



1997 SENATE BILL 75

February 12, 1997 - Introduced by Senators ADELMAN and DARLING, cosponsored by Representatives URBAN, BOCK, NOTESTEIN, LA FAVE and L. YOUNG. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1 **AN ACT to repeal** 340.01 (46m) (a), 340.01 (46m) (b), 885.235 (1) (a) 2., 885.235
2 (1) (b) and 885.235 (1) (cd); **to renumber** 885.235 (1) (a) 1.; **to renumber and**
3 **amend** 340.01 (46m) (intro.); **to amend** 23.33 (4c) (a) 2., 23.33 (4c) (a) 3., 23.33
4 (4c) (b) 2., 23.33 (4c) (b) 4., 30.681 (1) (b) 1., 30.681 (2) (b) 1., 30.681 (2) (d) 1.,
5 343.31 (1) (ar), 346.63 (2m), 346.63 (5) (a), 346.63 (6) (a), 350.101 (1) (b), 350.101
6 (1) (c), 350.101 (2) (b), 350.101 (2) (d), 885.235 (1) (c), 885.235 (1m), 940.09 (1)
7 (bm), 940.09 (1g) (b), 940.25 (1) (bm), 949.08 (2) (em) and 967.055 (1) (b); and
8 **to create** 23.33 (1) (jc), 30.50 (9f), 350.01 (10c) and 939.22 (26) of the statutes;
9 **relating to:** lowering the prohibited alcohol concentration for certain offenses
10 involving alcohol use.

Analysis by the Legislative Reference Bureau

Under present law, a person may not operate an all-terrain vehicle, motorboat or snowmobile if the person has 0.1 grams or more of alcohol in 100 milliliters of his or her blood or 0.1 grams or more of alcohol in 210 liters of his or her breath. A person who has one or no prior convictions of operating a motor vehicle while intoxicated (OWI) is subject to the same alcohol concentration standards. If the person has 2 or

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more prior OWI convictions, these standards change to 0.08 grams in his or her blood or breath.

This bill prohibits a person from operating any of those vehicles if the person has 0.08 grams or more of alcohol in 100 milliliters of his or her blood or in 210 liters of his or her breath. The bill similarly changes the applicable levels for other offenses involving intoxication, including the operation or handling of a firearm, and revises the legal presumptions for chemical tests for intoxication accordingly.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 23.33 (1) (jc) of the statutes is created to read:

2 23.33 (1) (jc) “Prohibited alcohol concentration” has the meaning given in s.
3 340.01 (46m).

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

5 23.33 (4c) (a) 2. ‘Operating with alcohol concentrations at or above specified
6 levels.’ No person may engage in the operation of an all-terrain vehicle while the
7 person has an a prohibited alcohol concentration of ~~0.1 or more~~.

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

9 23.33 (4c) (a) 3. ‘Operating with alcohol concentrations at specified levels;
10 below age 19.’ If a person has not attained the age of 19, the person may not engage
11 in the operation of an all-terrain vehicle while he or she has an alcohol concentration
12 of more than 0.0 but not more than ~~0.1~~ the minimum prohibited alcohol
13 concentration.

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

15 23.33 (4c) (b) 2. ‘Causing injury with alcohol concentrations at or above
16 specified levels.’ No person who has an a prohibited alcohol concentration of ~~0.1 or~~
17 ~~more~~ may cause injury to another person by the operation of an all-terrain vehicle.

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1 **SECTION 5.** 23.33 (4c) (b) 4. of the statutes is amended to read:

2 23.33 **(4c)** (b) 4. 'Defenses.' In an action under this paragraph, the defendant
3 has a defense if he or she proves by a preponderance of the evidence that the injury
4 would have occurred even if he or she had been exercising due care and he or she had
5 not been under the influence of an intoxicant or did not have ~~an~~ a prohibited alcohol
6 concentration of ~~0.1 or more~~.

7 **SECTION 6.** 30.50 (9f) of the statutes is created to read:

8 30.50 **(9f)** "Prohibited alcohol concentration" has the meaning given in s.
9 340.01 (46m).

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

11 30.681 **(1)** (b) 1. No person may engage in the operation of a motorboat while
12 the person has ~~an~~ a prohibited alcohol concentration of ~~0.1 or more~~. This subdivision
13 does not apply to commercial motorboats.

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

15 30.681 **(2)** (b) 1. No person who has ~~an~~ a prohibited alcohol concentration of ~~0.1~~
16 ~~or more~~ may cause injury to another person by the operation of a motorboat. This
17 subdivision does not apply to commercial motorboats.

18 **SECTION 9.** 30.681 (2) (d) 1. of the statutes is amended to read:

19 30.681 **(2)** (d) 1. In an action under this subsection for a violation of the
20 intoxicated boating law where the defendant was operating a motorboat that is not
21 a commercial motorboat, the defendant has a defense if he or she proves by a
22 preponderance of the evidence that the injury would have occurred even if he or she
23 had been exercising due care and he or she had not been under the influence of an
24 intoxicant or did not have ~~an~~ a prohibited alcohol concentration of ~~0.1 or more~~.

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1 **SECTION 10.** 340.01 (46m) (intro.) of the statutes is renumbered 340.01 (46m)
2 and amended to read:

3 340.01 (**46m**) “Prohibited alcohol concentration” means ~~one of the following:~~
4 an alcohol concentration of 0.08 or more.

5 **SECTION 11.** 340.01 (46m) (a) of the statutes is repealed.

6 **SECTION 12.** 340.01 (46m) (b) of the statutes is repealed.

7 **SECTION 13.** 343.31 (1) (ar) of the statutes is amended to read:

8 343.31 (**1**) (ar) Injury by the operation of a commercial motor vehicle while the
9 person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ the minimum
10 prohibited alcohol concentration and which is criminal under s. 346.63 (6).

11 **SECTION 14.** 346.63 (2m) of the statutes is amended to read:

12 346.63 (**2m**) If a person has not attained the age of 19, the person may not drive
13 or operate a motor vehicle while he or she has an alcohol concentration of more than
14 0.0 but not more than ~~0.1~~ the minimum prohibited alcohol concentration. One
15 penalty for violation of this subsection is suspension of a person’s operating privilege
16 under s. 343.30 (1p). The person is eligible for an occupational license under s. 343.10
17 at any time. If a person arrested for a violation of this subsection refuses to take a
18 test under s. 343.305, the refusal is a separate violation and the person is subject to
19 revocation of the person’s operating privilege under s. 343.305 (10) (em).

20 **SECTION 15.** 346.63 (5) (a) of the statutes is amended to read:

21 346.63 (**5**) (a) No person may drive or operate a commercial motor vehicle while
22 the person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ the
23 minimum prohibited alcohol concentration.

24 **SECTION 16.** 346.63 (6) (a) of the statutes is amended to read:

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1 346.63 (6) (a) No person may cause injury to another person by the operation
2 of a commercial motor vehicle while the person has an alcohol concentration of 0.04
3 or more but less than ~~0.1~~ the minimum prohibited alcohol concentration.

4 **SECTION 17.** 350.01 (10c) of the statutes is created to read:

5 350.01 (10c) "Prohibited alcohol concentration" has the meaning given in s.
6 340.01 (46m).

7 **SECTION 18.** 350.101 (1) (b) of the statutes is amended to read:

8 350.101 (1) (b) *Operating with alcohol concentrations at or above specified*
9 *levels*. No person may engage in the operation of a snowmobile while the person has
10 ~~an a prohibited~~ alcohol concentration of ~~0.1 or more~~.

11 **SECTION 19.** 350.101 (1) (c) of the statutes is amended to read:

12 350.101 (1) (c) *Operating with alcohol concentrations at specified levels; below*
13 *age 19*. If a person has not attained the age of 19, the person may not engage in the
14 operation of a snowmobile while he or she has an alcohol concentration of more than
15 0.0 but not more than ~~0.1~~ the minimum prohibited alcohol concentration.

16 **SECTION 20.** 350.101 (2) (b) of the statutes is amended to read:

17 350.101 (2) (b) *Causing injury with alcohol concentrations at or above specified*
18 *levels*. No person who has ~~an a prohibited~~ alcohol concentration of ~~0.1 or more~~ may
19 cause injury to another person by the operation of a snowmobile.

20 **SECTION 21.** 350.101 (2) (d) of the statutes is amended to read:

21 350.101 (2) (d) *Defenses*. In an action under this subsection, the defendant has
22 a defense if he or she proves by a preponderance of the evidence that the injury would
23 have occurred even if he or she had been exercising due care and he or she had not
24 been under the influence of an intoxicant or did not have ~~an a prohibited~~ alcohol
25 concentration of ~~0.1 or more~~.

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1 **SECTION 22.** 885.235 (1) (a) 1. of the statutes is renumbered 885.235 (1) (a).

2 **SECTION 23.** 885.235 (1) (a) 2. of the statutes is repealed.

3 **SECTION 24.** 885.235 (1) (b) of the statutes is repealed.

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

5 885.235 (1) (c) The fact that the analysis shows that the person had an alcohol
6 concentration of ~~0.1~~ 0.08 or more is prima facie evidence that he or she was under the
7 influence of an intoxicant and is prima facie evidence that he or she had an alcohol
8 concentration of ~~0.1~~ 0.08 or more.

9 **SECTION 26.** 885.235 (1) (cd) of the statutes is repealed.

10 **SECTION 27.** 885.235 (1m) of the statutes is amended to read:

11 885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 346.63 (2m) or (7) or
12 350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the time in
13 question, as shown by chemical analysis of a sample of the person's blood or urine or
14 evidence of the amount of alcohol in the person's breath, is admissible on the issue
15 of whether he or she had an alcohol concentration in the range specified in s. 23.33
16 (4c) (a) 3., 346.63 (2m) or 350.101 (1) (c) or an alcohol concentration above 0.0 under
17 s. 346.63 (7) if the sample was taken within 3 hours after the event to be proved. The
18 fact that the analysis shows that the person had an alcohol concentration of more
19 than 0.0 but not more than ~~0.1~~ 0.08 is prima facie evidence that the person had an
20 alcohol concentration in the range specified in s. 23.33 (4c) (a) 3., 346.63 (2m) or
21 350.101 (1) (c) or an alcohol concentration above 0.0 under s. 346.63 (7).

22 **SECTION 28.** 939.22 (26) of the statutes is created to read:

23 939.22 (26) "Prohibited alcohol concentration" has the meaning given in s.
24 340.01 (46m).

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

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

4 **SECTION 30.** 940.09 (1g) (b) of the statutes is amended to read:

5 940.09 (1g) (b) Causes the death of another by the operation or handling of a
6 firearm or airgun while the person has an a prohibited alcohol concentration of ~~0.1~~
7 ~~or more~~.

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

9 940.25 (1) (bm) Causes great bodily harm to another human being by the
10 operation of a commercial motor vehicle while the person has an alcohol
11 concentration of 0.04 or more but less than ~~0.1~~ the minimum prohibited alcohol
12 concentration.

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

14 949.08 (2) (em) Is an adult passenger in the offender's commercial motor
15 vehicle and the crime involved is specified in s. 346.63 (6) or 940.25 and the passenger
16 knew the offender was under the influence of an intoxicant, a controlled substance,
17 a controlled substance analog or any combination of an intoxicant, controlled
18 substance and controlled substance analog, or had an alcohol concentration of 0.04
19 or more but less than ~~0.1~~ the minimum prohibited alcohol concentration. This
20 paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30,
21 940.305, 940.31 or 948.30.

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

23 967.055 (1) (b) The legislature intends to encourage the vigorous prosecution
24 of offenses concerning the operation of motorboats by persons under the influence of
25 an intoxicant, a controlled substance, a controlled substance analog or any

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1 combination of an intoxicant, controlled substance and controlled substance analog
2 to a degree which renders him or her incapable of operating a motorboat safely, or
3 under the combined influence of an intoxicant and any other drug to a degree which
4 renders him or her incapable of operating a motorboat safely or having an a
5 prohibited alcohol concentration of 0.1 or more, as defined in s. 340.01 (46m).

SECTION 34. Initial applicability.

7 (1) This act first applies to offenses committed on the effective date of this
8 subsection, but does not preclude the counting of other offenses as prior offenses for
9 purposes of administrative action by the department of transportation, sentencing
10 by a court or suspending or revoking a person's operating privilege.

11 (END)