

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2006/P1dn
ARG:kmg:pg

April 30, 2003

ATTN: Kristina Boardman

The attached redraft of 2001 AB-141 incorporates the amendment from last session (2001 LRBa0318) adding a delayed effective date of approximately 3 months. Is this consistent with your intent?

In response to the questions raised with the drafting request, under existing law, DOT may suspend a person's operating privilege if the person is a habitually reckless or negligent operator of a motor vehicle or repeatedly violates state traffic laws. (*See* s. 343.32 (2) (a).) In making this determination, DOT may adopt by rule a scale of "demerit points." For some offenses, demerit points are specified by statute. For most offenses, DOT establishes the number of demerit points assessed for the offense. By DOT rule, DOT must generally suspend or revoke the operating privilege of a person who attains 12 demerit points in a 12-month period (Trans. 101.04). However, because this requirement is imposed by rule and not by statute, DOT can change the requirement at any time to make suspension permissive rather than mandatory. Depending on the offense, committing 3 or more of the offenses specified in the bill during one course of conduct may or may not result in DOT's suspension of the person's operating privilege.

There are significant differences between the bill and the current DOT demerit point system. First, as stated above, DOT suspension for excessive demerit points is, by statute, generally permissive, not mandatory, while the bill provides for mandatory operating privilege suspension. In addition, operating privilege suspension resulting from excessive demerit points is an administrative proceeding in which DOT imposes the penalty. The bill provides for operating privilege suspension by a court as part of a judicial proceeding in which the convictions for the requisite offenses are entered. Accordingly, the effect of the bill is not already covered under existing law.

Under existing law, a court may, but is not required to, order a person to attend traffic safety school for violation of most state traffic laws. (*See* s. 345.60 (1) and (3).) Since the bill *requires* courts to order attendance at traffic safety school under specified circumstances, the effect of the bill is not already covered under existing law.

Under existing law, while DOT may require a person who has accumulated sufficient demerit points to attend "driver improvement counseling" (s. 343.32 (2) (d) — as a practical matter, I'm not sure what this "counseling" consists of), this requirement is

again permissive, not mandatory. Do you want to amend s. 343.32 (2) (d) to specifically include traffic safety school in addition to “counseling”? Under existing s. 343.32, it appears that DOT may provide by rule for a reduction of a person’s demerit points if the person attends a traffic safety school (s. 343.32 (5)), but this section does not specifically authorize DOT to compel attendance at a traffic safety school.

If the attached draft meets with your approval, please let me know and I will convert it to an introducible “/1” draft.

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