

May 1986 Spec. Sess.
Senate Bill 13

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1985 Wisconsin Act 331

AN ACT to repeal 30.68 (1); to renumber 30.50 (1), 967.055 (1) and 967.055 (2); to amend 30.80 (1) and (2), 46.03 (18) (f), 343.305 (6) (a), 422.413 (2g) (intro.), 885.235 (1) (intro.), 895.53 (1), 895.53 (2), 940.09 (1) (c) and (3), 940.25 (1) (c) and (3) and 967.055 (title); to repeal and recreate 350.01 (10); and to create 30.50 (1e) and (1m), 30.50 (3g), (3r), (4e), (4m) and (4s), 30.50 (8g), (8r), (9g), (9x) and (13m), 30.681 to 30.687, 30.69 (4), 30.80 (6), 895.53 (1) (a), 967.055 (1) (b) and 967.055 (2) (b) of the statutes, relating to intoxicated boating, implied consent, samples and tests related to intoxicants, granting rule-making authority and providing penalties.

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

SECTION 1. 30.50 (1) of the statutes is renumbered 30.50 (1s).

SECTION 2. 30.50 (1e) and (1m) of the statutes are created to read:

30.50 (1e) "Alcohol beverage" has the meaning specified under s. 125.02 (1).

(1m) "Approved public treatment facility" has the meaning specified under s. 51.45 (2) (c).

SECTION 3. 30.50 (3g), (3r), (4e), (4m) and (4s) of the statutes are created to read:

30.50 (3g) "Controlled substance" has the meaning specified under s. 161.01 (4).

(3r) "Drug" has the meaning specified under s. 450.01 (10).

(4e) "Intoxicant" means any alcohol beverage, controlled substance or other drug or any combination thereof.

(4m) "Intoxicated boating law" means s. 30.681 (1) or a local ordinance in conformity with that section, s.

30.681 (2) or, if the operation of a motorboat is involved, s. 940.09 or 940.25.

(4s) "Law enforcement officer" has the meaning specified under s. 165.85 (2) (c) and includes a person appointed as a conservation warden by the department under s. 23.10 (1).

SECTION 4. 30.50 (8g), (8r), (9g), (9x) and (13m) of the statutes are created to read:

30.50 (8g) "Operation of a motorboat" means controlling the speed or direction of a motorboat, except a sailboat operating under sail alone.

(8r) "Operator" means a person who is engaged in the operation of a motorboat, who is responsible for the operation of a motorboat or who is supervising the operation of a motorboat.

(9g) "Purpose of authorized analysis" means for the purpose of determining or obtaining evidence of the presence, quantity or concentration of alcohol or other intoxicant in a person's blood, breath or urine.

(9x) "Refusal law" means s. 30.684 (5) or a local ordinance in conformity with that section.

(13m) "Test facility" means a test facility or agency prepared to administer tests under s. 343.305 (1).

SECTION 5. 30.68 (1) of the statutes, as affected by 1985 Wisconsin Act 146, is repealed.

SECTION 6. 30.681 to 30.687 of the statutes are created to read:

30.681 Intoxicated boating. (1) **OPERATION.** (a) *Operating while under the influence of an intoxicant.* No person may engage in the operation of a motorboat while under the influence of an intoxicant to a degree which renders him or her incapable of safe motorboat operation.

(b) *Operating with alcohol concentrations at or above specified levels.* No person may engage in the operation of a motorboat while the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood. No person may engage in the operation of a motorboat while the person has 0.1 grams or more of alcohol in 210 liters of his or her breath.

(c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b), the offenses shall be joined. If the person is found guilty of both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 30.80 (6) (a) 2 and 3. Paragraphs (a) and (b) each require proof of a fact for conviction which the other does not require.

(2) **CAUSING INJURY.** (a) *Causing injury while under the influence of an intoxicant.* No person while under the influence of an intoxicant to a degree which renders him or her incapable of safe motorboat operation

may cause injury to another person by the operation of a motorboat.

(b) *Causing injury with alcohol concentrations at or above specified levels.* No person who has a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood may cause injury to another person by the operation of a motorboat. No person who has 0.1 grams or more of alcohol in 210 liters of his or her breath may cause injury to another person by the operation of a motorboat.

(c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b) in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 30.80 (6) (a) 2 and 3. Paragraphs (a) and (b) each require proof of a fact for conviction which the other does not require.

(d) *Defenses.* In an action under par. (a), the defendant has a defense if it appears by a preponderance of the evidence that the injury would have occurred even if the defendant was not under the influence of an intoxicant. In an action under par. (b), the defendant has a defense if it appears by a preponderance of the evidence that the injury would have occurred even if he or she did not have a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood. In an action under par. (b), the defendant has a defense if it appears by a preponderance of the evidence that the injury would have occurred even if he or she did not have 0.1 grams or more of alcohol in 210 liters of his or her breath.

30.682 Preliminary breath screening test. (1) **REQUIREMENT.** A person shall provide a sample of his or her breath for a preliminary breath screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated boating law and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

(2) **USE OF TEST RESULTS.** A law enforcement officer may use the results of a preliminary breath screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated boating law or for the purpose of deciding whether or not to request a chemical test under s. 30.684. Following the preliminary breath screening test, chemical tests may be required of the person under s. 30.684.

(3) **ADMISSIBILITY.** The result of a preliminary breath screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to show that a chemical test was properly required of a person under s. 30.684.

(4) REFUSAL. There is no penalty for a violation of sub. (1). Section 30.80 (1) and the general penalty provision under s. 939.61 do not apply to that violation.

30.683 Implied consent. Any person who engages in the operation of a motorboat upon the waters of this state is deemed to have given consent to provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis as required under s. 30.684. Any person who engages in the operation of a motorboat upon the waters of this state is deemed to have given consent to submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis as required under s. 30.684.

30.684 Chemical tests. (1) REQUIREMENT. (a) *Samples; submission to tests.* A person shall provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated boating law and if he or she is requested to provide the sample by a law enforcement officer. A person shall submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated boating law and if he or she is requested to submit to the test by a law enforcement officer.

(b) *Information.* A law enforcement officer requesting a person to provide a sample or to submit to a chemical test under par. (a) shall inform the person at the time of the request and prior to obtaining the sample or administering the test:

1. That he or she is deemed to have consented to tests under s. 30.683;
2. That a refusal to provide a sample or to submit to a chemical test constitutes a violation under sub. (5) and is subject to the same penalties and procedures as a violation of s. 30.681 (1) (a); and
3. That in addition to the designated chemical test under sub. (2) (b), he or she may have an additional chemical test under sub. (3) (a).

(c) *Unconscious person.* A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person violated the intoxicated boating law, one or more chemical tests may be administered to the person without a request under par. (a) and without providing information under par. (b).

(2) CHEMICAL TESTS. (a) *Test facility.* Upon the request of a law enforcement officer, a test facility shall administer a chemical test of breath, blood or urine for the purpose of authorized analysis. A test facility shall be prepared to administer 2 of the 3 chemical tests of breath, blood or urine for the purpose of authorized analysis. The department may enter into agreements for the cooperative use of test facilities.

(b) *Designated chemical test.* A test facility shall designate one chemical test of breath, blood or urine which it is prepared to administer first for the purpose of authorized analysis.

(c) *Additional chemical test.* A test facility shall specify one chemical test of breath, blood or urine, other than the test designated under par. (b), which it is prepared to administer for the purpose of authorized analysis as an additional chemical test.

(d) *Validity; procedure.* A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (10). The duties and responsibilities of the laboratory of hygiene, department of health and social services and department of transportation under s. 343.305 (10) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this section. Blood may be withdrawn from a person arrested for a violation of the intoxicated boating law only by a physician, registered nurse, medical technologist, physician's assistant or person acting under the direction of a physician and the person who withdraws the blood, the employer of that person and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53.

(e) *Report.* A test facility which administers a chemical test of breath, blood or urine for the purpose of authorized analysis under this section shall prepare a written report which shall include the findings of the chemical test, the identification of the law enforcement officer or the person who requested a chemical test and the identification of the person who provided the sample or submitted to the chemical test. The test facility shall transmit a copy of the report to the law enforcement officer and the person who provided the sample or submitted to the chemical test.

(3) ADDITIONAL AND OPTIONAL CHEMICAL TESTS. (a) *Additional chemical test.* If a person is arrested for a violation of the intoxicated boating law or is the operator of a motorboat involved in an accident resulting in great bodily harm to or the death of someone and if the person is requested to provide a sample or to submit to a test under sub. (1) (a), the person may request the test facility to administer the additional chemical test specified under sub. (2) (c) or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis.

(b) *Optional test.* If a person is arrested for a violation of the intoxicated boating law and if the person is not requested to provide a sample or to submit to a test under sub. (1) (a), the person may request the test facility to administer a chemical test of his or her breath or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis. If a test facility is unable to perform a chemical test of breath, the person may request the test facility to administer the des-

ignated chemical test under sub. (2) (b) or the additional chemical test under sub. (2) (c).

(c) *Compliance with request.* A test facility shall comply with a request under this subsection to administer any chemical test it is able to perform.

(d) *Inability to obtain chemical test.* The failure or inability of a person to obtain a chemical test at his or her own expense does not preclude the admission of evidence of the results of a chemical test required and administered under subs. (1) and (2).

(4) **ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE.** The results of a chemical test required or administered under sub. (1), (2) or (3) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated boating law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations at or above specified levels. Results of these chemical tests shall be given the effect required under s. 885.235. This section does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

(5) **REFUSAL.** No person may refuse a lawful request to provide one or more samples of his or her breath, blood or urine or to submit to one or more chemical tests under sub. (1). A person shall not be deemed to refuse to provide a sample or to submit to a chemical test if it is shown by a preponderance of the evidence that the refusal was due to a physical inability to provide the sample or to submit to the test due to a physical disability or disease unrelated to the use of an intoxicant. Issues in any action concerning violation of sub. (1) or this subsection are limited to:

(a) Whether the law enforcement officer had probable cause to believe the person was violating or had violated the intoxicated boating law.

(b) Whether the person was lawfully placed under arrest for violating the intoxicated boating law.

(c) Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required under sub. (1) (b) or whether the request and information was unnecessary under sub. (1) (c).

(d) Whether the person refused to provide a sample or to submit to a chemical test.

30.686 Report arrest to department. If a law enforcement officer arrests a person for a violation of the intoxicated boating law or the refusal law, the law enforcement officer shall notify the department of the arrest as soon as practicable.

30.687 Officer's action after arrest for violating intoxicated boating law. A person arrested for a violation of the intoxicating boating law, may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under s. 30.684 (1) (a) shows that there is 0.05% or less by weight of alcohol in the person's blood or 0.05 grams or less of alcohol in 210 liters of the person's

breath, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

SECTION 7. 30.69 (4) of the statutes is created to read:

30.69 (4) **INTOXICATED OPERATION.** No person may use water skis, an aquaplane or a similar device while under the influence of an intoxicant to a degree which renders him or her incapable of safely 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 using water skis, an aquaplane or a similar device.

SECTION 8. 30.80 (1) and (2) of the statutes are amended to read:

30.80 (1) Any person violating any provision of ss. 30.50 to 30.80 for which a penalty is not provided by ~~sub. under subs. (2), (3) or (4)~~ to (6) shall forfeit not more than \$50 for the first offense and shall forfeit not more than \$100 upon conviction of the same offense a 2nd or subsequent time within one year.

(2) Any person violating s. 30.67 (1) or 30.68 ~~(1) or~~ (2) shall be fined not more than \$200 or imprisoned not more than 6 months or both. Any person violating s. 30.68 shall be required to obtain a certificate of satisfactory completion of a safety course under s. 30.74 (1). Any person violating s. 30.67 (2) shall forfeit not more than \$200.

SECTION 9. 30.80 (6) of the statutes is created to read:

30.80 (6) (a) *Penalties related to prohibited operation of a motorboat; intoxicants; refusal.* 1. Except as provided under subs. 2 and 3, a person who violates s. 30.681 (1) or 30.684 (5) shall forfeit not less than \$150 nor more than \$300.

2. Except as provided under subd. 3, a person who violates s. 30.681 (1) or 30.684 (5) and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated boating law or the refusal law shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

3. A person who violates s. 30.681 (1) or 30.684 (5) and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated boating law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

(b) *Penalties related to causing injury; intoxicants.* A person who violates s. 30.681 (2) shall be fined not less than \$300 nor more than \$2,000 and may be imprisoned not less than 30 days nor more than one year in the county jail.

(c) *Calculation of previous convictions.* In determining the number of previous convictions under par. (a) 2 and 3, convictions arising out of the same incident or occurrence shall be counted as one previous conviction.

(d) *Alcohol or controlled substances; examination.* In addition to any other penalty or order, a person who violates s. 30.681 (1) or (2) or 30.684 (5) or who violates s. 940.09 or 940.25 if the violation involves the operation of a motorboat, shall be ordered by the court to submit to and comply with an assessment by an approved public treatment facility for an examination of the person's use of alcohol or controlled substances. Intentional failure to comply with an assessment ordered under this paragraph constitutes contempt of court, punishable under ch. 785.

(e) *Certificate of satisfactory completion of safety course.* In addition to any other penalty or order, a person who violates s. 30.681 (1) or (2) or 30.684 (5) or who violates s. 940.09 or 940.25 if the violation involves the operation of a motorboat, shall be ordered by the court to obtain a certificate of satisfactory completion of a safety course under s. 30.74 (1).

SECTION 10. 46.03 (18) (f) of the statutes, as affected by 1985 Wisconsin Act 176, is amended to read:

46.03 (18) (f) Notwithstanding par. (a), any person who submits to an assessment or driver safety plan under s. ~~30.80 (6) (d)~~, 343.16 (2) (a), 343.30 (1q) or 343.305 (9) shall pay a reasonable fee therefor to the appropriate county department under s. 51.42 or traffic safety school under s. 345.60. The fee for the driver safety plan may be reduced or waived if the person is unable to pay the complete fee, but no fee for assessment or attendance at a traffic safety school under s. 345.60 may be reduced or waived.

SECTION 11. 343.305 (6) (a) of the statutes, as affected by 1985 Wisconsin Act 64, is amended to read:

343.305 (6) (a) Blood may be withdrawn from the person arrested for violation of s. ~~30.68 (1)~~, 346.63 (1), (2) or (2m), 350.10 (3) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1) or 350.10 (3), or as provided in sub. (2) (c) to determine the presence or quantity of alcohol or controlled substance or a combination of alcohol and a controlled substance in the blood only by a physician, registered nurse, medical technologist, physician's assistant or person acting under the direction of a physician.

SECTION 12. 350.01 (10) of the statutes is repealed and recreated to read:

350.01 (10) "Owner" means a person who has lawful possession of a snowmobile by virtue of legal title or equitable interest therein which entitles the person to possession.

SECTION 13. 422.413 (2g) (intro.) of the statutes is amended to read:

422.413 (2g) (intro.) In any consumer credit transaction in which the collateral is a motor vehicle as defined in s. 340.01 (35), a trailer as defined in s. 340.01 (71), a snowmobile as defined in s. 340.01 (58a), a boat as defined in s. 30.50 ~~(1)~~ (2), an aircraft as defined in s. 114.002 (3), or a mobile home as defined

in s. 218.10 (2), a writing evidencing the transaction may provide for the creditor's recovery of all of the following expenses, if the expenses are reasonable and bona fide:

SECTION 14. 885.235 (1) (intro.) of the statutes is amended to read:

885.235 (1) (intro.) 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~~ while operating or driving a motor vehicle, while operating a motorboat, except a sailboat operating under sail alone, 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:

SECTION 15. 895.53 (1) of the statutes is amended to read:

895.53 (1) In this section, ~~"traffic~~:

(b) "Traffic officer" has the meaning ~~designated~~ specified in s. 340.01 (70).

SECTION 16. 895.53 (1) (a) of the statutes is created to read:

895.53 (1) (a) "Conservation warden" means a person appointed as a conservation warden by the department of natural resources under s. 23.10 (1).

SECTION 17. 895.53 (2) of the statutes is amended to read:

895.53 (2) Any person withdrawing blood at the request of a traffic officer, law enforcement officer or conservation warden for the purpose of determining the presence or quantity of alcohol, controlled substances or both is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.

SECTION 18. 940.09 (1) (c) and (3) of the statutes are amended to read:

940.09 (1) (c) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b) in the information, the crimes shall be joined under s. 971.12. If the person is found guilty of both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 30.80 (6) (a) 2 and 3 and counting convictions under ss. 343.30 (1q) and 343.305. Paragraphs (a) and (b) each require proof of a fact for conviction which the other does not require.

(3) An officer who makes an arrest for a violation of this section shall make ~~the~~ a report as required under s. 30.686 or 346.635.

SECTION 19. 940.25 (1) (c) and (3) of the statutes are amended to read:

940.25 (1) (c) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b) in the information, the crimes shall be joined under s. 971.12. If the person is found guilty of both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 30.80 (6) (a) 2 or 3 and counting convictions under ss. 343.30 (1q) and 343.305. Paragraphs (a) and (b) each require proof of a fact for conviction which the other does not require.

(3) An officer who makes an arrest for a violation of this section shall make ~~the~~ a report as required under s. 30.686 or 346.635.

SECTION 20. 967.055 (title) of the statutes is amended to read:

967.055 (title) Dismissing or amending charges; operation of a motor vehicle or motorboat; alcohol, intoxicant or drug.

SECTION 21. 967.055 (1) of the statutes is renumbered 967.055 (1) (a).

SECTION 22. 967.055 (1) (b) of the statutes is created 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 or both 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 a blood alcohol concentration of 0.1% or more.

SECTION 23. 967.055 (2) of the statutes is renumbered 967.055 (2) (a).

SECTION 24. 967.055 (2) (b) of the statutes is created to read:

967.055 (2) (b) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or amend a charge under s. 30.681 (1) or a local ordinance in conformity therewith, a charge under s. 30.681 (2), a charge under s. 30.684 (5) or a local ordinance in conformity therewith or a charge under s. 940.09 or 940.25 if the offense involved the use of a motorboat, except a sailboat operating under sail alone, 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 motorboats 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 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.

SECTION 25. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

A	B	C
Statute Sections	References Deleted	References Inserted
15.191 (intro.)	none	30.684 (2)(d)
15.461 (intro.)	none	30.684 (2)(d)
15.911 (2)	none	30.684 (2)(d)