

The History of 0.08 Percent Alcohol Concentration in Minnesota

This information brief provides a short history of attempts to lower the alcohol concentration limit for drunk driving violations in Minnesota and reviews federal sanctions for not doing so.

Lowering the alcohol concentration limit for impaired driving is a recurring issue at the legislature, only now there is now more incentive to do so—in fact, millions of incentives in the form of federal highway dollars. In 2000, the federal government adopted a national goal of 0.08 percent per se alcohol concentration limit and required states to lower their limits by 2004. States that don't will lose millions of dollars in federal highway funding.

Minnesota is one of five states that has not lowered its alcohol concentration limit to 0.08 percent. The other states are Colorado, Delaware, New Jersey, and West Virginia. As of October 1, 2003, 45 states, the District of Columbia, and Puerto Rico had adopted 0.08 percent alcohol concentration limits as their principal criterion for defining DWI violations. The alcohol concentration limit is a per se limit, which means it is a crime in itself to drive with an alcohol limit of 0.08 percent.

National Standard Established

Congress established a national standard of 0.08 percent alcohol concentration as part of a larger transportation funding bill in 2000. States were given until the beginning of fiscal year 2004 to

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lower their per se limits to 0.08 percent (federal fiscal years begin on October 1). States that don't lower their standard will lose 2 percent of their highway construction funding in 2004, 4 percent in 2005, 6 percent in 2006, 8 percent in 2007, and 8 percent thereafter. If states adopt the lower limit by October 1, 2007, they can recover all the funds that were withheld. After October 1, 2007, a state has four years after the funds were withheld to implement the lower standard and recover the withheld funds. After four years, states lose their funds permanently.

Federal Funds Withheld		
Fiscal Year	Percentage of Funds Withheld	Lapsed Funds
2004	2%	
2005	4%	
2006	6%	
2007	8%	
2008	8%	Funds withheld in FY04
2009	8%	Funds withheld in FY05
2010	8%	Funds withheld in FY06
2011	8%	Funds withheld in FY07
2012	8%	Funds withheld in FY08

National Highway Traffic Safety Administration

Proposals to lower the per se standard from 0.10 percent to 0.08 percent have been considered by the Minnesota Legislature, but have never become law (see [page 3](#) for specific proposals). In 2003, a proposal to lower the limit made it to the Senate floor; a similar bill never got a hearing in the House Judiciary Policy and Finance Committee. Under federal law, Minnesota stands to lose \$66.4 million over the next four years if it doesn't lower its per se standard to 0.08 percent. Because Minnesota didn't have a lower per se law in effect by October 1, 2003, it will be sanctioned by having \$6.64 million withheld from its U.S. Department of Transportation grants for fiscal year 2004.

Grant Money Subject to Withholding for Minnesota FY2004-FY2007		
Federal Fiscal Year	Percent Withheld	Grant Money Withheld
FY2004	2%	\$6.6 million
FY2005	4%	\$13.3 million
FY2006	6%	\$19.9 million
FY2007	8%	\$26.6 million
Total		\$66.4 million

Minnesota Department of Public Safety

The First Drunk Driving Laws

Minnesota first outlawed drunken driving in 1911, but it didn't implement a standard of impairment until nearly 45 years later. Many states started implementing alcohol concentration limits of 0.15 percent, following the recommendations of the American Medical Association.

This was a “presumptive limit,” which presumed the level at which a person was impaired by alcohol, but that presumption could be rebutted with contrary evidence.

In 1939, Indiana was the first state to implement a presumptive limit of 0.15 percent. Minnesota instituted its first presumptive limit of 0.15 percent alcohol concentration limit in 1955.

Minnesota’s limit meant that anyone with under 0.05 percent alcohol concentration was presumed to be unimpaired. Evidence of alcohol concentrations between 0.05 percent and 0.15 percent could be used as relevant evidence that the driver was impaired, but that evidence could be contested. Alcohol levels of 0.15 percent or more were regarded as prima facie evidence (or evidence that stands as its own proof) that the person was impaired by alcohol, although that presumption was also rebuttable.

With growing evidence of a positive relationship between alcohol concentration and crash risk, and improved technology to measure alcohol concentration in the body, many states began lowering their legal limits in the 1960s and 1970s. Minnesota lowered its alcohol concentration standard to 0.10 percent in 1967.

The state switched to a “per se” limit in 1971. The per se limit made it a crime to drive with an alcohol concentration of 0.10 percent or more, regardless of any other evidence of impairment.

Efforts to Lower the Limit

In 1989, bills to lower the per se limit to 0.05 percent were introduced in both houses of the Minnesota Legislature, but they didn’t progress. In 1993, bills were introduced in both houses that would have lowered the per se standard for juveniles to 0.02 percent. A bill to lower the limit to 0.08 percent for all drivers was again introduced in the House in 1995.

A more serious push was made in 1997. The House approved a bill that lowered the per se limit to 0.08 percent and lowered the limit to 0.04 percent for drivers under age 19. In the Senate’s version, the lower 0.08 percent standard only applied to repeat offenders and there were no provisions for underage drinkers. The 0.08 percent standard was stripped out in conference committee. The final version of the bill included harsher penalties for repeat impaired drivers and the lower 0.04 percent standard for drivers under age 19. It was vetoed by Gov. Arne Carlson, who said the underage provision placed an undue burden on youth.

In a one-day special session in June, the legislature approved a DWI bill that had stiffer penalties for repeat offenders, those with twice the legal limit, and those driving motorboats and off-road recreational vehicles. The youth provision was removed, and Gov. Carlson signed the bill.

Also in 1997, President Clinton voiced his support for a national per se standard of 0.08 percent.

Efforts to lower the per se standard in Minnesota continued in 1998 when the House approved a lower limit of 0.08 percent for all drivers, and the Senate again voted to lower the limit only for repeat offenders. The lower limit provision was again stripped out in conference committee.

On a national level, the U.S. Senate passed a national standard of 0.08 percent in 1998, while the U.S. House committee kept a similar proposal from reaching the House floor.

In Minnesota, bills lowering the per se standard were again heard in House and Senate committees during the 1999 session, but the House's version didn't make it out of the House Transportation Finance Committee.

In 2001, bills lowering the standard died in Senate and House committees. A 2003 proposal to lower the limit made it to the Senate floor; a similar bill never got a hearing in the House Judiciary Policy and Finance Committee.

Rationale and Effect of 0.08

Advocates for the 0.08 percent alcohol concentration limit, including the American Medical Association, Mothers Against Drunk Driving (MADD), and many state and local law enforcement agencies, say that the lower limit will reduce the number of deaths caused by drunk drivers. Other arguments for the lower standard propose that all drivers are substantially impaired at 0.08 percent and that the risk of being involved in a crash increases substantially by 0.08 percent alcohol concentration.

Opponents argue that existing DWI laws are sufficient and cite concerns about targeting social drinkers and the extra law enforcement costs for local governments. Additionally, some believe that by sanctioning states for not complying, the federal government is encroaching on state autonomy.

The amount of alcohol it takes to reach 0.08 percent alcohol concentration depends on a number of factors, such as gender, body weight, recency of eating, duration of drinking, and individual metabolic rates. According to the National Highway Traffic Safety Administration, on average, it would take a 170-pound man consuming four typical drinks on an empty stomach in an hour to reach 0.08 percent alcohol concentration; for a 137-pound woman, it would take three drinks. A woman drinking an equal amount of alcohol in the same period of time as a man of an equivalent weight may have a higher blood alcohol level than that man.

For more information about DWI, visit the criminal justice area of our web site, www.house.mn/hrd/issinfo/crime.htm.