

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

LRB-2994/P2dn  
BAB:cjs:nwn

November 5, 2007

ATTN: Tom Van Ess

The attached draft incorporates the tougher penalties you requested for text messaging while driving violations and for such violations in which another person is injured or dies. You requested that a violation involving bodily harm or great bodily harm should be a Class A misdemeanor. In order to be consistent with the similar, broader prohibition against negligent operation of a vehicle, I have used the same penalties as for causing bodily harm under s. 346.62 (3), which are fines of not less than \$300 nor more than \$2,000 and imprisonment of not less than 30 days nor more than one year in the county jail. I have modeled the penalties for a violation of created s. 346.89 (3) involving death after the penalties for homicide by negligent operation of a motor vehicle under s. 940.10 (1), making such a violation a Class G felony. I have also incorporated the provision of s. 940.10 (2) which makes the negligent operation of a vehicle resulting in the death of an unborn child a Class G felony. Is that acceptable?

This draft provides a criminal penalty for drivers who, in the course of text messaging, cause an accident that results in bodily harm to another person. The definition of "bodily harm" under s. 939.22 (4) is "physical pain or injury, illness, or any impairment of physical condition," which is quite broad and if applied literally, could include very minor physical conditions such as slight bruising or temporary nausea. Would you like to provide a lower penalty for violations that involve bodily harm but are less severe than great bodily harm?

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