



HOWARD MARKLEIN

STATE SENATOR • 17TH SENATE DISTRICT

September 9, 2021

**Senate Committee on Judiciary and Public Safety
Testimony on Senate Bill 437**

Thank you Chairman Wanggaard and committee members for hearing Senate Bill (SB) 437, which would clarify current law regarding the use and operation of unregistered vehicles.

This bill clarifies that all vehicles operated on a road must be registered, unless the operator of the vehicle believes he/she is in imminent danger of “death or great bodily harm”. Under the bill, a driver could still operate an unregistered vehicle if they were, for example, attempting to escape from an actual emergency, such as a wildfire. Thank you to Green County District Attorney Craig Nolen for bringing this issue to my attention.

Since 2019, there have been 19 State of Emergency declarations by the Governor that have applied to at least some part of the state under Wisconsin Statutes Chapter 323. These declarations have covered more than 710 of the last 982 days, or over 72% of the time. In addition, there have been countless local emergency declarations.

These State of Emergency declarations have ranged from closing state office buildings due to cold weather, to preparing an emergency management response due to elevated wildfire conditions, to COVID-19 related measures. While some of these declarations are only necessary for a few days, under state law, emergency declarations last 60 days, unless revoked by the governor via an executive order or by the legislature by joint resolution.

Under current law, a driver cannot operate an unregistered motor vehicle. However, there is an exception, “during a state of emergency proclaimed under ch. 323”. This makes sense during an actual and imminent emergency as it allows someone to drive to escape imminent harm. However, with so many State of Emergency declarations over the past few years, it is inhibiting law enforcement from doing its job.

Current law not only prohibits law enforcement from writing a citation, it also prohibits law enforcement from stopping a vehicle that is unregistered. As an example, all law enforcement officers were prohibited from stopping or ticketing an unregistered vehicle anywhere in Wisconsin from April 5, 2021 through June 3, 2021 because of “elevated wildfire risk”.

A special thank you to Green County District Attorney, Craig Nolen who brought me the idea for this commonsense legislation. AB 445, the Assembly companion to SB 437 received a public hearing in the Assembly Transportation Committee on Tuesday, August 31, 2021. Thank you again to the committee for hearing this proposal, and your timely action on the bill.



TODD NOVAK

STATE REPRESENTATIVE • 51ST ASSEMBLY DISTRICT

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P.O. Box 8953
Madison, WI 53708-8953

DATE: Thursday, September 9th, 2021
RE: Testimony on Senate Bill 437
TO: Senate Committee on Judiciary and Public Safety
FROM: State Representative Todd Novak

Thank you, Chairman Wanggaard, and members of the Senate Committee on Judiciary and Public Safety for holding this public hearing on Senate Bill 437 (SB437), which clarifies an exception for operating an unregistered vehicle during declared states of emergency.

Current law provides that vehicles must be registered with the state Department of Transportation if they're to be operated on a highway. However, there is a broad exception that applies during declared states of emergency. This bill seeks to clarify and refine that exception to apply only in instances where someone is in an actual and imminent emergency trying to escape harm.

The nonpartisan Legislative Reference Bureau (LRB) noted in a publication that data from 1965 until present reflected that some Governors declared as few as 16 emergencies during their term whereas others declared as many as 42 during a four year period. A state of emergency can be narrowly tailored to impact a specific area affected by a storm or in the case of the recent pandemic response can be written to include the entire state of Wisconsin.

Over the past two years, there have been several different states of emergency declared and a significant number of calendar days spent in states of emergency. As the law is currently written, law enforcement is limited from taking action against individuals driving an unregistered vehicle during any declared state of emergency, irrespective of whether the state of emergency is remotely related to the reason the vehicle is being driven. Under the proposed change, the law would allow for unregistered vehicles to be driven only if the action was connected to avoiding harm by fleeing an actual emergency caused by natural physical forces.

This legislative proposal stems from a request made by Green County District Attorney Craig Nolen seeking to clarify the existing law.

Thank you for your consideration of SB437.



VILLAGE OF MONTICELLO

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Date: September 9, 2021
RE: Testimony on Senate Bill 437
TO: Senate Committee on Judiciary and Public Safety
From: Szvon Conway, Chief of Police

Good morning esteemed members of this great State of Wisconsin,

I am Szvon Conway, the Chief of Police for the Monticello Police Department.

It should be noted that we cannot pull over registration violations during a State of Emergency.

Currently the State Statute for registration violations during a State Emergency is written so broadly it poses a significant obstacle to law enforcement on the ground. We're often left wondering, the one day, we missed a state of emergency, will the police traffic stop of a registration violation that lead to a criminal arrest stand up to the scrutiny of a court or is it considered the fruits of the poisonous tree?

We have been contacted by Milwaukee Police Department and Johnson County Sheriff's Office in the State of Iowa to conduct follow-up on felony crimes only to find out the front license plates were stolen off our resident's vehicles and used in a commission of a crime in their jurisdiction.

At the end of the day we're trying to faithfully execute the law and provide for the public's safety.

Thank you for your consideration and thank you for what you do as you all are appreciated!



City of Darlington Police Department

Excellence ~ Initiative ~ Integrity

Jason King, Chief of Police

627 Main Street ~ Darlington, WI 53530 ~ (608)776-4980
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Good morning,

My name is Jason King. I am the Chief of Police in Darlington and a Legislative Committee member of the Wisconsin Chiefs of Police Association. I appreciate your taking a few minutes to hear my testimony this morning on SB 437. I am personally in favor of this bill but would also like to mention the Wisconsin Chiefs of Police Association has registered in favor of this bill as well.

In recent years, the law enforcement community's efforts to enforce registration laws in this state have been hampered by Wis. Stats. 341.04 relating to the operation of unregistered vehicles during a state of emergency. In essence, the law permits citizens of this state to operate unregistered motor vehicles during states of emergency.

At first glance, one can understand the original intent of the statute. After all, if a fire, flood, or tornado ravages through one's neighborhood, or terrorists have attacked, the least of any residents' concerns will be what vehicle they're using to seek safety and whether it's registered. However, to be honest, the police are not going to have the time nor desire to enforce registration laws in such a state of emergency. Their resources will be consumed responding to the disaster and addressing public safety priorities.

In reality, what the law has accomplished are the unintended consequences of letting motor vehicle operators off the hook and taking away law enforcement's ability to enforce important vehicle registration requirements in our state. You see, the law does not differentiate between the impactful scenarios I just shared versus other states of emergency. For example, while the recent states of emergency surrounding wildfires and COVID are important, there is no reason to preclude law enforcement agencies from enforcing registration standards in this state. To be more specific, a wildfire in northern Wisconsin should not affect my department's ability in southern Wisconsin to maintain the registration standards the State of Wisconsin has prescribed for its residents.

I support SB 437 because it modifies the language of state statute 341.04 thereby reflecting what I believe to be its original intent; and, that is to let the people of this state know they can do whatever they need to do to escape imminent danger, even if that means operating an unregistered motor vehicle. At the same time, however, it does not preclude law enforcement agencies in jurisdictions not affected by the danger from continuing to perform their duties.

I respectfully request you support SB 437. Thank you for your consideration.

GREEN COUNTY DISTRICT ATTORNEY'S OFFICE

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DATE: 09/09/2021

RE: Testimony on Senate Bill 437

FROM: Green County District Attorney Craig R. Nolen

TO: Senate Committee on Judiciary and Public Safety

Thank you Chairman Van Wanggaard, members of the Committee on Judiciary and Public Safety, Senator Marklein, and Representative Novak for inviting me to testify on Senate Bill 437, particularly as it relates to Wis. Stat. § 341.04 and its inapplicability during a State of Emergency declared under Ch. 323. Regretfully, I am not available to testify before you in person, today.

Today is the 251st day of 2021; however, motorists in the State of Wisconsin have only been required to operate a properly registered motor vehicle for a total of 59 days during 2021 because we have been under States of Emergency declared under Chapter 323 for the other 192 days. As a District Attorney, I first learned of the State of Emergency provision of Wis. Stat. § 341.04 on March 25, 2020 after receiving an email from the Attorney General's office. Even today, we are under a State of Emergency that allows all motorists to drive without even the bare minimum of displaying a registration plate or matching registration plate, as a result of Executive Order 128, which is enclosed, and which will not expire until September 20, 2021.

The paramount issue with Wis. Stat. § 341.04 is that when a State of Emergency is declared, the language of such statute precludes the enforcement of the entirety of Wisconsin's motor vehicle registration system. As it stands right now, if a person is stopped during a State of Emergency solely for a registration violation, such as non-registration, improper display of license plates, etc, the entirety of any other violations of law discovered by a law enforcement officer will be suppressed by a Court thereby disallowing the State from introducing it as evidence. Today, in every county in Wisconsin, if law enforcement were to conduct such a stop and discover evidence of human trafficking, drug trafficking, or even homicide, such evidence would be thrown out of Court, all because a State of Emergency existed on July 28, 2021 in a different part of the State.

Logically, there is a rationale for an emergency exception for the operation of a motor vehicle that is not registered; what is not logical is the continuous 60 day period that exists that precludes all enforcement of Wisconsin's vehicle registration laws when a State of Emergency is declared. Senate Bill 437, if adopted by this committee and passed as an act, will allow for emergency usage of a non-registered motor vehicle to escape natural disaster, which I believe to be the original intent of such law. Accordingly, I urge this Committee to approve the Senate Bill 437.



OFFICE OF THE GOVERNOR

EXECUTIVE ORDER #128

Relating to a Proclamation Declaring a State of Emergency Due to Severe Weather

WHEREAS, beginning on July 28, 2021, several Wisconsin counties experienced extreme weather, including heavy rainfall, large hail, straight-line damaging winds, and reported tornadoes;

WHEREAS, this extreme weather has created an emergency situation by endangering lives and property throughout the state;

WHEREAS, emergency responders from fire, law enforcement, and emergency medical services must respond as a result of this disaster, including staff from Wisconsin Emergency Management, the Wisconsin Department of Health Services, the Wisconsin Department of Natural Resources, the Wisconsin State Patrol, and the Wisconsin National Guard; and

WHEREAS, additional personnel and resources are needed to expedite and enhance the response and recovery operations in the affected areas.

NOW, THEREFORE, I, Tony Evers, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and the Laws of the State, and specifically by Sections 321.39(1)(a), 323.10, and 323.12(4) of the Wisconsin Statutes, do hereby:

1. Proclaim that there is a State of Emergency in Wisconsin.
2. Direct all state agencies of the State of Wisconsin to assist affected counties as appropriate in a response and recovery effort.
3. Call to state active duty such elements of the Wisconsin National Guard as the Adjutant General deems necessary to assist civil authorities for purposes of assisting in response and recovery efforts as well as providing security and other essential services.
4. Authorize the Adjutant General to utilize personnel called to state active duty pursuant to this order in emergency status.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this twenty-ninth day of July in the year of two thousand twenty-one.

Tony Evers
TONY EVERS
Governor

By the Governor:

Douglas La Follette
DOUGLAS LA FOLLETTE
Secretary of State