

HB

321

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB321-LAW-CJL-1-16-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to high risk operation of a motor RDU: CRIMINAL
vehicle, aircraft, or watercraft while under the influence..." Component: Criminal Justice Litigation
 Sponsor: Representative Ramras
 Requester: House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	*****	*****	*****	*****	*****	*****
Travel	*****	*****	*****	*****	*****	*****
Contractual	*****	*****	*****	*****	*****	*****
Supplies	*****	*****	*****	*****	*****	*****
Equipment	*****	*****	*****	*****	*****	*****
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*****	*****	*****	*****	*****	*****
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 28.35.030 (Motor Vehicles- Operating a vehicle, aircraft or watercraft while under the influence...) by doubling the mandatory minimum sentence for drunk driving if the blood alcohol content (or the equivalent as measured by breath) is .16 or more. The mandatory minimum for refusal to be tested would also be doubled.

Passage of this legislation will have an indeterminate fiscal impact on Law because offenders will be less likely to enter a plea with the increased mandatory penalty. Law estimates that at least half the drunk driving cases currently involve a blood alcohol content of .16 and above.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 1/16/06 11:04 AM
 Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 1/16/2006
 Agency: Department of Law

FISCAL NOTE

**STATE OF ALASKA
2006 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB321-DPS-AST-1-17-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title Aggravated drunk driving that increases the RDU Alaska State Troopers
amount of time to be served Component AST Detachments
 Sponsor Representative Ramras
 Requester House Judiciary Committee Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

POSITIONS	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

If passed, this bill will provide enhanced jail terms for those convicted of refusal to submit to a chemical test as well as Driving Under the Influence (DUI) when their alcohol levels are found to be over .160 while operating a motor vehicle.

With the increased penalties, it can be reasonably expected that the defendant will mount a much more aggressive defense. As a result, there will be an increase in court testimony time. The cost associated with this increased court time is extremely variable and nearly impossible to predict. For now, this cost would be absorbed by utilizing existing resources of the department.

Prepared by: Lieutenant James Helges
 Division: Alaska State Trooper
 Approved by: Commissioner William Tandeske
 Agency: Department of Public Safety

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 Date/Time 1/17/08 11:4 AM
 Date 1/17/2008

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House District 10

House of Representatives

Sponsor Statement HB 321

"An Act relating to high risk operation of a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance and to refusal to submit to a chemical test."

This bill proposes new statutory language, which addresses tougher Driving Under the Influence (DUI) laws. Presently, it is a crime in Alaska to operate a vehicle with a blood alcohol level of .08 or greater. This proposed legislation would not change the current law, but would create an enhanced crime of high risk driving under the influence. A person commits the crime of high risk driving under the influence, if it is determined by a chemical test that a person's blood alcohol concentration (BAC) is .16 or greater. A person who is convicted of high risk DUI would face double the minimum sentences of those convicted of DUI. Under this legislation, sentencing for refusal to submit to a chemical test would also be made tougher, to concur with the high risk DUI sentences.

Current information from the National Highway Traffic Safety Administration (NHTSA) shows that 31 states have already adopted laws dealing with enhanced penalties for high-blood alcohol level driving offenses. The NHTSA also reports that over half of all alcohol-related fatalities involve someone with a .15 BAC or higher. The high-risk driver provision of this bill will take clear aim against the most egregious drunk driving offenders, providing stiffer penalties is a legal remedy to bring their numbers down. As we have seen from the needless and tragic incidents that have occurred in the Interior this summer, now is the time for Alaska to address stricter penalties for higher-risk driving under the influence.

This legislation is part of a full approach to improve alcohol management in Alaska. Earlier legislation introduced, which has been signed into law, involved renewal of alcohol server education cards. This legislation allows professional servers to renew their alcohol server education cards, by demonstrating their knowledge by passing the written test without having to retake the introductory course.

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Sectional Summary HB 321/High Risk DUI Work Order 24-LS1099\G

"An Act relating to high risk operation of a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance and to refusal to submit to a chemical test."

Section 1. AS 28.35.030(b) States that when the court finds that a defendant had a BAC of 0.16 or greater the court shall impose a minimum sentence of imprisonment as follows:

- (i) not less than 144 consecutive hours and a fine of not less than \$1,500 if it is a first offense;
- (ii) not less than 40 days and a fine of not less than \$3,000 if the person has been previously convicted once;
- (iii) not less than 80 days and a fine of not less than \$4,000 if the person has previously been convicted twice;
- (iv) not less than 140 days and a fine of not less than \$5,000 if the person has previously been convicted three times and is not subject to felony DUI charges;
- (v) not less than 360 days and a fine of not less than \$7,000 if the person has been convicted four or more times and is not subject to felony DUI charges.

Section 2. AS 28.35.030(k) Technical amendment.

Section 3. AS 28.35.032(g) Increases minimum sentencing requirements for the crime of refusal to submit to a chemical test to the same as those imposed in section 1, under AS 28.35.030(b).



National Conference of State Legislatures

National Highway Traffic Safety Administration

**State High BAC Laws
December 2004**

This chart is based on Appendix A from "Evaluation of Minnesota's High BAC Law," a report issued by the National Highway Traffic Safety Administration showing the status of State High BAC laws as of as of January 1, 2002. The chart was updated through January 10, 2005 using the joint NCSL/NCSL Legislative Tracking Database.

State High-BAC Standards and Penalties

State	High BAC	Illegal Per Se BAC	Enhanced Penalty for High-BAC Offenses
Arizona	.15	.08	If high BAC, mandatory jail 30 consecutive days; all but 10 consecutive days may be suspended if screening/treatment program completed. Mandatory 10 consecutive days for standard 1st offense; all but 24 consecutive hours may be suspended if complete screening/treatment. Jurisdictions may provide work release program after 48 consecutive hours in jail for high-BAC offenders vs. 24 consecutive hours for other offenders. Jurisdictions also may provide home monitoring program after 15 consecutive days in jail for high-BAC vs. 24 consecutive hours. Maximum 6 months (with 30 consecutive days) vs. 6 months (10 consecutive days). Mandatory minimum fine \$250 and \$250 assessment vs. \$250. Upon conviction, 12-month administrative ignition interlock required (or court may require) for high-BAC offenders after license suspension ends or conviction, whichever is later vs. no requirement.
Arkansas	.15	.08	For administrative license suspension, high-BAC offenders receive 180 days suspension or 30 days suspension followed by 150 days restricted driving privileges vs. 120 days suspension with restricted license. Restricted license can be available to all 1st offenders. Court can order ignition interlock.
California	.20	.08	Court may consider BAC = .20 as a special factor in imposing enhanced sanctions and determining whether to grant probation and may give high BAC "heightened consideration" in ordering an ignition interlock up to 3 years. In counties with licensed alcohol education/counseling program, offenders placed on probation with high BAC must participate in program for at least 6 months vs. 3 months.
Colorado	.15 .20	.08	For state's mandatory treatment/screening program for all offenders, assessment tool recommends Level I if BAC \geq .15; judge, however, has discretion. If BAC = .20: mandatory 90 days jail (10 days if participate in alcohol education/treatment program) vs. 5 days unless participate in program. \$500-1500 fine vs. \$300-1,000. 60-120 days (mandatory 60) community service vs. 48-96 hours (mandatory 48). Administrative licensing action for BAC > .20: completion of alcohol education or treatment program required for license reinstatement. If driving under the influence (DWI)

			charge is reduced to the lesser charge of driving while impaired, and if BAC = .20, then "because of such aggravating factor," sanctions imposed must be for (greater) DWI offense.
Connecticut	.16	.08	120 days administrative driver license suspension vs. 90 days, but all offenders may obtain restricted license after 30 days. Under state's diversion program, completion of pre-trial rehabilitation/alcohol education results in dismissal. If BAC = .16, offender attends more sessions at higher cost than other offenders.
Delaware	.16 .20	.08	BAC = .15: not automatically eligible, but can apply, for "First Offense Election Process" (dismissal of criminal charges upon completion of education/treatment program). BAC = .20: DMV conducts "character review" (references and interview) prior to reinstating license.
Florida	.20	.08	Fine \$500- \$1,000 vs. \$250 -\$500. Maximum 9 months jail vs. 6 months. Judge cannot accept guilty plea to lesser offense.
Georgia	.15	.08	Court cannot accept nolo contendere plea if violate illegal per se law and BAC = .15.
Idaho	.20	.08	Mandatory minimum 10 days jail (beginning with 48 consecutive hours) vs. no mandatory minimum; maximum 1 year vs. 6 months. Fine up to \$2,000 vs. \$1,000. Mandatory minimum 1 year driver license court suspension after release from confinement vs. mandatory minimum 30 days suspension followed by restricted license for 60-150 days.
Illinois	.15 .20	.08	BAC one of several criteria for assignment to "risk category" for completion of treatment program for license reinstatement: BAC < .15 = minimal risk (10 hours education); .15-.19 BAC = moderate risk (10 hours education and 12 hours early intervention); BAC = .20 = significant risk (10 hours education and 20 hours treatment). High risk multiple offenders must receive = 75 hours of treatment for reinstatement.
Indiana	.15	.08	BAC = .15 is a Class B felony. Maximum fine \$5000 vs. \$500. Maximum jail 1 year vs. 60 days.
Iowa	.15	.08	High-BAC offenders excluded from deferred judgment or sentence generally available to 1st offenders. Mandatory minimum 48 hours jail vs. no mandatory jail. Mandatory minimum \$500 fine. For other offenders, minimum is \$500, or \$1,000 if personal injury or property damage crash. However, court may order unpaid community service in lieu of fine.
Kentucky	.18	.08	BAC = .18 is one of several "aggravating circumstances"; enhanced penalty is mandatory minimum 4 days jail, which "shall not be suspended, probated, conditionally discharged, or subject to any other form of early release." Must also be detained 4 hours after arrest. Other 1st offenders must receive one of the following: \$200-\$500 fine, 48 hours-30 days jail or community labor, or 48 hours-30 days community service.
Louisiana	.15	.08	Mandatory 48 hours jail prior to probation. For other 1st offenders, in lieu of minimum 10 days jail, may participate in substance abuse/driver improvement program and 1) serve 2 days jail, or 2) perform 4 days community service.
Maine	.15	.08	Mandatory minimum 48 hours jail prior to probation alternatives vs. no mandatory jail.
Minnesota	.20	.08	Effective 1/1/2001, DWI offenses are categorized into three degrees based on the number of aggravating factors present, which include a prior DWI offense, BAC > .20, and driving with passenger < 16 years old and > 36 months

			younger than driver. Criminal penalties if high BAC only aggravating factor, i.e., second degree DWI. Include maximum jail 1 year vs. 90 days, mandatory minimum fine \$900 vs. \$210, maximum fine \$3,000 vs. \$700. If BAC > .20 court also may impose additional penalty assessment of \$1,000. In addition, court may stay sentence except license revocation if offender submits to level of care recommended in required chemical use assessment report. Court must order high-BAC offenders person to submit to recommended level of care. Mandatory "hold for court": unless maximum bail is imposed after arrest, high-BAC offender released from jail only if agree to abstain from alcohol with daily electronic alcohol monitoring. Mandatory administrative pre-conviction license revocation 180 days (30 days hard revocation) vs. 90 days (15 days hard); mandatory post-conviction license revocation 50 days (30 days hard revocation) vs. 30 days (15 days hard). Administrative plate impoundment equal to license revocation period if BAC = .20.
Missouri	.15	.08	Upon conviction, the court must order offender to complete substance abuse program. For persons with administrative per se violations, driving privileges cannot be restored until successfully complete program. For cause, court may modify but may not waive this requirement if BAC > .15
Montana	.18	.08	Court may restrict driving to vehicle with ignition interlock device, if device is reasonably available, for BAC = .18.
Nevada	.18	.08	Offenders with BAC = .18 must be evaluated for alcohol/drug abuse prior to sentencing, with \$100 fee. Also serve minimum 2 days jail or 48 hours community service. Other 1st offenders may receive suspended sentence if participate in treatment program but must serve 1 day jail or 48 hours community service.
New Hampshire	.16	.08	Class A misdemeanor vs. violation. Up to 1 year jail vs. no jail. Mandatory minimum fine \$500 vs. \$350; maximum \$2,000 vs. \$1,000. Mandatory minimum 1 year license revocation vs. 90 days. Administrative revocation of registration of vehicle registered to offender revoked for same period as license revocation; hardship registration available vs. no revocation. May receive conditional discharge, which may include up to 50 hours community service.
New Mexico	.16	.08	Mandatory minimum 48 consecutive hours jail vs. no mandatory jail.
North Carolina	.15 .16	.08	Person convicted with BAC = .15 must complete substance abuse assessment and treatment program, if indicated, to reinstate license. BAC = .16 considered gross impairment and an aggravating factor in sentencing; level of punishment is determined by weighting aggravating and mitigating factors. Also, to obtain restricted license after hard suspension, ignition interlock must be installed for one year, and driving with BAC = .04 prohibited.
Ohio	.17	.08	Mandatory jail time doubled from 3 consecutive days (may attend 3 consecutive days driver's intervention program in lieu of jail) to 6 days (may attend program for 3 days in lieu of 3 days jail but must serve 3 days jail).
Oklahoma	.15	.08	In addition to other penalties for all offenders, offenders convicted of driving with BAC = .15 receive mandatory minimum 28 days inpatient treatment, followed by minimum 1 year of supervision, periodic testing, and aftercare at defendant's expense, 480 hours of community service following aftercare, and minimum 30 days ignition interlock device. This shall not "preclude the defendant being charged or punished under other DWI statutes." Note: For any type of DWI offense, probation before judgment available. Deferred judgment also available upon guilty plea if complete alcohol/drug program.

Rhode Island	.15	.08	In contrast to .10 = BAC < .15, offenders with BAC = .15 receive \$500 fine vs. \$100-\$300 fine, 20-60 hours public community restitution and/or imprisonment for up to 1 year vs. 10-60 hours public community restitution and/or imprisonment for up to 1 year. Note: .08 < BAC < .10 is a civil offense.
South Dakota	.17	.08	Courts must require pre-sentencing alcohol evaluations vs. no such requirement
Tennessee	.20	.08	Mandatory minimum 7 consecutive days of jail vs. 48 consecutive hours It appears that in certain counties with more than 100,000 residents, court may allow 200 hours community service in lieu of jail term.
Utah	.16	.08	As an alternative to imprisonment or community service, an offender may be allowed to participate in home confinement electronic monitoring program; alcohol testing may be part of program. Court also may order alcohol or drug treatment and may require ignition interlock as condition of probation. For each of these sanctions court must give reasons on record if not imposed/ordered if offender had BAC > .16.
Virginia	.15	.08	Mandatory minimum jail: 5 days if BAC .15 - .20; 10 days if BAC > .20; no mandatory minimum if BAC < .15. Ignition interlock required for any high BAC offense. First offender may attend Virginia Alcohol Safety Action Program (VASAP) to obtain restricted license. BAC = .20 is one of several criteria used to indicate longer and more intensive education.
Washington	.15	.08	Mandatory minimum 2 days jail or 30 days electronic home monitoring vs. 24 hours or 15 days for standard offense. Ignition interlock device (after license suspension or revocation period) not less than 1 year vs. court discretion. Mandatory minimum fine \$925 vs. \$685. Mandatory court driver license suspension/revocation 1 year vs. 90 days. Deferred prosecution program for all 1st offenders results in issuance of 5-year probationary license and dismissal of charge upon completion of 2-year treatment program. Court must order ignition interlock if BAC = .15.
Wisconsin	.17 .20 .26	.08	Fine penalties for persons convicted of 3rd, 4th, and 5th DWI are doubled if BAC .17-.199, tripled if BAC .20-.249, and quadrupled if BAC = .25. The law does not include enhanced penalties for high-BAC 1st offenders. Wisconsin law also provides that if BAC is known (for first or subsequent offenses), the "court shall consider that level as a factor in sentencing."

Sources: Appendix A from "Evaluation of Minnesota's High BAC Law," issued by the National Highway Traffic Safety Administration; 50-state bill searches for 2002, 2003 and 2004 via joint NCSL/NHTSA bill tracking database; Westlaw searches; Lexis searches.

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Enhanced Sanctions For Higher Bacs A Summary Of States' Laws

Enhanced sanctions for drivers convicted a second or third time for Driving Under the Influence (DUI) have been in place for many years. Recently, many states have considered *hard core* offenders as those drivers who are arrested with high blood alcohol concentration (PACs). Twenty-nine states have a statute, regulation, or rule that provides for differential treatment for DUI offenders with higher BACs (than the state's standard illegal limit) such as .15 or .20 BACs, even for drivers who are first time offenders.

The National Highway Traffic Safety Administration (NHTSA) sponsored a study by Preusser Research Group to examine whether these higher sanctions for higher BACs are effective in reducing DUI recidivism and alcohol-related crashes in selected states. The study will document how the law is being enforced and any problems the states are having in implementing or enforcing the law. The first step in this project is to summarize the high BAC systems in the 29 states.

Enactment of Systems

Most of the 29 states enacted their high BAC statutes since 1990. Ten states have implemented laws since 1998, and five more states recently have strengthened their existing high BAC sanctions. Some states noted widespread public support for the legislation and most states reported little opposition.

States with more extensive or more recent sanctions reported higher levels of publicity about the sanctions. Jail or vehicle-based sanctions, in particular, received considerable press attention in some states.

States define *high BAC* in various ways and the threshold ranges from .15 to .20 BAC. Some states selected the average BAC of offenders as the threshold. Other states set the threshold at double the legal BAC limit.

Types of Sanctions for First Offenders

The types of sanctions for high BAC first offenders include the following:

- Longer or more intensive education or treatment
- Additional or enhanced driver sanctions such as jail, license sanctions, or fines
- Use of vehicle sanctions such as ignition interlocks and vehicle plate impoundment

Implementation Concerns

Most states reported few problems with implementing high BAC sanctions. Several noted concerns that include:

- High BAC sanctions may further complicate an already complicated DUI system
- Higher sanctions may increase the number of BAC test refusals at time of arrest
- Courts and/or prosecutors may allow high BAC offenders to plead down to a lower charge
- Courts may view the high BAC penalties as burdensome and thus fail to impose the penalties
- Concerns about jail overcrowding and limited availability of treatment facilities may limit the effectiveness of these jail sanctions.

29 States with Enhanced Sanctions for Higher BACs

State	High BAC	Standard BAC	State	High BAC	Standard BAC
Arkansas	.18	.10	Maine	.15	.08
Arizona	.18	.10	Minnesota	.20	.10
California	.20	.08	Nevada	.18	.10
Colorado	.15/.20	.10	New Hampshire	.16	.08
Connecticut	.16	.10	New Mexico	.16	.08
Delaware	.16/.20	.10	North Carolina	.15/.16	.08
Florida	.20	.08	Ohio	.17	.10
Georgia	.15	.10	Oklahoma	.15	.10
Idaho	.20	.08	Rhode Island	.15	.08
Illinois	.15/.20	.08	South Dakota	.17	.10
Indiana	.15	.10	Tennessee	.20	.10
Iowa	.15	.10	Virginia	.20	.08
Kansas	.15	.08	Washington	.15	.08
Kentucky	.18	.08	Wisconsin	.17/.20/.25	.10
Louisiana	.15	.10			

HOW TO ORDER

For a copy of *Evaluation of Enhanced Sanctions for Higher BACs: Summary of States' Laws* (26 pages plus appendices), write to the Office of Research and Traffic Records, NHTSA, NTS-31, 400 Seventh Street, S.W., Washington, D.C. 20590, fax (202) 366-7096, or download from <http://www.nhtsa.dot.gov> Amy Berning was the contract manager for this project.

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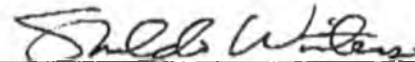
January 18, 2006

Re: HB 321

Dear Representative Ramras:

I am the lobbyist for State Farm Insurance Companies. As I discussed with your staff earlier this morning, State Farm supports House Bill 321 and encourages the Legislature to pass this worthy bill.

Sincerely,



Sheldon E. Winters