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# Wisconsin Briefs

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## PROHIBITED BLOOD ALCOHOL CONCENTRATION REDUCED TO .08

In response to the possibility of reductions in federal highway aid to Wisconsin, the Wisconsin Legislature passed and Governor Jim Doyle signed 2003 Wisconsin Act 30, effective September 30, 2003. The act reduces the minimum prohibited blood alcohol concentration (BAC) while operating a motor vehicle, all-terrain vehicle, snowmobile, or boat from 0.10% to 0.08%.

Although the law lowers the threshold for a conviction for operating while intoxicated (OWI), certain OWI penalties do not apply to first violations if the BAC is between 0.08% and 0.10%.

### THE NEW .08 LAW

Before 2003, no bills to lower prohibited blood alcohol levels for most drivers had been introduced since the 1997 session. Other laws in recent years have, however, reduced the BAC for specific groups of drivers, such as commercial drivers, underage persons, and repeat offenders, and have increased penalties for more serious violations. Although several interest groups and government officials have advocated a reduction in the minimum BAC, promoting it as a possible public safety measure, many observers attribute the change in the law in 2003 to a desire to meet a deadline for a *de facto* federal mandate.

2003 Wisconsin Act 30 lowered the *per se* threshold for an OWI violation from 0.10% to 0.08% BAC for persons with no or one prior OWI conviction, effective September 30, 2003. (It was already 0.08% or lower for repeat offenders with two or more prior convictions.)

By doing so, Wisconsin complied with a federal law that makes having a 0.08% *per se* BAC law a condition for receiving a specified portion of a state's federal highway construction funds. By enacting the law and having it go into effect by that date, the state avoided the loss of an estimated \$154 million in federal highway funding through 2009.

Because the legislature passed the new law, which Governor Doyle approved on July 3, before July 15, 2003, Wisconsin was also eligible for an additional \$2.6 million in incentives under the Transportation Equity Act for the 21st Century (TEA-21).

The law extends most of the preexisting penalties for drunk driving convictions to the new lower BAC limit with some exceptions.

**Surcharges and assessments.** First-time offenders with a BAC of at least 0.08% but less than 0.10% are not subject to the crime lab and drug law enforcement assessment, jail assessment, certain specified court fees, 24% penalty assessment, and a forfeiture of \$355 driver improvement surcharge that are otherwise levied in addition to the actual fines. They are also not required to submit to alcohol assessments, which may cost \$150 or more.

Without the add-ons, the penalties for a first OWI conviction are \$150-\$300, a license revocation of 6-9 months (plus the later costs of reinstatement), and at least 6 demerit points against a driver's record.

**Recordkeeping.** The law also requires the Wisconsin Department of Transportation to purge after 10 years the record of a violation

counted as a first offense if the violation was for a BAC of more than 0.08% but less than 0.10% and the driver has no subsequent convictions during that 10-year period. (The provision does not apply to someone who has a commercial driver's license or was driving a commercial motor vehicle.) Otherwise, conviction records are maintained permanently. (See the relevant provisions enacted in 1993 Wisconsin Act 317 and 1997 Wisconsin Act 237, described above.)

**Other vehicles.** The new 0.08% minimum also applies to comparable all-terrain vehicle, snowmobile, boat, and firearm offenses to which the former 0.10% minimum applied.

### PRIOR LAWS

**Drunk driving has been illegal in Wisconsin since 1911.** The statutory provision on age and speed limits for driving included language that "no intoxicated person shall operate, ride or drive any automobile, motor cycle or other similar motor vehicle along or upon any public highway of this state." The prohibition on drunk driving evolved over the succeeding decades, with an increasing number of additional restrictions and penalties.

**Chapter 534, Laws of 1949,** created statutory language providing for chemical testing for intoxication within two hours of arrest. That law established a three-level standard for determining whether the results indicated intoxication. A result of 0.05% or less by weight of alcohol in the person's blood was *prima facie* evidence that the person was not under the influence of an intoxicant. More than 0.05% and less than 0.15% BAC was admissible as evidence relevant to intoxication, but did not have any *prima facie* effect. A blood alcohol level of 0.15% or more was *prima facie* evidence of intoxication, but was not sufficient for

finding the person guilty of being under the influence of intoxicants without corroborating physical evidence.

**Chapter 383, Laws of 1969,** first created a driver's implied consent to chemical tests for intoxication. Refusal of a required chemical test meant an automatic 60 days' license suspension. If the person was ultimately convicted of drunk driving, the fact of refusal carried an additional penalty of two days in jail on nonworking days and a mandatory one-year revocation.

**Chapter 102, Laws of 1973,** lowered the 1949 standards from 0.15% to 0.10% between the middle and upper tiers described above.

**Chapter 193, Laws of 1977,** created the presumption that a BAC of 0.10% or more was sufficient evidence that a person was under the influence of an intoxicant, without a requirement for corroborating evidence.

**Chapter 20, Laws of 1981,** specifically made driving with a 0.10% BAC illegal. Before this *per se* law was enacted, a 0.10% BAC was considered sufficient evidence to prove prohibited intoxication, but was not technically in itself illegal.

**1985 Wisconsin Act 337,** the law that increased the legal minimum drinking age to 21, also made changes to drunk driving laws. It provided "aggravated drunk driving" penalties for driving with a BAC of 0.20% or more, increased license sanctions and waiting periods for occupational licenses, and required community service for first-time offenders.

**1987 Wisconsin Act 3** repealed or revised some of the drunk driving provisions enacted as part of 1985 Act 337. It repealed the aggravated drunk driving penalties, changed the revocation provision for first-time offenders back to a suspension, and made community service optional rather than mandatory.

**1989 Wisconsin Act 105** created stricter drunk driving provisions for commercial drivers in response to federal legislation, reducing the prohibited BAC to 0.04% for operating commercial motor vehicles and creating other penalties.

**1991 Wisconsin Act 277** made several major changes aimed at repeat offenders, including a 0.08% standard for persons with two or more prior offenses; adding vehicle seizure, immobilization, or ignition interlock provisions; longer incarceration for causing death by OWI; and longer record retention requirements.

**1993 Wisconsin Act 317** increased the period for counting OWI offenses from five years to 10 years for persons with two or more prior offenses.

**1997 Wisconsin Act 237** required that records of OWI violations dating from January 1, 1989, be permanently maintained if a person has two or more suspensions,

revocations, or convictions within a 10-year period. Prior to the 1997 law, OWI convictions records generally were “wiped clean” after a maximum of 10 years with no violations.

**1999 Wisconsin Act 109** increased penalties for third or subsequent OWI convictions involving elevated BAC levels. Minimum and maximum fines double for a .17 to 0.199% BAC, triple for 0.20% to 0.249%, and quadruple for 0.25% or higher.

#### **FOR MORE INFORMATION**

A copy of 2003 Wisconsin Act 30, which was introduced as 2003 Assembly Bill 88, is available through the “text and history of legislative proposals” function at <http://www.legis.state.wi.us/>. A listing of supporters and opponents of the bill at public hearings is available at the committee records section of <http://folio.legis.state.wi.us/> (line 2D). The statutory references found in 2003 Wisconsin Act 30 can be viewed at <http://www.legis.state.wi.us/rsb/stats.html>.

**OWI AND RELATED ALCOHOL PENALTIES (EFFECTIVE SEPTEMBER 30, 2003)\***

**\* CHART UPDATED MID LEGISLATIVE SESSION, THROUGH 2003 WISCONSIN ACT 30**

Conviction	Fine or Forfeiture <sup>9</sup>	Jail	Suspension or Revocation	Occupational License <sup>13</sup>	Assessment	Points <sup>12</sup>
OWI, First <sup>10</sup> [346.63(1)(a),(b)] (Per se AC ≥ .08) [340.01(46m)(a)]	\$150-\$300 <sup>6</sup> [346.65(2)(a)] (plus \$355 OWI surcharge) <sup>5</sup> [346.655]		6-9 month revocation <sup>6</sup> [343.30(1q)(b)2]	Immediately [343.30(1q)(b)2]	YES <sup>5</sup>	6
OWI, Second <sup>1,10</sup> (Per se AC ≥ .08) [340.01(46m)(b)]	\$350-\$1,100 <sup>6</sup> [346.65(2)(b)] (plus \$355 OWI surcharge)	5 days to 6 months <sup>6</sup> [346.65(2)(b)]	12-18 month revocation <sup>6</sup> [343.30(1q)(b)3] Vehicle immobilized or equipped with IID <sup>8</sup>	After 60 days <sup>2,3</sup> After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)3] [343.307(1)]	YES	6
OWI, Third <sup>1,10</sup> (Per se AC ≥ .08) [340.01(46m)(a)]	\$600-\$2,000 <sup>6,11</sup> [346.65(2)(c)] (plus \$355 OWI surcharge)	30 days to 1 year <sup>6</sup> [346.65(2)(c)]	2-3 year revocation <sup>6</sup> [343.30(1q)(b)4] Vehicle immobilized or equipped with IID, or may be seized [346.65(6)(a)1] <sup>8</sup>	After 90 days <sup>2,3,9</sup> After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)4]	YES	6
OWI, Fourth <sup>1,10</sup> (Per se AC > .02) [340.01(46m)(c)]	\$600-\$2,000 <sup>6,11</sup> [346.65(2)(d)] (plus \$355 OWI surcharge)	60 days to 1 year <sup>6</sup> [346.65(2)(d)]	2-3 year revocation <sup>6</sup> [343.30(1q)(b)4] Vehicle immobilized or equipped with IID or may be seized <sup>8</sup>	After 90 days <sup>2,3</sup> After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)4]	YES	6
OWI, Fifth or more <sup>1,10</sup> (Per se AC > .02) [340.01(46m)(c)]	\$600-\$10,000 <sup>11</sup> [346.65(2)(e)] [939.50(3)(h)] (plus \$355 OWI surcharge)	6 months to 6 years <sup>6</sup> imprisonment [346.65(2)(e)] [939.50(3)(h)]	2-3 year revocation <sup>6</sup> [343.30(1q)(b)4] Vehicle immobilized or equipped with IID or may be seized <sup>8</sup>	After 90 days <sup>2,3</sup> After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)4]	YES	6
Causing Injury <sup>10</sup> While OWI [346.63(2)(a)]	\$300-\$2,000 <sup>6, 11</sup> [346.65(3m)] (plus \$355 OWI surcharge)	30 days to 1 year <sup>6</sup> [346.65(3m)]	1-2 year revocation <sup>6,8</sup> [343.31(3)(e)]	After 60 days After 12 months if 2 or more offenses within 5 years [343.31(3m)(b)]	YES	6
Causing Great <sup>4,10</sup> Bodily Harm by OWI [940.25(1)]	Up to \$25,000 <sup>6,7,10,11</sup> [939.50(3)(f)] (plus \$355 OWI surcharge)	Up to 12.5 years <sup>6,7,10</sup> imprisonment [939.50(3)(f)]	2 year revocation <sup>6,7,8</sup> [343.31(3)(f)]	After 120 days After 12 months if 2 or more offenses within 5 years [343.31(3m)(a)]	YES	6
Homicide While OWI <sup>4,10</sup> [940.09(1)]	Up to \$100,000 <sup>6,7,10,11</sup> [939.50(3)(c),(d)] (plus \$355 OWI surcharge)	Up to 25 years or <sup>6,7,10</sup> if one or more prior OWI-related offense, up to 40 years [930.50(3)(c),(d)]	5 year or 10 year revocation <sup>8</sup> [343.31(3)(c)]	After 120 days After 12 months if 2 or more offenses within 5 years [343.31(3m)(a)]	YES	6
Chemical Test Refusal (First) [343.305(9)]			1 year revocation <sup>6</sup> [343.305(10)(b)2]	After 30 days [343.305(10)(b)2]	YES	0
Chemical Test Refusal (Second) <sup>1</sup> [343.305(9)]			2 year revocation <sup>6,8</sup> [343.305(10)(b)3]	After 90 days <sup>3</sup> After 12 months if 2 or more offenses within 5 years [343.305(10)(b)3]	YES	0
Chemical Test Refusal (Third or greater) <sup>1</sup> [343.305(9)]			3 year revocation <sup>6,8</sup> [343.305(10)(b)4]	After 120 days <sup>3</sup> After 12 months if 2 or more offenses within 5 years [343.305(10)(b)4]	YES	0
Administrative Suspension for Prohibited Alcohol Concentration [343.305(7)]			6 month suspension [343.305(7)(a)]	Immediately [343.305(8)(d)]	NO	0
Open Container (Driver or passenger) <sup>14</sup> [346.935]	\$100 [346.95(2m)]					0

<sup>1</sup>Generally, second offenses are counted within a 10-year period. Third and subsequent are counted within an individual's lifetime dating back to 1/1/89. [346.65(2)(b)-(e), 343.305(10)(b)3-4, 1997 Wis. Act 237- s. 9348(2f)] The 10-year and lifetime periods are measured from the date of refusal or violation that resulted in conviction. [346.65(2c)]

<sup>2</sup>Absolute sobriety is mandatory for an occupational license for persons with two or more suspensions, revocations or convictions. [343.10(5)(a)(2)]

<sup>3</sup>Persons with 2 or more suspensions, revocations or convictions counted under 343.307(1), must complete assessment and be in compliance with a driver safety plan to be eligible for an occupational license. [343.10(2)(e), 343.30(1q)(b)3 and 4]

<sup>4</sup>If repeat offender, court may immobilize, equip with an ignition interlock device (IID) or seize vehicle. [940.09(1d), 940.25(1d)]

<sup>5</sup>No OWI surcharge and no assessment of offender's alcohol or controlled substance use for first offense prohibited alcohol content [346.63(1)(b)] if AC ≥ .08 and <.10. An OWI surcharge and an assessment are required for all first prohibited alcohol convictions where AC ≥ .10 and for all first OWI convictions. [346.65(1), 343.30(1q)(c)1]

<sup>6</sup>Fines, forfeitures, jail and revocation/suspension penalties are doubled for a person convicted of OWI when a person under 16 years of age was in the vehicle at the time of the offense. [346.65(2)(f) and (2j)(d), 343.30(1q)(b)4m, 343.305(10)(b)4m, 343.31(3)(f), 940.25(1)(bm)] For third and subsequent OWI offenses, fines are increased according to AC. [346.65(2)]

<sup>7</sup>Fines, forfeitures, jail, and revocations or suspensions are doubled if a pregnant woman is in the vehicle at the time the driver committed the offense. [343.31(3)(c)(f)]

<sup>8</sup>The vehicle owned by the offender and used in the offense may be immobilized or equipped with IID or the offender's operating privileges may be restricted to vehicles equipped with IID. [343.301(1)(a) and (2)(a)] For second or subsequent offenses, if there are 2 or more enumerated offenses committed within any 5 years such operating privilege restrictions are mandatory and all vehicles titled or registered in the offenders' name must be immobilized or equipped with IID. [343.301(1)(a) and (2)(a), 343.305(10m)] For third or subsequent the vehicle may be seized and forfeited. [346.65(6)(a)1]

<sup>9</sup>Additional fees, assessments and surcharges will also apply except for first OWI offense where AC ≥ .08 and < .10. [814.65(1), 814.634(1)(a), 814.635(1)]

<sup>10</sup>If offense is committed while operating a commercial motor vehicle, then penalties will include a 1 year CDL disqualification (3 year disqualification if transporting hazardous materials, or lifetime disqualification for 2nd or subsequent OWI). [343.315(2)(a)(b)(c)]

<sup>11</sup>For third or subsequent OWI offenses, fines are increased according to AC. [346.65(2)(g)]

<sup>12</sup>For the scale of demerit points for all traffic violations, see Trans 101.02, Wisconsin Administrative Code, and 343.32(2); newly licensed and unlicensed drivers may be subject to increased demerit points. [343.32(2)(bc)]

<sup>13</sup>Persons whose operating privileges have been suspended or revoked may apply for an occupational license to drive between home and work or school. [343.10]

<sup>14</sup>Both drivers and passengers can be ticketed for the presence of an unsealed container of an intoxicating beverage in the passenger compartment of a vehicle. [346.935]

SOURCE: DOT-Bureau of Transportation Safety; DOT-Office of General Counsel  
<http://www.dot.wisconsin.gov/safety/docs/owipenaltychart.pdf>