



# Federal mandates persuade states to consider .08 legislation

by Laura Kliewer

Prompted by federal incentives and mandates, several Midwestern states considered legislation this year to lower the level at which citizens can be convicted for impaired driving to a blood alcohol content (BAC) of .08.

The outcomes for such legislation in 2001 have been mixed, but .08 bills will most certainly be addressed again next year due to action at the federal level. Last October, Congress passed .08 BAC as the national standard for impaired driving. Under the law, which is part of the U.S. Department of Transportation's fiscal year 2001 appropriations bill, states that do not adopt a .08 standard by October 1, 2003, will begin losing federal highway construction funds.

Starting in 2004, these states would begin to have 2 percent of certain highway construction funds withheld each year. In fiscal year 2007, the penalty would increase to a withholding of 8 percent. States that adopt the standard after the 2003 date — but by 2007 — would be reimbursed for lost funds (although without interest).

This threat of lost transportation money is not the only way the federal government has tried to induce .08 legislation at the state level. Section 163 of the Transportation Equity Act for the 21<sup>st</sup> Century, signed by President Bill Clinton on June 9, 1998, provides \$500 million in incentive grants over six years to states that have enacted and are enforcing a .08 BAC per se law (Per se means anyone driving with a blood alcohol content of .08 or above is impaired and cannot try to prove a lack of impairment). No state matching funds are required to receive the federal incentives.

The push to lower the level for drunken driving comes in part from the findings of recent studies. A typical 170-pound male would need to consume more than four cans of beer in one hour on an empty stomach to reach a BAC of .08. For a 137-pound female, it would take three beers. According to the National Highway Transportation Safety Administration (NHTSA), the vast majority of drivers — even experienced drinkers — are impaired at .08 with regard to critical driving tasks.

The relative risk of being killed in a single-vehicle crash for drivers at blood alcohol levels between .05 and .09 is 11 times that of drivers

who have consumed no alcohol, the Insurance Institute for Highway Safety found.

In addition, some studies seem to indicate that states have significantly lowered the number of alcohol-related fatal crashes after lowering the legal alcohol limit for driving. A September 2000 report evaluating Illinois' .08 statute found that the number of drunken drivers involved in fatal crashes decreased by 13.7 percent after implementation of the law, while surrounding states had no changes.

The study also found that there was no major impact on the operations of the criminal justice system or the driver licensing system.

Before this year, Illinois and Kansas were the only two Midwestern states with a .08 law. Illinois lowered its drunken driving per se law to .08 in 1997, and Kansas has had its measure on the books since 1993. The states have received \$19.3 million and \$7.1 million, respectively, in incentive grants during the three fiscal years since Section 163 was enacted.

According to early

NHTSA estimates, Illinois can expect to receive about \$5.5 million and Kansas \$2 million during fiscal year 2001.

Although the pot of federal money available increases each year, the amount each state receives is based on how many states are eligible. Indiana and Nebraska passed .08 legislation this year, so they are also

expected to receive incentive grants under Section 163. Indiana expects to receive about \$2.9 million in 2001, while Nebraska will take in \$1.35 million in incentive grant money. Michigan and Ohio also stood to receive grants if they passed legislation and could certify enactment by July 1.

Nebraska's passage of a .08 law in 2001 came after several failed attempts in previous years. Sen. Carol Hudkins, author of the bill, says the chance to secure additional federal funding far outweighed any concerns about the legislation.

"We just didn't feel that we could turn that much money down," the senator from Malcolm adds. "Anytime you're talking about a million dollars plus, that is nothing to be sneezed at. Even though it could be a small percentage of the total transportation funding, it is ours for just doing the right thing."

Indiana's experience was similar, although somewhat more contentious.

"One of the main reasons it moved is because of the federal mandate," says Rep. Peggy Welch, a Democrat from Bloomington and sponsor of the bill in the Indiana House. "For whatever reason, it moved, and we're glad because we believe it is just good public policy. We also realize that .08 is not a silver bullet, but is one piece of the puzzle."

Sen. Thomas Wyss had tried in 10 of the last 11 sessions to get .08 legislation considered. His persistence finally paid off this year.

"I'm not one that really likes the federal government mandating," the Republican from Fort Wayne says. "But I think of when Ronald Reagan signed the 21 law (pushing states to make the legal drinking age 21). He said it was one of the most important acts of his presidency. Why should Hoosiers be safer in Illinois than in their own state from those drivers?"


Legislation to lower the BAC level in Iowa, Minnesota and South Dakota did not fair as well. In both Iowa and South Dakota, the legislation never got out of committee.

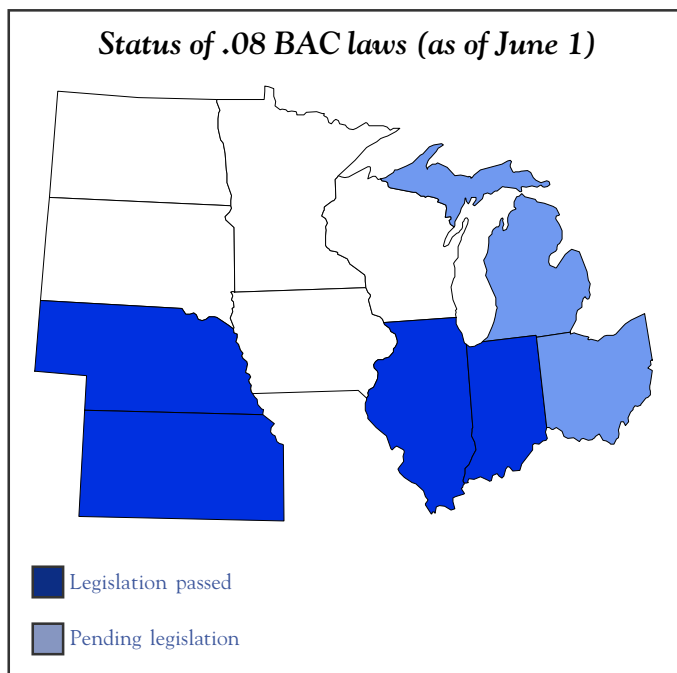
Sen. Johnnie Hammond of Iowa says she sponsored .08 BAC legislation this year at the

governor's urging.

The bill was never heard in committee or on the floor, though. The Democrat from Ames says her state has considered the legislation several times. Last year, members of the Judiciary Committee

took part in a test, sponsored by the Department of Public Safety and the Highway Patrol, to test their abilities to perform important functions after reaching a .08 BAC level. "It was interesting," she says. "We were mostly impaired at .08."

In Minnesota, opponents of the .08 law expressed skepticism about whether lowering the threshold would save lives, concerns about the cost of implementing the program, and apprehension about imposing such a mandate on cities and counties. Eventually, the measure was voted down in the Senate (33-30). 



*"We just didn't feel that we could turn that much money down. Anytime you're talking about a million dollars plus, that is nothing to be sneezed at. Even though it could be a small percentage of the total transportation funding, it is ours for just doing the right thing."*

Sen. Carol Hudkins  
Nebraska