it is not entirely clear to me how long an impoundment order may remain in effect. Do you want to clearly specify a limit?

17 (3) NOTICE OF IMPOUNDMENT. (a) An impoundment order under sub. (2) is
18 effective when the department provides the violator or registered owner of the motor
19 vehicle with a notice of the department's intent to impound the vehicle's registration
20 plates and the registration plate impoundment order. If mailed, the order of

1 impoundment is effective 3 days after mailing to the last-known address of the
2 violator or registered owner.

****NOTE: To provide additional clarity, I have at several points in the draft set dates for taking actions based on the effective date of the impoundment order rather than the date on which the notice is received. Let me know if you want any changes.

3 (b) The notice under par. (a) shall include information regarding the
4 requirements of sub. (4), the procedure to obtain new registration plates under sub.
5 (5), the right to obtain administrative review under sub. (6), and the right to obtain
6 judicial review under sub. (7).

7 (c) If a notice and order under par. (a) are provided to a registered owner other
8 than the violator, the department shall also provide a temporary vehicle permit for
9 the vehicle that is valid for 45 days. The permit shall be in a form determined by the
10 department and, whenever practicable, shall be posted on the left side of the inside
11 rear window of the vehicle.

12 (d) 1. If a law enforcement officer arrests a person for an impoundment
13 violation under sub. (1) (b) 2., the officer shall provide the person with a notice of the
14 department's intent to impound the vehicle's registration plates and a registration
15 plate impoundment order. If the vehicle involved in the violation is accessible to the
16 officer at the time of providing the impoundment order, the officer shall seize and
17 destroy the vehicle's registration plates.

18 2. The officer shall provide the department with copies of the notice and the
19 order under this paragraph and, if registration plates have been seized and
20 destroyed under this paragraph, a notice that the registration plates impounded
21 under this paragraph have been destroyed.

****NOTE: This subsection revises and combines subds. 3., 4., and 5. of the provided material. Paragraphs (a) and (b) include the material from subd. 3, par. (c) from subd. 5., and par. (d) from subd. 4. The most significant difference from the provided material is omission of some of the material contained in subds. 4. and 5. The Minnesota statute

specifically references a law enforcement officer's issuance of a revocation of the person's operator's license at the time of the delivery of the impoundment order. In Wisconsin, operator's license revocation does not take place until after an administrative hearing. This draft links impoundment with revocation, therefore, a law enforcement officer will not generally be issuing an impoundment order. Also, because this draft does not implement immediate delivery of impoundment orders, the seven-day temporary permit is omitted. The 45-day temporary permit for nonviolator owners, however, is retained in par. (c). Also, this section does retain the immediate impoundment of the plates of a person who commits an impoundment violation under sub. (1) (b) 2. because a person under that provision is not licensed. Please let me know if you would like to deal with this in another way. For example, do you want to decouple revocation and impoundment? Do you want to implement immediate revocation of operating privilege for certain offenses?

1 (4) SURRENDER OF REGISTRATION PLATES. (a) Except as provided in par. (c), not
2 more than 7 days after an impoundment order under sub. (2) becomes effective, a
3 person subject to the order shall surrender all registration plates subject to the order
4 that were not seized under sub. (3) (d). The registration plates shall be surrendered
5 to a law enforcement agency together with a copy of the impoundment order.

6 (b) A law enforcement agency that receives registration plates under par. (a)
7 shall destroy the plates and provide the department with a copy of the impoundment
8 order and a notification that the plates have been destroyed.

9 (c) A violator may file a sworn statement with the department not more than
10 7 days after an impoundment order under sub. (2) becomes effective, providing any
11 material information relating to the impoundment order. If the violator states that
12 the vehicle has been sold or destroyed, he or she shall supply the date, name, location,
13 and address of the person or entity that purchased or destroyed the vehicle.

14 (d) The department shall rescind the impoundment order if the department
15 determines that the impoundment order was not properly issued or if it finds that
16 the vehicle has been sold or destroyed and is no longer available for use by the
17 violator.

****NOTE: Subsection (4) contains the material in subd. 6. and 7. of the provided material. I revised subd. 6 of the provided material to provide additional clarity regarding standards and time frames. Do you want to be more specific about to whom

plates must be surrendered? Perhaps, DOT could specify in its order how plates should be surrendered.

****NOTE: Also, do you wish to specify further the procedure under par. (c)? For example, this draft does not specifically state what happens if the department determines that the violator's statement is of no import.

1 (5) RECISSION OF IMPOUNDMENT ORDER. (a) The department shall rescind an
2 impoundment order under sub. (2) that was provided to a registered owner other
3 than the violator if any of the following applies:

4 1. The violator possessed a valid operator's license on the date of the
5 impoundment violation and the owner files with the department a sworn statement,
6 in a form prescribed by the department, containing all of the following:

7 a. A statement that the owner is the registered owner of the vehicle from which
8 registration plates have been impounded under this section.

9 b. A statement that the owner is the current owner and possessor of the vehicle
10 used in the violation.

11 c. The date on which the violator obtained the vehicle from the owner.

12 d. The residence addresses of the owner and the violator on the date that the
13 violator obtained the vehicle from the owner.

14 e. A statement that the owner was not a passenger in the vehicle at the time
15 of the impoundment violation.

16 f. A statement that the owner knows that the violator may not drive or operate
17 a motor vehicle without a valid operator's license.

18 2. The violator did not possess a valid operator's license on the date of the
19 impoundment violation and the owner made a report to a law enforcement agency
20 before the impoundment violation stating that the vehicle had been taken from the
21 person's possession or was being used without permission.

****NOTE: This provision would allow recission of a nonviolator owner's plate impoundment when the violator is unlicensed only if: 1) the car is, essentially, stolen; and

2) a report of the theft is made before the impoundment violation occurs. Persons who do not become aware that their vehicle is stolen in a timely fashion may, therefore, be subject to impoundment.

1 (b) The department may issue special registration plates under sub. (10) to a
2 registered owner, other than the violator, if the violator did not possess a valid
3 operator's license and the owner did not make a report under par. (a) 2. The plates
4 shall be valid for a period of one year from the effective date of the impoundment
5 order under sub. (2). After this period, the owner may apply for another registration
6 plate under this chapter.

7 (c) If registration plates were seized and destroyed and the impoundment order
8 is rescinded, the owner shall receive new registration plates, of the same kind as were
9 impounded under this section, at no cost.

10 (6) ADMINISTRATIVE REVIEW. (a) At any time during the effective period of an
11 impoundment order under sub. (2), a person subject to the order may request, in
12 writing, a review of the order. Upon receiving a request for review, the department
13 shall review the order, the evidence upon which the order was based, and any other
14 material information and determine whether sufficient cause exists to sustain the
15 order. The department shall provide a written decision not more than 15 days after
16 receiving the request.

17 (b) If a registered owner's operator's license ^{operating privilege} was not revoked as a result of the
18 plate impoundment violation, the department may authorize the issuance of new
19 registration plates to the owner at no cost.

20 (c) The department's decision under this section is not subject to review under
21 ch. 227.

****NOTE: This draft omits subd. 9. (b) of the provided material. License revocation decisions in Wisconsin are not generally made by DOT. Thus, revocation and impoundment review will not generally be easily combined.

***NOTE: Also, you may wish to review par. (b). This provision appears to authorize a reissuance for a fairly broad group, potentially the entire group of nonviolator owners. Do you want this to apply only to situations where the violator's license was not revoked?

1 (7) JUDICIAL REVIEW. (a) Not later than 30 days after an impoundment order
2 under sub. (2) becomes effective, a person may petition for judicial review of the
3 order. The petition must state with specificity the grounds upon which the petitioner
4 seeks rescission of the order for impoundment. The petition must include all of the
5 following:

- 6 1. Proof of service of a copy of the petition on the department.
- 7 2. The petitioner's date of birth.
- 8 3. The petitioner's operator's license number.
- 9 4. The date of the plate impoundment violation.
- 10 5. The name of the violator.
- 11 6. The name of the law enforcement agency that issued the plate impoundment
12 order.

13 (b) The filing of a petition under this subsection does not stay the impoundment
14 order. The reviewing court may order a stay of the balance of the impoundment
15 period if the hearing has not been conducted within 60 days after filing of the
16 petition.

17 (c) The scope of a hearing under this subsection is limited to:
18 1. If the impoundment order is based on an impoundment violation under sub.
19 (1) (b) 1. b. or c., whether the law enforcement officer had probable cause to believe
20 the violator committed the impoundment violation and whether the evidence
21 demonstrates that the plate impoundment violation occurred.

1 2. If the impoundment order is not based on an impoundment violation under
2 sub. (1) (b) 1. b. or c., whether the law enforcement officer had probable cause to
3 believe the violator committed the plate impoundment violation.

4 (d) In a hearing under this subsection, all of the following records are
5 admissible evidence:

6 1. Certified copies of the violator's driving record.

7 2. Certified copies of vehicle registration records bearing the violator's name.

8 (e) The court shall order either that the impoundment be rescinded or
9 sustained and forward the order to the department. The court shall file its order not
10 more than 14 days after the hearing.

****NOTE: Similar to the treatment of sub. (6), sub. (7) of this draft omits the provisions regarding combining procedures contained in subd. 10. of the provided material. In some cases, judicial review of administrative revocations can probably be treated together. These can probably be handled jointly under existing court rules. In most cases, however, operator's license revocation will be part of a criminal sentencing.

11 (8) RESCISSION OF REVOCATION AND DISMISSAL. If the charge for the impoundment
12 violation that is the basis for an impoundment order under sub. (2) is dismissed with
13 prejudice and the applicant's operator's license revocation is rescinded, upon
14 application, the department shall issue new registration plates, of the same kind as
15 were impounded under this section, for the motor vehicle at no cost if the applicant
16 provides a copy of the order rescinding the operator's license revocation and the order
17 dismissing the charge that is the basis for the impoundment order.

****NOTE: This section is slightly different from subd. 11. of the provided material because acquittal in Wisconsin will generally mean that no revocation, and therefore no impoundment, occurs.

18 (9) CHARGE FOR REINSTATEMENT OF PLATES IN CERTAIN SITUATIONS. When the
19 department reinstates a person's registration plates after impoundment for a reason

1 other than described in sub. (8), the department shall charge the person \$50 for each
2 vehicle for which the registration plates are being reinstated.

****NOTE: Please review the dollar amount to be sure the charge reflects your
intent.

3 (10) SPECIAL REGISTRATION PLATES. (a) At any time during the effective period
4 of an impoundment order, a violator or owner may apply to the department for special
5 registration plates that bear a special series of numbers or letters so as to be readily
6 identified by traffic officers. The department may issue the plates if any of the
7 following applies:

8 1. The violator has a qualified licensed driver. The violator must identify the
9 driver to qualify under this subdivision.

****NOTE: Do you want to provide additional information regarding, or a definition
of, "qualified licensed driver?"

10 2. The violator or registered owner possesses a valid occupational license issued
11 under s. 343.10.

12 3. The registered owner is not the violator and the registered owner possesses
13 a valid operator's license.

14 4. A member of the registered owner's household possesses a valid operator's
15 license.

16 5. The violator has been reissued a valid operator's license.

17 (b) The department may not issue registration plates other than special plates
18 for a vehicle subject to an impoundment order under sub. (2) for a period of one year
19 from the date of the order. If the owner is the violator, the department may not issue
20 registration plates unless the person has been reissued a valid operator's license.

21 (c) A violator may not apply for registration plates for a vehicle before the
22 person's operating privilege is reinstated.

1 (d) The department shall charge a fee of \$50 for each vehicle for which special
2 plates are requested.

****NOTE: Please review the dollar amount to be sure the charge reflects your
intent.

3 (e) Notwithstanding pars. (a) to (d), the department shall issue upon request
4 registration plates other than special plates for a vehicle for which the registration
5 plates have been impounded if any of the following applies:

- 6 1. The impoundment order is rescinded.
- 7 2. The vehicle is transferred under sub. (11).
- 8 3. The vehicle is transferred to a licensed automobile dealer, a financial
9 institution that has submitted a repossession affidavit, or a government agency.

10 (11) SALE OF VEHICLE SUBJECT TO IMPOUNDMENT ORDER. A registered owner may
11 not sell or transfer a motor vehicle during the time its registration plates have been
12 ordered impounded or during the time its registration plates bear a special series of
13 numbers or letters, unless all of the following apply:

- 14 (a) The sale is for a valid consideration.
- 15 (b) The transferee and the registered owner are not close associates.
- 16 (c) The transferee provides a sworn statement in a form prescribed by the
17 department stating all of the following:

- 18 1. That the transferee and the violator are not close associates.
- 19 2. That the transferee understands that the vehicle is subject to an
20 impoundment order.
- 21 3. That the transferee understands that it is a crime to file a false statement
22 or to allow the previously registered owner to drive, operate, or be in control of the
23 vehicle during the impoundment period.

****NOTE: Sub. (11) omits the material in subd. 14. (a) (4) and (b) because these provisions appear superfluous. Nothing in this section appears to permit transfers of motor vehicles that are otherwise unlawful or otherwise permit title transfers that do not comply with existing title transfer procedures.

1 **(12) ACQUIRING ANOTHER VEHICLE.** Except as provided in sub. (10), the
2 department may not issue registration plates for which a violator applies during the
3 effective period of the registration plate impoundment under this section.

****NOTE: This draft omits subd. 16. of the provided material regarding apportionment of fees collected under the impoundment program. Unless specified otherwise, money collected under the provisions created by this draft would go to the Transportation Fund. Would you like to provide otherwise?

4 **(13) PENALTIES.** (a) No person may do any of the following:

5 1. Fail to comply with an impoundment order under sub. (2) to which the person
6 is subject.

7 2. File a false statement under sub. (4) (c), (5), or (11) (c).

8 3. Operate a motor vehicle on a highway when the vehicle is subject to an
9 impoundment order under sub. (2), unless special plates have been issued for the
10 vehicle under sub. (10).

11 4. Fail to notify the department of the impoundment order under sub. (2) when
12 requesting new plates.

13 5. If the person is subject to an impoundment order under sub. (2), drive or
14 operate a motor vehicle during the impoundment period, unless the vehicle has
15 special plates issued under sub. (10), and the person possesses a valid operator's
16 license.

17 6. If the person is a transferee of a motor vehicle who has signed a sworn
18 statement under sub. (11) (c), allow the previously registered owner to drive or
19 operate the vehicle during the impoundment period.

20 (b) Any person who violates par. (a) is guilty of a misdemeanor.

****NOTE: Each of the offenses described here is a generic misdemeanor. Under s. 939.61, these offenses are punishable by a fine of up to \$500 or imprisonment for up to 30 days or both. Please let me know if you would like to specify a different penalty for any or all of the violations.

****NOTE: This draft omits subd. 18. of the provided material because I believe the provision is superfluous. The provision would specify that a law enforcement officer may stop a vehicle bearing special registration plates for the purpose of determining whether the driver is operating the vehicle lawfully under a valid operator's license. If such a stop is permitted by the constitution, there is nothing in state law that prohibits the stop.

(END)

1

INS

13-1

D>Note

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0803/lins
EVM:kjf:jm

1 INS-Analysis

2

X Under current law, no one may operate a motor vehicle while under the influence of an intoxicant or with a prohibited blood alcohol concentration or with a detectable amount of a restricted controlled substance in his or her blood. A person who does so, or who improperly refuses a field sobriety test, is guilty of an offense related to operating while intoxicated (OWI-related offense) and is subject to forfeitures or fines and periods of imprisonment that increase with each subsequent OWI-related offense.

X X Under this bill, an "impoundment violation" is (a) an OWI-related offense committed within 10 years of a prior OWI-related offense, with a blood alcohol concentration of more than twice the prohibited blood alcohol concentration, or with a minor passenger under 16 years of age and more than 36 months younger than the violator. Under this bill, when a person's operating privilege is revoked for an impoundment violation, the Department of Transportation (DOT) must impound the registration plate of any vehicle owned by, or registered or leased in the name of, the violator and, in certain cases, the vehicle involved in the impoundment violation, whether or not owned by the violator. A person whose plates are impounded may seek administrative or judicial review of an impoundment order.

X If the owner of a vehicle subject to an impoundment order meets certain conditions, he or she may apply to DOT for special registration plates during the impoundment period. These special plates must bear a series of numbers or letters that readily identify the plate as a special plate to traffic officers. For one year after the impoundment order, DOT may not issue registration plates, other than these special plates, for a vehicle subject to an impoundment order. This bill also limits the sale or transfer of a vehicle subject to an impoundment order during the impoundment period.

Also under this bill, persons who fail to comply with an impoundment order, attempt to obtain registration plates other than special plates for a vehicle subject to an impoundment order, operate a vehicle subject to an impoundment order unless equipped with special plates, operate a vehicle not equipped with special plates while subject to an impoundment order, violate vehicle transfer requirements, or make certain false statements are guilty of a misdemeanor and may be fined not more than \$500 or imprisoned for not more than 30 days, or both.

3

4 INS 13-1

5

6 SECTION 1. Initial applicability.

1 (1) This act first applies to violations committed on the effective date of this
2 sub[✓]section, but does not preclude the counting of other convictions, suspensions, or
3 revocations as prior violations.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0803/1dn

EVM:kjf:jm

Date

ATTN: Rep. Josh Zepnick

This draft adds an initial applicability provision to specify to which violations this draft first applies. Please let me know if you have any questions or want any changes.

Eric V. Mueller
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0803/1dn
EVM:kjfjf

March 18, 2013

ATTN: Rep. Josh Zepnick

This draft adds an initial applicability provision to specify to which violations this draft first applies. Please let me know if you have any questions or want any changes.

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Barman, Mike

From: Gillis, George
Sent: Tuesday, September 03, 2013 8:55 AM
To: LRB.Legal
Subject: Draft Review: LRB -0803/1 Topic: Impoundment of registration plates for certain operating while intoxicated offenses.

Please Jacket LRB -0803/1 for the ASSEMBLY.