



## 2007 ASSEMBLY BILL 89

February 22, 2007 - Introduced by Representatives MURSAU, KRUSICK, BERCEAU, HINES, KERKMAN, MOLEPSKE, A. OTT, J. OTT, POCAN, SINICKI, STONE, TOWNSEND, ZEPNICK and GUNDERSON, cosponsored by Senators PLALE, COGGS, LASSA, OLSEN, RISSER, ROESSLER, SCHULTZ and WIRCH. Referred to Committee on Criminal Justice.

1     **AN ACT** *to renumber and amend* 114.09 (1) (b); *to amend* 114.09 (title) and  
2             343.307 (1) (intro.); *to repeal and recreate* 114.09 (2); and *to create* 343.307  
3             (1) (g) of the statutes; **relating to:** operating an aircraft recklessly or under the  
4             influence of an intoxicant and providing a penalty and granting rule-making  
5             authority.

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### *Analysis by the Legislative Reference Bureau*

Under current law, no person may operate an aircraft while under the influence of an intoxicating liquor or a controlled substance, or a combination thereof, nor operate an aircraft in the air or on the ground or water in a careless or reckless manner so as to endanger the life or property of another. A person who does so shall be fined not less than \$10 nor more than \$100 for the first offense and, for a second or subsequent offense, shall be fined not less than \$100 nor more than \$500 or imprisoned for not less than six months or both.

Under this bill, a person who operates an aircraft with a prohibited alcohol concentration or while under the influence of an intoxicating liquor or a controlled substance or a combination thereof, is subject to the same penalties as a person who operates a motor vehicle under the influence of an intoxicating liquor or controlled substance or a combination thereof. Additionally, under the bill, a prior violation of operating a vehicle under the influence of an intoxicant is counted against the operator of the aircraft for purposes of sentencing.

For a first violation, a person who operates an aircraft under the influence of an intoxicant is subject to a forfeiture of not less than \$150 nor more than \$300; for

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a second violation, a fine of not less than \$350 nor more than \$1,100 and imprisonment for not less than five days nor more than six months; for a third violation, a fine of not less than \$600 nor more than \$2,000 and imprisonment for not less than 30 days nor more than one year in the county jail; for a fourth violation, a fine of not less than \$600 nor more than \$2,000 and imprisonment for not less than 60 days nor more than one year in the county jail; and, for the fifth and subsequent violations, a felony conviction and a fine of not less than \$600 and imprisonment for not less than six months. The person must also submit to alcohol and other drug assessment and treatment.

In addition, if there was a minor passenger under 16 years of age in the aircraft at the time of the violation, the violation is a felony and the applicable minimum and maximum forfeitures, fines, or imprisonment are doubled. If a person convicted had an alcohol concentration of 0.17 to 0.199, the applicable minimum and maximum fines are doubled. If a person convicted had an alcohol concentration of 0.20 to 0.249, the applicable minimum and maximum fines are tripled. If a person convicted had an alcohol concentration of 0.25 or above, the applicable minimum and maximum fines are quadrupled.

Under the bill, any person who operates an aircraft in a reckless manner that endangers another person may be required to forfeit not less than \$25 nor more than \$200, except that if, the person has a prior conviction for operating an aircraft in a reckless manner in the previous four years, the person may be fined not less than \$50 nor more than \$500 or imprisoned for not more than one year in the county jail or both.

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 and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 46.03 (18) (f) of the statutes is amended to read:  
2           46.03 **(18)** (f) Notwithstanding par. (a), any person who submits to an  
3 assessment or airman or driver safety plan under s. 23.33 (13) (e), 30.80 (6) (d), 114.09  
4 (2) (bm), 343.16 (5) (a), 343.30 (1q), 343.305 (10) or 350.11 (3) (d) shall pay a  
5 reasonable fee therefor to the appropriate county department under s. 51.42 or traffic  
6 safety school under s. 345.60. A county may allow the person to pay the assessment

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1 fee in 1, 2, 3 or 4 equal installments. The fee for the airman or driver safety plan may  
2 be reduced or waived if the person is unable to pay the complete fee, but no fee for  
3 assessment or attendance at a traffic safety school under s. 345.60 may be reduced  
4 or waived. Nonpayment of the assessment fee is noncompliance with the court order  
5 that required completion of an assessment and airman or driver safety plan. Upon  
6 a finding that the person has the ability to pay, nonpayment of the airman or driver  
7 safety plan fee is noncompliance with the court order that required completion of an  
8 assessment and airman or driver safety plan.

9 **SECTION 2.** 51.42 (3) (ar) 4. b. of the statutes is amended to read:

10 51.42 (3) (ar) 4. b. Comprehensive diagnostic and evaluation services,  
11 including assessment as specified under ss. 114.09 (2) (bm), 343.30 (1q) and 343.305  
12 (10) and assessments under ss. 48.295 (1) and 938.295 (1).

13 **SECTION 3.** 114.09 (title) of the statutes is amended to read:

14 **114.09** (title) **Reckless Intoxicated and reckless flying; penalty.**

15 **SECTION 4.** 114.09 (1) (a) of the statutes is renumbered 114.09 (1) (a) (intro.) and  
16 amended to read:

17 114.09 (1) (a) (intro.) In this subsection, “drug”:

18 1. “Drug” has the meaning specified in s. 450.01 (10).

19 **SECTION 5.** 114.09 (1) (a) 2. of the statutes is created to read:

20 114.09 (1) (a) 2. “Prohibited alcohol concentration” means an alcohol  
21 concentration of 0.04 or more if there is no passenger in the aircraft, more than 0.00  
22 if there is a passenger in the aircraft.

23 **SECTION 6.** 114.09 (1) (b) of the statutes is renumbered 114.09 (1) (b) 1. and  
24 amended to read:

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1           114.09 (1) (b) 1. No person may operate an aircraft in the air or on the ground  
2 or water while under the influence of intoxicating liquor or controlled substances or  
3 controlled substance analogs under ch. 961 or a combination thereof, under the  
4 influence of any other drug to a degree which renders him or her incapable of safely  
5 operating an aircraft, or under the combined influence of intoxicating liquor and any  
6 other drug to a degree which renders him or her incapable of safely operating an  
7 aircraft, ~~nor~~.

8           2. No person may operate an aircraft in the air or on the ground or water in a  
9 careless or reckless manner so as to endanger the life or property of another. In  
10 determining whether the operation was careless or reckless the court shall consider  
11 the standards for safe operation of aircraft prescribed by federal statutes or  
12 regulations governing aeronautics.

13           3. The court shall make a written report of all convictions, including bail or  
14 appearance money forfeitures, obtained under this section to the department, which  
15 shall send the report to the proper federal agency.

16           **SECTION 7.** 114.09 (1) (b) 1m. of the statutes is created to read:

17           114.09 (1) (b) 1m. No person may operate an aircraft in the air or on the ground  
18 if the person has a prohibited alcohol concentration.

19           **SECTION 8.** 114.09 (2) of the statutes is repealed and recreated to read:

20           114.09 (2) (a) Any person violating sub. (1) (b) 1. or 1m.:

21           1. Shall forfeit not less than \$150 nor more than \$300, except as provided in  
22 subs. 6. and 7.

23           2. Except as provided in subd. 6., shall be fined not less than \$350 nor more than  
24 \$1,100 and imprisoned for not less than 5 days nor more than 6 months if the number  
25 of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total

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1 number of suspensions, revocations, and other convictions counted under s. 343.307  
2 (1) within a 10-year period, equals 2, except that suspensions, revocations, or  
3 convictions arising out of the same incident or occurrence shall be counted as one.

4 3. Except as provided in subds. 6. and 7., shall be fined not less than \$600 nor  
5 more than \$2,000 and imprisoned for not less than 30 days nor more than one year  
6 in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the  
7 person's lifetime, plus the total number of suspensions, revocations, and other  
8 convictions counted under s. 343.307 (1), equals 3, except that suspensions,  
9 revocations, or convictions arising out of the same incident or occurrence shall be  
10 counted as one.

11 4. Except as provided in subds. 6. and 7., shall be fined not less than \$600 nor  
12 more than \$2,000 and imprisoned for not less than 60 days nor more than one year  
13 in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the  
14 person's lifetime, plus the total number of suspensions, revocations, and other  
15 convictions counted under s. 343.307 (1), equals 4, except that suspensions,  
16 revocations, or convictions arising out of the same incident or occurrence shall be  
17 counted as one.

18 5. Except as provided in subds. 6. and 7., is guilty of a Class H felony and shall  
19 be fined not less than \$600 and imprisoned for not less than 6 months if the number  
20 of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total  
21 number of suspensions, revocations, and other convictions counted under s. 343.307  
22 (1), equals 5 or more, except that suspensions, revocations, or convictions arising out  
23 of the same incident or occurrence shall be counted as one.

24 6. If there was a minor passenger under 16 years of age in the aircraft at the  
25 time of the violation that gave rise to the conviction under sub. (1) (b) 1. or 1m., the

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1 applicable minimum and maximum forfeitures, fines, or imprisonment under subd.  
2 1., 2., 3., 4., or 5. for the conviction are doubled. An offense under sub. (1) (b) 1. or  
3 1m., that subjects a person to a penalty under subd. 3., 4., or 5. when there is a minor  
4 passenger under 16 years of age in the aircraft is a felony and the place of  
5 imprisonment shall be determined under s. 973.02.

6 7. a. If a person convicted had an alcohol concentration of 0.17 to 0.199, the  
7 applicable minimum and maximum fines under subd. 3. to 5. are doubled.

8 b. If a person convicted had an alcohol concentration of 0.20 to 0.249, the  
9 applicable minimum and maximum fines under subd. 3. to 5. are tripled.

10 c. If a person convicted had an alcohol concentration of 0.25 or above, the  
11 applicable minimum and maximum fines under subd. 3. to 5. are quadrupled.

12 (b) In par. (a) 1. to 5., the time period shall be measured from the dates of the  
13 refusals or violations that resulted in the revocation or convictions. If a person has  
14 a suspension, revocation, or conviction for any offense under a local ordinance or a  
15 state statute of another state that would be counted under s. 343.307 (1), that  
16 suspension, revocation or conviction shall count as a prior suspension, revocation, or  
17 conviction under par. (a) 1. to 5.

18 (bm) 1. Except as provided in subd. 1. a. or b., the court shall order the person  
19 violating sub. (1) (b) 1. or 1m. to submit to and comply with an assessment by an  
20 approved public treatment facility as defined in s. 51.45 (2) (c) for examination of the  
21 person's use of alcohol, controlled substances, or controlled substance analogs and  
22 development of an airman safety plan for the person. The court shall notify the  
23 person, the department, and the proper federal agency of the assessment order. The  
24 assessment order shall:

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1           a. If the person is a resident, refer the person to an approved public treatment  
2 facility in the county in which the person resides. The facility named in the order  
3 may provide for assessment of the person in another approved public treatment  
4 facility. The order shall provide that, if the person is temporarily residing in another  
5 state, the facility named in the order may refer the person to an appropriate  
6 treatment facility in that state for assessment and development of an airman safety  
7 plan for the person satisfying the requirements of that state.

8           b. If the person is a nonresident, refer the person to an approved public  
9 treatment facility in this state. The order shall provide that the facility named in the  
10 order may refer the person to an appropriate treatment facility in the state in which  
11 the person resides for assessment and development of an airman safety plan for the  
12 person satisfying the requirements of that state.

13           c. Require a person who is referred to a treatment facility in another state  
14 under subd. 1. a. or b. to furnish the department written verification of his or her  
15 compliance from the agency that administers the assessment and airman safety plan  
16 program. The person shall provide initial verification of compliance within 60 days  
17 after the date of his or her conviction. The requirement to furnish verification of  
18 compliance may be satisfied by receipt by the department of such verification from  
19 the agency that administers the assessment and airman safety plan program.

20           2. The department of health and family services shall establish standards for  
21 assessment procedures and the airman safety plan programs by rule. The  
22 department of health and family services shall establish by rule conflict of interest  
23 guidelines for providers.

24           3. Prior to developing a plan that specifies treatment, the facility shall make  
25 a finding that treatment is necessary and appropriate services are available. The

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1 facility shall submit a report of the assessment and the airman safety plan within  
2 14 days to the county department under s. 51.42, the plan provider, the department  
3 of transportation, the appropriate federal agency, and the person, except that, upon  
4 request by the facility and the person, the county department may extend the period  
5 for assessment for not more than 20 additional workdays. The county department  
6 shall notify the department of transportation regarding any such extension.

7 4. The assessment report shall order compliance with an airman safety plan.  
8 The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The  
9 safety plan may include a component that makes the person aware of the effect of his  
10 or her offense on a victim and a victim's family. The safety plan may include  
11 treatment for the person's misuse, abuse, or dependence on alcohol, controlled  
12 substances, or controlled substance analogs. If the plan requires inpatient  
13 treatment, the treatment shall not exceed 30 days. An airman safety plan under this  
14 paragraph shall include a termination date consistent with the plan that shall not  
15 extend beyond one year. The county department under s. 51.42 shall assure  
16 notification of the department of transportation and the person of the person's  
17 compliance or noncompliance with assessment and treatment.

18 (c) Any person violating sub. (1) (b) 2.:

19 1. May be required to forfeit not less than \$25 nor more than \$200, except as  
20 provided in subd. 2.

21 2. May be fined not less than \$50 nor more than \$500 or imprisoned for not more  
22 than one year in the county jail or both if the total of convictions under sub. (1) (b)  
23 2. equals 2 or more in a 4-year period. The 4-year period shall be measured from  
24 the dates of the violations that resulted in the convictions.

25 **SECTION 9.** 343.307 (1) (intro.) of the statutes is amended to read:



