

2001 DRAFTING REQUEST

Bill

Received: **11/29/2000**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Tony Staskunas (608) 266-0620**

By/Representing: **Adrienne Ramirez (aide)**

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

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - traffic laws**
Transportation - driver licenses

Extra Copies: **TNF, PJH**

Pre Topic:

No specific pre topic given

Topic:

Prohibit use of cellular phones by a driver holding a probationary drivers license

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>
/1	agary 02/15/2001	jdyer 02/15/2001	rschluet 02/19/2001	_____	lrb_docadmin 02/19/2001		
/2	agary 02/27/2001	jdyer 02/27/2001	pgreensl 02/27/2001	_____	lrb_docadmin 02/27/2001	lrb_docadmin 03/09/2001	

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<END>

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1/2 2/27 jw
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P8/15

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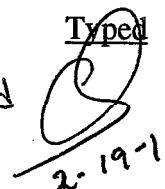
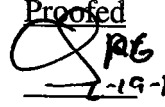
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FE Sent For:

<END>

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

From: Ramirez, Adrienne
Sent: Wednesday, November 29, 2000 2:06 PM
To: Kite, Robin
Subject: Drafting request

Robin-

Rep. Staskunas has asked that three proposals relating to transportation be drafted. If you are not the appropriate drafter, please forward this message onto the correct person.

1 - Require that the Wisconsin Motor Vehicle Accident Report include an area for police officers to indicate whether cellular phone usage contributed to the accident.

2 - Prohibit the use of cellular phones by drivers if they hold a probationary drivers license.

3 - Prohibit drivers from using fax machines, palm pilots, electronic visual navigational devices and lap-top computers.

Please contact me if you need further direction on any of these proposals.

Thank you for your assistance.

Adrienne
Office of Rep. Staskunas

JLd

2001 BILL

D-Note

gen

1 AN ACT ...; relating to: operating a motor vehicle while using a cellular or other
2 mobile telephone and providing a penalty. ✓

Analysis by the Legislative Reference Bureau

Current law prohibits inattentive driving. ^{The} ~~now~~ driver of a motor vehicle may not be so engaged or occupied as to interfere with the safe driving of the vehicle. Violators may be required to forfeit not less than \$20 nor more than \$400. ✓

This bill prohibits a person from operating a motor vehicle while using a cellular or other mobile telephone, regardless of whether use of the telephone interferes with operation of the vehicle. However, this prohibition applies only to persons driving under a probationary license. ~~A probationary license~~ is, with certain exceptions, issued to all applicants for an original driver's license and remains in effect for two years from the date of the licensee's next birthday. ~~Persons~~ ^{which} who violate this prohibition may be required to forfeit not less than \$20 nor more than \$40 for a first offense, and not less than \$50 nor more than \$100 for a subsequent offense. ^{within one year}

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

3 SECTION 1. 346.89 (3) of the statutes is created to read:
4 346.89 (3) No person who holds a probationary license issued under s. 343.085 ✓
5 may operate a motor vehicle while using a cellular or other mobile telephone.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1469/1dn

ARG:.....

Jld

1. A probationary license remains in effect for a period of two years after the applicant's next birthday. The attached draft restricts a probationary driver from using a cellular telephone while driving during the entire probationary period. I note certain existing restrictions on probationary drivers under the age of 18 operating under a "Class D" license limit the type of passengers and hours of vehicle operation. These latter restrictions remain in effect for only the first nine months of the two-year probationary period. See s. 343.085 (2m) (a), stats. If you would prefer the restriction on cellular telephone usage to remain in effect for only nine months following issuance of the probationary license, please advise and I will make the change. *
2. The passenger and hours of operation restrictions referenced above have an emergency exception. See s. 343.085 (2m) (ar), stats. Would you like an emergency exception relating to cellular telephone usage by probationary drivers?
3. The current statute relating to inattentive driving (s. 346.89) contains two subsections. Subsection (1) prohibits the driver of a vehicle from being so engaged or occupied as to interfere with the safe driving of the vehicle. For violating this subsection, a person is subject to a forfeiture of \$20 to \$400. Subsection (2) prohibits a person from operating a vehicle with a television in the front seat or visible from the front seat. For violating this subsection, a person is subject to a forfeiture of \$20 to \$40 for a first offense and \$50 to \$100 for subsequent offenses. The attached draft adopts the lower penalty provision. Is this consistent with your intent? *check A*
4. Instructional permit restrictions are similar to probationary license restrictions. See s. 343.07, stats. Would you like to include a similar provision restricting use of cellular telephones by those operating under instructional permits?
5. The draft provides a delayed effective date provision of ~~8~~^{SIX} months to allow for preparation by DOT and for education of the public and law enforcement before this new driving law goes into effect. Is this time period satisfactory?

Please feel free to contact me by e-mail or telephone if you would like to discuss these issues further.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1469/1dn
ARG:jld:rs

February 19, 2001

1. A probationary license remains in effect for a period of two years after the applicant's next birthday. The attached draft restricts a probationary driver from using a cellular telephone while driving during the entire probationary period. I note certain existing restrictions on probationary drivers under the age of 18 operating under a "Class D" license limit the type of passengers and hours of vehicle operation. These latter restrictions remain in effect for only the first nine months of the two-year probationary period. See s. 343.085 (2m) (a), stats. If you would prefer the restriction on cellular telephone usage to remain in effect for only nine months following issuance of the probationary license, please advise and I will make the change.
2. The passenger and hours of operation restrictions referenced above have an emergency exception. See s. 343.085 (2m) (ar), stats. Would you like an emergency exception relating to cellular telephone usage by probationary drivers?
3. The current statute relating to inattentive driving (s. 346.89) contains two subsections. Subsection (1) prohibits the driver of a vehicle from being so engaged or occupied as to interfere with the safe driving of the vehicle. For violating this subsection, a person is subject to a forfeiture of \$20 to \$400. Subsection (2) prohibits a person from operating a vehicle with a television in the front seat or visible from the front seat. For violating this subsection, a person is subject to a forfeiture of \$20 to \$40 for a first offense and \$50 to \$100 for subsequent offenses. The attached draft adopts the lower penalty provision. Is this consistent with your intent?
4. Instructional permit restrictions are similar to probationary license restrictions. See s. 343.07, stats. Would you like to include a similar provision restricting use of cellular telephones by those operating under instructional permits?
5. The draft provides a delayed effective date provision of six months to allow for preparation by DOT and for education of the public and law enforcement before this new driving law goes into effect. Is this time period satisfactory?

Please feel free to contact me by e-mail or telephone if you would like to discuss these issues further.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

RMR

2001 BILL

D-Note
soon turned in 2/27/01

Regen

1 AN ACT to amend 346.95 (1); and to create 346.89 (3) of the statutes; relating
2 to: operating a motor vehicle while using a cellular or other mobile telephone
3 and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits inattentive driving. The driver of a motor vehicle may not be so engaged or occupied as to interfere with the safe driving of the vehicle. Violators may be required to forfeit not less than \$20 nor more than \$400.

This bill prohibits a person from operating a motor vehicle while using a cellular or other mobile telephone, regardless of whether use of the telephone interferes with operation of the vehicle. However, this prohibition applies only to persons driving under a probationary license, which is, with certain exceptions, issued to all applicants for an original driver's license and remains in effect for two years from the date of the licensee's next birthday. Persons who violate this prohibition may be required to forfeit not less than \$20 nor more than \$40 for a first offense, and not less than \$50 nor more than \$100 for a 2nd or subsequent offense within one year.

except to report an emergency

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

4 SECTION 1. 346.89 (3) of the statutes is created to read:

an instruction permit or a probationary license. A probationary license

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1469/2dn

ARG:.....

↑
Jld

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"?

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

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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State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

February 27, 2001

MEMORANDUM

To: Representative Staskunas

From: Arron R. Gary, Attorney

Re: LRB-1469 Prohibit use of cellular phones by a driver holding a probationary drivers license

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 261-6926 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.