

1983 Senate Bill 561

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1983 Wisconsin Act 459

AN ACT to renumber and amend 30.68 (1), 114.09 (1) and 885.235 (1) (a); to amend 165.79 (3) (b), 343.12 (2) (d), 343.305 (3) (b) 5.a and d, 343.305 (7), 343.31 (1) (intro.), (am) and (b) and (3) (b), 346.63 (1) (a) and (2) (a) 1 and (b), 346.96 (5) (e), 350.08, 350.10 (3), 351.02 (1) (a) 3, 632.32 (6) (b) 4, 885.235 (5), 939.22 (42), 940.09 (1) (a) and (2), 940.25 (1) (a) and (2) and 967.055; and to create 30.68 (1) (a), 114.09 (1) (a), 340.01 (15n), 350.01 (intro.), 350.01 (3m), 885.235 (1) (a) 2, 885.235 (5) (b) and (c), 939.22 (11) and 967.055 (1m) of the statutes; and to affect laws of 1981, chapter 20, section 2051 (16), relating to driving and other acts while under the influence of an intoxicant or drug or both and requiring studies.

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

SECTION 1. 30.68 (1) of the statutes is renumbered 30.68 (1) (b) and amended to read:

30.68 (1) (b) No person may operate a ~~boat~~ motorboat upon the waters of this state or use water skis, an aquaplane or a similar device while under the influence of an intoxicant or a controlled substance as defined in s. 161.01 (4) or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely operating a motorboat or using water skis, an aquaplane or a similar device, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely operating a motorboat or using water skis, an aquaplane or a similar device.

SECTION 2. 30.68 (1) (a) of the statutes is created to read:

30.68 (1) (a) In this subsection:

1. "Drug" has the meaning specified in s. 450.06.
2. "Motorboat" has the meaning specified in s. 30.50 (6), except that it does not include any sailboat.

SECTION 3. 114.09 (1) of the statutes is renumbered 114.09 (1) (b) and amended to read:

114.09 (1) (b) No person ~~shall~~ may operate an aircraft in the air, or on the ground or water while under the influence of intoxicating liquor or controlled substances under ch. 161 or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely operating an aircraft, or under the combined influence of intoxicating liquor and any other drug to a degree which renders him or her incapable of safely operating an aircraft, 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. In determining whether the operation was careless or reckless the court shall consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics. The court shall make a written report of all convic-

- 1943 -

83 WisACT 459

tions ~~(, including bail or appearance money forfeitures)~~, obtained under this section to the department, which shall send the report to the proper federal agency.

SECTION 4. 114.09 (1) (a) of the statutes is created to read:

114.09 (1) (a) In this subsection, "drug" has the meaning specified in s. 450.06.

SECTION 4m. 165.79 (3) (b) of the statutes is amended to read:

165.79 (3) (b) At any preliminary examination, a report of the laboratory's, state laboratory of hygiene's or local health department's findings with reference to all or any part of the evidence submitted, certified as correct by the administrator, the director of the state laboratory of hygiene, the head of the local health department or a person designated by ~~either~~ any of them, shall, when offered by the state or the accused, be received as evidence of the facts and findings stated, if relevant. The expert who made the findings need not be called as a witness.

SECTION 5. 340.01 (15n) of the statutes is created to read:

340.01 (15n) "Drug" has the meaning specified in s. 450.06.

SECTION 6. 343.12 (2) (d) of the statutes is amended to read:

343.12 (2) (d) Subject to ss. 111.321, 111.322 and 111.335, has not been convicted of reckless driving under s. 346.62, ~~operating a motor vehicle while under the influence of an intoxicant or of a controlled substance~~ any of the offenses enumerated under s. 346.63 (1), or any of the offenses enumerated under s. 343.31 (1), within the 2-year period immediately preceding the date of application.

SECTION 8. 343.305 (3) (b) 5. a and d of the statutes are amended to read:

343.305 (3) (b) 5. a. Whether the officer had probable cause to believe the person was driving or operating a motor vehicle while under the influence of alcohol, a controlled substance or a combination of both, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of alcohol and any other drug to a degree which renders him or her incapable of safely driving or having a blood alcohol concentration of 0.1% or more and whether the person was lawfully placed under arrest for violation of s. 346.63 (1) or a local ordinance in conformity therewith or s. 346.63 (2), 940.09 or 940.25.

d. The person shall be deemed not to have refused the test if it is shown by a preponderance of evidence that the refusal was due to a physical inability to submit to the test due to a physical disability or disease unrelated to the use of alcohol ~~or~~ controlled substances or other drugs.

SECTION 9. 343.305 (7) of the statutes is amended to read:

343.305 (7) At the trial of any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have been driving or operating a motor vehicle while under the influence of an intoxicant or a controlled substance or a combination of alcohol and a controlled substance, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, or having a blood alcohol concentration of 0.1% or more, the results of a test administered under sub. (2) (b) or (c) or (5) are admissible on the issue of whether the person was under the influence of an intoxicant or a controlled substance or a combination of alcohol and a controlled substance, under the influence of any other drug or under the combined influence of an intoxicant and any other drug. Test results shall be given the effect required under s. 885.235.

SECTION 11. 343.31 (1) (intro.), (am) and (b) and (3) (b) of the statutes are amended to read:

343.31 (1) (intro.) The department shall revoke a person's operating privilege upon receiving a record of conviction showing that the person has been convicted of any of the following offenses under a state law or under a local ordinance which is in conformity therewith, except that if a person licensed as a chauffeur was convicted for operation of a motor vehicle while under the influence of an intoxicant or controlled substance or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving and the person was not operating a vehicle as a chauffeur at the time of the offense, only his or her regular license shall be revoked as provided in this section:

(am) Injury by the negligent operation of a vehicle while under the influence of an intoxicant or a controlled substance or a combination of an intoxicant and a controlled substance, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or while the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in that person's blood or 0.1 grams or more of alcohol in 210 liters of that person's breath and which is criminal under s. 346.63 (2).

(b) Upon the 2nd or any subsequent conviction for operation of a motor vehicle while under the influence of an intoxicant or controlled substance or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, in accordance with the order of the court.

(3) (b) If the revocation results from a first conviction of operation of a motor vehicle while under the influence of an intoxicant or controlled substance or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving and the conviction occurs in another jurisdiction, the period of revocation shall be 90 days.

SECTION 12. 346.63 (1) (a) and (2) (a) 1 and (b) of the statutes are amended to read:

346.63 (1) (a) Under the influence of an intoxicant or a controlled substance or a combination of an intoxicant and a controlled substance, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or

(2) (a) 1. Under the influence of an intoxicant or a controlled substance or a combination of an intoxicant and a controlled substance, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or

(b) Under par. (a), the actor has a defense if it appears by a preponderance of the evidence that the injury would have occurred even if the actor had not been under the influence of an intoxicant or a controlled substance or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or did not have a blood alcohol concentration described under par. (a) 2.

SECTION 13. 346.96 (5) (e) of the statutes is amended to read:

- 1945 -

83 WisACT 459

346.96 (5) (e) Has not been convicted of reckless driving under s. 346.62, ~~operating a motor vehicle while under the influence of an intoxicant or of a controlled substance any of the offenses enumerated~~ under s. 346.63 (1), or any of the offenses enumerated under s. 343.31 (1), within a 2-year period. Upon request of the operator or school, the department shall certify whether the operator meets this requirement.

SECTION 14. 350.01 (intro.) of the statutes is created to read:

350.01 (intro.) In this chapter:

SECTION 15. 350.01 (3m) of the statutes is created to read:

350.01 (3m) "Drug" has the meaning specified in s. 450.06.

SECTION 16. 350.08 of the statutes is amended to read:

350.08 Owner permitting operation. No owner or other person having charge or control of a snowmobile may knowingly authorize or permit any person to operate the snowmobile if the person is prohibited from operating a snowmobile under s. 350.05, if the person is incapable of operating a snowmobile because of physical or mental disability or if the person is under the influence of alcohol beverages or controlled substances or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely operating a snowmobile, or under the combined influence of alcohol beverages and any other drug to a degree which renders him or her incapable of safely operating a snowmobile.

SECTION 17. 350.10 (3) of the statutes is amended to read:

350.10 (3) While under the influence of alcohol beverages or controlled substances or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely operating a snowmobile, or under the combined influence of alcohol beverages and any other drug to a degree which renders him or her incapable of safely operating a snowmobile.

SECTION 18. 351.02 (1) (a) 3 of the statutes is amended to read:

351.02 (1) (a) 3. Driving or operating a motor vehicle ~~while under the influence of an intoxicant or controlled substance under~~ in violation of s. 346.63 (1) or (2).

SECTION 19. 632.32 (6) (b) 4 of the statutes is amended to read:

632.32 (6) (b) 4. Any use of the motor vehicle for unlawful purposes, or for transportation of liquor in violation of law, or while the driver is under the influence of ~~intoxicating liquors or narcotics~~ an intoxicant or a controlled substance under ch. 161 or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, or any use of the motor vehicle in a reckless manner. In this subdivision, "drug" has the meaning specified in s. 450.06.

SECTION 20. 885.235 (1) (a) of the statutes is renumbered 885.235 (1) (a) 1 and amended to read:

885.235 (1) (a) 1. ~~The~~ Except as provided in subd. 2, the fact that the analysis shows that there was 0.05% or less by weight of alcohol in the person's blood or 0.05 grams of alcohol or less in 210 liters of the person's breath is prima facie evidence that the person was not under the influence of an intoxicant and did not have a blood alcohol concentration of 0.1% or more.

SECTION 21. 885.235 (1) (a) 2 of the statutes is created to read:

885.235 (1) (a) 2. The fact that the analysis shows that there was more than 0.0% but less than 0.1% by weight of alcohol in the person's blood or more than 0.0 grams but less than 0.1 grams of alcohol in 210 liters of the person's breath is relevant evidence on the

issue of being under the combined influence of alcohol and a controlled substance or any other drug but is not to be given any prima facie effect.

SECTION 22. 885.235 (5) of the statutes is amended to read:

885.235 (5) In this section, ~~“blood;~~

(a) “Blood alcohol concentration of 0.1% or more” means a blood alcohol concentration of 0.1% or more by weight of alcohol in a person’s blood or 0.1 grams or more of alcohol in 210 liters of a person’s breath.

SECTION 23. 885.235 (5) (b) and (c) of the statutes are created to read:

885.235 (5) (b) “Controlled substance” has the meaning specified in s. 161.01 (4).

(c) “Drug” has the meaning specified in s. 450.06.

SECTION 24. 939.22 (11) of the statutes is created to read:

939.22 (11) “Drug” has the meaning specified in s. 450.06.

SECTION 25. 939.22 (42) of the statutes is amended to read:

939.22 (42) “Under the influence of an intoxicant” means that the actor’s ability to operate a vehicle or handle a firearm or airgun is materially impaired because of his or her consumption of an alcohol beverage or controlled substance under ch. 161 or both, of any other drug or of an alcohol beverage and any other drug.

SECTION 26. 940.09 (1) (a) and (2) of the statutes are amended to read:

940.09 (1) (a) Causes the death of another by the operation or handling of a vehicle, firearm or airgun and while under the influence of an intoxicant ~~or a controlled substance or a combination of an intoxicant and a controlled substance;~~

(2) The actor has a defense if it appears by a preponderance of the evidence that the death would have occurred even if the actor had not been under the influence of an intoxicant ~~or a controlled substance or a combination thereof~~ or did not have a blood alcohol concentration described under sub. (1) (b).

SECTION 27. 940.25 (1) (a) and (2) of the statutes are amended to read:

940.25 (1) (a) Causes great bodily harm to another human being by the operation of a vehicle while under the influence of an intoxicant ~~or a controlled substance or a combination of an intoxicant and a controlled substance.~~

(2) The actor has a defense if it appears by a preponderance of the evidence that the great bodily harm would have occurred even if the actor had not been under the influence of an intoxicant ~~or a controlled substance or a combination thereof~~ or did not have a blood alcohol concentration described under sub. (1) (b).

SECTION 28. 967.055 of the statutes is amended to read:

967.055 (title) Dismissing or amending charges; operating a motor vehicle; alcohol, intoxicant or drug. (1) INTENT. The legislature intends to encourage the vigorous prosecution of offenses concerning the operation of motor vehicles by persons under the influence of an intoxicant, ~~of a controlled substance or both,~~ under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or having a blood alcohol concentration of 0.1% or more.

(2) DISMISSING OR AMENDING CHARGE. Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or amend a charge under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall apply to the court. The application shall state the reasons for the proposed amendment or dismissal. The court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public’s interest in deterring the operation of motor

- 1947 -

83 WisACT 459

vehicles by persons who are under the influence of an intoxicant, a controlled substance or both, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving.

SECTION 29. 967.055 (1m) of the statutes is created to read:

967.055 (1m) DEFINITION. In this section, "drug" has the meaning specified in s. 450.06.

SECTION 30. Laws of 1981, chapter 20, section 2051 (16) is amended to read:

(Laws of 1981, chapter 20) Section 2051 (16) STUDY. The department of transportation shall evaluate the effectiveness of the portions of chapter ~~20~~ ~~(this act)~~ 20, laws of 1981, concerning driving while under the influence of an intoxicant, a controlled substance or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, and report its findings and recommendations to the speaker of the assembly and the president of the senate by December 31, 1986.

SECTION 31. **Nonstatutory provisions.** (1) The department of transportation shall study the feasibility of using administrative procedure for revocation of operating privileges for operating a motor vehicle while under the influence of an intoxicant or a drug or both and for improperly refusing to take tests for intoxication. The department shall report its findings and recommendations, which may include proposed legislation, to the speaker of the assembly and the president of the senate by January 1, 1985.

(2) The council on highway safety in the department of transportation shall study the feasibility of establishing lower blood alcohol concentration levels in sections 343.305 (3) (b) 5. a and (7), 343.31 (1) (am), 346.63 (1) (b) and (2) (a) 2, 885.235 (1), (4) and (5), 940.09 (1) (b), 940.25 (1) (b) and 967.055 (1) of the statutes. The council shall report its findings and recommendations, which may include proposed legislation, to the speaker of the assembly and the president of the senate by January 1, 1985.

SECTION 32. **Initial applicability.** This act first applies to offenses which occur on the effective date of this act.
