

ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE

April 10, 2001

1:45 p.m.

MEMBERS PRESENT

Representative Vic Kohring, Chair
Representative Beverly Masek, Vice Chair
Representative Drew Scalzi
Representative Peggy Wilson

MEMBERS ABSENT

Representative Scott Ogan
Representative Mary Kapsner
Representative Albert Kookesh

COMMITTEE CALENDAR

HOUSE BILL NO. 12

"An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated; relating to presumptions arising from the amount of alcohol in a person's breath or blood; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 12

SHORT TITLE:REDUCE PERCENTAGE FOR DWI

SPONSOR(S): REPRESENTATIVE(S)KOTT

Jrn-Date	Jrn-Page		Action
01/08/01	0026	(H)	PREFILE RELEASED 12/29/00
01/08/01	0026	(H)	READ THE FIRST TIME - REFERRALS
01/08/01	0027	(H)	TRA, JUD, FIN
04/03/01		(H)	TRA AT 1:00 PM CAPITOL 17
04/03/01		(H)	-- Meeting Canceled --
04/10/01		(H)	TRA AT 1:00 PM CAPITOL 17

WITNESS REGISTER

ROGER WORTMAN, Staff
to Representative Pete Kott

Alaska State Legislature
Capitol Building, Room 204
Juneau, Alaska 99801

POSITION STATEMENT: Testified on behalf of the sponsor of HB
12.

DOUG WOOLIVER, Administrative Attorney
Office of Administrative Director
Alaska Court System
820 West 4th Avenue
Anchorage Alaska 99501

POSITION STATEMENT: Answered questions on HB 12.

KACE McDOWELL, Executive Director
Anchorage Cabaret Hotel Restaurant & Retailers Association
(CHARR)
(No address provided)

POSITION STATEMENT: Testified on HB 12.

ALVIA "STEVE" DUNNAGAN, Lieutenant
Division of Alaska State Troopers
Department of Public Safety
5700 East Tudor Road
Anchorage, Alaska 99507

POSITION STATEMENT: Testified in support of HB 12.

MARY MARSHBURN, Director
Division of Motor Vehicles
Department of Administration
3300B Fairbanks Street
Anchorage, Alaska 99503

POSITION STATEMENT: Testified in support of HB 12.

CRAIG PERSSON
Legislative Liaison
Public Safety Employees Association
4300 Boniface Parkway
Anchorage, Alaska 99504

POSITION STATEMENT: Testified in support of HB 12.

CINDY CASHEN
Mothers Against Drunk Driving
211 4th Street
Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of HB 12.

LOREN JONES, Director

CMH/API Replacement Project
Division of Mental Health and Developmental Disabilities
Department of Health & Social Services
PO Box 110620
Juneau, Alaska 99824
POSITION STATEMENT: Answered questions on the fiscal note for
HB 12.

MARY MORAN, Administrator
Highway Safety Office
Division of Statewide Planning
Department of Transportation & Public Facilities
3132 Channel Drive
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HB 12.

ACTION NARRATIVE

TAPE 01-27, SIDE A
Number 0001

CHAIR VIC KOHRING called the House Transportation Standing Committee meeting to order at 1:45 p.m. Members present at the call to order were Representatives Kohring, Scalzi, Wilson, and Masek.

CHAIR KOHRING noted that he had sent a letter to Michele Brown, Commissioner [of the Department of Environmental Conservation] having to do with the [task force's] legislation dealing with the cruise ships [HB 55]. The letter is intended to have the commissioner provide an explanation as to the justification for the legislation in light of the fact that there are already some state statutes on the books that are believed to oversee the industry. He added that there is also the issue of graywater contaminates.

HB 12-REDUCE PERCENTAGE FOR DWI

[Contains discussion of HB 4]

CHAIR KOHRING announced that the committee would consider HOUSE BILL NO. 12, "An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated; relating to presumptions arising from the amount of alcohol in a person's breath or blood; and providing for an effective date."

Number 0267

CHAIR KOHRING addressed Roger Wortman, Staff to Representative Pete Kott, and stated that [the committee] has already heard DWI (driving while intoxicated) legislation and had addressed the .08 [blood alcohol concentration (BAC)] legislation. He said [the committee members] want solid justification as to why they need to hear this again.

ROGER WORTMAN, Staff to Representative Pete Kott, Alaska State Legislature, came forth on behalf of Representative Kott, sponsor of HB 12. He said Representative Kott felt this had a better chance of going through [the legislature] on a stand-alone basis. Having it rolled up with other issues, like those in HB 39, really exacerbates the fiscal note.

CHAIR KOHRING noted that he had spoken with Representative Rokeberg about his bill; it had moved out of the House Judiciary Standing Committee and is stuck in the House Finance Standing Committee. Concern was expressed about the fiscal note.

Number 0364

MR. WORTMAN offered the sponsor statement for HB 12:

Operating motor vehicles under the influence of alcohol has been a major problem in Alaska for a long time. This legislation reduces the amount of alcohol a person can have in their blood while operating motor vehicles. The number of accidents and deaths that occur due to the operation of motor vehicles while under the influence of alcohol is an ongoing problem. Alaska ranks number five in the nation for alcohol-related incidences. It is imperative the state takes action to reduce this serious problem.

Strengthening the current statutes, by lowering the amount of alcohol in a person's blood to .08, serves as a deterrent for operating any type of motor vehicle. Any costs associated with the implementation of this legislation will be beneficial in the long run, as it will save lives. This bill affords local law enforcement agencies a better instrument in the prosecution of offenders. The Alaska Peace Officers Association, the Public Safety Employees Association, ... Mothers Against Drunk Driving, and other similar organizations support this.

This legislation is imperative for the State of Alaska to follow the lead of the federal government in lowering the amount of alcohol a person can have in that person's blood while operating motorized vehicles. If this legislation fails, the State of Alaska stands to lose federal highway funds at a rate 2 percent after 2004, 4 percent after 2005, 6 percent after 2006, 8 percent after 2007, and so on. I found out recently ... that the Senate in Washington has passed a version to change the 2 percent to 5 percent the first year, and to attempt to increase it 10 percent each following year. ... I must remind the committee that although this bill has a significant fiscal note, HB 12 should be looked at as a policy issue rather than an expensive bill.

Number 0555

REPRESENTATIVE SCALZI referred to page 2 [of the bill] regarding the difference between the .04 and .08 [BAC]. He said there is a gray area between .04 and .08. The last sentence of paragraph (2) states, "but that fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor." He asked Mr. Wortman why that is in there.

MR. WORTMAN agreed it is a gray area and said he couldn't answer that.

Number 0647

DOUG WOOLIVER, Administrative Attorney, Office of Administrative Director, Alaska Court System, came forth and stated that these provisions are in existing law. He said there are three presumptions. A person can be pulled over and arrested for DWI even if he or she is below .08 BAC, but then there is a higher burden of proof. This would just lower those percentages so that below a point .04 BAC there is a presumption that the person is not intoxicated. Between .04 and .08, there is no presumption one way or the other. Above a .08 BAC, the presumption is that the person is intoxicated.

REPRESENTATIVE SCALZI asked whether this is currently in statutes, but at a different level.

MR. WOOLIVER answered affirmatively.

CHAIR KOHRING stated that he has a variety of concerns with this legislation. He said the one issue that is going to be most convincing to him is how effective lowering [the BAC] to .08 is going to be, aside from the issue of money. He asked Mr. Wooliver what evidence he could provide that this would work.

MR. WOOLIVER answered that he has done a lot of research on this and the fact is there is no concrete evidence that states that lowering the blood alcohol content (BAC) reduces incidences of traffic deaths. From his experience researching other states, he remarked that this is a tool when tied in with other legislation will definitely help decrease the number of alcohol-related traffic incidences.

Number 0918

KACE McDOWELL, Anchorage Cabaret Hotel Restaurant & Retailers Association (CHARR), testified via teleconference. She stated:

Some of the states have decided not to deal with this .08 issue at this time simply because they do not like the idea of being blackmailed into it by the federal government. Also, several state attorney generals are now forming a lawsuit addressing the unconstitutionality of the .08 federal blackmail mandate. ...

I know we do have time, so CHARR would ... like to see this maybe delayed, unless it is the wishes of the state legislature that we go to .08 on our own and not out of a blackmail situation.

I do believe that .08 targets more the responsible, social drinker than it does our real problem. So ... one of our biggest concerns at CHARR is the really big problem drinker and the underage drinking. ...

Also, my biggest concern, speaking for CHARR, ... is the fiscal note which I know is attached to the .08 bill that's involved with Representative Rokeberg's House Bill 4. The money that we would spend to enforce this is more than the small amount of money we'd be receiving this year; it's something like \$800,000 we might receive this year to a \$3 million fiscal note.

I also just want to bring to the committee's attention ... [the question of whether] we want to spend \$3 million on enforcing a .08, which is targeted at mostly our responsible drinkers ... [or] spend that \$3 million enforcing the laws we already have on the books, which would help us eliminate this chronic drinker that's giving us most of the problems - because there are laws to keep these people off the roads that don't have driver's licenses, and also there's [a] new law going in ... on our wellness courts or our therapeutic courts that will also help [get the ones well who] want to, and we are going to need money to put there also.

Number 1083

ALVIA "STEVE" DUNNAGAN, Lieutenant, Division of Alaska State Troopers, Department of Public Safety, testified via teleconference. He stated:

From an enforcement perspective, the Department of Public Safety would support this bill to reduce the current presumptive level from .10 to .08. I think that it is and will serve as an active deterrent to people to keep them off the road after they've had a few to drink. It's like a padlock. ... Padlocks keep the honest people honest.

I think the reduced BAC would help to keep those other people that are in that marginal area off the road. Everybody seems to think or has an understanding that the people who have humongous BACs are the most dangerous people out there. But I would submit to you that there's been numerous studies that .08, .09, [and] .10 are just as dangerous, if not more dangerous, because those are the ones who have consumed enough alcohol to affect their abilities to operate a car, which is a fairly complex operation. And yet they haven't had enough to know or think that they are impaired for the purposes of driving.

So what you have is ... an .08, .09 person who thinks he's not intoxicated and who believes he can drive 80 [miles per hour] safely, which ... is not the case because his judgment is already impaired. ... It doesn't matter if they are .08, .09, .10, 1.2, 1.5, or

2.5. As far as a problem, they're all problems and they're all dangerous.

I've worked the road for approximately 18 years and, frankly, the death and carnage that happens on our road system is terrible. I understand that this is a money issue for the state, but this isn't a money issue for the people of Alaska, I don't believe, or the law enforcement people.

This is another tool, like the Representative said. It is just one more piece in a large puzzle, and we're going to get there one day with the whole picture in place and be extremely effective. But right now, we need the little pieces to put together so we can start moving in that direction.

Number 1236

MARY MARSHBURN, Director, Division of Motor Vehicles (DMV), Department of Administration, testified via teleconference. She stated:

DMV also supports the bill, which would reduce the blood alcohol level to .08. For those new on the committee, when someone is arrested for DWI, a two-pronged process begins. One is prosecution in the courts for the criminal law violation. The other one is an administrative process before DMV, whose focus is usually public road safety and driver behavior for revocation of a license.

Last year, DMV revoked 4,700 licenses for alcohol-related offenses, largely DWI. The experience of states that have reduced the blood alcohol level to .08 and the reports from the Department of Justice indicate that once the level has been reduced, once law enforcement has received training, [and] once the agencies become accustomed ... to looking for the lower blood alcohols, you can have as much as a 20 percent increase in arrest rates - anywhere from 5 to 20 percent. So we would expect that, yes, there would be an impact from lowering the blood alcohol level and an increase in safety on the roads.

Number 1342

CRAIG PERSSON, Legislative Liaison, Public Safety Employees Association (PSEA), came forth in support of HB 12. He stated:

The Public Safety Employees Association fully supports House Bill 12. Many people are killed and severely injured on our roads every year. Many of the drivers that are involved in these accidents are impaired by alcohol. In our experience many are younger people, who along with being inexperienced drivers ... are also very inexperienced drinkers.

And I think Lieutenant Dunnagan of the troopers got to the point that .08, .09, [and] .10 drivers are the ones out there that are really the dangerous ones, because they think they have the ... alcohol courage that makes them go 80 [or] 90 miles an hour down a road. And these are the people out there killing and injuring and getting in accidents. This bill will go a long way in getting these impaired drivers off the road, and I think it will, in the long run, make our roads a lot safer.

REPRESENTATIVE SCALZI asked Mr. Persson how he would respond to the testimony that it is not the people with .08 BAC who are causing the trouble but the ones who are the habitual drinkers.

MR. PERSSON responded that there are statistics he doesn't have with him that would prove the opposite.

REPRESENTATIVE WILSON, in agreement with Mr. Persson, referred to information in the committee packet that indicates the number of drinks in two hours of drinking and the amount of impairment. She said even at .02 BAC, divided attention, reaction time, and visual function start to be affected.

MR. PERSSON concurred and remarked that he has found younger drivers below an .08 BAC who are very impaired.

Number 1520

CINDY CASHEN, Mothers Against Drunk Driving (MADD), came forth also as a victim of drunk driving. She stated:

MADD supports Representative Kott's bill. ... We feel it is part of the key to reducing drunk driving in Alaska. We feel this bill does not target the

responsible drinker because we feel the responsible drinker does not drink and drive.

I have sent to you ... several studies, which back up the proof that when .08 [as a legal limit] is passed with other bills and by itself ... it does lower drunk driving, and especially with younger drivers and also, surprisingly, with chronic drunk drivers. ... We don't know why, and we're certainly not going to question it.

CHAIR KOHRING asked Ms. Cashen how many other states have lowered their alcohol limits.

MS. CASHEN responded that it is hard to say right now because Maryland's governor is [signing] it today, making it 26 states.

CHAIR KOHRING asked who did the test [provided for the committee by MADD].

MS. CASHEN answered that there were two different studies. One was done by a couple of professors at a university on the East Coast.

Number 1663

CHAIR KOHRING asked, if the committee passes the bill, whether the net result will be less drunk drivers on the roads, or whether there would be more arrests of those who are the chronic drinkers who get behind the wheel and drive.

MS. CASHEN responded that she doesn't feel confident in giving that answer; however, in the studies she has looked at, she would say both.

CHAIR KOHRING asked Ms. Cashen whether she knew the last time [the BAC] was lowered in Alaska.

MS. CASHEN answered that it was lowered to .10 in 1983 after the grandsons of the founder of the Anchorage MADD chapter, June Garish, were killed by a first-time offender. She remarked that it had previously been .12.

CHAIR KOHRING asked what the result of that was.

MS. CASHEN replied that she does not have those statistics. She noted that a strong member of the alcohol industry has come out

in full force by announcing, on the steps of the capitol in Washington, D.C., support of .08.

Number 1832

LOREN JONES, Director, CMH/API Replacement Project, Division of Mental Health and Developmental Disabilities, Department of Health & Social Services Department of Health & Social Services (DHSS), came forth to answer questions on the fiscal note. He informed the committee that the department is in support of the bill. He clarified that the governor of Maryland and [the governor of] Arizona have signed [similar bills].

CHAIR KOHRING asked Mr. Jones whether he has any information about the correlation between [the BAC] level being lowered in the past and a reduced incidence of [drunk driving].

MR. JONES responded that he does not have any information.

REPRESENTATIVE MASEK noted that from the information provided from MADD, it states that MADD does not have a position on the BAC estimator.

REPRESENTATIVE WILSON asked which fiscal note [was being used].

MR. JONES responded that there are two fiscal notes from DHSS. Both relate to the .08 BAC. One is for the alcohol safety action program, and one is for the alcohol and drug abuse grant. He stated that with the estimations that [DHSS] has been given by the Department of Public Safety, DMV, and the courts, there would be about a 10 percent increase in the number of convictions for drunk driving. Therefore, the fiscal notes represent the additional persons who would be in the alcohol safety action program statewide.

REPRESENTATIVE WILSON asked whether the fiscal notes will be added together.

MR. JONES replied that he believes there will be more fiscal notes from other departments.

CHAIR KOHRING remarked that there was a concern brought forth earlier by Kace McDowell, who noted that if [the committee] looks at the fiscal note in a monetary perspective, the gain in return would be \$800,000 in road-related monies for an expenditure of about \$2.4 million. Looking at it from that perspective, he said, it's not a justifying reason to pass the

legislation. He stated that to him it is more of any issue of getting and keeping drunks off the road.

Number 2022

MARY MORAN, Administrator, Highway Safety Office, Division of Statewide Planning, Department of Transportation & Public Facilities, came forth and stated that she has recently been talking with representatives from the national Century Council who have all been in agreement with passing a .08 [BAC limit].

CHAIR KOHRING asked who makes up the Century Council.

MS. MORAN answered that it is basically levels of alcohol distributors who are not beer distributors. She pointed out that studies show that a .08 [limit], along with increased enforcement and education, does make a difference. She remarked that Alaska has a very high rate of drunk driving, which is steadily going down over the years, possibly due to more enforcement and education. In response to Chair Kohring's request, she said she could provide a letter of support from the Century Council.

Number 2139

REPRESENTATIVE MASEK referred to the federal law that was passed last year under the Clinton Administration and asked Ms. Moran how many states have enacted the .10 to .08 [BAC level] since then.

MS. MORAN responded that it had been her understanding that 21 states had passed .08 laws.

REPRESENTATIVE MASEK asked whether states had passed bills because of the loss of the federal funding or in support of the .08 [BAC].

MS. MORAN responded that the federal legislation doesn't go into effect until 2004; therefore, states that are passing .08 right now are either doing it because they think it is a good idea or because they are anticipating the sanction of [the loss of] federal funding. She added that since [the federal legislation] only came out last summer, most likely very few of those states have passed .08 [limits] because of the federal sanction.

Number 2239

REPRESENTATIVE MASEK requested information on how many states have complied with the .08 based on the merit that it would reduce drunk driving or because of the loss of federal funding.

MS. MORAN remarked that she thinks it will be a combination, and doesn't think anyone would say, "We only passed it because the [federal government] said we had to." She added that .08 has been an ongoing discussion, and she thinks [the committee] will find out that most states have passed .08 on its own merits, because people think it's a good idea, and because of the looming sanction.

REPRESENTATIVE MASEK referred to a question from the Century Council ".08 Event" in the committee's packet that read, "What is the stance on the Century Council's BAC estimator? Do you feel it is accurate?" She said MADD and the Department of Public Health don't have a position on the BAC estimator. She noted that it goes on to say, "We believe each state must make their own decision on the best kind of public information education efforts for their citizens." They do support a legal BAC limit of .08, she said, noting that it goes on to say, "We encourage people to designate a nondrinking driver if they plan to drink alcohol."

MS. MORAN said the Century Council estimator is basically a CD-Rom that provides percentages and how much a person needs to drink before he or she reaches a certain percentage based on weight. She added that she doesn't see it as anything but a toy.

Number 2422

CHAIR KOHRING addressed Mr. Wortman and asked what kind of compelling evidence there is that suggests a direct connection between lowering the incidence of drunk driving and passing this legislation. In addition, he asked whether the dollars can be directed to education and enforcement as opposed to lowering the [BAC level]. He noted that there was previous testimony that lowering [the level] to .08, by itself, may not produce any concrete change as far as the number of people on the roads, because it is an issue that has to work in tandem with education and enforcement.

MR. WORTMAN responded that there is no concrete evidence that lowering the blood alcohol level by itself reduces [drunk driving]; it is a tie-in to other bills.

TAPE 01-27, SIDE B

MR. WORTMAN continued, stating that as far as the money is concerned, sooner or later something has to be done or else [Alaska] is going to lose key highway funds. He said it was stated earlier that [Alaska] would receive some incentive funds for enacting this earlier, which is something the committee will have to decide on. He reiterated that this is not a fiscal situation but a policy situation.

Number 2428

CHAIR KOHRING, referring to statistics he had, stated that deaths attributed to drunk driving incidents were approximately 70,000 in the United States as a whole 15 years ago, and are now approximately 17,000. He said he doesn't know what that is attributed to; however, progress is being made.

REPRESENTATIVE MASEK commented that she can understand the intent; however, she thinks the focus needs to be toward the high-risk driver. She noted that the last page of the Century Council's ".08 Event" states, "It must aggressively address the hardcore drunk drivers."

REPRESENTATIVE WILSON stated:

My feelings are, where are we going to spend the money? Obviously, we aren't spending the money on the education end of it. ... We aren't even spending the money to educate our kids in school. ... The money issue - it's not whether we're going to spend it here or we're going to spend it here, because we aren't spending it at the other end.

If this saves one life, it's probably been worth it, no matter what it costs. Whether it's blackmail or whatever, the fact is, that's what's going to happen. By us not putting this into effect, I don't think it's going to affect one hill of beans what the federal government does. They're just going to keep on trucking; they don't care whether they have to give us any money or not. So I think we have to look at the facts.

REPRESENTATIVE WILSON asked Chair Kohring whether he was planning on moving the bill out today.

CHAIR KOHRING responded that he didn't have any intention one way or the other.

Number 2261

REPRESENTATIVE SCALZI said he didn't see any changes he would make to the bill, and therefore saw no advantage in leaving it in the committee. He recommended moving HB 12 out of committee.

REPRESENTATIVE MASEK pointed out that she had requested information on a few topics.

CHAIR KOHRING asked Representative Scalzi whether he would be amenable to holding the bill over in order to receive the information.

REPRESENTATIVE SCALZI responded that he was amenable to whatever Chair Kohring and the committee would like to do.

[HB 12 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:41 p.m.