

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/08/2003**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **John Ainsworth (608) 266-3097**

By/Representing: **kristina boardman**

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Drunk Driving - alcohol level**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Ainsworth@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Prohibited alcohol concentration to be .08 for first and second offense

---

**Instructions:**

Make identical to DOT budget request

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 01/08/2003	jdye 01/09/2003		_____			S&L
/1			chaskett 01/09/2003	_____	mbarman 01/09/2003	mbarman 01/14/2003	

FE Sent For:

<END>

↳ AT  
Intro

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/08/2003**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **John Ainsworth (608) 266-3097**

By/Representing: **kristina boardman**

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Drunk Driving - alcohol level**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Ainsworth@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Prohibited alcohol concentration to be .08 for first and second offense

---

**Instructions:**

Make identical to DOT budget request

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 01/08/2003	jdye 01/09/2003					S&L
/1			chaskett 01/09/2003		mbarman 01/09/2003		

FE Sent For:

**<END>**

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/08/2003**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **John Ainsworth (608) 266-3097**

By/Representing: **kristina boardman**

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Drunk Driving - alcohol level**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Ainsworth@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Prohibited alcohol concentration to be .08 for first and second offense

---

**Instructions:**

Make identical to DOT budget request

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley	1/8 jld	1/9 cph	1/9 rs/cph			

FE Sent For:

<END>

1356/1  
LRB-091971  
PJH:kjf&jld:pg  
stays

DOA:.....Schaeffer - BB0228, Prohibited blood alcohol concentration  
FOR 2003-05 BUDGET - NOT READY FOR INTRODUCTION

Gen

1 AN ACT ...; relating to: prohibited alcohol concentration.

*Analysis by the Legislative Reference Bureau*

**TRANSPORTATION**  
**DRIVERS AND MOTOR VEHICLES**

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, a snowmobile, or a boat if he or she has an alcohol concentration of 0.1 or more.

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.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 23.33 (4c) (a) 2. of the statutes is amended to read:

2           23.33 (4c) (a) 2. 'Operating with alcohol concentrations at or above specified  
3 levels.' No person may engage in the operation of an all-terrain vehicle while the  
4 person has an alcohol concentration of ~~0.1~~ 0.08 or more.

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

6           23.33 (4c) (a) 3. 'Operating with alcohol concentrations at specified levels;  
7 below age 19.' If a person has not attained the age of 19, the person may not engage  
8 in the operation of an all-terrain vehicle while he or she has an alcohol concentration  
9 of more than 0.0 but not more than ~~0.1~~ 0.08.

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

11          23.33 (4c) (b) 2. 'Causing injury with alcohol concentrations at or above  
12 specified levels.' No person who has an alcohol concentration of ~~0.1~~ 0.08 or more may  
13 cause injury to another person by the operation of an all-terrain vehicle.

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

15          23.33 (4c) (b) 4. 'Defenses.' In an action under this paragraph, the defendant  
16 has a defense if he or she proves by a preponderance of the evidence that the injury  
17 would have occurred even if he or she had been exercising due care and he or she had  
18 not been under the influence of an intoxicant or did not have an alcohol concentration  
19 of ~~0.1~~ 0.08 or more.

20          **SECTION 5.** 30.681 (1) (b) 1. of the statutes is amended to read:

21          30.681 (1) (b) 1. No person may engage in the operation of a motorboat while  
22 the person has an alcohol concentration of ~~0.1~~ 0.08 or more. This subdivision does  
23 not apply to commercial motorboats.

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

1           30.681 (1) (bn) *Operating with alcohol concentrations at specified levels; below*  
2 *legal drinking age.* A person who has not attained the legal drinking age, as defined  
3 in s. 125.02 (8m), may not engage in the operation of a motorboat while he or she has  
4 a blood alcohol concentration of more than 0.0 but less than ~~0.1~~ 0.08.

5           **SECTION 7.** 30.681 (2) (b) 1. of the statutes is amended to read:

6           30.681 (2) (b) 1. No person who has an alcohol concentration of ~~0.1~~ 0.08 or more  
7 may cause injury to another person by the operation of a motorboat. This subdivision  
8 does not apply to commercial motorboats.

9           **SECTION 8.** 30.681 (2) (d) 1. of the statutes is amended to read:

10          30.681 (2) (d) 1. In an action under this subsection for a violation of the  
11 intoxicated boating law where the defendant was operating a motorboat that is not  
12 a commercial motorboat, the defendant has a defense if he or she proves by a  
13 preponderance of the evidence that the injury would have occurred even if he or she  
14 had been exercising due care and he or she had not been under the influence of an  
15 intoxicant or did not have an alcohol concentration of ~~0.1~~ 0.08 or more.

16          **SECTION 9.** 340.01 (46m) (a) of the statutes is amended to read:

17          340.01 (46m) (a) If the person has ~~one or no~~ 2 or fewer prior convictions,  
18 suspensions, or revocations, as counted under s. 343.307 (1), an alcohol  
19 concentration of ~~0.1~~ 0.08 or more.

20          **SECTION 10.** 340.01 (46m) (b) of the statutes is repealed.

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

22          343.31 (1) (ar) Injury by the operation of a commercial motor vehicle while the  
23 person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08 and which  
24 is criminal under s. 346.63 (6).

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



1           **346.63 (2m)** If a person has not attained the legal drinking age, as defined in  
2 s. 125.02 (8m), the person may not drive or operate a motor vehicle while he or she  
3 has an alcohol concentration of more than 0.0 but not more than ~~0.1~~ 0.08. One  
4 penalty for violation of this subsection is suspension of a person's operating privilege  
5 under s. 343.30 (1p). The person is eligible for an occupational license under s. 343.10  
6 at any time. If a person arrested for a violation of this subsection refuses to take a  
7 test under s. 343.305, the refusal is a separate violation and the person is subject to  
8 revocation of the person's operating privilege under s. 343.305 (10) (em).

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

10           **346.63 (5) (a)** No person may drive or operate a commercial motor vehicle while  
11 the person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08.

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

13           **346.63 (6) (a)** No person may cause injury to another person by the operation  
14 of a commercial motor vehicle while the person has an alcohol concentration of 0.04  
15 or more but less than ~~0.1~~ 0.08.

16           **SECTION 15.** 350.101 (1) (b) of the statutes is amended to read:

17           **350.101 (1) (b)** *Operating with alcohol concentrations at or above specified*  
18 *levels.* No person may engage in the operation of a snowmobile while the person has  
19 an alcohol concentration of ~~0.1~~ 0.08 or more.

20           **SECTION 16.** 350.101 (1) (c) of the statutes is amended to read:

21           **350.101 (1) (c)** *Operating with alcohol concentrations at specified levels; below*  
22 *age 19.* If a person has not attained the age of 19, the person may not engage in the  
23 operation of a snowmobile while he or she has an alcohol concentration of more than  
24 0.0 but not more than ~~0.1~~ 0.08.

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

1           350.101 (2) (b) *Causing injury with alcohol concentrations at or above specified*  
2 *levels.* No person who has an alcohol concentration of ~~0.1~~ 0.08 or more may cause  
3 injury to another person by the operation of a snowmobile.

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

5           350.101 (2) (d) *Defenses.* In an action under this subsection, the defendant has  
6 a defense if he or she proves by a preponderance of the evidence that the injury would  
7 have occurred even if he or she had been exercising due care and he or she had not  
8 been under the influence of an intoxicant or did not have an alcohol concentration  
9 of ~~0.1~~ 0.08 or more.

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

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

12          **SECTION 21.** 885.235 (1g) (b) of the statutes is amended to read:

13          885.235 (1g) (b) Except with respect to the operation of a commercial motor  
14 vehicle as provided in par. (d), the fact that the analysis shows that the person had  
15 an alcohol concentration of more than 0.04 but less than ~~0.1~~ 0.08 is relevant evidence  
16 on the issue of intoxication or an alcohol concentration of ~~0.1~~ 0.08 or more but is not  
17 to be given any prima facie effect.

18          **SECTION 22.** 885.235 (1g) (bd) of the statutes is repealed.

19          **SECTION 23.** 885.235 (1g) (c) of the statutes is amended to read:

20          885.235 (1g) (c) The In cases involving persons who have 2 or fewer prior  
21 convictions, suspensions, or revocations, as counted under s. 343.307 (1), the fact  
22 that the analysis shows that the person had an alcohol concentration of ~~0.1~~ 0.08 or  
23 more is prima facie evidence that he or she was under the influence of an intoxicant  
24 and is prima facie evidence that he or she had an alcohol concentration of ~~0.1~~ 0.08  
25 or more.

1           **SECTION 24.** 885.235 (1g) (cd) of the statutes is repealed.

2           **SECTION 25.** 885.235 (1m) of the statutes is amended to read:

3           885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m)  
4 or (7), or 350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the  
5 time in question, as shown by chemical analysis of a sample of the person's blood or  
6 urine or evidence of the amount of alcohol in the person's breath, is admissible on the  
7 issue of whether he or she had an alcohol concentration in the range specified in s.  
8 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an alcohol  
9 concentration above 0.0 under s. 346.63 (7) if the sample was taken within 3 hours  
10 after the event to be proved. The fact that the analysis shows that the person had  
11 an alcohol concentration of more than 0.0 but not more than ~~0.1~~ 0.08 is prima facie  
12 evidence that the person had an alcohol concentration in the range specified in s.  
13 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an alcohol  
14 concentration above 0.0 under s. 346.63 (7).

15           **SECTION 26.** 940.09 (1) (bm) of the statutes is amended to read:

16           940.09 (1) (bm) Causes the death of another by the operation of a commercial  
17 motor vehicle while the person has an alcohol concentration of 0.04 or more but less  
18 than ~~0.1~~ 0.08.

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

20           940.09 (1) (e) Causes the death of an unborn child by the operation of a  
21 commercial motor vehicle while the person has an alcohol concentration of 0.04 or  
22 more but less than ~~0.1~~ 0.08.

23           **SECTION 28.** 940.09 (1g) (b) of the statutes is amended to read:

24           940.09 (1g) (b) Causes the death of another by the operation or handling of a  
25 firearm or airgun while the person has an alcohol concentration of ~~0.1~~ 0.08 or more.

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

2           940.09 (1g) (d) Causes the death of an unborn child by the operation or  
3 handling of a firearm or airgun while the person has an alcohol concentration of ~~0.1~~  
4 0.08 or more.

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

6           940.25 (1) (bm) Causes great bodily harm to another human being by the  
7 operation of a commercial motor vehicle while the person has an alcohol  
8 concentration of 0.04 or more but less than ~~0.1~~ 0.08.

9           **SECTION 31.** 940.25 (1) (e) of the statutes is amended to read:

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

13          **SECTION 32.** 949.08 (2) (em) of the statutes is amended to read:

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

21          **SECTION 33.** 967.055 (1) (b) of the statutes is amended to read:

22          967.055 (1) (b) The legislature intends to encourage the vigorous prosecution  
23 of offenses concerning the operation of motorboats by persons under the influence of  
24 an intoxicant, a controlled substance, a controlled substance analog or any  
25 combination of an intoxicant, controlled substance and controlled substance analog

1 to a degree which renders him or her incapable of operating a motorboat safely, or  
2 under the combined influence of an intoxicant and any other drug to a degree which  
3 renders him or her incapable of operating a motorboat safely or having an alcohol  
4 concentration of ~~0.1~~ 0.08 or more.

5 <sup>Fix component</sup> SECTION ~~9353~~ <sup>#</sup> Initial applicability; transportation <sup>keep</sup>

6 (1) The treatment of sections 23.33 (4c) (a) 2. and 3. and (b) 2. and 4., 30.681  
7 (1) (b) 1. and (bn) and (2) (b) 1. and (d) 1., 340.01 (46m) (a) and (b), 343.31 (1) (a),  
8 346.63 (2m), (5) (a), and (6) (a), 350.101 (1) (b) and (c) and (2) (b) and (d), 885.235 (1g),  
9 (a) 1. and 2., (b), (bd), (c), and (cd) and (1m), 940.09 (1) (bm) and (e) and (1g) (b) and  
10 (d), 940.25 (1) (bm) and (e), 949.08 (2) (em), and 967.055 (1) (b) of the statutes first  
11 applies to offenses committed on the effective date of this subsection.

This act

12 <sup>Fix component</sup> SECTION ~~9453~~ <sup>#</sup> Effective dates; transportation <sup>keep</sup>

13 (1) The treatment of sections 23.33 (4c) (a) 2. and 3. and (b) 2. and 4., 30.681  
14 (1) (b) 1. and (bn) and (2) (b) 1. and (d) 1., 340.01 (46m) (a) and (b), 343.31 (1) (a),  
15 346.63 (2m), (5) (a), and (6) (a), 350.101 (1) (b) and (c) and (2) (b) and (d), 885.235 (1g),  
16 (a) 1. and 2., (b), (bd), (c), and (cd) and (1m), 940.09 (1) (bm) and (e) and (1g) (b) and  
17 (d), 940.25 (1) (bm) and (e), 949.08 (2) (em), and 967.055 (1) (b) of the statutes and  
18 Section 9353 (1) of this act take effect on September 30, 2003.

(END)  
# This act takes

**Mentkowski, Annie**

---

**From:** Boardman, Kristina  
**Sent:** Monday, January 13, 2003 4:43 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB-1356/1 Topic: Prohibited alcohol concentration to be .08 for first and second offense

It has been requested by <Boardman, Kristina> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-1356/1 Topic: Prohibited alcohol concentration to be .08 for first and second offense