

1981 Senate Bill 741

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## CHAPTER 184 , Laws of 1981

AN ACT to amend 343.305 (1), (3) (b) 5. a, (7) and (9) (b) 2, 343.307, 346.63 (2) (b), 885.235 (1), (3) and (4), 940.09 (1) (intro.) and (2), 940.25 (1) (intro.) and (2) and 967.055 (title) and (1); and to create 300.03 (4) and 885.235 (5) of the statutes; and to amend laws of 1981, chapter 20, section 2051 (13) (title), (a) 1 to 4 and (b) 2 to 5, (15) and (16), relating to miscellaneous corrections and revisions to the laws relating to operating a motor vehicle while under the influence of an intoxicant or a controlled substance, or a combination thereof, or while having a blood alcohol concentration of 0.1% or more.

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

SECTION 1. 343.305 (1), (3) (b) 5. a, (7) and (9) (b) 2 of the statutes, as affected by chapter 20, laws of 1981, are amended to read:

343.305 (1) Any person who drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in s. 346.61, shall be deemed to have given consent to one or more tests of his or her breath, blood or urine, for the purpose of determining the presence or quantity in his or her blood or breath, of alcohol or controlled substances or a combination of alcohol and controlled substances when requested to do so by a law enforcement officer under sub. (2). Any such tests shall be administered upon the request of a law enforcement officer. The law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility, 2 of the 3 tests under sub. (2) (b), and may designate which of the tests shall be administered first.

(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 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.

(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 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. Test results shall be given the

effect required under s. 885.235, ~~except as provided in ss. 346.63 (1) and (2), 940.09 and 940.25.~~

(9) (b) 2. Except as provided in subd. 3 or 4, for the first improper refusal, the court shall revoke the person's ~~operator's license~~ operating privilege for 6 months. After the first 15 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

SECTION 2. 343.307 of the statutes, as affected by chapter 20, laws of 1981, is amended to read:

**343.307 Prior convictions to be counted.** For purposes of counting the number of refusals, revocations and convictions under s. 343.30 (1q), 343.305 (8) or (9) or 346.65 (2) on and after July 1, 1978, convictions for violations 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, prior to and after the treatment of ~~that section~~ any of those sections by chapter 193, laws of 1977, shall be counted and given the effect specified under s. 343.30 (1q), 343.305 (8) or (9) or 346.65 (2) on and after July 1, 1978.

SECTION 3. 346.63 (2) (b) of the statutes, as affected by chapter 20, laws of 1981, is amended to read:

346.63 (2) (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 or did not have a blood alcohol concentration described under par. (a) 2.

SECTION 4. 800.03 (4) of the statutes is created to read:

800.03 (4) Notwithstanding sub. (1), a court appearance is required for a violation of a local ordinance in conformity with s. 346.63 (1).

SECTION 5. 885.235 (1), (3) and (4) of the statutes, as affected by chapter 20, laws of 1981, are amended to read:

885.235 (1) In any action or proceeding in which it is material to prove that a person was under the influence of an intoxicant or had a blood alcohol concentration of 0.1 % or more when operating or driving a motor vehicle, or while handling a firearm, 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 was under the influence of an intoxicant or had a blood alcohol concentration of 0.1 % or more if the sample was taken within 3 hours after the event to be proved. The chemical analysis shall be given effect as follows without requiring any expert testimony as to its effect:

(a) 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;

(b) The fact that the analysis shows that there was more than 0.05 % but less than 0.1 % by weight of alcohol in the person's blood or more than 0.05 grams but less than 0.1 grams of alcohol in 210 liters of the person's breath is relevant evidence on the issue of intoxication or blood alcohol concentration but is not to be given any prima facie effect;

(c) ~~Except for offenses specified in ss. 346.63 (1) and (2) (a), 940.09 (1) and 940.25 (1), the~~ The fact that the analysis shows that there was 0.1 % or more by weight of alcohol in the person's blood or 0.1 grams or more of alcohol in 210 liters of the person's breath 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 a blood alcohol concentration of 0.1 % or more.

(3) If the sample of breath, blood or urine was not taken within 3 hours after the event to be proved, evidence of the amount of alcohol in the person's blood or breath as shown by the chemical analysis is admissible only if expert testimony establishes its probative value and may be given prima facie effect only if the effect is established by expert testimony ~~except for offenses specified in ss. 346.63 (1) and (2) (a), 940.09 (1) and 940.25 (1).~~

(4) ~~Except as provided in ss. 346.63 (1) (b) and (2) (a) 2, 940.09 (1) (b) and 940.25 (1) (b), the~~ The provisions of this section relating to the admissibility of chemical tests for intoxication or blood alcohol concentration shall not be construed as limiting the introduction of any other competent evidence bearing on the question of whether or not a person was under the influence of an intoxicant or had a blood alcohol concentration of 0.1 % or more.

SECTION 6. 885.235 (5) of the statutes is created to read:

885.235 (5) In this section, "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 7. 940.09 (1) (intro.) and (2) of the statutes, as affected by chapter 20, laws of 1981, are amended to read:

940.09 (1) (intro.) Any person who does either of the following under par. (a) or (b) is guilty ~~or~~ of a Class D felony:

(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 8. 940.25 (1) (intro.) and (2) of the statutes, as affected by chapter 20, laws of 1981, are amended to read:

940.25 (1) (intro.) Any person who does either of the following under par. (a) or (b) is guilty of a Class E felony:

(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 9. 967.055 (title) and (1) of the statutes, as created by chapter 20, laws of 1981, are amended to read:

**967.055 (title) Dismissing or amending charges; operating a motor vehicle; alcohol, intoxicant or controlled substance.** (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, or a controlled substance or both or having a blood alcohol concentration of 0.1 % or more.

SECTION 10. Laws of 1981, chapter 20, section 2051 (13) (title), (a) 1 to 4 and (b) 2 to 5, (15) and (16) are amended to read:

(Laws of 1981, chapter 20) Section 2051 (13) (title) **OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF INTOXICANT OR CONTROLLED SUBSTANCE OR WHILE HAVING A BLOOD ALCOHOL CONCENTRATION OF 0.1 % OR MORE.**

(a) 1. Operation of motor vehicles by persons who are under the influence of an intoxicant or have a blood alcohol concentration of 0.1 % or more seriously threatens the public safety and welfare.

2. Persons who operate motor vehicles while under the influence of an intoxicant or having a blood alcohol concentration of 0.1 % or more do so in disregard of the safety and welfare of both themselves and other members of the driving public and of the laws of this state.

3. Penalties are an important and necessary element in deterring the operation of motor vehicles by those persons ~~who are intoxicated~~.

4. A substantial number of persons who operate motor vehicles while intoxicated or having a blood alcohol concentration of 0.1 % or more are in need of treatment or education or both to prevent further offenses related to the use of intoxicants.

(b) 2. To provide penalties sufficient to deter the operation of motor vehicles by persons who are intoxicated or have a blood alcohol concentration of 0.1 % or more.

3. To deny the privileges of operating motor vehicles to persons who have operated their motor vehicles while intoxicated or having a blood alcohol concentration of 0.1 % or more.

4. To encourage the vigorous prosecution of persons who operate motor vehicles while intoxicated or having a blood alcohol concentration of 0.1 % or more.

5. To promote driver improvement, through appropriate treatment or education or both, of persons who operate motor vehicles while intoxicated or having a blood alcohol concentration of 0.1 % or more.

(15) ARREST PROCEDURE. The department of transportation, in consultation with the law enforcement standards board, shall evaluate the arrest procedure used for violations involving the operation of a motor vehicle by persons who are under the influence of an intoxicant or controlled substance or both or have a blood alcohol concentration of 0.1 % or more. The department shall make recommendations concerning methods of improving and streamlining arrest procedures. The department shall report its findings and recommendations to the speaker of the assembly and the president of the senate by January 17, 1983.

(16) STUDY. The department of transportation shall evaluate the effectiveness of the portions of chapter 20, laws of 1981, concerning driving while under the influence of an intoxicant, a controlled substance or a combination thereof or having a blood alcohol concentration of 0.1 % or more, and report its findings and recommendations to the speaker of the assembly and the president of the senate by December 31, 1986.

SECTION 11. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
343.305 (9)(b) 1	343.63 (1) 343.63 (2)	346.63 (1) 346.63 (2)

SECTION 12. Effective date. This act takes effect May 1, 1982, or on the day after its publication, whichever is later.