

2001 DRAFTING REQUEST

Bill

Received: 01/25/2001

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Pedro Colon (608) 267-7669

By/Representing: Jerry Lowriex (aide)

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Alt. Drafters:

Subject: **Transportation - traffic laws**

Extra Copies: **TNF, PJH**

Pre Topic:

No specific pre topic given

Topic:

Prohibiting cell phone use while driving

Instructions:

Wants bill prohibiting cell phone use while driving. Should be secondary violation, not primary violation. Would like bill to be similar to seat belt law. Use of hands free cell phone and cell phone in emergency situations okay. Wants penalty to be forfeiture, not fine. Amount of penalty should be consistent with seat belt violation.

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 02/22/2001	jdyer 02/22/2001	pgreensl 02/26/2001	_____	lrb_docadmin 02/26/2001		S&L
/2	agary 02/28/2001	jdyer 02/28/2001	rschluet 02/28/2001	_____	lrb_docadmin 02/28/2001	lrb_docadmin 03/05/2001	

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<END>

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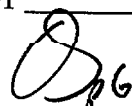
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FE Sent For:		1/2 2/28 jld	 2-28-1	 2-25-1 <END>			

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1?	agary	1 3/22 ja	2/26 PS	2/26 SELF			

FE Sent For:

<END>

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

which means that

Current law prohibits inattentive driving, ~~when~~ a driver of a motor vehicle may not be so engaged or occupied as to interfere with the safe driving of the vehicle. Any person convicted of inattentive driving may be required to forfeit not less than \$20 nor more than \$400, and will incur additional fees, costs, and assessments.

This bill generally prohibits a person from operating a motor vehicle (other than an authorized emergency vehicle) while using a cellular or other mobile telephone (cellular phone), regardless of whether use of the cellular phone interferes with the operation of the vehicle. However, an operator may use a hands-free cellular phone and may use a cellular phone to report an emergency. Any person convicted of operating a motor vehicle while using a cellular phone may be required to forfeit \$10, and will not incur any additional fees, costs, assessments, or driver's license demerit points.

This bill prohibits law enforcement officers from stopping or inspecting a motor vehicle solely to determine compliance with the prohibition on cellular phone use, but an officer may issue a citation for a violation observed in the course of a stop or inspection made for other purposes. A law enforcement officer may not take a person into physical custody solely for a violation of the cellular phone use prohibition.

BILL

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:

1 **SECTION 1.** 165.755 (1) (b) [✓] of the statutes is amended to read:

2 165.755 (1) (b) A court may not impose the crime laboratories and drug law
3 enforcement assessment under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar)
4 or (bm) or (5) (b) or for a violation of a state law or municipal or county ordinance
5 involving a nonmoving traffic violation, a cellular telephone use violation under s.
6 346.895[✓], or a safety belt use violation under s. 347.48 (2m).

7 **SECTION 2.** 302.46 (1) (a) [✓] of the statutes is amended to read:

8 302.46 (1) (a) On or after October 1, 1987, if a court imposes a fine or forfeiture
9 for a violation of state law or for a violation of a municipal or county ordinance except
10 for a violation of s. 101.123 (2) (a), (am) 1., (ar) or (bm) or (5) or state laws or municipal
11 or county ordinances involving nonmoving traffic violations, cellular telephone use
12 violations under s. 346.895[✓], or safety belt use violations under s. 347.48 (2m), the
13 court, in addition, shall impose a jail assessment in an amount of 1% of the fine or
14 forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the
15 court shall determine the jail assessment on the basis of each fine or forfeiture. If
16 a fine or forfeiture is suspended in whole or in part, the court shall reduce the jail
17 assessment in proportion to the suspension.

18 **SECTION 3.** 343.32 (2) (bt) [✓] of the statutes is amended to read:

19 343.32 (2) (bt) The scale adopted by the secretary may not assess any demerit
20 points for a violation of s. 346.895[✓], 346.922[✓], or 347.48 (2m) (b), (c) or (d) or (4) (a).

21 **SECTION 4.** 346.895 [✓] of the statutes is created to read:

BILL

1 **346.895 Use of cellular telephone.** (1) No person may operate a motor
2 vehicle, other than an authorized emergency vehicle, while using a cellular or other
3 mobile telephone unless one of the following applies:

4 (a) The operator of a motor vehicle may use a cellular or other mobile telephone
5 to report an emergency.

6 (b) The operator of a motor vehicle equipped with a cellular or other mobile
7 telephone device that allows the operator to talk and listen without holding the
8 telephone or its handset or receiver may utilize this device if the operator does not
9 hold or touch the telephone or its handset or receiver while operating the motor
10 vehicle except to enable the device, enter a telephone number, or hang up or turn off
11 the telephone.

12 (2) Notwithstanding s. 349.02, a law enforcement officer may not stop or
13 inspect a vehicle solely to determine compliance with this section. This subsection
14 does not limit the authority of a law enforcement officer to issue a citation for a
15 violation of this section observed in the course of a stop or inspection made for other
16 purposes, except that a law enforcement officer may not take a person into physical
17 custody solely for a violation of this section.

18 **SECTION 5.** 346.95 (8) of the statutes is created to read:

19 346.95 (8) Any person violating s. 346.895 may be required to forfeit \$10.

20 **SECTION 6.** 757.05 (1) (a) of the statutes is amended to read:

21 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
22 state law or for a violation of a municipal or county ordinance except for a violation
23 of s. 101.123 (2) (a), (am) 1., (ar) or (bm) or (5) or state laws or municipal or county
24 ordinances involving nonmoving traffic violations, cellular telephone use violations
25 under s. 346.895, or safety belt use violations under s. 347.48 (2m), there shall be

BILL**SECTION 6**

1 imposed in addition a penalty assessment in an amount of 23% of the fine or
2 forfeiture imposed. If multiple offenses are involved, the penalty assessment shall
3 be based upon the total fine or forfeiture for all offenses. When a fine or forfeiture
4 is suspended in whole or in part, the penalty assessment shall be reduced in
5 proportion to the suspension.

6 **SECTION 7.** 814.63 (1) (c) ✓ of the statutes is amended to read:

7 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
8 101.123 (2) (a), (am) 1., (ar) or (bm) or (5), a cellular telephone use violation under
9 s. 346.895 ✓, or a safety belt use violation under s. 347.48 (2m).

10 **SECTION 8.** 814.63 (2) ✓ of the statutes is amended to read:

11 814.63 (2) Upon the disposition of a forfeiture action in circuit court for
12 violation of a county, town, city, village, town sanitary district or public inland lake
13 protection and rehabilitation district ordinance, except an action for a cellular
14 telephone use violation under s. 346.895 ✓ or a safety belt use violation under s. 347.48
15 (2m), the county, town, city, village, town sanitary district or public inland lake
16 protection and rehabilitation district shall pay a nonrefundable fee of \$5 to the clerk
17 of circuit court.

18 **SECTION 9.** 814.634 (1) (a) ✓ of the statutes is amended to read:

19 814.634 (1) (a) Except for an action for a cellular telephone use violation under
20 s. 346.895 ✓ or a safety belt use violation under s. 347.48 (2m), the clerk of circuit court
21 shall charge and collect a \$40 court support services fee from any person, including
22 any governmental unit as defined in s. 108.02 (17), paying a fee under s. 814.61 (1)
23 (a), (3) or (8) (am) or 814.63 (1).

24 **SECTION 10.** 814.635 (1) ✓ of the statutes is amended to read:

BILL

1 814.635 (1) Except for an action for a cellular telephone use violation under s.
2 346.895✓ or a safety belt use violation under s. 347.48 (2m), the clerk of circuit court
3 shall charge and collect a \$9 justice information system fee from any person,
4 including any governmental unit as defined in s. 108.02 (17), paying a fee under s.
5 814.61 (1) (a), (3) or (8) (am), 814.62 (1), (2) or (3) (a) or (b) or 814.63 (1). The justice
6 information system fee is in addition to the other fees listed in this section.

7 **SECTION 11.** 814.65 (1)✓ of the statutes is amended to read:

8 814.65 (1) **COURT COSTS.** In a municipal court action, except an action for
9 violation of an ordinance in conformity with s. 346.895✓ or 347.48 (2m), the municipal
10 judge shall collect a fee of not less than \$15 nor more than \$23 on each separate
11 matter, whether it is on default of appearance, a plea of guilty or no contest, on
12 issuance of a warrant or summons or the action is tried as a contested matter. Of each
13 fee received by the judge under this subsection, the municipal treasurer shall pay
14 monthly \$5 to the state treasurer for deposit in the general fund and shall retain the
15 balance for the use of the municipality.

16 **SECTION 12. Effective date.**

17 (1) This act takes effect on the first day of the ✓4th month beginning after
18 publication.

19 (END)

D - Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2260/1dn

ARG:.....

JLD

The penalty provisions in the attached draft parallel the penalty provisions of s. 347.48 (2m), the safety belt law. Accordingly, the attached draft provides for only "secondary enforcement," and no fees, costs, assessments, or driver's license demerit points are imposed in addition to the forfeiture of \$10. Is this consistent with your intent?

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-2260/1dn
ARG:jld:pg

February 26, 2001

The penalty provisions in the attached draft parallel the penalty provisions of s. 347.48 (2m), the safety belt law. Accordingly, the attached draft provides for only "secondary enforcement," and no fees, costs, assessments, or driver's license demerit points are imposed in addition to the forfeiture of \$10. Is this consistent with your intent?

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LRB 2260
2/27/01

Telephone conference with Jerry Lowriex re redraft. Feels that bill is too weak and wants to add "teeth" to it. Wants to provide for primary enforcement of violation, to increase penalty to \$20 to \$400 consistent with existing inattentive driving penalty, and to allow fees, costs, assessments, demerit points, etc. to be imposed in addition to forfeiture amount.

ARG

RMR

2001 BILL

J. Note
soon turned in 2/28/01

regen

1 AN ACT to amend 165.755 (1) (b), 302.46 (1) (a), 343.32 (2) (bt), 757.05 (1) (a),
2 814.63 (1) (c), 814.63 (2), 814.634 (1) (a), 814.635 (1) and 814.65 (1); and to
3 create 346.895 and 346.95 (8) of the statutes; relating to: operating a motor
4 vehicle while using a cellular or other mobile telephone and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits inattentive driving, which means that a driver of a motor vehicle may not be so engaged or occupied as to interfere with the safe driving of the vehicle. Any person convicted of inattentive driving may be required to forfeit not less than \$20 nor more than \$400, and will incur additional fees, costs, and assessments.

This bill generally prohibits a person from operating a motor vehicle (other than an authorized emergency vehicle) while using a cellular or other mobile telephone (cellular phone), regardless of whether use of the cellular phone interferes with the operation of the vehicle. However, an operator may use a hands-free cellular phone and may use a cellular phone to report an emergency. Any person convicted of operating a motor vehicle while using a cellular phone may be required to forfeit ~~\$200~~ and will not incur any additional fees, costs, assessments, or driver's license demerit points. not less than \$20 nor more than \$400.

This bill prohibits law enforcement officers from stopping or inspecting a motor vehicle solely to determine compliance with the prohibition on cellular phone use, but an officer may issue a citation for a violation observed in the course of a stop or

BILL

~~inspection made for other purposes. A law enforcement officer may not take a person into physical custody solely for a violation of the cellular phone use prohibition.~~

~~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:

SECTION 1. 165.755 (1) (b) of the statutes is amended to read:

165.755 (1) (b) A court may not impose the crime laboratories and drug law enforcement assessment under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar) or (bm) or (5) (b) or for a violation of a state law or municipal or county ordinance involving a nonmoving traffic violation, a cellular telephone use violation under s. 346.895, or a safety belt use violation under s. 347.48 (2m).

SECTION 2. 302.46 (1) (a) of the statutes is amended to read:

302.46 (1) (a) On or after October 1, 1987, if a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) (a), (am) 1., (ar) or (bm) or (5) or state laws or municipal or county ordinances involving nonmoving traffic violations, cellular telephone use violations under s. 346.895, or safety belt use violations under s. 347.48 (2m), the court, in addition, shall impose a jail assessment in an amount of 1% of the fine or forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the court shall determine the jail assessment on the basis of each fine or forfeiture. If a fine or forfeiture is suspended in whole or in part, the court shall reduce the jail assessment in proportion to the suspension.

SECTION 3. 343.32 (2) (bt) of the statutes is amended to read:

343.32 (2) (bt) The scale adopted by the secretary may not assess any demerit points for a violation of s. 346.895, 346.922, or 347.48 (2m) (b), (c) or (d) or (4) (a).

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2 **346.895 Use of cellular telephone.** ~~111~~ No person may operate a motor
3 vehicle, other than an authorized emergency vehicle, while using a cellular or other
4 mobile telephone unless one of the following applies:

5 ^{(1) ← (3)}
~~(1)~~ The operator of a motor vehicle may use a cellular or other mobile telephone
6 to report an emergency.

7 ^{(2) ← (3)}
~~(2)~~ The operator of a motor vehicle equipped with a cellular or other mobile
8 telephone device that allows the operator to talk and listen without holding the
9 telephone or its handset or receiver may utilize this device if the operator does not
10 hold or touch the telephone or its handset or receiver while operating the motor
11 vehicle except to enable the device, enter a telephone number, or hang up or turn off
12 the telephone.

insert
A

~~(2) Notwithstanding s. 349.02, a law enforcement officer may not stop or
inspect a vehicle solely to determine compliance with this section. This subsection
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violation of this section observed in the course of a stop or inspection made for other
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1 ~~under s. 346.895, or safety belt use violations under s. 347.48 (2m), there shall be~~
2 ~~imposed in addition a penalty assessment in an amount of 23% of the fine or~~
3 ~~forfeiture imposed. If multiple offenses are involved, the penalty assessment shall~~
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5 ~~is suspended in whole or in part, the penalty assessment shall be reduced in~~
6 ~~proportion to the suspension.~~

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10 s. 346.895, or a safety belt use violation under s. 347.48 (2m).

11 **SECTION 8.** 814.63 (2) of the statutes is amended to read:

12 814.63 (2) Upon the disposition of a forfeiture action in circuit court for
13 violation of a county, town, city, village, town sanitary district or public inland lake
14 protection and rehabilitation district ordinance, except an action for a cellular
15 telephone use violation under s. 346.895 or a safety belt use violation under s. 347.48
16 (2m), the county, town, city, village, town sanitary district or public inland lake
17 protection and rehabilitation district shall pay a nonrefundable fee of \$5 to the clerk
18 of circuit court.

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23 any governmental unit as defined in s. 108.02 (17), paying a fee under s. 814.61 (1)
24 (a), (3) or (8) (am) or 814.63 (1).

25 **SECTION 10.** 814.635 (1) of the statutes is amended to read:

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4 ~~including any governmental unit as defined in s. 108.02 (17), paying a fee under s.~~
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6 ~~information system fee is in addition to the other fees listed in this section.~~

7 **SECTION 11.** 814.65 (1) of the statutes is amended to read:

8 814.65 (1) COURT COSTS. In a municipal court action, except an action for
9 violation of an ordinance in conformity with s. 346.895 or 347.48 (2m), the municipal
10 judge shall collect a fee of not less than \$15 nor more than \$23 on each separate
11 matter, whether it is on default of appearance, a plea of guilty or no contest, on
12 issuance of a warrant or summons or the action is tried as a contested matter. Of each
13 fee received by the judge under this subsection, the municipal treasurer shall pay
14 monthly \$5 to the state treasurer for deposit in the general fund and shall retain the
15 balance for the use of the municipality.

16 **SECTION 12. Effective date.**

17 (1) This act takes effect on the first day of the 4th month beginning after
18 publication.

19 (END)

D-Note

**2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2260/2ins
ARG:.....

Insert
A

SECTION 1. 346.95 (2) of the statutes is amended to read:
346.95 (2) Any person violating s. 346.89 (1), 346.895[✓], or 346.94 (2), (4), or (7)
may be required to forfeit not less than \$20 nor more than \$400.

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

LRB-2260/2dn

ARG:.....

Jld

The attached draft ^{makes} ~~includes~~ the following changes to LRB-2260/1:

1. The draft makes a violation of the prohibition against operating a motor vehicle while using a cellular phone subject to primary enforcement, rather than secondary enforcement.
2. The draft increases the penalty provision from a \$10 forfeiture (the same penalty as a safety belt violation) to a \$20 to \$400 forfeiture (the same penalty as inattentive driving under s. 346.89 (1), stats.).
3. The draft provides for (by not exempting) payment by violators of additional costs, fees, and assessments in addition to the forfeiture. These costs, fees, and assessments are imposed for virtually all traffic offenses except nonmoving violations and safety belt violations. The draft also allows for (by not exempting) the assessment of driver's license demerit points against violators.

Please feel free to call or e-mail 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-2260/2dn
ARG:jld:rs

February 28, 2001

The attached draft makes the following changes to LRB-2260/1:

1. The draft makes a violation of the prohibition against operating a motor vehicle while using a cellular phone subject to primary enforcement, rather than secondary enforcement.
2. The draft increases the penalty provision from a \$10 forfeiture (the same penalty as a safety belt violation) to a \$20 to \$400 forfeiture (the same penalty as inattentive driving under s. 346.89 (1), stats.).
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STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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

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

February 28, 2001

MEMORANDUM

To: Representative Colon

From: Arron R. Gary, Attorney

Re: LRB-2260 Prohibiting cell phone use while driving

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.