

Traffic Safety Facts

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.08 BAC Illegal *per se* Level

It is illegal *per se* (in itself) to drive a motor vehicle with a blood alcohol concentration (BAC) at or above a specified level in all but one State in the United States. The previous level in most states had been .10 BAC for drivers 21 and older, but now 34 States (AL, AK, AZ, AR, CA, CT, FL, GA, HI, ID, IL, IN, KA, KY, LA (effective 9/30/02), ME, MD, MS, MO, NE, NH, NM, NC, OK, OR, RI*, SD, TN, TX, UT, VT, VA, WA, WY), the District of Columbia, and Puerto Rico have enacted laws that set a lower level of .08 BAC. In a 1992 Report to Congress, NHTSA recommended that all States lower the illegal *per se* level to .08 for all drivers 21 and older. [Rhode Island's .08 BAC law does not presently meet federal requirements stated in Sec. 163 of 23 U.S.C. (listed on pages 3 & 4) to avoid sanctions in 2003.]

In 1998, as part of the Transportation Equity Act for the 21st Century (TEA-21), a new Federal incentive grant was

created to encourage States to adopt a .08 BAC illegal *per se* level.

In 2000, Congress passed .08 BAC as the national standard for impaired driving as part of the Department of Transportation's appropriations for fiscal year 2001. States that do not adopt .08 BAC by October 1, 2003, will have 2 percent of certain highway construction funds withheld. Each year, the withholding increases by 2 percent, up to 8 percent in fiscal year 2007 and later. Those States that adopt the standard by fiscal year 2007 will be reimbursed for any withheld funds.

Key Facts

- In 2001, 41 percent of the 42,116 motor vehicle deaths were alcohol-related. This translates to 17,448 alcohol-related motor vehicle deaths during that year, accounting for an average of one alcohol-related fatality every 32 minutes.
- The National Highway Traffic Safety Administration's (NHTSA) position on the relationship between blood alcohol concentration and driving is that driving performance degrades after just one drink.
- A comprehensive NHTSA study provides what is perhaps the clearest laboratory evidence to date of the significant impairment that occurs in driving-related skills of all drivers with .08 BAC, regardless of age, gender, and drinking history.
- .08 BAC laws are effective in reducing alcohol-related fatal crashes. At least 10 studies, covering many of the States that have enacted .08 BAC laws, have

consistently shown that .08 BAC laws are associated with reductions in alcohol-related fatalities, particularly in conjunction with the administrative license revocation (ALR) laws that are present in 41 States.

- NHTSA has published several comprehensive studies on the effectiveness of .08 BAC laws. These studies found consistent and persuasive evidence that .08 BAC laws are associated with reduced incidence of alcohol-related fatal crashes. A study of the effectiveness of a .08 BAC law, implemented in Illinois in 1997, found that the .08 BAC law was associated with a 13.7 percent decline in the number of drinking drivers involved in fatal crashes. The reduction included drivers at both high and low BAC levels. This is significant because critics of .08 BAC laws have often claimed that these laws have no effect on high BAC drivers. The study also found that there were no major problems reported by local law enforcement or court systems due to the change in the law. An updated analysis of the Illinois data found that the .08 *per se* law continues to save lives. It is estimated that the .08 BAC law has saved 105 lives in the first two full calendar years since its implementation in Illinois.
- In a comprehensive study of drivers involved in fatal crashes in all 50 states and the District of Columbia from 1982-1997, it was estimated that .08 BAC laws reduced driver alcohol-related fatal crashes by 8 percent. If all states adopt .08 BAC

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laws, the study estimated that an additional 400-600 lives could be saved annually.

- A 1999 report by the U.S. General Accounting Office (GAO) reviewed the studies available at that time and found strong indications that .08 BAC laws, in combination with other drunk driving laws (particularly license revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement, can save lives. The GAO report also concluded that a .08 (BAC) law can be an important component of a State's overall high-way safety program.

Why .08?

The research is clear. Virtually all drivers, even experienced drinkers, are significantly impaired at .08 BAC. As early as 1988, a NHTSA review of 177 studies clearly documented this impairment. NHTSA released a later review of 112 more recent studies, providing additional evidence of impairment at .08 BAC and below. The results of the nearly 300 studies reviewed have shown that, at .08 BAC, virtually all drivers are impaired on critical driving tasks such as divided attention, complex reaction time, steering, lane changing, and judgment.

The risk of being in a crash gradually increases as a driver's BAC increases, but rises more rapidly once a driver reaches or exceeds .08 BAC, compared with drivers with no alcohol in their blood stream. A recent study has estimated that drivers at .08-.09 BACs are anywhere from 11 to 52 times more likely to be involved in a fatal crash than drivers at .00 BAC, depending upon their age and gender.

Lowering the *per se* limit is a proven effective countermeasure that will reduce alcohol-related traffic fatalities, especially when combined with an administrative license revocation (ALR) law. There was a 12 percent reduction in alcohol-related fatalities in California in 1990, the year .08 and an administrative license revocation law went into effect. The decrease in

alcohol-related fatalities occurred at both high and low BAC levels, including even drivers with BAC levels of .20 or greater. A 1996 study at Boston University showed that States adopting .08 laws experienced 16 percent and 18 percent post-law declines in the proportions of fatal crashes involving fatally-injured drivers whose BAC levels were .08 or higher and .15 or higher, respectively. A recent review of the evidence by the Centers for Disease Control and Prevention concluded that .08 BAC laws are associated with a median 7 percent reduction in alcohol-related traffic fatalities in States that adopt them.

The .08 BAC limit is reasonable and has the potential for saving hundreds of lives and reducing thousands of serious injuries each year, if implemented by all States.

The public supports a .08 BAC level. NHTSA surveys show that most people would not drive after consuming two or three drinks in an hour. Polls show that two out of three Americans favor lowering the limit to .08 when they are aware of how much alcohol it takes to reach that level.

Point-Counterpoint

States considering .08 BAC laws should review all the facts, including the rationale behind .08 and the potential impact on alcohol-related deaths. Opposition to .08 laws generally includes the following arguments:

- **Point:** In 1999, the U.S. General Accounting Office (GAO) conducted a critical review of the .08 studies and concluded that these laws are not effective in reducing alcohol-related fatalities.
- **Counterpoint:** This statement is incorrect! The GAO report stated that there are "strong indications that .08 BAC laws, in combination with other drunk driving laws (particularly license revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement can save lives".

- **Point:** .08 BAC legislation will not affect problem drinker-drivers who have high BAC levels.
 - **Counterpoint:** The latest research shows that .08 laws not only reduce the incidence of impaired driving at lower BACs, they also reduce the incidence of impaired driving at higher BAC levels (i.e., over .10). A .08 law serves as a general deterrent to all those who drink and drive because it sends a message that the State is getting tougher on impaired driving, and it makes many people think twice about getting behind the wheel after they have had too much to drink. A .08 law is a key component of an overall program to reduce impaired driving. While repeat offenders do account for a significant part of the problem, most fatally-injured drinking drivers have no prior alcohol-related offenses.
 - **Point:** .08 BAC laws make criminals out of normal social drinkers.
 - **Counterpoint:** Impairment and crash risk are the issues, not how many drinks it may take to get to a .08 BAC. Numerous studies have indicated that at .08 BAC, virtually all drivers are impaired on critical driving tasks such as divided attention, complex reaction time, steering, lane changing, and judgment. In addition, the risk of being involved in a fatal crash is much greater than at .00 BAC.
 - **Point:** .08 is just the first step in a movement toward zero tolerance.
 - **Counterpoint:** NHTSA and the .08 BAC movement are not attempting to prohibit the use of alcohol. Illegal BAC limits for adults are not meant to restrict individuals from drinking alcohol. Rather, they exist to prevent individuals from operating a motor vehicle while impaired by alcohol, putting their own lives, and the lives of others, at risk.
 - **Point:** .08 BAC laws will overwhelm police and clog the criminal justice system.
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- **Counterpoint:** Two studies, one in California and another in Illinois, looked at the impact of .08 BAC laws on enforcement efforts and the criminal justice system. These studies have not found any significant problems for the police or for the court systems.

Section 163 of 23 U.S.C.

Section 163 of the Transportation Equity Act for the 21st Century (TEA-21) created incentive grants for States enacting and enforcing a qualifying .08 BAC illegal *per se* law.

To be eligible for a grant under 23 U.S.C. Section 163, a State's law must meet six basic elements:

- It must apply to all drivers.
- It must set a BAC level of no higher than .08.
- It must establish driving at .08 BAC as an illegal *per se* offense.
- It must provide for primary enforcement of the law (rather than requiring probable cause that another violation had been committed before allowing enforcement of the .08 BAC law).
- It must apply to the criminal code and, in States with administrative license revocation (ALR) laws, to the ALR law as well.
- It must be deemed to be equivalent to the State's standard "driving while intoxicated" offense.

Section 163 Incentive Grant Terms

Grant funds can be used for highway safety and highway construction projects. No State matching funds are required for these grants.

A total of \$500 million was authorized for this grant program: \$55 million in fiscal year 1998, \$65 million in fiscal year 1999, \$80 million in fiscal year 2000, \$90 million in fiscal year 2001, \$100 million in fiscal year 2002, and \$110 million in fiscal year 2003.

New Penalty Program

As mentioned previously, 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. Those States that adopt the standard by 2007 will be reimbursed for any lost funds. The bill was signed into law on October 23, 2000.

.05 BAC Limit in Other Countries

The international trend continues to be to reduce illegal *per se* limits to .05 BAC or lower. The illegal limit is .05 BAC in numerous countries including: Australia, Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Germany, Greece, Israel, Italy, The Netherlands, Portugal, South Africa, Spain, and Turkey. Russia, Sweden, and Norway have a limit of .02 BAC and Poland recently went to .03 BAC. Several countries have reported studies indicating that lowering the illegal *per se* limit from .08 BAC to .05 BAC reduces alcohol-related fatalities (e.g., Australia, Austria, Belgium, The Netherlands, and France).

Laboratory studies indicate that impairment in critical driving functions begins at low BACs. Most subjects in these studies were significantly impaired at .05 BAC with regard to visual acuity, vigilance, drowsiness, psychomotor skills, and information processing compared to their performance at .00 BAC.

Leading medical, crash prevention, public health, and traffic safety organizations in the world support BAC limits at .05 or lower, including: the World Medical Association, the American and British Medical Associations, the European

Commission, the European Transport Safety Council, the World Health Organization, and the American College of Emergency Physicians.

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