

1989 Assembly Bill 661

Date of enactment: April 20, 1990

Date of publication*: May 3, 1990

1989 WISCONSIN ACT 275

AN ACT to amend 23.33 (4c) (b) 4, 30.681 (2) (d), 346.63 (2) (b), 350.101 (2) (d), 940.09 (2) and 940.25 (2) of the statutes, relating to: an affirmative defense if a person is charged with causing death or injury while under the influence of an intoxicant, drugs or both.

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

SECTION 1. 23.33 (4c) (b) 4. of the statutes is amended to read:

23.33 (4c) (b) 4. 'Defenses.' In an action under ~~subd. 4~~ this paragraph, the defendant has a defense if ~~it appears he or she proves~~ he or she proves by a preponderance of the evidence that the injury would have occurred even if ~~the defendant was he or she had been exercising due care and he or she had not been~~ he or she had been exercising due care and he or she had not been under the influence of an intoxicant. ~~In an action under subd. 2, the defendant has a defense if it appears by a preponderance of the evidence that the injury would have occurred even if the defendant or 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 subd. 2, 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 or 0.1 grams or more of alcohol in 210 liters of his or her breath.~~

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

30.681 (2) (d) *Defenses.* In an action under ~~par. (a) this subsection~~, the defendant has a defense if ~~it appears he or she proves~~ he or she proves by a preponderance of the evidence that the injury would have occurred even if ~~the defendant was he or she had been exercising due care and he or she had not been~~ he or she had been exercising due care and he or she had not been 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 or 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 or 0.1 grams or more of alcohol in 210 liters of his or her breath.~~

SECTION 3. 346.63 (2) (b) of the statutes is amended to read:

346.63 (2) (b) ~~Under par. (a) In an action under this subsection, the actor~~ defendant has a defense if ~~it appears he or she proves~~ he or she proves by a preponderance of the evidence that the injury would have occurred even if ~~the actor he or she had been exercising due care and he or she had not been~~ he or she had been exercising due care and he or she had not been under the influence of an intoxicant or a controlled substance or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or did not have a blood alcohol concentration described under par. (a) 2.

SECTION 4. 350.101 (2) (d) of the statutes is amended to read:

350.101 (2) (d) *Defenses.* In an action under ~~par. (a) this subsection~~, the defendant has a defense if ~~it appears he or she proves~~ he or she proves by a preponderance of the evidence that the injury would have occurred even if ~~the defendant was he or she had been exercising due care and he or she had not been~~ he or she had been exercising due care and he or she had not been 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 the defendant or did not have a~~

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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 or 0.1 grams or more of alcohol in 210 liters of his or her breath.~~

SECTION 5. 940.09 (2) of the statutes is amended to read:

940.09 (2) The actor ~~defendant~~ has a defense if it appears he or she proves by a preponderance of the evidence that the death would have occurred even if ~~the actor he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have a blood alcohol concentration described under sub. (1) (b).~~

SECTION 6. 940.25 (2) of the statutes is amended to

read:

940.25 (2) The actor ~~defendant~~ has a defense if it appears he or she proves by a preponderance of the evidence that the great bodily harm would have occurred even if ~~the actor he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have a blood alcohol concentration described under sub. (1) (b).~~

SECTION 7. Initial applicability. This act first applies to causes of action that accrue on the effective date of this SECTION.

SECTION 8. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 23.33 (4c) (b) 4. and 350.101 (2) (d) of the statutes takes effect on March 1, 1989, or the day after publication, whichever is later.