



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2007 Assembly Bill 89

**Assembly Substitute
Amendment 1**

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Provisions identical to those contained in Assembly Bill 89 are also included in 2007 Wisconsin Act 20, the Biennial Budget Act.

ASSEMBLY BILL 89

Operating an Aircraft While Intoxicated

Under Assembly Bill 89 and current law, as affected by Act 20, a person who operates an aircraft with a prohibited alcohol concentration or while under the influence of an intoxicating liquor or a controlled substance or a combination, is subject to the same penalties as a person who operates a motor vehicle under the influence of an intoxicating liquor or a controlled substance or a combination. Violations of operating an aircraft while intoxicated and of operating a motor vehicle while intoxicated are treated the same for purposes of counting prior convictions for sentencing. Therefore, a person who operates an aircraft while intoxicated and has a prior conviction for operating a motor vehicle while intoxicated is sentenced for his or her second offense.

For purposes of the offense of operating an aircraft while intoxicated, the prohibited alcohol concentration is **0.04 or more** if there is no passenger in the aircraft and **more than 0.00** if there is a passenger in the aircraft. Also, if there was a minor passenger under 16 years of age in the aircraft, the violation is a felony if it is the operator's third, fourth, fifth, or subsequent violation. For any violation where there was a minor passenger under 16 years of age in the aircraft, the fines for any violation are doubled.

Operating an Aircraft Recklessly

Under Assembly Bill 89 and current law, as affected by Act 20, no person may 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. In determining whether the operation was careless or reckless, the court must

consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics.

Any person who operates an aircraft in a reckless manner 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.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 does the following:

- Deletes the provision under which the prohibited alcohol concentration for operating an aircraft is 0.00 or more if there is a passenger in the aircraft. Therefore, under the amendment, the prohibited alcohol concentration for purposes of operating an aircraft is 0.04 or more.
- For the offense of operating an aircraft in a reckless manner, requires a court to consider, if applicable, regulations regarding commercial agricultural operations in determining whether the operation was careless or reckless. Under federal regulations, certain provisions of federal regulation relating to reckless flying do not apply while the operator of the aircraft is engaged in commercial agricultural operations.
- Provides that any person operating an aircraft is deemed to have given consent, pursuant to federal aviation regulations, to have his or her blood, breath, or urine tested for the purpose of determining the presence or quantity in his or her blood, breath, or urine, or alcohol or other drugs when requested to do so by a law enforcement officer.
- Clarifies that prior violations of operating an aircraft while intoxicated are counted for purposes of sentencing upon a conviction of operating an aircraft while intoxicated.
- Provides that, in determining a penalty for operating an aircraft while intoxicated or in a reckless manner, the court may request information about and consider the person's certification record with the Federal Aviation Administration.
- Deletes provision that count a conviction for operating an aircraft while intoxicated as convictions for purposes of the person's Department of Transportation (DOT) driving record.
- Requires notification to the court, instead of DOT, of the person's compliance with any alcohol or drug assessment or treatment ordered by the court.

Legislative History

Assembly Substitute Amendment 1 was introduced by Representatives Mursau and Krusick. The Assembly adopted the substitute amendment on a voice vote and passed Assembly Bill 89, as amended, on a vote of Ayes, 93; Noes, 3.

AS:wu:jal