

# State of Wisconsin



2003 Assembly Bill 88

Date of enactment: **July 3, 2003**  
Date of publication\*: **July 18, 2003**

## 2003 WISCONSIN ACT 30

AN ACT *to repeal* 340.01 (46m) (b), 885.235 (1g) (a) 2., 885.235 (1g) (bd) and 885.235 (1g) (cd); *to renumber* 885.235 (1g) (a) 1.; and *to amend* 23.33 (4c) (a) 2., 23.33 (4c) (a) 3., 23.33 (4c) (b) 2., 23.33 (4c) (b) 4., 30.681 (1) (b) 1., 30.681 (1) (bn), 30.681 (2) (b) 1., 30.681 (2) (d) 1., 165.755 (1) (b), 302.46 (1) (a), 340.01 (46m) (a), 343.23 (2) (b), 343.30 (1q) (c) 1. (intro.), 343.31 (1) (ar), 346.63 (2m), 346.63 (5) (a), 346.63 (6) (a), 346.655 (1), 350.101 (1) (b), 350.101 (1) (c), 350.101 (2) (b), 350.101 (2) (d), 757.05 (1) (a), 814.63 (1) (c), 814.63 (2), 814.634 (1) (a), 814.635 (1), 814.65 (1), 885.235 (1g) (b), 885.235 (1g) (c), 885.235 (1m), 940.09 (1) (bm), 940.09 (1) (e), 940.09 (1g) (b), 940.09 (1g) (d), 940.25 (1) (bm), 940.25 (1) (e), 949.08 (2) (em) and 967.055 (1) (b) of the statutes; **relating to:** prohibited alcohol concentration.

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

**SECTION 1.** 23.33 (4c) (a) 2. of the statutes is amended to read:

23.33 (4c) (a) 2. 'Operating with alcohol concentrations at or above specified levels.' No person may engage in the operation of an all-terrain vehicle while the person has an alcohol concentration of  $\theta$  ~~1~~ 0.08 or more.

**SECTION 2.** 23.33 (4c) (a) 3. of the statutes is amended to read:

23.33 (4c) (a) 3. 'Operating with alcohol concentrations at specified levels; below age 19.' If a person has not attained the age of 19, the person may not engage in the operation of an all-terrain vehicle while he or she has an alcohol concentration of more than 0.0 but not more than  $\theta$  ~~1~~ 0.08.

**SECTION 3.** 23.33 (4c) (b) 2. of the statutes is amended to read:

23.33 (4c) (b) 2. 'Causing injury with alcohol concentrations at or above specified levels.' No person who

has an alcohol concentration of  $\theta$  ~~1~~ 0.08 or more may cause injury to another person by the operation of an all-terrain vehicle.

**SECTION 4.** 23.33 (4c) (b) 4. of the statutes is amended to read:

23.33 (4c) (b) 4. 'Defenses.' In an action under this paragraph, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have an alcohol concentration of  $\theta$  ~~1~~ 0.08 or more.

**SECTION 5.** 30.681 (1) (b) 1. of the statutes is amended to read:

30.681 (1) (b) 1. No person may engage in the operation of a motorboat while the person has an alcohol concentration of  $\theta$  ~~1~~ 0.08 or more. This subdivision does not apply to commercial motorboats.

**SECTION 6.** 30.681 (1) (bn) of the statutes is amended to read:

30.681 (1) (bn) *Operating with alcohol concentrations at specified levels; below legal drinking age.* A per-

\* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

son who has not attained the legal drinking age, as defined in s. 125.02 (8m), may not engage in the operation of a motorboat while he or she has a blood alcohol concentration of more than 0.0 but less than ~~0.1~~ 0.08.

**SECTION 7.** 30.681 (2) (b) 1. of the statutes is amended to read:

30.681 (2) (b) 1. No person who has an alcohol concentration of ~~0.1~~ 0.08 or more may cause injury to another person by the operation of a motorboat. This subdivision does not apply to commercial motorboats.

**SECTION 8.** 30.681 (2) (d) 1. of the statutes is amended to read:

30.681 (2) (d) 1. In an action under this subsection for a violation of the intoxicated boating law where the defendant was operating a motorboat that is not a commercial motorboat, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have an alcohol concentration of ~~0.1~~ 0.08 or more.

**SECTION 8g.** 165.755 (1) (b) of the statutes is amended to read:

165.755 (1) (b) A court may not impose the crime laboratories and drug law enforcement assessment under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), or (br) or (5) (b), for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation. or for a violation of a state law or municipal or county ordinance involving a nonmoving traffic violation or a safety belt use violation under s. 347.48 (2m).

**SECTION 8r.** 302.46 (1) (a) of the statutes is amended to read:

302.46 (1) (a) On or after October 1, 1987, if a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), or (br) or (5), or for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation. or for a violation of state laws or municipal or county ordinances involving nonmoving traffic violations or safety belt use violations under s. 347.48 (2m), the court, in addition, shall impose a jail assessment in an amount of 1% of the fine or forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the court shall determine the jail assessment on the basis of each fine or forfeiture. If a fine or forfeiture is suspended in whole or in part, the court shall reduce the jail assessment in proportion to the suspension.

**SECTION 9.** 340.01 (46m) (a) of the statutes is amended to read:

340.01 (46m) (a) If the person has ~~one or no~~ 2 or fewer prior convictions, suspensions, or revocations, as counted under s. 343.307 (1), an alcohol concentration of ~~0.1~~ 0.08 or more.

**SECTION 10.** 340.01 (46m) (b) of the statutes is repealed.

**SECTION 10m.** 343.23 (2) (b) of the statutes is amended to read:

343.23 (2) (b) The information specified in par. (a) must be filed by the department so that the complete operator's record is available for the use of the secretary in determining whether operating privileges of such person shall be suspended, revoked, canceled, or withheld in the interest of public safety. The record of suspensions, revocations, and convictions that would be counted under s. 343.307 (2) shall be maintained permanently, except that the department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, if the person does not have a commercial driver license, if the violation was not committed by a person operating a commercial motor vehicle, and if the person has no other suspension, revocation, or conviction that would be counted under s. 343.307 during that 10-year period. The record of convictions for disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) and (j) shall be maintained for at least 3 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be maintained permanently, except that 5 years after a licensee transfers residency to another state such record may be transferred to another state of licensure of the licensee if that state accepts responsibility for maintaining a permanent record of convictions for disqualifying offenses. Such reports and records may be cumulative beyond the period for which a license is granted, but the secretary, in exercising the power of suspension granted under s. 343.32 (2) may consider only those reports and records entered during the 4-year period immediately preceding the exercise of such power of suspension.

**SECTION 10r.** 343.30 (1q) (c) 1. (intro.) of the statutes is amended to read:

343.30 (1q) (c) 1. (intro.) Except as provided in subd. 1. a. or b., and except for a first violation of s. 346.63 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, the court shall order the person to submit to and comply with an assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for examination of the person's use of alcohol, controlled substances or controlled substance analogs and development of a driver safety plan for the person. The court shall notify the department of transportation of

the assessment order. The court shall notify the person that noncompliance with assessment or the driver safety plan will result in revocation of the person's operating privilege until the person is in compliance. The assessment order shall:

**SECTION 11.** 343.31 (1) (ar) of the statutes is amended to read:

343.31 (1) (ar) Injury by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08 and which is criminal under s. 346.63 (6).

**SECTION 12.** 346.63 (2m) of the statutes is amended to read:

346.63 (2m) If a person has not attained the legal drinking age, as defined in s. 125.02 (8m), the person may not drive or operate a motor vehicle while he or she has an alcohol concentration of more than 0.0 but not more than ~~0.1~~ 0.08. One penalty for violation of this subsection is suspension of a person's operating privilege under s. 343.30 (1p). The person is eligible for an occupational license under s. 343.10 at any time. If a person arrested for a violation of this subsection refuses to take a test under s. 343.305, the refusal is a separate violation and the person is subject to revocation of the person's operating privilege under s. 343.305 (10) (em).

**SECTION 13.** 346.63 (5) (a) of the statutes is amended to read:

346.63 (5) (a) No person may drive or operate a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08.

**SECTION 14.** 346.63 (6) (a) of the statutes is amended to read:

346.63 (6) (a) No person may cause injury to another person by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08.

**SECTION 14m.** 346.655 (1) of the statutes is amended to read:

346.655 (1) If a court imposes a fine or a forfeiture for a violation of s. 346.63 (1) or (5), except for a first violation of s. 346.63 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, it shall impose a driver improvement surcharge in an amount of \$355 in addition to the fine or forfeiture, penalty assessment, jail assessment, crime laboratories and drug law enforcement assessment, and, if required by s. 349.04, truck driver education assessment.

**SECTION 15.** 350.101 (1) (b) of the statutes is amended to read:

350.101 (1) (b) *Operating with alcohol concentrations at or above specified levels.* No person may engage

in the operation of a snowmobile while the person has an alcohol concentration of ~~0.1~~ 0.08 or more.

**SECTION 16.** 350.101 (1) (c) of the statutes is amended to read:

350.101 (1) (c) *Operating with alcohol concentrations at specified levels; below age 19.* If a person has not attained the age of 19, the person may not engage in the operation of a snowmobile while he or she has an alcohol concentration of more than 0.0 but not more than ~~0.1~~ 0.08.

**SECTION 17.** 350.101 (2) (b) of the statutes is amended to read:

350.101 (2) (b) *Causing injury with alcohol concentrations at or above specified levels.* No person who has an alcohol concentration of ~~0.1~~ 0.08 or more may cause injury to another person by the operation of a snowmobile.

**SECTION 18.** 350.101 (2) (d) of the statutes is amended to read:

350.101 (2) (d) *Defenses.* In an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have an alcohol concentration of ~~0.1~~ 0.08 or more.

**SECTION 18c.** 757.05 (1) (a) of the statutes is amended to read:

757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), or (br) or (5), or for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, or for a violation of state laws or municipal or county ordinances involving nonmoving traffic violations or safety belt use violations under s. 347.48 (2m), there shall be imposed in addition a penalty assessment in an amount of 24% of the fine or forfeiture imposed. If multiple offenses are involved, the penalty assessment shall be based upon the total fine or forfeiture for all offenses. When a fine or forfeiture is suspended in whole or in part, the penalty assessment shall be reduced in proportion to the suspension.

**SECTION 18g.** 814.63 (1) (c) of the statutes is amended to read:

814.63 (1) (c) This subsection does not apply to an action for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), or (br) or (5), for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the

time of the violation, or for a violation of a safety belt use violation under s. 347.48 (2m).

**SECTION 18L.** 814.63 (2) of the statutes is amended to read:

814.63 (2) Upon the disposition of a forfeiture action in circuit court for violation of a county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district ordinance, except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, or for a safety belt use violation under s. 347.48 (2m), the county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district shall pay a nonrefundable fee of \$5 to the clerk of circuit court.

**SECTION 18p.** 814.634 (1) (a) of the statutes is amended to read:

814.634 (1) (a) Except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, or for a safety belt use violation under s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$52 court support services fee from any person, including any governmental unit as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am) or 814.63 (1).

**SECTION 18t.** 814.635 (1) of the statutes is amended to read:

814.635 (1) Except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, or for a safety belt use violation under s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$9 justice information system fee from any person, including any governmental unit as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3) or (8) (am), 814.62 (1), (2) or (3) (a) or (b) or 814.63 (1). The justice information system fee is in addition to the other fees listed in this section.

**SECTION 18x.** 814.65 (1) of the statutes is amended to read:

814.65 (1) COURT COSTS. In a municipal court action, except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, or for a violation of an ordinance in conformity with s. 347.48 (2m), the municipal judge shall collect a fee of not less than \$15 nor more than \$23 on each separate matter, whether it is on default of appearance, a plea of guilty or no contest, on issuance of a warrant or summons or the action is tried as a contested

matter. Of each fee received by the judge under this subsection, the municipal treasurer shall pay monthly \$5 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the municipality.

**SECTION 19.** 885.235 (1g) (a) 1. of the statutes is renumbered 885.235 (1g) (a).

**SECTION 20.** 885.235 (1g) (a) 2. of the statutes is repealed.

**SECTION 21.** 885.235 (1g) (b) of the statutes is amended to read:

885.235 (1g) (b) Except with respect to the operation of a commercial motor vehicle as provided in par. (d), the fact that the analysis shows that the person had an alcohol concentration of more than 0.04 but less than ~~0.1~~ 0.08 is relevant evidence on the issue of intoxication or an alcohol concentration of ~~0.1~~ 0.08 or more but is not to be given any prima facie effect.

**SECTION 22.** 885.235 (1g) (bd) of the statutes is repealed.

**SECTION 23.** 885.235 (1g) (c) of the statutes is amended to read:

885.235 (1g) (c) The In cases involving persons who have 2 or fewer prior convictions, suspensions, or revocations, as counted under s. 343.307 (1), the fact that the analysis shows that the person had an alcohol concentration of ~~0.1~~ 0.08 or more is prima facie evidence that he or she was under the influence of an intoxicant and is prima facie evidence that he or she had an alcohol concentration of ~~0.1~~ 0.08 or more.

**SECTION 24.** 885.235 (1g) (cd) of the statutes is repealed.

**SECTION 25.** 885.235 (1m) of the statutes is amended to read:

885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m) or (7), or 350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the time in question, as shown by chemical analysis of a sample of the person's blood or urine or evidence of the amount of alcohol in the person's breath, is admissible on the issue of whether he or she had an alcohol concentration in the range specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an alcohol concentration above 0.0 under s. 346.63 (7) if the sample was taken within 3 hours after the event to be proved. The fact that the analysis shows that the person had an alcohol concentration of more than 0.0 but not more than ~~0.1~~ 0.08 is prima facie evidence that the person had an alcohol concentration in the range specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an alcohol concentration above 0.0 under s. 346.63 (7).

**SECTION 26.** 940.09 (1) (bm) of the statutes is amended to read:

940.09 (1) (bm) Causes the death of another by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08.

**SECTION 27.** 940.09 (1) (e) of the statutes is amended to read:

940.09 (1) (e) Causes the death of an unborn child by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08.

**SECTION 28.** 940.09 (1g) (b) of the statutes is amended to read:

940.09 (1g) (b) Causes the death of another by the operation or handling of a firearm or airgun while the person has an alcohol concentration of ~~0.1~~ 0.08 or more.

**SECTION 29.** 940.09 (1g) (d) of the statutes is amended to read:

940.09 (1g) (d) Causes the death of an unborn child by the operation or handling of a firearm or airgun while the person has an alcohol concentration of ~~0.1~~ 0.08 or more.

**SECTION 30.** 940.25 (1) (bm) of the statutes is amended to read:

940.25 (1) (bm) Causes great bodily harm to another human being by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08.

**SECTION 31.** 940.25 (1) (e) of the statutes is amended to read:

940.25 (1) (e) Causes great bodily harm to an unborn child by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08.

**SECTION 32.** 949.08 (2) (em) of the statutes is amended to read:

949.08 (2) (em) Is an adult passenger in the offender's commercial motor vehicle and the crime involved is specified in s. 346.63 (6) or 940.25 and the passenger knew the offender was under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog, or had an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08. This paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30, 940.305, 940.31, or 948.30.

**SECTION 33.** 967.055 (1) (b) of the statutes is amended to read:

967.055 (1) (b) The legislature intends to encourage the vigorous prosecution of offenses concerning the operation of motorboats by persons under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog to a degree which renders him or her incapable of operating a motorboat safely, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of operating a motorboat safely or having an alcohol concentration of ~~0.1~~ 0.08 or more.

**SECTION 34. Initial applicability.**

(1) This act first applies to offenses committed on the effective date of this subsection.

**SECTION 35. Effective date.**

(1) This act takes effect on September 30, 2003.