

# State of Wisconsin



1995 Senate Bill 573

Date of enactment: **June 10, 1996**  
Date of publication\*: **June 24, 1996**

## 1995 WISCONSIN ACT 436

AN ACT to amend 23.33 (4c) (a) 2., 23.33 (4c) (a) 3., 23.33 (4c) (b) 2., 23.33 (4c) (b) 4., 23.33 (4x), 30.681 (1) (b), 30.681 (2) (b), 30.681 (2) (d), 30.687, 340.01 (46m) (a), 340.01 (46m) (b), 343.10 (5) (a) 2., 343.305 (4m) (b), 343.305 (5) (d), 343.305 (7) (b), 345.24 (1), 346.63 (2) (b), 346.63 (2m), 346.63 (7) (a) 1., 350.101 (1) (b), 350.101 (1) (c), 350.101 (2) (b), 350.101 (2) (d), 350.107, 885.235 (1) (a) 1., 885.235 (1) (a) 2., 885.235 (1) (b), 885.235 (1) (bd), 885.235 (1) (c), 885.235 (1) (cd), 885.235 (1) (d), 885.235 (1m), 885.235 (4), 905.04 (4) (f), 940.09 (1g) (b), 940.09 (2), 940.25 (2) and 967.055 (1) (b); and to create 23.33 (1) (ar), 30.50 (1g), 350.01 (1h) and 939.22 (3) of the statutes; relating to: the definition of alcohol concentration.

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

**SECTION 1.** 23.33 (1) (ar) of the statutes is created to read:

23.33 (1) (ar) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

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

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

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

23.33 (4c) (a) 3. 'Operating with alcohol concentrations at specified levels; below age 19.' If a person has not attained the age of 19, the person may not engage in the operation of an all-terrain vehicle while he or she has

~~a blood an alcohol concentration of more than 0.0% 0.0 but not more than 0.1% by weight of alcohol in his or her blood or more than 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of his or her breath 0.1.~~

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

23.33 (4c) (b) 2. 'Causing injury with alcohol concentrations at or above specified levels.' No person who has a blood an alcohol concentration of 0.1% 0.1 or more by weight of alcohol in his or her blood may cause injury to another person by the operation of an all-terrain vehicle. ~~No person who has 0.1 grams or more of alcohol in 210 liters of his or her breath may cause injury to another person by the operation of an all-terrain vehicle.~~

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

23.33 (4c) (b) 4. 'Defenses.' In an action under this paragraph, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if 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 an alcohol concentration of 0.1% ~~or more by weight of alcohol in his or her~~

\* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

**SECTION 6.** 23.33 (4x) of the statutes is amended to read:

23.33 (4x) OFFICER'S ACTION AFTER ARREST FOR OPERATING AN ALL-TERRAIN VEHICLE WHILE UNDER INFLUENCE OF INTOXICANT. A person arrested for a violation of sub. (4c) (a) 1. or 2., or a local ordinance in conformity therewith or sub. (4c) (b) 1. or 2. may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under sub. (4p) (a) 1. shows that there is 0.05% or less by weight of alcohol in the person's blood or 0.05 grams or less of alcohol in 210 liters of the person's breath the person has an alcohol concentration of 0.05 or less, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

**SECTION 7.** 30.50 (1g) of the statutes is created to read:

30.50 (1g) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

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

30.681 (1) (b) *Operating with alcohol concentrations at or above specified levels.* No person may engage in the operation of a motorboat while the person has a blood an alcohol concentration of 0.1% 0.1 or more by weight of alcohol in his or her blood. ~~No person may engage in the operation of a motorboat while the person has 0.1 grams or more of alcohol in 210 liters of his or her breath.~~

**SECTION 9.** 30.681 (2) (b) of the statutes is amended to read:

30.681 (2) (b) *Causing injury with alcohol concentrations at or above specified levels.* No person who has a blood an alcohol concentration of 0.1% 0.1 or more by weight of alcohol in his or her blood may cause injury to another person by the operation of a motorboat. ~~No person who has 0.1 grams or more of alcohol in 210 liters of his or her breath may cause injury to another person by the operation of a motorboat.~~

**SECTION 10.** 30.681 (2) (d) of the statutes is amended to read:

30.681 (2) (d) *Defenses.* In an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if 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 an alcohol concentration of 0.1% or more by weight of alcohol in his or her blood or 0.1 grams or more of alcohol in 210 liters of his or her breath.

**SECTION 11.** 30.687 of the statutes is amended to read:

**30.687 Officer's action after arrest for violating intoxicated boating law.** A person arrested for a viola-

tion of the intoxicating boating law, may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under s. 30.684 (1) (a) shows that there is 0.05% or less by weight of alcohol in the person's blood or 0.05 grams or less of alcohol in 210 liters of the person's breath the person has an alcohol concentration of 0.05 or less, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

**SECTION 12.** 340.01 (46m) (a) of the statutes is amended to read:

340.01 (46m) (a) If the person has one or no prior convictions, suspensions or revocations, as counted under s. 343.307 (1), a blood an alcohol concentration of 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.

**SECTION 13.** 340.01 (46m) (b) of the statutes is amended to read:

340.01 (46m) (b) If the person has 2 or more prior convictions, suspensions or revocations, as counted under s. 343.307 (1), a blood an alcohol concentration of 0.08% or more by weight of alcohol in the person's blood or 0.08 grams or more of alcohol in 210 liters of the person's breath.

**SECTION 14.** 343.10 (5) (a) 2. of the statutes is amended to read:

343.10 (5) (a) 2. If the petitioner has 2 or more convictions, suspensions or revocations, as counted under s. 343.307 (1), the order for issuance of an occupational license shall prohibit the petitioner from driving or operating a motor vehicle while he or she has a blood an alcohol concentration of more than 0.0% by weight of alcohol in the person's blood or more than 0.0 grams of alcohol in 210 liters of that person's breath.

**SECTION 15.** 343.305 (4m) (b) of the statutes is amended to read:

343.305 (4m) (b) That, if one or more tests are taken and the results of any test indicate that the person has any measured an alcohol concentration above 0.0 and was driving or operating or on duty time with respect to a commercial motor vehicle, the person will be subject to penalties and issuance of an out-of-service order for the 24 hours following the test.

**SECTION 16.** 343.305 (5) (d) of the statutes is amended to read:

343.305 (5) (d) At the trial of any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have been driving or operating a motor vehicle while under the influence of an intoxicant or a controlled substance or a combination of alcohol and a controlled substance, 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 having a prohibited

alcohol concentration, or alleged to have been driving or operating or on duty time with respect to a commercial motor vehicle while having ~~any measured an~~ alcohol concentration above 0.0 or possessing an intoxicating beverage, regardless of its alcohol content, or within 4 hours of having consumed or having been under the influence of an intoxicating beverage, regardless of its alcohol content, or of having an alcohol concentration of 0.04 or more, the results of a test administered in accordance with this section are admissible on the issue of whether the person was under the influence of an intoxicant or a controlled substance or a combination of alcohol and a controlled substance, 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 any issue relating to the person's alcohol concentration. Test results shall be given the effect required under s. 885.235.

**SECTION 17.** 343.305 (7) (b) of the statutes is amended to read:

343.305 (7) (b) If a person who was driving or operating or on duty time with respect to a commercial motor vehicle submits to chemical testing administered in accordance with this section and any test results indicate ~~any measured an~~ alcohol concentration above 0.0, the law enforcement officer may take possession of the person's license and retain the license for 24 hours. The person may reclaim a seized license in person or request return of the license by mail. The law enforcement officer shall issue a citation for violation of s. 346.63 (7) (a) 1., issue citations for such other violations as may apply and issue an out-of-service order to the person for the 24 hours after the testing, and report both the out-of-service order and the test results to the department in the manner prescribed by the department. If the person is a nonresident, the department shall report issuance of the out-of-service order to the driver licensing agency in the person's home jurisdiction.

**SECTION 18.** 345.24 (1) of the statutes is amended to read:

345.24 (1) A person arrested under s. 346.63 (1) or (5) or an ordinance in conformity therewith or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under s. 343.305 shows that ~~there is 0.04% or less by weight of alcohol in the person's blood or 0.04 grams or less of alcohol in 210 liters of the person's breath~~ the person has an alcohol concentration of less than 0.04, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

**SECTION 19.** 346.63 (2) (b) of the statutes is amended to read:

346.63 (2) (b) In an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if 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 prohibited~~ alcohol concentration described under par. (a) 2.

**SECTION 20.** 346.63 (2m) of the statutes is amended to read:

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

**SECTION 21.** 346.63 (7) (a) 1. of the statutes is amended to read:

346.63 (7) (a) 1. While having ~~any measured an~~ alcohol concentration above 0.0.

**SECTION 22.** 350.01 (1h) of the statutes is created to read:

350.01 (1h) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

**SECTION 23.** 350.101 (1) (b) of the statutes is amended to read:

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

**SECTION 24.** 350.101 (1) (c) of the statutes is amended to read:

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

than 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of his or her breath 0.1.

**SECTION 25.** 350.101 (2) (b) of the statutes is amended to read:

350.101 (2) (b) *Causing injury with alcohol concentrations at or above specified levels.* No person who has a blood ~~an~~ alcohol concentration of ~~0.1%~~ 0.1 or more by weight of alcohol in his or her blood may cause injury to another person by the operation of a snowmobile. ~~No person who has 0.1 grams or more of alcohol in 210 liters of his or her breath may cause injury to another person by the operation of a snowmobile.~~

**SECTION 26.** 350.101 (2) (d) of the statutes is amended to read:

350.101 (2) (d) *Defenses.* In an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if 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 ~~an~~ alcohol concentration of ~~0.1% or more by weight of alcohol in his or her blood or 0.1 grams or more of alcohol in 210 liters of his or her breath.~~

**SECTION 27.** 350.107 of the statutes is amended to read:

**350.107 Officer's action after arrest for operating a snowmobile while under influence of intoxicant.** A person arrested for a violation of s. 350.101 (1) (a) or (b) or a local ordinance in conformity therewith or s. 350.101 (2) (a) or (b) may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under s. 350.104 (1) (a) shows that there is ~~0.05% or less by weight of alcohol in the person's blood or 0.05 grams or less of alcohol in 210 liters of the person's breath~~ the person has an alcohol concentration of 0.05 or less, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

**SECTION 28.** 885.235 (1) (a) 1. of the statutes is amended to read:

885.235 (1) (a) 1. The fact that the analysis shows that there was ~~more than 0.0% but less than 0.08% by weight of alcohol in the person's blood or more than 0.0 grams but less than 0.08 grams of alcohol in 210 liters of the person's breath~~ the person had an alcohol concentration of more than 0.0 but less than 0.08 is relevant evidence on the issue of being under the combined influence of alcohol and a controlled substance or any other drug, but, except as provided in par. (d) or sub. (1m), is not to be given any prima facie effect.

**SECTION 29.** 885.235 (1) (a) 2. of the statutes is amended to read:

885.235 (1) (a) 2. The fact that the analysis shows that there was ~~more than 0.0% but less than 0.1% by weight of alcohol in the person's blood or more than 0.0 grams but less than 0.1 grams of alcohol in 210 liters of~~

~~the person's breath~~ the person had an alcohol concentration of more than 0.0 but less than 0.1 is relevant evidence on the issue of being under the combined influence of alcohol and a controlled substance or any other drug but, except as provided in par. (d) or sub. (1m), is not to be given any prima facie effect.

**SECTION 30.** 885.235 (1) (b) of the statutes is amended to read:

885.235 (1) (b) Except with respect to the operation of a commercial motor vehicle as provided in par. (d), the fact that the analysis shows that there was ~~more than 0.04% but less than 0.1% by weight of alcohol in the person's blood or more than 0.04 grams but less than 0.1 grams of alcohol in 210 liters of the person's breath~~ the person had an alcohol concentration of more than 0.04 but less than 0.1 is relevant evidence on the issue of intoxication or an alcohol concentration of 0.1 or more but is not to be given any prima facie effect.

**SECTION 31.** 885.235 (1) (bd) of the statutes is amended to read:

885.235 (1) (bd) Except with respect to the operation of a commercial motor vehicle as provided in par. (d), the fact that the analysis shows that there was ~~more than 0.04% but less than 0.08% by weight of alcohol in the person's blood or more than 0.04 grams but less than 0.08 grams of alcohol in 210 liters of the person's breath~~ the person had an alcohol concentration of more than 0.04 but less than 0.08 is relevant evidence on the issue of intoxication or an alcohol concentration of 0.08 or more, but is not to be given any prima facie effect.

**SECTION 32.** 885.235 (1) (c) of the statutes is amended to read:

885.235 (1) (c) The fact that the analysis shows that there was ~~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~~ the person had an alcohol concentration of 0.1 or more is prima facie evidence that he or she was under the influence of an intoxicant and is prima facie evidence that he or she had an alcohol concentration of 0.1 or more.

**SECTION 33.** 885.235 (1) (cd) of the statutes is amended to read:

885.235 (1) (cd) In cases involving persons who have 2 or more prior convictions, suspensions or revocations, as counted under s. 343.307 (1), the fact that the analysis shows that there was ~~0.08% or more by weight of alcohol in the person's blood or 0.08 grams or more of alcohol in 210 liters of the person's breath~~ the person had an alcohol concentration of 0.08 or more is prima facie evidence that he or she was under the influence of an intoxicant and is prima facie evidence that he or she had an alcohol concentration of 0.08 or more.

**SECTION 34.** 885.235 (1) (d) of the statutes is amended to read:

885.235 (1) (d) The fact that the analysis shows that there was ~~0.04% or more by weight of alcohol in the per-~~

son's blood or 0.04 grams or more of alcohol in 210 liters of the person's breath the person had an alcohol concentration of 0.04 or more is prima facie evidence that he or she was under the influence of an intoxicant with respect to operation of a commercial motor vehicle and is prima facie evidence that he or she had an alcohol concentration of 0.04 or more.

**SECTION 35.** 885.235 (1m) of the statutes is amended to read:

885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 346.63 (2m) or (7) or 350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the time in question, as shown by chemical analysis of a sample of the person's blood or urine or evidence of the amount of alcohol in the person's breath, is admissible on the issue of whether he or she had a ~~blood an~~ alcohol concentration in the range specified in s. 23.33 (4c) (a) 3., 346.63 (2m) or 350.101 (1) (c) or a measured an alcohol concentration above 0.0 under s. 346.63 (7) if the sample was taken within 3 hours after the event to be proved. The fact that the analysis shows that ~~there was more than 0.0% but not more than 0.1% by weight of alcohol in the person's blood or more than 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of the person's breath the person had an alcohol concentration of more than 0.0 but not more than 0.1~~ is prima facie evidence that the person had a ~~blood an~~ alcohol concentration in the range specified in s. 23.33 (4c) (a) 3., 346.63 (2m) or 350.101 (1) (c) or a measured an alcohol concentration above 0.0 under s. 346.63 (7).

**SECTION 36.** 885.235 (4) of the statutes is amended to read:

885.235 (4) The provisions of this section relating to the admissibility of chemical tests for alcohol concentration, or intoxication or blood alcohol concentration shall not be construed as limiting the introduction of any other competent evidence bearing on the question of whether or not a person was under the influence of an intoxicant, had a specified alcohol concentration or had a ~~blood an~~ alcohol concentration in the range specified in s. 23.33 (4c) (a) 3., 346.63 (2m) or 350.101 (1) (c).

**SECTION 37.** 905.04 (4) (f) of the statutes is amended to read:

905.04 (4) (f) *Tests for intoxication.* There is no privilege concerning the results of or circumstances surrounding any chemical tests for intoxication or ~~blood alcohol concentration, as defined in s. 340.01 (1v).~~

**SECTION 38.** 939.22 (3) of the statutes is created to read:

939.22 (3) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

**SECTION 39.** 940.09 (1g) (b) of the statutes is amended to read:

940.09 (1g) (b) Causes the death of another by the operation or handling of a firearm or airgun while the person has a ~~blood an~~ alcohol concentration of 0.1% 0.1 or more by weight of alcohol in that person's blood or 0.10 grams or more of alcohol in 210 liters of that person's breath.

**SECTION 40.** 940.09 (2) of the statutes is amended to read:

940.09 (2) The defendant has a defense if he or she proves by a preponderance of the evidence that the death would have occurred even if 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 an~~ alcohol concentration described under sub. (1) (b) or (bm) or (1g) (b).

**SECTION 41.** 940.25 (2) of the statutes is amended to read:

940.25 (2) The defendant has a defense if he or she proves by a preponderance of the evidence that the great bodily harm would have occurred even if 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 an~~ alcohol concentration described under sub. (1) (b) or (bm).

**SECTION 42.** 967.055 (1) (b) of the statutes is amended to read:

967.055 (1) (b) The legislature intends to encourage the vigorous prosecution of offenses concerning the operation of motorboats by persons under the influence of an intoxicant, a controlled substance or both to a degree which renders him or her incapable of operating a motorboat safely, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of operating a motorboat safely or having a ~~blood an~~ alcohol concentration of 0.1% 0.1 or more.