

2007 DRAFTING REQUEST

Bill

Received: 09/20/2006

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Carol Owens (608) 267-7990

By/Representing: self

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Transportation - traffic laws

Extra Copies: BAB, CTS

Submit via email: YES

Requester's email: Rep.Owens@legis.wisconsin.gov

Carbon copy (CC:) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Accidents while using a cellular telephone; rebuttable presumption; creating offense; cellular telephone dealers

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>
/?	agary 09/29/2006	jdyer 10/18/2006					State Crime
/P1			rschluet 10/18/2006		mbarman 10/18/2006		State Crime
/1	agary 11/14/2006	jdyer 11/15/2006	rschluet 11/15/2006		sbasford 11/15/2006	mbarman 01/02/2007	

FE Sent For:

<END>

→ At
Intro

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/?	agary 09/29/2006	jdye 10/18/2006		_____			State Crime
/P1		11/15/06 J	rschluet 10/18/2006	_____	mbarman 10/18/2006		

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1156
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/?	agary	PI 10/18 jld		514			
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FE Sent For:

<END>

Gary, Aaron

From: Rep.Owens
Sent: Wednesday, September 20, 2006 3:32 PM
To: Gary, Aaron
Subject: Drafting Request for 2007-08 Session

Aaron,

I would like to re-draft 2005 Assembly Bill 1113 and Assembly Bill 655.

If you have any questions, please feel free to contact Becky Kikkert in my office.

Thank you,

Carol Owens

in 9/29

RM NR

J. Note

LPS -
PWF
please

2005 ASSEMBLY BILL 1113

March 14, 2006 - Introduced by Representatives OWENS and AINSWORTH. Referred to Committee on Highway Safety.

Regen

- 1 AN ACT *to amend* 346.70 (3m) (c); and *to create* 100.53 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. ✓

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.

*

ASSEMBLY BILL 1113

* 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 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. *that*

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.

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

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^{100.527}
SECTION 1. ~~100.52~~ of the statutes is created to read:

²⁷
~~100.52~~ **Cellular telephone dealers.** (1) No person in the business of selling or leasing cellular telephones at retail may sell or lease 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, prominently displayed, in substantially the following language in bold-faced capital letters of not less than 10-point type: "CAUTION: USING A CELLULAR TELEPHONE WHILE OPERATING A VEHICLE MAY BE HAZARDOUS." ✓

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

SECTION 2. ^{346.70} (3m) (c) of the statutes is amended to read:

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

ASSEMBLY BILL 1113

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 more than 6 months[✓] in the county jail or both if the accident involved injury to a
22 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 more than one[✓] year in the county jail or both if the accident involved death to a
25 person.

ASSEMBLY BILL 1113

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.

4 **SECTION 4. Initial applicability.**

5 (1) The treatment of section 346.735[✓] of the statutes first applies to accidents
6 occurring on the effective date of this subsection.

7 (2) The treatment of section 346.70 (3m) (c)[✓] of the statutes first applies to
8 reports required to be made to the department of transportation[✓] for accidents
9 occurring on the effective date of this subsection.

10 (3) The treatment of section 100.53[✓] of the statutes first applies to cellular
11 telephones sold or leased on the effective date of this subsection.[✓]

12 **SECTION 5. Effective date.**

13 (1) This act takes effect on the first day of the 4th[✓] month beginning after
14 publication.

15 (END)

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0312/P1dn

ARG:.....

date

JG

ATTN: Representative Owens

Please review the attached draft carefully to ensure that it is consistent with your intent.

* The attached draft is based upon 2005 AB-1113. ✓ DOT prepared a sizeable fiscal
* estimate for AB-1113, which could be significantly reduced by incorporating a
non-statutory provision into the bill that allows DOT to deplete its existing stock of
accident reports. This provision would work more smoothly with a slight modification
of the effective date as well. Would you like me to redraft the bill to make these
changes?

Please let me know if you would like any changes made to the attached draft or if you
have any questions. If the attached draft meets with your approval, 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.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0312/P1dn
ARG:jld:rs

October 18, 2006

ATTN: Representative Owens

Please review the attached draft carefully to ensure that it is consistent with your intent.

The attached draft is based upon 2005 AB-1113. DOT prepared a sizeable fiscal estimate for AB-1113, which could be significantly reduced by incorporating a nonstatutory provision into the bill that allows DOT to deplete its existing stock of accident reports. This provision would work more smoothly with a slight modification of the effective date as well. Would you like me to redraft the bill to make these changes?

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, 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.wisconsin.gov

11/13/06

file from Rep. Owens

7-7990

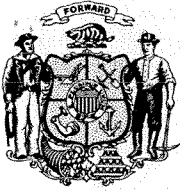
- few changes

• re D-Note =>

- yes, include nonstat re depleting stock
- OK to make date change too

• want "1/1"





State of Wisconsin
2007 - 2008 LEGISLATURE

soon

LRB-0312/01 1

ARG:jld:rs

in 11/14

KMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS -
check auto
refs

Regen

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.

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.

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.

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
16 detailed information to disclose with reference to a traffic accident the cause,

1 conditions then existing, whether a cellular telephone was being used by the operator
2 of any vehicle at the time of the accident, and the persons and vehicles involved.

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

4 **346.735 Accidents while using cellular telephones.** (1) In this section:

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

7 (b) "Great bodily harm" has the meaning given in s. 939.22 (14).

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

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

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

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

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

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

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.

4 **SECTION ~~4~~. Initial applicability.**

5 (1) The treatment of section 346.735 of the statutes first applies to accidents
6 occurring on the effective date of this subsection.

7 (2) The treatment of section 346.70 (3m) (c) of the statutes first applies to
8 reports required to be made to the department of transportation for accidents
9 occurring on the effective date of this subsection.

10 ~~(#)~~ ~~(3)~~ The treatment of section 100.527 of the statutes first applies to cellular
11 telephones sold or leased on the effective date of this subsection.

12 **SECTION ~~5~~. Effective date.**

The treatment of sections 100.527 and 346.735 of the statutes

13 (1) ~~This act~~ takes effect on the first day of the 4th month beginning after
14 publication.

15 (END)

✓
Insert
4-3

Insert
4-14 ✓

INSERT 4-3:

SECTION 4. Nonstatutory provisions.

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

INSERT 4-14:

~~#~~ The treatment of section 346.70 (3m) (c) ✓ of the statutes and SECTION 4 ✓ of this act takes effect on the first day of the 6th ✓ month beginning after publication. a.r.

(end ins 4-14)

MOVE

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

Barman, Mike

From: Kikkert, Becky
Sent: Tuesday, January 02, 2007 3:14 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-0312/1 Topic: Accidents while using a cellular telephone; rebuttable presumption; creating offense; cellular telephone dealers

Please Jacket LRB 07-0312/1 for the ASSEMBLY.