

ENGROSSED 2003 ASSEMBLY BILL 88

June 4, 2003 – Printed by direction of SENATE CHIEF CLERK.

1 **AN ACT** *to repeal* 340.01 (46m) (b), 885.235 (1g) (a) 2., 885.235 (1g) (bd) and
2 885.235 (1g) (cd); *to renumber* 885.235 (1g) (a) 1.; and *to amend* 23.33 (4c) (a)
3 2., 23.33 (4c) (a) 3., 23.33 (4c) (b) 2., 23.33 (4c) (b) 4., 30.681 (1) (b) 1., 30.681 (1)
4 (bn), 30.681 (2) (b) 1., 30.681 (2) (d) 1., 165.755 (1) (b), 302.46 (1) (a), 340.01
5 (46m) (a), 343.23 (2) (b), 343.31 (1) (ar), 346.63 (2m), 346.63 (5) (a), 346.63 (6)
6 (a), 350.101 (1) (b), 350.101 (1) (c), 350.101 (2) (b), 350.101 (2) (d), 757.05 (1) (a),
7 814.63 (1) (c), 814.63 (2), 814.634 (1) (a), 814.635 (1), 814.65 (1), 885.235 (1g) (b),
8 885.235 (1g) (c), 885.235 (1m), 940.09 (1) (bm), 940.09 (1) (e), 940.09 (1g) (b),
9 940.09 (1g) (d), 940.25 (1) (bm), 940.25 (1) (e), 949.08 (2) (em) and 967.055 (1)
10 (b) of the statutes; **relating to:** prohibited alcohol concentration.

Analysis by the Legislative Reference Bureau

Engrossment information:

The text of Engrossed 2003 Assembly Bill 88 consists of the bill, as affected by the following documents adopted in the assembly on May 29, 2003: the bill as affected by Assembly Amendment 1.

ENGROSSED ASSEMBLY BILL 88***Content of Engrossed 2003 Assembly Bill 88:***

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.

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.

Current law requires a person who is convicted of operating a motor vehicle with a prohibited alcohol concentration to pay various court costs and fees in addition to the fine or forfeiture imposed for the violation. Also under current law the Department of Transportation (DOT) maintains, permanently, a record of the person's violation as a part of his or her driving record.

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.

The bill eliminates the various additional court costs and fees for a person who violates, for the first time, the prohibition against operating a motor vehicle with a prohibited alcohol concentration if the person's alcohol concentration was between 0.08 and 0.099 at the time of the violation.

The bill also requires DOT to purge, after ten years, a person's driving record of a first violation for operating a motor vehicle with a prohibited alcohol concentration if the person had an alcohol concentration between 0.08 and 0.099 at the time of the violation and if the person is not convicted of another violation related to operating a motor vehicle while intoxicated.

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:

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1 23.33 (4c) (a) 3. ‘Operating with alcohol concentrations at specified levels;
2 below age 19.’ If a person has not attained the age of 19, the person may not engage
3 in the operation of an all-terrain vehicle while he or she has an alcohol concentration
4 of more than 0.0 but not more than ~~0.1~~ 0.08.

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

6 23.33 (4c) (b) 2. ‘Causing injury with alcohol concentrations at or above
7 specified levels.’ No person who has an alcohol concentration of ~~0.1~~ 0.08 or more may
8 cause injury to another person by the operation of an all-terrain vehicle.

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

10 23.33 (4c) (b) 4. ‘Defenses.’ In an action under this paragraph, the defendant
11 has a defense if he or she proves by a preponderance of the evidence that the injury
12 would have occurred even if he or she had been exercising due care and he or she had
13 not been under the influence of an intoxicant or did not have an alcohol concentration
14 of ~~0.1~~ 0.08 or more.

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

16 30.681 (1) (b) 1. No person may engage in the operation of a motorboat while
17 the person has an alcohol concentration of ~~0.1~~ 0.08 or more. This subdivision does
18 not apply to commercial motorboats.

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

20 30.681 (1) (bn) *Operating with alcohol concentrations at specified levels; below*
21 *legal drinking age.* A person who has not attained the legal drinking age, as defined
22 in s. 125.02 (8m), may not engage in the operation of a motorboat while he or she has
23 a blood alcohol concentration of more than 0.0 but less than ~~0.1~~ 0.08.

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

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

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

5 30.681 (2) (d) 1. In an action under this subsection for a violation of the
6 intoxicated boating law where the defendant was operating a motorboat that is not
7 a commercial motorboat, the defendant has a defense if he or she proves by a
8 preponderance of the evidence that the injury would have occurred even if he or she
9 had been exercising due care and he or she had not been under the influence of an
10 intoxicant or did not have an alcohol concentration of ~~0.1~~ 0.08 or more.

11 **SECTION 8g.** 165.755 (1) (b) of the statutes is amended to read:

12 165.755 (1) (b) A court may not impose the crime laboratories and drug law
13 enforcement assessment under par. (a) for a violation of s. 101.123 (2) (a), (am) 1.,
14 (ar), (bm), or (br) or (5) (b), for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1.,
15 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood
16 alcohol concentration between 0.08 and 0.099 at the time of the violation, or for a
17 violation of a state law or municipal or county ordinance involving a nonmoving
18 traffic violation or a safety belt use violation under s. 347.48 (2m).

19 **SECTION 8r.** 302.46 (1) (a) of the statutes is amended to read:

20 302.46 (1) (a) On or after October 1, 1987, if a court imposes a fine or forfeiture
21 for a violation of state law or for a violation of a municipal or county ordinance except
22 for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), or (br) or (5), or for a first
23 violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the
24 person who committed the violation had a blood alcohol concentration between 0.08
25 and 0.099 at the time of the violation, or for a violation of state laws or municipal or

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1 county ordinances involving nonmoving traffic violations or safety belt use violations
2 under s. 347.48 (2m), the court, in addition, shall impose a jail assessment in an
3 amount of 1% of the fine or forfeiture imposed or \$10, whichever is greater. If
4 multiple offenses are involved, the court shall determine the jail assessment on the
5 basis of each fine or forfeiture. If a fine or forfeiture is suspended in whole or in part,
6 the court shall reduce the jail assessment in proportion to the suspension.

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

8 340.01 **(46m)** (a) If the person has ~~one or no~~ 2 or fewer prior convictions,
9 suspensions, or revocations, as counted under s. 343.307 (1), an alcohol
10 concentration of ~~0.1~~ 0.08 or more.

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

12 **SECTION 10m.** 343.23 (2) (b) of the statutes is amended to read:

13 343.23 **(2)** (b) The information specified in par. (a) must be filed by the
14 department so that the complete operator's record is available for the use of the
15 secretary in determining whether operating privileges of such person shall be
16 suspended, revoked, canceled, or withheld in the interest of public safety. The record
17 of suspensions, revocations, and convictions that would be counted under s. 343.307
18 (2) shall be maintained permanently, except that the department shall purge the
19 record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or
20 350.101 (1) (b) after 10 years, if the person who committed the violation had a blood
21 alcohol concentration between 0.08 and 0.099 at the time of the violation, if the
22 person does not have a commercial driver license, and if the person has no other
23 suspension, revocation, or conviction that would be counted under s. 343.307 during
24 that 10-year period. The record of convictions for disqualifying offenses under s.
25 343.315 (2) (h) shall be maintained for at least 10 years. The record of convictions

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1 for disqualifying offenses under s. 343.315 (2) (f) and (j) shall be maintained for at
2 least 3 years. The record of convictions for disqualifying offenses under s. 343.315
3 (2) (a) to (e) shall be maintained permanently, except that 5 years after a licensee
4 transfers residency to another state such record may be transferred to another state
5 of licensure of the licensee if that state accepts responsibility for maintaining a
6 permanent record of convictions for disqualifying offenses. Such reports and records
7 may be cumulative beyond the period for which a license is granted, but the secretary,
8 in exercising the power of suspension granted under s. 343.32 (2) may consider only
9 those reports and records entered during the 4-year period immediately preceding
10 the exercise of such power of suspension.

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

12 343.31 (1) (ar) Injury by the operation of a commercial motor vehicle while the
13 person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08 and which
14 is criminal under s. 346.63 (6).

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

16 346.63 (2m) If a person has not attained the legal drinking age, as defined in
17 s. 125.02 (8m), the person may not drive or operate a motor vehicle while he or she
18 has an alcohol concentration of more than 0.0 but not more than ~~0.1~~ 0.08. One
19 penalty for violation of this subsection is suspension of a person's operating privilege
20 under s. 343.30 (1p). The person is eligible for an occupational license under s. 343.10
21 at any time. If a person arrested for a violation of this subsection refuses to take a
22 test under s. 343.305, the refusal is a separate violation and the person is subject to
23 revocation of the person's operating privilege under s. 343.305 (10) (em).

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

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1 346.63 (5) (a) No person may drive or operate a commercial motor vehicle while
2 the person has an alcohol concentration of 0.04 or more but less than ~~0.1~~ 0.08.

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

4 346.63 (6) (a) No person may cause injury to another person by the operation
5 of a commercial motor vehicle while the person has an alcohol concentration of 0.04
6 or more but less than ~~0.1~~ 0.08.

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

8 350.101 (1) (b) *Operating with alcohol concentrations at or above specified*
9 *levels.* No person may engage in the operation of a snowmobile while the person has
10 an alcohol concentration of ~~0.1~~ 0.08 or more.

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

12 350.101 (1) (c) *Operating with alcohol concentrations at specified levels; below*
13 *age 19.* If a person has not attained the age of 19, the person may not engage in the
14 operation of a snowmobile while he or she has an alcohol concentration of more than
15 0.0 but not more than ~~0.1~~ 0.08.

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

17 350.101 (2) (b) *Causing injury with alcohol concentrations at or above specified*
18 *levels.* No person who has an alcohol concentration of ~~0.1~~ 0.08 or more may cause
19 injury to another person by the operation of a snowmobile.

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

21 350.101 (2) (d) *Defenses.* In an action under this subsection, the defendant has
22 a defense if he or she proves by a preponderance of the evidence that the injury would
23 have occurred even if he or she had been exercising due care and he or she had not
24 been under the influence of an intoxicant or did not have an alcohol concentration
25 of ~~0.1~~ 0.08 or more.

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1 **SECTION 18c.** 757.05 (1) (a) of the statutes is amended to read:

2 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
3 state law or for a violation of a municipal or county ordinance except for a violation
4 of s. 101.123 (2) (a), (am) 1., (ar), (bm), or (br) or (5), or for a first violation of s. 23.33
5 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who
6 committed the violation had a blood alcohol concentration between 0.08 and 0.099
7 at the time of the violation, or for a violation of state laws or municipal or county
8 ordinances involving nonmoving traffic violations or safety belt use violations under
9 s. 347.48 (2m), there shall be imposed in addition a penalty assessment in an amount
10 of 24% of the fine or forfeiture imposed. If multiple offenses are involved, the penalty
11 assessment shall be based upon the total fine or forfeiture for all offenses. When a
12 fine or forfeiture is suspended in whole or in part, the penalty assessment shall be
13 reduced in proportion to the suspension.

14 **SECTION 18g.** 814.63 (1) (c) of the statutes is amended to read:

15 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
16 101.123 (2) (a), (am) 1., (ar), (bm), or (br) or (5), for a first violation of s. 23.33 (4c) (a)
17 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the
18 violation had a blood alcohol concentration between 0.08 and 0.099 at the time of the
19 violation, or for a violation of a safety belt use violation under s. 347.48 (2m).

20 **SECTION 18L.** 814.63 (2) of the statutes is amended to read:

21 814.63 (2) Upon the disposition of a forfeiture action in circuit court for
22 violation of a county, town, city, village, town sanitary district or public inland lake
23 protection and rehabilitation district ordinance, except for an action for a first
24 violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the
25 person who committed the violation had a blood alcohol concentration between 0.08

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1 and 0.099 at the time of the violation, or for a safety belt use violation under s. 347.48
2 (2m), the county, town, city, village, town sanitary district or public inland lake
3 protection and rehabilitation district shall pay a nonrefundable fee of \$5 to the clerk
4 of circuit court.

5 **SECTION 18p.** 814.634 (1) (a) of the statutes is amended to read:

6 814.634 (1) (a) Except for an action for a first violation of s. 23.33 (4c) (a) 2.,
7 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the
8 violation had a blood alcohol concentration between 0.08 and 0.099 at the time of the
9 violation, or for a safety belt use violation under s. 347.48 (2m), the clerk of circuit
10 court shall charge and collect a \$52 court support services fee from any person,
11 including any governmental unit as defined in s. 108.02 (17), paying a fee under s.
12 814.61 (1) (a), (3), or (8) (am) or 814.63 (1).

13 **SECTION 18t.** 814.635 (1) of the statutes is amended to read:

14 814.635 (1) Except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681
15 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
16 had a blood alcohol concentration between 0.08 and 0.099 at the time of the violation,
17 or for a safety belt use violation under s. 347.48 (2m), the clerk of circuit court shall
18 charge and collect a \$9 justice information system fee from any person, including any
19 governmental unit as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a),
20 (3) or (8) (am), 814.62 (1), (2) or (3) (a) or (b) or 814.63 (1). The justice information
21 system fee is in addition to the other fees listed in this section.

22 **SECTION 18x.** 814.65 (1) of the statutes is amended to read:

23 814.65 (1) COURT COSTS. In a municipal court action, except for an action for
24 a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1)
25 (b), if the person who committed the violation had a blood alcohol concentration

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1 between 0.08 and 0.099 at the time of the violation, or for a violation of an ordinance
2 in conformity with s. 347.48 (2m), the municipal judge shall collect a fee of not less
3 than \$15 nor more than \$23 on each separate matter, whether it is on default of
4 appearance, a plea of guilty or no contest, on issuance of a warrant or summons or
5 the action is tried as a contested matter. Of each fee received by the judge under this
6 subsection, the municipal treasurer shall pay monthly \$5 to the state treasurer for
7 deposit in the general fund and shall retain the balance for the use of the
8 municipality.

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

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

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

12 885.235 **(1g)** (b) Except with respect to the operation of a commercial motor
13 vehicle as provided in par. (d), the fact that the analysis shows that the person had
14 an alcohol concentration of more than 0.04 but less than ~~0.1~~ 0.08 is relevant evidence
15 on the issue of intoxication or an alcohol concentration of ~~0.1~~ 0.08 or more but is not
16 to be given any prima facie effect.

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

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

19 885.235 **(1g)** (c) ~~The~~ In cases involving persons who have 2 or fewer prior
20 convictions, suspensions, or revocations, as counted under s. 343.307 (1), the fact
21 that the analysis shows that the person had an alcohol concentration of ~~0.1~~ 0.08 or
22 more is prima facie evidence that he or she was under the influence of an intoxicant
23 and is prima facie evidence that he or she had an alcohol concentration of ~~0.1~~ 0.08
24 or more.

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

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

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

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

15 940.09 **(1)** (bm) Causes the death of another by the operation of a commercial
16 motor vehicle while the person has an alcohol concentration of 0.04 or more but less
17 than ~~0.1~~ 0.08.

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

19 940.09 **(1)** (e) Causes the death of an unborn child by the operation of a
20 commercial motor vehicle while the person has an alcohol concentration of 0.04 or
21 more but less than ~~0.1~~ 0.08.

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

23 940.09 **(1g)** (b) Causes the death of another by the operation or handling of a
24 firearm or airgun while the person has an alcohol concentration of ~~0.1~~ 0.08 or more.

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

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

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

5 940.25 **(1)** (bm) Causes great bodily harm to another human being by the
6 operation of a commercial motor vehicle while the person has an alcohol
7 concentration of 0.04 or more but less than ~~0.1~~ 0.08.

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

9 940.25 **(1)** (e) Causes great bodily harm to an unborn child by the operation of
10 a commercial motor vehicle while the person has an alcohol concentration of 0.04 or
11 more but less than ~~0.1~~ 0.08.

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

13 949.08 **(2)** (em) Is an adult passenger in the offender's commercial motor
14 vehicle and the crime involved is specified in s. 346.63 (6) or 940.25 and the passenger
15 knew the offender was under the influence of an intoxicant, a controlled substance,
16 a controlled substance analog or any combination of an intoxicant, controlled
17 substance and controlled substance analog, or had an alcohol concentration of 0.04
18 or more but less than ~~0.1~~ 0.08. This paragraph does not apply if the victim is also a
19 victim of a crime specified in s. 940.30, 940.305, 940.31, or 948.30.

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

21 967.055 **(1)** (b) The legislature intends to encourage the vigorous prosecution
22 of offenses concerning the operation of motorboats by persons under the influence of
23 an intoxicant, a controlled substance, a controlled substance analog or any
24 combination of an intoxicant, controlled substance and controlled substance analog
25 to a degree which renders him or her incapable of operating a motorboat safely, or

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

4 **SECTION 34. Initial applicability.**

5 (1) This act first applies to offenses committed on the effective date of this
6 subsection.

7 **SECTION 35. Effective date.**

8 (1) This act takes effect on September 30, 2003.

9 (END)