



## 2005 ASSEMBLY BILL 1124

March 14, 2006 - Introduced by Representatives MURSAU, KRUSICK, FRISKE, AINSWORTH, HAHN, JESKEWITZ, MONTGOMERY, OTT, SHERIDAN, VAN ROY, WOOD and ZIEGELBAUER, cosponsored by Senators ROESSLER and LASSA. Referred to Committee on Criminal Justice and Homeland Security.

1     **AN ACT** *to renumber and amend* 114.09 (1) (b); *to amend* 114.09 (title) and  
2           343.307 (1) (intro.); *to repeal and recreate* 114.09 (2); and *to create* 343.307  
3           (1) (g) of the statutes; **relating to:** operating an aircraft recklessly or under the  
4           influence of an intoxicant and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Under current law, no person may operate an aircraft while under the influence of an intoxicating liquor or a controlled substance, or a combination thereof, nor operate an aircraft in the air or on the ground or water in a careless or reckless manner so as to endanger the life or property of another. A person who does so shall be fined not less than \$10 nor more than \$100 for the first offense and, for a second or subsequent offense, shall be fined not less than \$100 nor more than \$500 or imprisoned for not less than six months or both.

Under this bill, a person who operates an aircraft while under the influence of an intoxicating liquor or a controlled substance, or a combination thereof, is subject to the same penalties as a person who operates a motor vehicle under the influence of an intoxicating liquor or controlled substance or a combination thereof. Additionally, under the bill, a prior violation of operating a vehicle under the influence of an intoxicant is counted against the operator of the aircraft for purposes of sentencing.

For a first violation, a person who operates an aircraft under the influence of an intoxicant is subject to a forfeiture of not less than \$150 nor more than \$300; for a second violation, a fine of not less than \$350 nor more than \$1,100 and

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imprisonment for not less than five days nor more than six months; for a third violation, a fine of not less than \$600 nor more than \$2,000 and imprisonment for not less than 30 days nor more than one year in the county jail; for a fourth violation, a fine of not less than \$600 nor more than \$2,000 and imprisonment for not less than 60 days nor more than one year in the county jail; and, for the fifth and subsequent violations, a felony conviction and a fine of not less than \$600 and imprisonment for not less than six months.

In addition, if there was a minor passenger under 16 years of age in the aircraft at the time of the violation, the violation is a felony and the applicable minimum and maximum forfeitures, fines, or imprisonment are doubled. If a person convicted had an alcohol concentration of 0.17 to 0.199, the applicable minimum and maximum fines are doubled. If a person convicted had an alcohol concentration of 0.20 to 0.249, the applicable minimum and maximum fines are tripled. If a person convicted had an alcohol concentration of 0.25 or above, the applicable minimum and maximum fines are quadrupled.

Under the bill, any person who operates an aircraft in a reckless manner that endangers another person may be required to forfeit not less than \$25 nor more than \$200, except that if, the person has a prior conviction for operating an aircraft in a reckless manner in the previous four years, the person may be fined not less than \$50 nor more than \$500 or imprisoned for not more than one year in the county jail or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 114.09 (title) of the statutes is amended to read:

2           **114.09** (title) **Reckless Intoxicated and reckless flying; penalty.**

3           **SECTION 2.** 114.09 (1) (b) of the statutes is renumbered 114.09 (1) (b) 1. and  
4 amended to read:

5           114.09 (1) (b) 1. No person may operate an aircraft in the air or on the ground  
6 or water while under the influence of intoxicating liquor or controlled substances or  
7 controlled substance analogs under ch. 961 or a combination thereof, under the

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1 influence of any other drug to a degree which renders him or her incapable of safely  
2 operating an aircraft, or under the combined influence of intoxicating liquor and any  
3 other drug to a degree which renders him or her incapable of safely operating an  
4 aircraft, ~~nor.~~

5 2. No person may operate an aircraft in the air or on the ground or water in a  
6 careless or reckless manner so as to endanger the life or property of another. In  
7 determining whether the operation was careless or reckless the court shall consider  
8 the standards for safe operation of aircraft prescribed by federal statutes or  
9 regulations governing aeronautics.

10 3. The court shall make a written report of all convictions, including bail or  
11 appearance money forfeitures, obtained under this section to the department, which  
12 shall send the report to the proper federal agency.

13 **SECTION 3.** 114.09 (2) of the statutes is repealed and recreated to read:

14 114.09 (2) (a) Any person violating sub. (1) (b) 1.:

15 1. Shall forfeit not less than \$150 nor more than \$300, except as provided in  
16 subs. 6. and 7.

17 2. Except as provided in subd. 6., shall be fined not less than \$350 nor more than  
18 \$1,100 and imprisoned for not less than 5 days nor more than 6 months if the number  
19 of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total  
20 number of suspensions, revocations, and other convictions counted under s. 343.307  
21 (1) within a 10-year period, equals 2, except that suspensions, revocations, or  
22 convictions arising out of the same incident or occurrence shall be counted as one.

23 3. Except as provided in subds. 6. and 7., shall be fined not less than \$600 nor  
24 more than \$2,000 and imprisoned for not less than 30 days nor more than one year  
25 in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the

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1 person's lifetime, plus the total number of suspensions, revocations, and other  
2 convictions counted under s. 343.307 (1), equals 3, except that suspensions,  
3 revocations, or convictions arising out of the same incident or occurrence shall be  
4 counted as one.

5 4. Except as provided in subds. 6. and 7., shall be fined not less than \$600 nor  
6 more than \$2,000 and imprisoned for not less than 60 days nor more than one year  
7 in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the  
8 person's lifetime, plus the total number of suspensions, revocations, and other  
9 convictions counted under s. 343.307 (1), equals 4, except that suspensions,  
10 revocations, or convictions arising out of the same incident or occurrence shall be  
11 counted as one.

12 5. Except as provided in subds. 6. and 7., is guilty of a Class H felony and shall  
13 be fined not less than \$600 and imprisoned for not less than 6 months if the number  
14 of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total  
15 number of suspensions, revocations, and other convictions counted under s. 343.307  
16 (1), equals 5 or more, except that suspensions, revocations, or convictions arising out  
17 of the same incident or occurrence shall be counted as one.

18 6. If there was a minor passenger under 16 years of age in the aircraft at the  
19 time of the violation that gave rise to the conviction under sub. (1) (a), the applicable  
20 minimum and maximum forfeitures, fines, or imprisonment under subd. 1., 2., 3., 4.,  
21 or 5. for the conviction are doubled. An offense under sub. (1) (a) that subjects a  
22 person to a penalty under subd. 3., 4., or 5. when there is a minor passenger under  
23 16 years of age in the aircraft is a felony and the place of imprisonment shall be  
24 determined under s. 973.02.

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1           7. a. If a person convicted had an alcohol concentration of 0.17 to 0.199, the  
2 applicable minimum and maximum fines under subd. 3. to 5. are doubled.

3           b. If a person convicted had an alcohol concentration of 0.20 to 0.249, the  
4 applicable minimum and maximum fines under subd. 3. to 5. are tripled.

5           c. If a person convicted had an alcohol concentration of 0.25 or above, the  
6 applicable minimum and maximum fines under subd. 3. to 5. are quadrupled.

7           (b) In par. (a) 1. to 5., the time period shall be measured from the dates of the  
8 refusals or violations that resulted in the revocation or convictions. If a person has  
9 a suspension, revocation, or conviction for any offense under a local ordinance or a  
10 state statute of another state that would be counted under s. 343.307 (1), that  
11 suspension, revocation or conviction shall count as a prior suspension, revocation, or  
12 conviction under par. (a) 1. to 5.

13           (c) Any person violating sub. (1) (b) 2.:

14           1. May be required to forfeit not less than \$25 nor more than \$200, except as  
15 provided in subd. 2.

16           2. May be fined not less than \$50 nor more than \$500 or imprisoned for not more  
17 than one year in the county jail or both if the total of convictions under sub. (1) (b)  
18 2. equals 2 or more in a 4-year period. The 4-year period shall be measured from  
19 the dates of the violations that resulted in the convictions.

20           **SECTION 4.** 343.307 (1) (intro.) of the statutes is amended to read:

21           343.307 (1) (intro.) The court shall count the following to determine the length  
22 of a revocation under s. 343.30 (1q) (b) and to determine the penalty under s. 114.09  
23 (2) and 346.65 (2):

24           **SECTION 5.** 343.307 (1) (g) of the statutes is created to read:

