



WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2003 Assembly Bill 88	Assembly Amendment 1
<i>Memo published: June 2, 2003</i>	<i>Contact: Don Salm, Senior Staff Attorney (266-8540)</i>

CURRENT LAW

Under *current law*, a person may not operate a motor vehicle if he or she has an alcohol concentration of 0.1 or more. If a person has two convictions relating to operating a motor vehicle with a prohibited alcohol concentration, he or she may not operate a motor vehicle if he or she has an alcohol concentration of 0.08 or more. If a person has three or more convictions relating to operating a motor vehicle with a prohibited alcohol concentration, he or she may not operate a motor vehicle if he or she has an alcohol concentration of 0.02 or more.

Also under *current law*, a person may not operate an all-terrain vehicle (ATV), a snowmobile, or a boat if he or she has an alcohol concentration of 0.1 or more.

Under current law, certain assessments, fees, and costs are imposed in the case of operating while intoxicated (OWI) violations, including all first offense OWI violations.

THE BILL

2003 Assembly Bill 88 changes the prohibited alcohol concentration from 0.1 to 0.08 for a person with one or no prior convictions relating to operating a motor vehicle with a prohibited alcohol concentration and from 0.1 to 0.08 for a person operating an ATV, a snowmobile, or a boat. The bill does not affect the assessments, fees, and costs applicable to these violations.

ASSEMBLY AMENDMENT 1

Certain Assessments, Fees, and Costs Not Applicable to Certain First Offenses

Assembly Amendment 1 revises the bill to provide that for a *first violation* of operating a motor vehicle, ATV, snowmobile, or boat the following assessments, fees, and costs do not apply *if* the person who committed the violation had a blood alcohol content (BAC) *between 0.08 and 0.099* at the time of the violation:

1. The crime laboratories and drug law enforcement assessment under s. 165.755 (1) (a), Stats. (currently \$5).

2. The jail assessment under s. 302.46 (1) (a), Stats. (currently 1% of the fine or forfeiture imposed or \$10, whichever is greater).
3. The penalty assessment under s. 757.05 (1) (a), Stats., whenever a court imposes a fine or forfeiture for a violation of a municipal or county ordinance (currently 24% of the fine or forfeiture imposed).
4. The fee in forfeiture actions under s. 814.63 (1) (c), Stats. (currently \$25).
5. The fee upon disposition of a forfeiture action in circuit court for violation of a municipal ordinance under s. 814.63 (2), Stats. (currently \$5).
6. The court support services fee under s. 814.634 (1) (a), Stats. (currently \$52).
7. The justice information system fee under s. 814.635 (1), Stats. (currently \$9).
8. The fee in municipal court actions under s. 814.65 (1), Stats. (currently not less than \$15 nor more than \$23, with \$5 sent to the State Treasurer for deposit in the general fund and the balance for the use of the municipality).

Purging the Record of Certain First Offenses

Under current law, the record of OWI and OWI-related violations must, under s. 343.23 (2) (b), Stats., be *maintained permanently*. Under Assembly Amendment 1, the requirement that these records be maintained permanently would not apply to certain first OWI violations. The amendment specifies that the Department of Transportation *must, after 10 years, purge* the record of a first violation of operating a motor vehicle, ATV, snowmobile, or boat with a prohibited alcohol concentration if *all of the following* apply:

1. The person who committed the violation had a BAC between 0.08 and 0.099 at the time of the violation.
2. The person does not have a Commercial Driver License.
3. During that 10-year period, the person has no other suspension, revocation, or conviction that would be counted under s. 343.307, Stats. (i.e., the provision that sets forth the OWI and OWI-related violations that will be counted in determining which offense the OWI violator is guilty of).

LEGISLATIVE HISTORY

On March 24, 2003, the Assembly Committee on Transportation voted to recommend passage of Assembly Bill 88 on a vote of Ayes, 8; Noes, 4. On May 29, 2003, the Assembly passed the bill, as amended by Assembly Amendment 1 (which was adopted on a voice vote), by a vote of Ayes, 72; Noes, 23. The bill was immediately messaged to the Senate and has been referred to the Senate Committee on Transportation and Information Infrastructure.

DLS:rv;ksm



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2003 Assembly Bill 88

**Senate
Amendment __ (LRBa0613/2)**

Memo published: June 23, 2003

Contact: Don Salm, Senior Staff Attorney (266-8540)

CURRENT LAW

Under *current law*, a person may not operate a motor vehicle if he or she has an alcohol concentration of 0.1 or more. If a person has two convictions relating to operating a motor vehicle with a prohibited alcohol concentration, he or she may not operate a motor vehicle if he or she has an alcohol concentration of 0.08 or more. If a person has three or more convictions relating to operating a motor vehicle with a prohibited alcohol concentration, he or she may not operate a motor vehicle if he or she has an alcohol concentration of 0.02 or more.

Also under *current law*, a person may not operate an all-terrain vehicle (ATV), a snowmobile, or a boat if he or she has an alcohol concentration of 0.1 or more.

Under current law, certain assessments, fees, and costs are imposed in the case of operating while intoxicated (OWI) violations, including all first offense OWI violations.

THE ENGROSSED BILL

References to "the bill" in this memo are to Engrossed 2003 Assembly Bill 88 (i.e., the bill as affected by Assembly Amendment 1, which was the only amendment adopted by the Assembly).

Change in Blood Alcohol Concentration From 0.1 to 0.08

The bill changes the prohibited alcohol concentration from 0.1 to 0.08 for a person with one or no prior convictions relating to operating a *motor vehicle* with a prohibited alcohol concentration and from 0.1 to 0.08 for a person operating *an ATV, a snowmobile, or a boat*.

Certain Assessments, Fees, and Costs Not Applicable to Certain First Offenses

The bill provides that for a *first violation* of operating a motor vehicle, ATV, snowmobile, or boat the following assessments, fees, and costs do not apply *if* the person who committed the violation had a blood alcohol content (BAC) *between 0.08 and 0.099* at the time of the violation:

1. The crime laboratories and drug law enforcement assessment under s. 165.755 (1) (a), Stats. (currently \$5).
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Under current law, the record of OWI and OWI-related violations must, under s. 343.23 (2) (b), Stats., be *maintained permanently*. Under the bill, the requirement that these records be maintained permanently would not apply to certain first OWI violations. The bill specifies that the Department of Transportation *must, after 10 years, purge* the record of a first violation of operating a motor vehicle, ATV, snowmobile, or boat with a prohibited alcohol concentration if *all of the following* apply:

1. The person who committed the violation had a BAC between 0.08 and 0.099 at the time of the violation.
2. The person does not have a Commercial Driver License (CDL).
3. During that 10-year period, the person has no other suspension, revocation, or conviction that would be counted under s. 343.307, Stats. (i.e., the provision that sets forth the OWI and OWI-related violations that will be counted in determining which offense the OWI violator is guilty of).

SENATE AMENDMENT I

Clarification of "Between 0.08 and 0.099" Language

Senate Amendment 1 changes provisions in the bill referring to BAC "between 0.08 and 0.099" to read BAC "*of 0.08 or more but not less than 0.1.*" Without this change, these provisions would

apply only to BACs *between* 0.08 and 0.099 (i.e., would not include 0.08 and 0.099, but only the BACs between those numbers).

Assessment and Driver Safety Plan Provisions Not Applicable to Certain First Offenses

Under current law, a person who commits any OWI violation, including all first offense OWI violations, is required to submit to and comply with an assessment for examination of his or her use of alcohol or controlled substances and development of a driver safety plan for the person.

The **amendment** specifies that this assessment and driver safety plan requirement does not apply *if* the person who committed the violation had a BAC of 0.08 or more but less than 0.1 at the time of the violation.

Driver Improvement Surcharge Not Applicable to Certain First Offenses

Current law specifies that if a court imposes a fine or forfeiture for an OWI violation, it must impose a driver improvement surcharge in the amount of **\$355**. Moneys collected from the surcharge are used, as prescribed in the statutes, for various purposes, including, among other things, for services to drivers provided by the State Laboratory of Hygiene, the Department of Health and Family Services, the Department of Public Instruction, and county boards under s. 51.42, Stats.

The **amendment** specifies that the driver improvement surcharge is not applicable to a first-time OWI violator if the person who committed the violation had a BAC of 0.08 or more but less than 0.1 at the time of the violation.

Clarification of Provision Relating to Purging of Records of Certain Violators and Commercial Motor Vehicle Operators

With reference to the provision in the bill on purging the record of certain first OWI offenses, the bill appears to require the Department of Transportation (DOT) to purge the record of such an offense committed by a person who does *not* hold a CDL but who is operating a commercial motor vehicle (CMV) at the time of the offense. This would appear to violate the federal CDL record retention rules that mandate lifetime (55 years) retention of the records of such offenses for all persons operating a CMV at the time of the offense, whether or not they hold a CDL. The **amendment** clarifies this provision, to accord with the federal requirements, by adding language that one of the requirements for purging the record under the bill is that *the violation was not committed by a person operating a CMV*.

LEGISLATIVE HISTORY

On March 24, 2003, the Assembly Committee on Transportation voted to recommend passage of Assembly Bill 88 on a vote of Ayes, 8; Noes, 4. On May 29, 2003, the Assembly passed the bill, as amended by Assembly Amendment 1 (which was adopted on a voice vote), by a vote of Ayes, 72; Noes, 23. The bill was immediately messaged to the Senate.

DLS:rv:ksm;ksm;tlu



WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2003 Assembly Bill 88	Senate Amendment 1
<i>Memo published: June 30, 2003</i>	<i>Contact: Don Salm, Senior Staff Attorney (266-8540)</i>

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LEGISLATIVE HISTORY

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DLS:ksm:rv;ksm:tlu

Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: June 23, 2003
Bill Number: Assembly Bill 88 (Engrossed)
Moved by: Senate Committee on Transportation and Information Infrastructure
Motion: *Passage of Assembly Bill 88 (Engrossed) as amended.*

Committee Member
Senator Joseph Leibham

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Signature: _____

Joe Leibham

Vote Record

Committee on Transportation and Information
Infrastructure

Date: June 23, 2003
Bill Number: Assembly Bill 88 (Engrossed)
Moved by: Senate Committee on Transportation and Information Infrastructure
Motion: *Passage of Assembly Bill 88 (Engrossed) as amended.*

Committee Member
Senator Mark Meyer

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Signature: _____

Mark Meyer

Vote Record

Committee on Transportation and Information
Infrastructure

Date: June 23, 2003
Bill Number: Assembly Bill 88 (Engrossed)
Moved by: Senate Committee on Transportation and Information Infrastructure
Motion: *Passage of Assembly Bill 88 (Engrossed) as amended.*

Committee Member
Senator Ted Kanavas

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature:



Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: June 23, 2003
Bill Number: Assembly Bill 88 (Engrossed)
Moved by: Senate Committee on Transportation and Information Infrastructure
Motion: *Passage of Assembly Bill 88 (Engrossed) as amended.*

Committee Member
Senator Neal Kedzie

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____

Neal J. Kedzie

Vote Record

Committee on Transportation and Information Infrastructure

Date: June 23, 2003
Bill Number: Senate Amendment 1 (LRBa0613/2)
Moved by: Senate Committee on Transportation and Information Infrastructure
Motion: *Introduction and Adoption of Senate Amendment 1
(LRBa0613/2) to Assembly Bill 88 (Engrossed).*

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
Senator Joseph Leibham	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____



Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: June 23, 2003
Bill Number: Senate Amendment 1 (LRBa0613/2)
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Motion: *Introduction and Adoption of Senate Amendment 1
(LRBa0613/2) to Assembly Bill 88 (Engrossed).*

Committee Member
Senator Mark Meyer

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Signature: _____

Mark Meyer

Vote Record

Committee on Transportation and Information
Infrastructure

Date: June 23, 2003
Bill Number: Senate Amendment 1 (LRBa0613/2)
Moved by: Senate Committee on Transportation and Information Infrastructure
Motion: *Introduction and Adoption of Senate Amendment 1
(LRBa0613/2) to Assembly Bill 88 (Engrossed).*

Committee Member
Senator Ted Kanavas

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature:



Vote Record

**Committee on Transportation and Information
Infrastructure**

Date: June 23, 2003
Bill Number: Senate Amendment 1 (LRBa0613/2)
Moved by: Senate Committee on Transportation and Information Infrastructure
Motion: *Introduction and Adoption of Senate Amendment 1
(LRBa0613/2) to Assembly Bill 88 (Engrossed).*

Committee Member
Senator Neal Kedzie

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature:



WISCONSIN ASSEMBLY
2003-2004 SESSION
SPEAKER GARD

AB 88
BY AINSWORTH
PROHIBITED ALCOHOL CONCENTRATION
PASSAGE

AYES - 72 NAYS - 23 NOT VOTING - 2 PAIRED - 0

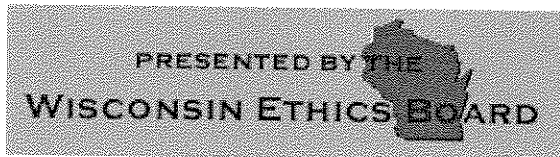
<u>A</u>	<u>N</u>	<u>NV</u>	<u>NAME</u>		<u>A</u>	<u>N</u>	<u>NV</u>	<u>NAME</u>		<u>A</u>	<u>N</u>	<u>NV</u>	<u>NAME</u>	
A			AINSWORTH	(R)	A			KRAWCZYK	(R)	A			SERATTI	(R)
A			ALBERS	(R)	A			KREIBICH	(R)		N		SHERMAN	(D)
A			BALOW	(D)		N		KREUSER	(D)	A			SHILLING	(D)
A			BERCEAU	(D)		N		KRUG	(D)	A			SINICKI	(D)
A			BIES	(R)	A			KRUSICK	(D)	A			STASKUNAS	(D)
A			BLACK	(D)	A			LADWIG	(R)	A			STEINBRINK	(D)
	N		BOYLE	(D)		X		LASEE	(R)	A			STONE	(R)
A			COGGS	(D)	A			LEHMAN, J.	(D)		N		SUDER	(R)
A			COLON	(D)	A			LEHMAN, M.	(R)	A			TAYLOR	(D)
A			CULLEN	(D)	A			LEMAHIEU	(R)		N		TOWNS	(R)
A			FITZGERALD	(R)	A			LOEFFELHOLZ	(R)	A			TOWNSEND	(R)
A			FOTI	(R)	A			LOTHIAN	(R)		N		TRAVIS	(D)
	N		FREESE	(R)	A			MCCORMICK	(R)	A			TURNER	(D)
A			FRISKE	(R)	A			MEYER	(R)	A			UNDERHEIM	(R)
A			GIELOW	(R)	A			MILLER	(D)	A			VAN AKKEREN	(D)
A			GOTTLIEB	(R)	A			MONTGOMERY	(R)	A			VAN ROY	(R)
	N		GRONEMUS	(D)	A			MORRIS	(D)	A			VRAKAS	(R)
A			GROTHMAN	(R)		N		MUSSER	(R)	A			VRUWINK	(D)
A			GUNDERSON	(R)		N		NASS	(R)	A			VUKMIR	(R)
A			GUNDRUM	(R)	A			NISCHKE	(R)	A			WARD	(R)
A			HAHN	(R)	A			OLSEN	(R)	A			WASSERMAN	(D)
A			HEBL	(D)	A			OTT	(R)	A			WEBER	(R)
A			HINES	(R)	A			OWENS	(R)	A			WIECKERT	(R)
	N		HUBER	(D)		N		PETROWSKI	(R)		N		WILLIAMS, A.	(D)
	N		HUBLER	(D)	A			PETTIS	(R)	A			WILLIAMS, M.	(R)
A			HUEBSCH	(R)		N		PLOUFF	(D)		N		WOOD, J.	(R)
A			HUNDERTMARK	(R)		N		POCAN	(D)		X		WOOD, W.	(D)
A			JENSEN	(R)	A			POPE-ROBERTS	(D)		N		YOUNG	(D)
A			JESKEWITZ	(R)	A			POWERS	(R)	A			ZEPNICK	(D)
	N		JOHNSRUD	(R)	A			RHOADES	(R)		N		ZIEGELBAUER	(D)
A			KAUFERT	(R)	A			RICHARDS	(D)	A			SPEAKER	(R)
	N		KERKMAN	(R)		N		SCHNEIDER	(D)					
A			KESTELL	(R)	A			SCHOOFF	(D)					

IN CHAIR: FREESE

VACANT DISTRICT(S): 21, 71

SEQUENCE NO. 122
Thursday, May 29, 2003
2:02 PM

- ▶ Home
- ▶ Lobbying in Wisconsin
- ▶ Organizations employing lobbyists
- ▶ Lobbyists



as of Tuesday, June 24, 2003

2003-2004 legislative session

Legislative bills and resolutions

(search for another legislative bill or resolution at the bottom of this page)

- Text, Sponsors and Analysis
- Status and Fiscal Estimate
- Lobbying Effort on this item

Assembly Bill 88

prohibited alcohol concentration. (FE)

Organization		These organizations have reported lobbying on this proposal:	Place pointer on icon to display comment click icon to display prior comments		
Profile	Interests		Date Notified	Position	Comm
●	●	3M	6/20/2003	?	
●	●	AAA Wisconsin	3/19/2003	↑	
●	●	American Council of Engineering Companies of Wisconsin	3/7/2003	↑	💬
●	●	Kenosha County	2/21/2003	↑	
●	●	Outagamie County Board of Supervisors	3/6/2003	↑	
●	●	State Farm Insurance Companies	2/21/2003	↑	
●	●	Wisconsin Innkeepers Association	4/11/2003	?	
●	●	Wisconsin Insurance Alliance	6/11/2003	↔	
●	●	Wisconsin Medical Society	3/10/2003	↑	
●	●	Wisconsin Motor Carriers Association	2/28/2003	?	
●	●	Wisconsin Nurses Association	5/30/2003	↑	
●	●	Wisconsin Professional Police Association	3/12/2003	?	
●	●	Wisconsin Restaurant Association	2/21/2003	↓	
●	●	Wisconsin Transportation Builders Association	4/10/2003	?	
●	●	Wisconsin Wholesale Beer Distributors Association Inc	4/28/2003	↓	

Select a legislative proposal and click "go"

House

Assembly
Senate

Proposal Type

Bill
Joint Resolution
Resolution

Proposal Number

Assembly Bill 88... relating to: prohibited alcohol concentration.

BILL SPONSORS	Cosponsored by Senator Roessler . Authored by Representative Ainsworth.
BILL HISTORY	<p>Assembly Bill 88 (AB 88) was introduced on February 20, 2003 and referred to the Assembly Committee on Transportation.</p> <p>A public hearing was held in the Assembly committee on April 10, 2003 and executive action on April 24, 2003. The committee recommended concurrence of AB 88 by a vote of 8-4.</p> <p>On May 29, the full Assembly adopted AA 1 on a voice vote, and passed AB 88 by a vote of 72-23.</p> <p>AB 88 was referred to the Senate committee on Transportation and Information Infrastructure on May 30, 2003. A public hearing was held on June 17, 2003.</p> <p>Senate Amendment 1 was offered by Senator Roessler on June 26, 2003.</p> <p>PLEASE CLICK ON THE FOLLOWING LINK FOR A LEGISLATIVE COUNCIL MEMO ON SA 1 TO AB 88:</p> <p>http://www.legis.state.wi.us/lc/amendment_memo/ab088.pdf</p>
LRB ANALYSIS	<p>Current Law: Under current law, a person may not operate a motor vehicle if he or she has an alcohol concentration of 0.1 or more. If a person has two convictions relating to operating a motor vehicle with a prohibited alcohol concentration, he or she may not operate a motor vehicle if he or she has an alcohol concentration of 0.08 or more. If a person has three or more convictions relating to operating a motor vehicle with a prohibited alcohol concentration, he or she may not operate a motor vehicle if he or she has an alcohol concentration of 0.02 or more.</p> <p>Also under current law, a person may not operate an all-terrain vehicle, a snowmobile, or a boat if he or she has an alcohol concentration of 0.1 or more.</p> <p>Proposed Changes: This bill changes the prohibited alcohol concentration from 0.1 to 0.08 for a person with one or no prior convictions relating to operating a motor vehicle with a prohibited alcohol concentration and from 0.1 to 0.08 for a person operating an all-terrain vehicle, a snowmobile, or a boat.</p> <p>Major Impact: This bill changes the prohibited alcohol concentration from 0.1 to 0.08.</p>
FISCAL EFFECT	<p>According to the fiscal estimate prepared by DOT: (1) there would be no withholding of federal highway funds in 2004 or thereafter; (2) WI would qualify for federal Section 163 incentive funding in FFY 2003, and if no other state enacts a 0.08 law, the state's share would be \$3.2 million; (3) Increases or decreases in the number of OWI convictions per year would mean fewer associated Division of Motor Vehicles transactions; (4) WisDOT's public information materials related to impaired driving could be incorporated into the next planned cycle of revisions; (5) WisDOT would have to replace the reference standard gas used in the breath alcohol testing device, for a one time cost of \$23,520; and (6) changes in the number of OWI convictions per</p>

year would affect a variety of state and local revenues paid by OWI offenders.

SUPPORT

The following people appeared in favor of this bill:

1. State Representative John Ainsworth, Wisconsin State Assembly, Assembly author
2. Executive Assistant Randy Romanski, Wisconsin Department of Transportation
3. Dennis Hughes, Wisconsin Department of Transportation
4. John Sobotek, Wisconsin Department of Transportation
5. Kate Nolan, Mothers Against Drunk Driving (MADD), In favor of AB 88 as originally drafted.
6. Kari Kinnard, Mothers Against Drunk Driving (MADD), In favor of AB 88 as originally drafted.
7. Ernie Stetenfeld, AAA of Wisconsin, In favor of AB 88 as originally drafted.
8. Nina Emerson, Resource Center on Impaired Driving, University of Wisconsin Law School, In favor of AB 88 as originally drafted.
9. Karl Brooks, Wisconsin Department of Natural Resources (DNR)

The following people registered in favor of this bill:

1. Mark Wadium, Outagamie County
2. Carol Goduksen, ACEC WI
3. State Senator Carol Roessler, Wisconsin State Senate
4. Casey Perry, Wisconsin Troopers Association
5. Mark Grapentine, Wisconsin Medical Association

The following organizations registered their support for the bill with the State Ethics Board, but did not testify or register at the public hearing:

1. Kenosha County
2. State Farm Insurance Companies
3. WI Nurses Association

The following organizations registered their intention to lobby on SB 58 but did not take a position on the bill:

1. 3M
2. WI Innkeepers Association
3. WI Motor Carriers Association
4. WI Professional Police Association
5. WI Transportation Builders Association
6. WI Insurance Alliance

The following group testified for information only:

1. Paul Merline, Wisconsin Restaurant Association, 2801 Fish Hatchery Road, Madison, WI 53713

OPPOSITION

No one appeared or registered in opposition to this bill.

The following organization registered their opposition for the bill with the State

	Ethics Board, but did not testify or register at the public hearing: 1. WI Wholesale Beer Distributors Association, Inc.
CONTACT	Dan Lindstedt, Committee Clerk, Senate Committee on Transportation and Information Infrastructure
DATE	June 30, 2003

Organization		These organizations have reported lobbying on this proposal:	Place pointer on icon to display comment click icon to display prior comments		
Profile	Interests		Date Notified	Position	Comm
●	●	3M	6/20/2003	?	
●	●	AAA Wisconsin	3/19/2003	↑	
●	●	American Council of Engineering Companies of Wisconsin	3/7/2003	↑	💬
●	●	Kenosha County	2/21/2003	↑	
●	●	Outagamie County Board of Supervisors	3/6/2003	↑	
●	●	State Farm Insurance Companies	2/21/2003	↑	
●	●	Wisconsin Innkeepers Association	4/11/2003	?	
●	●	Wisconsin Insurance Alliance	6/11/2003	↔	
●	●	Wisconsin Medical Society	3/10/2003	↑	
●	●	Wisconsin Motor Carriers Association	2/28/2003	?	
●	●	Wisconsin Nurses Association	5/30/2003	↑	
●	●	Wisconsin Professional Police Association	3/12/2003	?	
●	●	Wisconsin Restaurant Association	2/21/2003	↓	
●	●	Wisconsin Transportation Builders Association	4/10/2003	?	
●	●	Wisconsin Wholesale Beer Distributors Association Inc	4/28/2003	↓	

GRAND CHUTE

la grande chute

CERTIFICATION OF CLERK

I, JUDITH A. CHRISTJOHN, the duly elected and qualified Town Clerk of the Town of Grand Chute, Wisconsin, do hereby certify that the attached Resolution was adopted by a majority vote of the Town Board of the Town of Grand Chute, Outagamie County, Wisconsin, at a regular meeting held on May 20, 2003 and recorded in the minutes of said meeting.

In testimony whereof, I have hereunto set my hand and the seal of the Town of Grand Chute, Outagamie County, Wisconsin, this 21st. day of May, 2003.


JUDITH A. CHRISTJOHN
Town Clerk

(Town Seal)

TRADITION AND PROGRESS
SINCE 1849

RESOLUTION # R-25-2003

A RESOLUTION OF THE TOWN BOARD
OF THE TOWN OF GRAND CHUTE,
OUTAGAMIE COUNTY, WISCONSIN
SUPPORTING THE LOWERING OF THE MAXIMUM
LEGAL BLOOD ALCOHOL CONTENT TO 0.08%

WHEREAS, the State of Wisconsin stands to lose millions in federal highway aid due to the failure of the State to adopt a maximum legal blood alcohol content of 0.08% for Wisconsin motorists; and

WHEREAS, due to a projected State budget deficit of \$3.2 billion, Governor Doyle is proposing the use of State Transportation Aids to reduce the deficit; and

WHEREAS, the loss of federal highway aids, coupled with the redirection of State Highway Aids to the General Fund, will severely impact the long term viability of the State of Wisconsin's transportation network, which is essential to the economic well-being of our state; and

WHEREAS, the lowering of the maximum legal blood alcohol content to 0.08% not only makes financial sense, but is a proven way to reduce alcohol-related traffic accidents and fatalities.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE TOWN OF GRAND CHUTE:

1. The Town of Grand Chute supports the lowering of the maximum legal blood alcohol content to 0.08%.
2. The Town of Grand Chute urges Wisconsin Governor James Doyle, the Secretary of the Wisconsin Department of Transportation, and the Wisconsin State Legislature to take the necessary steps to lower the maximum legal blood alcohol content to 0.08%.
3. The Town Clerk is hereby directed to transmit a copy of this resolution to Governor James Doyle, Wisconsin Transportation Secretary Frank Busalacchi, State Senator Michael Ellis, State Representatives Terri McCormick and Steve Wieckert, local media, and the Wisconsin Towns Association.

PASSED, APPROVED, AND ADOPTED THIS 20 DAY OF May, 2003.


Town Chairman


Town Clerk



U.S. Department of Transportation
National Highway Traffic Safety Administration

Memorandum

225-2358

Subject: Wisconsin Proposed 0.08 BAC Legislation under Section 163 (AB 88)

Date: MAY 28 2003

From: *Heidi L. Coleman*
Heidi L. Coleman
Assistant Chief Counsel
for General Law

To: Marlene Markison
Acting Associate Administrator
For ICOR

DEBBIE G.

This is in response to your request that the Office of Chief Counsel (OCC) review proposed legislation (Assembly Bill (AB) 88) and proposed modifications to the penalties associated with Wisconsin's operating a motor vehicle while under the influence (OWI) offense. You requested OCC's opinion concerning whether the legislation and/or proposed penalty modifications would enable Wisconsin to demonstrate compliance with the requirements of the Section 163 criteria, 23 U.S.C. Section 163, which were established in the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178.

On April 25, 2002, John H. Evans, the Director of the Wisconsin Department of Transportation's Bureau of Transportation Safety, submitted a letter to NHTSA's Region V Administrator, Don McNamara, making the following inquiry: "Does the penalty for a 1st DWI, or OWI in Wisconsin, offense have to be criminal?" A copy of Wisconsin's current DWI law was enclosed with the letter. Following our review of the submitted materials, this office concluded that Wisconsin's current law would enable the State to meet four of the six requirements of Section 163. However, it would not enable the State to comply fully with the requirements of Section 163 and the agency's implementing regulations, because the legislation would not set a blood alcohol concentration of 0.08 percent as the legal limit; or apply the 0.08 BAC limit to both the State's administrative and criminal codes.

In response to Mr. Evans' inquiry about the classification of Wisconsin's first offense penalty, this office noted that the 0.08 requirements do not specify the penalties to be imposed on offenders who violate 0.08 BAC per se laws. Accordingly, this office indicated that, if the same penalties that are currently imposed for Wisconsin's standard 0.10 BAC DWI offense were to be applied to a new 0.08 BAC offense, the application of these penalties to the new offense would meet the requirements of Section 163 and the agency's implementing regulations.



More recently, on May 20, 2003, this office received a copy of AB 88 for review. In addition, this office received a copy of a letter dated May 14, 2003 from Wisconsin State Assembly Majority Leader Steve Foti to Congressman Tom Petri, Vice Chairman of the U. S. House of Representatives' Committee on Transportation and Infrastructure for review and comment. This letter identified modifications that are being considered to Wisconsin's penalties for the OWI offense and inquires about the effects of such modifications on the State's ability to comply with Section 163.

I. Wisconsin's Current Law

Wisconsin law currently provides that:

No person may drive or operate a motor vehicle while:

(a) Under the influence of an intoxicant . . . 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

(b) The person has a prohibited alcohol concentration.

WIS. STAT. § 346.63(1)(a)-(b).

The term "prohibited alcohol concentration" is defined as one or more of the following:

(a) If the person has one or no prior convictions, suspensions or revocations, as counted under s. 343.307 (1), an alcohol concentration of 0.1 or more.

(b) If the person has 2 prior convictions, suspensions or revocations, as counted under s. 343.307 (1), an alcohol concentration of 0.08 or more.

(c) If the person has 3 or more prior convictions, suspensions or revocations, as counted under s. 343.307 (1), an alcohol concentration of more than 0.02.

WIS. STAT. § 340.01(46m).

In addition, the State's administrative license revocation provision provides that:

If a person submits to chemical testing administered in accordance with this section and any test results indicate a prohibited alcohol concentration, the law enforcement officer shall report the results to the department and take possession of the person's license and forward it to the department. The person's operating privilege is administratively suspended for 6 months.

WIS. STAT. § 343.305(7)(a).

II. AB 88

AB 88 would modify the definition of "prohibited alcohol concentration" as follows:

(a) If the person has 2 or fewer prior convictions, suspensions or revocations, as counted under s. 343.307 (1), an alcohol concentration of 0.08 or more.

WIS. STAT. § 340.01(46m)(a), as amended.

Based on an examination of AB 88, we conclude that the bill would: apply to all persons; set a blood alcohol concentration of 0.08 percent as the legal limit; make operating a motor vehicle by an individual at or above the legal limit a *per se* offense; provide for primary enforcement; apply the 0.08 BAC legal limit to the State's administrative and criminal code; and be equivalent to the standard driving while intoxicated offense in the State. Accordingly, if AB 88 is enacted without change, it would meet all the requirements of Section 163 and its implementing regulations.

III. Foti Letter

Assemblyman Foti proposed the following modifications to Wisconsin's penalties for the OWI offense:

- Forego all surcharges from 0.08-0.09 on the first offense
- Forego all assessments from 0.08-0.09 on the first offense
- Maintain all existing fines at current standards
- Modify the treatment of OWI records for offenders with a BAC of 0.08-0.09 by clearing the OWI conviction if an offender remains conviction-free for ten years

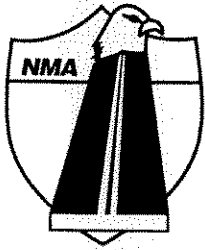
Although these modifications would make the proposed 0.08 offense less restrictive than the current 0.10 offense, we find, based on a review of all the proposed modifications, that the proposed 0.08 offense, if no further changes are made, would meet the requirements of Section 163.

IV. Conclusion

To meet the Section 163 requirements in FY 2003, conforming legislation must be enacted by July 15, 2003, and must take effect by September 30, 2003. Moreover, we note that, on February 6, 2003, this agency published a notice of proposed rulemaking in the Federal Register to define the criteria for the 0.08 BAC sanction program enacted by the DOT Appropriations Act of FY 2001, which requires the withholding of Federal-aid highway funds, beginning in FY 2004, from any State that has not enacted and is not enforcing a conforming Section 163 law. Sec 68 Fed. Reg. 6091.

I hope this information is helpful. If you have additional questions or require further information, please contact me at 6-1834.

#



NATIONAL MOTORISTS ASSOCIATION

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608/849-6000

Fax: 608/849-8697

E-mail: nma@motorists.org

Web site: www.motorists.org

JUN 1 2 2003

June 4, 2003

Senator Joseph Leibham
State Capitol
P.O. Box 7882
Madison, WI 53707

Dear Senator Leibham,

I was very dismayed to learn that the Assembly capitulated to federal funding threats by passing a .08 percent DUI BAC threshold.

The reduced fines and driver record amendments provide a modicum of recognition that this legislation is not about reducing drunk driving, it's simply a guise to appease federal funding dictates. So who pays the price for this misbegotten and counterproductive legislation?

The hospitality industry can speak to its own interests and concerns. Lost in this rush to appease federal threats and the neo-prohibitionist interests is the harm caused to decent responsible citizens who are not threatening anyone's well being. Despite the amendments offering lower fines and the removing of the DUI conviction from the driver record after ten years, the personal costs will be devastating. The insurance industry is not going to care about distinctions Wisconsin makes for .08, .09 DUI convictions. There will be thousands of dollars in insurance surcharges, for those who can still afford insurance. For ten years the person with a .08 conviction on their record will not be able to enter Canada or rent a car—not a minor problem for someone who travels a great deal in their work.

Anyone who works in a transportation related occupation will most likely lose his or her job. Perhaps fair enough for a chronic drunk driver, but is this reasonable or rational punishment for someone who had two or three beers at the ball game and gets pulled over for a burned out license plate bulb? Won't happen? People who have two or three drinks won't blow a .08 BAC? Wrong, it happens every single day.

Between the bogus science behind Breathalyzers and the biological differences between individuals there is no consistency or reliable outcome that can be expected by persons charged with DUI. The use of Breathalyzers for evidentiary purposes should be classed as a miscarriage of justice! What other crime can be substantiated and proved by a device that can err up to 50 percent in it's results?!

I ask that rather than saddle Wisconsin with a bad, arbitrarily punitive law, that you reject the federal financial threats. Instead, appeal to the Wisconsin Congressional Delegation and ask that the practice of using highway fund coercion cease and that the states be allowed to exercise their legitimate discretion in these matters.

Money alone is not reason enough to irreparably harm thousands of decent responsible people. And money, not highway safety, is the only documentable reason for passing a .08 BAC standard.

Sincerely,


James J. Baxter
NMA President



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Wisconsin

JUN 13 2003
The American Council of Engineering Companies of Wisconsin

3 S Pinckney Street, Suite 800 Madison, WI 53703
Tel: 608-257-9223 Fax: 608-257-0009 www.acecwi.org

the business voice of the Wisconsin consulting engineering industry

June 13, 2003

Senator Joseph Leibham
Chairman, Senate Transportation and Information Infrastructure Committee
Wisconsin State Senate
P O Box 7882
Madison, WI 53707

RE: AB 88, Scheduled for Public Hearing June 17

Dear Senator Leibham and Members of the Senate Transportation and Information Infrastructure Committee:

The American Council of Engineering Companies of Wisconsin (ACEC WI) represents 70 member firms with offices across the state employing more than 3,500 engineers, architects, and other design professionals. Our member play a critical role for Wisconsin, from designing the infrastructure essential for economic development, such as designing bridges and airports, to developing ways to clean up and protect the environment.

ACEC WI is in favor of Assembly Bill 88, lowering the legal alcohol limit to .08. We took this position in June of 2002. A copy of our position paper is attached. It reads:

The American Council of Engineering Companies of Wisconsin (ACEC WI) supports legislation that would lower the legal limit for an OWI first offense from the current .10 BAC to .08. Consulting engineers play key roles in enhancing Wisconsin's economic development and the quality of life for its citizens. Our agenda is focused on the continued protection of the health, safety and welfare of the people of Wisconsin. ACEC WI member firms, as highway designers, strive for safe roadway designs and recognize the important safety impact of lower alcohol limits. In addition, as it becomes increasingly difficult to secure funding for transportation and other infrastructure projects, any potential loss in federal highway funding could have a serious impact on the state's already aging roads and bridges.

We urge you to support passage of AB88. Thank you.

Sincerely,

Carol Godiksen
Executive Director

Attached: ACEC WI Position Statement on Lowering Legal Alcohol Limit



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Wisconsin

The American Council of Engineering Companies of Wisconsin

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the business voice of the Wisconsin consulting engineering industry

POSITION STATEMENT

LOWERING LEGAL ALCOHOL LIMIT TO .08

Background

Governor McCallum has directed the Department of Transportation to start building the consensus needed to help make .08 BAC (blood alcohol concentration) the legal limit for an Operating While Intoxicated (OWI) first offense in Wisconsin.

Wisconsin already has one of the most aggressive "impaired driving" programs in the country. The current limit for a third OWI offense is .08. For fourth and subsequent OWI offenses, any level more than .02 is considered to be above the legal limit.

Enactment of a .08 law by October 1, 2003, would meet federal requirements and would protect federal highway funds coming to Wisconsin. Those funds will be withheld from states that don't comply by that date. The total financial impact of not lowering the limit could be as high as \$142 million.

The US DOT's 2001 Appropriation Act (HR 4475) requires states to lower their legal drunk driving limit for a first offense to .08 BAC by September 30, 2003, in order to receive the full share of federal highway funds.

If Wisconsin does not pass a .08 law, the state could face an annually increasing series of withholdings in federal highway funds, starting with a \$9.1 million penalty in 2004. Withholdings will be returned if Wisconsin passes a .08 law within four years of the withholding.

Beginning in 2004, Wisconsin would lose 2% of federal highway funding, with the penalty increasing by 2 percentage points a year until it reaches a cap of 8% in 2007. The 8% cut in funds would continue each year after that.

Position

The American Council of Engineering Companies of Wisconsin (ACEC WI) supports legislation that would lower the legal limit for an OWI first offense from the current .10 BAC to .08.

Consulting engineers play key roles in enhancing Wisconsin's economic development and the quality of life for its citizens. Our agenda is focused on the continued protection of the health, safety and welfare of the people of Wisconsin. ACEC WI member firms, as highway designers, strive for safe roadway designs and recognize the important safety impact of lower alcohol limits. In addition, as it becomes increasingly difficult to secure funding for transportation and other infrastructure projects, any potential loss in federal highway funding could have a serious impact on the state's already aging roads and bridges.


Adopted 6/12/02 by ACEC WI Board of Directors



8401 Excelsior Drive
P.O. Box 33
Madison, WI 53701-0033
608/828-2487
800/236-1300. Ext. 2487

June 17, 2003

TO: Chairman Joseph Leibham and Members
of the Senate Committee on Transportation and Information Infrastructure

FROM:  Ernie Stetenfeld, Vice President, Corporate Relations, AAA Wisconsin

RE: AAA Wisconsin support for A.B. 88, establishing .08 as the illegal *per se* BAC limit for intoxicated operation of a motor vehicle

Good morning, Chairman Leibham and members of the committee. My name is Ernie Stetenfeld, and I am here to express AAA Wisconsin's support for Assembly Bill 88 and for .08 percent as the blood alcohol concentration (BAC) standard defining the illegal *per se* limit for intoxicated operation of a motor vehicle.

AAA Wisconsin's support for a .08 BAC limit stems from AAA's century-long commitment to roadway safety. We do believe that a .08 law in Wisconsin would make our highways and streets measurably safer.

Wisconsin has made progress in reducing drunk-driving fatalities – from a high of nearly 600 per year in 1979 and 1980 to about 300 annually, and sometimes fewer, in some recent years. Recently, our state has stiffened penalties and tightened allowable BAC levels for repeat drunk drivers. Some would say that this means we shouldn't need to pass the .08 law the federal government has been pressing. Far from being mutually exclusive with Wisconsin's legislative efforts to target repeat offenders, however, a .08 BAC law can build on the hoped-for successes of those efforts. Also, it's important to note that although repeat drunk drivers remain a key concern, about 80 percent of all drunk-driving convictions on file in this state are of drivers who have only one OWI conviction – nonetheless one too many. Furthermore, AAA Wisconsin's support for a .08 BAC limit for our state is informed by the following insights:

- Driving at .08 BAC is driving impaired. To achieve a BAC of .08 percent, a 170-pound man typically would have to drink more than four 12-ounce beer equivalents in a single hour on an empty stomach. A 137-pound female generally would have to consume three drinks in the same time frame to get to .08. Experts agree that at .08 percent BAC all drivers are impaired in all critical driving functions.
- In 2000 Congress tied the federal highway purse stings to states' passage of .08. AAA objected to the coercive mechanism of this policy shift. As a matter of principle, AAA prefers that the federal government use incentives rather than sanctions in encouraging state policies that promote traffic safety. As a matter of policy, however, both AAA as a national federation and AAA Wisconsin have long strongly supported .08 BAC as an appropriate and prudent first-offense standard for the illegal *per se* limit.

(– MORE –)

AAA SUPPORT FOR A.B. 88 & .08 BAC – Page Two

- By the time Congress acted, 16 states had already determined .08 BAC to be a prudent illegal *per se* limit. That number has grown to 39 since passage of the *de facto* federal mandate. Wisconsin is now in the minority of states with .10 BAC limits. Clearly, therefore, Wisconsin has little reasonable expectation of obtaining a waiver from the federal sanction under which our state would forgo a percentage of the highway funds Wisconsin motorists have paid in through the federal motor fuel tax.
- Estimates of the probability of the apprehension of any drunken driver, regardless of the level of impairment, range from 1 in 200 to 1 in 1,000. Therefore, we can never expect to have enough police presence to catch all impaired drivers. This means that the message sent by our laws governing driving after drinking is even more important than the enforcement of those laws. If the law itself sends the message that Wisconsin is less tolerant of drunken driving, we will all be able to travel more safely.
- A .08 BAC law would not merely send a message, however. It would definitely have practical enforcement effects as well. When California lowered its prohibited BAC to .08 in the early '90s, the BAC threshold at which cases tended to be prosecuted (rather than allowing a plea to lesser charges) was reduced from .12 to .10 BAC, resulting in more impaired drivers being taken off the roads. The courts reported no change in the proportion of guilty pleas, jury-trial requests, convictions or appeals.
- Based on the experience of other states, the National Highway Traffic Safety Administration estimates that a .08 BAC limit would likely have prevented 24 of the 304 deaths of persons killed in alcohol-related crashes in Wisconsin during 2001.
- The fact that the median BAC level for OWI arrests in Wisconsin is between .16 and .18 – a good deal higher than even the current prohibited BAC of .10 – is sometimes used as an argument against moving our limit any lower. As the California example above indicates, however, lowering the prohibited BAC level can result in prosecution in those currently “marginal” cases (in which alcohol-impaired driving nonetheless occasions a crash or traffic stop) and tends to produce reductions in fatal crashes across the BAC spectrum – including fatal crashes involving drivers with very high BACs.
- Wisconsin having some of the highest rates of alcohol consumption in the nation constitutes an argument for a *lower* BAC limit here – not a higher one. The preference of some of us Wisconsinites to drink more heavily needs to be constrained to those circumstances in which it will not result death and injury. This means we need to be less – not more – tolerant of mixing drinking and driving. This means that we need to join those states that have chosen a *lower* prohibited BAC. A.B. 88 wouldn't prevent us from drinking as much alcohol as we care to. It should make it more difficult to get away with drinking that way and then grabbing the steering wheel.

Any number a state settles on in defining its illegal *per se* BAC is a compromise between existing law and the fact that there is no threshold below which alcohol consumption results in no driving impairment. Evidence of impaired driving does exist below .08 BAC. Obviously, this requires lawmakers to exercise prudent judgment in selecting a prohibited BAC level that generally results in driving that could commonly be recognized as impaired. Does .08 BAC meet this standard of prudent judgment? One useful way to rephrase that question is to ask whether the state should claim the right to require a 170-pound man who has consumed four drinks on an empty stomach in one hour not to get behind the wheel of a motor vehicle. AAA suggests that he – and others equally intoxicated – should not have that privilege. (Note, however, that AAA policy does not support an illegal *per se* BAC limit lower than .08 percent, nor are there any plans on the part of AAA Wisconsin to seek such a lower limit.)

Chairman Leibham and members of the committee, I thank you for considering AAA Wisconsin's position supporting .08 percent as the prudent and appropriate illegal *per se* blood alcohol concentration limit for drivers in our state, and I urge you and all members of the Senate to concur in the Assembly's favorable consideration of A.B. 88.




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June 27, 2003

TO: Members of the Senate

JUN 27 2003

FROM:  Ernie Stetenfeld, Vice President, Corporate Relations, AAA Wisconsin

RE: **AAA Wisconsin support for .08 BAC and A.B. 88**

Given the prospect of extraordinary legislative session, you may yet have a crucial opportunity to take action that will help make our streets and highways measurably safer. Wisconsin lawmakers may bridle, understandably, at the federal sanction that will apply if Wisconsin fails to join the 40 states that to date have made .08 percent the blood alcohol concentration (BAC) standard constituting their illegal *per se* limit for intoxicated operation of a motor vehicle. Please know, however, that – without regard for the fiscal impacts – in voting for .08 BAC and A.B. 88, you will be taking prudent, appropriate and life-saving public-policy action. On behalf of AAA Wisconsin, the statewide motor and travel club with a long history of traffic-safety advocacy, I strongly urge you to take that action and enact .08 BAC legislation.

Wisconsin has made progress in reducing drunk-driving fatalities – from a high of nearly 600 per year in 1979 and 1980 to about 300 annually, and sometimes fewer, in some recent years. Recently, our state has stiffened penalties and tightened allowable BAC levels for repeat drunk drivers. Some would say that this means we shouldn't need to pass the .08 law the federal government has been pressing. Far from being mutually exclusive with Wisconsin's legislative efforts to target repeat offenders, however, a .08 BAC law can build on the hoped-for successes of those efforts. Also, it's important to note that although repeat drunk drivers remain a key concern, about 80 percent of all drunk-driving convictions on file in this state are for drivers who have only one OWI conviction – nonetheless one too many. Furthermore, AAA Wisconsin's support for a .08 BAC limit for our state is informed by the following insights:

- Driving at .08 BAC is driving impaired. To achieve a BAC of .08 percent, a 170-pound man typically would have to drink more than four 12-ounce beer equivalents in a single hour on an empty stomach. A 137-pound female generally would have to consume three such drinks in the same time frame to get to .08. Experts agree that at .08 percent BAC all drivers are impaired in all critical driving functions.
- In 2000 Congress did tie the federal highway purse stings to states' passage of .08. AAA objected to the coercive mechanism of this policy shift. As a matter of principle, AAA prefers that the federal government use incentives rather than sanctions in encouraging state policies that promote traffic safety. As a matter of policy, however, both AAA as a national federation and AAA Wisconsin have long strongly supported .08 BAC as an appropriate and prudent first-offense standard for the illegal *per se* limit.

Lowering the prohibited BAC level to .08 tends to produce reductions in fatal crashes across the BAC spectrum – including fatal crashes involving drivers with very high BACs.

- By the time Congress acted, 16 states had already determined .08 BAC to be a prudent illegal *per se* limit. That number has grown to 40 since passage of the *de facto* federal mandate. Wisconsin is now in the small minority of states with .10 BAC limits. Clearly, therefore, Wisconsin has no reasonable expectation of obtaining a waiver from the federal sanction under which our state would forgo a percentage of the highway funds Wisconsin motorists have paid in through the federal motor fuel tax.
- Estimates of the probability of the apprehension of any drunken driver, regardless of the level of impairment, range from 1 in 200 to 1 in 1,000. Therefore, we can never expect to have enough police presence to catch all impaired drivers. This means that the message sent by our laws governing driving after drinking is even more important than the enforcement of those laws. If the law itself sends the message that Wisconsin is less tolerant of drunken driving, we will all be able to travel more safely.
- A .08 BAC law would not merely send a message, however. It would have practical enforcement effects. When California lowered its prohibited BAC to .08 in the early '90s, the BAC threshold at which cases tended to be prosecuted (rather than settled by a plea to lesser charges) was reduced from .12 to .10 BAC, resulting in more impaired drivers being taken off the roads. The courts reported no change in the proportion of guilty pleas, jury-trial requests, convictions or appeals.
- Based on the experience of other states, the National Highway Traffic Safety Administration estimates that a .08 BAC limit would likely have prevented 24 of the 304 deaths of persons killed in alcohol-related crashes in Wisconsin during 2001.
- The fact that the median BAC level for OWI arrests in Wisconsin is about .17 – a good deal higher than even the current prohibited BAC of .10 – is sometimes used as an argument against moving our limit any lower. As the California example above indicates, however, lowering the prohibited BAC level can result in prosecution in those currently “marginal” cases (in which alcohol-impaired driving nonetheless occasions a crash or traffic stop). Even more importantly, studies show that lowering the prohibited BAC level to .08 tends to produce reductions in fatal crashes across the BAC spectrum – including fatal crashes involving drivers with very high BACs.
- Wisconsin having some of the highest rates of alcohol consumption in the nation constitutes an argument for a *lower* BAC limit here – not a higher one. The preference of some of us Wisconsinites to drink more heavily needs to be constrained to those circumstances in which it will not result death and injury. This means we need to be less – not more – tolerant of mixing drinking and driving. This means that we need to join those states – 40 and counting – that have enacted a *lower* prohibited BAC. A.B. 88 wouldn't prevent us from drinking as much alcohol as we care to. It should make it more difficult to get away with drinking that way and then grabbing a steering wheel.

About 80 percent of all drunk-driving convictions on file in this state are for drivers who have only one OWI conviction – nonetheless one too many.

A .08 BAC limit would likely have prevented 24 of the 304 deaths of persons killed in alcohol-related crashes in Wisconsin during 2001.

Any number a state settles on in defining its illegal *per se* BAC is a compromise between existing law and the fact that there is no threshold below which alcohol consumption results in no driving impairment *. Evidence of impaired driving does exist below .08 BAC, and at .08 BAC evidence of impairment in all critical driving skills is abundant. Obviously, this requires lawmakers to exercise prudent judgment in selecting a prohibited BAC level that generally results in driving that could commonly be recognized as impaired. Does .08 BAC meet this standard of prudent judgment? One useful way to rephrase that question is this: Should the state claim the prerogative to require a 170-pound man who has consumed four drinks or more on an empty stomach in one hour not to get behind the wheel of a motor vehicle? AAA suggests that he – and others intoxicated to that extent – should not be due the driving privilege while so impaired.

Wisconsin is running about 15 percent ahead of the state's 2002 pace for traffic fatalities, and the 805 persons killed on Wisconsin roadways last year broke a 13-year record.

On a year-to-date basis, Wisconsin is running about 15 percent ahead of the state's 2002 pace for traffic fatalities, and the 805 persons killed on Wisconsin roadways last year broke a 13-year record. Mixing alcohol with driving is – along with excessive speed and a relatively low rate of safety-belt use – one of the key reasons why these Wisconsin crash deaths are not accidents; they are preventable. Enacting a .08 BAC limit for Wisconsin, as embodied in A.B. 88, is one crucial step you can take to help change the course of this fatal trend.

I thank you for considering AAA Wisconsin's position supporting .08 percent as the prudent and appropriate illegal *per se* blood alcohol concentration limit for drivers in our state, and I urge all members of the Senate to concur in the Assembly's favorable consideration of A.B. 88.

*(* Note that AAA policy does not support an illegal per se BAC limit lower than .08 percent, nor are there any plans on the part of AAA Wisconsin to seek such a lower limit. Please note, also, that although the club remains supportive of A.B. 88 as the Assembly sent it to the Senate, AAA Wisconsin would prefer that the bill not minimize penalties for drivers testing at between .08 and .099 BAC. This aspect of the amended bill weakens the important message sent by the .08 BAC limit – representing, experts agree, a level of intoxication at which all drivers are impaired in all critical driving skills. The club also shares the concerns expressed by the Department of Transportation about amending Wisconsin OWI law in ways that would merely prohibit the department from retaining records of some OWI first offenses after a certain period but which would not prohibit, for instance, local prosecution that nonetheless counts those same prior offenses based on other legal records.)*

AB 88 HEARING (0.08 BAC)

WRITTEN REMARKS

**WISCONSIN DEPARTMENT OF TRANSPORTATION
SENATE TRANSPORTATION AND INFORMATION INFRASTRUCTURE COMMITTEE
TUESDAY, JUNE 17, 2003 10:00 AM**

OVERVIEW

- The issue of .08 has very clear implications for the State of Wisconsin. Implications both in terms of improving highway safety, and some very sound fiscal implications as well.

SAFETY IMPLICATIONS

- Governor Doyle has made it clear that .08 is a measure that Wisconsin should have enacted years ago. As the Governor said, "it would have saved lives then. It will save lives now."
- Alcohol-related crashes kill about 300 people a year in Wisconsin.
 - .08 could mean a potential savings of 24 lives a year in Wisconsin, according to the U.S. DOT, and save countless more serious injuries.
- Our studies show that by far the majority of OWI offenders are first-time offenders.
- In fact, a majority of drinking drivers involved in fatal crashes or serious injury crashes have NO prior OWI conviction on their record.
 - In 2000, about 76% of drinking drivers involved in fatal crashes had NO prior OWI history.
 - And about 66% of drinking drivers involved in non-fatal serious injury crashes had NO prior OWI history.
- .08 would discourage many of those potential first-time offenders from having too much to drink and then getting behind the wheel.

THE FINANCIAL IMPLICATIONS

- There's another very important reason to enact .08 now.
- Wisconsin stands to lose tens of millions of dollars in vital federal highway funding if we don't.
- There are now 36 states (plus the District of Columbia and Puerto Rico) that have enacted first offense .08 laws. They understood that not doing so would cut into vital transportation funding.

- Wisconsin cannot afford to forsake a single dollar of federal funding this year.
- It would be foolish to absorb an additional reduction in funding now.
- In light of current state budget conditions, this is a slam-dunk, a potential federal funding reduction we can easily head off.
- The hard fact is, if we fail to enact .08 legislation by September 30 of this year, the federal government will begin to withhold millions of dollars of our vital transportation funding.
- Some have pointed out that, technically, we can hold off on a .08 law until 2007 and still get the money back.
- But can we really afford to wait four years for millions and millions of dollars in federal funding that should be ours to put to use right now?
 - With current cuts in the transportation budget, this money is critical now.
 - We simply can't afford to be without it now, even IF we get it back later.
 - We cannot afford to put this off for a year, much less four years.
- We need those funds this year to invest in Wisconsin's infrastructure -- now.
- To do anything else would be fiscally irresponsible.

THE WITHHOLDINGS

- So what are we facing?
- Federal rules have set down a couple of deadlines this year.
- The first is July 15.
 - Enact .08 by July 15, and Wisconsin not only preserves its federal highway funding, but also qualifies to apply for an incentive grant in 2003.
 - We estimate Wisconsin's share of incentive funding to be about \$2.88 million.
- A second deadline is September 30.
 - If the July 15 deadline passes, all we lose is eligibility for the incentive funds.
 - But if we don't enact .08 by September 30, then the federal government begins withholding our allocated highway funds.

- The first federal withholding would amount to nearly \$8 million in 2004. That would just be the beginning.
 - If next year rolled around and we still hadn't enacted .08, an ADDITIONAL \$16.5 million in federal funds will NOT be coming to Wisconsin.
 - Then, an additional \$26 million in 2006 funding, if we still haven't enacted .08.
 - By 2007, the annual withholding would be \$36 million, and so on.
- We estimate Wisconsin would be prevented from using more than \$125 million dollars in federal highway funds between now and 2008, if we fail to enact this legislation before then.
- These withholdings of federal funds would be returned in their entirety ONLY if Wisconsin passes a .08 law within four years. After that, the funding begins to be taken away permanently.
- If, for instance, we wait until 2008 to enact this legislation, we would NOT be able to retrieve our funding allocation for 2004.
 - If we wait until '09, then funding for '04 AND '05 would be gone forever, and so on.

THE RIGHT CHOICE FOR WISCONSIN

- In conclusion, .08 is the right choice for Wisconsin.
- It's right because it's going to save lives.
- It's right because without it, Wisconsin stands to lose millions in federal funding at a time when we can't afford to lose a single dollar.



MADD

Activism | Victim Services | Education

Mothers Against Drunk Driving
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**Testimony of Kari Kinnard
Executive Director
Mothers Against Drunk Driving
In Support of Assembly Bill 88
June 17, 2003**

Thank you Mr. Chairman and members of the committee for holding this important hearing and for the opportunity to submit testimony to you today in support of a .08 BAC per se law. I am Kari Kinnard, Wisconsin's Executive Director for Mothers Against Drunk Driving.

The mission of Mothers Against Drunk Driving is to stop drunk driving, support the victims of this violent crime and prevent underage drinking.

It seems inconceivable to MADD that lowering the BAC per se law to .08 is an issue that was ever in question. When examined logically, this piece of legislation is a win-win situation. To help you make your decision, let's dispel the myths and misconceptions that plague this lifesaving measure.

Lowering the BAC to .08 is aimed at the social drinker. False. It would take a 170 pound man 4 drinks in one hour on an empty stomach to reach .08. This man would then need to continue drinking to maintain or exceed a .08 BAC. Clearly this will not affect a social drinker having a glass of wine with dinner, or someone having a beer and brat at a sporting event.

MADD has a hidden agenda – this is an attempt to move toward prohibition. False. MADD is not now, nor have we ever been, against the consumption of alcohol by responsible adults of legal drinking age. MADD's mission is our agenda – to stop drunk driving.

We don't need .08 – it's the repeat offender and the high BAC offender we need to stop. True and False. While the repeat and high BAC offenders contribute to the deadly problem of drunk driving, they are not the only problem. In fact, the vast majority of drunk drivers killing and injuring our families, neighbors, friends and loved ones have no prior OWI convictions. This trend has been true for a minimum of nine years. In 2000 75.9% of drinking drivers involved in a fatal crash had no previous OWI.

Wisconsin has been devoting the majority of its attention and legislation on the repeat offender. The repeat offender laws enacted in 2000 are not working – this is evidenced by the alcohol-related fatalities and injuries that continue to rise.

.08 is a tool and should be viewed as such. It is an opportunity to educate the general population about the dangers of drinking and driving. An opportunity to create more responsible drinkers who will choose to find alternative transportation, or utilize a designated driver.

The majority of OWI's are first time offenders – or in Wisconsin – the first criminal offense. The vast majority of these people do not become repeat offenders. .08 is a method of educating this vast majority before they offend, while at the same time making our roads a lot safer.

.08 isn't going to solve the problem of drunk driving. True. .08 in and by itself will not solve this problem. Drunk driving is a multi-faceted problem, and will require an array of compatible solutions with one common goal. But, .08 will make a difference – it has saved lives in other States that have adopted it.

.08 will put taverns out of business. False. This myth is entirely unsubstantiated. To our knowledge there have been no studies to prove this statement.

We don't need to pass this legislation until 2007 – we'll get that money back. This statement is nothing short of being fiscally irresponsible with taxpayer dollars.

Wisconsin doesn't need to be strong-armed by the Fed's. This statement is nothing short of being irresponsible with our lives.

We must remember that the Federal Government has identified this piece of legislation as a lifesaving measure and a concern for public safety. The Federal Government encouraged States to adopt .08 on its' merits. Wisconsin did not comply. The Federal Government offered incentive grant money to States who chose to adopt .08 on their own. Wisconsin did not comply. After many years of encouragement and incentive grants the Federal Government has now decided that there is enough public safety involved to demand that States comply.

Wisconsin has one more opportunity to adopt .08 and be considered a hero – concerned for the safety and financial responsibility of her citizens.

The bottom line is this: without .08 we lose money and lives. MADD urges you to support the passage of a .08 BAC per se law. Thank you.

1991-2000 Wisconsin Drinking Driver Crashes By Prior OWI History

Drinking Drivers in FATAL Crashes - Prior OWI History

Year	No prior OWI	1 prior	2 prior	3 prior	4 or more priors	Total	% No priors	% 1 or more	% 2 or more
1991	227	40	5	0	0	272	83.5%	16.5%	1.8%
1992	213	28	5	0	0	246	86.6%	13.4%	2.0%
1993	202	42	10	0	0	254	79.5%	20.5%	3.9%
1994	187	41	5	1	0	234	79.9%	20.1%	2.6%
1995	172	36	11	4	1	224	76.8%	23.2%	7.1%
1996	196	43	12	1	4	256	76.6%	23.4%	6.6%
1997	163	63	12	4	1	243	67.1%	32.9%	7.0%
1998	156	45	21	5	3	230	67.8%	32.2%	12.6%
1999	157	44	20	6	2	229	68.6%	31.4%	12.2%
2000	183	39	13	4	2	241	75.9%	24.1%	7.9%

Drinking Drivers in NON-FATAL SERIOUS INJURY Crashes - Prior OWI History

Year	No prior OWI	1 prior	2 prior	3 prior	4 or more priors	Total	% No priors	% 1 or more	% 2 or more
1991	1,257	171	19	3	2	1,452	86.6%	13.4%	1.7%
1992	1,181	196	32	6	1	1,416	83.4%	16.6%	2.8%
1993	941	213	39	17	3	1,213	77.6%	22.4%	4.9%
1994	962	247	66	17	7	1,299	74.1%	25.9%	6.9%
1995	880	199	76	12	4	1,171	75.1%	24.9%	7.9%
1996	754	196	68	18	10	1,046	72.1%	27.9%	9.2%
1997	651	208	55	28	13	955	68.2%	31.8%	10.1%
1998	667	173	68	28	15	951	70.1%	29.9%	11.7%
1999	657	173	87	34	15	966	68.0%	32.0%	14.1%
2000	641	178	92	42	20	973	65.9%	34.1%	15.8%

Drinking Drivers in FATAL and NON-FATAL SERIOUS INJURY Crashes - Prior OWI History

Year	No prior OWI	1 prior	2 prior	3 prior	4 or more priors	Total	% No priors	% 1 or more	% 2 or more
1991	1,484	211	24	3	2	1,724	86.1%	13.9%	1.7%
1992	1,394	224	37	6	1	1,662	83.9%	16.1%	2.6%
1993	1,143	255	49	17	3	1,467	77.9%	22.1%	4.7%
1994	1,149	288	71	18	7	1,533	75.0%	25.0%	6.3%
1995	1,052	235	87	16	5	1,395	75.4%	24.6%	7.7%
1996	950	239	80	19	14	1,302	73.0%	27.0%	8.7%
1997	814	271	67	32	14	1,198	67.9%	32.1%	9.4%
1998	823	218	89	33	18	1,181	69.7%	30.3%	11.9%
1999	814	217	107	40	17	1,195	68.1%	31.9%	13.7%
2000	824	217	105	46	22	1,214	67.9%	32.1%	14.3%

Notes

These figures include only drivers who reside in Wisconsin and for whom a license number was recorded. These drivers are not limited to licensed drivers, because license numbers / prime id numbers are created for drivers who crash w/o licenses. The OWI history file only goes back to January 1, 1989. Some drivers shown here as "No prior OWI" may have been convicted of OWI prior to that date. These figures are not necessarily comparable to earlier reports because numbers may have been calculated differently. The drop in drinking drivers in fatal crashes with no priors from 1999 to 2000 is likely to be because the cases have not yet been adjudicated. Offenses considered in "prior OWI history" include: prohibited alcohol content, operating while intoxicated, negligent homicide while intoxicated, intoxicant use causing injury, and intoxicant use causing great bodily harm.



Memo

**To: Members of the Senate Committee on Transportation and Information
Infrastructure – Senator Joseph Leibham, Chairman**

**From: Paul W. Merline
Government Relations Specialist
Wisconsin Restaurant Association**

Date: June 17, 2003

Re: Assembly Bill 88

While the Wisconsin Restaurant Association (WRA) does not support a lowering of the legal BAC to 0.08 in principle, we do understand the revenue implications associated with Assembly Bill (AB) 88.

WRA represents approximately 7,000 foodservice outlets across the state, ranging from fast service to fine dining establishments. Our membership is made up of both those establishments that have a license to serve alcohol and those that do not. We have taken the lead, along with other associations representing the hospitality industry, on initiatives designed to improve highway safety for everyone. Our members are found in neighborhoods and communities all across the state and we have a very keen interest in continuing to make our roads and highways safer.

We do not support AB 88 in principle for several reasons:

- This is an issue that should be left up to the states to decide, and not mandated by the federal government.
- Lowering the legal BAC to 0.08 does not guarantee a reduction in DWI-related accidents. The vast majority of drunk-driving deaths are caused by drivers with BAC levels of 0.14 and higher.
- We appreciate the fact that Wisconsin stands to lose significant federal highway funds, but we have until 2007 to enact a 0.08 standard before we risk permanently losing these funds. We still have time to work with our federal delegation to seek rewards for the successful measures we have already taken to address the problem of drunk driving.

That being said however, the revenue implications associated with AB 88 and the actions taken by the Joint Committee on Finance on the State Budget make a move to lower the legal BAC to 0.08 inevitable.

Because of this, we do support Assembly Amendment 1 of AB 88 that would apply to individuals whose BAC was between 0.08 and 0.099 at the time of a first-time violation. This amendment would waive many of the fees and assessments that would be associated with a violation of a new 0.08 BAC standard and would also remove the violation from the person's record if there are no other suspensions, revocations or convictions for a period of ten years.

We feel that the person committing this type of violation should not be held to the same standards and penalties as those committing violations with BACs greater than 0.10, which is where the vast majority of problems continue to be.



Wisconsin Medical Society

Your Doctor. Your Health.

TO: Members, Senate Transportation and Information Infrastructure Committee

FROM: Alice O'Connor, Vice President, Advocacy and Policy

DATE: June 17, 2003

RE: AB 88: Support

On behalf of nearly 10,000 physician members of the Wisconsin Medical Society, thank you for this opportunity to testify in strong support of AB 88, a bill that would change the prohibited blood alcohol concentration for motorists from .10 to .08 percent. Decreasing the legal blood alcohol content limit will decrease drunken driving and save lives in Wisconsin.

Drunken driving increased for the first time in 20 years in 2002. The *Milwaukee Journal Sentinel* reported on December 18, 2002, that the drunken driving death rate in Wisconsin has risen 19% in the past two years, at a time when the national rate has leveled off. In 2001, 304 Wisconsin citizens lost their lives, and more than 6,500 others were injured, in alcohol-related traffic accidentsⁱ.

States that have decreased the legal blood alcohol content to .08 have shown significant improvements. After implementation of the .08 BAC, Illinois saw an immediate 13.7 percent reduction in the number of alcohol-related fatal accidentsⁱⁱ. If critical driving skills are impaired at .08, those skills are impaired more severely at .10. We cannot afford not to adopt this law.

Lowering the blood alcohol content limit to .08 has the potential to generate federal revenue for Wisconsin. Changes in federal law require states to adopt a .08 BAC standard or risk losing federal highway aid. Wisconsin stands to lose \$125 million in federal dollars if it does not approve the lower limit. Moreover, the Wisconsin Department of Transportation estimates that Wisconsin would lose \$9.1 million in federal highway aid in 2004 if the .08 law is not adopted, and that annual loss would increase to over \$36 million by 2007ⁱⁱⁱ.

Reducing the BAC level to .08 will save lives, reduce injuries and the associated medical costs, and protect federal funds vital to Wisconsin's highways. Thank you for your time and consideration. Please contact me at 442-3800 or aliceo@wismed.org for further information.

ⁱ Wisconsin Department of Transportation, *2001 Traffic Crash Facts, Section 5: Alcohol*

ⁱⁱ *Effectiveness of the Illinois .08 Law*, Robert Voas, Elaine Taylor, Tara Kelly Baker, and A. Scott Tippetts, December 2000, DOT HS 801 186 – and – U.S. Department of Transportation Secretary News Release, September 21, 2000.

ⁱⁱⁱ Congress passed .08 BAC as the national standard for impaired driving as part of the Department of Transportation's appropriations bill (October 2000). Those States that do not adopt .08 BAC by October 1, 2003, will have 2 percent of certain highway construction funds withheld each year, with the penalty increasing to 8 percent by fiscal year 2007. This bill was signed into law on October 23, 2000.



Testimony of
Nina J. Emerson, Director
University of Wisconsin Law School
Resource Center on Impaired Driving

2003 Assembly Bill 88

Senate Hearing
Committee on Transportation and Information Infrastructure
201 Southeast
Tuesday, June 17, 2003, 10:00 P.M.

Thank you, Chairperson Leibham and members of the Committee on Transportation and Information Infrastructure for the opportunity to testify on AB 88. My name is Nina Emerson, and I am the director of the Resource Center on Impaired Driving at the University of Wisconsin Law School. I am testifying today in support of AB 88 for the following three reasons:

First, it is a right step in simplifying an already complex law. Wisconsin currently has a three-tiered system of legal limits for OWI offenses. First and second offense is subject to an alcohol concentration of 0.10. Third offense is subject to 0.08. Fourth and subsequent offenses are subject to 0.02. It makes sense to eliminate one of the tiers by having first through third offenses subject to one legal limit; namely, 0.08.

However, the provisions in Assembly Amendment 1 undo the simplification that would otherwise be accomplished in passing AB 88. Specifically, by carving out exceptions in record keeping, forfeitures and surcharges, the law becomes more complicated to implement. Further, it can send an inconsistent and contradictory message to the public. Do we want impaired driving to be treated on par with "overtaking and passing bicycles" or "unreasonable/imprudent speed?"

Arguably, Wisconsin is already lenient with first offense OWI in that it is a forfeiture only offense and not subject to jail time. I do not see the need to give people a further break just because they have an alcohol concentration between .08 and .099. Further, this is not the time to be eliminating a surcharge that the legislature felt was

Resource Center on Impaired Driving
Law School

important enough to establish and important enough to distribute by statute. *See sec. 346.655.*

Second, all people are impaired at 0.08. My own observations and experience have convinced me that all people are impaired to some degree at 0.08. I have been involved in law enforcement training and legal education programs that have allowed me to observe as well as participate in "alcohol workshops." I can safely say that it takes a lot of alcohol to get to 0.08, more than most people would think. In the drinking sessions I have participated in, I have never been able to reach 0.08 and I haven't wanted to. **The alcohol industry would have each of you believe that if you pass .08, a woman my size (without divulging my specific weight) would not be able to go to a cocktail party and have 2 glasses of wine in 2 hours without reaching .08. I am here to tell you that is a blatant lie. I have tested that very premise in a controlled setting, 2 glasses of red wine in one and a half hours and I was a .04.** This means that a person can drink socially and responsibly without reaching 0.08, which brings me to my third point.

Third, 0.08 will not "criminalize" the social drinker. It won't do this because our first offense OWI is not a crime; it is a civil forfeiture, and first offense represented 64% of all OWI convictions in Wisconsin in 2001. In addition, the median alcohol concentration for all offenses is 0.17. Clearly, most OWI offenders are already operating outside the realm of being "social drinkers" and well above the legal limit. Further, the OWI laws are not targeting the "social drinker." **Officers don't stake out cocktail parties.** The OWI laws prohibit a person from driving or operating a motor vehicle while under the influence of an intoxicant, which means that a person has to exhibit signs of impairment or commit a traffic infraction before an officer can lawfully stop the person. Once a person is stopped, the officer must have a reason to believe that he or she is operating under the influence before the stop can proceed to an OWI arrest. The ultimate goal of the OWI laws is to remove intoxicated drivers from the roadways and reduce the incidence of traffic crashes, injuries and fatalities, which is what the Committee on Transportation and Information Infrastructure should be concerned about.

In conclusion, I urge you to pass Assembly Bill 88 for all the reasons I have stated and because it is the right thing to do. I thank you for your time.

**Testimony in Favor - AB 88
Presented to the Senate Committee on
Transportation and Information Infrastructure**

Snowmobile/ATV Administrator Karl Brooks
Department of Natural Resources
Madison Wisconsin
June 17, 2003

My name is Karl Brooks, your snowmobile and ATV administrator for the Department of Natural Resources. AB 88 would have minor effects on the Bureau of Law Enforcement, municipal boat patrols, county snowmobile and ATV patrol programs.

While AB 88 will reduce the BAC level needed to arrest subjects that are operating under the influence, our agency is already making this type of enforcement a priority in work planning efforts.

Additional positive effects from this bill will result in increase safety aspects to all recreational users while bringing consistency for the public and to the programs as they relate to vehicle operation and intoxication laws.

There are a number of statistics that could be stated that are paramount to the statistics already stated by the Department of Transportation; I will only relate three significant figures;

Snowmobiling

- ✓ 84% of the fatality victims from this past year had consumed alcohol.

ATVing

- ✓ 45% of the fatality victims from this past year had consumed alcohol.

Boating

- ✓ 31% of the fatality victims from this past year had consumed alcohol.

	All Fatalis	Alcohol involved	%
Snow	26	22	84
ATV	11	5	45
Boat	19	6	31
Total	56	33	59%

OWI Arrests

Snow	Typical year 50-90
ATV	22
Boat	197

One thing is clear, a reduction in the BAC level will result in fewer people operating on trails and recreation areas with impairment. That alone will help reduce the number of crashes and fatal incidents.

Questions?

.08 Talking Points

Background

- The attached WI DOT background information will be helpful in fully understanding Wisconsin's current OWI laws, the federal payments and deadlines involved in the .08 mandate, as well as arguments used by supporters of enacting the Governor's originally proposed language. The .08 legislation was considered policy and pulled out of the budget.

Assembly Bill 88 (engrossed)

- AB 88 (engrossed) will modify Wisconsin's current penalties for an OWI offense, essentially creating a tiered system. The following are highlights of the bill:
 - Forego all surcharges from 0.08-0.099 on the first offense.
 - Forego all assessments from 0.08-0.099 on the first offense.
 - Maintain all existing fines at current standards.
 - Modify the treatment of OWI records for offenders with a BAC of 0.08-0.099 by purging the OWI conviction if an offender remains conviction-free for ten years.

Senate Amendment 1

- SA 1 is a technical amendment drafted to incorporate necessary changes that have come up following the passage of AB 88 by the Assembly.
- SA 1 changes provisions in the bill referring to BAC "between 0.08 and 0.099" to read BAC "*of 0.08 or more but less than 0.1.*" Without this change, these provisions would apply only to BACs *between* 0.08 and 0.099 (i.e., would not include 0.08 and 0.099, but only the BACs between those numbers).
- The amendment specifies that this assessment and driver safety plan requirement does not apply *if* the person who committed the violation had a BAC of 0.08 or more but less than 0.1 at the time of the violation.
- The amendment specifies that the driver improvement surcharge of \$355 is not applicable to a first-time OWI violator if the person who committed the violation had a BAC of 0.08 or more but less than 0.1 at the time of the violation.
- With reference to the provision in the bill on purging the record of certain first OWI offenses, the bill appears to require the Department of Transportation (DOT) to purge the record of such an offense committed by a person who does not hold a CDL but who is operating a commercial motor vehicle (CMV) at the time of the offense. This would appear to violate the federal CDL record retention rules that mandate lifetime (55 years) retention of the records of such offenses for all persons operating a CMV at the time of the offense, whether or not they hold a CDL. The amendment clarifies this provision, to accord with the federal requirements, by adding language that one of the requirements for purging the record under the bill is that *the violation was not committed by a person operating a CMV.*

AB 88 THEMES

- We are passing this bill because the Federal government is holding taxpayer dollars “hostage” unless we comply with what the Federal government has determined is the measure of operating a motor vehicle while intoxicated.
- Were there no financial implication in passing this bill by July 15th, would we be here today debating the merits of whether a person is considered legally intoxicated at .08 or .10?
- Are we focusing on the problem or posturing? The real problem is the repeat offender who often is well above .08 or .10, not the “social drinker.”
 - While passing a bill that lowers the State’s BAL standard may have good intentions and will be worthwhile if it saves only one life, we should focus on the penalties already in place.
 - We need to educate motorists, enhance current penalties, especially for repeat offenders and enforce laws already on the books.

.08 BAC FIRST OFFENSE OWI LAW

OVERVIEW

The U.S. DOT's 2001 Appropriation Act (HR 4475) requires states to lower the legal limit for an OWI first offense to .08 BAC (blood alcohol concentration) by September 30, 2003, in order to receive the full share of federal highway funds. As of June 20, 2003, 40 states (plus the District of Columbia and Puerto Rico) had passed .08 legislation.

Wisconsin faces two deadlines for certifying a .08 law (under proposed federal regulations expected to be finalized shortly):

July 15, 2003

Enactment of conforming legislation by this date would qualify Wisconsin for an incentive grant in FY 2003, and would avoid the withholding of federal highway funds in FY 2004.

September 30, 2003

Enactment of conforming legislation by this date (but after July 15) would not qualify Wisconsin for an incentive grant, but *would* avoid the withholding of federal highway funds.

The federal withholding would cost Wisconsin nearly \$8 million in federal highway aid in 2004, increasing in annual increments to an estimated penalty of more than \$34 million by 2007.

- The potential loss of federal highway construction funds for Wisconsin for the six-year period from 2004 - 2009 is estimated to be more than \$154 million.

THE FEDERAL SANCTION

An increasing percentage of Wisconsin's core highway funds will be withheld each year the state fails to enact a .08 standard.

- Withholdings will be returned if Wisconsin passes a .08 law within four years of the withholding.
 - For example, if a .08 law were to pass in 2007, withholdings from 2004-2007 would be returned. However if the law were to pass in 2008, the withholdings for 2005-2008 would be returned, but the withholding for 2004 would be permanently lost.
- If a penalty (withholding) is invoked, the federal highway funds related to the penalty will be set aside and held by the Federal Highway Administration (FHWA).
- When Wisconsin passes a conforming .08 law and sends the appropriate certification to FHWA, the withheld funding will be restored.
 - To avoid the sanction, Wisconsin must enact a .08 law that takes effect by September 30, 2003.
 - To qualify for a Section 163 incentive grant, AND avoid the sanction, Wisconsin must pass a .08 law by July 15, 2003, with an effective date no later than September 30, 2003.

FINANCIAL DETAILS

Beginning in federal fiscal year 2004, Wisconsin would lose 2% of federal highway funding, with the penalty increasing by two percentage points a year - until it reaches an 8% cap in 2007.

NOTE: The following figures are based on the federal re-estimate for Wisconsin's '03-'05 biennial budget, and the numbers in the Congressional Budget Resolution for 2004-2009 (the expected duration of the next authorization).

2004 penalty - 2%:	\$ 7,843,045
2005 penalty - 4%:	\$15,996,568
2006 penalty - 6%:	\$24,881,800
2007 penalty - 8%:	\$34,157,214
2008 penalty - 8%:	\$35,286,056
2009 penalty - 8%:	\$36,000,619

(While the penalty is capped at 8% in 2007, estimates assume average rate of growth in funding, resulting in higher figure as the penalty continues in 2008 and later years.)

- Estimated potential loss of federal highway funds (2004-2009): **\$154,165,302**
- Federal incentive funds potentially available to Wisconsin (2003): **\$2,880,959**

INCENTIVE FUNDS SPECIFICS

If conforming legislation is enacted by July 15, 2003, Wisconsin could be eligible for up to \$2.88 million in 2003 incentive funds (according to an October 2002 NHTSA estimate).

- The federal incentive funds are apportioned among all eligible states that have enacted conforming .08 legislation.
- The net effect of other states enacting 0.08 laws prior to the certification deadline would be to reduce Wisconsin's proportional share of the available national pool of incentive funding (expected to total \$110 million for FFY 2003).
- Wisconsin's share would depend on the number of other states that enact qualifying legislation by July 15, 2003.

DEFINITION OF CONFORMING .08 LEGISLATION

The basic requirements for a conforming law are that the law must:

- Apply to all persons;
- Set a blood alcohol concentration of not higher than 0.08 percent as the legal limit;
- Make operating a motor vehicle by an individual at or above the legal limit a per se offense;
- Provide for primary enforcement;
- Apply the 0.08 BAC legal limit to the state's criminal code and, if the state has an administrative license suspension or revocation law, to its ALR law; and
- Be deemed to be or be equivalent to the standard driving while intoxicated offense.

DRUNK DRIVING LAWS ALREADY IN PLACE IN WISCONSIN

- Wisconsin law sets a limit of .08 for a third OWI offense. For fourth and subsequent OWI offenses, the standard is more stringent: any level "more than .02." For some violators, such as commercial drivers and drivers under age 21, the standard is absolute sobriety.
- OWI laws in Wisconsin provide a structure of increasing penalties for repeat offenders and for those with high blood alcohol levels, or those with a minor child in the vehicle.
- Wisconsin law prohibits deferred prosecution for impaired driving violations, which helps account for the 92% conviction rate for those arrested and prosecuted. Statutes also prohibit prosecutors from dismissing or reducing OWI charges without a judge's written approval.

POTENTIAL IMPACT OF .08 ON LAW ENFORCEMENT EFFORTS

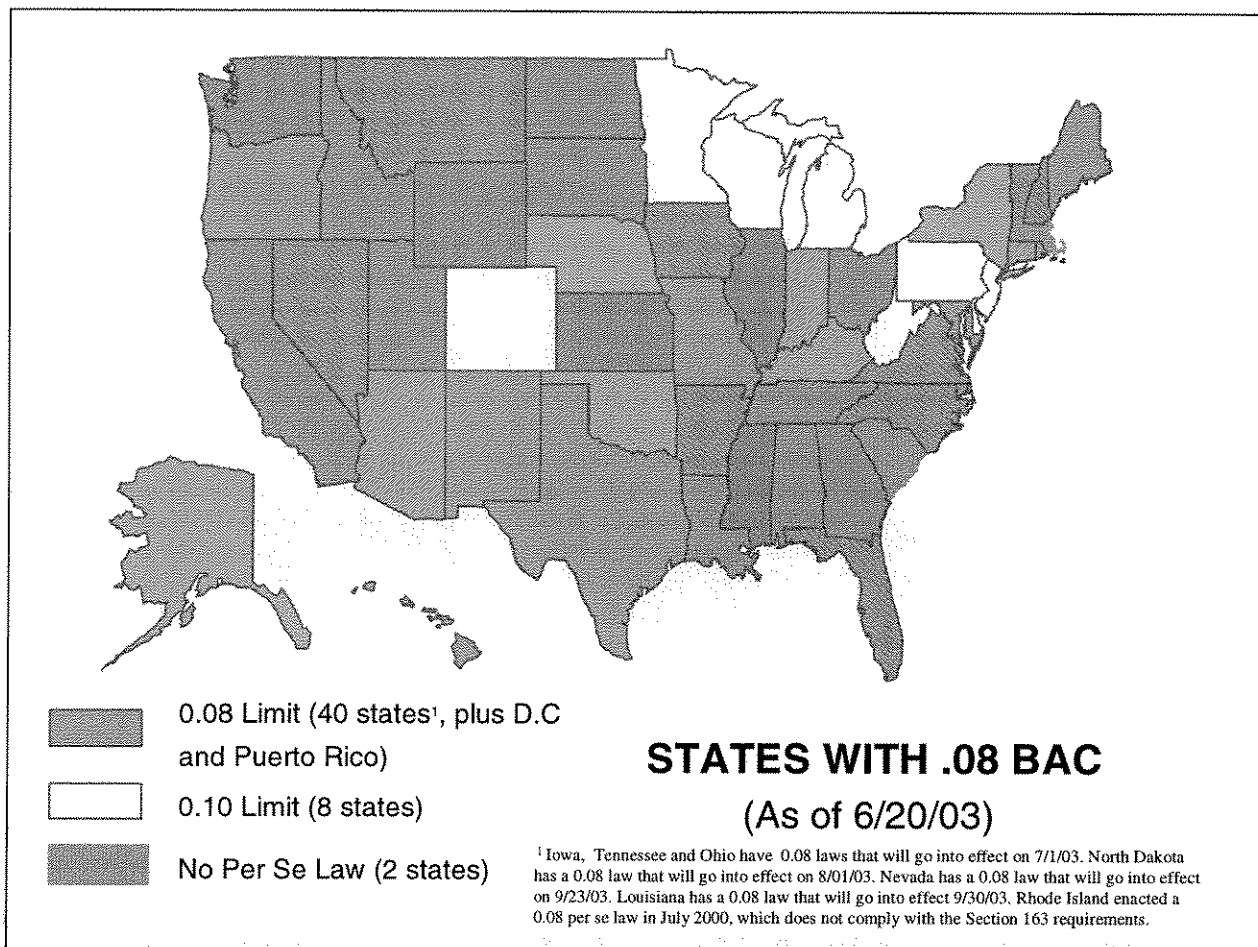
- Officers would not necessarily stop more people for suspicion of OWI. Law enforcement officers in Wisconsin already have authority to arrest and cite motorists for impaired driving if they suspect a person has been drinking, even if the alcohol concentration is below .10.
- Of the 37,077 people arrested for OWI in 2001, 990 (2.7%) tested at a level of .08 or .09. (These figures do not include drivers stopped but not arrested, who may have been in the .08 and .09 range.) An increase in the OWI conviction rate is one possible result of a .08 law.
- The Division of State Patrol estimates a one-time cost for breath testing equipment, software and re-programming (approximately \$30,000) as well as other administrative expenses. Rewriting administrative rules and other training costs would be absorbed within existing resources. There could be added personnel costs if additional court testimony is needed.

EFFECT OF A .08 LAW ON THE SOCIAL DRINKER

- .08 does not target the average social drinker who may have a couple of drinks after work or a glass or two of wine with dinner.
- The median alcohol concentration is .17 for people arrested for OWI and who test positive for alcohol in their system. In 2001, 82% of those arrested and tested were at .10 or above.

BENEFIT TO WISCONSIN CITIZENS

- Scientific studies show that drivers are impaired at .08. Braking, steering, lane changing, speed control and attentiveness are all compromised at this level.
- .08 would help save lives. Wisconsin had 304 alcohol-related fatalities in 2001. U.S. DOT estimates that 8% of those, or 24 lives, could have been saved in 2001 with a .08 limit.
- Passage of .08 would maintain Wisconsin's full share of federal highway aids and would make the state eligible to apply for additional incentive funding.



- 40 states (plus the District of Columbia and Puerto Rico) have enacted first offense .08 laws as of June 20, 2003.
- New York, Ohio, Nevada, North Dakota, Iowa and Montana recently passed .08 legislation.

Lindstedt, Daniel

From: Sobotik, John
Sent: Tuesday, June 24, 2003 4:50 PM
To: Lindstedt, Daniel
Cc: Gary, Aaron; Romanski, Randy
Subject: FW: LRB 03a0701 Topic: Counting of prior OWI convictions

Dear Dan:

Randy Romanski asked that I forward to you the results of a technical review of LRB03a0701/1 that I did for him earlier today. This is an amendment to engrossed AB88 that would prohibit counting single .08 OWIs that are more than 10 years old in subsequent OWI prosecutions (if a person had multiple OWIs, all the offenses would count).

Federal CDL laws require DMV to hang on to two types of OWI convictions:

- (1) Those committed by people with CDL licenses; and
- (2) Those committed by people in Commercial Motor Vehicles regardless of the type of license they hold.

Engrossed AB88 requires DMV to delete the records described in (2).

LRB 0613/2, page 1, lines 8-9 fixed that error and permit their retention to comply with Federal law.

LRB0701/1, as I understand it, is intended to conform the criminal law to the record keeping requirements of engrossed AB88 as amended by LRB 0613/2.

If that is NOT correct, and 0701/1 is suggested as an alternate to 0613/2, then 0701/1 needs to correct the error in engrossed AB88 caused by the phrase "between 0.08 and 0.099" (which is also used in 0701/1). The problem with that phrase is that it forgets to eliminate tests exactly at .08 or .099, so that a driver at .08, for example, would face the penalties applicable at .10 and above. In 06/13/2, this "bug" is fixed by substituting the phrase "of .08 or more but less than .01." Enacting that replacement language is desirable.

With regard to counting OWI, the draft provides that prosecutors should count the OWIs in category #(1) above, but not the OWIs in category #(2). If the intent is to have the criminal code and the record keeping consistent, which is what we would recommend, the amendment should have prosecutors count both the (1) and the (2) convictions. In addition, I think the draft could be clearer in referencing the fact that the important issue is whether the person had a CDL or drove a CMV at the time of the original .08 conviction, not at the time of the more recent arrest.

I would suggest p2 lines 5-9 read something like this:

...if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1, did not have a commercial driver license and was not operating a commercial motor vehicle at the time of the violation, and if the person has no other suspension, revocation or conviction that would be counted under sub. (1) or (2) during that 10-year period.

My home phone number is 833-4052, and my pager number is 276-4859. If this does go to the floor and you would like me to be around to assist in reviewing amendments, etc., or if you just want to call me for more discussion, feel free to do so.

- John Sobotik

John Sobotik
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Madison, WI 53707-7910
Phone: (608) 267 9320
Fax: (608) 267 6734

Lindstedt, Daniel

From: Maassen, Joe
Sent: Thursday, June 26, 2003 5:25 PM
To: Lindstedt, Daniel
Cc: Romanski, Randy

I have been asked by DOT Executive Assistant Randy Romanski to provide your office with my assessment (opinion) on the likelihood that AB-88 as amended and passed by the Assembly will satisfy the federal funding criteria of both the National Highway Traffic Safety Administration (NHTSA), and the Federal Motor Carrier Safety Administration (FMCSA).

Short Answer: Yes, In my opinion, AB-88 as passed by the Wisconsin Assembly in May of 2003 should satisfy NHTSA criteria. Wisconsin DOT should also be able to work with and satisfy FMCSA that Wisconsin will be able to comply with FMCSA requirements on the permanent retention of OWI conviction information for CDL holders as well as non-CDL holders convicted of OWI in a commercial vehicle.

Discussion: It is my opinion, based on a memorandum dated May 28 2002, over the signature of NHTSA Assistant Chief Counsel Heidi Coleman, that the version of AB-88 as passed by the Assembly should be acceptable to NHTSA. WisDOT has asked NHTSA to review AB-88 as passed by the Assembly. NHTSA has not yet responded to that request. However, it seems logical, if the proposal Ms. Coleman reviewed met NHTSA requirements, then AB-88 as passed by the Assembly should also meet NHTSA requirements.

On May 29, 2003 WisDOT did receive a memorandum from a FMCSA official, Robert Redmond. Mr. Redmond identified a technical problem in AB-88 as passed by the Assembly regarding FMCSA requirements for the Commercial Driver License (CDL) Program. WisDOT believes that the FMCSA concerns are likely resolvable even if the technicality is not addressed in AB-88.

Summary: It is my opinion that AB-88, as passed by the Wisconsin Assembly in May, should be acceptable to NHTSA, and should not result in withholding of funds by FMCSA for non-compliance. CAVEAT: While I believe my position is legally supportable and defensible, I cannot provide 100% assurance that NHTSA and FMCSA will view AB-88 as passed by the Assembly as satisfying all the federal criteria in play here! Finally, this opinion should not be construed by anyone as representing any view on my part for or against the substantive changes set forth in AB-88 as amended by the Assembly.

Joe Maassen
Deputy General Counsel
266-7364

Memo

To: Dan Lindstedt
From: Cindy Polzin
Date: 06/26/03
Re: Record purging inconsistency (.08)

In the Senate Committee hearing on Transportation and Information Infrastructure it was brought to attention the inconsistency that exists regarding the purging of records on the state and county level for OWIs. The purpose of this memo is to outline possible future action to address this issue for passage and concurrence.

According to Legislative Council Attorney Don Salm, Assembly Bill 88 can be passed as amended by both the Assembly and Senate. It does comply with federal standards per the "Foti letter" that has been cited. The Department of Transportation (DOT) would accept the bill as amended.

The confusion that needs addressing lies in the purging of the records affecting s.346.63 and s.346.65. As Assembly Bill 88 as amended and passed stands, district attorneys, police, etc, would still be able to obtain county records and count first .08 - .099 convictions after the 10-year purging policy in the bill when assessing penalties. Even though the DOT would not retain the first .08 - .099 records after 10 year time period, there is nothing in the bill preventing counties from keeping the records on file.

There are two approaches to take when addressing this issue: 1) Pass the bill with the Senate amendment and deal with the inconsistency issue later or 2) Deal with the problem by Tuesday, June 24, 2003.

According to Don Salm, there is time to deal with this issue if we so choose. The DOT will not be able to start purging records until at least May 2004 due to computer upgrades per DOT testimony at the aforementioned hearing. Due to the timeframe of the upgrade, first .08 - .099 OWI convictions for individuals will begin to be purged at the same time (May 2014) if another OWI is not obtained.

Representative Foti would prefer we pass the bill as amended and deal with the inconsistency issue later in a separate bill.

Please let me know if you should have questions.



Joe Leibham
STATE SENATOR

FOR IMMEDIATE RELEASE

FOR INFORMATION, CONTACT:
State Senator Joe Leibham (888) 295-8750

July 1, 2003

Leibham Urges Taxpayers to Speak Out on Tax Freeze
Citizen Participation Critical to Avoid Tax Increase

MADISON... State Senator Joe Leibham (R-Sheboygan) today urged Wisconsin residents to speak out in support of the property tax freeze proposal in the state budget and asked them to contact Governor Doyle to voice their opinion or possibly face a massive property tax hike this December.

"Governor Doyle has said he will do everything in his power as Governor to not raise taxes. Now he is threatening to break his word, veto our property tax freeze and stick the taxpayer with a massive property tax hike," said Leibham.

Faced with a \$3.2 billion deficit and a bi-partisan pledge not to raise taxes, the State Legislature made difficult decisions to reduce government spending. State government will lead by example by capping state operation expenditures for the next three years, resulting in 0% growth. Leibham said he recognizes state government has spent too much for too long and wants to force state bureaucracy to become more efficient.

"I am working hard to ensure government doesn't spend beyond a families ability to pay. The tax freeze in the budget gives taxpayers the relief many families need during these challenging economic times," Leibham said.

In addition, the Legislature's property tax freeze proposal asks local governments to control spending by capping property taxes for three years. Local governments can increase their tax levies at the same rate that new construction causes their property values to rise. Additional taxes would have to be approved by local residents through a referendum, providing taxpayers with ultimate control. According to the non-partisan Legislative Fiscal Bureau, without the freeze the budget proposed by Governor Doyle could result in a property tax increase of over 13%, or \$531 on the median valued home in Wisconsin.

"The action taken by the Legislature to cap state operations spending and property taxes will help lead state government back to fiscal health, work to get Wisconsin out of the top ten highest taxed states in the country, and deliver a higher quality of life for the people of Wisconsin in the long run," Leibham said. "I encourage people to contact Governor Doyle to let them know they support the freeze on both state operations and property taxes."

Leibham said individuals can contact Governor Doyle by calling 608-266-1212 or by writing to: Office of the Governor, 115 East, State Capitol, Madison, WI 53702.

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Joe Leibham

State Senator
9th State Senate District

July 1, 2003

For more information: Senator Leibham (608) 266-2056

STATEMENT BY STATE SENATOR JOE LEIBHAM ON .08 VOTE

I was not comfortable voting in favor of Assembly Bill (AB) 88, legislation that will reduce Wisconsin's blood alcohol level from the current .10 to the proposed .08. There are a number of questions that remain regarding whether or not the provisions included in AB 88 are the appropriate way to address the important issue of driving while intoxicated.

While the receipt of federal transportation dollars is important at this fiscally tight time, I do not believe receipt of these dollars should be the main reason for enacting legislation that will impact the lives of every Wisconsin citizen. Support for the provisions of AB 88 should be based on the merits of the proposal, not a federal mandate and the potential loss of federal transportation dollars.

The issue of drunk driving in Wisconsin must be seriously addressed. If we are sincere about saving lives and making Wisconsin's roads safer, we must first address the issue of increasing the penalties placed against the reckless individuals that drive with blood alcohol levels well above the current limit of .10 and those who repeatedly operate vehicles while intoxicated. There is no excuse for this behavior. I will be working to advance legislation that will address these important traffic safety and life impacting issues.

Memo

Date: 07/01/03

Re: Record purging inconsistency (.08)

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