

## 2007 ASSEMBLY BILL 38

January 30, 2007 – Introduced by Representative OWENS. Referred to Committee on Transportation.

1     **AN ACT to amend** 346.70 (3m) (c); and **to create** 100.527 and 346.735 of the  
2             **statutes; relating to:** motor vehicle accidents while using a cellular telephone,  
3             cellular telephone dealers, and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Current law requires the Department of Transportation (DOT) to prepare a uniform traffic accident report form or automated format for distribution to persons, including law enforcement agencies, required to submit accident reports to DOT. The form or automated format must include sufficiently detailed information to disclose the conditions at the time of the accident, the persons and vehicles involved in the accident, and the cause of the accident. This bill requires DOT to include in the uniform traffic accident report form or automated format an area designating whether a cellular telephone was being used by the operator of any vehicle at the time of the accident.

The bill also creates a new form of traffic offense. If a person operating a motor vehicle is primarily at fault for causing an accident and the person's use of a cellular telephone contributed to causing the accident, the person is subject to various penalties, from civil forfeiture to criminal misdemeanor penalties, depending on the extent of injury involved. The person may also be required to pay restitution for any loss suffered because of the accident. The bill further creates a rebuttable presumption that, if the operator of a motor vehicle is using a cellular telephone at the time of an accident, the use of the cellular telephone contributed to causing the accident.

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The bill also prohibits a person in the business of selling or leasing cellular telephones at retail from selling or leasing any cellular telephone unless, at the time that the cellular telephone is delivered to the purchaser or lessee, the cellular telephone is accompanied by a written warning that using a cellular telephone while operating a vehicle may be hazardous. A person who violates this prohibition may be required to forfeit not more than \$100 for each violation.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 100.527 of the statutes is created to read:

2           **100.527 Cellular telephone dealers. (1)** No person in the business of selling  
3 or leasing cellular telephones at retail may sell or lease any cellular telephone unless,  
4 at the time that the cellular telephone is delivered to the purchaser or lessee, the  
5 cellular telephone is accompanied by a written warning, prominently displayed, in  
6 substantially the following language in bold-faced capital letters of not less than  
7 10-point type: “CAUTION: USING A CELLULAR TELEPHONE WHILE  
8 OPERATING A VEHICLE MAY BE HAZARDOUS.”

9           **(2)** Any person who violates this section may be required to forfeit not more  
10 than \$100 for each violation.

11           **SECTION 2.** 346.70 (3m) (c) of the statutes is amended to read:

12           **346.70 (3m) (c)** The department shall prepare and supply at its own expense  
13 to police departments, coroners, sheriffs and other suitable agencies or individuals,  
14 forms or an automated format for accident reports required to be made to the  
15 department. Any report forms and automated format shall call for sufficiently

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1 detailed information to disclose with reference to a traffic accident the cause,  
2 conditions then existing, whether a cellular telephone was being used by the operator  
3 of any vehicle at the time of the accident, and the persons and vehicles involved.

4 **SECTION 3.** 346.735 of the statutes is created to read:

5 **346.735 Accidents while using cellular telephones. (1)** In this section:

6 (a) “Accident” means an accident for which the operator of a vehicle is required  
7 to give notice under s. 346.70 (1).

8 (b) “Great bodily harm” has the meaning given in s. 939.22 (14).

9 **(2)** If the operator of a motor vehicle, other than an authorized emergency  
10 vehicle, is using a cellular telephone at the time that an accident occurs, there is a  
11 rebuttable presumption that the use of the cellular telephone contributed to causing  
12 the accident.

13 **(3)** If a person operating a motor vehicle is primarily at fault for causing an  
14 accident and the person’s use of a cellular telephone contributed to causing the  
15 accident, the person:

16 (a) Shall forfeit not more than \$300 if the accident did not involve death or  
17 injury to a person.

18 (b) Shall forfeit not less than \$300 nor more than \$1,000 if the accident involved  
19 injury to a person but the person did not suffer great bodily harm.

20 (c) Shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned for  
21 not more than 6 months in the county jail or both if the accident involved injury to  
22 a person and the person suffered great bodily harm.

23 (d) Shall be fined not less than \$5,000 nor more than \$10,000 or imprisoned for  
24 not more than one year in the county jail or both if the accident involved death to a  
25 person.

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1 (e) May be required by the court to pay restitution, in any amount determined  
2 appropriate by the court, to any person suffering loss because of the accident if proof  
3 of such loss is submitted to the satisfaction of the court.

**SECTION 4. Nonstatutory provisions.**

4 (1) Notwithstanding section 346.70 (3m) (c) of the statutes, as affected by this  
5 act, the department of transportation may supply forms for accident reports  
6 containing the information specified in section 346.70 (3m) (c), 2005 stats., until the  
7 department has depleted its existing stock of forms for accident reports.  
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**SECTION 5. Initial applicability.**

9 (1) The treatment of section 346.735 of the statutes first applies to accidents  
10 occurring on the effective date of this subsection.  
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12 (2) The treatment of section 100.527 of the statutes first applies to cellular  
13 telephones sold or leased on the effective date of this subsection.

14 **SECTION 6. Effective dates.** This act takes effect on the first day of the 4th  
15 month beginning after publication, except as follows:

16 (1) The treatment of section 346.70 (3m) (c) of the statutes and SECTION 5 of this  
17 act take effect on the first day of the 6th month beginning after publication.

18 (END)