



**SENATE SUBSTITUTE AMENDMENT 1,
TO 1995 SENATE BILL 404**

January 11, 1996 – Offered by Senator ADELMAN.

1 **AN ACT to repeal** 340.01 (46m) (a), 885.235 (1) (a) 2., 885.235 (1) (b) and 885.235
2 (1) (cd); **to renumber** 885.235 (1) (a) 1.; **to consolidate, renumber and**
3 **amend** 340.01 (46m) (intro.) and (b); **to amend** 23.33 (4c) (a) 2. and 3., 23.33
4 (4c) (b) 2., 23.33 (4c) (b) 4., 30.681 (1) (b), 30.681 (2) (b), 30.681 (2) (d), 343.31
5 (1) (ar), 346.63 (2m), 346.63 (5) (a), 346.63 (6) (a), 350.101 (1) (b) and (c), 350.101
6 (2) (b), 350.101 (2) (d), 885.235 (1) (c), 885.235 (1m), 885.235 (4), 940.09 (1)
7 (intro.), 940.09 (1) (bm), 940.09 (1g) (b), 940.25 (1) (bm), 949.08 (2) (em) and
8 967.055 (1) (b); and **to create** 23.33 (1) (jc), 30.50 (9f), 350.01 (10b) and 885.235
9 (5) (d) of the statutes; **relating to:** homicide by intoxicated use of a vehicle, the
10 alcohol concentration of vehicle operators and providing a penalty.

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

11 **SECTION 1.** 23.33 (1) (jc) of the statutes is created to read:
12 23.33 (1) (jc) “Prohibited alcohol concentration” has the meaning given in s.
13 340.01 (46m).

14 **SECTION 2.** 23.33 (4c) (a) 2. and 3. of the statutes are amended to read:

1 23.33 (4c) (a) 2. Operating with alcohol concentrations at or above specified
2 levels. No person may engage in the operation of an all-terrain vehicle while the
3 person has a ~~blood~~ prohibited alcohol concentration of 0.1% or more by weight of
4 alcohol in his or her blood. ~~No person may engage in the operation of an all-terrain~~
5 ~~vehicle while the person has 0.1 grams or more of alcohol in 210 liters of his or her~~
6 ~~breath.~~

7 3. Operating with alcohol concentrations at specified levels; below age 19. If
8 a person has not attained the age of 19, the person may not engage in the operation
9 of an all-terrain vehicle while he or she has a blood alcohol concentration of more
10 than 0.0% but not more than 0.1% by weight of alcohol in his or her blood or more than
11 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of his or her breath the
12 prohibited alcohol concentration.

13 **SECTION 3.** 23.33 (4c) (b) 2. of the statutes is amended to read:

14 23.33 (4c) (b) 2. Causing injury with alcohol concentrations at or above
15 specified levels. No person who has a ~~blood~~ prohibited alcohol concentration of 0.1%
16 ~~or more by weight of alcohol in his or her blood~~ may cause injury to another person
17 by the operation of an all-terrain vehicle. ~~No person who has 0.1 grams or more of~~
18 ~~alcohol in 210 liters of his or her breath may cause injury to another person by the~~
19 ~~operation of an all-terrain vehicle.~~

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

21 23.33 (4c) (b) 4. Defenses. In an action under this paragraph, the defendant
22 has a defense if he or she proves by a preponderance of the evidence that the injury
23 would have occurred even if he or she had been exercising due care and he or she had
24 not been under the influence of an intoxicant or did not have a ~~blood~~ prohibited

1 alcohol concentration of ~~0.1% or more by weight of alcohol in his or her blood or 0.1~~
2 ~~grams or more of alcohol in 210 liters of his or her breath.~~

3 **SECTION 5.** 30.50 (9f) of the statutes is created to read:

4 30.50 (9f) "Prohibited alcohol concentration" has the meaning given in s.
5 340.01 (46m).

6 **SECTION 6.** 30.681 (1) (b) of the statutes is amended to read:

7 30.681 (1) (b) *Operating with alcohol concentrations at or above specified levels.*
8 No person may engage in the operation of a motorboat while the person has a blood
9 prohibited alcohol concentration of ~~0.1% or more by weight of alcohol in his or her~~
10 ~~blood. No person may engage in the operation of a motorboat while the person has~~
11 ~~0.1 grams or more of alcohol in 210 liters of his or her breath.~~

12 **SECTION 7.** 30.681 (2) (b) of the statutes is amended to read:

13 30.681 (2) (b) *Causing injury with alcohol concentrations at or above specified*
14 *levels.* No person who has a blood prohibited alcohol concentration of ~~0.1% or more~~
15 ~~by weight of alcohol in his or her blood~~ may cause injury to another person by the
16 operation of a motorboat. ~~No person who has 0.1 grams or more of alcohol in 210 liters~~
17 ~~of his or her breath may cause injury to another person by the operation of a~~
18 ~~motorboat.~~

19 **SECTION 8.** 30.681 (2) (d) of the statutes is amended to read:

20 30.681 (2) (d) *Defenses.* In an action under this subsection, the defendant has
21 a defense if he or she proves by a preponderance of the evidence that the injury would
22 have occurred even if he or she had been exercising due care and he or she had not
23 been under the influence of an intoxicant or did not have a blood prohibited alcohol
24 concentration of ~~0.1% or more by weight of alcohol in his or her blood or 0.1 grams~~
25 ~~or more of alcohol in 210 liters of his or her breath.~~

1 **SECTION 9.** 340.01 (46m) (intro.) and (b) of the statutes are consolidated,
2 renumbered 340.01 (46m) and amended to read:

3 340.01 (**46m**) “Prohibited alcohol concentration” means ~~one of the following:~~
4 ~~(b) If the person has 2 or more prior convictions, suspensions or revocations, as~~
5 ~~counted under s. 343.307 (1),~~ a blood alcohol concentration of 0.08% or more by
6 weight of alcohol in the person’s blood or 0.08 grams or more of alcohol in 210 liters
7 of the person’s breath.

8 **SECTION 10.** 340.01 (46m) (a) of the statutes is repealed.

9 **SECTION 11.** 343.31 (1) (ar) of the statutes is amended to read:

10 343.31 (**1**) (ar) Injury by the operation of a commercial motor vehicle while the
11 person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08 and which
12 is criminal under s. 346.63 (6).

13 **SECTION 12.** 346.63 (2m) of the statutes is amended to read:

14 346.63 (**2m**) If a person has not attained the age of 19, the person may not drive
15 or operate a motor vehicle while he or she has a blood alcohol concentration of more
16 than 0.0% but not more than ~~0.1% by weight of alcohol in the person’s blood or more~~
17 ~~than 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of that person’s~~
18 ~~breath~~ the prohibited alcohol concentration. One penalty for violation of this
19 subsection is suspension of a person’s operating privilege under s. 343.30 (1p). The
20 person is eligible for an occupational license under s. 343.10 at any time. If a person
21 arrested for a violation of this subsection refuses to take a test under s. 343.305, the
22 refusal is a separate violation and the person is subject to revocation of the person’s
23 operating privilege under s. 343.305 (10) (em).

24 **SECTION 13.** 346.63 (5) (a) of the statutes is amended to read:

1 346.63 (5) (a) No person may drive or operate a commercial motor vehicle while
2 the person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08.

3 **SECTION 14.** 346.63 (6) (a) of the statutes is amended to read:

4 346.63 (6) (a) No person may cause injury to another person by the operation
5 of a commercial motor vehicle while the person has an alcohol concentration of 0.04
6 or more but less than ~~0.1~~ 0.08.

7 **SECTION 15.** 350.01 (10b) of the statutes is created to read:

8 350.01 (10b) "Prohibited alcohol concentration" has the meaning given in s.
9 340.01 (46m).

10 **SECTION 16.** 350.101 (1) (b) and (c) of the statutes are amended to read:

11 350.101 (1) (b) *Operating with alcohol concentrations at or above specified*
12 *levels.* No person may engage in the operation of a snowmobile while the person has
13 a blood prohibited alcohol concentration of ~~0.1% or more by weight of alcohol in his~~
14 ~~or her blood.~~ No person may engage in the operation of a snowmobile while the
15 person has ~~0.1 grams or more of alcohol in 210 liters of his or her breath.~~

16 (c) *Operating with alcohol concentrations at specified levels; below age 19.* If
17 a person has not attained the age of 19, the person may not engage in the operation
18 of a snowmobile while he or she has a blood alcohol concentration of more than 0.0%
19 but not more than ~~0.1% by weight of alcohol in his or her blood or more than 0.0 grams~~
20 ~~but not more than 0.1 grams of alcohol in 210 liters of his or her breath~~ the prohibited
21 alcohol concentration.

22 **SECTION 17.** 350.101 (2) (b) of the statutes is amended to read:

23 350.101 (2) (b) *Causing injury with alcohol concentrations at or above specified*
24 *levels.* No person who has a blood prohibited alcohol concentration of ~~0.1% or more~~
25 ~~by weight of alcohol in his or her blood~~ may cause injury to another person by the

1 operation of a snowmobile. ~~No person who has 0.1 grams or more of alcohol in 210~~
2 ~~liters of his or her breath may cause injury to another person by the operation of a~~
3 ~~snowmobile.~~

4 **SECTION 18.** 350.101 (2) (d) of the statutes is amended to read:

5 350.101 (2) (d) *Defenses.* In an action under this subsection, the defendant has
6 a defense if he or she proves by a preponderance of the evidence that the injury would
7 have occurred even if he or she had been exercising due care and he or she had not
8 been under the influence of an intoxicant or did not have a blood prohibited alcohol
9 concentration of ~~0.1% or more by weight of alcohol in his or her blood or 0.1 grams~~
10 ~~or more of alcohol in 210 liters of his or her breath.~~

11 **SECTION 19.** 885.235 (1) (a) 1. of the statutes is renumbered 885.235 (1) (a).

12 **SECTION 20.** 885.235 (1) (a) 2. of the statutes is repealed.

13 **SECTION 21.** 885.235 (1) (b) of the statutes is repealed.

14 **SECTION 22.** 885.235 (1) (c) of the statutes is amended to read:

15 885.235 (1) (c) The fact that the analysis shows that there was ~~0.1%~~ 0.08% or
16 more by weight of alcohol in the person's blood or ~~0.1~~ 0.08 grams or more of alcohol
17 in 210 liters of the person's breath is prima facie evidence that he or she was under
18 the influence of an intoxicant and is prima facie evidence that he or she had an
19 alcohol concentration of ~~0.1~~ 0.08 or more.

20 **SECTION 23.** 885.235 (1) (cd) of the statutes is repealed.

21 **SECTION 24.** 885.235 (1m) of the statutes is amended to read:

22 885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 346.63 (2m) or (7) or
23 350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the time in
24 question, as shown by chemical analysis of a sample of the person's blood or urine or
25 evidence of the amount of alcohol in the person's breath, is admissible on the issue

1 of whether he or she had a ~~blood~~ prohibited alcohol concentration ~~in the range~~
2 ~~specified in s. 23.33 (4e) (a) 3., 346.63 (2m) or 350.101 (1) (e)~~ or a measured alcohol
3 concentration under s. 346.63 (7) if the sample was taken within 3 hours after the
4 event to be proved. The fact that the analysis shows that there was more than 0.0%
5 but not more than ~~0.1%~~ 0.08% by weight of alcohol in the person's blood or more than
6 0.0 grams but not more than ~~0.1~~ 0.08 grams of alcohol in 210 liters of the person's
7 breath is prima facie evidence that the person had a ~~blood~~ prohibited alcohol
8 concentration ~~in the range specified in s. 23.33 (4e) (a) 3., 346.63 (2m) or 350.101 (1)~~
9 ~~(e)~~ or a measured alcohol concentration under s. 346.63 (7).

10 **SECTION 25.** 885.235 (4) of the statutes is amended to read:

11 885.235 (4) The provisions of this section relating to the admissibility of
12 chemical tests for alcohol concentration, intoxication or blood alcohol concentration
13 shall not be construed as limiting the introduction of any other competent evidence
14 bearing on the question of whether or not a person was under the influence of an
15 intoxicant, had a specified alcohol concentration or had a ~~blood~~ prohibited alcohol
16 concentration ~~in the range specified in s. 23.33 (4e) (a) 3., 346.63 (2m) or 350.101 (1)~~
17 ~~(e)~~.

18 **SECTION 26.** 885.235 (5) (d) of the statutes is created to read:

19 885.235 (5) (d) "Prohibited alcohol concentration" has the meaning given in s.
20 340.01 (46m).

21 **SECTION 27.** 940.09 (1) (intro.) of the statutes is amended to read:

22 940.09 (1) (intro.) Any person who does any of the following is guilty of a Class
23 C B felony:

24 **SECTION 28.** 940.09 (1) (bm) of the statutes is amended to read:

1 940.09 (1) (bm) Causes the death of another by the operation of a commercial
2 motor vehicle while the person has an alcohol concentration of 0.04 or more but less
3 than ~~0.1~~ 0.08.

4 **SECTION 29.** 940.09 (1g) (b) of the statutes is amended to read:

5 940.09 (1g) (b) Causes the death of another by the operation or handling of a
6 firearm or airgun while the person has a ~~blood~~ prohibited alcohol concentration of
7 ~~0.1% or more by weight of alcohol in that person's blood or 0.10 grams or more of~~
8 ~~alcohol in 210 liters of that person's breath, as defined in s. 340.01 (46m).~~

9 **SECTION 30.** 940.25 (1) (bm) of the statutes is amended to read:

10 940.25 (1) (bm) Causes great bodily harm to another human being by the
11 operation of a commercial motor vehicle while the person has an alcohol
12 concentration of 0.04 or more but less than ~~0.1~~ 0.08.

13 **SECTION 31.** 949.08 (2) (em) of the statutes is amended to read:

14 949.08 (2) (em) Is an adult passenger in the offender's commercial motor
15 vehicle and the crime involved is specified in s. 346.63 (6) or 940.25 and the passenger
16 knew the offender was under the influence of an intoxicant, a controlled substance
17 or both or had an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08. This
18 paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30,
19 940.305, 940.31 or 948.30.

20 **SECTION 32.** 967.055 (1) (b) of the statutes is amended to read:

21 967.055 (1) (b) The legislature intends to encourage the vigorous prosecution
22 of offenses concerning the operation of motorboats by persons under the influence of
23 an intoxicant, a controlled substance or both to a degree which renders him or her
24 incapable of operating a motorboat safely, or under the combined influence of an
25 intoxicant and any other drug to a degree which renders him or her incapable of

1 operating a motorboat safely or having a blood prohibited alcohol concentration of
2 ~~0.1% or more, as defined in s. 340.01 (46m).~~

3 **SECTION 33. Initial applicability.**

4 (1) This act first applies to offenses committed on the effective date of this
5 subsection, but does not preclude the counting of other offenses as prior offenses for
6 sentencing a person or suspending or revoking a person's operating privilege.

7 (END)