

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1918/2dn
MDK&EVM:sac:rs

July 16, 2013

Rep. Krug:

This version of the bill is based on the changes that were requested. Please review it to make sure it achieves your intent. In particular, please note the following:

1. Before a person can install adaptive equipment, the individual for whom the equipment is installed must “certify” to the person that the individual has received both a clinical and behind-the-wheel evaluation. Is that okay, or do you want to require the individual to do something else, such as provide documentation, in addition to making a certification?

2. The bill prohibits a person from installing adaptive equipment unless the person is accredited to install the equipment under the Quality Assurance Program (QAP) of the National Mobility Equipment Dealer’s Association (NMEDA). How does one know whether a person satisfies this requirement? We found on the Internet the August 2012 QAP membership rules of the NMEDA, which state that members of NMEDA are required to participate in the QAP, and that nonmembers may participate by paying a \$5,000 annual fee. However, we have not been able to find a publicly available list of members and nonmembers who are accredited under the QAP. Such information appears to be available in a NMEDA publication called Circuit Breaker, but that publication is available only with a paid subscription. If the information is not otherwise available, it may be difficult for individuals for whom equipment is installed to ascertain whether they have complied with the law, and it may difficult for DOT to enforce the law. Please let us know what you think about these issues. Also, if we are mistaken about any of the foregoing, please let us know.

3. The accreditation described above could be challenged as an improper delegation of law-making authority to a private entity, as NMEDA, rather than the legislature or a state agency, determines the requirements for accreditation. Note that some courts have upheld statutes that refer to determinations made by private entities. See, e.g., *State v. Wakeen*, 263 Wis. 401 (1953) (defining “drug” based on pharmacopoeia compiled by private organizations); and *State of Michigan v. Bayer*, 279 Mich. App. 49 (2008) (defining a crime to include a violation of professional code of ethics), *vacated in part on other grounds*, 482 Mich. 1000 (2008). Although it is difficult to predict how a court would resolve the issue, we think you should at least be aware of this potential challenge.

4. Please note, the adaptive equipment requirement for obtaining an operator's license is only effective upon a person's need for a license. A person who already has an operator's license will not be in violation of the adaptive equipment requirements for licensing until his or her license expires or is cancelled.
5. The prohibition in s. 347.473 (2) can be read to cover, perhaps, more conduct than you intend to cover. Please review the prohibition and the definition of "adaptive equipment" to ensure the provision meets your intent.
6. As currently written, s. 347.473 may be difficult for DOT to enforce. Do you want to include recordkeeping requirements or inspection authority to allow for more effective enforcement?
7. Driving a motor vehicle with adaptive equipment on a highway without complying with s. 343.13 would subject the operator to the penalties for driving without a license. Please review s. 343.05 (5) to ensure that these penalties meet your intent.
8. How do you want to handle vehicles that already have adaptive equipment? Grandfather them? An alternate inspection requirement?
9. Do you want to provide penalties for any other conduct related to motor vehicles and adaptive equipment, for example, false certifications?
10. It is likely that the provisions of this draft would increase costs for DOT. Do you want to appropriate additional funds to DOT?

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