



## 1995 SENATE BILL 605

March 7, 1996 - Introduced by Senator ADELMAN. Referred to Committee on Judiciary.

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

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### *Analysis by the Legislative Reference Bureau*

Under present law, a person may not operate an all-terrain vehicle, motorboat or snowmobile if his or her alcohol concentration is 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.

A person who has one or no prior convictions of operating a motor vehicle while intoxicated (OWI) is guilty of an OWI offense if the person operates or drives a motor vehicle while his or her blood alcohol concentration is 0.1% or more or while his or her breath contains 0.1 grams or more of alcohol in 210 liters of breath. If the person has 2 or more prior OWI convictions, these figures are 0.08% and 0.08 grams.

This bill prohibits a person from operating any of those vehicles if the person's alcohol concentration is 0.08% or more by weight of alcohol in his or her blood or 0.08

grams or more of alcohol 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.

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*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. and 3. of the statutes are amended to read:

5           23.33 (4c) (a) 2. (title) 'Operating with a prohibited alcohol concentrations at  
6 ~~or above specified levels~~ concentration.' No person may engage in the operation of  
7 an all-terrain vehicle while the person has a blood prohibited alcohol concentration  
8 of 0.1% or more by weight of alcohol in his or her blood. No person may engage in  
9 the operation of an all-terrain vehicle while the person has 0.1 grams or more of alco-  
10 hol in 210 liters of his or her breath.

11           3. (title) 'Operating with a prohibited alcohol concentrations at specified levels  
12 concentration; below age 19.' If a person has not attained the age of 19, the person  
13 may not engage in the operation of an all-terrain vehicle while he or she has a blood  
14 alcohol concentration of more than 0.0% but not more than 0.1% by weight of alcohol  
15 in his or her blood or more than 0.0 grams but not more than 0.1 grams of alcohol in  
16 210 liters of his or her breath the prohibited alcohol concentration.

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

18           23.33 (4c) (b) 2. (title) 'Causing injury with a prohibited alcohol concentrations  
19 ~~at or above specified levels~~ concentration.' No person who has a blood prohibited

1 alcohol concentration of ~~0.1% or more by weight of alcohol in his or her blood~~ may  
2 cause injury to another person by the operation of an all-terrain vehicle. ~~No person~~  
3 ~~who has 0.1 grams or more of alcohol in 210 liters of his or her breath may cause~~  
4 ~~injury to another person by the operation of an all-terrain vehicle.~~

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

6 23.33 **(4c)** (b) 4. ‘Defenses.’ In an action under this paragraph, the defendant  
7 has a defense if he or she proves by a preponderance of the evidence that the injury  
8 would have occurred even if he or she had been exercising due care and he or she had  
9 not been under the influence of an intoxicant or did not have a blood prohibited alco-  
10 hol concentration of ~~0.1% or more by weight of alcohol in his or her blood or 0.1 grams~~  
11 ~~or more of alcohol in 210 liters of his or her breath.~~

12 **SECTION 5.** 30.50 (9f) of the statutes is created to read:

13 30.50 **(9f)** “Prohibited alcohol concentration” has the meaning given in s.  
14 340.01 (46m).

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

16 30.681 **(1)** (b) (title) *Operating with a prohibited alcohol concentrations at or*  
17 *above specified levels concentration.* No person may engage in the operation of a mo-  
18 torboat while the person has a blood prohibited alcohol concentration of ~~0.1% or more~~  
19 ~~by weight of alcohol in his or her blood.~~ ~~No person may engage in the operation of~~  
20 ~~a motorboat while the person has 0.1 grams or more of alcohol in 210 liters of his or~~  
21 ~~her breath.~~

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

23 30.681 **(2)** (b) (title) *Causing injury with a prohibited alcohol concentrations at*  
24 *or above specified levels concentration.* No person who has a blood prohibited alcohol  
25 concentration of ~~0.1% or more by weight of alcohol in his or her blood~~ may cause

1 injury to another person by the operation of a motorboat. ~~No person who has 0.1~~  
2 ~~grams or more of alcohol in 210 liters of his or her breath may cause injury to another~~  
3 ~~person by the operation of a motorboat.~~

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

5 30.681 **(2)** (d) *Defenses.* In an action under this subsection, the defendant has  
6 a defense if he or she proves by a preponderance of the evidence that the injury would  
7 have occurred even if he or she had been exercising due care and he or she had not  
8 been under the influence of an intoxicant or did not have a blood prohibited alcohol  
9 concentration of ~~0.1% or more by weight of alcohol in his or her blood or 0.1 grams~~  
10 ~~or more of alcohol in 210 liters of his or her breath.~~

11 **SECTION 9.** 340.01 (46m) (intro.) and (b) of the statutes are consolidated, re-  
12 numbered 340.01 (46m) and amended to read:

13 340.01 **(46m)** "Prohibited alcohol concentration" means ~~one of the following:~~  
14 ~~(b) If the person has 2 or more prior convictions, suspensions or revocations, as~~  
15 ~~counted under s. 343.307 (1), a blood alcohol concentration of 0.08% or more by~~  
16 ~~weight of alcohol in the person's blood or 0.08 grams or more of alcohol in 210 liters~~  
17 ~~of the person's breath.~~

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

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

20 343.31 **(1)** (ar) Injury by the operation of a commercial motor vehicle while the  
21 person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08 and which  
22 is criminal under s. 346.63 (6).

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

24 346.63 **(2)** (b) In an action under this subsection, the defendant has a defense  
25 if he or she proves by a preponderance of the evidence that the injury would have

1 occurred even if he or she had been exercising due care and he or she had not been  
2 under the influence of an intoxicant or a controlled substance or a combination  
3 thereof, under the influence of any other drug to a degree which renders him or her  
4 incapable of safely driving, or under the combined influence of an intoxicant and any  
5 other drug to a degree which renders him or her incapable of safely driving or did  
6 not have a blood prohibited alcohol concentration described under par. (a) 2.

7 **SECTION 13.** 346.63 (2m) of the statutes is amended to read:

8 346.63 (2m) If a person has not attained the age of 19, the person may not drive  
9 or operate a motor vehicle while he or she has a blood alcohol concentration of more  
10 than 0.0% but not more than ~~0.1% by weight of alcohol in the person's blood or more~~  
11 ~~than 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of that person's~~  
12 ~~breath~~ the prohibited alcohol concentration. One penalty for violation of this subsec-  
13 tion is suspension of a person's operating privilege under s. 343.30 (1p). The person  
14 is eligible for an occupational license under s. 343.10 at any time. If a person arrested  
15 for a violation of this subsection refuses to take a test under s. 343.305, the refusal  
16 is a separate violation and the person is subject to revocation of the person's operat-  
17 ing privilege under s. 343.305 (10) (em).

18 **SECTION 14.** 346.63 (5) (a) of the statutes is amended to read:

19 346.63 (5) (a) No person may drive or operate a commercial motor vehicle while  
20 the person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08.

21 **SECTION 15.** 346.63 (6) (a) of the statutes is amended to read:

22 346.63 (6) (a) No person may cause injury to another person by the operation  
23 of a commercial motor vehicle while the person has an alcohol concentration of 0.04  
24 or more but less than ~~0.1~~ 0.08.

25 **SECTION 16.** 350.01 (10b) of the statutes is created to read:

1           350.01 (10b) "Prohibited alcohol concentration" has the meaning given in s.  
2 340.01 (46m).

3           **SECTION 17.** 350.101 (1) (b) and (c) of the statutes are amended to read:

4           350.101 (1) (b) (title) *Operating with a prohibited alcohol concentrations at or*  
5 *above specified levels concentration.* No person may engage in the operation of a  
6 snowmobile while the person has a blood prohibited alcohol concentration of 0.1% or  
7 more by weight of alcohol in his or her blood. No person may engage in the operation  
8 of a snowmobile while the person has 0.1 grams or more of alcohol in 210 liters of his  
9 or her breath.

10           (c) (title) *Operating with a prohibited alcohol concentrations at specified levels*  
11 *concentration; below age 19.* If a person has not attained the age of 19, the person  
12 may not engage in the operation of a snowmobile while he or she has a blood alcohol  
13 concentration of more than 0.0% but not more than 0.1% by weight of alcohol in his  
14 or her blood or more than 0.0 grams but not more than 0.1 grams of alcohol in 210  
15 liters of his or her breath the prohibited alcohol concentration.

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

17           350.101 (2) (b) (title) *Causing injury with a prohibited alcohol concentrations*  
18 *at or above specified levels concentration.* No person who has a blood prohibited alco-  
19 hol concentration of 0.1% or more by weight of alcohol in his or her blood may cause  
20 injury to another person by the operation of a snowmobile. No person who has 0.1  
21 grams or more of alcohol in 210 liters of his or her breath may cause injury to another  
22 person by the operation of a snowmobile.

23           **SECTION 19.** 350.101 (2) (d) of the statutes is amended to read:

24           350.101 (2) (d) *Defenses.* In an action under this subsection, the defendant has  
25 a defense if he or she proves by a preponderance of the evidence that the injury would

1 have occurred even if he or she had been exercising due care and he or she had not  
2 been under the influence of an intoxicant or did not have a blood prohibited alcohol  
3 concentration of ~~0.1% or more by weight of alcohol in his or her blood or 0.1 grams~~  
4 ~~or more of alcohol in 210 liters of his or her breath.~~

5 **SECTION 20.** 885.235 (1) (a) 1. of the statutes is renumbered 885.235 (1) (a).

6 **SECTION 21.** 885.235 (1) (a) 2. of the statutes is repealed.

7 **SECTION 22.** 885.235 (1) (b) of the statutes is repealed.

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

9 885.235 (1) (c) The fact that the analysis shows that there was ~~0.1%~~ 0.08% or  
10 more by weight of alcohol in the person's blood or ~~0.1~~ 0.08 grams or more of alcohol  
11 in 210 liters of the person's breath is prima facie evidence that he or she was under  
12 the influence of an intoxicant and is prima facie evidence that he or she had an alco-  
13 hol concentration of ~~0.1~~ 0.08 or more.

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

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

16 885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 346.63 (2m) or (7) or  
17 350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the time in  
18 question, as shown by chemical analysis of a sample of the person's blood or urine or  
19 evidence of the amount of alcohol in the person's breath, is admissible on the issue  
20 of whether he or she had a blood prohibited alcohol concentration in the range speci-  
21 fied in s. 23.33 (4c) (a) 3., 346.63 (2m) or 350.101 (1) (e) or a measured alcohol con-  
22 centration under s. 346.63 (7) if the sample was taken within 3 hours after the event  
23 to be proved. The fact that the analysis shows that there was more than 0.0% but  
24 not more than ~~0.1%~~ 0.08% by weight of alcohol in the person's blood or more than 0.0  
25 grams but not more than ~~0.1~~ 0.08 grams of alcohol in 210 liters of the person's breath

1 is prima facie evidence that the person had a ~~blood~~ prohibited alcohol concentration  
2 in the range specified in ~~s. 23.33 (4c) (a) 3., 346.63 (2m) or 350.101 (1) (e)~~ or a mea-  
3 sured alcohol concentration under s. 346.63 (7).

4 **SECTION 26.** 885.235 (4) of the statutes is amended to read:

5 885.235 (4) The provisions of this section relating to the admissibility of chemi-  
6 cal tests for alcohol concentration, intoxication or blood alcohol concentration shall  
7 not be construed as limiting the introduction of any other competent evidence bear-  
8 ing on the question of whether or not a person was under the influence of an intoxi-  
9 cant, had a specified alcohol concentration or had a ~~blood~~ prohibited alcohol con-  
10 centration in the range specified in ~~s. 23.33 (4c) (a) 3., 346.63 (2m) or 350.101 (1) (e)~~.

11 **SECTION 27.** 885.235 (5) (d) of the statutes is created to read:

12 885.235 (5) (d) "Prohibited alcohol concentration" has the meaning given in s.  
13 340.01 (46m).

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

15 940.09 (1) (bm) Causes the death of another by the operation of a commercial  
16 motor vehicle while the person has an alcohol concentration of 0.04 or more but less  
17 than ~~0.1~~ 0.08.

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

19 940.09 (1g) (b) Causes the death of another by the operation or handling of a  
20 firearm or airgun while the person has a ~~blood~~ prohibited alcohol concentration of  
21 ~~0.1% or more by weight of alcohol in that person's blood or 0.10 grams or more of alco-~~  
22 ~~hol in 210 liters of that person's breath,~~ as defined in s. 340.01 (46m).

23 **SECTION 30.** 940.09 (2) of the statutes is amended to read:

24 940.09 (2) The defendant has a defense if he or she proves by a preponderance  
25 of the evidence that the death would have occurred even if he or she had been exercis-

1 ing due care and he or she had not been under the influence of an intoxicant or did  
2 not have a prohibited alcohol concentration or a blood alcohol concentration de-  
3 scribed under sub. (1) (b) or (bm) or (1g) (b).

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

5 940.25 (1) (bm) Causes great bodily harm to another human being by the opera-  
6 tion of a commercial motor vehicle while the person has an alcohol concentration of  
7 0.04 or more but less than ~~0.1~~ 0.08.

8 **SECTION 32.** 940.25 (2) of the statutes is amended to read:

9 940.25 (2) The defendant has a defense if he or she proves by a preponderance  
10 of the evidence that the great bodily harm would have occurred even if he or she had  
11 been exercising due care and he or she had not been under the influence of an intoxi-  
12 cant or did not have a prohibited alcohol concentration or a blood alcohol concentra-  
13 tion described under sub. (1) (b) or (bm).

14 **SECTION 33.** 949.08 (2) (em) of the statutes is amended to read:

15 949.08 (2) (em) Is an adult passenger in the offender's commercial motor ve-  
16 hicle and the crime involved is specified in s. 346.63 (6) or 940.25 and the passenger  
17 knew the offender was under the influence of an intoxicant, a controlled substance  
18 or both or had an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08. This  
19 paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30,  
20 940.305, 940.31 or 948.30.

21 **SECTION 34.** 967.055 (1) (b) of the statutes is amended to read:

22 967.055 (1) (b) The legislature intends to encourage the vigorous prosecution  
23 of offenses concerning the operation of motorboats by persons under the influence of  
24 an intoxicant, a controlled substance or both to a degree which renders him or her  
25 incapable of operating a motorboat safely, or under the combined influence of an

1 intoxicant and any other drug to a degree which renders him or her incapable of oper-  
2 ating a motorboat safely or having a blood prohibited alcohol concentration of 0.1%  
3 ~~or more, as defined in s. 340.01 (46m).~~

4 **SECTION 35. Initial applicability.**

5 (1) This act first applies to violations committed on the effective date of this  
6 subsection, but does not preclude the counting of other convictions, suspensions, re-  
7 vocations, disqualifications or refusals as prior convictions, suspensions, revoca-  
8 tions, disqualifications or refusals for purposes of administrative action by the de-  
9 partment of transportation or for sentencing by a court.

10

**(END)**