



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBs0169/1
PJH:lmk&kjf:jf

ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2007 ASSEMBLY BILL 89

November 6, 2007 – Offered by Representatives MURSAU and KRUSICK.

1 **AN ACT** *to repeal* 343.307 (1) (g); *to amend* 114.09 (1) (a) 2., 114.09 (1) (b) 2.,
2 114.09 (2) (a) 2., 3., 4. and 5., 114.09 (2) (b), 114.09 (2) (bm) 1. (intro.), 114.09 (2)
3 (bm) 1. c., 114.09 (2) (bm) 3. and 4. and 343.307 (1) (intro.); and *to create* 114.09
4 (1) (c) and 114.09 (2) (d) of the statutes; **relating to:** operating an aircraft
5 recklessly or under the influence of an intoxicant.

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

6 **SECTION 1.** 114.09 (1) (a) 2. of the statutes, as created by 2007 Wisconsin Act
7 20, is amended to read:

8 114.09 (1) (a) 2. “Prohibited alcohol concentration” means an alcohol
9 concentration of 0.04 or more ~~if there is no passenger in the aircraft, more than 0.00~~
10 ~~if there is a passenger in the aircraft.~~

11 **SECTION 2.** 114.09 (1) (b) 2. of the statutes, as affected by 2007 Wisconsin Act
12 20, is amended to read:

1 114.09 (1) (b) 2. No person may operate an aircraft in the air or on the ground
2 or water in a careless or reckless manner so as to endanger the life or property of
3 another. In determining whether the operation was careless or reckless the court
4 shall consider the standards for safe operation of aircraft prescribed by federal
5 statutes or regulations governing aeronautics including, if applicable, regulations
6 regarding commercial agricultural operations.

7 **SECTION 3.** 114.09 (1) (c) of the statutes is created to read:

8 114.09 (1) (c) Any person operating an aircraft in the air or on the ground or
9 water is deemed to have given consent, pursuant to 14 CFR 91.17, to have his or her
10 blood, breath, or urine tested for the purpose of determining the presence or quantity
11 in his or her blood, breath, or urine, of alcohol, controlled substances, controlled
12 substance analogs, or other drugs, or any combination thereof, when requested or
13 required to do so by a law enforcement officer.

14 **SECTION 4.** 114.09 (2) (a) 2., 3., 4. and 5. of the statutes, as affected by 2007
15 Wisconsin Act 20, are amended to read:

16 114.09 (2) (a) 2. Except as provided in subd. 6., shall be fined not less than \$350
17 nor more than \$1,100 and imprisoned for not less than 5 days nor more than 6 months
18 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
19 plus the total number of suspensions, revocations, and other convictions counted
20 under s. 114.09 (1) (b) 1. or 1m. or 343.307 (1) within a 10-year period, equals 2,
21 except that suspensions, revocations, or convictions arising out of the same incident
22 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

1 person's lifetime, plus the total number of suspensions, revocations, and other
2 convictions counted under s. 114.09 (1) (b) 1. or 1m. or 343.307 (1), equals 3, except
3 that suspensions, revocations, or convictions arising out of the same incident or
4 occurrence shall be 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. 114.09 (1) (b) 1. or 1m. or 343.307 (1), equals 4, except
10 that suspensions, revocations, or convictions arising out of the same incident or
11 occurrence shall be 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. 114.09
16 (1) (b) 1. or 1m. or 343.307 (1), equals 5 or more, except that suspensions, revocations,
17 or convictions arising out of the same incident or occurrence shall be counted as one.

18 **SECTION 5.** 114.09 (2) (b) of the statutes, as affected by 2007 Wisconsin Act 20,
19 is amended to read:

20 114.09 (2) (b) In par. (a) 1. to 5., the time period shall be measured from the
21 dates of the refusals or violations that resulted in the revocation or convictions. If
22 a person has a suspension, revocation, or conviction for any offense under a local
23 ordinance or a state statute of another state that would be counted under s. 114.09
24 (1) (b) 1. or 1m. or 343.307 (1), that suspension, revocation or conviction shall count
25 as a prior suspension, revocation, or conviction under par. (a) 1. to 5.

1 **SECTION 6.** 114.09 (2) (bm) 1. (intro.) of the statutes, as affected by 2007
2 Wisconsin Act 20, is amended to read:

3 114.09 **(2)** (bm) 1. (intro.) Except as provided in subd. 1. a. or b., the court shall
4 order the person violating sub. (1) (b) 1. or 1m. to submit to and comply with an
5 assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for
6 examination of the person's use of alcohol, controlled substances, or controlled
7 substance analogs and development of an airman safety plan for the person. The
8 court shall notify the person, ~~the department~~, and the proper federal agency of the
9 assessment order. The assessment order shall:

10 **SECTION 7.** 114.09 (2) (bm) 1. c. of the statutes, as affected by 2007 Wisconsin
11 Act 20, is amended to read:

12 114.09 **(2)** (bm) 1. c. Require a person who is referred to a treatment facility in
13 another state under subd. 1. a. or b. to furnish the ~~department~~ court written
14 verification of his or her compliance from the agency that administers the
15 assessment and airman safety plan program. The person shall provide initial
16 verification of compliance within 60 days after the date of his or her conviction. The
17 requirement to furnish verification of compliance may be satisfied by receipt by the
18 ~~department~~ court of such verification from the agency that administers the
19 assessment and airman safety plan program.

20 **SECTION 8.** 114.09 (2) (bm) 3. and 4. of the statutes, as affected by 2007
21 Wisconsin Act 20, are amended to read:

22 114.09 **(2)** (bm) 3. Prior to developing a plan that specifies treatment, the
23 facility shall make a finding that treatment is necessary and appropriate services are
24 available. The facility shall submit a report of the assessment and the airman safety
25 plan within 14 days to the county department under s. 51.42, the plan provider, the

1 ~~department of transportation~~, the appropriate federal agency, and the person, except
2 that, upon request by the facility and the person, the county department may extend
3 the period for assessment for not more than 20 additional workdays. The county
4 department shall notify the ~~department of transportation~~ court regarding any such
5 extension.

6 4. The assessment report shall order compliance with an airman safety plan.
7 The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The
8 safety plan may include a component that makes the person aware of the effect of his
9 or her offense on a victim and a victim's family. The safety plan may include
10 treatment for the person's misuse, abuse, or dependence on alcohol, controlled
11 substances, or controlled substance analogs. If the plan requires inpatient
12 treatment, the treatment shall not exceed 30 days. An airman safety plan under this
13 paragraph shall include a termination date consistent with the plan that shall not
14 extend beyond one year. The county department under s. 51.42 shall assure
15 notification of the ~~department of transportation~~ court and the person of the person's
16 compliance or noncompliance with assessment and treatment.

17 **SECTION 9.** 114.09 (2) (d) of the statutes is created to read:

18 114.09 (2) (d) In determining a penalty under this subsection, the court may
19 request information about and consider the person's certification record with the
20 federal aviation administration.

21 **SECTION 10.** 343.307 (1) (intro.) of the statutes, as affected by 2007 Wisconsin
22 Act 20, is amended to read:

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

1 **SECTION 11.** 343.307 (1) (g) of the statutes, as created by 2007 Wisconsin Act
2 20, is repealed.

3 (END)