

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

LRB-1469/2dn  
ARG:jld:pg

February 27, 2001

The attached draft adds provisions prohibiting a person holding an instruction permit from using a cellular telephone while operating a motor vehicle and allowing use of a cellular telephone to report an emergency.

You also asked me to provide you with the statutory definition of "operate." Although the term is frequently used in chapters 343 and 346, there is no overriding definition of "operate" in chapter 340, 343, or 346. (For purposes of operating while intoxicated, "operate" is defined as "the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion." See ss. 343.305 (1) (c) and 346.63 (3) (b), stats.) The statutes contain, in chapter 340, an overriding definition of "operator," which is "a person who drives or is in actual physical control of a vehicle." See s. 340.01 (41), stats. "Operate" would likely be construed in a similar manner. Both case law and the dictionary define "operate" to include activity beyond driving a vehicle. For example, "operate" would include sitting in the operator's seat of a vehicle that is parked with the engine running. The term "drive" is also commonly used in the statutes and is also not generally defined. The term "drive" is more restrictive than "operate," and contemplates an act of putting the vehicle into motion. The term "drive" would not include sitting in the operator's seat of a vehicle that is parked with the engine running. Is the term "operate" in proposed s. 346.89 (3) consistent with your intent, or would you prefer the term "drive"?

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