HB

521

Alaska State Legislature

STEVE FRANK
DISTRICT 20A
Finance Committee

1125 Sunset Drive
Fairbanks, Alaska 99701

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709

House of Representatives

TO: House State Affairs Committee

FROM: Representative Steve Frank

RE: House Bill 521 - "An Act relating to open containers of alcoholic beverages in motor vehicles"

DATE: March 4, 1988

House Bill 521 would make it illegal to carry open containers of alcoholic beverages in the passenger compartment of a motor vehicle. A person in violation would be guilty of an infraction, which is punishable by a fine of up to $300.

Alaska Administrative Code 13 02 545 prohibits drinking while driving; however, no statute or regulation exists prohibiting having an open container of alcohol in a vehicle. Therefore, the existing regulation cannot be enforced unless an officer actually sees the driver of a vehicle consuming an alcoholic beverage.

This bill would allow for open containers (including containers with a broken seal) to be carried in the trunk of a vehicle. In the case of a station wagon, hatch back, or similar vehicle that has no trunk or separate storage compartment, open containers could be transported, within another container, behind the last upright seat of the vehicle.

House Bill 521 has broad statewide support from such groups as the Anchorage and Fairbanks chapters of Mothers Against Drunk Driving (MADD), the Fairbanks Native Association, and the Alaska Council for the Prevention of Alcoholism and Drug Abuse. It is also supported by the Department of Health and Social Services (State Office of Alcoholism and Drug Abuse - SOADA) and the Department of Public Safety.

House Bill 3, which was introduced during the 13th Alaska Legislature, is identical to House Bill 521. As you can see, there was a great deal of support for HB 3 in the House in 1985.

CSHB 3(Jud)am

Tha question to be reconsidered: "Shall CSHB 3(Jud)am pass the House?" The roll was taken with the following result:

CSHB 3(JUD)AM RECON

Yeas:	34	Adams, Binkley, Boucher, Cato, Clocksin, Collins, Cotten, Duncan, Frank, Fullor, Furnace, Goll, Gruenberg, Grussendorf, Hanley, Hurley, Jenkins, Koponen, Larson, Martin, Miller,M.M., Miller,M.W., Navarre, Pettyjohn, Phillips, Pignalberi, Pourchot, Rieger, Ringstad, Sund, Szymanski, Taylor, Thompson, Uehling
Nays:	4	Davis, Marrou, Pearce, Shultz
Excused:	1	Herrmann
Absent:	1	Wallis

And so, CSHB 3(Jud)am passed the House on reconsideration and was referred to the Chief Clerk for engrossment.

CSHB 17(Jud)

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 17 (Judiciary) (multiple convictions for motor vehicle theft and joyriding) which had been reported out of the Finance Committee and held in third reading under reconsideration (page 431) was again before the House in third reading.

The question to be reconsidered: "Shall CSHB 17(Jud) pass the House?" The roll was taken with the following result:

CSHB 17(JUD) RECONSIDERATION

Yeas:	34	Adams, Binkley, Boucher, Cato, Collins, Cotten, Duncan, Frank, Fuller, Furnace, Goll, Gruenberg, Grussendorf, Hanley, Jenkins, Larson, Marrou, Martin, Miller,M.M., Miller,M.W., Navarre, Pearce, Pettyjohn, Phillips, Pignalberi, Pourchot, Rieger, Ringstad, Shultz, Sund, Szymanski, Taylor, Thompson, Uehling
Nays:	3	Clocksin, Davis, Koponen
Excused:	1	Herrmann
Absent:	2	Hurley, Wallis

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Public Safety	Alaska State Troopers	HB 521	Rep. Frank

SHORT TITLE OF BILL
Open containers of alcoholic beverages

DEPARTMENT POSITION
Support

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Col. Robert E. Jent	2/29/88		

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Department of law All law enforcement agencies	All licensed drivers
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**

FISCAL IMPACT: ☒ NONE ☒ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

This bill makes it an infraction for a person to drive a motor vehicle while there is an open container of alcoholic beverages in the passenger compartment. The basic purpose of the legislation is to discourage drinking while driving.

ANALYSIS OF BILL/PROGRAM EFFECTS

Nationally, the majority of serious and fatal accidents are connected with alcohol use by the driver. This measure will provide law enforcement officers with an additional deterrent to address this problem, although effective enforcement on a constant basis may prove difficult.

AMENDMENTS PROPOSED

This bill provides that a person is deemed to have consented to a preliminary breath test (PBT) if he drives with an open container in the vehicle. In Leslie v. State, 711 P. 2d 575 (Ct. App. 1986) the court of appeals held that a PBT result could not be used to help an officer decide whether to arrest a subject; the officer already has to have probable cause to arrest before he can require the driver to take a preliminary breath test. The bill, as presently drafted, does not address this issue.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

009 (Rev. 12/83)

POSITION PAPER/Department of Health & Social Services

POSITION PAPER
ON
HOUSE BILL NO. 521

"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 the Anchorage Mayor's Drunk Driving Advisory Committee a few years ago, 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 521 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 HB 521.

Myra M Munson

Myra M. Munson, Commissioner
3/4/88

For Sonya Mendez

Matthew C. Felix, Coordinator

BILL NO: HB 521 DATE: 2/29/88

TITLE: "An Act relating to open containers of alcoholic beverages in motor vehicles." CONTACT: Col. Robert E. Jent 269-5641

DEPARTMENT OF PUBLIC SAFETY

This bill makes it an infraction for a person to drive a motor vehicle while there is an open container of alcoholic beverages in the passenger compartment. The basic purpose of the legislation is to discourage drinking while driving.

Nationally, the majority of serious and fatal accidents are connected with alcohol use by the driver. This measure will provide law enforcement officers with an additional deterrent to address this problem, although effective enforcement on a constant basis may prove difficult.

This bill provides that a person is deemed to have consented to a preliminary breath test (PBT) if he drives with an open container in the vehicle. In Leslie v. State, 711 p. 2d 575 (Ct. App. 1986) the court of appeals held that a PBT result could not be used to help an officer decide whether to arrest a subject: the officer already has to have probable cause to arrest before he can require the driver to take a preliminary breath test. The bill, as presently drafted, does not address this issue.

The Department of Public Safety supports this legislation.

Arthur English
Commissioner

ALASKA COUNCIL ON PREVENTION OF ALCOHOL AND DRUG ABUSE, INC.

March 1, 1988

Rep. Fran Ulmer, Chairwoman
House State Affairs Committee
P.O. Box V
Juneau, AK 99811

Dear Chairwoman Ulmer:

I understand that two bills regarding alcohol will be considered in House State Affairs Committee on Friday, March 4. The Alaska Council supports both pieces of legislation and asks that the following comments be read into the record at that time, if at all possible.

HB 500:

The Alaska Council on Prevention of Alcohol and Drug Abuse supports HB 500 which relates to membership on the Alcoholic Beverage Control Board. Public awareness of the severity of alcohol abuse in Alaska is increasing and this bill will help continue that process. The Alaska Council is encouraged by the proposed changes which would require that one member of the board be knowledgeable of alcohol and substance abuse problems. The presence of a substance abuse professional on the ABC Board would be a responsible step toward increasing awareness of the effects of alcohol on individuals and communities.

The Alcoholic Beverage Control Board's decisions impact the health and well being of the citizens of Alaska. The Alaska Council feels that informed, responsible decision making at the state level is crucial to alcohol prevention efforts. Passage of HB 500 will send a positive message that legislators recognize the need for continued awareness of the problems associated with alcohol use and abuse.

HB 521:

The Alaska Council supports HB 521, relating to open containers of alcoholic beverages in motor vehicles. Drinking and driving are a dangerous, often fatal, combination which should be strongly discouraged.

A United Way Agency

7521 OLD SEWARD HWY., SUITE A ANCHORAGE, ALASKA 99518 (907) 349•6602

In 1986, 58 traffic accidents resulted in 69 alcohol-related deaths in Alaska. Youth under age 21 accounted for 14 percent of these driving fatalities even though this same age group only holds 7.1 percent of the drivers licenses. Measures, such as enacting HB 521, need to be taken to reduce the number of lives that are lost each year in alcohol-related accidents.

The Alaska Council hopes that the House State Affairs Committee will act favorably on HB 521 and take this opportunity to help protect the lives of Alaskans.

Thank you, Chairwoman Ulmer, for sponsoring HB 500 and hearing other bills in House State Affairs Committee which support prevention of alcohol and drug abuse in our state.

Sincerely,

Bette O'Moor

Bette O'Moor
Executive Director

cc: Rep. Steve Frank

FAIRBANKS NATIVE ASSOCIATION, INC.
310½ First Avenue
Fairbanks, Alaska 99701
Phone: (907) 452-1648 / 456-5151

February 29, 1988

Representative Fran Ulmer
Chairman, House State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

The abuse of alcohol and the resulting tragedies associated with this abuse are a primary concern to the Fairbanks Native Association. Among the perils related to alcohol abuse are those which happen due to drunk driving.

FNA is aware of Representative Steve Frank's proposed "Open Container Law", HB 521. In our continuing work towards eliminating alcoholism we do support HB 521. FNA sees this as an important step towards curbing drunk driving and the related deaths, accidents and other tragedies.

We hope you will support this bill in the interest of Alaska's efforts to combat drunk driving and alcohol abuse.

Sincerely,

Samuel S. Demientieff
Acting Executive Director

cc: Representative Steve Frank

MADD

MOTHERS AGAINST DRUNK DRIVERS
Fairbanks Northern Lights Chapter
P.O. Box 1167
Fairbanks, Alaska 99707-1167
(907) 456-3964

March 3, 1988

Rep. Frances Ulmer, Chairman
House State Affairs Committee
P.O. Box V
Juneau, Alaska 99811

Dear Rep. Ulmer,

The Fairbanks Northern Lights Chapter of Mothers Against Drunk Driving strongly supports passage of HB 521, the Open Container Bill.

MADD's stand against drinking and driving is well known. Drinking while driving is a doubly dangerous activity. It not only contributes to a higher blood alcohol level, but is a distraction from the serious business of safely operating a motor vehicle.

We constantly read vehicle crash reports wherein the investigating officer has inserted comments such as, 'numerous empty beer cans were observed in the vehicle', or 'strong odor of an alcoholic beverage was apparent in the vehicle'. Beer cans or liquor bottles are found stuffed under seats, or close by vehicles at crash sites, where they have obviously been tossed out after a crash. Partially empty six packs are common currency in vehcile crash reports.

The only safe place for alcohol in a motor vehicle is in a sealed container, or mixed in the tank with gasoline. Please give an assist to safety on the highways, airways and waterways of Alaska by passing out HB 521 with a 'do-pass' endorsement from the House State Affairs Committee.

We ask that you share these comments with other committee members.

Sincerely yours,

Barbara Gaston

Barbara Gaston, President
Fairbanks Northern Lights
Chapter MADD

✓ cc: Rep. Steve Frank, Prime Sponsor HB 521

SCOTT & WESLEY GERRISH
MEMORIAL

MADD

ANCHORAGE, ALASKA
CHAPTER

MAILING ADDRESS:
733 West 4th Avenue, Box 821
Anchorage, AK 99501

(907) 258-MADD

BUSINESS ADDRESS
733 West 4th Avenue, Suite 304
Anchorage, AK 99501

March 1, 1988

Rep. Steve Frank
P.O. Box V
Juneau, AK 99811

Dear Rep. Frank,

On behalf of the Anchorage Chapter of Mothers Against Drunk Driving, I would like to endorse House Bill #521. This bill regarding open containers of alcoholic beverages in automobiles is long overdue in Alaska. There are very few states in our country that have not passed similar legislation. This bill would give the message to the citizens, especially the teenagers, of this state that the legislature is committed to eliminating the drunk driving problem in Alaska. I wish you the best in passing this bill into law.

Sincerely,

Barbara B Mills

Barbara B. Mills, President
Anchorage Chapter MADD

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD. 3-17-88 1:30p.m.

H. JUD. 3-16-88 1:30p.m.

(7)

HOUSE COMMITTEE REPORT

Date referred: 3/7/88

FURTHER REFERRALS:

DATE: March 17, 1988

The Judiciary Committee has considered HB 521

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

RECOMMENDS:

[✓] replace with CS HB521(Jud) [ ] the same title

[ ] attached amendment(s) [ ] a new title

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[✓] same as previous zero fiscal note published 3/7/88

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

Original sponsors: Frank, Miller, Koponen, et al.

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 521 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

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

(b) A person may transport an open bottle, can, or other receptacle containing an alcoholic beverage in the trunk of a motor vehicle or, if the open bottle, can, or other receptacle is enclosed within another container,

(1) behind the last upright seat in a motor home, station wagon, hatchback, or similar trunkless vehicle; or

(2) on a motor-driven cycle.

(c) In this section

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

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

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

(4) "passenger compartment" means the area normally

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

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

* Sec. 2. AS 28.35.031(b) is amended to read:

(b) A person who operates or drives a motor vehicle in this state or who operates an aircraft or watercraft shall be considered to have given consent to a preliminary breath test for the purpose of determining the alcoholic content of the person's blood or breath. A law enforcement officer may administer a preliminary breath test at the scene of the incident if the officer has reasonable grounds to believe that a person's ability to operate a motor vehicle, aircraft, or watercraft is impaired by the ingestion of alcoholic beverages and that the person

(1) was operating or driving a motor vehicle, aircraft, or watercraft that is involved in an accident; [OR]

(2) committed a moving traffic violation or unlawfully operated an aircraft or watercraft; in this paragraph, "unlawfully" means in violation of any federal, state, or municipal statute, regulation or ordinance, except for violations that do not provide reason to believe that the operator's ability to operate the aircraft or watercraft was impaired by the ingestion of alcoholic beverages; or

(3) was operating or driving a motor vehicle in violation of AS 28.35.029(a).

Adopted

5-1909Aa
Ford

AMENDMENT #1

Offered in the HOUSE

By Gruenberg

TO HB 521

Page 1, line 19, after "container,":

Insert "(1)"

Page 1, line 20, after "vehicle":

Insert "; or

(2) ~~behind the driver's seat of~~ on a motor-driven cycle"

Alaska State Legislature

STEVE FRANK
DISTRICT 20A
Finance Committee

1125 Sunset Drive
Fairbanks, Alaska 99701

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709

House of Representatives

TO: Representative John Sund, Chairman
House Judiciary Committee

FROM: Representative Steve Frank

RE: House Bill 521 - "An Act relating to open containers of alcoholic beverages in motor vehicles"

DATE: March 7, 1988

I have introduced House Bill 521 which would make it illegal to carry open containers of alcoholic beverages in the passenger compartment of a motor vehicle. A person in violation would be guilty of an infraction, which is punishable by a fine of up to $300.

Alaska Administrative Code 13 02 545 prohibits drinking while driving; however, no statute or regulation exists prohibiting having an open container of alcohol in a vehicle. Therefore, the existing regulation cannot be enforced unless an officer actually sees the driver of a vehicle consuming an alcoholic beverage.

HB 521 passed the House State Affairs Committee on Friday March 5 with the four members present signing "do pass." I would appreciate your scheduling a hearing on the bill in the House Judiciary Committee at your earliest convenience.

Thank you very much for your consideration.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M March 4, 1988

SUBJECT: Sectional analysis - HB 521

TO: Representative Steve Frank

FROM: Michael F. Ford
Legislative Counsel

The following is a sectional analysis of HB 521:

Section 1 - Prohibits a person from driving on a highway or vehicular way with an open alcoholic beverage except when the open beverage is in the trunk, or enclosed within another container behind the last seat in a trunkless vehicle. Establishes the penalty for violating the law as an infraction.

Section 2 - Adds violation of the open container law to those offenses for which a person is considered to have given consent for a preliminary breath test.

MFF:bb
wkb3/075

Alaska State Legislature

STEVE FRANK
DISTRICT 20A
Finance Committee

1125 Sunset Drive
Fairbanks, Alaska 99701

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709

House of Representatives

TO: House Judiciary Committee

FROM: Rep. Steve Frank

RE: penalties for violation of local ordinances regarding open containers

DATE: March 16, 1988

The following information was obtained from the House Research Agency regarding local penalties for open container violations in some Alaskan communities.

Anchorage - violation is considered a misdemeanor, you lose 2 points from your drivers license, and the maximum fine is $50.

Nome - violation is considered a misdemeanor, and you can receive a maximum fine of $500 or a jail term of up to one year.

Juneau - violation is considered an infraction, the maximum fine is $300, and a court appearance is mandatory.

Fairbanks - violation is considered an infraction and a court appearance is mandatory.

Seward - violation is punishable by a maximum fine of $50.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 4, 1988

MEMORANDUM

TO: Representative Steve Frank

ATTN: Teresa Sager-Stancliff

FROM: Patricia Brawley
Legislative Analyst

RE: Open Container Laws in Other States and Alaska Communities
Research Request 88.200

You asked this agency to provide the names of states with laws prohibiting possession of open containers of alcoholic beverages in vehicles. You also wished to know which Alaska communities have ordinances prohibiting the same. Because of increased national awareness of public health and safety problems associated with drinking and driving, more stringent legislation is the trend throughout the country. The attached information, updated to January 1988, from the National Highway Traffic Safety Administration's, Digest of State Alcohol--Highway Safety Related Legislation, shows which states currently prohibit the possession of open containers in vehicles, as well as which states have laws prohibiting consumption of alcoholic beverages in motor vehicles.

State Laws

~~Ten states have open container laws which prohibit the possession of open containers and prohibit any consumption of alcoholic beverages in motor vehicles.~~ These states are California, Hawaii, Iowa, Kansas, Michigan, Minnesota, Montana, North Dakota, Oklahoma, Oregon, South Carolina, Utah, Washington, and Wisconsin.

~~Three states, Idaho, Illinois, and South Dakota, prohibit open containers in motor vehicles but are silent on consumption~~ -consumption being implicitly prohibited in the absence of an open container.

~~Maryland and North Carolina prohibit open containers from driver access in motor vehicles and prohibit consumption of alcoholic beverages by drivers.~~

~~Two states and the District of Columbia do not prohibit open containers, but do prohibit any consumption~~ by passenger or driver--of alcoholic beverages within a motor vehicle. These states are Arkansas, Colorado, Kentucky, Nebraska, New Hampshire (possession is prohibited for persons under 20, unless accompanied by a parent or guardian), New Jersey, New York, Ohio, Virginia, and West Virginia.

The following ~~seven states do not prohibit open containers in vehicles~~, but do prohibit the consumption of alcoholic beverages by drivers: Arizona, Massachusetts, Nevada, Pennsylvania, Rhode Island, Texas (sentence for DWI may be more severe if an open container is present at offence), and Vermont.

~~Alaska is one of fourteen states which currently have no statutes prohibiting the possession or transportation of open containers or the consumption of alcoholic beverages in motor vehicles.~~ Other states include Alabama, Connecticut, Delaware, Florida, Georgia, Indiana, Louisiana, Maine, Mississippi, Missouri, New Mexico, Tennessee, and Wyoming. Alabama, Mississippi, and New Mexico are also currently considering legislation addressing these issues.

~~Alaska Community Ordinances~~

~~Anchorage, Fairbanks, Nome, and Seward have ordinances which specifically prohibit the possession or transportation of open containers of alcoholic beverages in motor vehicles.~~ Other communities--including Juneau, Cordova, and Petersburg--prohibit the possession of open containers in public places, and consider motor vehicles to be "public places." Some communities, however--including Ketchikan, Kodiak, and Barrow--prohibit possession of open containers in public places, but do not consider motor vehicles to be "public places." Thus, local ordinances and enforcement vary widely.

I hope this information is useful to you. Please contact me if you have any questions.

Attachment

ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION
TABLE 2

STATE	Illegal Per Se (BAC Level)	Presumptive (BAC level)	In Vehicle Prohibitions: Open Container[1]	In Vehicle Prohibitions: Anti-Consumption Law	Dram Shop Law[2]	Legal Purch/ Sale for Alc Bev
AL	0.10	0.10			Statute	21
AK	0.10	--			Statute	21
AZ	0.10	0.10		X[3]	Statute	21
AR	0.10	--		X[4]	No	21
CA	0.10	0.10	X	X	Statute[5]	21
CO	0.15	.05-.10[6]		X	Statute	21
CT	0.10	--			Statute[8]	21
DE	0.10	0.10[9]			No	21
DC	0.10	0.05[9]		X	Case Law	21[10]
FL	0.10	--			Statute[11]	21
GA	0.12	0.10			Possible[7]	21
HI	0.10	--	X	X	Case Law	21
ID	0.10	>0.08	X		Statute	21
IL	0.10	0.10	X		Statute[8]	21
IN	0.10	0.10[9]			Statute	21
IA	0.10	--	X	X	Statute	21
KS	0.10	0.10[9]	X	X	No	21
KY	--	0.10		X	Case Law	21
LA	0.10	0.10			Possible[12]	21
ME	0.10	--			Statute[8]	21
MD	--	.08,.13[9,13]	X[14]	X[3]	No	21
MA	--	0.10		X[3]	Case Law	21
MI	0.10	>.07,.10[6]	X	X	Statute	21
MN	0.10	--	X	X	Statute	21
MS	0.10	--			Statute	21
MO	0.10	0.10[9]			Statute[15]	21
MT	0.10	0.10	X	X	Statute	21
NE	0.10	--		X	No	21
NV	0.10	0.10		X[3]	No	21
NH	0.10	0.10[9]		X[4]	Statute	21
NJ	0.10	--		X	Statute	21
NM	0.10	0.10			Statute	21
NY	0.10	0.08[9]		X	Statute	21
NC	0.10	--	X[14]	X[14,3]	Statute	21
ND	0.10	--	X	X	Statute	21
OH	0.10	--		X	Statute	21
OK	0.10	0.10[9]	X	X	Case Law	21
OR	0.08	0.08[17]	X	X	Statute	21
PA	0.10	--		X[3]	Statute	21
PR	--	0.10			No	18
RI	0.10	--		X[3]	Statute	21
SC	--	0.10	X	X[4]	Possible[7]	21
SD	0.10	0.10	X		No	21[23]
TN	--	0.10			Statute	21
TX	0.10	--		X[3]	Statute[21]	21

STATE	Illegal Per Se (BAC Level)	Presumptive (BAC Level)	In Vehicle Prohibitions: Open Container[1]	In Vehicle Prohibitions: Anti-Consumption Law	Dram Shop Law[2]	Legal Purch/ Sale for Alc Bev
UT	0.08	--	X	X	Statute	21
VT	0.10	0.10		X[3]	Statute	21[18]
VA	0.10	0.10		X[4]	No	21
WA	0.10	--	X	X	Case Law[8&19]	21
WV	0.10	0.10[20]		X	No	21
WI	0.10	--	X	X	Statute[5]	21
WY	--	0.10			Statute[22]	19
TOTAL	.08 - 2 .10 - 41 .12 - 1 .15 - 1	>.08 - 1 .10 - 21 .10 prima facie - 7 Other - 5	19	34	Case Law - 6 Statute - 33 Possible Case Law - 3	18 - 1 19 - 1 21 - 50

[1]Laws prohibiting the possession of an open container of an alcoholic beverage in the passenger compartment of a motor vehicle.
[2]Ten (10) States do not have dram shop liability.
[3]Applies to drivers only.
[4]Possible.
[5]Applies only to the actions of intoxicated minors; previous case law as to other types of dram shop actions has been specifically abrogated by legislation.
[6]The lower of the two numbers is driving while impaired; the higher is driving while under the influence.
[7]Possible case law.
[8]This state has a statute that places a monetary limit on the amount of damages that can be awarded in dram shop liability actions.
[9]BAC level or levels which indicated prima facie evidence.
[10] Persons who were 18 before 9/30/86, may continue to purchase beer and light wine (14% alcohol or less).
[11]Applies only to the actions of intoxicated minors or persons known to be habitually addicted to alcohol.

[12]Possible case law based upon the actions of minors.
[13]The lower of the two numbers is prima facie evidence of driving while under the influence; the higher is prima facie evidence of driving while intoxicated.
[14]Limited application.
[15]Cause of action limited to licensees who have been convicted of selling alcoholic beverages either to minors or to intoxicated individuals.
[16]The statute applies specifically to the actions of intoxicated minors, but the law does not foreclose developing case law as to other types of dram shop actions.
[17]Not less than 0.08 constitutes being under the influence of intoxicating liquor.
[18]Persons who were 18 as of 6/30/86 may continue to purchase alcoholic beverages.
[19]Applies only to the actions of (1) intoxicated minors and/or (2) adults who have lost their will to stop drinking.
[20]This state has both prima facie and presumptive evidence laws with BAC levels of 0.10.
[21]Statutory law has limited dram shop actions.
[22]Liability limited only to the actions of persons who are under 19 years old.
[23]Until 4/1/88, persons who are at least 19 years of age can purchase 3.2% beer.

Op. No. 687 (File Nos. A-1392, A-1413), P.2d (1987).

Stated in Kavorkian v. Tommy's Elbow Room, Inc., Sup. Ct. Op. No. 2906 (File Nos. S-62, S-79), 694 P.2d 160 (1985).

Cited in Effenbeck v. State, Ct. App. Op. No. 479 (File No. A-597), 700 P.2d 811 (1985); Anderson v. State, Ct. App. Op. No. 585 (File No. A-1028), 713 P.2d 1220 (1986); Morris v. State, Ct. App. Op. No. 694 (File No. A-1668), P.2d (1987); Brown v. State, Ct. App. Op. No. 714 (File No. A-1715), P.2d (1987); Clark v. State, Ct. App. Op. No. 716 (File No. A-1840), P.2d (1987).

Sec. 28.35.031. Implied consent. (a) A person who operates or drives a motor vehicle in this state or who operates an aircraft as defined in AS 28.35.030(g)(1) or who operates a watercraft as defined in AS 28.35.030(g)(2) shall be considered to have given consent to a chemical test or tests of the person's breath for the purpose of determining the alcoholic content of the person's blood or breath if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated. The test or tests shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating or driving a motor vehicle or operating an aircraft or a watercraft in this state while intoxicated.

(b) A person who operates or drives a motor vehicle in this state or who operates an aircraft or watercraft shall be considered to have given consent to a preliminary breath test for the purpose of determining the alcoholic content of the person's blood or breath. A law enforcement officer may administer a preliminary breath test at the scene of the incident if the officer has reasonable grounds to believe that a person's ability to operate a motor vehicle, aircraft, or watercraft is impaired by the ingestion of alcoholic beverages and that the person

(1) was operating or driving a motor vehicle, aircraft, or watercraft that is involved in an accident; or

(2) committed a moving traffic violation or unlawfully operated an aircraft or watercraft; in this paragraph, "unlawfully" means in violation of any federal, state, or municipal statute, regulation or ordinance, except for violations that do not provide reason to believe that the operator's ability to operate the aircraft or watercraft was impaired by the ingestion of alcoholic beverages.

(c) Before administering a preliminary breath test under (b) of this section, the officer shall advise the person that refusal may be used against the person in a civil or criminal action arising out of the incident and that refusal is an infraction. If the person refuses to submit to the test, the test shall not be administered.

(d) The result of the test under (b) of this section may be used by the law enforcement officer to determine whether the driver or operator should be arrested.

(e) Refusal to submit to a preliminary breath test at the request of a law enforcement officer is an infraction.

(f) If a driver or operator is arrested, the provisions of (a) of this section apply. The preliminary breath test authorized in this section is in addition to any tests authorized under (a) of this section. (§ 1 ch 83 SLA 1969; am § 11 ch 129 SLA 1980; am § 16 ch 117 SLA 1982; am § 16 ch 77 SLA 1983; am §§ 1 — 4 ch 76 SLA 1985)

Revisor's notes. — The last clause of (b)(2) of this section was enacted as AS 28.35.031(g). Reorganized in 1985.

Effect of amendments. — The 1985 amendment in subsection (b) inserted "or who operates an aircraft or watercraft" in the first sentence, inserted "aircraft, or watercraft" in the second sentence, in paragraph (1) inserted "operating or" and "aircraft, or watercraft," and in paragraph (2) added the language beginning "or unlawfully operated"; and in subsections (d) and (f) inserted "or operator."

Opinions of attorney general. — The Intoximeter 3000, an infrared alcohol breath test apparatus, is a "chemical test" under this section. 1984 Op. Att'y Gen. No. 01.

NOTES TO DECISIONS

Section constitutional. — The portable breath test authorized by this section does not constitute an unreasonable search under the fourth amendment to the United States Constitution. Leslie v. State, Ct. App. Op. No. 570 (File No. A-866), 711 P.2d 575 (1986).

The imposition of criminal penalties upon a motorist for his peaceful refusal to submit to a breath test does not violate his right to equal protection under the law. Burnett v. Municipality of Anchorage, 634 F. Supp. 1029 (D. Alaska 1986).

The implied consent statute clearly serves a legitimate state interest. All drivers lawfully stopped are treated equally, and, from the perspective of the fourth and fourteenth amendments, those drivers are treated no differently from other sorts of persons suspected of committing criminal acts. Burnett v. Municipality of Anchorage, 806 F.2d 1447 (9th Cir. 1986).

Legislative intent. — In the implied consent statutes, the legislature has gone to great lengths to avoid authorizing the police to take blood alcohol tests forcibly from defendants charged with driving while intoxicated; the legislature has, instead, provided extremely strong incentives to a defendant to take a breath test for blood alcohol by providing criminal penalties. Bass v. Municipality of Anchorage, Ct. App. Op. No. 429 (File No. A-273), 692 P.2d 961 (1984).

Consent to breathalyzer test, etc.

Just as a driver's failure to cooperate in the search conducted by means of a breathalyzer test is no impediment to the classification of the proceeding as a search incident to arrest, the absence of cooperation is no bar to the characterization of the taking of breath as a consent search for which consent has already been supplied by the act of driving on Alaska roads. Burnett v. Municipality of Anchorage, 634 F. Supp. 1029 (D. Alaska 1986).

Request for counsel before breathalyzer test. — District court judge's finding that defendant, convicted of driving while intoxicated under municipal code, did not request counsel prior to taking the breathalyzer examination where he never asked to speak to an attorney but asked whether he might need an attorney, with testimony supporting the conclusion that he wondered if he needed an attorney in order to make bail, not because he wanted advice about submitting to a breathalyzer exam, was not clearly erroneous, and superior court judge should not have reversed the conviction. Anchorage v. Erickson, Ct. App. Op. No. 417 (File No. A-512), 690 P.2d 20 (1984).

Right to counsel before breathalyzer test.

See note to AS 28.35.030 under this catchline, Van Wormer v. State, Ct. App. Op. No. 473 (File No. A-320), 699 P.2d 895 (1985).

Use of search warrant.

Implied Consent Statutes in effect at the time of the arrests of defendants in 1980 and 1981 precluded the admission into evidence of chemical sobriety test results obtained pursuant to a search warrant after the arrestees had refused to take such a test. Pena v. State, Sup. Ct. Op. No. 2851 (File Nos. 6174, 7052), 684 P.2d 864 (1984).

(f) If a driver or operator is arrested, the provisions of (a) of this section apply. The preliminary breath test authorized in this section is in addition to any tests authorized under (a) of this section. (§ 1 ch 83 SLA 1969; am § 11 ch 129 SLA 1980; am § 16 ch 117 SLA 1982; am § 16 ch 77 SLA 1983; am §§ 1 — 4 ch 76 SLA 1985)

Revisor's notes. — The last clause of (b)(2) of this section was enacted as AS 28.35.031(g). Reorganized in 1985.

Effect of amendments. — The 1985 amendment in subsection (b) inserted "or who operates an aircraft or watercraft" in the first sentence, inserted "aircraft, or watercraft" in the second sentence, in paragraph (1) inserted "operating or" and "aircraft, or watercraft," and in paragraph (2) added the language beginning "or unlawfully operated"; and in subsections (d) and (f) inserted "or operator."

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STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 521
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to open containers of alcoholic beverages in motor vehicles."
Sponsor: Frank
Requestor: N/A

Agency Affected: Health & Social Services
BRU: Alcoholism & Drug Abuse
Components: Alcohol Abuse Grant

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
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)

Prepared by: Matthew Felix by George Mundell
Phone: 586-6201
Division: Alcoholism and Drug Abuse
Date: 3/3/88

(R) Approved by Commissioner: Myra M Munson DHSS
Date: 3/4/88
Agency: George Mundell

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 521
PUBLISH DATE:

FISCAL NOTE

REQUEST

Revision Date:
Title: "An Act relating to open containers of alcoholic beverages in vehicles."
Sponsor: Rep. Frank
Requestor: House State Affairs

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

F.C.A.

Prepared by: Francis C. Allan
Division: Alaska State Troopers
Phone: 269-5691
Date: 2/23/88

Approved by Commissioner:
Agency: Public Safety
Date:

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

(7)

HOUSE COMMITTEE REPORT

Date referred: 2/15/88 FURTHER REFERRALS: Judiciary

DATE: 3-4-88

The State Affairs Committee has considered HB 521

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

RECOMMENDS:

[ ] replace with _____ [ ] the same title
[ ] attached amendment(s) [ ] a new title
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

AD PTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact
2 [X] zero fiscal note
[ ] zero with analysis
[ ] same as previous fiscal note published _____
[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature