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STEPHEN R. MILLER
CHIEF

June 2, 2009

MEMORANDUM

To: Representative Staskunas

From: Peggy J. Hurley, Senior Legislative Attorney, (608) 266-8906

Subject: Technical Memorandum to **2009 AB 283** (LRB-2859/1) by **DOT**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

CORRESPONDENCE MEMORANDUM

Wisconsin Department of Transportation

DT1175 97

Date: June 1, 2009

To: Legislative Reference Bureau

From: Richard Kleist
DMV Legislative Liaison, Department of Transportation

Subject: Technical Note for Assembly Bill 283 relating to operation a vehicle while intoxicated, granting rule-making authority, making an appropriation, and providing a penalty.

In reviewing AB-283, Section 12 states the person must submit proof an ignition interlock device has been installed on each vehicle for which the person's name appears on the title or registration. Section 19 states the court shall order that each motor vehicle in the person's household operated by the person be equipped with an ignition interlock device. These two Sections seem to contradict each other. Also, if it is the intention of the bill to require that each motor vehicle in the person's household operated by the person be equipped with an ignition interlock device, it would be beneficial to define the household to avoid any issues of ambiguity when it is necessary to determine if a vehicle should have a device installed or not.

It appears this bill intends to toll a license revocation period while the violator is imprisoned. However, it inadvertently tolls the period during which prior offenses are counted. Currently the time period used for counting a person's prior refusals or OWI-related convictions is relatively straightforward. The time period is counted backwards beginning with the date of the current refusal or OWI-related violation and goes back the period specified under the particular statute section, depending on the number of prior refusals or convictions on the record.

AB-283 changes statute sections that define how the time period is determined for counting a person's prior offenses. The proposal requires the court to notify DOT whether or not the person has been ordered imprisoned so the department may use the appropriate "count-back" period when determining the person's prior OWI-related offenses. As the proposal states, the period specified for "counting-back" in the person's driving record to determine the number of prior offenses is tolled for the duration the person has been imprisoned. The proposal doesn't limit the tolling to imprisonment related to an alcohol-related offense.

Additionally, if the imprisonment were to be related to the underlying alcohol-related offense, the offense would need to be under s. 940.09 (1) or s. 940.25, or at least a fifth-offense on an OWI-related charge before prison time can be ordered. In all three of these scenarios, the "count-back" time for the OWI-related charges indicated in this proposal is already the person's lifetime, so the tolling for the time they are imprisoned would have no affect.

AB-283 in its current language seems ambiguous and does not appear to accomplish the analysis provided with the proposal. It appears by the analysis, the desire is to toll the revocation period while a person is imprisoned, not change the method for counting prior OWI-related offenses.

The language in the bill states the time period is tolled whenever or for as long as the person is imprisoned. Does this language mean whenever they are imprisoned, such as if they were imprisoned for burglary, or just when they are imprisoned for the underlying OWI-related charge?

Also, the proposal states a person must notify the department when they have been released from prison, while the analysis states jail or prison. Clarification of the language in this area may be necessary also.

Finally, the analysis states that under this bill, the period of revocation begins on the date the person commits the OWI-related offense. Generally, the period of revocation begins on the date a person is convicted of an offense, or a later date if so ordered by the court

We appreciate your attention to these technical concerns.

Richard Kleist, WisDOT-DMV
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