

1999 DRAFTING REQUEST

Bill

Received: **10/07/1999**

Received By: **nilsepe**

Wanted: **As time permits**

Identical to LRB:

For: **David Brandemuehl (608) 266-1170**

By/Representing: **Sheri**

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

Drafter: **nilsepe**

May Contact:

Alt. Drafters:

Subject: **Transportation - driver licenses**

Extra Copies: **TNF, ISR**

Pre Topic:

No specific pre topic given

Topic:

Act 84 implementation technical changes

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>
/?	nilsepe 11/09/1999	chanaman 11/19/1999		_____			
/1			martykr 11/22/1999	_____	lrb_docadmin 11/22/1999	lrb_docadmin 12/09/1999	

FE Sent For:

<END>

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1?	nilsepe	cm # /	km 11/22	ms 11/22 km 22			
FE Sent For:		11/22					

<END>

Nilsen, Paul

From: Krause, Sheri
Sent: Thursday, October 07, 1999 2:02 PM
To: Nilsen, Paul
Subject: FW: How's this for a draft request?

Paul,
We've looked this over and it seems fine. Could you go ahead and get it drafted for Dave?
Thanks!

*Sheri Krause, Research Assistant
Office of Rep. David Brandemuehl
317 N, State Capitol
(608)266-1170*

-----Original Message-----

From: Clark, Julie
Sent: Thursday, October 07, 1999 11:10 AM
To: Vance, Vaughn; Krause, Sheri
Cc: Ford, William; Sobotik, John; Maassen, Joe
Subject: FW: How's this for a draft request?



nilsen 84 memo.doc

Vaughn/Sheri: John Sobotik, our Office of General Counsel Attorney, has discovered an oversight in Act 84 the OAR/OWS (operating while revoked/suspended) Act from last session. The way Act 84 was drafted it fails to count prior OAR & OWS actions. For example a person with 2 priors, after the enactment of Act 84, if apprehended and convicted again for OAR could only be charged as his or her first (a civil action). We have contacted Todd Meuer, Dane County Court Comm. and several law enforcement officers re. this oversight. They all feel that priors should be counted. John Sobotik's memo to Paul Nilsen below explains the issue in more detail.

Sheri, you have indicated you would send this over to Paul to be drafted. Vaughn, please consider this for a companion bill drafting and/or co-sponsorship. Thanks for your consideration.

CORRESPONDENCE MEMORANDUM

DT1175 97

Wisconsin Department of Transportation

Date: October 7, 1999
To: Paul Nilsen, Legislative Reference Bureau
From: John Sobotik, WISDOT Office of General Counsel
Subject: Counting of OAR Violations for Revocation and Suspension Purposes

Dear Paul:

I have been instructed to request the Legislative Reference Bureau draft a bill that amends 1997 Wis. Act 84 to correct a bug dealing with the counting of prior OAR or OWS offenses for purposes of determining driver license sanctions.

We have discussed the "problem" before: whether violations of s. 343.44(1), 1997 Stats., will be countable as prior offenses under the new OAR law for purposes of DMV calculating whether to suspend or revoke and for criminal sentencing purposes.

The sections dealing with revocation and suspension issues are 343.30(1g)(a) [Act 84 s. 18] and 343.31(1)(hm) [Act 84 s. 40]:

SECTION 18. 343.30 (1g) of the statutes is renumbered 343.30 (1g) (a) and amended to read:

343.30 (1g) (a) Except as provided in par. (b), a court may revoke suspend a person's operating privilege for any period not exceeding 6 months upon the person's conviction for violating s. 343.44 (1) (a), (b) or (d) or a local ordinance in conformity therewith by operating a motor vehicle while operating privileges are suspended or revoked. (b) A court shall revoke a person's operating privilege upon the person's conviction for violating s. 343.44 (1) (a), (b) or (d) or a local ordinance in conformity therewith by operating a motor vehicle while operating privileges are suspended or revoked if the suspension or revocation was for improperly refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or violating s. 346.63 (2) or (6), 940.09 (1) or 940.25 if the person has been convicted of 3 or more prior violations of s. 343.44 (1) (a), (b) or (d), or a local ordinance in conformity therewith, within the 5-year period preceding the violation. The revocation shall be for any a period not exceeding of 6 months, unless the court orders a period of revocation of less than 6 months and places its reasons for ordering the lesser period of revocation on the record.

SECTION 40. 343.31 (1) (hm) of the statutes is created to read:

343.31 (1) (hm) A violation of s. 343.44 (1) (a), (b) or (d), or a local ordinance in conformity therewith, if the person has been convicted of 3 or more prior violations of s. 343.44 (1) (a), (b) or (d) or a local ordinance in conformity therewith within the 5-year period preceding the violation. Revocation under this paragraph shall be for a period of 6 months unless a lesser period of revocation is ordered under s. 343.30 (1g) (b).

The problem identified in both sections is that it is not clear that violations under s. 343.44(1) of the old law (1997 Stats. and prior years) for operating after revocation, suspension or while disqualified should count as prior offenses under the new law. The desire is to have draft language prepared that would clearly make offenses under the old law count as prior offenses.

In s. 343.44(2)(am), there is a similar problem with respect to determining whether an offense is a first offense (and therefore civil) violation:

SECTION 70. 343.44 (2) of the statutes is repealed and recreated to read...
(am) Any person who violates sub. (1) (b) before the first day of the 13th month beginning after publication [revisor inserts date], may be required to forfeit not more than \$600, except that, if the person has been convicted of a previous violation described in sub. (1) (b) within the preceding 5-year period, the penalty under par. (b) shall apply.

The date provision is already the subject of a budget amendment [see 1999 AB 133, s. 2751]. The issue here is whether offenses under the "old law" s. 343.44(1) [1997 Stats. and prior] should be countable as prior offenses under this provision.

Finally, it might be cleanest to also mention that "old law" offenses are countable as priors by courts under the new proposed s. 343.44(2)(b)3.:

SECTION 70. 343.44 (2) of the statutes is repealed and recreated to read...
(b) Except as provided in par. (am), any person who violates sub. (1) (b), (c) or (d) shall be fined not more than \$2,500 or imprisoned for not more than one year or both. In imposing a sentence under this paragraph, or a local ordinance in conformity with this paragraph, the court shall review the record and consider the following:...

3. The number of prior convictions of the person for violations of this section within the 5 years preceding the person's arrest.

The effect of these changes would be to make all prior OWS and OAR offenses committed under State law countable as prior offenses under the new OAR law.

Not implementing this change would result in revoked drivers who are arrested one time prior to May 1, 2002* , under the new law being subjected only to civil penalties rather than criminal

* For purposes of this memo, it is assumed that the proposed legislative change in s. 2751 of 1999 AB 133 is actually passed and adopted by the legislature.

penalties for operating after revocation. Drivers who are arrested for more than one OAR violation or arrested after May 1, 2002, would be subject to criminal penalties.

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Wanted: **As time permits**

Identical to LRB:

For: **David Brandemuehl (608) 266-1170**

By/Representing: **Sheri**

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Drafter: **nilsepe**

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/?	nilsepe			_____			

FE Sent For:

<END>

CORRESPONDENCE MEMORANDUM

DT1175 97

Wisconsin Department of Transportation

Date: September 29, 1999

To: Roger Cross, Administrator, Division of Motor Vehicles
cc: Paul Nilsen, Legislative Reference Bureau

From: John Sobotik, WISDOT Office of General Counsel

Subject: Counting of OAR Violations for Revocation and Suspension Purposes

You ask that instructions be provided to the Legislative Reference Bureau in order to have them draft a bill to amend 1997 Wis. Act 84 and correct an apparent oversight dealing with the counting of prior OAR or OWS offenses for purposes of determining driver license sanctions. This memo should provide the LRB with sufficient instruction to draft an appropriate bill.

The issue is whether violations of s. 343.44(1), 1997 Stats., will be countable as prior offenses under the new OAR law for purposes of DMV calculating whether to suspend or revoke and for criminal sentencing purposes.

Two areas need to be dealt with: the provisions dealing with driver license actions, and the provisions dealing with criminal sanctions for violation of the statute.

The sections dealing with revocation and suspension issues are 343.30(1g)(a) [Act 84 s. 18] and 343.31(1)(hm) [Act 84 s. 40]:

SECTION 18. 343.30 (1g) of the statutes is renumbered 343.30 (1g) (a) and amended to read:

343.30 (1g) (a) A Except as provided in par. (b), a court may revoke suspend a person's operating privilege for any period not exceeding 6 months upon the person's conviction for violating s. 343.44 (1) (a), (b) or (d) or a local ordinance in conformity therewith by operating a motor vehicle while operating privileges are suspended or revoked. (b) A court shall revoke a person's operating privilege upon the person's conviction for violating s. 343.44 (1) (a), (b) or (d) or a local ordinance in conformity therewith by operating a motor vehicle while operating privileges are suspended or revoked if the suspension or revocation was for improperly refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or violating s. 346.63 (2) or (6), 940.09 (1) or 940.25 if the person has been convicted of 3 or more prior violations of s. 343.44 (1) (a), (b) or (d), or a local ordinance in conformity therewith, within the 5-year period preceding the violation. The revocation shall be for any a period not exceeding of 6 months, unless the court orders a period of revocation of less than 6 months and places its reasons for ordering the lesser period of revocation on the record.

SECTION 40. 343.31 (1) (hm) of the statutes is created to read:

343.31 (1) (hm) A violation of s. 343.44 (1) (a), (b) or (d), or a local ordinance in conformity therewith, if the person has been convicted of 3 or more prior violations of s. 343.44 (1) (a), (b) or (d) or a local ordinance in conformity therewith within the 5-year period preceding the violation. Revocation under this paragraph shall be for a period of 6 months unless a lesser period of revocation is ordered under s. 343.30 (1g) (b).

The problem identified in both sections is that it is not clear that violations under s. 343.44(1) of the old law (1997 Stats. and prior years) for operating after revocation, suspension or while disqualified should count as prior offenses under the new law. The desire is to have draft language prepared that would clearly make offenses under the old law count as prior offenses.

In s. 343.44(2)(am), there is a similar problem with respect to determining whether an offense is a first offense (and therefore civil) violation:

SECTION 70. 343.44 (2) of the statutes is repealed and recreated to read...
(am) Any person who violates sub. (1) (b) before the first day of the 13th month beginning after publication [revisor inserts date], may be required to forfeit not more than \$600, except that, if the person has been convicted of a previous violation described in sub. (1) (b) within the preceding 5-year period, the penalty under par. (b) shall apply.

The date provision is already the subject of a budget amendment [see 1999 AB 133, s. 2751]. The issue here is making offenses under the "old law" s. 343.44(1) [1997 Stats. and prior] be countable as prior offenses under this provision.

Finally, it might be cleanest to also mention that "old law" offenses are countable as priors by courts under the new proposed s. 343.44(2)(b)3.:

SECTION 70. 343.44 (2) of the statutes is repealed and recreated to read...
(b) Except as provided in par. (am), any person who violates sub. (1) (b), (c) or (d) shall be fined not more than \$2,500 or imprisoned for not more than one year or both. In imposing a sentence under this paragraph, or a local ordinance in conformity with this paragraph, the court shall review the record and consider the following:...

3. The number of prior convictions of the person for violations of this section within the 5 years preceding the person's arrest.

The desired effect of changing these provisions would be to make all prior OWS and OAR offenses committed under Statc law countable as prior offenses under the new OAR law.

Not implementing any change would mean that a revoked driver who has been convicted of OWS or OAR within the last 5 years and who is arrested one time prior to May 1, 2002*, would be subject only to civil penalties rather than criminal penalties for operating after revocation. [These changes do not affect penalties for drivers who operate after suspension.] Drivers who are arrested for more than one OAR violation or who are arrested for OAR after May 1, 2002, would be subject to criminal penalties under the new law even without these changes.

DMV Suspension and Revocation Section and OGC Staff noticed this discrepancy in 1997 Wis. Act 84 and surveyed the various political bodies that have an interest in OWS and OAR legislation. Doug Pettit, President of the Wisconsin Law Enforcement Coalition and the legislative co-chair of the Wisconsin Chiefs of Police Association has let us know law enforcement believes this should be corrected. Captain Huxtable of the Division of State Patrol has expressed the same opinion.

Staff has concluded it would be better to give the legislature an opportunity to fix this discrepancy in the Act prior to putting it into effect. The bill draft is intended to be a vehicle by which interested legislators can introduce corrective legislation, be it as a stand alone bill or as part of some other legislative initiative.

* For purposes of this memo, it is assumed that the proposed legislative change in s. 2751 of 1999 AB 133 is actually passed and adopted by the legislature.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3716?
PEN.....

cnH

11

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

gen. cat.

1 AN ACT ~~relating to~~; relating to: counting prior offenses of operating a motor vehicle with
2 an operating privilege that is suspended or revoked, or of operating a
3 commercial motor vehicle while disqualified or ordered out of service.

to the law

Numerous changes were made by

Analysis by the Legislative Reference Bureau

regarding

1997 Wisconsin Act 84 ~~made numerous changes to the law~~ regarding operating a motor vehicle with an operating privilege that is suspended or revoked and operating a commercial motor vehicle while ordered out of service or while disqualified. The changes take effect May 1, 2001, or when implemented by the department of transportation, whichever is sooner. It is unclear under that act whether convictions of certain offenses committed before the implementation of 1997 Wisconsin Act 84 must be counted as prior convictions after the implementation of 1997 Wisconsin Act 84. The number of prior convictions is used, before and after implementation of 1997 Wisconsin Act 84, to determine the appropriate penalty or administrative sanction to impose on a person convicted of a second or subsequent, similar offense.

This bill clarifies that convictions for certain offenses (operating a motor vehicle with an operating privilege that is suspended or revoked, or of operating a commercial motor vehicle while ordered out of service or while disqualified) that

are committed before the implementation of 1997 Wisconsin Act 84 must be counted as prior convictions after the implementation of 1997 Wisconsin Act 84.

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

1 SECTION 1. 343.30 (1g) ~~HAHAHA~~ (b) of the statutes, as affected by 1997 Wisconsin
2 Act 84, is amended to read:

3 343.30 (1g) (b) A court shall revoke a person's operating privilege upon the
4 person's conviction for violating s. 343.44 (1) (a), (b) or (d) or a local ordinance in
5 conformity therewith if the person has been convicted of 3 or more prior violations
6 of s. 343.44 (1) (a), (b) or (d), or s. 343.44 (1), 1997 stats., or a local ordinance in
7 conformity therewith, within the 5-year period preceding the violation. The
8 revocation shall be for a period of 6 months, unless the court orders a period of
9 revocation of less than 6 months and places its reasons for ordering the lesser period
10 of revocation on the record.

History: 1971 c. 213 s. 5; 1971 c. 278; 1973 c. 70, 218; 1975 c. 5; 1975 c. 184 s. 13; 1975 c. 199, 297, 421; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 30, 64, 193, 203; 1979 c. 221, 300, 331, 333, 355; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 17; 1983 a. 74 ss. 23m to 26, 32; 1983 a. 192; 1985 a. 80, 176, 337; 1987 a. 3, 17, 285; 1987 a. 332 s. 64; 1989 a. 7, 31, 105, 121, 336; 1991 a. 39, 251, 277, 316; 1993 a. 16, 227, 317; 1995 a. 27, 77, 269, 338, 401, 425, 448; 1997 a. 35, 84, 135, 237, 283; s. 13.93 (2)(c).

11 SECTION 2. 343.31 (1) (hm) of the statutes, as created by 1997 Wisconsin Act
12 84, is amended to read:

13 343.31 (1) (hm) A violation of s. 343.44 (1) (a), (b) or (d), or a local ordinance in
14 conformity therewith, if the person has been convicted of 3 or more prior violations
15 of s. 343.44 (1) (a), (b) or (d), or s. 343.44 (1), 1997 stats., or a local ordinance in
16 conformity therewith within the 5-year period preceding the violation. Revocation
17 under this paragraph shall be for a period of 6 months unless a lesser period of
18 revocation is ordered under s. 343.30 (1g) (b).

History: 1971 c. 219; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 193, 447; 1979 c. 221; 1981 c. 20, 70; 1983 a. 192 s. 304; 1983 a. 459; 1985 a. 80, 82; 1985 a. 293 s. 3; 1987 a. 3, 399; 1989 a. 31, 105; 1991 a. 39, 277, 316; 1993 a. 317; 1995 a. 269, 425, 448; 1997 a. 84, 237, 238, 293.

1 SECTION 3. 343.38 (1) (c) 2. d. of the statutes, as created by 1997 Wisconsin Act
2 84, is amended to read:

3 343.38 (1) (c) 2. d. Reinstatement of an operating privilege revoked under s.
4 343.31 (1) (b) or (2) if, within the 5-year period preceding the violation, the person
5 has not been convicted of a prior offense that may be counted under s. 343.307 (2) and
6 if, within the 10-year period preceding the violation, the person has not been
7 convicted of 2 or more prior offenses that may be counted under s. 343.307 (2).

8 SECTION 4. 343.44 (2) (am) of the statutes, as ^{affected} created by 1997 Wisconsin Act
9 84, ^{and 1999 Wisconsin Act 9} is amended to read:

10 343.44 (2) (am) Any person who violates sub. (1) (b) before ^{the first day of the}
11 ~~12th month beginning after publication ... [revisor inserts date]~~ ^{May 1, 2002} may be required to
12 forfeit not more than \$600, except that, if the person has been convicted of a previous
13 violation described in of sub. (1) (b), or of operating a motor vehicle in violation of s.
14 343.44 (1), 1997 stats., with an operating privilege that is revoked, within the
15 preceding 5-year period, the penalty under par. (b) shall apply.

16 SECTION 5. 343.44 (2r) of the statutes, as affected by 1997 Wisconsin Act 84, is
17 amended to read:

18 343.44 (2r) PRIOR CONVICTIONS. For purposes of determining prior convictions
19 under this section, the 5-year period shall be measured from the dates of the
20 violations that resulted in the convictions and each conviction under sub. (2) shall
21 be counted. Convictions of s. 343.44 (1), 1997 stats., shall be counted under this
22 section as prior convictions.

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

23 SECTION 6. Effective date.

**SUBMITTAL
FORM**

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 11/22/1999

To: Representative Brandemuehl

Relating to LRB drafting number: LRB-3716

Topic

Act 84 implementation technical changes

Subject(s)

Transportation - driver licenses

1. **JACKET** the draft for introduction Brandemuehl
in the **Senate** ___ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction Brandemuehl

Not Needed.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Paul E. Nilsen, Legislative Attorney
Telephone: (608) 261-6926