

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBf87/1dn
MGD:jld:jf

March 6, 2002

Reps. Young, Staskunas, Bock, and Schoof:

I have made several changes to this amendment to put it in the proper form. Even with those changes, however, the language of the amendment may not fully reflect your intent.

I assume that by referring to "12(m)," you intended to create bill SECTION 12m. I made that assumption because the bill SECTIONS that precede and follow page 30, line 23, are 12 and 13. In addition, there does not appear to be a logical place for a sub. (12m) or a subd. 12m. in any of the statutory sections between s. 941.235 (the statutory section to which bill SECTION 12 relates) and s. 941.295 (the statutory section to which bill SECTION 13 relates). (To illustrate, the highest numbered subsection within that span of statutes is sub. (10) of s. 941.29.)

If that assumption is correct, then the provision added by the amendment does not have a statutory number or letter. The absence of that number is significant in at least two respects. First, since it is not part of any particular statute, the phrase "Notwithstanding the above" may be construed to mean "notwithstanding anything preceding page 30, line 23 of the bill" — that is, "notwithstanding the fact that the bill otherwise authorizes a licensee to carry a concealed weapon." I assume that this is consistent with your intent. But second, the absence of a number may mean that the provision, though a valid law, is not a statute. *See* s. 35.18 (3) (requiring numbers or letters for all statutory sections, subsections, paragraphs, subdivisions, and subdivision paragraphs). In that case, the default penalty provision contained in s. 939.61, which relates to "act[s] or omission[s] prohibited *by statute*" (emphasis added), would not apply. In other words, there may be no penalty that can be imposed for a violation of this law. (It might be possible, however, to enforce the provision by obtaining an injunction, but I assume that that was not your intent.)

In addition, the substance of the amendment might be construed in a way that does not reflect your intent. First, you refer only to *blood* alcohol content. Consequently, the amendment could require blood tests — and preclude the use of breath screening tests — when police seek to enforce the prohibition. *See* s. 30.681 (1) (b) 2. (distinguishing blood alcohol concentration from the amount of alcohol in a person's breath); *see also* s. 340.01 (1v) (defining "alcohol concentration" to include breath- and blood-based alcohol concentrations). Second, the language of your amendment ends with a

reference to an alcohol concentration level — “.02” — explicitly indicating what is being measured. In all likelihood, a court would construe that to mean .02 grams of alcohol per 100 milliliters of a person’s blood, *see* s. 340.01 (1v) (a), which I assume was your intent, but the amendment would be less likely to be misconstrued if the more detailed language were included in the amendment itself.

I regret that I was not available to draft this amendment for you in the first instance. But I am very willing to work with you if you decide to request an alternative amendment for introduction in the Senate that better reflects your intent.

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