



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Assembly Bill 873

Assembly Amendment 1

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2017 Assembly Bill 873 (“the bill”) makes the laws regulating the intoxicated operation of a snowmobile, an all-terrain vehicle (ATV), a utility terrain vehicle (UTV), an off-highway motorcycle (OHM), or a motorboat¹ (“recreational vehicles”) more consistent.

BACKGROUND

Under current law, a person may not operate a recreational vehicle while under the influence of alcohol or a controlled substance to a degree that he or she cannot operate the vehicle or boat safely. A person is prohibited from operating an ATV, a UTV, an OHM, a recreational motorboat, or a snowmobile by a person who has an alcohol concentration of 0.08 or more. For motorboats being operated on a commercial basis, the maximum alcohol concentration is 0.04. These laws are respectively referred to as: (1) the intoxicated operation of an ATV or UTV law; (2) the intoxicated operation of an OHM law; (3) the intoxicated boating law; and (4) the intoxicated snowmobiling law.

Also under current law, a person who refuses to submit to a legal request for a breath, blood, or urine sample pursuant to an arrest for operating a recreational vehicle while under the influence is in violation of what is known as the refusal law.

When imposing a penalty for a violation of the intoxicated operation of an ATV or UTV law, the intoxicated operation of an OHM law, the intoxicated boating law, or the intoxicated snowmobiling law, a court may only count a previous conviction of the same law, or the applicable refusal law. For example, if a person is before the court for violating the intoxicated snowmobiling law or the snowmobile refusal law, the court may count only previous

¹ A motor boat includes a personal watercraft (e.g., jetski, water scooter, etc.). [s. 30.50 (9d), Stats.]

convictions of the intoxicated snowmobiling law and the snowmobile refusal law as prior convictions. However, a previous conviction for operating another type of recreational vehicle (ATV or UTV, OHM, or motorboat) while under the influence, or a conviction of the applicable refusal law, may not be counted.

Current law also provides that the sentence for the conviction of certain second, third, or fourth offenses involving the operation of a motor vehicle while under the influence of an intoxicant may be reduced if the violator successfully completes a period of probation that includes alcohol and other drug treatment. A person may complete a treatment program and receive a reduced period of imprisonment only once.

2017 ASSEMBLY BILL 873

Prior Convictions for Intoxicated Operation of a Recreational Vehicle

Under the bill, a court must count previous convictions of any of the intoxicated operation or refusal laws that occurred within the previous five years when imposing a penalty for a violation of any of these laws. When counting the number of convictions within the previous five years, the previous convictions for intoxicated operation of that same type of recreational vehicle or the related refusal law that occurred before the effective date of this bill are counted, but previous convictions for the other three types of recreational vehicles that occurred before the effective date of this bill are not counted.

Penalties

The bill makes the penalties of the intoxicated operation of an ATV or UTV, the intoxicated operation of an OHM, the intoxicated boating, and the intoxicated snowmobiling laws more consistent. These changes include:

- Adopting the higher penalties for various violations where the penalties for violations of the intoxicated operation of an ATV or UTV law, the intoxicated operation of an OHM law, the intoxicated boating law, the intoxicated snowmobiling law, and the refusal law conflict.
- Imposing increased penalties for violating the intoxicated operation of an OHM law, the intoxicated boating law, or the intoxicated snowmobiling law or related refusal law if the OHM, motorboat, or snowmobile is operated with a passenger under 16 years of age. The increased penalty already exists for a violation of the intoxicated operation of an ATV or UTV law and the ATV or UTV refusal law.
- Repealing the provisions that imposed increased penalties for operating an ATV or UTV with an alcohol concentration level that is 0.17 or more. Under current law, these increased penalties are not imposed for violations of the intoxicated boating or the intoxicated snowmobiling laws.

Suspensions and Revocations

The bill requires a court to enter an order to suspend the person's privilege to operate a snowmobile, an ATV, a UTV, an OHM, and a motorboat for a period of not less than 12 months and not more than 16 months if the court imposes a penalty for a violation of the intoxicated operation of an ATV or UTV, the intoxicated operation of an OHM, the intoxicated boating, or the intoxicated snowmobiling law or the related refusal law. The bill allows the court, as part of the order, to authorize the person to operate an ATV, UTV, OHM, or snowmobile exclusively on land under the management and control of the person's immediate family, or to operate a recreational motorboat, if the court finds that such operation is essential for the purpose of engaging in an occupation or trade. The bill also provides a forfeiture and additional six-month period of operating privilege suspension for violating the order of suspension.

If the person is found guilty of a violation of the intoxicated operation of a recreational vehicle or the related refusal law, and has within the previous five years, violated one of these laws, the court is required to revoke the person's privilege to operate a motor vehicle for at least six months, but not more than 12 months. The bill also provides that the person may be eligible for an occupational driver's license at any time during the revocation period. The bill requires the person whose motor vehicle operating privilege was revoked to pay a \$140 reinstatement fee.

Under the bill, if a person has had his or her privilege to operate a motor vehicle suspended or revoked for a violation of a prohibition against operating a motor vehicle while intoxicated, the person may not operate a snowmobile, an ATV, a UTV, an OHM, or a motorboat during the period of that motor vehicle operating privilege suspension or revocation. The bill also provides a forfeiture and an additional six-month period of operating privilege suspension for violating a suspension order.

Sentence Reduction for Alcohol and Other Drug Treatment

As previously mentioned, current law provides that a person's sentence for certain second, third, or fourth offenses involving the operation of a motor vehicle while under the influence of an intoxicant may be reduced if the violator successfully completes a period of probation that includes alcohol and other drug treatment. The bill allows this option to be used for persons convicted of a violation of the intoxicated operation of an ATV or UTV, the intoxicated operation of an OHM, the intoxicated boating, or the intoxicated snowmobiling law or the applicable refusal law.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 amends the provision of the bill related to the penalties for refusing to submit to a legal request for a breath, blood, or urine sample pursuant to an arrest for operating a recreational vehicle while under the influence, or the refusal law. The bill requires confinement in the county jail for second and subsequent violations of the refusal law. Assembly Amendment 1 eliminates the terms of confinement and provides that the penalty for

violating the refusal law is a forfeiture of at least \$400 but not more than \$550, regardless of the number of prior violations of the refusal law.

BILL HISTORY

On February 13, 2018, Representatives Jacque and Horlacher introduced Assembly Amendment 1. On February 14, 2018, the Assembly Committee on Criminal Justice and Public Safety voted to recommend adoption of Assembly Amendment 1, and subsequently voted to pass the bill, as amended, by votes of Ayes, 11; Noes, 0.