

2009 DRAFTING REQUEST

Assembly Amendment (AA-AB841)

Received: 03/30/2010

Received By: rnelson2

Wanted: Today

Companion to LRB:

For: Louis Molepske Jr (608) 267-9649

By/Representing: Kathy

May Contact:

Drafter: rnelson2

Subject: Drunk Driving - penalties
Nat. Res. - boats snomos ATVs

Addl. Drafters:

Extra Copies:

Submit via email: YES

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Occupational license for rec. vehicle related license revocation

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>
/1	rnelson2 04/05/2010	jdyer 04/06/2010	rschluet 04/06/2010	_____	lparisi 04/06/2010	lparisi 04/06/2010	
/2	rnelson2 04/07/2010	jdyer 04/07/2010	rschluet 04/07/2010	_____	cduerst 04/07/2010	cduerst 04/07/2010	

FE Sent For:

<END>

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/1	rnelson2 04/05/2010	jdye 04/06/2010	rschlue 04/06/2010		lparisi 04/06/2010	lparisi 04/06/2010	

FE Sent For:

1/2 4/7 jld
4710
MPP
<END>
47

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/1	rnelson2	1/4/6jld					
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FE Sent For:

<END>

Nelson, Robert P.

From: Farnsworth, Kathy
Sent: Monday, March 29, 2010 4:22 PM
To: Gibson-Glass, Mary; Nelson, Robert P.
Cc: Rep.Molepske; 'molepskelaw@gmail.com'; Maloney2, Eric; Van de Bogert, Abigail; Van de Bogert, Abigail
Subject: AB 841

Attachments: Tech note for AB-841 from DoT (2).doc; DNR Memo AB841 rel to DoT tech note (2).doc

Rep. Molepske is seeking your assistance in drafting an amendment to AB 841 per the attached memo from Gary Eddy at DNR.

I've also attached as background a memo you may already have seen from Richard Kleist at DMV.

There is an Executive Session on this bill tomorrow in the Assembly Committee on Public Safety. The arrival time of these memos is such that I request the draft soon for the bill's next step after the Executive Committee meeting tomorrow.

Your assistance is appreciated.



Tech note for
AB-841 from DoT ...



DNR Memo AB841
rel to DoT tech...

Kathy Farnsworth
Office of Representative Louis J. Molepske, Jr.
Chair-Committee on Jobs, the Economy and Small Business
State Capitol
P. O. Box 8953
Madison, WI 53708-8953
608.267.9649
888.534.0071
kathy.farnsworth@legis.wisconsin.gov

DATE: March 29, 2010
TO: Legislative Reference Bureau
FROM: Gary Eddy, DNR ATV/ Snowmobile Administrator
SUBJECT: Assembly Bill 841 – DOT Technical Note

Richard Kleist, DMV-DOT has forwarded a memo regarding omissions or inconsistencies within AB 841 which relates to operating while intoxicated (OWI) on all-terrain vehicles (ATVs), boats and snowmobiles and penalties.

The DNR recommends the following amendments to address concerns regarding occupational licenses:

343.10 Occupational licenses.

(1) Application for occupational license.

(a) If a person's license or operating privilege is revoked or suspended under this chapter or s. 23.33(4y)(a)2., 30.688(1)(b), 350.1075(1)(b), 767.73, 938.34 (14q), 943.21 (3m), or 961.50 and if the person is engaged in an occupation, including homemaking or full-time or part-time study, or a trade making it essential that he or she operate a motor vehicle, the person, after payment of the fee provided in sub. (6), may file an application with the department setting forth in detail the need for operating a motor vehicle. No person may file more than one application with respect to each revocation or suspension of the person's license or operating privilege under this chapter or s. 23.33(4y)(a)2., 30.688(1)(b), 350.1075(1)(b), 767.73, 938.34 (14q), 943.21 (3m), or 961.50, except that this limitation does not apply to an application to amend an occupational license restriction.

(2) Eligibility.

(a) Except as provided in pars. (b) to (f), a person is eligible for an occupational license if the following conditions are satisfied:

1. Except for a revocation or suspension that arose out of the same incident or occurrence for which the person's license or operating privilege is currently revoked or suspended, the person's license or operating privilege was not revoked or suspended previously under this chapter or ch. 344 or s. 23.33(4y)(a)2., 30.688(1)(b), 350.1075(1)(b), 943.21 (3m) or 961.50 within the one-year period immediately preceding the present revocation or suspension, except as provided in s. 344.40.

(9) Notice. The department shall inform a person whose operating privilege is revoked or suspended under this chapter or under chs. 23, 30 or 350 of his or her right to apply to the department for issuance of an occupational license under this section.

343.30 Suspension and revocation by the courts.

(1q) (a) If a person is convicted under s. 346.63 (1) or a local ordinance in conformity therewith, the court shall proceed under this subsection. If a person is convicted under s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, the court shall proceed under pars. (c) and (d). If a person is referred by the department acting under s. 343.16

(5) (a), the department shall proceed under pars. (c) and (d) without the order of the court.

(b) For persons convicted under s. 346.63 (1) or a local ordinance in conformity therewith:

1. Except as provided in subds. 3. and 4., the court shall revoke the person's operating privilege under this paragraph according to the number of previous suspensions, revocations or convictions that would be counted under s. 343.307 (1). Suspensions, revocations and convictions arising out of the same incident shall be counted as one. If a person has a conviction, suspension or revocation for any offense that is counted under s. 343.307 (1), that conviction, suspension or revocation shall count as a prior conviction, suspension or revocation under this subdivision.

2. Except as provided in sub. (1r) or subd. 3., 4. or 4m., for the first conviction, the court shall revoke the person's operating privilege for not less than 6 months nor more than 9 months. "The person is eligible for an occupational license under s. 343.10 at any time."

Similar to the language found under s. 343. 30(1q)(b)2. , it would also be helpful to add the sentence indicated in blue font above to the appropriate parts of ss. 23.33(4y)(a)2., 30.688(1)(b) and 350.1075(1)(b) to clearly show that those individuals whose motor vehicle operating privileges are suspended or revoked under those sections are also eligible for an occupational license. The person is eligible for an occupational license under s. 343.10 at any time.

Another concern related to a lack of alcohol assessments, education or treatment for a person arrested for OWI on an ATV, boat or snowmobile. AB 841 does mandate alcohol assessments, education and treatment for all persons arrested for these violations. Prior to AB 841 language existed that required alcohol assessments; that language still exists and was not repealed in AB 841. AB 841 further provides alternate program for alcohol and drug treatment and mandates that an ATV, boat or snowmobile safety education course be completed.

It was pointed out that 2009 Wisconsin Act 100 provides a provision requiring \$140 for reinstatement of their operating privilege after revocation. AB 841 will need this language inserted if it is not accounted for.

And lastly, under the Federal regulation 49CFR part 383.5 an ATV is legally viewed as a motor vehicle under the Federal Code and a conviction for operating an ATV while intoxicated while on a public highway would cause the person with a Commercial Driver License (CDL) to have their CDL disqualified and second offense would cause the person's CDL to be disqualified for life. This is currently the case as there are many instances where ATVs are permitted to operate on public highways throughout Wisconsin. Many ATV operators have been already been arrested for OWI while operating on public highways.

If you have any further questions, please let me or Natural Resources Policy Officer, Tom Van Haren know.

Gary Eddy – (608) 267-7455
Tom Van Haren (608) 266-3244

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

Date: March 29, 2010

To: Legislative Reference Bureau

From: Richard Kleist
DMV Legislative Liaison, Department of Transportation

Subject: Technical Note for Assembly Bill 841 relating to intoxicated operation of all-terrain vehicles, snowmobiles, motorboats, and motor vehicles, the calculation of the amount of moneys to be expended from the snowmobile account in the conservation fund for certain activities relating to snowmobile trails and routes, and providing penalties.

The provisions in this proposal are written under s. 23.33, Wis. Stats., relating to ATVs, Subchapter V of Chapter 30, Wis. Stats., relating to the regulation of boating, and Chapter 350, Wis. Stats., relating to snowmobiles. As none of the provisions of this proposal include language under Chapter 343, Wis. Stats., relating to operator's licenses, there are several technical omissions or inconsistencies.

While the proposal includes provisions for revocation of a person's motor vehicle operating privilege for convictions for operating a particular recreational vehicle while intoxicated or refusing a chemical test for intoxication, no provisions were included for the issuance of an occupational driver license for operation for purposes described in s. 343.10, Wis. Stats., during the period of the revocation.

Convictions for operating while intoxicated in a motor vehicle under s. 346.63(1) are convictions used when the Department considers whether to revoke a person's operating privilege as a habitual traffic offender. There is no indication of a desire to have recreational vehicle operating while intoxicated convictions considered for purposes of a person being found to be a habitual traffic offender.

Also, currently a person convicted of operating while intoxicated in a motor vehicle is required to complete an alcohol assessment and any education or treatment recommended as a result of the alcohol assessment. This proposal does not require an alcohol assessment and education or treatment in conjunction with the motor vehicle operating privilege revocation resulting from two or more convictions for operating a recreational vehicle while intoxicated.

2009 Wisconsin Act 100 included a provision under s. 343.21(1)(jr), requiring persons convicted of operating while intoxicated in a motor vehicle to pay an additional \$140 for reinstatement of their operating privilege after revocation. This proposal would seem to be inconsistent in that area as the additional fee is not required.

Federal regulation 49CFR part 383.5 defines a "motor vehicle" as a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, except that such term does not include a vehicle, machine, tractor, trailer, semitrailer operated exclusively on a rail. Currently there are other proposed legislative bills that would allow ATVs to be legally driven on highways. Should one of those proposals become law, an ATV would be legally viewed as a motor vehicle under the Federal Code and a conviction for operating an ATV while intoxicated

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

would cause a person with a Commercial Driver License to have that license disqualified for one year under Federal Regulation 49CFR, part 383.51. As second such conviction would cause the person's commercial operating privilege to be disqualified for life.

We appreciate your attention to these technical concerns.

Richard Kleist, WisDOT-DMV
(608) 266-1449



4/5
State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa1956/1

RPN:A:...

5004

JLD

ASSEMBLY AMENDMENT,
TO 2009 ASSEMBLY BILL 841

V. V.

1 At the locations indicated, amend the bill as follows:

plain →

NO SCORING →

2 1. Page 7, line 11: after "revocation." insert "The person is eligible for an
3 occupational license under s. 343.10 at any time."

4 2. Page 15, line 22: after "revocation." insert "The person is eligible for an
5 occupational license under s. 343.10 at any time."

6 3. Page 21, line 19: after that line insert:

7 "SECTION 54c. 343.10 (1) (a) of the statutes is amended to read:

8 343.10 (1) (a) If a person's license or operating privilege is revoked or
9 suspended under this chapter or s. 23.33 (4y) (a), 30.688 (1) (b), 350.1075 (1) (b),
10 767.73, 938.34 (14q), 943.21 (3m), or 961.50 and if the person is engaged in an
11 occupation, including homemaking or full-time or part-time study, or a trade
12 making it essential that he or she operate a motor vehicle, the person, after payment
13 of the fee provided in sub. (6), may file an application with the department setting

1 forth in detail the need for operating a motor vehicle. No person may file more than
 2 one application with respect to each revocation or suspension of the person's license
 3 or operating privilege under this chapter or s. 23.33 (4y) (a) 2., 30.688 (1) (b),
 4 350.1075 (1) (b), 767.73, 938.34 (14q), 943.21 (3m), or 961.50, except that this
 5 limitation does not apply to an application to amend an occupational license
 6 restriction.

History: 1973 c. 90, 218; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 193; 1979 c. 102, 316, 355; 1981 c. 20; 1983 a. 27, 525, 526; 1985 a. 32 s. 3; 1985 a. 71, 337; 1987 a. 3; 1989 a. 31, 38, 105, 359; 1991 a. 39, 269, 277; 1995 a. 113, 201, 269, 401, 436, 448; 1997 a. 35, 84, 237; 1999 a. 109; 2001 a. 16 ss. 3409f, 3409g, 4060hw, 4060hy; 2003 a. 33, 80, 200, 326; 2005 a. 443 s. 265; 2007 a. 20, 94; 2009 a. 100.

7 **SECTION 54f.** 343.10 (2) (a) 1. of the statutes is amended to read:

8 343.10 (2) (a) 1. Except for a revocation or suspension that arose out of the same
 9 incident or occurrence for which the person's license or operating privilege is
 10 currently revoked or suspended, the person's license or operating privilege was not
 11 revoked or suspended previously under this chapter or ch. 344 or s. 23.33 (4y) (a) 2.,
 12 30.688 (1) (b), 350.1075 (1) (b), 943.21 (3m) or 961.50 within the one-year period
 13 immediately preceding the present revocation or suspension, except as provided in
 14 s. 344.40.

History: 1973 c. 90, 218; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 193; 1979 c. 102, 316, 355; 1981 c. 20; 1983 a. 27, 525, 526; 1985 a. 32 s. 3; 1985 a. 71, 337; 1987 a. 3; 1989 a. 31, 38, 105, 359; 1991 a. 39, 269, 277; 1995 a. 113, 201, 269, 401, 436, 448; 1997 a. 35, 84, 237; 1999 a. 109; 2001 a. 16 ss. 3409f, 3409g, 4060hw, 4060hy; 2003 a. 33, 80, 200, 326; 2005 a. 443 s. 265; 2007 a. 20, 94; 2009 a. 100.

15 **SECTION 54h.** 343.10 (9) of the statutes is amended to read:

16 343.10 (9) NOTICE. The department shall inform a person whose operating
 17 privilege is revoked or suspended under this chapter or chapters 23, 30, or 350 of his
 18 or her right to apply to the department for issuance of an occupational license under
 19 this section.

History: 1973 c. 90, 218; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 193; 1979 c. 102, 316, 355; 1981 c. 20; 1983 a. 27, 525, 526; 1985 a. 32 s. 3; 1985 a. 71, 337; 1987 a. 3; 1989 a. 31, 38, 105, 359; 1991 a. 39, 269, 277; 1995 a. 113, 201, 269, 401, 436, 448; 1997 a. 35, 84, 237; 1999 a. 109; 2001 a. 16 ss. 3409f, 3409g, 4060hw, 4060hy; 2003 a. 33, 80, 200, 326; 2005 a. 443 s. 265; 2007 a. 20, 94; 2009 a. 100.

20 **4.** Page 24, line 13: after "revocation." insert "The person is eligible for an
 21 occupational license under s. 343.10 at any time."

(END)

↑
NO SCORING

D-note
↓

↑
plain

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1956/1dn

RPN:.....

date

Jld

Please review this ^{e amendment} draft carefully to ensure that it is consistent with your intent.

I did not include the \$140^v increase for the reinstatement of the person's operating privilege that was mentioned in the DMV memo. OK?

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.wisconsin.gov

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

LRBa1956/1dn
RPN:jld:rs

April 6, 2010

Please review this amendment carefully to ensure that it is consistent with your intent.

I did not include the \$140 increase for the reinstatement of the person's operating privilege that was mentioned in the DMV memo. OK?

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.wisconsin.gov

Nelson, Robert P.

From: Maloney2, Eric
Sent: Tuesday, April 06, 2010 5:58 PM
To: Nelson, Robert P.
Subject: Amendment to AB 841, LRBA1956/1

Hey Bob,

I realize that I never got back to you on the issue of the \$140 fee increase for reinstatement in the amendment to 841. The representative **would** like that language added, so could you redraft the amendment to include the increase from \$50 to \$140 for reinstatement, consistent with Act 100? Thanks much.

Eric

Eric Maloney
Office of Rep. Louis Molepske
State Capitol
Room 214 N
Madison, WI 53708
(608) 267-2372
Toll-Free: (888) 534-0071
Eric.Maloney2@legis.wi.gov



5004
**ASSEMBLY AMENDMENT ,
TO 2009 ASSEMBLY BILL 841**

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9 suspended under this chapter or s. 23.33 (4y) (a) 2., 30.688 (1) (b), 350.1075 (1) (b),
10 767.73, 938.34 (14q), 943.21 (3m), or 961.50 and if the person is engaged in an
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3 or operating privilege under this chapter or s. 23.33 (4y) (a) 2., 30.688 (1) (b),
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12 30.688 (1) (b), 350.1075 (1) (b), 943.21 (3m) or 961.50 within the one-year period
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16 343.10 (9) NOTICE. The department shall inform a person whose operating
17 privilege is revoked or suspended under this chapter or chs. 23, 30, or 350 of his or
18 her right to apply to the department for issuance of an occupational license under
19 this section. ^e

20 **4.** Page 24, line 13: after "revocation." insert "The person is eligible for an
21 occupational license under s. 343.10 at any time."
22

(END)

ins 2-19

54 m ✓
Section ~~X~~ 343.21 (1) (jr) of the statutes, as created by 2009 Wisconsin Act 100, is amended to read:

23.33 (4r) (a) 2., 30.688 (1) (b) 2,
or 350.1075 (1) (b)

343.21 (1) (jr) In addition to any other fee under this subsection, for reinstatement of an operating privilege previously revoked or suspended under s. 343.305 (7) or resulting from the commission of an offense listed in s. 343.307, \$140.

NOTE: Par. (jr) is created eff. 7-1-10 by 2009 Wis. Act 100

History: 1973 c. 90, 309; 1975 c. 5; 1977 c. 29 ss. 1459, 1654 (7) (a); 1977 c. 273; 1979 c. 221, 306; 1981 c. 20, 71; 1983 a. 243; 1985 a. 29, 65; 1987 a. 3, 358; 1989 a. 105; 1991 a. 39; 1993 a. 16; 1995 a. 113; 1997 a. 27; 1999 a. 9; 2003 a. 280; 2007 a. 20; 2009 a. 28, 100.

(end ins 2-19)