

OWI-Related Legislative Summary
Prepared by Nina J. Emerson, J.D.
Director, Resource Center on Impaired Driving
University of Wisconsin Law School
April 2008

2007 Wis. Act 3:

Extends the hours of operation for bars to accommodate the earlier daylight-savings time change. The Act allows bars to serve alcohol until 3:30 a.m., instead of closing at 2 a.m., when the clocks advance one hour.

2007 Wis. Act 8:

Creates an exception to the prohibition against underage persons entering or being on premises operating under an alcohol beverage license for the Wisconsin Renaissance Faire in Chippewa Falls.

2007 Wis. Act 9:

Allows certain retail premises to provide wine samples of not more than 3 fluid ounces each and 3 fluid ounces of fermented malt beverages, not to exceed two taste samples per day to any one person. Taste samples may be provided between the hours of 11 a.m. and 7 p.m.

2007 Wis. Act 111:

Increases the felony classifications for repeat offenders:

5th & 6th Offense = Class H felony

Fine not less than \$600 or more than \$10,000, imprisonment not less than 6 months or more than 6 years, or both. (*Formerly applied to 5 or more offenses*)

7th, 8th or 9th Offense = Class G felony

Fine not to exceed \$25,000, imprisonment not to exceed 10 years, or both.

10th & Subsequent Offense = Class F felony

Fine not to exceed \$25,000, imprisonment not to exceed 12 years & 6 months, or both.

Increases the OWI surcharge from \$355 to \$365, part of the increase to go to the Safe-Ride Program.

2005 Wis Act 317:

Increases the forfeiture for absolute sobriety violations (for persons under 21) from \$20 to \$200. If there is a minor passenger in the car, the forfeiture is increased to \$400. A conviction is assessed 4 demerit points.

2005 Wis. Act 268:

Allows restaurants to re-cork an unfinished bottle of wine so the patron can take it home and not be in violation of the open intoxicants statute. The patron must have a receipt from the restaurant. Carry out cannot occur between the hours of midnight and 6 a.m.

2005 Wis. Act 413:

Creates a subsection under the Implied Consent Law that allows an officer to request a chemical test sample in crashes involving death or great bodily harm when the officer detects the presence of alcohol or drugs, but the person is not under arrest for OWI. (The Legislature codifies *State v. Erickson*, 2003 WI App 43, 260 Wis. 2d 279, which held that in the absence of arrest, probable cause to believe a suspect's blood contains evidence of a drunk driving related crime satisfied the warrantless blood draw requirements under *State v. Bohling*, 173 Wis. 2d 529, 494 N.W.2d 399 (Sup. Ct. 1993).)

2003 Wis. Act 30:

Lowers the "prohibited alcohol concentration" to .08 or more on 1st – 3rd offenses. (4th and subsequent remains at .02) Creates an exception for a first offense, if the person has a blood alcohol concentration of .08 or more but less than 0.1 at the time of the violation, which exempts the person from paying the OWI surcharge of \$365.00, having an alcohol assessment, completing a driver safety plan, and paying a number of court fines and costs. Also creates a provision that requires DOT to purge the record of a first offense with an alcohol concentration between .08 and 0.1, provided the person does not get another violation within a 10-year period.

2003 Wis. Act 97:

Creates s. 346.63(1)(am), which prohibits a person from driving or operating a motor vehicle with a "detectable amount of a restricted controlled substance" in a person's blood. The penalties are the same as for OWI under s. 346.63(1)(a).

"Restricted controlled substance" is defined as follows:

- a) A schedule I controlled substance, other than tetrahydrocannabinol
- b) A controlled substance analog
- c) Cocaine or any of its metabolites
- d) Methamphetamine
- e) Delta-9-tetrahydrocannabinol

This is considered a "per se" violation for using illicit drugs and driving.