

2003 ASSEMBLY BILL 88

February 20, 2003 – Introduced by Representatives AINSWORTH, BIES, BERCEAU, GOTTLIEB, J. LEHMAN, OLSEN, OWENS and TOWNSEND, cosponsored by Senator ROESSLER. Referred to Committee on Transportation.

1 **AN ACT** *to repeal* 340.01 (46m) (b), 885.235 (1g) (a) 2., 885.235 (1g) (bd) and
2 885.235 (1g) (cd); *to renumber* 885.235 (1g) (a) 1.; and *to amend* 23.33 (4c) (a)
3 2., 23.33 (4c) (a) 3., 23.33 (4c) (b) 2., 23.33 (4c) (b) 4., 30.681 (1) (b) 1., 30.681 (1)
4 (bn), 30.681 (2) (b) 1., 30.681 (2) (d) 1., 340.01 (46m) (a), 343.31 (1) (ar), 346.63
5 (2m), 346.63 (5) (a), 346.63 (6) (a), 350.101 (1) (b), 350.101 (1) (c), 350.101 (2) (b),
6 350.101 (2) (d), 885.235 (1g) (b), 885.235 (1g) (c), 885.235 (1m), 940.09 (1) (bm),
7 940.09 (1) (e), 940.09 (1g) (b), 940.09 (1g) (d), 940.25 (1) (bm), 940.25 (1) (e),
8 949.08 (2) (em) and 967.055 (1) (b) of the statutes; **relating to:** prohibited
9 alcohol concentration.

Analysis by the Legislative Reference Bureau

Under current law, a person may not operate a motor vehicle if he or she has an alcohol concentration of 0.1 or more. If a person has two convictions relating to operating a motor vehicle with a prohibited alcohol concentration, he or she may not operate a motor vehicle if he or she has an alcohol concentration of 0.08 or more. If a person has three or more convictions relating to operating a motor vehicle with a prohibited alcohol concentration, he or she may not operate a motor vehicle if he or she has an alcohol concentration of 0.02 or more.

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Also under current law, a person may not operate an all-terrain vehicle, a snowmobile, or a boat if he or she has an alcohol concentration of 0.1 or more.

This bill changes the prohibited alcohol concentration from 0.1 to 0.08 for a person with one or no prior convictions relating to operating a motor vehicle with a prohibited alcohol concentration and from 0.1 to 0.08 for a person operating an all-terrain vehicle, a snowmobile, or a boat.

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

2 23.33 **(4c)** (a) 2. ‘Operating with alcohol concentrations at or above specified
3 levels.’ No person may engage in the operation of an all-terrain vehicle while the
4 person has an alcohol concentration of ~~0.1~~ 0.08 or more.

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

6 23.33 **(4c)** (a) 3. ‘Operating with alcohol concentrations at specified levels;
7 below age 19.’ If a person has not attained the age of 19, the person may not engage
8 in the operation of an all-terrain vehicle while he or she has an alcohol concentration
9 of more than 0.0 but not more than ~~0.1~~ 0.08.

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

11 23.33 **(4c)** (b) 2. ‘Causing injury with alcohol concentrations at or above
12 specified levels.’ No person who has an alcohol concentration of ~~0.1~~ 0.08 or more may
13 cause injury to another person by the operation of an all-terrain vehicle.

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

15 23.33 **(4c)** (b) 4. ‘Defenses.’ In an action under this paragraph, the defendant
16 has a defense if he or she proves by a preponderance of the evidence that the injury
17 would have occurred even if he or she had been exercising due care and he or she had

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1 not been under the influence of an intoxicant or did not have an alcohol concentration
2 of ~~0.1~~ 0.08 or more.

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

4 30.681 (1) (b) 1. No person may engage in the operation of a motorboat while
5 the person has an alcohol concentration of ~~0.1~~ 0.08 or more. This subdivision does
6 not apply to commercial motorboats.

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

8 30.681 (1) (bn) *Operating with alcohol concentrations at specified levels; below*
9 *legal drinking age.* A person who has not attained the legal drinking age, as defined
10 in s. 125.02 (8m), may not engage in the operation of a motorboat while he or she has
11 a blood alcohol concentration of more than 0.0 but less than ~~0.1~~ 0.08.

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

13 30.681 (2) (b) 1. No person who has an alcohol concentration of ~~0.1~~ 0.08 or more
14 may cause injury to another person by the operation of a motorboat. This subdivision
15 does not apply to commercial motorboats.

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

17 30.681 (2) (d) 1. In an action under this subsection for a violation of the
18 intoxicated boating law where the defendant was operating a motorboat that is not
19 a commercial motorboat, the defendant has a defense if he or she proves by a
20 preponderance of the evidence that the injury would have occurred even if he or she
21 had been exercising due care and he or she had not been under the influence of an
22 intoxicant or did not have an alcohol concentration of ~~0.1~~ 0.08 or more.

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

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

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

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

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

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

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

18 **SECTION 13.** 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 14.** 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 15.** 350.101 (1) (b) of the statutes is amended to read:

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1 350.101 (1) (b) *Operating with alcohol concentrations at or above specified*
2 *levels.* No person may engage in the operation of a snowmobile while the person has
3 an alcohol concentration of ~~0.1~~ 0.08 or more.

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

5 350.101 (1) (c) *Operating with alcohol concentrations at specified levels; below*
6 *age 19.* If a person has not attained the age of 19, the person may not engage in the
7 operation of a snowmobile while he or she has an alcohol concentration of more than
8 0.0 but not more than ~~0.1~~ 0.08.

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

10 350.101 (2) (b) *Causing injury with alcohol concentrations at or above specified*
11 *levels.* No person who has an alcohol concentration of ~~0.1~~ 0.08 or more may cause
12 injury to another person by the operation of a snowmobile.

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

14 350.101 (2) (d) *Defenses.* In an action under this subsection, the defendant has
15 a defense if he or she proves by a preponderance of the evidence that the injury would
16 have occurred even if he or she had been exercising due care and he or she had not
17 been under the influence of an intoxicant or did not have an alcohol concentration
18 of ~~0.1~~ 0.08 or more.

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

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

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

22 885.235 (1g) (b) Except with respect to the operation of a commercial motor
23 vehicle as provided in par. (d), the fact that the analysis shows that the person had
24 an alcohol concentration of more than 0.04 but less than ~~0.1~~ 0.08 is relevant evidence

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1 on the issue of intoxication or an alcohol concentration of ~~0.1~~ 0.08 or more but is not
2 to be given any prima facie effect.

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

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

5 885.235 **(1g)** (c) The In cases involving persons who have 2 or fewer prior
6 convictions, suspensions, or revocations, as counted under s. 343.307 (1), the fact
7 that the analysis shows that the person had an alcohol concentration of ~~0.1~~ 0.08 or
8 more is prima facie evidence that he or she was under the influence of an intoxicant
9 and is prima facie evidence that he or she had an alcohol concentration of ~~0.1~~ 0.08
10 or more.

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

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

13 885.235 **(1m)** In any action under s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m)
14 or (7), or 350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the
15 time in question, as shown by chemical analysis of a sample of the person's blood or
16 urine or evidence of the amount of alcohol in the person's breath, is admissible on the
17 issue of whether he or she had an alcohol concentration in the range specified in s.
18 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an alcohol
19 concentration above 0.0 under s. 346.63 (7) if the sample was taken within 3 hours
20 after the event to be proved. The fact that the analysis shows that the person had
21 an alcohol concentration of more than 0.0 but not more than ~~0.1~~ 0.08 is prima facie
22 evidence that the person had an alcohol concentration in the range specified in s.
23 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an alcohol
24 concentration above 0.0 under s. 346.63 (7).

25 **SECTION 26.** 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~~ 0.08.

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

5 940.09 (1) (e) Causes the death of an unborn child by the operation of a
6 commercial motor vehicle while the person has an alcohol concentration of 0.04 or
7 more but less than ~~0.1~~ 0.08.

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

9 940.09 (1g) (b) Causes the death of another by the operation or handling of a
10 firearm or airgun while the person has an alcohol concentration of ~~0.1~~ 0.08 or more.

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

12 940.09 (1g) (d) Causes the death of an unborn child by the operation or
13 handling of a firearm or airgun while the person has an alcohol concentration of ~~0.1~~
14 0.08 or more.

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

16 940.25 (1) (bm) Causes great bodily harm to another human being by the
17 operation of a commercial motor vehicle while the person has an alcohol
18 concentration of 0.04 or more but less than ~~0.1~~ 0.08.

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

20 940.25 (1) (e) Causes great bodily harm to an unborn child by the operation of
21 a commercial motor vehicle while the person has an alcohol concentration of 0.04 or
22 more but less than ~~0.1~~ 0.08.

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

24 949.08 (2) (em) Is an adult passenger in the offender's commercial motor
25 vehicle and the crime involved is specified in s. 346.63 (6) or 940.25 and the passenger

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1 knew the offender was under the influence of an intoxicant, a controlled substance,
2 a controlled substance analog or any combination of an intoxicant, controlled
3 substance and controlled substance analog, or had an alcohol concentration of 0.04
4 or more but less than ~~0.1~~ 0.08. This paragraph does not apply if the victim is also a
5 victim of a crime specified in s. 940.30, 940.305, 940.31, or 948.30.

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

7 967.055 (1) (b) The legislature intends to encourage the vigorous prosecution
8 of offenses concerning the operation of motorboats by persons under the influence of
9 an intoxicant, a controlled substance, a controlled substance analog or any
10 combination of an intoxicant, controlled substance and controlled substance analog
11 to a degree which renders him or her incapable of operating a motorboat safely, or
12 under the combined influence of an intoxicant and any other drug to a degree which
13 renders him or her incapable of operating a motorboat safely or having an alcohol
14 concentration of ~~0.1~~ 0.08 or more.

15 **SECTION 34. Initial applicability.**

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

18 **SECTION 35. Effective date.**

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

20 (END)