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STATE OF ALASKA THE LEGISLATURE

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House	Judiciary	Standing	Committee	2/15/85	1:30 pm
"	"	"	"	2/11/85	1:30 pm
"	"	"	"	2/7/85	1:30 pm

COMMITTEE REPORT

HOUSE

(7)

FURTHER:

1/25/85

Date: 2-15-85

The Committee on JUDICIARY has had HB 3

"An Act relating to open containers of alcoholic beverages in motor vehicles."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 3 same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

MEMBERS HAVING OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]
CHAIRMAN

Original sponsors: Szymanski, Bowsher,
Duncan, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 3 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to open containers of alcoholic
7 beverages in motor vehicles."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 28.35 is amended by adding a new section to article 2
10 to read:

11 Sec. 28.35.029. OPEN CONTAINER. (a) A person may not drive or
12 operate a motor vehicle on a highway or vehicular way or area when
13 there is an open bottle, can or other receptacle containing an
14 alcoholic beverage in the passenger compartment of the vehicle, except
15 as provided in (b) of this section.

16 (b) A person may transport an open bottle, can, or other recep-
17 tacle containing an alcoholic beverage in the trunk of a motor vehicle
18 or, if the open bottle, can or other receptacle is enclosed within
19 another container, behind the last upright seat in a motor home,
20 station wagon, hatchback or similar trunkless vehicle.

21 (c) In this section

22 (1) "alcoholic beverage" has the meaning given in AS 04.-
23 21.080(b);

24 (2) "motor vehicle" means a vehicle for which a driver's
25 license is required;

26 (3) "open" includes having a broken seal;

27 (4) "passenger compartment" means the area of a motor
28 vehicle normally occupied by the driver and passengers and includes a
29 utility or glove compartment accessible to the driver or a passenger

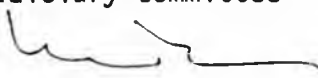
1 while the vehicle is being operated.

2 (d) A person who violates (a) of this section is guilty of an
3 infraction.
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89 - HB 3



Representative Mike Miller

To: Members of the House Judiciary Committee
From: M. M. Miller, Chairman 

The Judiciary Committee will consider HB 3, relating to open containers of alcoholic beverages, on Friday, Feb. 15, instead of Wednesday, Feb. 13, as was announced during the meeting today. We have allotted the first 20 minutes of Friday's meeting to consideration of that bill, the remainder of the time to be spent on HB 97.

Edwards
2/15/85 ✓

Original sponsors: Szymanski, Boucher,
Duncan, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 3 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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15 of this section.

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17 tacle containing an alcoholic beverage in the trunk of a motor vehicle
18 or, if the container is enclosed, behind the last upright seat in a
19 motor home, station wagon, hatchback or similar trunkless vehicle.

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27 vehicle normally occupied by the driver and passengers and includes a
28 utility or glove compartment accessible to the driver or a passenger
29 while the vehicle is being operated.

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(d) A person who violates (a) of this section is guilty of an
infraction.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: B 3
 Title: "An Act relating to open con-
 tainers of alcoholic beverages in motor vehicles."
 Sponsor: Szmanski, Beucher, Duncan,*
 Requestor: _____
 Date of Request: 2/1/85

tainers of alcoholic beverages in motor vehicles."

FISCAL DETAIL

Agency Affected: Health & Social Services
 Program Category Affected: Alcohol & Drug
 Abuse Services
 BRU, Program or Subprogram(s) Affected:
Alcohol Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

*M.M. Miller and Navarre.

Prepared By: Matthew C. Felix *Matthew C. Felix* Phone: 586-6201
 Division: Alcoholism and Drug Abuse Date: 2/1/85

Approved by Commissioner: *John R. O'Byrne* Date: 2/15/85 *JOC*
 Agency: Health and Social Services

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget

POSITION PAPER
HOUSE BILL 3

"An Act relating to open containers of alcoholic beverages in motor vehicles."

The intent of this bill is to assist in lowering the alcohol related traffic accidents and fatalities by prohibiting operators of motor vehicles from consuming alcoholic beverages while driving.

Analysis

Expert testimony at the Presidential Commission on Drunk Driving, Governor's Task Force on Drunk Driving, and Mayor Knowles Drunk Driving Advisory Committee, indicated a strong need for this legislation. The testimony shows a strong relationship between consumption of alcohol and accidents. The act of operating a motor vehicle requires individuals to be free of other activities that may take away from their concentration. Furthermore, consumption of alcohol, a central nervous system depressant drug, often interferes with brain functions required to make special/peripheral judgements while driving.

This statute would bring State law in line with many local ordinances. In Alaska many roads and highways traverse districts with local jurisdictions as well as State enforcement areas. House Bill 3 is needed for continuous and uniform enforcement.

The Statute would give authority for action prior to a driver obtaining the minimum legal limit blood alcohol level. Under a variety of conditions, individuals may become less functional drivers yet not have reached a blood alcohol level of .10 ratio. This statute, with probable cause, allows authorities to take preventive enforcement actions.

Nineteen other states have open container statutes. Other states have more restrictive laws such as "in and about an automobile". When consideration is given to Alaskans rate of alcohol consumption, alcohol related fatalities, and attitude regarding alcohol abuse, this statute becomes very necessary.

Recommendation

The Department is impressed with public testimony in favor of this concept, the Presidential Commission Report's recommendation, and the action of other states in this regard, and accordingly is supportive of SB 71.

Recommended by:

Matthew C. Ferix
Matthew C. Ferix
Coordinator
Office of Alcoholism/
Drug Abuse

Date:

2/1/85

Approved by:

John R. Pugh
John R. Pugh
Commissioner
Dept. of Health &
Social Services

Date:

2/5/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: _____

REQUESTBill/Resolution No.: HB 3Title: "An Act relating to open
containers of alcoholic beverages..."Sponsor: Repr. SzvanskiRequestor: House JudiciaryDate of Request: 1/31/85FISCAL DETAILAgency Affected: Department of Law

Program Category Affected: _____

Administration of Justice

BRU, Program or Subprogram(s) Affected: _____

Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This bill would make it illegal for a person to operate a motor vehicle when there is an open bottle, can or other receptacle containing an alcoholic beverage in the passenger compartment of the vehicle. Although several municipalities have "open container" ordinances, such conduct has not, heretofore, been prohibited by state statute. Consequently, the department does not have enough information to accurately predict what sort of impact may result from enactment of this bill. There could be a fairly substantial impact if there

Prepared By: Richard I. Pegues, Director Phone: 465-3672Division: Administrative Services Date: 2/4/85Approved by Commissioner: Richard I. Pegues / ASL Date: 2/4/85Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

ANALYSIS (Cont'd.):

is vigorous enforcement, and if that enforcement is contested. Likewise, there could be a substantial impact to the state if municipalities elect to charge violators under state statutes, in lieu of charging under local ordinances, once the bill is enacted. At present, most of the major municipalities in the state have ordinances covering this subject and the department believes that the problem addressed by this bill is one that is best handled at the local government level. Without any hard data the Department of Law does not feel that it would be appropriate to request fiscal note funds. If the events speculated about above do not come to pass, this is the type of bill that, when considered by itself, may not result in a fiscal impact. At the least, this bill, when considered in conjunction with other non-impact measures, will divert prosecution resources from other more serious offenses because of their cumulative effect.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 3
 Title: "An Act relating to open
 containers..."
 Sponsor: Rep. Szumanski
 Requestor: House State Affairs
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: _____
Administration of Justice
 BRU, Program or Subprogram(s) Affected: _____
Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger Phone: 465-4338
 Division: Administrative Services Date: 1-21-85

Approved by Commissioner: [Signature] Date: 1/22/85
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

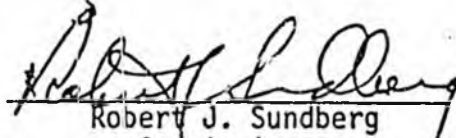
HB 3

SUPPORT

HB 3 - "An Act relating to open containers of alcoholic beverages in motor vehicles."

This bill will provide another law enforcement tool toward reducing the drunk drivers on the road.

Making it a violation to have an open container in the passenger compartment of a motor vehicle should reduce the tendency to drink while in the process of driving, which now is the only violation related to alcoholic beverages in a vehicle.


Robert J. Sundberg
Commissioner

POSITION PAPER

HOUSE BILL 3

"An Act relating to open containers of alcoholic beverages in motor vehicles."

The Department is supportive of HB No. 3 as a preventative measure to drinking and driving. This strategy was favorably reviewed by the Governor's Task Force on Drunk Driving and is a legislative priority of the Alaska Mothers Against Drunk Driving organization.

This legislation would bring the state into conformity with local government ordinances. Alaska is one of the few states that does not have this type of statute.

Recommended by:

Matthew Felix
Matthew C. Felix
Coordinator
Office of Alcoholism/
Drug Abuse

Date:

1/23/85

Approved by:

John R. Pugh
John R. Pugh
Commissioner
Dept. of Health &
Social Services

Date:

1/23/85

REQUEST

FISCAL DETAIL

Bill/Resolution No.: HD 3
Title: "An Act relating to open con-
tainers of alcoholic beverages in motor vehicles."
Sponsor: Szmanski, Boucher, Duncan.*
Requestor: _____
Date of Request: 1/22/85

Agency Affected: Health & Social Service
Program Category Affected: Alcoholism and
Drug Abuse Services
BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

* M.M. Miller and Navarre.

Prepared By: Matthew C. Felix
Division: Alcoholism and Drug Abuse

Phone: 586-6201
Date: 1/23/85

Approved by Commissioner: [Signature]
Agency: Health & Social Services

Date: 1/23/85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

Bill would ban having open containers of alcoholic beverages in cars

Continued from Page A-1

ied in the trunk of a car or he cargo compartment of a ruck.

Motorhomes and campers present unique problems, Szymanski said. Violations will occur only if open containers of beer, wine and liquor are 'reasonably accessible to the driver.'

Motorists caught violating the proposed law would be

subject to fines of up to \$50 and jail terms of up to 90 days.

Szymanski doesn't believe his bill will lead to a police crackdown on those who imbibe on the highway. Instead, he said, the law is intended to "reform people . . . to discourage people from the practice of keeping a cooler of beer on the back seat or a six pack between their legs."

A state open container law

is badly needed, said Katherine Bigler, president of Mothers Against Drunk Driving (MADD). Earlier this year Bigler recommended the adoption of similar legislation.

Bigler has not had a chance to review Szymanski's bill.

Ten years ago, the state traffic code did include an "open container" regulation. It was eliminated, said Joe Balfe, an assistant attorney

general assigned to the Alaska State Troopers, after someone questioned the Department of Public Safety's authority to adopt and enforce it.

Public Safety can adopt traffic regulations governing the behavior of people behind the wheel, Balfe said. "But when you start regulating passengers, only the ABC (Alcohol Beverage Control) board can do that."

In Alaska, people who drive while intoxicated are subject to stiff fines and mandatory three-day jail sentences. The penalty for drinking while driving is not as severe, said Sgt. Spike Christopher of the Homer Police Department.

If the driver is not intoxicated, Christopher said, he usually gets a \$15 fine and 2 points against his driver's license.

Lawmaker proposes 'open container' bill

By RONNIE CHAPPELL
Daily News reporter

The possession of an open can of beer or liquor in a moving vehicle will be illegal in Alaska if the legislature approves a new bill proposed by Rep. Mike Szymanski, D-Anchorage.

Anchorage already has an "open container" ordinance, but on the Kenai Peninsula

and in other parts of the state it is legal for passengers in campers, trucks and automobiles to sample their favorite alcoholic beverages as they are driving on the highway.

That creates a problem, police and prosecutors say, because it makes it almost impossible to enforce existing regulations against drinking while driving.

To get a conviction a trooper must see a person drinking behind the wheel. Otherwise, said Kenai District Attorney Tom Wardell, violators claim the booze is only in transit or belongs to a passenger.

"If you're concerned about people drinking in cars, an open container law is the way to go," Wardell said.

Under the bill Szymanski

Anch. Daily News 1/19/85
has pre-filed in the legislature, it would be illegal to carry open alcoholic beverage containers in the passenger compartments of moving vehicles. Wine and liquor bottles would be open, Szymanski said, if the seal on the cap has been broken.

Open bottles could be car-

See Back Page, BILL.

PUBLIC SAFETY

OLD
REGS

which prevents the free and unhampered operation of the vehicle. (Eff. 12/1/69, reg. 31)

Authority: AS 28.05.030

13 AAC 02.545. DRINKING WHILE DRIVING. (a) A person may not drink or have in his possession an open or unsealed receptacle containing an intoxicating beverage while in a motor vehicle.

(b) An open or unsealed receptacle containing an intoxicating beverage is considered in possession of the registered owner of a motor vehicle, or the operator, if the registered owner is not then present in the motor vehicle, unless the container is in the trunk of the motor vehicle or unless it is in the locked glove compartment of a motor vehicle which does not have a trunk. (Eff. 12/1/69, reg. 31)

Authority: Apark 5.030

13 AAC 02.550. LEAVING CHILD UNATTENDED IN STANDING VEHICLE WITH MOTOR RUNNING. A person, while operating or in control of a motor vehicle, may not park or willfully allow the motor vehicle to stand with its motor running if a minor child under the age of 12 years is unattended in the vehicle. (Eff. 12/1/69, reg. 31)

Authority: AS 28.05.030

ARTICLE 12. GENERAL PROVISIONS

Section

- 560. Application of traffic regulations
- 565. Obedience to police officer, flagman and fireman
- 570. Required to give information and cooperate with police officer
- 575. Person riding animal or driving animal drawn vehicle
- 580. Fireman's private vehicle
- 585. Authorized emergency vehicle

13 AAC 02.560. APPLICATION OF TRAFFIC REGULATIONS. The traffic regulations apply exclusively to the equipping, condition, movement or operation of a vehicle, bicycle, person or animal upon a highway or a state operated and maintained ferry facility; except,

(1) where a limited application or a different place is specifically referred to in a section;

(2) where a section provides that it applies on a highway and elsewhere throughout the state.

(b) Unless specifically made applicable by statute or regulation, the traffic regulations do not apply to a person, vehicle or other equipment while actually engaged in construction maintenance or repair work upon, along, above or under a highway but do apply to these persons and vehicles when traveling to or from the work or when traveling to or from the actual work site as part of the work.

PROPOSED
CHANGES
See page 2

NOTICE OF PROPOSED CHANGES
IN THE
REGULATIONS OF THE DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given that the Department of Public Safety, under authority vested by AS 28.05.030 and AS 28.20.020 proposes to amend and repeal certain regulations in Title 13 of the Alaska Administrative Code as follows:

(1) 13 AAC 02.180 is amended to read:

13 AAC 02.180. PEDESTRIAN SOLICITING RIDE OR BUSINESS. A person may not stand on or along a roadway in a manner that will distract a driver's attention for the purpose of soliciting a ride, employment, business or a contribution from the occupant of a vehicle. (Eff. before 7/28/59; am 12/15/61, reg. 3; am 8/10/66, reg. 22; am 12/31/69, reg. 31; at Leg. request, am. / / reg.)

Authority: AS 28.05.030

(2) 13 AAC 02.340 (b) is amended to read:

(b) This section does not apply to the driver of a school bus stopped to load or unload a school child or to the driver of a vehicle which is disabled while on a highway in a manner and to an extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in that position; provided, if the vehicle is left unattended, the operator shall leave a notice in or on the vehicle which is visible to a person outside the vehicle or leave the hood of the vehicle in a raised position either of which indicates the vehicle is temporarily disabled. This section does not allow a vehicle to be left unattended in or on a bridge, causeway or tunnel or in a hazardous position on a roadway.

(3) 13 AAC 02.340 is amended by adding a new subsection to read:

(c) A vehicle that is stopped, parked or standing in violation of a statute or traffic regulation is considered to have been stopped, parked or left standing by the registered owner of the vehicle, unless at the time of the violation a police officer observes the vehicle being stopped, parked or left standing by a driver who is not the registered owner, in which case any action by the officer shall be directed to that driver. (Eff. before 7/28/59; am 12/15/61, reg. 3; am 8/10/66, reg. 22; am 12/31/69, reg. 31; am / / , reg.)

Authority: AS 28.05.030

Cross Reference: 14 AAC 04.790g
(parking at airports)

(4) 13 AAC 02.455 (c) is amended to read:

(c) A snow vehicle may not be operated on the roadway of a state highway but may be operated on a path or shoulder adjacent to the roadway of a state

highway, provided the snow vehicle is driven three feet or more from the extreme edge of the roadway.

(5) 13 AAC 02.455(g) is repealed.

(6) 13 AAC 02.545(a) is amended to read

13 AAC 02.545. DRINKING WHILE DRIVING. A person may not drink an intoxicating beverage while operating a motor vehicle.

(7) 13 AAC 02.545(b) is repealed.

(8) 13 AAC 04.145(b) and (c) are amended to read

(b) Except as required or authorized in §§ 90, 100 and 150(b) of this chapter, a person may not drive or move a vehicle or equipment with a lamp or device displaying a red or blue light visible from directly in front of the center of the vehicle or equipment.

(c) A flashing light is prohibited except as required or authorized in §§ 35, 90, 95, 100(a), 105, 110(d) and 150(b) of this chapter. (Eff. before 7/28/59; am 12/15/61, reg. 3; am 8/10/66, reg. 22; am 12/31/69, reg. 31; am. / / , reg.)

Authority AS 28.05.030

(9) 13 AAC 04.155 is repealed, and existing 13 AAC 04.160 is repositioned as 13 AAC 04.155.

(10) 13 AAC 08.105 is amended to read:

13 AAC 08.105. FORM OF NOTICE. A written notice, including a notice of suspension, is considered delivered to that person 10 days after it is registered or certified and deposited in the United States mail, postage prepaid, addressed to that person at his last known address as shown by the most recent records of the department. (Eff. 12/31/69, reg. 31; am. / / , reg.)

Authority: AS 28.20.070

Cross Reference: AS 28.20.050(c) & (d)

AS 28.20.090(a)

AS 28.20.400(c)

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at Room 423 of the Capital Building, Juneau, Alaska; 830 Water Street, Ketchikan, Alaska; 702 East 30th Avenue, Anchorage, Alaska; 1616 Cushman Street, Fairbanks, Alaska; and the Alaska State Trooper office, Nome, Alaska, at 9:00 a.m. on June 1, 1970.

The Department of Public Safety, upon its own motion or at the instance of any interested person, may at the hearing or after it adopt the above proposals substantially as above set out without further notice.

Date April 20, 1970

A handwritten signature in dark ink, appearing to read 'Mel J. Personett', written over a horizontal line.

Mel J. Personett, Commissioner
Department of Public Safety

AMENDED
REGS
1970

Reg. , Oct. 1970

PUBLIC SAFETY

13 AAC 02.540
13 AAC 02.560

13 AAC 02.540. EMBRACING ANOTHER WHILE DRIVING. A person may not operate a vehicle when he has in his embrace another person in a manner which prevents the free and unhampered operation of the vehicle. (Eff. 12/31/69, reg. 31)

Authority: AS 28.05.030

13 AAC 02.545. DRINKING WHILE DRIVING. A person may not drink an intoxicating beverage while operating a motor vehicle. (Eff. 12/31/69, reg. 31; am 7/23/70, reg.35)

Authority: AS 28.05.030

13 AAC 02.550. LEAVING CHILD UNATTENDED IN STANDING VEHICLE WITH MOTOR RUNNING. A person, while operating or in control of a motor vehicle, may not park or willfully allow the motor vehicle to stand with its motor running if a minor child under the age of 12 years is unattended in the vehicle. (Eff. 12/31/69, reg. 31)

Authority: AS 28.05.030

ARTICLE 12. GENERAL PROVISIONS

Section

- 560. Application of traffic regulations
- 565. Obedience to police officer, flagman and fireman
- 570. Required to give information and cooperate with police officer
- 575. Person riding animal or driving animal drawn vehicle
- 580. Fireman's private vehicle
- 585. Authorized emergency vehicle

13 AAC 02.560. APPLICATION OF TRAFFIC REGULATIONS. (a) The traffic regulations applying exclusively to the equipping, condition, movement or operation of a vehicle, bicycle, person or animal upon a highway or a state operated and maintained ferry facility; except,

(1) where a limited application or a different place is specifically referred to in a section;

(2) where a section provides that it applies on a highway and elsewhere throughout the state.

(b) Unless specifically made applicable by statute or regulation, the traffic regulations do not apply to a person, vehicle or other equipment while actually engaged in construction maintenance or repair work upon, along, above or under a highway but do apply to these persons and vehicles when traveling to or from the work or when traveling to or from the actual work site as part of the work.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

February 6, 1985

REPLY TO:

OFFICE OF THE CHIEF PROSECUTOR
POUCH KC
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

Honorable Kate Hurley
Chairman, House State Affairs
Pouch V
Juneau, AK 99811

Re: House Bill 3 - An Act Relating to Open Containers of Alcoholic Beverages in Motor Vehicles

Dear Chairman Hurley:

On Wednesday, January 23, 1985, I represented the Department of Law, Criminal Division at the House State Affairs committee on House Bill 3 -- an act relating to open containers of alcoholic beverages in motor vehicles. This letter is written in response to your request that my comments be placed in writing.

My comments can be summarized as follows:

(1) A definition of "alcoholic beverage" should be provided in this section. As there is a definition of "alcoholic beverage" already located in Title 4 -- Alcoholic Beverages, the recommended drafting technique would be to cross-reference to that Title 4 definition. Thus, the amendment would read:

"alcoholic beverage" has the meaning given in AS 04.21.080(b)(1)."

In using the cross-reference technique, however, one must realize that any future changes in the Title 4 definition will be incorporated in this Title 28 definition. If the committee feels the two definitions should be independent, the full Title 4 definition can be written out in this bill. We would recommend that the cross-reference technique be used in this case because it is highly likely that any change in the Title 4 definition, which is defined for the purpose of regulating the sale, distribution and consumption of alcoholic beverages, would be a desirable change for the purposes of the open container law, as well.

(2) The legislature should determine whether it wants to make it a crime for a person to have an open

receptacle containing alcoholic beverages while "driving" a motor vehicle only, or while "driving or operating" a motor vehicle. The existing DWI statute makes it a crime to "drive or operate" a motor vehicle while intoxicated. The definition of "driving" is self-explanatory. The definition of "operate" is less obvious and has been the subject of legal argument. A common jury instruction given by Alaska courts for the definition of "operate" reads as follows:

"operating" a motor vehicle means a person voluntarily placed himself behind the wheel of a motor vehicle and (A) had started the motor or permitted it to run, or (B) was in exclusive control of a stationary vehicle in that he was able to immediately control the mechanical or electrical devices that could cause the vehicle to move;

In other words, a person observed sitting in an automobile which has its motor running, which has two wheels on the road and two wheels off the road, who has his head and shoulders on the passenger side of the front seat and his feet and legs below the steering wheel, and who is sleeping, would be seen as "operating" a motor vehicle for the purposes of a DWI prosecution. Jacobson v. State, 551 P.2d 935 (Alaska 1976).

The issue, then, is whether the legislature wants to make it a crime to have an open container of alcoholic beverage in the car just while the car is moving, or also when it is parked, but the driver is in a position to move the car.

(3) It should be decided whether this law should apply only to persons driving a motor vehicle on a highway or vehicular way, or whether it should apply to persons driving anywhere, i.e., on private property, in parking lots, etc. Under existing law, a farmer can be prosecuted for Driving While Intoxicated for driving his tractor in his own barley field while under the influence of intoxicating liquor. This is because a tractor falls under the definition of "motor vehicle" and there is no requirement under the DWI statute that the driving be on a highway or vehicular way. It is felt that any person driving a motor vehicle while impaired is a danger to life and property, no matter where he is driving.

On the other hand, a person can be prosecuted for Driving While License Suspended (DWLS) under AS 28.15.291 only if he is driving the motor vehicle on a highway or vehicular way. That is because a drivers license is not required to operate a motor vehicle in places other than a highway or vehicular area.

(4) I also testified that this bill addresses a local problem, because it is not the type of problem that occurs frequently outside local boundaries. And it does appear that the major cities in Alaska, such as Anchorage, Fairbanks, and Juneau have similar, but not identical, laws. A certain amount of this type of activity occurs on roadways which are not within the jurisdiction of any local government, however, and thus a state statute would be necessary for State Troopers to enforce such a law.

(5) Finally, I mentioned that this new law could possibly be used by local police departments for charging purposes, instead of a similar local ordinance. By charging a misdemeanor under state law, a local government would avoid paying for public defender costs for the defense of indigent offenders, as required by a law passed in the last legislative session (AS 18.85.155). However, this concern appears to be unwarranted as the three largest cities in Alaska -- Anchorage, Fairbanks, and Juneau -- make this violation punishable by a fine only. Only those indigent persons charged with offenses which carry a potential jail penalty are entitled to receive legal representation at public expense.

It should also be noted that the definition of "motor vehicle" under Title 28 includes any vehicle which is self-propelled, except a vehicle moved by human or animal power. This includes tractors, snow machines, three-wheelers, in addition to the traditional automobile or truck.

I hope these comments clarify my testimony on this bill.

At your request, I have provided copies of this letter to the Honorable Mike Miller, Chairman of the House Judiciary Committee and all House Judiciary Committee Members. I have also provided a copy to the prime sponsor of the bill, the Honorable Mike Szymanski.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: *Lisa B. Nelson*
Lisa B. Nelson
Assistant Attorney General



Official Business

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

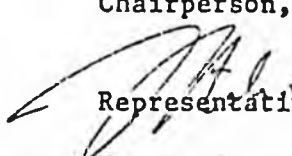
Rep. Mike Szymanski
801 W. Fireweed Lane, Suite 102
Anchorage, Alaska 99503
Phone 276-6731

SR-A-Box 1304B
Anchorage, Alaska 99502
Phone (907) 349-3373

While in Session:
Pouch V
State Capitol
Juneau, Alaska 99801

January 22, 1985

TO: Representative Katie Hurley
Chairperson, House State Affairs Committee

FROM:  Representative Mike Szymanski

SUBJECT: House Bill 3

The intent of HB 3 is to provide law enforcement officials another tool for use in combatting drunk driving. There can be little doubt that the presence of open alcoholic beverage containers in a vehicle increases the probability of consumption while driving and correspondingly, the possibility of an alcohol related accident.

Currently, Alaska has no open container statute on the books. For while 13AAC 02 545 prohibits drinking while driving, nothing prohibits open alcoholic beverage containers in the passenger compartments of moving vehicles.

Nineteen other states have an open container law (see attached analysis), some of which have been in existence since the 1930's. House Research contacted Utah and Hawaii where laws were recently enacted.

Utah enacted its law in 1981 in an effort to alleviate confusion resulting from the inconsistency of numerous local ordinances governing drinking and driving. Hawaii, which also enacted its law in 1981, did so in response to police accident reports which frequently cited empty alcohol containers at the scene.

Given Alaska's disproportionate number of alcohol related accidents, I would greatly appreciate your consideration of this important measure.

From: U.S. Department of Transportation, National Highway
 Traffic Safety Administration
 "Alcohol-Highway Safety: A Digest of State Alcohol-
 Highway Safety Related Legislation 1983"

ANALYSIS BY STATES—HIGH-INTEREST LEGISLATION (Continued)

State	Dram Shop	Open Container	Community Service	Mandatory Jail—1st Offense	Mandatory Jail—2nd or Other Offense
ALABAMA	Statute				
ALASKA	Statute				
ARIZONA	No		X	X	X
ARKANSAS	No				
CALIFORNIA	No	X			X
COLORADO	Statute		X		
CONNECTICUT	Statute				X
DELAWARE	No				
DISTRICT OF COLUMBIA	Case law				
FLORIDA	Case law		X		
GEORGIA	Statute				
HAWAII	Case law	X	X		
IDAHO	Case law	X			
ILLINOIS	Statute	X			
INDIANA	Case law				X
IOWA	Statute				X
KANSAS	No	X			
KENTUCKY	Case law				X
LOUISIANA	No		X	X	X
MAINE	Statute			X	X
MARYLAND	No	X			
MASSACHUSETTS	Statute				
MICHIGAN	Statute	X	X		
MINNESOTA	Statute	X			
MISSISSIPPI	Case law				
MISSOURI	Case law				
MONTANA	No	X			X
NEBRASKA	No				X
NEVADA	No				X
NEW HAMPSHIRE	No				X
NEW JERSEY	Case law		X		
NEW MEXICO	Case law				X
NEW YORK	Statute				
NORTH CAROLINA	No	X			X
NORTH DAKOTA	Statute	X			
OHIO	Statute	X			

ANALYSIS BY STATES—HIGH-INTEREST LEGISLATION (Continued)

State	Dram Shop	Open Container	Community Service	Mandatory Jail—1st Offense	Mandatory Jail—2nd or Other Offense
OKLAHOMA	No	X			
OREGON	Statute	X			
PENNSYLVANIA	Statute		X	X	X
PUERTO RICO	No				
RHODE ISLAND	Statute				
SOUTH CAROLINA	No	X			
SOUTH DAKOTA	No	X			
TENNESSEE	Case law		X	X	X
TEXAS	No				
UTAH	Statute	X	X		
VERMONT	Statute				
VIRGINIA	No				X
WASHINGTON	Case law	X		X	X
WEST VIRGINIA	No		X	X	X
WISCONSIN	No	X			
WYOMING	Statute			X	X
	Case law-12 Statute -20	19	11	8	20

Introduced: 1/14/85
Referred: State Affairs and
Judiciary

BY SZYMANSKI, BOUCHER, DUNCAN,
M.M.MILLER AND NAVARRE

1 IN THE HOUSE

2 HOUSE BILL NO. 3

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to open containers of alcoholic
7 beverages in motor vehicles."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 Section 1. AS 28.35 is amended by adding a new section to article 2
10 to read:

11 Sec. 28.35.029. OPEN CONTAINER. (a) A person may not operate a
12 motor vehicle when there is an open bottle can or other receptacle
13 containing an alcoholic beverage in the passenger compartment of the
14 vehicle.

15 (b) In this section

16 (1) "motor vehicle" means a vehicle for which a driver's
17 license is required;

18 (2) "open" includes having a broken seal;

19 (3) "passenger compartment" means the area of a motor
20 vehicle normally occupied by the driver and passengers and includes a
21 utility or glove compartment accessible to the driver or a passenger
22 while the vehicle is being operated.

23 (c) A person who violates (a) of this section is guilty of an
24 infraction.




ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 14, 1985

MEMORANDUM

TO: Representative Mike Szymanski

FROM: Sharman Haley 
Legislative Analyst

RE: Open Container Laws in Other States
Research Request 85-174

Per your request, I have reviewed statutes from other states with open container laws to determine how they apply to vehicles that do not have a trunk, such as stationwagons, hatchbacks, or recreational vehicles.

North Dakota, Minnesota, Wisconsin, Washington, California, Hawaii, and Oregon statutes have language similar to HB 3, making it unlawful to have an open container of alcoholic beverage in the passenger area of a motor vehicle. The cargo area of a stationwagon or hatchback is included in the prohibition unless it is actually enclosed, for example, the spare tire compartment. Washington, California, Hawaii, and Oregon statutes specifically exclude living quarters in recreational vehicles, campers, or motor homes. The Kansas statute is similar in scope but worded differently from these four. A captain in the Oregon State Highway Patrol stated that officers in Oregon are encouraged to use their discretion and not apply the law strictly when there is no reason to believe that the alcohol is being consumed; for example, a half bottle of wine, corked and stowed out of reach among picnic supplies in the cargo area of a stationwagon occupied by sober adults, would not be cause for citation.

North and South Carolina statutes specifically allow open containers to be transported in the cargo area or the area behind the last upright seat in a stationwagon, hatchback, or similar vehicle. Michigan law provides that a container of alcohol on which the seal is broken may be transported in a vehicle without a trunk if the container is encased or enclosed. The South Dakota statute simply provides that the open container must be "so removed" that no occupant has access to it while the vehicle is in motion.

Representative Szymanski
February 14, 1985
Page Two

Idaho, Montana, and Illinois prohibit the transport of open containers of alcohol altogether, even in the trunk.

Copies of the referenced statutes are attached. If you have further research needs, please contact us.

SH

Attachments

or club licensees duly authorized to sell beer under the provisions of this code;

(c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of advertisement or any other announcement, publication, or price list of or concerning liquor or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department and then only in accordance with such rules.

(2) This section shall not apply to:

(a) the department, any act of the department, any state liquor store; or

(b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of his employment as such agent, operator, or employee.

History: En. Sec. 65, Ch. 105, L. 1933; re-en. Sec. 2815.124, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1974; amd. Sec. 1, Ch. 274, L. 1975; Sec. 4-170, R.C.M. 1947; redes. 4-3-103 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-103.

16-3-104. Common carriers to purchase beer from brewer or wholesaler. It shall be unlawful for the operator of any common carrier or its employees to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a duly licensed brewer or wholesaler.

History: En. Sec. 37, Ch. 106, L. 1933; re-en. Sec. 2815.41, R.C.M. 1935; Sec. 4-338, R.C.M. 1947; amd. and redes. 4-3-104 by Sec. 67, Ch. 387, L. 1975; R.C.M. 1947, 4-3-104.

16-3-105. Restrictions on liquor in hotels. Except in the case of liquor or beer kept or consumed in premises for which a license has been granted under the law and which form a part of a hotel, no person shall:

(1) keep or consume liquor in any part of a hotel other than a private guest room;

(2) keep or have any liquor in any room in a hotel unless he is a bona fide guest of the hotel and is duly registered in the office of the hotel as an occupant of that room.

History: En. Sec. 64, Ch. 105, L. 1933; re-en. Sec. 2815.123, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1974; Sec. 4-169, R.C.M. 1947; redes. 4-3-105 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-105.

16-3-106. Conveyance of liquors — opening liquor during transit forbidden. (1) It shall be lawful to carry or convey liquor to any state store and to and from any warehouse or depot established by the department for the purposes of this code, and when permitted to do so by this code and the rules made thereunder and in accordance therewith, it shall be lawful for any common carrier or other person to carry or convey liquor sold by a vendor from a state store or beer, when lawfully sold by a brewer, from the premises wherein such beer was manufactured or from premises where the beer may be lawfully kept and sold to any place to which the same may be lawfully delivered under this code and the rules made thereunder.

(2) No common carrier or any other person shall open, break, or allow to be opened or broken any package or vessel containing liquor or drink or use or allow to be drunk or used any liquor therefrom while being carried or conveyed.

History: En. Sec. 17, Ch. 105, L. 1933; re-en. Sec. 2815.76, R.C.M. 1935; Sec. 4-122, R.C.M. 1947; amd. and redes. 4-2-103 by Sec. 12, Ch. 387, L. 1975; R.C.M. 1947, 4-2-103.

16-3-201. Power other than to purchase, sell or dispose of or character of article other than in the manner prescribed. History: En. Sec. 5, L. 1933; amd. and redes. 4-3-201.

16-3-202. Be the department is. History: En. Sec. 4, L. 1937; amd. Sec. 1, Ch. 387, L. 1975; R.C.M.

16-3-203 thro

16-3-211. Mo premises. Every person before the 15th day of the month prescribed by the department amount of beer manufactured in the previous month and any time to make and otherwise check the content of beer manufactured. History: En. Sec. 7, L. 1937; amd. and redes. 4-3-203.

16-3-212. Br for any brewer to sell to a wholesaler. History: En. Sec. 9, L. 1937; R.C.M. 1935; Sec. 4-313, L. 1947, 4-3-204.

16-3-213. Br exception. It shall be unlawful for any person to sell or give away any permit to sell or give away any declared intention of beer; provided that no person shall prohibit breweries from selling beer in original package. History: En. Sec. 11, L. 1947; redes. 4-3-205 by S.

16-3-214. Be restrictions contained in the United States of A.

ILLINOIS

95½ § 11-501 ILLINOIS VEHICLE CODE Note 78 Vehicle Code § 11-501

settle report or certify a bystander's report of proceedings. People v. Ruzin- 270.

§ 11-502. Transportation of alcoholic liquor—Penalty

No person shall transport, carry, possess or have any alcoholic liquor in or upon or about any motor vehicle except in the original package and with the seal unbroken. A person convicted of violating this Section shall be fined not less than \$25 nor more than \$500.

P.A. 76-1586, § 11-502, eff. July 1, 1970.

Historical Note

This section as enacted carries forward the identical text of former section 111.2 of chapter 95½.

The first sentence of this section was originally enacted as part of the Liquor Control Act, effective January 31, 1931.

Repealed in 1967, it was at the same time reenacted as section 111.2. The

second sentence was also added in the year.

Prior Laws:

Laws 1933-34, Second Sp.Sess., p. art. VI, § 19.
Ill.Rev.Stat.1965, ch. 43, § 110.
Laws 1967, p. 1535, § 1 adding § 111.
Ill.Rev.St.1967, ch. 95½, § 111.2.

Cross References

Bail for illegal transportation of alcoholic liquor, see ch. 110A, § 526.
Court appearance required for violation of this section, see ch. 110A, § 551.
Driver's license in lieu of bail see ch. 110A, § 526.

Law Review Commentaries

Problem of the drinking driver. Roger C. Cramton, 1968, 34 A.B.A.J. 995.

Library References

Automobiles § 321-359.
C.J.S. Motor Vehicles §§ 585 et seq., 596 et seq.
I.L.P. Automobiles and Motor Vehicles § 339.

Notes of Decisions

Construction and application of prior laws 1
Constructive possession 2
Evidence 3
Sentence and punishment 4

mal" in the same sense as a criminal statute. People v. Graf, 1968, 93 Ill. App.2d 13, 235 N.E.2d 886.

The act prohibited in ch. 43, § 110 (repealed) providing that no person shall transport, carry, possess, or have any alcoholic liquor in or upon or about any motor vehicle except in original package with seal unbroken was not a crime in absence of specific description of prohibited conduct as an offense in this act or in any other statute and in view of fact that no penalty for violation of the section was made part thereof or any other section of the Draft Shop A

1. Construction and application of prior laws

Chapter 43, § 110, (repealed. Now this section), was "penal" only insofar as the act imposed civil liability without fault for damages upon dram shop keeper and owner of real estate wherein the dram shop was located; the act was not "penal"

REC

see, now, second sentence of the act. Id.

since Dram Shops Act, ch. 43, (repealed) was not a criminal act transporting alcoholic liquor in a motor vehicle except in the original package with seal unbroken was not made a crime as required by the criminal code as provided therefor in § 1-7, in effect authorizing imprisonment for not exceeding one year, or a fine not exceeding \$1,000, or both, if no penalty otherwise provided. Id.

2. Constructive possession

To apply doctrine of constructive possession in automobile of liquor when taken, there must be a showing defendant had immediate and exclusive control of area where items are possessed were situated. People v. 1969, 116 Ill.App.2d 252, 252 N.E.2d 1112.

3. Evidence

Evidence that defendant guest in automobile of front seat of parked automobile between owner-driver and deputy sheriff arrested defendant and his relatives, in automobile in warrants and placed defendant

§ 11-503. Reckless

(a) Any person who drives a motor vehicle with disregard for the safety of others shall be fined not less than \$100 nor more than \$500, or both, and on conviction thereof shall be imprisoned for not less than 30 days nor more than 90 days, or both, and on conviction thereof shall be imprisoned for not less than 6 months, or by a fine of not less than \$100 nor more than \$500, or both.

(b) Every person convicted of violating this section upon a first conviction by imprisonment for not less than 30 days nor more than 90 days, or both, and on conviction thereof shall be imprisoned for not less than 6 months, or by a fine of not less than \$100 nor more than \$500, or both.

P.A. 76-1586, § 11-503, eff. July 1, 1970.

Except for the increase in the maximum fine for the first offense to \$25 made by the 1967 amendment, former section 145 of Chapter 111 is identical with the subsection 145 as enacted in 1945.

Compiler's notes. Section 804-A of S.L. 1939, ch. 222, added by S.L. 1939, ch. 217, § 1, and providing that any person may lawfully possess and store alcoholic liquors lawfully purchased for the personal use of himself, his family and guests, was repealed by S.L. 1947, ch. 178, § 3.

Collateral References.

45 Am. Jur. 2d, Intoxicating Liquors, §§ 7, 18
48 C.J.S., Intoxicating Liquors, §§ 7, 10.

23-505. Transportation of alcoholic beverages. — Alcoholic liquor lawfully purchased may be transported, but no person shall break open, or allow to be broken or opened any container of alcoholic liquor, or drink, or use, or allow to be drunk, or used any alcoholic liquor therein while the same is being transported. [1939, ch. 222, § 805, p. 465.]

Collateral References.

45 Am. Jur. 2d, Intoxicating Liquors, § 343.

23-506. Permissive uses subject to regulation. — Any person shall have the privilege of the permissive uses hereinbefore referred to in this article without payment of fee, subject to such reasonable general regulations as the dispensary may promulgate for the purpose of preventing any abuses of the privileges thereby permitted. [1939, ch. 222, § 806, p. 465.]

Compiler's notes. For words "this article" see compiler's notes, § 23-501.

Collateral References.

45 Am. Jur. 2d, Intoxicating Liquors, §§ 57, 61.

23-507. Manufacturers' licenses. — The dispensary may grant a license to a manufacturer of alcoholic liquor for sale to the dispensary and to customers outside of the state, subject to such regulations as the dispensary may adopt. The fee for such permit shall be \$100. [1939, ch. 222, § 807, p. 465.]

Collateral References.

45 Am. Jur. 2d, Intoxicating Liquors, §§ 41, 48, 56, 127.
48 C.J.S., Intoxicating Liquors, § 125.

23-508. Manufacturer's bond. — As a condition precedent to the issuance of a manufacturer's license, the applicant shall post a bond, written by a surety company authorized to do business in Idaho, in the penal sum of \$1,000, conditioned for the faithful observation of the provisions of this act and the regulations of the dispensary promulgated thereunder. For a violation of the conditions thereof, said bond shall be forfeited to the state of Idaho, and any recovery thereon shall be covered into the liquor fund. [1939, ch. 222, § 808, p. 465.]

Compiler's notes. The words "this act" refer to S.L. 1939, ch. 222, compiled herein as §§ 23-101 — 23-807.

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SOUTH DAKOTA

35-1-9

ALCOHOLIC BEVERAGES

35-1-9. Storage of beverages restricted to licensed premises — Exceptions. No licensee under this title shall keep or store any alcoholic beverages at any place within the state other than on the premises where he is authorized to operate, except that any such licensee may store such alcoholic beverages in a warehouse licensed under § 35-4-44 or with a bonded warehouse which has qualified under § 35-4-45, such storage to be subject to such rules and regulations as may be issued by the secretary in compliance with chapter 1-26 with reference thereto, and except that as to localities where there is no such bonded warehouse, the secretary may by rules and regulations adopted in compliance with chapter 1-26 provide for storage of malt beverages.

Source: SDC 1939, § 5.0120; SL 1971, ch 211, § 11; revised pursuant to SL 1972, ch 15, § 4.

Cross-References.

Distiller's and bonded warehouses storage in, §§ 35-4-44, 35-4-45.
Rules and regulations, procedure for adoption, §§ 1-26-4 to 1-26-14.

35-1-9.1. Possession of unsealed package in vehicle as misdemeanor. It is a Class 2 misdemeanor for any person to have a package or any receptacle containing an alcoholic beverage in his possession in a motor vehicle unless the seal of the original package remains unbroken or the alcoholic beverage is so removed that no occupant of the motor vehicle shall have access to it while the vehicle is in motion.

Source: SL 1935, ch 134, § 29; SDC 1939, § 5.0227 (1); SDCL, § 35-4-87; SL 1971, ch 211, § 4, 1977, ch 190, § 124.

Cross-References.

Punishment of classified misdemeanors, § 22-6-2.

Opinions of Attorney General.

Possession of unsealed package in automobile on highway unlawful, Report 1949-50, p. 370.

Collateral References.

Construction and validity of statute or ordinance making it an offense to consume, possess or have alcoholic beverages in opened package in motor vehicle, 35 ALR 3d 1418; 57 ALR 3d 1071.

35-1-10. Severability of provisions. If any section, part, or provision of this title, or the application thereof to any party or class, or to any circumstance, shall be held to be invalid for any cause whatsoever, the remainder of this title or the application to parties or circumstances other than those as to which it is held to be invalid, shall not be affected thereby and shall remain in full force and effect as though no part thereof had been declared to be invalid.

Source: SL 1935, ch 134, § 49; SDC 1939, § 5.0123.

CHAPTER 35-2

LICENSING POLICIES AND PROCEDURES

Section 35-2-1 Application forms and verification Information and eligibility shown

35-2-1.1	Applicat
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35-2-19	Terminal
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For prior law on 1903, §§ 2854 to 2858; ch 72, §§ 3, 4; RPolC

Section 278, ch 2, secretary of revenue change the title of officers in cities and changes throughout

Definition of term: False application as below § 35-1-7

MICHIGAN

LIQUOR LAW

436.35

were negligent by furnishing intoxicant to other minor defendants without a doctor's prescription, and that two minor defendants were guilty of negligence by opening a can of beer and handing an open can of beer to driver of automobile while it was in motion, contrary to section 750.141a and this section, sections were pertinent and indispensable to maintenance of personal injury action. *Id.*

at substituted for "minor"

A.1972, No. 13, owing § 436.33.

436.34a Open liquor containers in vehicles on highways

Sec. 34a. A person shall not transport or possess any alcoholic liquor in a container which is open, uncapped, or upon which the seal is broken, within the passenger compartment of a vehicle on the highways of this state. If the vehicle does not have a trunk or compartment separate from the passenger compartment a container which is open, uncapped, or upon which the seal is broken shall be encased or enclosed.

liquors §§ 222,

highways, parks

This section shall not apply to any chartered passenger vehicle licensed by the Michigan public service commission.

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P.A.1933, Ex.Sess., No. 3, § 34a, added by P.A.1973, No. 49, § 1, Imd. Eff. July 1, 1973.

Library References

Intoxicating Liquors § 138. M.L.P. Liquors § 41.
C.J.S. Intoxicating Liquors § 234.

Notes of Decisions

1. Search and seizure

Where police officer stopped automobile driven by defendant after observing a moving violation and, while his partner approached driver's door, officer approached passenger side where flashlight revealed that passenger had open can of beer in violation of statute, offi-

cer then ordered passenger out of automobile and placed him under arrest, and when passenger alighted from automobile, heroin was exposed in plain view, such heroin was not obtained by means of unreasonable search and seizure. *People v. Edwards* (1977) 252 N.W.2d 522, 73 Mich.App. 579.

436.35 Armories, air bases, naval installations and state military reservation

Sec. 35. The commanding general, Michigan national guard, is hereby authorized to publish by general order such regulations and restrictions as to the transportation, possession, sale and use of liquors of any alcoholic content in armories, air bases and naval installations owned or leased by the state or provided by the federal government by either lease, license or use permit and used by outside parties of a nonmilitary or state governmental nature and on the state military reservation during the field training periods of the Michigan national guard, either in state or federal service, as shall in his opinion be for the best interests of the military service.

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Chapters
18 through 18B

§ 18B-401. Manner of transportation.

(a) Opened Containers. — It shall be unlawful for a person to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer's unopened original container. It shall be unlawful for a person who is driving a motor vehicle on a highway or public vehicular area to consume in the passenger area of that vehicle any malt beverage or unfortified wine. Violation of this subsection shall constitute a misdemeanor punishable by a fine of twenty-five dollars (\$25.00) to five hundred dollars (\$500.00), imprisonment for not more than 30 days, or both.

(b) Taxis. — It shall be unlawful for a person operating a for-hire passenger vehicle as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the vehicle is transporting a paying passenger who owns the alcoholic beverage being transported. Not more than four liters of fortified wine or spirituous liquor, or combination of the two, may be transported by each passenger. A violation of this subsection shall not be grounds for suspension of the driver's license for illegal transportation of intoxicating liquors under G.S. 20-16(a)(8).

(c) Definitions. — The definitions in Chapter 20 of the General Statutes apply in interpreting this section. If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback or similar vehicle, the area behind the last upright back seat shall not be considered part of the passenger area. (1923, c. 1, s. 25; C.S., s. 3411(y); 1937, c. 49, ss. 14, 16; c. 411; 1967, c. 222, ss. 1, 7; c. 1256, s. 3; 1969, c. 598, ss. 2, 3; c. 1018; 1971, c. 872, s. 1; 1977, c. 176, s. 1; c. 586; 1979, c. 607, s. 1; 1981, c. 412, s. 2; c. 747, s. 45; 1983, c. 435, s. 7.)

Editor's Note. — Session Laws 1983, c. 435, s. 1, provides that the act shall be known as the Safe Roads Act of 1983.

Section 41 of the act provides: "The original inclusion and ultimate deletion in the course of passing this act of statutory liability for certain persons who sell or furnish alcoholic beverages to intoxicated persons does not reflect any legislative intent one way or the other with respect to the issue of civil liability for negligence by persons who sell or furnish those beverages to such persons."

Section 42 of the act provides: "Prosecutions for offenses occurring before the effective date of this act and administrative actions affecting drivers' licenses based on these offenses are not abated or affected by the repeal or amendment in this act of statutes creating or punishing the offense or authorizing administrative action concerning a driver's license, and the statutes that would be applicable but for the amendments and repeals in

the act remain applicable to those prosecutions and administrative actions."

Section 45 of the act contains a severability clause.

Section 46 of the act provides that except as provided in s. 42 (quoted above) and s. 43 (relating to §§ 1-54, 18B-120 through 18B-129, 18B-900 and 18B-1003) the act becomes effective Oct. 1, 1983.

Effect of Amendments. — The 1983 amendment, in subsection (a), rewrote the subsection catchline and substituted the present first and second sentences for a former second sentence, which read "It shall be unlawful to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle if the cap or seal on the container has been opened or broken," and in subsection (c) substituted "Definitions" for "Definition" in the subsection catchline and inserted the present first and second sentences.

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SOUTH CAROLINA

§ 61-5-10 ALCOHOL AND ALCOHOLIC BEVERAGES

facilities for seating not less than forty persons simultaneously at tables for the service of meals.

(2) "Furnishing lodging" shall refer only to those businesses which rent accommodations for lodging to the public on a regular basis consisting of not less than twenty rooms.

HISTORY: 1962 Code § 4-29.4; 1972 (57) 2213.

§ 61-5-20. When transportation, possession and consumption is lawful; sale and consumption in containers of two ounces or less.

Notwithstanding any other provision of law, it shall be lawful, subject to the provisions of § 61-5-30, for any person who is twenty-one years of age or older to transport, possess or consume lawfully acquired alcoholic liquors in accordance with the following:

(1) Any person may transport alcoholic liquors to and from any place where alcoholic liquors may be lawfully possessed or consumed; but if the cap or seal on the container has been opened or broken, it shall be unlawful to transport such liquors in any motor vehicle, except in the luggage compartment or cargo area.

(2) Any person may possess or consume alcoholic liquors:

(a) In a private residence, hotel room or motel room;

(b) Or on any other property not engaged in any business or commercial activity, at private gatherings, receptions, or occasions of a single and isolated nature, and not on any repetitive or continuous basis, with the express permission of the owner and any other person in possession of such property, and to which the general public is not invited; *provided, however*, this shall not be construed to permit or in any way authorize the possession or consumption of alcoholic liquors on premises open to the general public for which a license has been obtained pursuant to subsections (3) and (4) of this section.

(c) In separate and private areas of an establishment whether or not such establishment includes premises which are licensed pursuant to subsections (3) and (4) of this section, where specific individuals have leased such areas for a function not open to the general public.

(3) Nonprofit organizations with limited membership, not open to the general public, established for social, benevolent, patriotic, recreational or fraternal purposes may be licensed to sell alcoholic liquors and beverages in sealed containers of two ounces or less. Members or guests of members of such organizations may consume alcoholic liquors and beverages sold in such containers upon

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General penalty provisions, see ch. 41, art. 9
Nuisances, see 41-723.

41-801. Common and other carriers to furnish director with duplicate bill of lading or receipt; penalty for failure. Every railroad, express or transportation company, or other common contract or private carrier or contract hauler, their agents, employees or servants, shall furnish to the director a duplicate bill of lading or receipt, showing the name of the consignor and the consignee, date, place received, destination, and quantity of alcoholic liquor received by them for shipment to any point within this state. Upon failure to comply with the provisions of this section, such railroad, express or transportation company, or other common contract or private carrier or contract hauler, their agents, employees or servants, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of fifty dollars (\$50) for each offense.

History: L. 1949, ch. 242, § 90; March 9.

Research and Practice Aids:

Intoxicating Liquors—112½.

C.I.S. Intoxicating Liquors § 206.

41-802.

History: L. 1949, ch. 242, § 91; Repealed, L. 1969, ch. 180, § 21-4701; July 1, 1970.

Source or prior law:

21-2128.

Revisor's Note:

New act, see 21-4109.

CASE ANNOTATIONS

1. Mentioned in holding driving while intoxicated is violation of "intoxicating liquor law" for purposes of K.S.A. 41-311. *Keck v. Cheney*, 196 K. 535, 537, 413 P.2d 119.

41-803. "Open saloon" defined and prohibited; penalty. (a) It shall be unlawful for any person to own, maintain, operate or conduct either directly or indirectly, an open saloon.

(b) As used in this section, "open saloon" means any place, public or private, where alcoholic liquor is sold or offered or kept for sale by the drink or in any quantity of less than two hundred (200) milliliters (fluid ounces) or sold or offered or kept for sale for consumption on the premises where sold, but does not include any club licensed pursuant to article 25 of chapter 41 of the Kansas Statutes Annotated.

(c) Any violation of the provisions of this section is a misdemeanor punishable by a fine of not more than five hundred dollars (\$500) and by imprisonment for not more than ninety (90) days.

History: L. 1949, ch. 242, § 92, L. 1975, ch. 187, § 2; L. 1978, ch. 189, § 13; L. 1979, ch. 152, § 4; July 1.

Research and Practice Aids:

Hatcher's Digest, Intoxicating Liquors §§ 42, 120

Law Review and Bar Journal References:

"Liquor Regulation, Racial Discrimination, and Private Clubs in Kansas," Elizabeth Dyson, 13 K.L.R. 135 (1964).

"Wyatt Earp and the Winelist: Is a Restaurant an 'Open Saloon'?", Barkley Clark, 47 J.B.A.K. 63 (1978).

CASE ANNOTATIONS

1. Dispensing alcoholic liquors by the drink in exchange for coupons constitutes open saloon hereunder. *State v. Larkin*, 173 K. 112, 118, 119, 123, 244 P.2d 686.

2. Information charging defendant with commission of offense in language of statute sufficient. *State v. Thomas*, 177 K. 230, 231, 277 P.2d 577.

3. Prosecution hereunder and under 21-915 and 21-916, failure to instruct under 21-934; effect. *State v. Tague*, 188 K. 462, 363 P.2d 454.

4. Cited in upholding constitutionality of the private club act (41-2601 et seq.); liquor pool not a sale constituting "open saloon." *Tri-State Hotel Co. v. Londerholm*, 195 K. 748, 749, 752, 753, 754, 755, 757, 408 P.2d 877.

5. Mentioned; action by passenger train corporation (Amtrak) to enjoin enforcement of state liquor laws. *National Railroad Passenger Corporation v. Miller*, 358 F.Supp. 1321, 1323, 1325.

6. 1978 amendments to this section and to 41-2601 et seq. authorized maintenance of open saloon in violation of Kansas constitution. *State, ex rel. Schneider v. Kennedy*, 225 K. 1, 2, 586 P.2d 276, 225 K. 13, 14, 15, 17, 18, 19, 25, 27, 37, 587 P.2d 844.

41-804. Transportation of liquor in opened containers unlawful; exceptions; penalty. (a) No person shall transport in any vehicle upon a highway or street any alcoholic liquor unless such liquor is:

(1) In the original unopened package or container, the seal of which has not been broken and from which the original cap, cork or other means of closure has not been removed;

(2) in the locked rear trunk or rear compartment, or any locked outside compartment which is not accessible to any person in the vehicle while it is in motion; or

(3) in the exclusive possession of a passenger in a vehicle which is a recreational vehicle, as defined by K.S.A. 1980 Supp. 75-1212, or a bus, as defined by K.S.A. 8-1-406, who is not in the driving compartment of such vehicle or who is in a portion of such

his direction or control may withdraw blood or pierce human tissue. A licensed physician, or a qualified person acting under his direction or control, shall not be held civilly liable for withdrawing any bodily substance, in a medically acceptable manner, at the request of a peace officer. [Formerly 483.640]

487.830 Reports of chemical analyses; expenses of conducting chemical tests. (1) An individual who performs a chemical analysis of breath, blood or urine under ORS 487.805 or 487.835 shall prepare and sign a written report of the findings of the test which shall include the identification of the police officer upon whose request the test was administered.

(2) Any individual having custody of the report mentioned in this section shall, upon request of the person tested, furnish that person or that person's attorney, a copy of the report.

(3) The expense of conducting a chemical test as provided by ORS 487.805 and 487.835 shall be paid by the governmental unit on whose equipment the test is conducted or by the governmental unit upon whose request the test was administered if no governmental unit's equipment is used to conduct the test. [Formerly 483.646; 1981 c.806 §7; 1983 c.822 §6]

487.835 Chemical test with or without consent. Nothing in ORS 487.805 is intended to preclude the administration of a chemical test described in this section. A police officer may obtain a chemical test of the blood to determine the amount of alcohol in any person's blood or a test of the person's blood or urine, or both, to determine the presence of a controlled substance in the person as provided in the following:

(1) If, when requested by a police officer, the person expressly consents to such a test.

(2) Notwithstanding subsection (1) of this section, from a person without the person's consent if:

(a) The police officer has probable cause to believe that the person was driving while under the influence of intoxicants and that evidence of the offense will be found in the person's blood or urine; and

(b) The person is unconscious or otherwise in a condition rendering the person incapable of expressly consenting to the test or tests requested. [Formerly 483.636; 1981 c.806 §8; 1983 c.822 §7]

ALCOHOLIC LIQUOR IN VEHICLES

487.837 "Motor vehicle" defined for purpose of ORS 487.837 to 487.843. As used in ORS 487.837 to 487.843, "motor vehicle" does not include a motor vehicle operated by a publicly owned transit system or a motor vehicle operated by a common carrier and used primarily to carry passengers for hire. [Formerly 483.775]

487.839 Drinking alcoholic liquor in vehicle on highway prohibited. (1) No person shall drink any alcoholic liquor in a motor vehicle when the vehicle is upon a highway.

(2) A person who violates this section commits a Class B traffic infraction. [Formerly 483.780; 1977 c.882 §63]

487.841 Possessing open liquor container in vehicle on highway prohibited. (1) No person shall have in his possession on his person, while in a motor vehicle upon a highway, any bottle, can, or other receptacle containing any alcoholic liquor, which has been opened, or a seal broken, or the contents of which have been partially removed.

(2) A person who violates this section commits a Class B traffic infraction. [Formerly 483.785; 1977 c.882 §64]

487.843 Keeping open liquor container in vehicle on highway prohibited unless container is in area normally unoccupied by operator or passengers. (1) It is unlawful for the registered owner of any motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle when the vehicle is upon any highway, any bottle, can, or other receptacle containing any alcoholic liquor, which has been opened, or a seal broken, or the contents of which have been partially removed, unless the bottle, can, or other receptacle is kept in the trunk of the vehicle, or kept in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. For the purposes of this section, a utility compartment or glove compartment is considered within the area occupied by the driver and passengers. This section shall not apply to the living quarters of a camper or a motor home.

(2) A person who violates this section commits a Class B traffic infraction. [Formerly 483.790; 1977 c.882 §65]

(e) Any person violating this section shall be guilty of a misdemeanor. [L 1981, c 152, pt of §1]

[§291-3.2] Consuming or possessing intoxicating liquor while a passenger in a motor vehicle. (a) No person shall consume any intoxicating liquor while a passenger in any motor vehicle upon any public street, road, or highway

(b) No person shall possess, while a passenger in a motor vehicle upon any public street, road, or highway, any bottle, can, or other receptacle containing any intoxicating liquor which has been opened, or a seal broken, or the contents of which have been partially removed.

(c) As used in this section, "intoxicating liquor" means the same as that term is defined in section 281-1.

(d) This section shall not apply to the living quarters of a trailer or camper.

(e) Any person violating this section shall be guilty of a petty misdemeanor. [L 1981, c 152, pt of §1]

[§291-3.3] Storage of opened container containing intoxicating liquor. (a) No person shall keep in a motor vehicle, when such vehicle is upon any public street, road, or highway, any bottle, can, or other receptacle containing any intoxicating liquor which has been opened, or a seal broken, or the contents of which have been partially removed or fully removed, unless such container is kept in the trunk of the vehicle, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

(b) As used in this section, "intoxicating liquor" means the same as the term is defined in section 281-1.

(c) This section shall not apply to a recreational or other vehicle not having a separate trunk compartment, or to the living quarters of a trailer or camper.

(d) Any person violating this section shall be guilty of a violation. [L 1981, c 152, pt of §1]

§291-4 Driving under influence of intoxicating liquor. (a) A person commits the offense of driving under the influence of intoxicating liquor if:

- (1) The person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor; or
- (2) The person operates or assumes actual physical control of the operation of any vehicle with 0.10 per cent or more, by weight of alcohol in the person's blood.

(b) A person committing the offense of driving under the influence of intoxicating liquor shall be sentenced as follows without possibility of probation or suspension of sentence:

- (1) For a first offense, or any offense not preceded within a five-year period by a conviction under this section, by:
 - (A) A fourteen-hour minimum alcohol abuse rehabilitation program including education and counseling, or other comparable program deemed appropriate by the court; and

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Misdemeanor

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§ 25: Amended Stats 1983 ch 1005 § 1

to be subd (a), (2) substituted "driving" for "in" in

s beginning at page 25 of the bound volume.

[4 Van Code

§ 23223. Possession of opened receptacle while in motor vehicle

No person shall have in his or her possession on his or her person, while in
a motor vehicle upon a highway, any bottle, can, or other receptacle,
containing any alcoholic beverage which has been opened, or a seal broken,
or the contents of which have been partially removed.

§ 23122.5 amended and renumbered Stats 1981 ch 940 § 26

Amendments:

1981 Amendment: Added "or her" wherever it appears

Review of 1981 Legislation. 13 Pacific LJ 787

§ 23224. Possession of alcohol in vehicle by persons under age

(a) No person under the age of 21 years shall knowingly drive any motor
vehicle carrying any alcoholic beverage, unless the person is accompanied by
a parent or legal guardian or is employed by a licensee under the Alcoholic
Beverage Control Act (Division 9 (commencing with Section 23000) of the
Business and Professions Code), and is driving the motor vehicle during
regular hours and in the course of the person's employment.

(b) No passenger in any motor vehicle who is under the age of 21 years
shall knowingly possess or have under that person's control any alcoholic
beverage, unless the passenger is accompanied by a parent or legal guardian
or is employed by a licensee under the Alcoholic Beverage Control Act
(Division 9 (commencing with Section 23000) of the Business and Profes-
sions Code), and the possession or control is during regular hours and in the
course of the passenger's employment.

(c) If the vehicle used in any violation of subdivision (a) or (b) is registered
to an offender who is under the age of 21 years, the vehicle may be
impounded at the owner's expense for not less than one day nor more than
30 days for each violation.

(d) The driver's license of any person under 21 years of age convicted of a
violation of this section shall also be suspended for not less than 15 days nor
more than 30 days.

§ 23123.5 amended and renumbered Stats 1981 ch 940 § 28.

Amendments:

1981 Amendment: In addition to making technical changes, substituted (1) "an offender who is" for
"such person" in subd (c), and (2) "The driver's license of any person under 21 years of age convicted of
a violation of this section shall also be" for "Any such person under 21 years of age found guilty under
this section shall also have his driver's license" in subd (d).

Review of 1981 Legislation. 13 Pacific LJ 787

§ 23225. Storage of opened receptacle

It is unlawful for the registered owner of any motor vehicle, or the driver if
the registered owner is not then present in the vehicle, to keep in a motor
vehicle, when the vehicle is upon any highway, any bottle, can, or other
receptacle containing any alcoholic beverage which has been opened, or a
seal broken, or the contents of which have been partially removed, unless
the container is kept in the trunk of the vehicle, or kept in some other area
of the vehicle not normally occupied by the driver or passengers, if the
vehicle is not equipped with a trunk. A utility compartment or glove
compartment shall be deemed to be within the area occupied by the driver
and passengers.

This section shall not apply to the living quarters of a housecar or camper.

[4 Van Code]

46.61.5151 Sentence under RCW 46.61.515—Intermittent fulfillment of—Restrictions. A sentencing court may allow persons convicted of violating RCW 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in RCW 46.61.515 (1) or (2) in nonconsecutive or intermittent time periods. However, the first twenty-four hours of any sentence under RCW 46.61.515(1) and the first forty-eight hours of any sentence under RCW 46.61.515(2) shall be served consecutively unless suspended or deferred as otherwise provided by law. [1983 c 165 § 33.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.61.516 Qualified probation department defined. A qualified probation department means a probation department for a district or municipal court that has a sufficient number of qualified alcohol assessment officers who meet the requirements of a qualified alcoholism counselor as provided by rule of the department of social and health services, except that the required hours of supervised work experience in an alcoholism agency may be satisfied by completing an equivalent number of hours of supervised work doing alcohol assessments within a probation department. [1983 c 150 § 2.]

46.61.517 Refusal of blood alcohol content test—Admissibility as evidence—Conditions. The refusal of a person to submit to a test of the alcoholic content of his blood under RCW 46.20.308 is admissible into evidence at a subsequent criminal trial without any comment and with a jury instruction, where applicable, that there shall be no speculation as to the reason for the refusal and that no inference is to be drawn from the refusal. [1983 c 165 § 27.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.61.518 Penalty assessments—Disposition of gross proceeds. The gross proceeds of the penalty assessments provided for in RCW 46.61.515(2) shall be separately accounted for and transmitted to the city or county treasurer, as the case may be, by the court collecting the same, in the manner and at the times that fines and bail forfeitures are transmitted to such treasurers. The city and county treasurers shall also separately account for such moneys, place them in a separate fund, and shall transmit to the state treasurer monthly and without deduction the gross amount of such penalty assessments received, which shall be credited forthwith to the highway safety fund of the state treasury. [1974 ex.s. c 130 § 3.]

46.61.519 Alcoholic beverages—Drinking or open container in vehicle on highway—Exceptions. (1) It is a traffic infraction to drink any alcoholic beverage in a motor vehicle when the vehicle is upon a highway.

(2) It is a traffic infraction for a person to have in his possession while in a motor vehicle upon a highway, a

bottle, can, or other receptacle containing an alcoholic beverage if the container has been opened or a seal broken or the contents partially removed.

(3) It is a traffic infraction for the registered owner of a motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle when the vehicle is upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage which has been opened or a seal broken or the contents partially removed, unless the container is kept in the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle does not have a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

(4) This section does not apply to a public conveyance that has been commercially chartered for group use or to the living quarters of a motor home or camper or, except as otherwise provided by RCW 66.44.250 or local law, to any passenger for compensation in a for-hire vehicle licensed under city, county, or state law. [1983 c 165 § 28.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.61.520 Vehicular homicide—Penalty. (1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner or with disregard for the safety of others, the person so operating such vehicle is guilty of vehicular homicide.

(2) Vehicular homicide is a class B felony punishable under chapter 9A.20 RCW. [1983 c 164 § 1; 1975 1st ex.s. c 287 § 3; 1973 2nd ex.s. c 38 § 2; 1970 ex.s. c 49 § 5; 1965 ex.s. c 155 § 63; 1961 c 12 § 46.56.040. Prior: 1937 c 189 § 120; RRS § 6360-120. Formerly RCW 46.56.040.]

Severability—1970 ex.s. c 49: See note following RCW 9.69.100. Suspension or revocation of license upon conviction of vehicular homicide or assault resulting from operation of motor vehicle RCW 46.20.285, 46.20.291

46.61.522 Vehicular assault—Penalty. (1) A person is guilty of vehicular assault if he operates or drives any vehicle:

(a) In a reckless manner, and this conduct is the proximate cause of serious bodily injury to another; or

(b) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, and this conduct is the proximate cause of serious bodily injury to another.

(2) "Serious bodily injury" means bodily injury which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.

(3) Vehicular assault is a class C felony punishable under chapter 9A.20 RCW. [1983 c 164 § 2.]

other than a certificate or other sticker issued by order of a governmental agency. Such permitted sticker shall not cover more than 15 square inches of glass surface and shall be placed in the lower left-hand corner of the windshield, the left corner being on the driver's left when seated behind the wheel.

(b) No person shall drive any motor vehicle upon a highway with any object so placed or suspended in or upon the vehicle so as to obstruct the driver's clear view through the front windshield.

(c) No person shall drive any motor vehicle upon a highway so loaded or with any object so placed or suspended in or upon the vehicle so as to obstruct the driver's clear vision through the rear window unless such vehicle is equipped with an outside rear view mirror meeting the requirements of s. 347.40.

(d) Signal lamps used by authorized emergency vehicles shall not be considered a violation of this section.

(4) The windshield, side wings and side and rear windows of a motor vehicle shall be kept reasonably clean at all times.

346.89 Inattentive driving. (1) No person while driving a motor vehicle shall be so engaged or occupied as to interfere with the safe driving of such vehicle.

(2) No person shall drive any motor vehicle equipped with any device for visually receiving a television broadcast when such device is located in the motor vehicle at any point forward of the back of the operator's seat or when such device is visible to the operator while driving the motor vehicle.

346.90 Following emergency vehicle. The operator of any vehicle other than one on official business shall not follow an authorized emergency vehicle responding to a call or alarm closer than 500 feet or drive into or park his or her vehicle within the block where, or within 300 feet of the driveway entrance or similar point of access to a driveway or road on which, fire apparatus has stopped in response to an alarm. The personal vehicles of members of a volunteer fire department answering the alarm are considered on official business.

History: 1975 c. 253, 421.

346.91 Crossing fire hose. No person without the consent of the fire department official in command shall drive a vehicle over any unprotected hose of a fire department when such hose is laid down on any street, private driveway or streetcar track to be used at any fire or alarm of fire.

346.92 Illegal riding. (1) No person shall drive a vehicle when any person other than an employe engaged in the necessary discharge of his duty is upon any portion thereof not designed or intended for the use of passengers.

(2) No person other than an employe engaged in the necessary discharge of his duty shall ride upon any portion of a vehicle not designed or intended for the use of passengers.

(3) This section does not apply to persons riding within truck bodies in spaces intended for merchandise or to the operator of any such vehicle.

346.93 Intoxicants in vehicle. No underage person, as defined under s. 125.02 (20m), may knowingly possess, transport or have under his or her control any alcohol beverage in any motor vehicle unless the person is employed by a liquor licensee, wholesaler, retailer, distributor, manufacturer or certifier and is possessing, transporting or otherwise such beverage in a motor vehicle in his or her control during regular working hours and in the course of employment.

History: 1971 c. 213 s. 8, 1983 a. 74.

This section discussed: 86 Atty. Gen. 215.

346.935 Intoxicants in motor vehicles. (1) No person may drink alcohol beverages in any motor vehicle when the vehicle is upon a highway.

(2) No person may possess on his or her person, in a privately owned motor vehicle upon a public highway, any bottle or receptacle containing alcohol beverages if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed.

(3) The owner of a privately owned motor vehicle, or the driver of the vehicle if the owner is not present in the vehicle, shall not keep, or allow to be kept in the motor vehicle when it is upon a highway any bottle or receptacle containing alcohol beverages if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed. This subsection does not apply if the bottle or receptacle is kept in the trunk of the vehicle or, if the vehicle has no trunk, in some other area of the vehicle not normally occupied by the driver or passengers. A utility compartment or glove compartment is considered to be within the area normally occupied by the driver and passengers.

(4) (a) In this subsection

1. "Chauffeur" has the meaning designated in s. 343.01 (2) (c).

2. "Limousine" means any motor vehicle for charter or hire which is operated by a chauffeur

and driver than proprietor.
(b) This in a limousine under s. 343.01 (2) (c) History: 1983 a. 74.

346.94 DRIVING vehicle shall except at local authority.

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Subd. 10. Research programs. No person is guilty of a violation of this section committed while participating in a research or demonstration project conducted by the Minnesota highway safety center created pursuant to section 136.147. This subdivision applies only to conduct occurring while operating a state-owned vehicle under the supervision of personnel of the center on the grounds of the center.

History: 1957 c 297 s 1; 1961 c 454 s 9; 1967 c 283 s 1; 1967 c 569 s 1; 1969 c 744 s 1; 1971 c 244 s 1; 1971 c 893 s 1,2; Ex 1971 c 27 s 6; 1973 c 421 s 1; 1973 c 494 s 8; 1975 c 370 s 1; 1976 c 298 s 2; 1976 c 341 s 1; 1978 c 727 s 2; 1981 c 9 s 1; 1982 c 423 s 2-8; 1983 c 134 s 1; 1983 c 177 s 1; 1983 c 306 s 1-4; 1984 c 430 s 2,3; 1984 c 622 s 5-9; 1984 c 654 art 5 s 58

169.122 OPEN BOTTLE LAW; PENALTY.

Subdivision 1. No person shall drink or consume intoxicating liquors or nonintoxicating malt liquors in any motor vehicle when such vehicle is upon a public highway.

Subd. 2. No person shall have in his possession on his person while in a private motor vehicle upon a public highway, any bottle or receptacle containing intoxicating liquor or nonintoxicating malt liquor which has been opened, or the seal broken, or the contents of which have been partially removed.

Subd. 3. It shall be unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway any bottle or receptacle containing intoxicating liquors or nonintoxicating malt liquors which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle shall be kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

Subd. 4. Whoever violates the provisions of subdivision 1 to 3 is guilty of a misdemeanor.

History: 1959 c 255 s 1-4

169.123 CHEMICAL TESTS FOR INTOXICATION.

Subdivision 1. Peace officer defined. For purposes of this section and section 169.121, the term peace officer means a state patrol officer, university of Minnesota peace officer, a constable as defined in section 367.40, subdivision 3, or police officer of any municipality, including towns having powers under section 368.01, or county.

Subd. 2. Implied consent; conditions; election as to type of test. (a) Any person who drives, operates, or is in physical control of a motor vehicle within this state consents, subject to the provisions of this section and section 169.121, to a chemical test of his blood, breath, or urine for the purpose of determining the presence of alcohol or a controlled substance. The test shall be administered at the direction of a peace officer. The test may be required of a person when an officer has probable cause to believe the person was driving, operating, or in physical control of a motor vehicle in violation of section 169.121 and one of the following conditions exist: (1) the person has been lawfully placed under arrest for violation of section 169.121, or an ordinance in conformity with it; or (2) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death; or (3) the person has refused to take the screening test provided for by section 169.121, subdivision b; or (4) the screening test was administered and recorded an alcohol concentration of 0.10 or more.

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39-08-17. Magistrates to report convictions to highway commissioner. Every magistrate in this state shall make a full and complete report to the commissioner within ten days after any person has been convicted of reckless driving or of driving a motor vehicle while under the influence of intoxicating liquor or a controlled substance, or of failure to stop in event of an accident involving injury or death to any person.

Source: S.L. 1955, ch. 253, § 15; R.C. 1943, § 39-0817; S.L. 1975, ch. 319, § 7.

39-08-18. Open bottle law — Penalty. No person shall drink or consume alcoholic beverages, as defined in section 5-01-01, in or on any motor vehicle when such vehicle is upon a public highway or in an area used principally for public parking. No person shall have in his possession on his person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. It shall be unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway or in an area used principally for public parking a bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle shall be kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment shall not be deemed to be within the area occupied by the driver and passengers. The provisions of this section shall not prohibit the consumption or possession of alcoholic beverages in a house car, as defined by subsection 23 of section 39-01-01, if the consumption or possession occurs in the area of the house car used as sleeping or living quarters and that area is separated from the driving compartment by a solid partition, door, curtain, or some similar means of separation; however, consumption is not authorized while the house car is in motion. Any person violating the provisions of this section shall be assessed a fee of twenty dollars; however, the licensing authority shall not record the violation against the driving record of such person unless he was the driver of the automobile at the time that the violation occurred.

Source: S.L. 1947, ch. 10, §§ 1, 2; R.C. 1943, § 39-0818; S.L. 1965, ch. 255, § 1; S.L. 1973, ch. 309, § 1, 1973, ch. 301, § 24; 1979, ch. 331.

Collateral References.

Construction of statute or ordinance making it an offense to possess or have alcoholic beverages in opened package in motor vehicle, 35 ALR 34118.

Note: The provisions of section 5-01-24 have been transferred to this section.

39-08-19. Penalty for harassment of domestic animals. Any person operating a motorcycle, snowmobile, or other motor vehicle as defined in