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Comments From the Department of Transportation



U.S. Department of
Transportation

Assistant Secretary
for Administration

401 Seventh St. S.W.
Washington, D.C. 20560

June 8, 1999

Ms. Phyllis Scheinberg
Associate Director, Transportation Issues
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Scheinberg:

Enclosed are the Department of Transportation's comments on the GAO draft report, "Highway Safety: Effectiveness of State .08 Blood Alcohol Laws," RCED-99-179.

We appreciate this opportunity to review and comment on the draft report. Please contact Martin Gertel on (202)-366-5145 if there are any questions concerning our comments.

Sincerely,

Melissa J. Allen
Melissa J. Allen

Appendix I
Comments From the Department of
Transportation

Department of Transportation
Comments on the General Accounting Office (GAO) Draft Report
"Highway Safety: Effectiveness of State .08 Blood Alcohol Laws,"
RCED-99-179

The Department commends GAO for reaching the sound and accurate conclusion that a .08 blood alcohol concentration (.08 BAC) law can be an important component of a state's overall highway safety program. We agree that highway safety research shows that the best countermeasure against drunk driving is a combination of laws, including .08 BAC, sustained public education, and vigorous enforcement. The Department has consistently supported such a systems approach to reduce alcohol related driving fatalities. The .08 BAC laws are an important component of this system, as research has shown substantial evidence that performance in driving-related skills such as reaction time, tracking and steering, and emergency response is substantially impaired for all persons at .08 BAC. It is not the Department's position that .08 BAC laws, by themselves, are sufficient to address the issue of alcohol-impaired driving.

**Systems Approach Most Effective for
Reducing Alcohol Related Highway Deaths**

GAO aptly recognizes in the draft report that the National Highway Traffic Safety Administration (NHTSA) has, since 1970, espoused a systems approach for reducing alcohol-impaired driving. This systems approach must include legislative, enforcement, judicial, licensing and public information components. In 1998, NHTSA further refined this concept with the publication of an action plan to further reduce alcohol related driving fatalities. This plan recommends that all states initiate a wide range of laws and programs including .08 BAC limits, administrative license revocation (ALR) laws, comprehensive screening and treatment programs for alcohol offenders, vehicle impoundment and zero tolerance BAC laws for youth.

While studies conducted for NHTSA have attempted to measure the effectiveness of individual components of such a systems approach to reducing alcohol related deaths, it is recognized that no component operates in a vacuum. All of the efforts to reduce alcohol-impaired driving over the past two decades have built upon and operated in the environment created by the totality of actions which have preceded it. Thus, new laws will be most effective when they complement other laws and activities. Consistent with this position, the Agency has often pointed out that .08 BAC laws are likely to be most effective when combined with ALR laws, and vice versa. The studies conducted to date convincingly support this position.

Appendix I
Comments From the Department of
Transportation

**Studies Provide Consistent Evidence
Supporting .08 BAC Law Effectiveness**

There is consistent evidence supporting the effectiveness of .08 BAC laws in reducing alcohol-related fatalities. Six of the seven published studies, and one study completed but not yet published, were designed and executed in accordance with sound, well accepted scientific procedures. All of the studies conducted to date have been directionally consistent in demonstrating reductions in alcohol-related fatalities associated with .08 BAC laws. Significant reductions have been reported for most of the states studied. Studies which have pooled or averaged results across states have shown reductions in alcohol related fatalities ranging from 6-16 percent. Most variation in individual state outcomes has been among smaller or less populated states where the number of fatalities is small and as a result, relatively small changes in annual crash statistics can profoundly affect the measurement of results.

At a minimum, the study results available to date provide consistent evidence that .08 BAC laws add to the effectiveness of laws and other activities already in place, and result in reductions in alcohol-related fatalities. When all of the outcomes contained in all of the studies are considered in total, these results are consistent and persuasive. Particularly in the multi-state studies, the results consistently suggest that these laws are more frequently associated with significant reductions in alcohol-related crashes than was the case with minimum drinking age laws.

Thus, NHTSA agrees with GAO that there are strong indications that .08 BAC laws, in combination with other drunk driving laws and other programs, can save lives. This is particularly the case when .08 BAC laws are combined with the ALR laws already in place in most states.

**Earlier Study Results Provided Reasonable Basis
for Supporting .08 BAC Laws**

Four early studies, three of which controlled for extraneous factors, provided consistent, if not conclusive, evidence of the benefit of .08 BAC laws. While all studies have limitations, these studies provided credible evidence of the impact of these laws, either alone or in combination with ALR laws. Nonetheless, NHTSA recognized the need for more replication on which to base conclusions. In addition, it recognized that in the two California studies, it was very difficult to isolate the effects of the .08 BAC and ALR laws, which were implemented within 6 months of each other. Thus, NHTSA initiated three new studies.

**Appendix I
Comments From the Department of
Transportation**

**Three Recent Studies Strengthen Analytical Basis
for Supporting .08 BAC Laws**

NHTSA recently released the results of these three high quality studies of .08 BAC law effects, which provided additional evidence to support the effectiveness of these laws. When combined with the previously conducted studies, the three new studies provide additional confidence in the expectation that .08 BAC laws, when added to existing laws or programs, reduce alcohol-related traffic fatalities. A substantial body of directionally consistent evidence is now available to support the Department's position that .08 BAC laws are effective in reducing alcohol-related fatalities. The 50-state study, for example, controlled for more extraneous variables than any previous study and showed a significant reduction in the involvement of both low BAC and high BAC drivers in fatal crashes. The 11-state study found that .08 BAC laws were associated with reductions in alcohol-related fatalities in 7 of the 11 states studied, either alone or in conjunction with ALR laws. In the North Carolina study, which found no clear effect of its .08 BAC law, the majority of outcomes were directionally consistent with such an effect, over and above the sharp decline in alcohol-related fatalities that began before the law was enacted.

The methodologies used in these studies provide tools to make responsible estimates of how many lives would be saved if all states enacted .08 BAC laws. It is common and appropriate for such estimates to be made, based on average, pooled, or aggregated study results. Researchers that make such estimates are fully aware that there will be a range of results experienced by individual states. However, if such estimates are based on sound research and appropriate algorithms, it is reasonable to predict average effects which can be expected in states yet to adopt a particular program.

GAO Contacts and Staff Acknowledgments

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In addition to those named above, Steve Cohen, Amy Gleason Carroll, Sara Ann Moessbauer, Mitchell B. Karpman, and Allan Rogers made key contributions to this report.

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POLICY BRIEF

**Minnesota House of Representatives
Research Department
600 State Office Building
St. Paul, MN 55155**

March 1994

Jim Cleary, Legislative Analyst (296-5053)

The 0.08 Alcohol Concentration Limit

One recently proposed DWI countermeasure would lower from 0.10 to 0.08 the "per se" level -- i.e., the legal limit for a driver's alcohol concentration. This policy brief describes that proposal and examines several fundamental questions pertaining to it.

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Introduction

"Per se level" refers to the legal limit for a driver's alcohol concentration. This is the level at and above which it is illegal, in itself (i.e., per se), to be driving a motor vehicle. The general per se level in Minnesota is 0.10, or one-tenth of one percent of alcohol in the bloodstream. For commercial motor vehicle drivers and airplane pilots the per se level is 0.04.

NHTSA is the acronym for the National Highway Traffic Safety Administration. While NHTSA has little direct authority in controlling drinking driving, it influences states' policies primarily through its qualifying conditions for certain federal incentive grants to states. NHTSA is regarded as the chief advocate for lowering the per se limit.

Drinking and driving has long been regarded as a serious public health and public safety issue. In 1992, the most recent year for which data are available, 229 people were killed and 5,837 injured in Minnesota in alcohol-related motor vehicle crashes. These figures represent at least 39 percent of all deaths and at least 15 percent of all injuries due to motor vehicle crashes statewide.¹

Alcohol-related crashes incur significant social and economic costs. In 1992, alcohol-related fatalities in Minnesota cost an estimated \$99,000,000 in lost wages, medical expenses, insurance administration costs, and motor vehicle damage.² Significant costs also accompanied the numerous alcohol-related crashes in which injuries or property damage occurred.

One recently proposed and widely debated drinking driving countermeasure would lower the per se level, which is the legal limit for a driver's alcohol concentration (AC), from 0.10 to 0.08. The trend to lower the per se level stems from greater knowledge of the risks associated with drinking and driving and continued public support for tougher drinking driving laws. The findings from recent empirical research on the effects of alcohol impairment on driving suggest that even small doses of alcohol may have a deleterious effect on driving related skills. Numerous studies show that many driving related skills become significantly impaired at or below alcohol concentration levels of 0.08 and some skills become impaired at 0.05 AC or less.³ Several professional associations and other groups support reductions in alcohol concentration limits to 0.08 or 0.05, including the American Medical Association, National Highway Traffic Safety Administration, National Safety Council, International Association of Chiefs of Police, and Mothers Against Drunk Driving.⁴

Opponents of a reduction in the legal alcohol concentration limit include such representatives of the alcohol industry as the American Beverage Institute (ABI), the National Beer Wholesalers' Association, the Beer Institute, and Miller Brewing. Of these groups, the ABI is arguably the most vocal opponent. These opponents argue that the proposed 0.08 per se level "is arbitrary, unnecessary, and targeted at the wrong population."⁵ The ABI asserts that there is no clear empirical evidence suggesting that reduced alcohol concentration standards lead to a reduction in highway fatalities. Furthermore, court records reveal that the majority of drivers convicted of driving while intoxicated have blood alcohol concentration

ABI refers to the American Beverage Institute, arguably the most outspoken opponent of lowering the per se level. In this report, "opponents of the 0.08 policy" generally refers to the ABI.

Those opposed to lowering the alcohol concentration limit contend that the proposed 0.08 per se level "is arbitrary, unnecessary, and targeted at the wrong population."

The trend to lower the alcohol concentration limit stems from greater knowledge of the risks associated with drinking and driving and continued public support for tougher drinking driving laws.

levels far exceeding the legal limit of 0.10. These drivers also are most often the victims in alcohol-related fatal crashes.

Consequently, those opposed to the more restrictive standard assert that this strategy will affect only the less intoxicated and least dangerous drivers, and that a more effective approach would be to emphasize enforcement policies that target drivers with high alcohol concentration levels, since these drivers represent the greatest threat to public safety and are responsible for most of the costs and damage resulting from alcohol-related crashes.⁶ For example, Richard Berman, executive director of the ABI, contends that:

"increased enforcement, harsher sentences, and intervention programs to identify and treat the problem drinker are the answer to the threat posed by drunk driving."⁷

This policy brief addresses several important questions related to any proposal for lowering the per se limit to 0.08 in Minnesota. The answers to some of these questions are based on the results of several years of empirical research; others are derived from pioneering studies or the "best guesses" of experts. For some questions, there are only assertions and counterassertions about likely effects; such opposing views are presented for the reader's own appraisal.

Scientific evidence of the negative effects of alcohol impairment on driving ability appear to support the reduction of the per se level to 0.08, yet little is known about the practical implications of reducing the per se level for law enforcement agencies and the court system. Thus far, California is the only state to undertake a systematic evaluation of the effects of the change to the 0.08 per se level. The results of that evaluation recently appeared in a controversial report published by NHTSA. Findings from that study are interpreted with caution for this brief due to the recent criticisms and absence of any similar studies.

In policy briefs such as this one, the House Research Department does not take a position or make recommendations. The intent here is to describe the proposed policy as thoroughly and objectively as possible and to discuss the implications of the policy using the best evidence available. It is assumed that the reader will factor this information with his or her other concerns to arrive at a conclusion about the viability of the policy.

How Many Drinks Does It Take To Reach 0.08 AC?

The amount of alcohol that must be consumed to reach an alcohol concentration level of 0.08 is affected by several factors including gender, body weight, ingestion of food, and duration of the drinking episode.

The term "standard drink" refers to the quantity of alcohol in one 5 ounce glass of wine (12% alcohol by volume), 1 1/2 ounces of spirits (40% alcohol by volume), or a 12 ounce glass of beer (5% alcohol by volume).

The amount of alcohol that must be consumed to reach an alcohol concentration level of 0.08 is affected by several factors including gender, body weight, ingestion of food, and duration of the drinking episode.⁸

Women usually reach higher peak alcohol concentration levels than men when given identical weight-adjusted doses of alcohol.⁹ The intoxicant in alcoholic beverages is ethanol. Ethanol, a water soluble and fat insoluble substance, is distributed throughout the total body water after alcohol is consumed. Thus, the concentration of ethanol in the body is inversely related to an individual's total volume of body water.

The average man is comprised of approximately 58.3 percent water, while the average woman is approximately 48.5 percent water.¹⁰ These figures suggest that the total volume of distribution available in a man and woman of equal weight often is greater in the man, which decreases the man's alcohol concentration level relative to the woman's after each has had the same number of drinks.

For example, a 150 pound man has a total volume of body water of 39.75 kilograms: Multiplying his weight in kilograms (68.18) by his average percent of body water (58.3 percent) yields a total volume of body water of 39.75 kilograms. In contrast, a 150 pound woman who is approximately 48.5 percent water has a total volume of body water of 32.72 kilograms. If each consumes 13.6 grams of ethanol, the amount of ethanol in one standard drink, the concentration of ethanol in the man's body water will be $13.6 \div 39.75 = .342$. Multiplying this result by .8 corrects for the percentage of body water in blood and yields 27.4 milligrams of alcohol per 100 milliliters of blood, or 0.027 AC. Completing the same calculations for the 150 pound woman shows that her alcohol concentration level after one drink, 0.033, is slightly higher than the man's $[(13.6 \div 32.72) \times .8 = 32.9$ milligrams of alcohol per 100 milliliters of blood or 0.033 AC].

A 130 pound woman who consumes two standard drinks will reach a peak alcohol concentration level of 0.077, nearly the proposed 0.08 per se level. If she consumes three standard drinks, the same woman will reach a peak AC level of 0.116, which is beyond the current limit of 0.10.

A 175 pound man may consume three standard drinks and his peak alcohol concentration level will remain below 0.08. If he consumes a fourth drink, his peak AC level will be 0.094, and after one hour his AC level will be approximately 0.08.

Total volume of body water also is responsible for the influence of body weight on alcohol concentration levels as volume of body water increases with body weight.

The ingestion of food also affects alcohol concentration levels. Food in the stomach slows the absorption rate of alcohol and results in a longer period over which alcohol remains in the body.¹¹ Consequently, a lower peak AC level will be obtained if alcohol is consumed with or after the consumption of food.

A fourth important variable in determining alcohol concentration levels is the duration of time over which the alcohol is consumed. As soon as alcohol is ingested, it begins to be metabolized by the body. Thus, other things being equal, the more slowly the alcohol is ingested, the greater the proportion that is metabolized during the drinking session and the lower the drinker's alcohol concentration level.

On average, the rate of metabolism¹² for an adult is 15 milligrams of ethanol per 100 milliliters of blood per hour or 0.015 AC per hour.¹³ As shown above, a 150 pound man who consumes one standard drink will reach a peak alcohol concentration level of 0.027. If he does not have a second drink, his AC level will decrease to 0.012 after one hour (0.027 - 0.015 = 0.012). Generally, peak AC levels are reached between 30 and 90 minutes after the last drink is consumed.¹⁴

The following tables present the estimated alcohol concentration levels over time for a 130 pound woman and a 175 pound man by number of standard drinks. The alcohol concentration levels reported in these tables were computed using the total body water averages and metabolic rate cited above, and assumes the person has not eaten recently.

Table 1 shows that a typical 130 pound woman who consumes two standard drinks will reach a peak alcohol concentration level of 0.077, nearly the proposed 0.08 per se level. After one hour, her alcohol concentration level will decrease well below this limit. If she consumes three standard drinks, the same woman will reach a peak AC level of 0.116. Her AC level still will be just over 0.08 after two hours provided that she does not consume additional alcohol.

Table 2 reveals that a typical 175 pound man may consume three standard drinks and his peak alcohol concentration level will remain below 0.08. If he consumes a fourth drink, his peak AC level will be 0.094; after one hour, his AC level will be approximately 0.08 provided that he does not have a fifth drink.

Table 1
Estimated Alcohol Concentration Levels by Number of Drinks:
for a 130 Pound Woman

AC Level	Number of Standard Drinks*				
	One	Two	Three	Four	Five
At the peak**	.038	.077	.116	.144	.194
After 1 hour	.023	.062	.101	.139	.179
" 2 hours	.008	.047	.086	.124	.164
" 3 hours	-	.032	.071	.109	.149
" 4 hours	-	.017	.056	.094	.134
" 5 hours	-	.002	.041	.079	.119
" 6 hours	-	-	.026	.064	.104

* The term "standard drink" refers to the quantity of alcohol in one 5 ounce glass of wine (12% alcohol by volume), 1 1/2 ounces of spirits (40% alcohol by volume), or a 12 ounce glass of beer (5% alcohol by volume).
** Peak alcohol concentration level is generally attained within 30 to 90 minutes after the last drink.

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Table 2
Estimated Alcohol Concentration Levels by Number of Drinks
for a 175 Pound Man

AC Level	Number of Standard Drinks*				
	One	Two	Three	Four	Five
At the peak**	.023	.047	.071	.094	.118
After 1 hour	.008	.032	.056	.079	.103
" 2 hours	-	.017	.041	.064	.088
" 3 hours	-	.002	.026	.049	.073
" 4 hours	-	-	.011	.034	.058
" 5 hours	-	-	-	.019	.043
" 6 hours	-	-	-	.004	.028

* The term "standard drink" refers to the quantity of alcohol in one 5 ounce glass of wine (12% alcohol by volume), 1 1/2 ounces of spirits (40% alcohol by volume), or a 12 ounce glass of beer (5% alcohol by volume).
** Peak alcohol concentration level is generally attained within 30 to 90 minutes after the last drink.

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Can a Person Accurately Judge His or Her Own Alcohol Concentration Level?

There is no practical way for a driver to accurately estimate his or her own alcohol concentration level.

Proof refers to alcoholic strength indicated by a number that is twice the percent by volume of alcohol present. For example, whiskey that is 90 proof is 45% alcohol.

There is no practical way for a driver to accurately gauge his or her own alcohol concentration level; the variability in the amount and proof of alcohol in many drinks as well as individual differences in body water to fat ratios and metabolic rates preclude a reliable estimate.¹⁵

In a 1990 Minnesota roadside survey study of 2,857 randomly sampled drivers, 438 were found to have alcohol concentration levels of at least 0.02.¹⁶ Each was informed that 0.10 AC was the legal limit and was then asked to estimate his or her own AC. The study revealed that drivers with more than 0.05 AC strongly tend to underestimate their AC levels, and that this tendency to underestimate one's own AC increases with consumption. Nearly all of those drivers with ACs of 0.10 or more underestimated their own ACs. Every driver with an AC of 0.15 or more underestimated his or her own AC. Furthermore, underestimations were far more likely among drivers under age 21 than among older drivers.

A study in which experimentally naive subjects were administered different amounts of alcohol also revealed that the ability to estimate one's own alcohol concentration decreases as the quantity consumed increases.¹⁷ Yet another study suggests that the discrepancy between subjective impairment ratings and actual impairment of driving performance appears greatest when alcohol concentration levels are falling.¹⁸ Thus, impaired drivers who wait for a time (even one to two hours) to "sober up" following their last drink, could readily underestimate their continuing impairment.

Accordingly, people most likely to be impaired are the very ones least likely to accurately judge their own alcohol concentration levels. Consequently, some researchers contend that AC tables such as those presented above provide drivers with the best estimate of their AC level and should be carried by anyone who plans to drink any amount of alcohol and drive.¹⁹

Why the Trend to Lower the Legal Limit?

The regulation of drinking driving is primarily a state responsibility.

However, the federal government, through NHTSA, has advocated a number of drinking driving countermeasures, including lowering the alcohol concentration limit to 0.08.

The early absence of research into the effects of alcohol impairment on driving ability led to the setting of initially quite high alcohol concentration standards of impairment, above which virtually all drivers were expected to be visibly impaired.

The regulation of drinking and driving is primarily a state responsibility. However, in recent decades the federal government, through NHTSA, has advocated a number of drinking driving countermeasures and incorporated them into a set of qualifications for obtaining certain federal traffic safety incentive funds. One of these qualifications involves lowering the alcohol concentration to 0.08. NHTSA's proposal needs to be understood in its historical context.

Drinking driving laws were difficult to apply before the advent of chemical tests for alcohol because alcohol impairment had to be determined by an officer based upon his or her interpretation of behavioral cues or other physical evidence.²⁰ The ability to test bodily substances for alcohol came about in the 1940s, prompting legislation allowing police to request these tests for suspected impaired drivers and easing enforcement problems. Prosecuting impaired drivers also became easier as prosecutors were allowed to employ the results of AC tests as evidence of impairment in court.

The early absence of research into the effects of alcohol impairment on driving ability led to the setting of initially quite high alcohol concentration standards of impairment, above which virtually all drivers were expected to be visibly impaired. In most states, legislatures followed the recommendations of the American Medical Association and established a "presumptive" alcohol concentration limit of 0.15.²¹ A presumptive AC limit establishes a point above which a driver is presumed to be impaired, but this presumption can be refuted in court if contrary evidence exists. Many states also set a presumptive limit of 0.05 AC as the limit below which a driver was presumed not to be under the influence of alcohol.

In Minnesota, the first presumptive limits were established in 1955.²² Similar to the early laws of most states, Minnesota law stipulated that drivers with alcohol concentration levels at or above 0.15 were presumed to be impaired while those with alcohol concentration levels at or below 0.05 were presumed to be unimpaired. Evidence of alcohol concentration levels between these two points was regarded as "relevant" evidence of a driver's impairment.

During the 1960s and 1970s, the results of epidemiological and pharmacological studies increasingly showed a positive relationship between driver alcohol concentration level and crash risk. The results of this research, coupled with improvements in alcohol concentration testing technology,

The movement to reduce the alcohol concentration limit to 0.10 was based on mounting scientific evidence of the effect of alcohol on driving related skills.

However, the 0.10 per se standard was still a somewhat arbitrary cutoff.

Many recent research studies focusing on the effects of low doses of alcohol on driving ability conclude that the ability to drive becomes impaired when drivers attain alcohol concentration levels as low as 0.05.

induced most states to lower their alcohol concentration limits to 0.10.²³ Forty six states also changed the nature of their alcohol concentration laws from presumptive to "per se," making it a crime in itself for a driver to have an alcohol concentration in excess of the legal limit. In Minnesota, the alcohol concentration limit was reduced to 0.10 in 1967²⁴ and changed from presumptive to per se in 1971.²⁵

As stated above, the movement to reduce the alcohol concentration limit to 0.10 was based on mounting scientific evidence of the effect of alcohol on driving related skills. Nevertheless, the 0.10 per se standard was still a somewhat arbitrary cutoff. Little was known at that time about the effect of lower doses of alcohol on driving ability as few studies had examined alcohol concentration levels below 0.10.

Many more-recent studies, however, conclude that the ability to drive generally becomes impaired when drivers attain alcohol concentration levels as low as 0.05.²⁶ This finding, combined with continued public support for tougher laws against drinking and driving, has helped persuade several state legislatures to further lower their alcohol concentration limits. By 1991, California, Oregon, Utah, Maine and Vermont lowered their per se levels to 0.08. Five additional states-North Carolina, New Mexico, New Hampshire, Florida and Kansas-passed similar legislation in 1993

(Table 3). In addition, more restrictive alcohol concentration standards have been adopted in several foreign countries. Great Britain, Austria, Switzerland, Canada, and most Australian states have set their alcohol concentration limits at 0.08; Norway, Finland, the Netherlands and the remaining Australian states have adopted a 0.05 standard; and Sweden has set its alcohol concentration limit at 0.02 (Table 4).²⁷

Additionally, 20 states have recently enacted lower alcohol concentration standards for drivers under 21, ranging from a high of 0.07 in Texas to a low of 0.00 in six states.²⁸ In some states, violation of such law constitutes a full fledged DWI violation. However, Minnesota's law merely provides for administrative license suspension triggered by conviction for violation of the state's underage drinking laws, provided that the person committed the offense while driving a motor vehicle. Thus, unless the youth's alcohol concentration is in excess of 0.10, the offense is not recorded as an actual DWI violation.²⁹

Table 3
States with a 0.08 Per Se Policy By Year

State	Year Effective
Oregon	1983
Utah	1983
Maine	1988
California	1990
Vermont	1991
North Carolina	1993
Kansas	1993
Florida	1994
New Hampshire	1994
New Mexico	1994

* Source: National Conference of State Legislatures

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Table 4
Foreign Countries with Per Se Levels Below 0.10 AC

0.09 AC	0.08 AC	0.05 AC	0.03 AC	0.02 AC
India	Australia*	Australia*	Czechoslovakia	Sweden
	Austria	Finland		
	Canada	Iceland		
	Denmark	Japan		
	France	Netherlands		
	Great Britain	Norway		
	New Zealand			
	Sri Lanka			
	Switzerland			

* Most Australian states have set their per se standard at 0.08; the remainder have set it at 0.05.
 ** Source: NHTSA.

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At What Level of Alcohol Concentration Do Drivers Actually Become Impaired?

Numerous laboratory studies of the pharmacological effects of alcohol and epidemiological analyses of traffic accident data conclude that relatively low alcohol concentration levels significantly impair the ability to drive a motor vehicle.

Numerous laboratory studies of the pharmacological effects of alcohol and epidemiological analyses of traffic accident data conclude that relatively low alcohol concentration levels significantly impair the ability to drive a motor vehicle.

Laboratory Studies

NHTSA recently conducted a meta-analysis of all laboratory studies of the effects of alcohol on driving related skills.³⁰ Over 500 studies were located; 177 met the selection criteria employed by NHTSA and were retained for analysis. The results are grouped into nine behavioral categories and summarized below.

Divided Attention: Most studies find impairment of divided attention at or below the alcohol concentration level of 0.08; some studies find impairment begins at less than 0.02. This finding is important because driving is a multi task operation requiring a driver to employ several skills simultaneously.

Tracking Performance: Tracking is one of the principal components of driving. Three types of tracking are addressed in the studies reviewed: compensatory tracking, critical tracking, and pursuit tracking. Compensatory tracking involves making inputs to a task to maintain an index at a predetermined position, such as when a driver acts to maintain a vehicle in its lane. Critical tracking is an unstable form of compensatory tracking. Pursuit tracking is more complicated than either compensatory or critical tracking, requiring a control index to be maintained in a constant position relative to another moving index. Most studies of tracking performance find onset of impairment at or below 0.05 AC. Impairment of pursuit tracking, which involves a divided attention situation, occurs at even lower alcohol concentration levels.

Information Processing: Studies of information processing suggest that this skill becomes impaired at or below alcohol concentration levels of 0.08; however, only a few of the studies examined AC levels below 0.05.

Psychomotor Skills: Tasks requiring skilled motor performance and coordination (tasks combining steadiness

The majority of laboratory studies of alcohol and driving related skills conclude that most driving related skills become significantly impaired at AC levels below 0.08.

Some critical skills, including tracking ability, reaction time, skilled psychomotor tasks, and ocularmotor control become impaired at AC levels at or below 0.05.

or coordination measures with speed and accuracy tasks) are more likely to become impaired at lower alcohol concentration levels than other psychomotor tasks. Skilled psychomotor tasks often become impaired at 0.05 AC, while psychomotor tasks requiring less skill become impaired at higher levels.

Visual Functions: Ocularmotor control, which refers to the control of eye movement, tends to become impaired at alcohol concentration levels of 0.05 or less. Other visual functions, including glare recovery, visual acuity, and flicker fusion, do not appear impaired at low or moderate AC levels.

Reaction Time: Complex reaction time (i.e., involving a choice decision) becomes impaired at lower alcohol concentration levels than simple reaction time (i.e., with no choice involved). In general, reaction time is not as sensitive to low AC levels as other types of driving skills. An exception to this finding occurs when accuracy is considered. Most studies including a measure of accuracy find that complex reaction times can become impaired at AC levels of 0.03 to 0.04; in contrast, simple reaction times appear to become impaired at 0.04 or more. Studies not taking accuracy into account find that reaction times become impaired at or above 0.10 AC.

Concentrated Attention: Concentrated attention, measured by fixation in a visual field and peripheral vision, appears to be the driving related skill least impaired by alcohol. No study included in the review found impairment below 0.05 AC and most did not find impairment below 0.08 AC.

Perception: Most studies find little impairment of perception below 0.08 AC. Typically, measures of perception include the distribution in space of eye fixations and the duration of fixation.

Driving (in a simulator or on road driving): The findings from studies employing driving simulators vary considerably; much of this variation stems from the diversity of behavioral demands imposed by the driving tasks. Some studies find that alcohol concentrations as low as 0.03 produce significant impairment of driver performance. Most studies find that AC levels of 0.08 or lower impair a driver's accuracy of steering, braking, speed control, lane tracking, gear changing, and judgements of speed and distance in the driving situation.

The majority of laboratory studies of alcohol and driving related skills conclude that most, but not all, driving related skills become significantly impaired at alcohol concentration levels below 0.08. Some critical skills -- including reaction time, tracking ability, skilled psychomotor tasks, and ocularmotor control -- become impaired at AC levels at or below 0.05.

Table 5
Alcohol Concentration Level at which Various
Driving Skills Become Impaired

Driving Related Skill	AC Level at which Skill is Impaired
Complex Reaction Time	0.03
Simple Reaction Time	0.04
Tracking Skilled Psychomotor Tasks Ocularmotor Control	0.05
Divided Attention Information Processing Driving Related Tasks (steering, braking, speed control, lane tracking, gear changing, judgements of speed and distance)	0.08
Concentrated Attention Perception	0.09 to 0.10
* Source: NHTSA review of published findings.	

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After controlling for drinking frequency, their analysis revealed that crash risk among all drivers with alcohol concentration levels of 0.08 or higher was 175 times greater than non drinking drivers.

Drivers who drank only yearly were at the greatest risk of being involved in a crash. At 0.08 AC, yearly drinkers were nearly 1,000 times more likely to be involved in a crash, compared to sober yearly drinkers.

Epidemiological Studies

Epidemiology is the study of the occurrence of a phenomenon among naturally occurring subpopulations. Many epidemiological studies employ traffic accident data to examine the relationship between alcohol concentration levels and accident risk. A recent and notable study of this relationship, conducted by Zador,³¹ examines the alcohol concentration levels of drivers killed in single vehicle crashes to determine the relative risk of death accompanying different alcohol concentration levels. According to Zador, the risk of being killed in a single vehicle crash relative to drivers who had not been drinking is 11 times greater for drivers with alcohol concentrations between 0.05 and 0.09, 48 times greater for drivers with AC levels between 0.10 and 0.14, and 380 times greater for drivers with AC levels of 0.15 or more. Zador also found that at comparable AC levels the fatality risk is greater among females and drivers under the age of 20 years when compared to males and drivers over 20 years of age. The results of Zador's research suggest that driver fatality risk increases considerably at alcohol concentrations as low as 0.05, and this risk is even higher among certain population subgroups (Table 6).

**Table 6
Fatality Risk for Drivers in Single Vehicle Crashes
At Various Alcohol Concentration Levels:
Relative to Non-Drinking Drivers**

AC Level	Fatality Risk
0.05-0.09	11 times greater
0.10-0.14	48 times greater
0.15 or higher	380 times greater

* Source: Zador study, 1991.

In sum, the majority of laboratory studies and epidemiological analyses conclude that the impairment of driving ability often begins at low alcohol concentration levels and increases markedly as the level of alcohol concentration increases.

However, research does not reveal an alcohol concentration "threshold" at which the impairment of driving related skills begins or below which no impairment is found.

Additional epidemiological studies corroborate Zador's findings. A reanalysis of data first evaluated in one of the earliest studies of this kind, the Grand Rapids study,³² revealed dramatic increases in crash risk accompanying higher alcohol concentration levels as well as increased risk among subgroups of drivers.³³ After controlling for drinking frequency, the analysis revealed that crash risk among all drivers with alcohol concentration levels of 0.08 or higher was at least 175 times greater than non drinking drivers. Drivers who drank three times a week had the lowest crash risk at 0.08 AC; nevertheless, compared to their sober counterparts, these drivers still were approximately 125 times more likely to be involved in a crash. Drivers who drank only yearly were, when drinking, at the greatest risk of being involved in a crash; at 0.08 AC, yearly drinkers were nearly 1,000 times more likely to be involved in a crash, compared to sober yearly drinkers.

Summary of the Empirical Research

In sum, the majority of laboratory studies and epidemiological analyses conclude that the impairment of driving ability often begins at low alcohol concentration levels and increases markedly as the level of alcohol concentration increases. However, research does not reveal an alcohol concentration "threshold" at which the impairment of driving related skills begins or below which no impairment is found.³⁴ The findings from laboratory studies indicate that some driving related skills become significantly impaired at AC levels as low as 0.03 while other skills are relatively unimpaired at AC levels of 0.08 or more.

Additionally, alcohol consumption does not impair the driving ability of all drivers uniformly. Variables such as age, gender, and driving experience appear to mediate the effect of alcohol concentration level on driving ability; consequently, as little as one drink may impair the driving related skills of some drivers while the skills of others may appear relatively unaffected by such low doses. A few recent studies also suggest that some driving related skills are more impaired when alcohol concentration levels are increasing than when AC levels are decreasing relative to the peak AC reached.³⁵ Despite these caveats, many researchers cite 0.05 AC level as the point above which most skills and most drivers show signs of impairment.

Would It Be Difficult to Detect Drivers Between 0.08 and 0.10 AC?

Enforcement of alcohol concentration limits depends primarily upon observations of deviant driving, indicating to an officer that a driver might be impaired. These observations form the basis of the reasonable suspicion that police officers are required to have to stop a vehicle. However, some drivers do not exhibit these cues at lower AC levels, making police stops of drivers with lower AC levels unlikely³⁶ and, in fact, potentially unlawful.³⁷

Enforcement of alcohol concentration limits depends primarily upon observations of deviant driving. However, some drivers do not exhibit these cues at lower AC levels, making police stops of drivers with lower AC levels unlikely.

A crude estimate of the likelihood of detecting drivers with low alcohol concentration levels can be derived from the number of alcohol content reports being filed by Minnesota law enforcement officers. Officers are required to file an alcohol content report for each driver stopped and administered a preliminary breath test (PBT), and found to have an AC level just under the legal limit (i.e., between 0.07 and 0.09). In 1992, Minnesota law enforcement officers filed 1,205 alcohol content reports.

For several reasons, this number is an inexact estimate of the ability to detect drivers with alcohol concentration levels between 0.08 and 0.10. First, it includes an alcohol concentration level (i.e. 0.07) that would not be affected by a reduction in the standard to 0.08. Second, officers are not necessarily motivated to detect drivers with ACs in the 0.07 to 0.09 range, since those AC levels are less than the current per se level. Finally, the accuracy of this number is itself uncertain. Police officers are mandated to submit alcohol content reports to the Department of Public Safety, but it is not known how consistently they comply with this mandate. Still, this number is fairly small relative to the roughly 35,000 drinking driving arrests made annually, supporting the belief that drivers with low alcohol concentration levels are difficult to detect.

Would Current Alcohol Measurement Techniques Work with a 0.08 Limit?

The experience of California law enforcement officials following the implementation of the 0.08 standard suggests that law enforcement agencies can adapt to this lower standard with minimal changes.

PBT refers to a preliminary breath testing device. About the size of a pocket radio, a PBT is used to measure a DWI suspect's alcohol concentration level at the roadside. A driver failing the PBT test is typically arrested, taken to the police station, and given an evidentiary-quality test using the Intoxilyzer, a considerably more sophisticated breath testing device.

Once a suspected drinking driver is stopped, police officers rely heavily on the standard field sobriety test (SFST) to develop probable cause to arrest an impaired driver and conduct a preliminary breath test. The SFST currently used by officers is designed to detect alcohol concentration levels of 0.10 or more. Thus, new procedures or techniques must be developed if officers are to detect AC levels as low as 0.08.³⁸

The experience of California law enforcement officials following the implementation of the 0.08 standard suggests that law enforcement agencies can adapt to this lower standard with minimal changes. The primary modification that occurred in California was a new scoring system for the SFST. Some California officers also required training to recognize the subtle indications of alcohol impairment.³⁹

Alternatives to modifications in the SFST include the use of passive alcohol sensors or greater use of PBTs; both of these alternatives would require additional or modified equipment and training procedures. Nearly all Minnesota law enforcement agencies currently possess or have access to PBT devices. Most of these devices employ a set of colored lights to indicate whether or not a driver's alcohol concentration level is beyond the legal limit. Currently, PBT devices are calibrated to detect three ranges of alcohol concentration levels: 0.003 to 0.055, 0.056 to 0.110, and 0.111 and beyond.⁴⁰ Drivers with alcohol concentrations in the last category "fail" the PBT and are arrested and detained for an evidentiary alcohol concentration test using a more sophisticated testing instrument, the Intoxilyzer.

According to the Minnesota Bureau of Criminal Apprehension (BCA), PBT devices can be recalibrated to detect lower alcohol concentration levels. However, such recalibration would consume some time of BCA technicians and incur some monetary costs as well.

Current evidentiary breath testing devices accurately measure alcohol concentration levels to as low as 0.001.⁴¹ Thus, law enforcement agencies would not need to change the methods employed to determine alcohol concentration levels after a driver is arrested.

Are Existing Enforcement and Court Resources Sufficient to Implement 0.08?

Opponents of the 0.08 per se level maintain that it would increase the number of DWI arrests and flood an already overburdened court system with new cases. They contend that this would result in an increased likelihood that some more-dangerous offenders would go unpunished, thereby diminishing the deterrent effect of the per se law.

The Minnesota Department of Finance anticipates that a change to 0.08 in Minnesota would result in an additional 1,500 alcohol-related driving convictions annually, or a four percent increase.

Those opposed to the 0.08 per se level contend that a reduction in the alcohol concentration standard would have an adverse effect on the law enforcement and court systems. They posit that lowering the per se level to 0.08 would increase the number of DWI arrests and flood an already overburdened court system with new cases.⁴² They contend that, unless there is a concurrent increase in resources, many apprehended DWI suspects would not be prosecuted or the charges against them would be plea bargained to a lesser charge than DWI; this would result in an increased likelihood that some of the more dangerous offenders would go unpunished thereby diminishing the deterrent effect of the per se law.

In contrast, proponents of lower per se levels suggest that, while tightening the limit would result in some increase in arrests and prosecutions -- at least initially and until the public adapts to the tighter standard -- such an increase probably would not be so dramatic as to overburden the system. Their rationale is that since officers generally must rely on deviant driving as an indicator of alcohol impairment and since there are generally fewer observable signs of impairment at lower alcohol concentration levels, the number of additional arrests would not be great. Support for this premise is generated by data on the AC levels of persons arrested for driving while intoxicated. In Minnesota, the average AC level of drivers apprehended for driving while intoxicated is between 0.15 and 0.18.

The California study revealed that misdemeanor DWI arrests increased 11.1 percent in California following adoption of the 0.08 per se level. However, whether this increase was due to the change to the 0.08 limit or to some other factor is difficult to discern, since the simultaneous increase in adult misdemeanor arrests of all types was nearly two percentage points greater than that for misdemeanor DWIs. Furthermore, the increase in misdemeanor DWI arrests varied greatly by jurisdiction -- from a low of 2% to a high of 39% for the 12 jurisdictions examined. Thus, while some increase in DWI arrests in Minnesota could be expected following adoption of the 0.08 per se level, it is difficult to predict the amount of increase.

In its bill analysis for the 1993 legislative session, the Minnesota Department of Finance estimated that a change to the 0.08 per se level in Minnesota would result in an additional 1,500 alcohol-related driving convictions annually, or a four percent increase.

In California, the main impact on the court system of the change to the 0.08 standard was on prosecutors' decisions to file charges. It appears to have increased the certainty of prosecution for DWI at lower alcohol concentration levels.

Given the limited experience of other states, such estimation appears to be largely educated guesswork.

The actual result might depend in part on the perceived intent of the change to the 0.08 per se level. The California study noted that at least some law enforcement agencies perceived the new 0.08 per se policy as signalling increased social disapproval of drinking driving, which encouraged them to step up their enforcement activities in various ways, thus possibly explaining the larger increases in some jurisdictions. Such efforts are likely to be self limiting -- i.e., when enforcement and court resource limits are encountered, the stepped up enforcement is likely to be reined in. Any change in DWI arrests is also likely to depend upon the degree of general public acceptance of the tighter per se limit, as well as the extent of eventual adaptation to the lower legal limit by the drinking driving public.

It is also difficult to predict whether the likely increase in DWI cases would overload the court system. California's experience suggests it would not. Evaluation of California's court records showed no significant changes in the following measures following the implementation of the tighter standard: the proportions of DWI arrestees pleading guilty (95 percent) versus requesting jury trials, convictions, appeals, and sentencing patterns by judges (since California judges, the report notes, typically simply impose the mandatory minimum sentence for DWI). The study also found no significant increase in jail overcrowding.

The California study found that the main impact on the court system was on prosecutors and their decisions to file charges. Prior to the law change, prosecutors were reluctant to prosecute cases as DWI in which chemical tests showed the driver's alcohol concentration level was at or just above 0.10. Typically, drivers arrested for DWI with AC levels of 0.12 or 0.13 and below were charged with the lesser offense of reckless driving. Reduction of the limit to 0.08 led to the lowering of this point at which DWI charges were substituted with lesser charges to approximately 0.10 AC. Thus, the adoption of the 0.08 standard in California appears to have increased the certainty of prosecution for DWI at lower alcohol concentration levels.⁴⁵

Would a 0.08 Limit Divert Enforcement Resources?

Would a 0.08 limit divert enforcement resources from more seriously impaired drivers or unfairly target social drinkers?

Recent data on fatal traffic accidents shows that the most dangerous drinking drivers are those with alcohol concentration levels exceeding 0.10.

Proponents of the 0.08 per se level agree that empirical evidence suggests the less impaired "social drinker" is less dangerous than the more impaired driver, but assert that both are nevertheless dangerous.

The claim by opponents to the 0.08 per se limit that a reduced per se level would affect only the least dangerous drinking drivers is difficult to assess due to the multitude of ways in which one may determine who is a "dangerous" driver. The opponents posit that recent data on fatal traffic accidents shows that the most dangerous drinking drivers are those with alcohol concentration levels exceeding 0.10. Both logic and data tend to support this claim. In 1991, 24 percent of all drivers involved in fatal crashes nationwide had AC levels of 0.10 or more, while only 7.2 percent had lower positive alcohol concentration readings.⁴⁴ In Minnesota, these figures were 21 and 8 percent, respectively.⁴⁵ Thus, of drinking drivers involved in fatal crashes, the vast majority -- about three-fourths -- have AC levels of 0.10 or more.

Proponents of the 0.08 per se level agree that empirical evidence suggests the less impaired "social drinker" is less dangerous than the more impaired driver, but assert that both are nevertheless dangerous. Both logic and data support this claim, as well. As mentioned previously, many driving related skills are significantly impaired at alcohol concentration levels between 0.05 and 0.08. Further, epidemiological studies show that drivers with AC levels as low as 0.05 are at considerably greater risk of being involved in an accident than drivers who abstain from alcohol.

To the extent that all impaired drivers -- whether above or just below the current per se limit -- are dangerous, it matters somewhat less where the enforcement focus would be placed under the policy of a 0.08 per se level. Nevertheless, given that the most seriously impaired drivers are indeed more dangerous, it is still a valid question to ask whether enforcement resources would be shifted from them to the less seriously impaired drivers.

Among enforcement agencies generally, such a refocusing would seem unlikely, since police must still have probable cause to detect, apprehend and arrest suspected drinking drivers and since, as has already been reasoned, not many drivers with alcohol concentrations in the 0.08 to 0.10 range would be easily detectable in general driving situations. Nevertheless, at enforcement checkpoints -- i.e., DWI roadblocks -- DWI arrests might be expected to include a higher proportion of drivers in the 0.08 to 0.10 range, since that enforcement setting provides more opportunity for detection (e.g., through smell) of the more marginally impaired drivers. However, the relatively high cost

and difficulty of properly administering DWI roadblocks results in only infrequent use of this enforcement technique in Minnesota and most other states.

It seems unlikely that with a change to 0.08 there would be any sizeable shift of enforcement resources toward the less impaired drivers.

For prosecutors and courts, on the other hand, such refocusing could become an unintended consequence of a change to 0.08, but only should they happen to decide to actually prosecute most of defendants with AC readings between 0.08 and 0.10, since defendants with readings just above any legal limit are more inclined to contest their DWI charge. This consequence, however, also seems unlikely in light of the control that prosecutors have in defining the AC level below which they routinely engage in charge reduction through plea bargaining. The California finding discussed earlier suggests that this point will be lowered under a 0.08 per se level policy (perhaps to about 0.10 or 0.11), but it will still exist. Thus, the likely result is that prosecutors will be more able to obtain guilty pleas for defendants in the approximate range of 0.10 to 0.13, without becoming overburdened with actually prosecuting DWI charges based on AC readings in the approximate range of 0.08 to 0.10.

How Many Crashes, Injuries and Fatalities Would Be Averted with a 0.08 Limit?

While it seems reasonable to expect some decrease in alcohol-related traffic crashes, injuries and fatalities from a change to the 0.08 per se level, any estimate of such effects at this time must be regarded as quite tentative.

It is difficult to predict what effect a tightening of the alcohol concentration standard would have on the number of alcohol-related traffic crashes, injuries, and fatalities in Minnesota. In California, the reduction in alcohol-related traffic fatalities following implementation in January, 1990 of the 0.08 per se level was estimated at 12%.⁴⁶ However, as the authors of the California study note, it is virtually impossible statistically to apportion that effect between 1) the reduction in the per se level to 0.08, and 2) the implementation of an administrative license revocation law in that state just six months later. They note that, due to the publicity surrounding the simultaneous legislative action on both countermeasures, part of the estimated fatality reduction impact may actually be due to the anticipatory effect of the administrative license revocation law. It is noteworthy that the California study found no corresponding reduction in non-alcohol-related fatalities in California, nor in alcohol-related fatalities nationwide.

The California study also analyzed alcohol-related crash data and, rather surprisingly, found some increase in this measure in two of the four study sites, though not statewide. The study convincingly notes, however, that the measure of alcohol-involvement in the case of non-fatal crashes is based on the subjective judgment of the attending officer rather than on alcohol concentration tests⁴⁷ (as used with fatal crashes⁴⁸). It is quite possible that the law itself may have resulted in more conscientious reporting of alcohol involvement, thereby invalidating the use of this measure for evaluating the actual impact of the law. Thus, the finding regarding a 12% reduction in alcohol-related fatalities in California following implementation of the 0.08 per se level could not be corroborated using crash data. Unfortunately, it could not be corroborated using traffic injury data either, since that data was in a form that made it totally unavailable for use in the California study.

Critics of the California study take issue with that study's methodology and findings, and claim that the report offers no evidence to link any reduction in drinking driving deaths to California's 0.08 law.⁴⁹ Using a different methodology, the ABI claims that alcohol-related fatalities in California decreased only 6.1% in 1990, compared to a nationwide decrease of 6.3%.⁵⁰

In light of the controversy surrounding the findings of the California study, it seems prudent to be cautious about

generalizing its fatality impacts to other states and situations. Nevertheless, if one were to generalize from California's experience, Minnesota might expect an annual reduction of perhaps 6% in the number of alcohol-related traffic fatalities following the implementation of the 0.08 standard. Based on 1992 figures, this translates to an annual savings of roughly 14 lives and approximately \$6,300,000 in social costs associated with the would-be fatalities. Other health and cost savings would accrue from avoided injuries and property damage. While it seems reasonable to expect some decrease in alcohol-related traffic crashes, injuries, and fatalities with a tightening of the per se level, any estimate of such effects at this time must be regarded as quite tentative.

Would Drivers Adapt to the 0.08 Limit by Drinking Less?

Proponents claim that the intent of such legislation is not to decrease the consumption of alcohol but to decrease driving while impaired.

Nevertheless, it seems likely that the sale and consumption of alcohol at drinking establishments and events that involve subsequent driving would in fact decrease.

Proponents of the more restrictive alcohol concentration standard claim that the intent of such legislation is not to decrease the consumption of alcohol but to decrease driving while impaired and to prevent traffic accidents, injuries, and fatalities.

Nevertheless, it seems possible that a change to the 0.08 per se level would result in some decrease in alcohol consumption, particularly at drinking establishments and events that involve subsequent driving. The ABI voices this concern, asserting that a change to 0.08 would have a devastating effect on the hospitality industry.⁵¹ However, available data appears to offer little support for this assertion.⁵²

As noted, California's 0.08 legislation became effective in January, 1990. Given the strong publicity and high general awareness of the law change among Californians, one would expect any subsequent reduction in alcohol consumption to be rather immediate. Indeed, according to consumption data published by the Beer Institute, per capita wine consumption in California decreased by 6.3% during 1990. However, a closer inspection of the data reveals that such decrease is consistent with the downward trend in wine consumption in that state beginning in 1987 and continuing to the present; in fact the decrease in each of the two years prior to implementation of the 0.08 standard exceeded 9%. The same data source reveals that the consumption of malted beverages (i.e., beer) and distilled spirits (i.e., liquor), which also had been declining in recent years, actually increased very slightly in 1990.

It may be important to note that the greatest annual decrease in California's per capita consumption of malt beverages (-6.3%), distilled spirits (-14.9%), and wine (-10.5%) occurred in 1991, the second year following implementation of the 0.08 standard. It is reasonable to ask whether such decreases might be due to a delayed effect of the law change. It would seem more likely, however, that such decreased consumption was due to the combined effects of the factors driving the long-term downward trends coupled with a very significant alcohol tax increase in California, effective July 15, 1991.⁵³

The inconsistent and weak decline in California's alcohol consumption levels following the change to the 0.08 standard initially seems incongruent with the 12% reduction in fatalities reported in the California study. However, this discrepancy might be explained by an increase in the proportion of adults choosing to drink in their home, rather than elsewhere, or to an

The ABI contends that the impact on the hospitality industry would be devastating, but the data does not appear to support that claim.

increase in the use of designated drivers to avoid driving after drinking. If such behavioral adaptation has in fact occurred, it might indeed result in some loss of business to the server industry without a concomitant decrease in alcohol consumption itself. Supporters of the 0.08 standard suggest that establishments that promote the "designated driver" concept may be less affected, as might those restaurants and bars that serve food and non-alcoholic beverages in addition to alcohol. In general, it seems likely that those businesses offering other products, services, or entertainment besides alcohol would be less affected than those that offer only alcohol.

Would the Public Accept the Lower Legal Limit?

Opponents of a reduction in the per se level suggest that the 0.10 standard is the historical standard for intoxication and changing this standard would be difficult.

Proponents of the 0.08 alcohol concentration limit assert that the public is ready for a tightening of the per se standard.

It seems reasonable to expect that the public's willingness to accept or embrace the 0.08 standard would depend primarily on whether they view it as appropriate and contributing to public safety.

Proponents of the 0.08 alcohol concentration limit assert that the public is ready for a tightening of the per se standard. The limited available data appears to support this claim. A 1988 survey of the Michigan public's attitudes toward various alcohol policies found that a majority (55 percent) of respondents supports a reduction in the per se level to 0.05, a lower and more controversial limit than the 0.08 standard.⁵⁴ The primary weakness of that study involves the generalizability of its findings; that is, since the survey was limited to Michigan residents, it is unclear whether the findings apply more broadly.

Proponents of the 0.08 standard also maintain that tightening the standard would draw further attention to the seriousness of driving while impaired and thus would enhance the moral proscription against drinking driving.⁵⁵ A reduction in drinking driving depends not only on certain, severe, and swift punishment of offenders but also on public awareness of and attitudes toward drinking and driving. Proponents assert that the public should be made aware that alcohol degrades driving performance at any measurable level, and that legislating a more restrictive per se standard would contribute to educating the public on the dangers of drinking and driving.

Those who oppose a reduction in the per se level suggest that the 0.10 standard is the historical standard for intoxication and changing this standard would be difficult. Supporters of a reduced per se level counter this argument by stating that the public has accepted several changes in drinking driving laws over the last few decades, including the previous reduction in the standard from 0.15 to 0.10 AC.

Minnesotans have enthusiastically embraced a broad range of restrictive and punitive DWI laws and crackdowns during the past 15 years. It seems reasonable to expect that the public's willingness to accept or embrace the 0.08 standard would depend primarily on whether they view it as appropriate and contributing to public safety; that, in turn, would likely depend on their beliefs regarding whether or not drivers are excessively impaired and unsafe at alcohol concentrations of 0.08 and above.

Notes

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10. Fisher, Simpson, and Kapur, "Calculation of Blood Alcohol Concentration (BAC)."
11. Ibid.
12. The rate of metabolism refers to both how quickly ethanol is absorbed from the intestines into the bloodstream and how quickly it is decomposed by the liver.
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21. Ibid.
22. Laws of Minn. 1955, c487, establishing Minnesota Statutes 1955, sec 169.12.
23. Snyder, "Lower Alcohol Levels, Driver Impairment and Crash Risk."
24. Laws of Minn. 1967, sec. 1; Minnesota Statutes 1967, sec. 169.121, subd. 2.
25. Laws of Minn. 1971, c893, sec. 1-3; Minnesota Statutes 1971, sec. 169.121, subd. 1(d).
26. Snyder, "Lower Alcohol Levels, Driver Impairment and Crash Risk."; NHTSA, Effects of Low Doses of Alcohol on Driving-related Skills.
27. NHTSA, "0.08 Illegal Per Se."
28. Digest of State Alcohol-Highway Safety Related Legislation, 11th edition, 1993; National Highway Traffic Safety Administration. NHTSA credits Minnesota with having a zero per se level for youth. This is somewhat an overstatement, however, since Minnesota's new law relating to youth merely provides for administrative license suspension based on conviction for violation of the underage consumption law (MS 340A.503, subd. 1), provided that the person committed the offense while driving a motor vehicle. The period of suspension is 30 days for a first offense and 180 days for a repeat offense. Such a violation is not regarded as a DWI under the state's DWI laws. "Consumption" is defined as both "the ingestion" and the "physical state of having ingested" an alcoholic beverage, other than at home and with a parent's permission.
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36. NHTSA, Driving Under the Influence.
37. An arrest for DWI stemming from a police stop not involving the prior observation of deviant driving behavior or some other visible indicator of impairment would be unlawful since it would not be properly supported by "probable cause" for the stop. In the event of a judicial challenge by a defendant, unless probable cause can be demonstrated for the stop, the case would be dismissed and the driver's license reinstated.
38. NHTSA, 1991. The Effects Following the Implementation of an 0.08 BAC Limit and Administrative Per se Law in California. Washington, D.C.: Research and Evaluation Associates; NHTSA, Driving Under the Influence.

39. NHTSA, The Effects Following the Implementation of an 0.08 BAC Limit.

40. According to Robert Mooney, lab technician at the Minnesota Bureau of Criminal Apprehension, most of the PBT devices in use in Minnesota issue results as a "pass", "warning" or "failure", though a few have digital readouts. To compensate for possible measurement variance, the failure level is typically calibrated at 0.11. The dividing point between a pass and a warning is calibrated at half that of the failure point ($.11 \div 2 = .055$). If the per se level is changed to 0.08, the dividing point will become 0.04 (or 0.045 if the PBTs are calibrated at .09).

41. Mr. Mooney indicated that any AC reading below 0.003 is reported as zero. He noted that the biggest problem applying to both PBT and Intoxilyzer tests occurs in the situation of less-than-complete exhalation by the suspect. However, he noted that this situation presents the greatest problem at very low AC levels; for the most part, accuracy is not an issue for either device in the vicinity of 0.08 AC or higher.

42. ABI, "Issue: The Lowering of the Allowable Blood Alcohol Concentration."

43. Ibid.

44. NHTSA, 1992. 1991 Alcohol Fatal Crash Facts. Washington, D.C.: National Center for Statistics and Analysis (Research and Development).

45. Office of Traffic Safety, 1991 Minnesota Motor Vehicle Crash Facts 1992.

46. NHTSA, The Effects Following the Implementation of an 0.08 BAC Limit.

47. Of course, in many cases of suspected alcohol involvement in nonfatal crashes, the attending officer is able to obtain an alcohol concentration test for subsequent use in legal proceedings. However, alcohol concentration tests are not required in the case of nonfatal accidents. Thus, the report form, which is the source of data for this measure, is highly dependent on the subjective impressions and sensitivity of the attending officer, which conceivably could have been enhanced by the law change itself.

48. In the case of fatal accidents, investigating officers are both directed and able to be much more thorough in obtaining alcohol concentration tests of drivers. Such data are then centralized nationally in the Fatal Accident Reporting System (FARS) administered by NHTSA, from which they were obtained for use in the California study.

49. ABI, "Has the Emperor No Clothes?"

50. The ABI critique compares the number of fatalities in 1990 to the preceding four year average. Methodologically, this is a questionable approach since, unlike the time-series analysis methodology (i.e., ARIMA modelling) used in the California study, the technique employed by ABI does not take into consideration any pre-intervention trends in the data.

51. ABI, "Issue: The Lowering of the Allowable Blood Alcohol Concentration," p.1.

52. Beer Institute. 1993. "Brewers Almanac."

53. The tax increase, which went into effect July 15, 1991, raised the California alcohol tax from 2 to 20 cents per gallon for beer and wine, from \$2 to \$3.30 per gallon for distilled spirits of less than 100 proof, and from \$4 to \$6.60 per gallon for distilled spirits of 100 or more proof. The tax on sparkling wine remained the same.

54. Wagenaar, A.C. and F.M. Streff, 1990. "Public Opinion on Alcohol Policies." Journal of Public Health Policy, 11(2):189-205.

55. NHTSA, Driving Under the Influence.

HOUSE JUDICIARY COMMITTEE

March 9, 2001

**CHANGE "DWI" TO
"DUI"**

(IN ADDITION TO ORIGINAL PACKET)

Final Report
of the
DUI Prevention
Task Force



Municipality of Anchorage

October 30, 2000

Summary of Task Force Recommendations

The Task Force addressed the broad spectrum of legislative modifications, enforcement issues, potential government programs, and other types of public and private organizations within the scope of the charter statement and reached consensus on the following recommendations:

State and Municipal Legislative Recommendations

- Change the legal designation from DWI (Driving While Intoxicated) to DUI (Driving Under the Influence)
- Update present statutes to reflect subsequent court decisions
- Make third and subsequent DUIs felonies by eliminating "look back" provisions
- Identify enhancements for charging and sentencing considerations
- Graduate Blood Alcohol Concentration (BAC) levels and penalties from .08, and consider modifying AS 28.35.032, Refusal To Submit To A Chemical Test, to reflect the graduated penalty implications
- Require a valid driver's license and proof of insurance to register a vehicle
- Adopt a mandatory impoundment and forfeiture procedure at the state level
- Explore the feasibility of a centralized clearinghouse for licenses and investigate the expanded options provided by technological advances for tracking licenses whose holders have convictions for certain alcohol related offenses
- Require mandatory alcohol awareness training and a victim's panel as a prerequisite for obtaining a valid resident driver's license
- Provide parameters for monitored, certifiable residential treatment in sentencing when enhancement factors are present
- Offer screening, mandatory alcohol education, and mandatory alcohol assessment during incarceration for DUI
- Provide for monitored alcohol treatment and ensure certifiable minimum standards in all DUI treatment programs
- Adopt Alaska Criminal Justice Assessment Commission recommendation #15 that the state should encourage the expansion of the Department of Health and Social Services Alcohol Safety Action Program (ASAP) through legislation and funding
- Recognize that halfway houses are not appropriate for repeat offenders and analyze halfway house administration
- Adopt Alaska Criminal Justice Assessment Commission recommendation #8 which relates to underage drinkers
- Make AS 04.16.050, Possession, Control, or Consumption by Persons Under 21 a misdemeanor and provide for alcohol treatment or counseling, peer options such as Youth Court, and parental/guardian notification
- Repeal AMC 10.50.015(H), Solicit the Purchase, Attempt to Purchase, or Possess Intoxicating Liquor, and require these offenses be charged under a revised AS 04.16.050

- Establish and fund a DUI Court
- Make AS 28.05.095, Use of Seat Belts and Child Safety Devices Required, a primary law

Enforcement Recommendations

- Encourage focused enforcement of youthful offenders
- Encourage the state to enforce and prosecute AS 28.35.280, Minor Operating a Vehicle After Consuming
- Establish a Report Every Drunk Driver Immediately (REDDI) program in Anchorage
- Expand "Drunk Busters" program, and initiate year round saturation patrols
- Streamline drunken driver arrest processing procedures
- Initiate safety checkpoints when deemed appropriate by law enforcement
- Implement ignition interlock devices as a condition of probation for DUI offenders after their driving privileges have been reinstated

Other Government Programs

- Increase alcohol server mandatory training from every three years to every two years
- Establish media awareness campaigns that target the "uncaught offender"
- Establish mandatory alcohol education and awareness programs in schools
- Study alternative forms of transportation between Girdwood and Anchorage
- Establish an umbrella group to facilitate continued coordination, compilation and exchange of data, and exchange of materials between interested groups and organizations

Public/Private Organizations

- Establish a Responsible Hospitality Institute Chapter in Anchorage

Task Force Recommendations

State and Municipal Legislative

1. **Change the legal designation in state law and municipal law from DWI (Driving While Intoxicated) to DUI (Driving Under The Influence).**

Goal: Provide clarification as to the intent of the law

Discussion: The Task Force is convinced that the legal designation for this offense should reflect the nature of the impairment to the driving or operation of a vehicle while under the influence of any drug, legal or illegal, including alcohol.

Action Needed: Change State and Municipal law

Responsible Entities: State Legislature and Municipal Assembly

2. **Update present statutes to reflect court decisions, particularly AS 28.35.031, Implied Consent, and AS 28.35.033 (e), Presumptions and Chemical Analysis of Breath or Blood.**

Goal: Bring statutory language into conformance with court interpretations of that particular language

Discussion: The language of some statutes pertaining to drunken driving has been addressed by the Alaska Court of Appeals and the Alaska Supreme Court. Particularly, the use of a preliminary breath test instrument, as set forth in AS 28.35.031 differs from a subsequent court interpretation that precludes an officer from using a portable breath tester for probable cause (*Leslie v. State*, 711 P.2d 575 (1986 Alaska Court of Appeals)). In another situation, the independent test established in AS 28.35.033 (e) has been recognized as a constitutional right, and the existence of two possible tests is difficult to explain and can result in the loss of valuable evidence (*Gundersen v. Municipality of Anchorage*, 792 P.2d 673 (1990 Alaska Supreme Court)).

Action Needed: Review language in present State statutes pertaining to drunk driving, and modify for clarity if court interpretations exist.

Responsible Entity: State Legislature

Subject: DWI and DUI - information

Date: Fri, 09 Mar 2001 07:44:27 -0900

From: Mary Marshburn <mary_marshallburn@admin.state.ak.us>

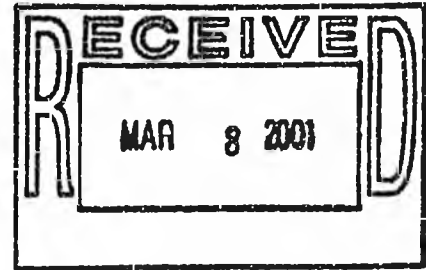
To: Representative_Norman_Rokeberg@legis.state.ak.us

CC: Janet_Seitz@legis.state.ak.us

Representative Rokeberg:

Regarding changing "DWI" to "DUI", "DUI" is the national standard for states motor vehicle agencies and is the standard for the federal government in their regulation of commercial vehicle drivers. Driving Under the "Influence" is more descriptive of the negative affect that multiple substances can have on driving than is "intoxicated" which is more closely associated with alcohol.

Mary Marshburn
Director, DMV



HB

4

(File 3)

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 28, 2001

FURTHER REFERRALS: Finance

Date of Committee Action: 4.3.01

The JUDICIARY Committee considered:

HB 4

HOUSE BILL NO. 4

DRUNK DRIVING CLEARINGHOUSE

"An Act relating to offenses involving operating a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage or controlled substance; relating to implied consent to take a chemical test; relating to registration of motor vehicles; relating to presumptions arising from the amount of alcohol in a person's breath or blood; and providing for an effective date."

Recommends it be replaced with CS HB 4 (JUD) Same Title New Title
 For Senate Bills with new title: Technical Title New Title: HCR _____

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev. For Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LAA
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*For Chief Clerk's Office Use Only				
FN#	List by Dept(s):	Fiscal	Indet.	Zero
	COR	✓		
	CRT	✓		
	LAW	✓		
	HSS			✓
	HSEC(2)			✓
	ADM	✓		
	ADM(2)	✓		
	DPS	✓		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN #	Fiscal	Indet.	Zero
HSS	6	✓		
HSS	5	✓		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>Manville James</i>	JAMES			✓	
<i>Illicit Kookesh</i>	KOOKESH			✓	
<i>Esther Berkowitz</i>	BERKOWITZ			✓	
<i>K. Meyer</i>	Meyer			✓	
<i>John Coughlin</i>	Coughlin			✓	
Chair: <i>Norm Rokceberg</i>	ROKCEBERG	✓			
Chair: _____					

Adopted
as amended

22-LS0046\B.1
Ford
4/3/01

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 4(JUD), Draft Version "B"

1 Page 17, lines 19 – 21:

2 Delete all material and insert:

3 "(4) the court shall, if the person has been previously convicted

4 (A) order the motor vehicle, aircraft, or watercraft used in
5 the commission of the offense forfeited under AS 28.35.036 or shall order
6 the motor vehicle, aircraft, or watercraft taken to the owner's residence or
7 property and immobilized for the period of time that the person's driver's
8 license is revoked; the court shall also require the person to pay any
9 administrative costs of keeping the motor vehicle, aircraft, or watercraft
10 immobilized; and ✓

11 (B) two or more times, order the motor vehicle, aircraft, or
12 watercraft used in the commission of the offense forfeited under
13 AS 28.35.036."

14

15 Page 26, lines 9 – 11:

16 Delete all material and insert:

17 "(4) the court shall, if the person has been previously convicted

18 (A) order the motor vehicle, aircraft, or watercraft used in
19 the commission of the offense forfeited under AS 28.35.036 or shall order
20 the motor vehicle, aircraft, or watercraft taken to the owner's residence or
21 property and immobilized for the period of time that the person's driver's
22 license is revoked; the court shall also require the person to pay any
23 administrative costs of keeping the motor vehicle, aircraft, or watercraft
24 immobilized; and ✓

1
2
3

(B) two or more times, order the motor vehicle, aircraft, or
watercraft used in the commission of the offense forfeited under
AS 28.35.036; and"

22-LS0046\B
Ford
4/2/01

CS FOR HOUSE BILL NO. 4(JUD)

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE ROKEBERG

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to offenses involving operating a motor vehicle, aircraft, or watercraft**
2 **while under the influence of an alcoholic beverage, inhalant, or controlled substance;**
3 **relating to court records of a conviction involving a violation of the Alaska Uniform**
4 **Vehicle Code or another law, regulation, or ordinance regulating the driving of vehicles;**
5 **relating to implied consent to take a chemical test; relating to operating a motor vehicle**
6 **without a driver's license; relating to registration of motor vehicles; relating to**
7 **presumptions arising from the amount of alcohol in a person's breath or blood; relating**
8 **to alcoholism treatment for offenders convicted of certain offenses involving operating a**
9 **motor vehicle, aircraft, or watercraft; and providing for an effective date."**

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

11 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
12 to read:

1 FINDINGS AND INTENT. (a) The legislature finds that

2 (1) driving on state highways is a privilege granted to citizens;

3 (2) in order to keep the privilege of driving on state highways, a citizen must
4 follow state laws regarding safe driving;

5 (3) in 1998, there were 71 vehicle-related deaths in the state, and 31 were
6 alcohol-related;

7 (4) in 1999, there were 76 vehicle-related deaths in the state, and 40 were
8 alcohol-related;

9 (5) from 1998 to 1999, the number of traffic fatalities in Alaska rose by nine
10 percent;

11 (6) Alaska ranks in the top 15 states in terms of alcohol-related traffic
12 fatalities;

13 (7) habitual offenders do most of the harm.

14 (b) It is the intent of this Act to reduce the number of alcohol-related traffic accidents
15 and fatalities.

16 * Sec. 2. AS 09.60.070(c)(14) is amended to read:

17 (14) driving while under the influence of an alcoholic beverage,
18 inhalant, or controlled substance [INTOXICATED] or another crime resulting from
19 the operation of a motor vehicle, boat, or airplane when the offender is under the
20 influence of an alcoholic beverage, inhalant, or controlled substance
21 [INTOXICATED];

22 * Sec. 3. AS 12.25.033 is amended to read:

23 **Sec. 12.25.033. Arrest without warrant for operating vehicle while under**
24 **the influence of an alcoholic beverage, inhalant, or controlled substance**
25 **[INTOXICATED].** A peace officer may arrest a person without a warrant, whether
26 or not the offense is committed in the presence of the officer, when the officer has
27 probable cause to believe that the person to be arrested has committed the crime of
28 operating a motor vehicle, an aircraft, or a watercraft in violation of AS 28.35.030 or a
29 similar city or borough ordinance, if the violation is alleged to have occurred less than
30 eight hours before the time of arrest.

31 * Sec. 4. AS 12.55.125(c) is amended to read:

1 (c) A defendant convicted of a class A felony may be sentenced to a definite
2 term of imprisonment of not more than 20 years, and shall be sentenced to the
3 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
4 12.55.175:

5 (1) if the offense is a first felony conviction and does not involve
6 circumstances described in (2) of this subsection, five years;

7 (2) if the offense is a first felony conviction

8 (A) other than for manslaughter and the defendant possessed a
9 firearm, used a dangerous instrument, or caused serious physical injury during
10 the commission of the offense, or knowingly directed the conduct constituting
11 the offense at a uniformed or otherwise clearly identified peace officer, fire
12 fighter, correctional employee, emergency medical technician, paramedic,
13 ambulance attendant, or other emergency responder who was engaged in the
14 performance of official duties at the time of the offense, seven years;

15 (B) for manslaughter and the conduct resulting in the
16 conviction was knowingly directed towards a child under the age of 16, seven
17 years;

18 (C) for manslaughter and the conduct resulting in the
19 conviction involved driving while under the influence of an alcoholic
20 beverage, inhalant, or controlled substance, seven years;

21 (3) if the offense is a second felony conviction, 10 years;

22 (4) if the offense is a third felony conviction and the defendant is not
23 subject to sentencing under (1) of this section, 15 years.

24 * Sec. 5. AS 18.67.101 is amended to read:

25 **Sec. 18.67.101. Incidents and offenses to which this chapter applies.** The
26 board may order the payment of compensation in accordance with the provisions of
27 this chapter for personal injury or death that resulted from

28 (1) an attempt on the part of the applicant to prevent the commission of
29 crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police
30 officer to do so, or aiding a victim of crime; or

31 (2) the commission or attempt on the part of one other than the

1 applicant to commit any of the following offenses:

- 2 (A) murder in any degree;
- 3 (B) manslaughter;
- 4 (C) criminally negligent homicide;
- 5 (D) assault in any degree;
- 6 (E) kidnapping;
- 7 (F) sexual assault in any degree;
- 8 (G) sexual abuse of a minor;
- 9 (H) robbery in any degree;
- 10 (I) threats to do bodily harm; or
- 11 (J) driving while under the influence of an alcoholic

12 beverage, inhalant, or controlled substance [INTOXICATED] or another
 13 crime resulting from the operation of a motor vehicle, boat, or airplane when
 14 the offender is under the influence of an alcoholic beverage, inhalant, or
 15 controlled substance [INTOXICATED].

16 * Sec. 6. AS 28.10.041 is amended by adding a new subsection to read:

17 (d) The department shall refuse to register a vehicle if the applicant fails to
 18 register the vehicle using the applicant's first, middle, and last name or a business
 19 name.

20 * Sec. 7. AS 28.10 is amended by adding a new section to read:

21 **Sec. 28.10.453. Seizure of registration plates resulting from chemical**
 22 **sobriety tests and refusals to submit to tests.** (a) If a law enforcement officer seizes
 23 a driver's license under AS 28.15.165, the officer shall also seize the registration plates
 24 for the motor vehicle the person was operating and shall deliver the registration plates
 25 to the department if the person is a registered owner or co-owner of the vehicle.

26 (b) The law enforcement officer who seizes registration plates under this
 27 section shall

- 28 (1) issue a temporary permit in a distinctive color under which the
- 29 vehicle may be operated that expires seven days after it is delivered to the person; and
- 30 (2) give the person written notice that, unless the person, within seven
- 31 days, requests an administrative review under AS 28.15.166, the department shall

1 suspend the registration for the motor vehicle and retain possession of the motor
2 vehicle registration plates as provided under (d) of this section.

3 (c) Unless the person has obtained a stay of a departmental action under
4 AS 28.15.166, if the chemical test administered under AS 28.33.031(a) or
5 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2) or the
6 person refused to submit to a chemical test authorized under AS 28.33.031(a) or
7 AS 28.35.031(a) or (g), the department shall revoke the registration for the motor
8 vehicle. The department's action takes effect seven days after delivery to the person of
9 the notice required under (b) of this section, and after receipt of a sworn report of a
10 law enforcement officer as described under AS 28.15.165(c).

11 (d) The period of revocation of a motor vehicle registration under this section
12 shall be for the appropriate minimum period for driver's license revocations under
13 AS 28.15.181(c) or court disqualifications under AS 28.33.140. A department hearing
14 officer may grant limited motor vehicle registration privileges to a person whose
15 motor vehicle registration was revoked under this section in accordance with the
16 standards set out in AS 28.15.201 for granting limited driver's license privileges.

17 (e) The department shall allow a person who is an owner or co-owner of a
18 motor vehicle and who is not the person who was operating the motor vehicle when
19 the registration plates were seized under (a) of this section to register the motor
20 vehicle without the name of the person who was operating the vehicle when the
21 registration plates were seized under (a) of this section. If a person registers a motor
22 vehicle under this subsection, the department shall reissue the registration plates
23 seized under (a) of this section.

24 * Sec. 8. AS 28.15.046(d) is amended to read:

25 (d) The department may not issue a license to an applicant who has been
26 convicted of driving while under the influence of an alcoholic beverage, inhalant,
27 or controlled substance [INTOXICATED] under AS 28.35.030 within two years of
28 the time of application or to an applicant who has two or more convictions for driving
29 while under the influence of an alcoholic beverage, inhalant, or controlled
30 substance [INTOXICATED] within 10 years of the time of application.

31 * Sec. 9. AS 28.15.081(a) is amended to read:

1 (a) The department shall examine every applicant for a driver's license. The
2 examination must include a test of the applicant's (1) eyesight, (2) ability to read and
3 understand official traffic control devices, (3) knowledge of safe driving practices, (4)
4 knowledge of the effects of alcohol and drugs on drivers and the dangers of driving
5 under the influence of alcohol or drugs, (5) knowledge of the laws on driving while
6 under the influence of an alcoholic beverage, inhalant, or controlled substance
7 [INTOXICATED], (6) knowledge of the laws on financial responsibility and
8 mandatory motor vehicle liability insurance, and (7) knowledge of the traffic laws and
9 regulations of the state. The examination may include a demonstration of ability to
10 exercise ordinary and reasonable control in the driving of a motor vehicle of the type
11 and general class of vehicles for which the applicant seeks a license. However, an
12 applicant who has not been previously issued a driver's license by this or another
13 jurisdiction shall demonstrate ability and shall present medical information that the
14 department reasonably requires to determine fitness to safely drive a motor vehicle of
15 the type and general class of vehicles for which the applicant seeks a license.

16 * Sec. 10. AS 28.15.165(c) is amended to read:

17 (c) Unless the person has obtained a temporary permit or stay of a
18 departmental action under AS 28.15.166, if the chemical test administered under
19 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in
20 AS 28.35.030(a)(2) or the person refused to submit to a chemical test authorized under
21 AS 28.33.031(a) or AS 28.35.031(a) or (g), the department shall revoke the person's
22 license, privilege to drive, or privilege to obtain a license, shall refuse to issue an
23 original license, and, if the chemical test administered under AS 28.33.031(a)
24 produced a result described in AS 28.33.030(a)(2) or the person refused to submit to a
25 chemical test authorized under AS 28.33.031(a), shall disqualify the person. The
26 department's action takes effect seven days after delivery to the person of the notice
27 required under (a) of this section, and after receipt of a sworn report of a law
28 enforcement officer

29 (1) that a chemical test administered under AS 28.33.031(a) or
30 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2), that a
31 chemical test administered under AS 28.33.031(a) produced a result described in

1 AS 28.33.030(a)(2), or that a person refused to submit to a chemical test authorized
2 under AS 28.33.031(a) or AS 28.35.031(a) or (g);

3 (2) that notice under (a) of this section was provided to the person; and

4 (3) describing the

5 (A) circumstances surrounding the arrest and the grounds for
6 the officer's belief that the person operated a motor vehicle, commercial motor
7 vehicle, or aircraft while under the influence of an alcoholic beverage,
8 inhalant, or controlled substance [INTOXICATED] in violation of
9 AS 28.33.030 or AS 28.35.030; or

10 (B) grounds for the officer's belief that the person operated a
11 motor vehicle or commercial motor vehicle that was involved in an accident
12 causing death or serious physical injury to another person.

13 * Sec. 11. AS 28.15.166(a) is amended to read:

14 (a) A person who has received a notice under AS 28.10.453(b) or
15 AS 28.15.165(a) may make a written request (1) for administrative review of the
16 department's action under AS 28.10.453(c) or AS 28.15.165(c); or for (2) limited
17 motor vehicle registration privileges under AS 28.10.453(d) or for limited license
18 privileges under AS 28.15.165(d). If the person's driver's license has not been
19 previously surrendered to the department, it shall be surrendered to the department at
20 the time the request for review is made.

21 * Sec. 12. AS 28.15.166(b) is amended to read:

22 (b) A request for review of the department's action under AS 28.10.453 or
23 AS 28.15.165 shall be made within seven days after receipt of the notice under
24 AS 28.10.453 or AS 28.15.165, or the right to review is waived and the action of the
25 department under AS 28.10.453(c) or AS 28.15.165(c) is final. If a written request for
26 a review is made after expiration of the seven-day period, and if it is accompanied by
27 the applicant's verified statement explaining the failure to make a timely request for a
28 review, the department shall receive and consider the request. If the department finds
29 that the person was unable to make a timely request because of lack of actual notice of
30 the department's action or because of factors of physical incapacity such as
31 hospitalization or incarceration, the department shall waive the period of limitation,

1 reopen the matter, and grant the review request. An initial request for limited license
2 privileges may be made at any time. Subsequent requests for limited license
3 privileges may not be made unless the applicant demonstrates a significant change in
4 circumstances.

5 * Sec. 13. AS 28.15.166(c) is amended to read:

6 (c) Upon receipt of a request for review, if it appears that the person holds a
7 valid driver's license or motor vehicle registration plates and that the driver's license
8 or motor vehicle registration plates have [HAS] been surrendered, the department
9 shall issue a temporary driver's permit or motor vehicle registration that is valid until
10 the scheduled date for the review. A person who has requested a review under this
11 section may request, and the department may grant for good cause, a delay in the date
12 of the hearing. If necessary, the department may issue additional temporary permits to
13 stay the effective date of its action under AS 28.15.165(c) until the final order after the
14 review is issued.

15 * Sec. 14. AS 28.15.166(g) is amended to read:

16 (g) The hearing for review of action by the department under AS 28.15.165
17 shall be limited to the issues of whether the law enforcement officer had probable
18 cause [REASONABLE GROUNDS] to believe that the person was operating a motor
19 vehicle or commercial motor vehicle that was involved in an accident causing death or
20 serious physical injury to another, or that the person was operating a motor vehicle,
21 commercial motor vehicle, or aircraft while under the influence of an alcoholic
22 beverage, inhalant, or controlled substance [INTOXICATED] in violation of
23 AS 28.33.030 or AS 28.35.030 and whether

24 (1) the person refused to submit to a chemical test authorized under
25 AS 28.33.031(a) or AS 28.35.031(a) or (g) after being advised that refusal would
26 result in disqualification or the suspension, revocation, or denial of the person's
27 license, privilege to drive, or privilege to obtain a license, and that the refusal is a
28 misdemeanor;

29 (2) the chemical test administered under AS 28.33.031(a) or
30 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2); or

31 (3) the chemical test administered under AS 28.33.031(a) produced a

1 result described in AS 28.33.030(a)(2).

2 * **Sec. 15.** AS 28.15.181(a) is amended to read:

3 (a) Conviction of any of the following offenses is grounds for the immediate
4 revocation of a driver's license, privilege to drive, or privilege to obtain a license:

5 (1) manslaughter or negligent homicide resulting from driving a motor
6 vehicle;

7 (2) a felony in the commission of which a motor vehicle is used;

8 (3) failure to stop and give aid as required by law when a motor
9 vehicle accident results in the death or personal injury of another;

10 (4) perjury or making a false affidavit or statement under oath to the
11 department under a law relating to motor vehicles;

12 (5) operating a motor vehicle or aircraft while under the influence of
13 an alcoholic beverage, inhalant, or controlled substance [INTOXICATED];

14 (6) reckless driving;

15 (7) using a motor vehicle in unlawful flight to avoid arrest by a peace
16 officer;

17 (8) refusal to submit to a chemical test authorized under
18 AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle,
19 commercial motor vehicle, or aircraft while under the influence of an alcoholic
20 beverage, inhalant, or controlled substance [INTOXICATED], or authorized under
21 AS 28.35.031(g);

22 (9) driving while license, privilege to drive, or privilege to obtain a
23 license, canceled, suspended, or revoked, or in violation of a limitation;

24 (10) vehicle theft in the first degree in violation of AS 11.46.360 or
25 vehicle theft in the second degree in violation of AS 11.46.365.

26 * **Sec. 16.** AS 28.15.181(c) is amended to read:

27 (c) A court convicting a person of an offense described in (a)(5) or (8) of this
28 section arising out of the operation of a motor vehicle, commercial motor vehicle, or
29 aircraft shall revoke that person's driver's license, privilege to drive, or privilege to
30 obtain a license. The revocation may be concurrent with or consecutive to an
31 administrative revocation under AS 28.15.165. The court may not, except as provided

1 in AS 28.15.201, grant limited license privileges during the minimum period of
2 revocation. Except as provided under AS 28.35.030(n)(3) and 28.35.032(p)(3), the
3 [THE] minimum periods of revocation are [:]

4 (1) not less than 90 days if the person has not been previously
5 convicted;

6 (2) not less than one year if the person has been previously convicted
7 once;

8 (3) not less than 3 years if the person has been previously convicted
9 twice;

10 (4) not less than 5 years if the person has been previously convicted
11 more than twice.

12 * Sec. 17. AS 28.15.191(a) is amended to read:

13 (a) A court that convicts a person of an offense under this title or a regulation
14 adopted under this title, or another law or regulation of this state, or a municipal
15 ordinance that regulates the driving of vehicles, shall forward a record of the
16 conviction to the department within five working days. A conviction of a standing or
17 parking offense need not be reported.

18 * Sec. 18. AS 28.15.201(d) is amended to read:

19 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain
20 a license under AS 28.15.181(c), or the department when revoking a driver's license,
21 privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant
22 limited license privileges for the final 60 days during which the license is revoked if

23 (1) the revocation was for a violation of AS 28.15.181(a)(5) and not
24 for a violation of AS 28.15.181(a)(8);

25 (2) the person has not been previously convicted; in this paragraph,
26 "previously convicted" has the meaning given in AS 28.35.030 and also includes
27 convictions based on laws presuming that the person was under the influence of
28 intoxicating liquor if there was 0.08 percent or more by weight of alcohol in the
29 person's blood;

30 (3) the court or the department determines that the person's ability to
31 earn a livelihood would be severely impaired without a limited license;

1 (4) the court or the department determines that a limitation under (a) of
2 this section can be placed on the license that will enable the person to earn a livelihood
3 without excessive danger to the public; and

4 (5) the court or the department determines that the person has met [IS
5 ENROLLED IN AND IS IN COMPLIANCE WITH, OR HAS SUCCESSFULLY
6 COMPLETED, AN] alcoholism screening, evaluation, referral, and [EDUCATION
7 AND REHABILITATION TREATMENT] program requirements of the
8 Department of Health and Social Services under AS 28.35.030(h).

9 * Sec. 19. AS 28.15.211(d) is amended to read:

10 (d) At the end of a period of revocation or limitation following a revocation, a
11 person whose driver's license has been revoked may apply to the department for the
12 issuance of a new license, but shall submit to reexamination, pay all required fees
13 including a reinstatement fee, and, if the license was revoked under
14 AS 28.15.181(a)(5) or (8), submit proof to the court or the department that the
15 person has met the alcoholism screening, evaluation, referral, and program
16 requirements of the Department of Health and Social Services under
17 AS 28.35.030(h) [OF

18 (1) ENROLLMENT IN AND COMPLIANCE WITH OR
19 COMPLETION OF AN ALCOHOLISM EDUCATION AND REHABILITATION
20 TREATMENT PROGRAM APPROVED UNDER AS 47.37 IF THE PERSON WAS
21 SENTENCED UNDER AS 28.15.181(c)(1); OR

22 (2) COMPLETION OF AND PAYMENT FOR AN ALCOHOLISM
23 EDUCATION AND REHABILITATION TREATMENT PROGRAM APPROVED
24 UNDER AS 47.37 IF THE PERSON WAS CONVICTED UNDER
25 AS 28.15.181(c)(2) - (4)].

26 * Sec. 20. AS 28.15.271(b) is amended to read:

27 (b) In addition to the fees under (a) of this section,

28 (1) a person who renews a driver's license by mail shall pay a fee of
29 \$1;

30 (2) a person who applies for a limited driver's license under
31 AS 28.15.201 shall pay a fee of \$100; and

1 (3) a person who applies for reinstatement of a driver's license under
2 AS 28.15.211 shall pay a fee of

3 (A) \$100 if the person's driver's license has, within the 10 years
4 preceding the application, been suspended, revoked, or limited under the
5 provisions of this chapter, except as provided by (C) of this paragraph, only
6 once; [OR]

7 (B) \$250 if the person's driver's license has, within the 10 years
8 preceding the application, been suspended, revoked, or limited under the
9 provisions of this chapter, except as provided by (D) of this paragraph, two
10 or more times;

11 (C) \$200 if the person's driver's license has, within the 10
12 years preceding the application, been revoked under AS 28.35.030 or
13 28.35.032 only once; or

14 (D) \$500 if the person's driver's license has, within the 10
15 years preceding the application, been revoked under AS 28.35.030 or
16 28.35.032 two or more times.

17 * Sec. 21. AS 28.15.281(b) is amended to read:

18 (b) A person may not authorize or knowingly permit a motor vehicle owned
19 by the person or under the control of the person to be driven in this state by a person
20 who is not validly licensed. This subsection does not apply to a victim of domestic
21 violence who authorizes or permits a motor vehicle to be driven due to fear of the
22 perpetrator of the domestic violence. In this subsection, "domestic violence" has
23 the meaning given in AS 18.66.990.

24 * Sec. 22. AS 28.33.030 is amended to read:

25 Sec. 28.33.030. Operating a commercial motor vehicle while under the
26 influence of an alcoholic beverage, inhalant, or controlled substance
27 [INTOXICATED]. (a) A person commits the crime of operating a commercial
28 motor vehicle while under the influence of an alcoholic beverage, inhalant, or
29 controlled substance [INTOXICATED] if the person operates a commercial motor
30 vehicle

31 (1) while under the influence of an alcoholic beverage, inhalant,

1 [INTOXICATING LIQUOR] or any controlled substance;

2 (2) when, as determined by a chemical test taken within four hours
3 after the alleged offense was committed, there is 0.04 percent or more by weight of
4 alcohol in the person's blood or 40 milligrams or more of alcohol per 100 milliliters of
5 blood, or when there is 0.04 grams or more of alcohol per 210 liters of the person's
6 breath; or

7 (3) while under the combined influence of an alcoholic beverage,
8 inhalant, [INTOXICATING LIQUOR] and a controlled substance.

9 (b) Operating a commercial motor vehicle while under the influence of an
10 alcoholic beverage, inhalant, or controlled substance [INTOXICATED] is a class
11 A misdemeanor.

12 (c) The sentencing of a person convicted under this section shall be in
13 accordance with the minimum periods of imprisonment, fines, rehabilitative treatment,
14 and other provisions of AS 28.35.030, as if the person had been convicted of a
15 violation of AS 28.35.030. For purposes of sentencing, convictions for operating a
16 commercial motor vehicle while under the influence of an alcoholic beverage,
17 inhalant, or controlled substance [INTOXICATED] under this section, and for
18 refusal to submit to a chemical test under AS 28.33.032, if arising out of a single
19 transaction, are considered one previous conviction.

20 * Sec. 23. AS 28.33.031(a) is amended to read:

21 (a) A person who operates a commercial motor vehicle in this state is
22 considered to have given consent to a chemical test or tests

23 (1) of the person's breath if lawfully arrested for an offense arising out
24 of acts alleged to have been committed when the person was operating the commercial
25 motor vehicle while under the influence of an alcoholic beverage, inhalant, or
26 controlled substance [INTOXICATED]; the test or tests may be administered at the
27 direction of a law enforcement officer who has probable cause [REASONABLE
28 GROUNDS] to believe that the person was operating a commercial motor vehicle
29 while under the influence of an alcoholic beverage, inhalant, or controlled
30 substance [INTOXICATED] in violation of AS 28.33.030 or AS 28.35.030;

31 (2) of the person's breath and blood for the purpose of determining the

1 alcoholic content of the person's breath and blood and is considered to have given
2 consent to a chemical test or tests of the person's blood and urine for the purpose of
3 determining the presence of controlled substances in the person's blood and urine if
4 the person is involved in a motor vehicle accident that causes death or serious physical
5 injury to another person; the test or tests may be administered at the direction of a law
6 enforcement officer who has probable cause [REASONABLE GROUNDS] to
7 believe that the person was operating a commercial motor vehicle that was involved in
8 an accident causing death or serious physical injury to another person.

9 * Sec. 24. AS 28.33.031(c) is amended to read:

10 (c) A person who operates a commercial motor vehicle is considered to have
11 given consent to a preliminary breath test, at the direction of a law enforcement
12 officer, for the purpose of determining the alcoholic content of the person's blood or
13 breath. A law enforcement officer may administer a preliminary breath test if the
14 officer has probable cause [REASONABLE GROUNDS] to believe that the person's
15 ability to operate a commercial motor vehicle is impaired by the ingestion of alcoholic
16 beverages and that

17 (1) the commercial motor vehicle caused injury to person or property;

18 (2) the person violated the provisions of AS 28.33.130(a) or violated
19 the terms of an out-of-service order issued under AS 28.33.130; or

20 (3) the person unlawfully operated a commercial motor vehicle; in this
21 paragraph, "unlawfully" means in violation of any federal, state, or municipal statute,
22 regulation, or ordinance.

23 * Sec. 25. AS 28.33.033(a) is amended to read:

24 (a) Upon the trial of a civil or criminal action or proceedings arising out of
25 acts alleged to have been committed by a person operating a commercial motor
26 vehicle while under the influence of an alcoholic beverage [INTOXICATED] in
27 violation of AS 28.33.030, the following rules apply with regard to the amount of
28 alcohol in the person's blood or breath at the time alleged:

29 (1) if there was less than 0.04 percent by weight of alcohol in the
30 person's blood, or less than 40 milligrams of alcohol per 100 milliliters of the person's
31 blood, or less than 0.04 grams of alcohol per 210 liters of the person's breath, that fact

1 does not give rise to a presumption that the person was or was not under the influence
2 of an alcoholic beverage [INTOXICATING LIQUOR], but that fact may be
3 considered with other competent evidence in determining whether the person was
4 under the influence of an alcoholic beverage [INTOXICATING LIQUOR];

5 (2) if there was 0.04 percent or more by weight of alcohol in the
6 person's blood, or 40 milligrams or more of alcohol per 100 milliliters of the person's
7 blood, or 0.04 grams or more of alcohol per 210 liters of the person's breath, it is
8 presumed that the person was under the influence of an alcoholic beverage
9 [INTOXICATING LIQUOR].

10 * Sec. 26. AS 28.33.033(c) is amended to read:

11 (c) The provisions of (a) of this section may not be construed to limit the
12 introduction of any other competent evidence bearing upon the question of whether
13 the person was or was not under the influence of an alcoholic beverage
14 [INTOXICATING LIQUOR].

15 * Sec. 27. AS 28.33.140(a) is amended to read:

16 (a) In addition to the court action provided in AS 28.15.181, conviction of any
17 of the following offenses is grounds for immediate disqualification from driving a
18 commercial motor vehicle for the periods set out in this section:

19 (1) operating a commercial motor vehicle while under the influence
20 of an alcoholic beverage, inhalant, or controlled substance [INTOXICATED] in
21 violation of AS 28.33.030;

22 (2) refusal to submit to a chemical test in violation of AS 28.35.032;

23 (3) operating a motor vehicle while under the influence of an
24 alcoholic beverage, inhalant, or controlled substance [INTOXICATED] in
25 violation of AS 28.35.030;

26 (4) leaving the scene of an accident in violation of AS 28.35.060, or
27 failing to file, or providing false information in, an accident report in violation of
28 AS 28.35.110;

29 (5) a felony under state or federal law, which was facilitated because
30 the person used a commercial motor vehicle;

31 (6) a serious traffic violation; or

1 (7) driving after being placed out of service in violation of regulations
2 adopted under AS 28.05.011.

3 * Sec. 28. AS 28.35.030(a) is amended to read:

4 (a) A person commits the crime of driving while under the influence of an
5 alcoholic beverage, inhalant, or controlled substance [INTOXICATED] if the
6 person operates or drives a motor vehicle or operates an aircraft or a watercraft

7 (1) while under the influence of an alcoholic beverage, intoxicating
8 liquor, inhalant, or any controlled substance;

9 (2) when, as determined by a chemical test taken within four hours
10 after the alleged offense was committed, there is 0.08 [0.10] percent or more by
11 weight of alcohol in the person's blood or 80 [100] milligrams or more of alcohol per
12 100 milliliters of blood, or when there is 0.08 [0.10] grams or more of alcohol per 210
13 liters of the person's breath; or

14 (3) while the person is under the combined influence of an alcoholic
15 beverage, an intoxicating liquor, an inhalant, and a controlled substance.

16 * Sec. 29. AS 28.35.030(b) is amended to read:

17 (b) Except as provided under (n) of this section, driving while under the
18 influence of an alcoholic beverage, inhalant, or controlled substance
19 [INTOXICATED] is a class A misdemeanor. Except as provided under (r) of this
20 section, upon [UPON] conviction,

21 (1) the court shall impose a minimum sentence of imprisonment of

22 (A) not less than 72 consecutive hours and a fine of not less
23 than \$1,500 [\$250] if the person has not been previously convicted;

24 (B) not less than 30 days, or not less than 20 days if the court
25 orders the person to perform 10 days of community service as authorized
26 under AS 12.55.055, and a fine of not less than \$3,000 [\$500] if the person
27 has been previously convicted once;

28 (C) not less than 60 days and a fine of not less than \$4,000
29 [\$1,000] if the person has been previously convicted twice and is not subject to
30 punishment under (n) of this section;

31 (D) not less than 120 days and a fine of not less than \$5,000

1 [\$2,000] if the person has been previously convicted three times and is not
2 subject to punishment under (n) of this section;

3 (E) not less than 240 days and a fine of not less than \$6,000
4 [\$3,000] if the person has been previously convicted four times and is not
5 subject to punishment under (n) of this section;

6 (F) not less than 360 days and a fine of not less than \$7,000
7 [\$4,000] if the person has been previously convicted more than four times and
8 is not subject to punishment under (n) of this section;

9 (2) the court may not, except as provided under (1)(A)(i) of this
10 subsection.

11 (A) suspend execution of sentence or grant probation except on
12 condition that the person serve the minimum imprisonment under (1) of this
13 subsection;

14 (B) suspend imposition of sentence;

15 (3) the court shall revoke the person's driver's license, privilege to
16 drive, or privilege to obtain a license under AS 28.15.181, and may order that the
17 motor vehicle, [OR] aircraft, or watercraft that was used in commission of the
18 offense to be forfeited under AS 28.35.036;

19 (4) the court shall order that the motor vehicle, aircraft, or
20 watercraft that was used in the commission of the offense be forfeited under
21 AS 28.35.036 if the person has been previously convicted two or more times.

22 * Sec. 30. AS 28.35.030(d) is amended to read:

23 (d) Except as prohibited by federal law or regulation, every provider of
24 treatment programs to which persons are ordered under [(h) OF] this section shall
25 supply the judge, prosecutor, defendant, and an agency involved in the
26 defendant's treatment with information and reports concerning the defendant's
27 past and present assessment, treatment, and progress [ALASKA COURT
28 SYSTEM WITH THE INFORMATION REGARDING THE CONDITION AND
29 TREATMENT OF THOSE PERSONS AS THE SUPREME COURT MAY
30 REQUIRE BY RULE]. Information compiled under this subsection is confidential
31 and may only be used in connection with court proceedings involving the

1 defendant's treatment [BY A COURT IN SENTENCING A PERSON
2 CONVICTED UNDER THIS SECTION, OR BY AN OFFICER OF THE COURT IN
3 PREPARING A PRESENTENCE REPORT FOR THE USE OF THE COURT IN
4 SENTENCING A PERSON CONVICTED UNDER THIS SECTION].

5 * Sec. 31. AS 28.35.030(h) is amended to read:

6 (h) The court shall order a person convicted under this section to satisfy the
7 screening, evaluation, referral, and program requirements of an alcohol safety action
8 program if such a program is available in the community where the person resides, or
9 a private or public treatment facility approved by the division of alcoholism and drug
10 abuse, of the Department of Health and Social Services, under AS 47.37 to make
11 referrals for rehabilitative treatment or to provide rehabilitative treatment. If a person
12 is convicted under (n) of this section, the court shall order the person to be evaluated
13 as required by this subsection before the court imposes sentence for the offense.
14 Treatment required under this subsection shall occur, as much as possible, when
15 the person is incarcerated. The cost of treatment required under this subsection
16 shall be paid to the state by the person being treated. The cost of treatment
17 required to be paid to the state under this subsection may not exceed \$10,000;
18 however, the cost of treatment must include at least \$150 for the cost of an
19 alcohol safety action program if the program is available. Upon the person's
20 conviction, the court shall include reimbursement of the cost of treatment as a
21 part of the sentence. Except for reimbursement from a permanent fund dividend
22 as provided in this subsection, payment of the cost of treatment is not required if
23 the court determines the person is indigent. For costs of treatment that are not
24 paid by the person as required by this subsection, the state shall seek
25 reimbursement from the person's permanent fund dividend as provided in
26 AS 43.23.065. This subsection does not apply to costs of treatment incurred by a
27 person if the cost is incurred as a result of treatment not required under this
28 subsection.

29 * Sec. 32. AS 28.35.030(k) is amended to read:

30 (k) Imprisonment required under (b)(1)(A) or (B) of this section shall be
31 served at a community residential center or, if a community residential center is not

1 available, at another appropriate place determined by the commissioner of corrections.
2 The cost of imprisonment resulting from the sentence imposed under (b)(1) of this
3 section shall be paid to the state by the person being sentenced provided, however, that
4 the cost of imprisonment required to be paid under this subsection may not exceed
5 \$2,000 [\$1,000]. Upon the person's conviction, the court shall include the costs of
6 imprisonment as a part of the judgment of conviction. Except for reimbursement from
7 a permanent fund dividend as provided in this subsection, payment of the cost of
8 imprisonment is not required if the court determines the person is indigent. For costs
9 of imprisonment that are not paid by the person as required by this subsection, the
10 state shall seek reimbursement from the person's permanent fund dividend as provided
11 under AS 43.23.065. While at the community residential center or other appropriate
12 place, a person sentenced under (b)(1)(A) of this section shall perform at least 24
13 hours of community service work, and a person sentenced under (b)(1)(B) of this
14 section shall perform at least 160 hours of community service work, as required by the
15 director of the community residential center or other appropriate place. In this
16 subsection, "appropriate place" means a facility with 24-hour on-site staff supervision
17 that is specifically adapted to provide a residence, and includes a correctional center,
18 residential treatment facility, hospital, halfway house, group home, work farm, work
19 camp, or other place that provides varying levels of restriction.

20 * Sec. 33. AS 28.35.030(n) is amended to read:

21 (n) A person is guilty of a class C felony if the person is convicted under (a)
22 of this section [OF DRIVING WHILE INTOXICATED] and has been previously
23 convicted two or more times since January 1, 1996, and within the 10 [FIVE] years
24 preceding the date of the present offense. For purposes of determining minimum
25 sentences based on previous convictions, the provisions of (o)(4) of this section apply.
26 Except as provided under (r) of this section, upon [UPON] conviction, the court

27 (1) shall impose a fine of not less than \$10,000 [\$5,000] and a
28 minimum sentence of imprisonment of not less than

29 (A) 180 [120] days if the person has been previously convicted
30 twice;

31 (B) 360 [240] days if the person has been previously convicted

1 three times;

2 (C) 440 [360] days if the person has been previously convicted
3 four or more times;

4 (2) may not

5 (A) suspend execution of sentence or grant probation except on
6 condition that the person serve the minimum imprisonment under (1) of this
7 subsection; or

8 (B) suspend imposition of sentence;

9 (3) shall permanently revoke the person's driver's license, privilege to
10 drive, or privilege to obtain a license subject to restoration of the license under (p)
11 of this section [UNCLER AS 28.15.181(c)];

12 (4) may order as a condition of probation or parole that the person take
13 a drug or combination of drugs, intended to prevent the consumption of an alcoholic
14 beverage; a condition of probation imposed under this paragraph is in addition to any
15 other condition authorized under another provision of law; [AND]

16 (5) shall [MAY] also order forfeiture under AS 28.35.036 of the
17 vehicle, watercraft, or aircraft used in the commission of the offense, subject to
18 remission under AS 28.35.037; and

19 (6) shall order the department to revoke the registration for any
20 vehicle registered by the department in the name of the person convicted under
21 this subsection; if a person convicted under this subsection is a registered co-
22 owner of a vehicle or is registered as a co-owner under a business name, the
23 department shall reissue the vehicle registration and omit the name of the person
24 convicted under this subsection.

25 * Sec. 34. AS 28.35.030(o) is amended to read:

26 (o) In this section,

27 (1) "inhalant" has the meaning given to the phrase "hazardous
28 volatile material or substance" in AS 47.37.270; [REPEALED]

29 (2) "operate an aircraft" means to [USE,] navigate, pilot, or taxi an
30 aircraft in the airspace over this state, or upon the land or water inside this state;

31 (3) "operate a watercraft" means to navigate [OR USE] a vessel used

1 or capable of being used as a means of transportation on water for recreational or
2 commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial
3 limits or under the jurisdiction of the state;

4 (4) "previously convicted" means having been convicted in this or
5 another jurisdiction, [WITHIN 10 YEARS PRECEDING THE DATE OF THE
6 PRESENT OFFENSE,] of any of the following offenses; however, convictions for any
7 of these offenses, if arising out of a single transaction and a single arrest, are
8 considered one previous conviction:

9 (A) operating a motor vehicle, aircraft, or watercraft while
10 under the influence of an alcoholic beverage, inhalant, or controlled
11 substance [INTOXICATED,] in violation of this section or in violation of
12 another law or ordinance with similar elements, except that the other law or
13 ordinance may provide for a lower level of alcohol in the person's blood or
14 breath than imposed under (a)(2) of this section;

15 (B) refusal to submit to a chemical test in violation of
16 AS 28.35.032 or in violation of another law or ordinance with similar
17 elements; or

18 (C) operating a commercial motor vehicle while under the
19 influence of an alcoholic beverage, inhalant, or controlled substance
20 [INTOXICATED] in violation of AS 28.33.030 or in violation of another law
21 or ordinance with similar elements, except that the other law or ordinance may
22 provide for a lower level of alcohol in the person's blood or breath than
23 imposed under AS 28.33.030(a)(2).

24 * Sec. 35. AS 28.35.030 is amended by adding new subsections to read:

25 (p) Upon request, the department shall review a driver's license revocation
26 imposed under (n)(3) of this section and may restore the driver's license if

27 (1) the license has been revoked for a period of at least 10 years;

28 (2) the person has not been convicted of a criminal offense since the
29 license was revoked; and

30 (3) the person provides proof of financial responsibility.

31 (q) If a person is convicted under this section and has been previously

1 convicted, the court shall order the person to surrender the registration plates for any
2 vehicle registered or co-registered in the person's name. The person shall surrender
3 the registration plates to the department by the close of the next business day. A
4 person other than the person convicted under this section who applies to register a
5 motor vehicle that has registration plates that were required to be surrendered under
6 this section but that were not surrendered as required by this subsection may not
7 register the vehicle unless the person registering the vehicle provides proof
8 satisfactory to the department that the person did not know that the registration plates
9 were required to be surrendered under this subsection or the person pays twice the
10 applicable registration fee required under AS 28.10.421.

11 (r) The court may suspend

12 (1) a portion of the mandatory minimum sentence required under
13 (b)(1) or (n)(1) of this section if the court determines that the person has successfully
14 completed a therapeutic court program; and

15 (2) up to 50 percent of the minimum fines required under (b)(1) or
16 (n)(1) of this section.

17 (s) For purposes of this section, the director of the division within the
18 department responsible for administration of this section or a person designated by the
19 director may request and receive criminal justice information available under
20 AS 12.62. In this subsection, "criminal justice information" has the meaning given in
21 AS 12.62.900.

22 * Sec. 36. AS 28.35.031(a) is amended to read:

23 (a) A person who operates or drives a motor vehicle in this state or who
24 operates an aircraft as defined in AS 28.35.030(o) [AS 28.35.030(o)(2)] or who
25 operates a watercraft as defined in AS 28.35.030(o) [AS 28.35.030(o)(3)] shall be
26 considered to have given consent to a chemical test or tests of the person's breath for
27 the purpose of determining the alcoholic content of the person's blood or breath if
28 lawfully arrested for an offense arising out of acts alleged to have been committed
29 while the person was operating or driving a motor vehicle or operating an aircraft or a
30 watercraft while under the influence of an alcoholic beverage, inhalant, or
31 controlled substance [INTOXICATED] or if lawfully arrested under AS 28.35.280

1 for the offense of minor operating a vehicle after consuming alcohol. The test or tests
2 shall be administered at the direction of a law enforcement officer who has probable
3 cause [REASONABLE GROUNDS] to believe that the person was operating or
4 driving a motor vehicle or operating an aircraft or a watercraft in this state while
5 under the influence of an alcoholic beverage, inhalant, or controlled substance
6 [INTOXICATED] or that the person was a minor operating a vehicle after consuming
7 alcohol.

8 * Sec. 37. AS 28.35.031(b) is amended to read:

9 (b) A person who operates or drives a motor vehicle in this state or who
10 operates an aircraft or watercraft shall be considered to have given consent to a
11 preliminary breath test for the purpose of determining the alcoholic content of the
12 person's blood or breath. A law enforcement officer may administer a preliminary
13 breath test at the scene of the incident if the officer has probable cause
14 [REASONABLE GROUNDS] to believe that a person's ability to operate a motor
15 vehicle, aircraft, or watercraft is impaired by the ingestion of alcoholic beverages and
16 that the person

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

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

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

26 * Sec. 38. AS 28.35.031(g) is amended to read:

27 (g) A person who operates or drives a motor vehicle in this state shall be
28 considered to have given consent to a chemical test or tests of the person's breath and
29 blood for the purpose of determining the alcoholic content of the person's breath and
30 blood and shall be considered to have given consent to a chemical test or tests of the
31 person's blood and urine for the purpose of determining the presence of controlled

1 substances in the person's blood and urine if the person is involved in a motor vehicle
2 accident that causes death or serious physical injury to another person. The test or
3 tests may be administered at the direction of a law enforcement officer who has
4 probable cause [REASONABLE GROUNDS] to believe that the person was
5 operating or driving a motor vehicle in this state that was involved in an accident
6 causing death or serious physical injury to another person.

7 * Sec. 39. AS 28.35.031 is amended by adding a new subsection to read:

8 (h) Nothing in this section shall be construed to restrict searches or seizures
9 under a warrant issued by a judicial officer.

10 * Sec. 40. AS 28.35.032(a) is amended to read:

11 (a) If a person under arrest for operating a motor vehicle or aircraft while
12 under the influence of an alcoholic beverage, inhalant, or controlled substance
13 [INTOXICATED] refuses the request of a law enforcement officer to submit to a
14 chemical test authorized under AS 28.33.031(a)(1) or AS 28.35.031(a), or if a person
15 involved in a motor vehicle accident that causes death or serious physical injury to
16 another person refuses the request of a law enforcement officer to submit to a
17 chemical test authorized under AS 28.33.031(a)(2) or AS 28.35.031(g), after being
18 advised by the officer that the refusal will result in the denial or revocation of the
19 driver's license, privilege to drive, or privilege to obtain a license, that the refusal may
20 be used against the person in a civil or criminal action or proceeding arising out of an
21 act alleged to have been committed by the person while operating a motor vehicle or
22 aircraft while under the influence of an alcoholic beverage, inhalant, or controlled
23 substance [INTOXICATED], and that the refusal is a crime, a chemical test may not
24 be given, except as provided by AS 28.35.035. If a person under arrest for operating a
25 watercraft while under the influence of an alcoholic beverage, inhalant, or
26 controlled substance [INTOXICATED] refuses the request of a law enforcement
27 officer to submit to a chemical test authorized under AS 28.35.031(a), after being
28 advised by the officer that the refusal may be used against the person in a civil or
29 criminal action or proceeding arising out of an act alleged to have been committed by
30 the person while operating a watercraft while under the influence of an alcoholic
31 beverage, inhalant, or controlled substance [INTOXICATED], and that the refusal

1 is a crime, a chemical test may not be given, except as provided by AS 28.35.035.

2 * **Sec. 41.** AS 28.35.032(e) is amended to read:

3 (e) The refusal of a person to submit to a chemical test authorized under
4 AS 28.33.031(a) or AS 28.35.031(a) or (g) is admissible evidence in a civil or criminal
5 action or proceeding arising out of an act alleged to have been committed by the
6 person while operating or driving a motor vehicle or operating an aircraft or watercraft
7 while under the influence of an alcoholic beverage, inhalant, or controlled
8 substance [INTOXICATED].

9 * **Sec. 42.** AS 28.35.032(g) is amended to read:

10 (g) Except as provided under (t) of this section, upon [UPON] conviction
11 under this section,

12 (1) the court shall impose a minimum sentence of imprisonment of

13 (A) not less than 72 consecutive hours and a fine of not less
14 than \$1,500 [\$250] if the person has not been previously convicted;

15 (B) not less than 30 days, or not less than 20 days if the court
16 orders the person to perform 10 days of community service as authorized
17 under AS 12.55.055, and a fine of not less than \$3,000 [\$500] if the person
18 has been previously convicted once;

19 (C) not less than 60 days and a fine of not less than \$4,000
20 [\$1,000] if the person has been previously convicted twice and is not subject to
21 punishment under (p) of this section;

22 (D) not less than 120 days and a fine of not less than \$5,000
23 [\$2,000] if the person has been previously convicted three times and is not
24 subject to punishment under (p) of this section;

25 (E) not less than 240 days and a fine of not less than \$6,000
26 [\$3,000] if the person has been previously convicted four times and is not
27 subject to punishment under (p) of this section;

28 (F) not less than 360 days and a fine of not less than \$7,000
29 [\$4,000] if the person has been previously convicted more than four times and
30 is not subject to punishment under (p) of this section;

31 (2) the court may not

1 (A) suspend execution of the sentence required by (1) of this
2 subsection or grant probation, except on condition that the person serve the
3 minimum imprisonment under (1) of this subsection; or

4 (B) suspend imposition of sentence;

5 (3) the court shall revoke the person's driver's license, privilege to
6 drive, or privilege to obtain a license under AS 28.15.181, and may order that the
7 motor vehicle, [OR] aircraft, or watercraft that was used in commission of the
8 offense be forfeited under AS 28.35.036; [AND]

9 (4) the court shall order that any motor vehicle, aircraft, or
10 watercraft that was used in the commission of the offense be forfeited under
11 AS 28.35.036 if the person has been previously convicted two or more times; and

12 (5) the sentence imposed by the court under this subsection shall run
13 consecutively with any other sentence of imprisonment imposed on the person.

14 * Sec. 43. AS 28.35.032(h) is amended to read:

15 (h) Except as prohibited by federal law or regulation, every provider of
16 treatment programs to which persons are ordered under [(I) OF] this section shall
17 supply the judge, prosecutor, defendant, and an agency involved in the
18 defendant's treatment with information and reports concerning the defendant's
19 past and present assessment, treatment, and progress [ALASKA COURT
20 SYSTEM WITH THE INFORMATION REGARDING THE CONDITION AND
21 TREATMENT OF THOSE PERSONS AS THE SUPREME COURT MAY
22 REQUIRE BY RULE]. Information compiled under this subsection is confidential
23 and may only be used in connection with court proceedings involving the
24 defendant's treatment [BY A COURT IN SENTENCING A PERSON
25 CONVICTED UNDER THIS SECTION, OR BY AN OFFICER OF THE COURT IN
26 PREPARING A PRE-SENTENCE REPORT FOR THE USE OF THE COURT IN
27 SENTENCING A PERSON CONVICTED UNDER THIS SECTION].

28 * Sec. 44. AS 28.35.032(j) is amended to read:

29 (j) For purposes of this section, convictions for operating or driving while
30 under the influence of an alcoholic beverage, inhalant, or controlled substance
31 [INTOXICATED] under AS 28.33.030 or AS 28.35.030 and for refusal to submit to a

1 chemical test under this section, if arising out of a single transaction and a single
2 arrest, are considered one previous conviction.

3 * Sec. 45. AS 28.35.032(!) is amended to read:

4 (l) The court shall order a person convicted under this section to satisfy the
5 screening, evaluation, referral, and program requirements of an alcohol safety action
6 program if such a program is available in the community where the person resides, or
7 a private or public treatment facility approved by the division of alcoholism and drug
8 abuse, of the Department of Health and Social Services, under AS 47.37 to make
9 referrals for rehabilitative treatment or to provide rehabilitative treatment. If a person
10 is convicted under (p) of this section, the court shall order the person to be evaluated
11 as required by this subsection before the court imposes sentence for the offense.
12 Treatment required under this subsection shall occur, as much as possible, when
13 the person is incarcerated. The cost of treatment required under this subsection
14 shall be paid to the state by the person being treated. The cost of treatment
15 required to be paid to the state under this subsection may not exceed \$10,000;
16 however, the cost of treatment must include at least \$150 for the cost of an
17 alcohol safety action program if the program is available. Upon the person's
18 conviction, the court shall include reimbursement of the cost of treatment as a
19 part of the sentence. Except for reimbursement from a permanent fund dividend
20 as provided in this subsection, payment of the cost of treatment is not required if
21 the court determines the person is indigent. For costs of treatment that are not
22 paid by the person as required by this subsection, the state shall seek
23 reimbursement from the person's permanent fund dividend as provided in
24 AS 43.23.065. This subsection does not apply to costs of treatment incurred by a
25 person if the cost is incurred as a result of treatment not required under this
26 subsection.

27 * Sec. 46. AS 28.35.032(o) is amended to read:

28 (o) Imprisonment required under (g)(1)(A) or (B) of this section shall be
29 served at a community residential center, or if a community residential center is not
30 available, at another appropriate place determined by the commissioner of corrections.
31 The cost of imprisonment resulting from the sentence imposed under (g)(1) of this

1 section shall be paid to the state by the person being sentenced provided, however, that
 2 the cost of imprisonment required to be paid under this subsection may not exceed
 3 \$2,000 [\$1,000]. Upon the person's conviction, the court shall include the costs of
 4 imprisonment as a part of the judgment of conviction. Except for reimbursement from
 5 a permanent fund dividend as provided in this subsection, payment of the cost of
 6 imprisonment is not required if the court determines the person is indigent. For costs
 7 of imprisonment that are not paid by the person as required by this subsection, the
 8 state shall seek reimbursement from the person's permanent fund dividend as provided
 9 under AS 43.23.065. While at the community residential center or other appropriate
 10 place, a person sentenced under (g)(1)(A) of this section shall perform at least 24
 11 hours of community service work and a person sentenced under (g)(1)(B) of this
 12 section shall perform at least 160 hours of community service work, as required by the
 13 director of the community residential center or other appropriate place. In this
 14 subsection, "appropriate place" means a facility with 24-hour on-site staff supervision
 15 that is specifically adapted to provide a residence, and includes a correctional center,
 16 residential treatment facility, hospital, halfway house, group home, work farm, work
 17 camp, or other place that provides varying levels of restriction.

18 * Sec. 47. AS 28.35.032(p) is amended to read:

19 (p) A person is guilty of a class C felony if the person is convicted under this
 20 section and has been previously convicted two or more times since January 1, 1996,
 21 and within the 10 [FIVE] years preceding the date of the present offense. For
 22 purposes of determining minimum sentences based on previous convictions, the
 23 provisions of AS 28.35.030(o)(4) apply. Except as provided under (t) of this
 24 section, upon [UPON] conviction,

25 (1) the court shall impose a fine of not less than \$10,000 [\$5,000] and
 26 a minimum sentence of imprisonment of not less than

27 (A) 180 [120] days if the person has been previously convicted
 28 twice;

29 (B) 360 [240] days if the person has been previously convicted
 30 three times;

31 (C) 440 [360] days if the person has been previously convicted

1 four or more times;

2 (2) the court may not

3 (A) suspend execution of the sentence required by (1) of this
4 subsection or grant probation, except on condition that the person serve the
5 minimum imprisonment under (1) of this subsection; or

6 (B) suspend imposition of sentence;

7 (3) the court shall permanently revoke the person's driver's license,
8 privilege to drive, or privilege to obtain a license subject to restoration under (r) of
9 this section [UNDER AS 28.15.181(c)];

10 (4) the court may order as a condition of probation or parole that the
11 person take a drug, or combination of drugs, intended to prevent consumption of an
12 alcoholic beverage; a condition of probation imposed under this paragraph is in
13 addition to any other condition authorized under another provision of law;

14 (5) the sentence imposed by the court under this subsection shall run
15 consecutively with any other sentence of imprisonment imposed on the person; [AND]

16 (6) the court shall [MAY] also order forfeiture under AS 28.35.036, of
17 the motor vehicle, [OR] aircraft, or watercraft used in the commission of the offense,
18 subject to remission under AS 28.35.037; and

19 (7) shall order the department to revoke the registration for any
20 vehicle registered by the department in the name of the person convicted under
21 this subsection; if a person convicted under this subsection is a registered co-
22 owner of a vehicle, the department shall reissue the vehicle registration and omit
23 the name of the person convicted under this subsection.

24 * Sec. 48. AS 28.35.032 is amended by adding new subsections to read:

25 (r) Upon request, the department shall review a driver's license revocation
26 imposed under (p)(3) of this section and may restore the driver's license if

27 (1) the license has been revoked for a period of at least 10 years;

28 (2) the person has not been convicted of a criminal offense since the
29 license was revoked; and

30 (3) the person provides proof of financial responsibility.

31 (s) If a person is convicted under this section and has been previously

1 convicted, the court shall order the person to surrender the registration plates for any
2 vehicle registered or co-registered in the person's name. The person shall surrender
3 the registration plates to the department by the close of the next business day. A
4 person other than the person convicted under this section who applies to register a
5 motor vehicle that has registration plates that were required to be surrendered under
6 this section but that were not surrendered as required by this subsection may not
7 register the vehicle unless the person registering the vehicle provides proof
8 satisfactory to the department that the person did not know that the registration plates
9 were required to be surrendered under this subsection or the person pays twice the
10 applicable registration fee required under AS 28.10.421.

11 (t) The court may suspend

12 (1) a portion of the mandatory minimum sentence required under
13 (g)(1) or (p)(1) of this section if the court determines that the person has successfully
14 completed a therapeutic court program; and

15 (2) up to 50 percent of the minimum fine required under (g)(1) and
16 (p)(1) of this section.

17 * Sec. 49. AS 28.35.033(a) is amended to read:

18 (a) Upon the trial of a civil or criminal action or proceeding arising out of acts
19 alleged to have been committed by a person while operating or driving a motor vehicle
20 or operating an aircraft or a watercraft while under the influence of an alcoholic
21 beverage, inhalant, or controlled substance [INTOXICATED], the amount of
22 alcohol in the person's blood or breath at the time alleged shall give rise to the
23 following presumptions:

24 (1) If there was 0.04 [0.05] percent or less by weight of alcohol in the
25 person's blood, or 40 [50] milligrams or less of alcohol per 100 milliliters of the
26 person's blood, or 0.04 [0.05] grams or less of alcohol per 210 liters of the person's
27 breath, it shall be presumed that the person was not under the influence of an
28 alcoholic beverage [INTOXICATING LIQUOR].

29 (2) If there was in excess of 0.04 [0.05] percent but less than 0.08
30 [0.10] percent by weight of alcohol in the person's blood, or in excess of 40 [50] but
31 less than 80 [100] milligrams of alcohol per 100 milliliters of the person's blood, or in

1 excess of 0.04 [0.05] grams but less than 0.08 [0.10] grams of alcohol per 210 liters of
2 the person's breath, that fact does not give rise to any presumption that the person was
3 or was not under the influence of an alcoholic beverage [INTOXICATING
4 LIQUOR], but that fact may be considered with other competent evidence in
5 determining whether the person was under the influence of an alcoholic beverage
6 [INTOXICATING LIQUOR].

7 (3) [REPEALED

8 (4)] If there was 0.08 [0.10] percent or more by weight of alcohol in
9 the person's blood, or 80 [100] milligrams or more of alcohol per 100 milliliters of the
10 person's blood, or 0.08 [0.10] grams or more of alcohol per 210 liters of the person's
11 breath, it shall be presumed that the person was under the influence of an alcoholic
12 beverage [INTOXICATING LIQUOR].

13 * Sec. 50. AS 28.35.033(e) is amended to read:

14 (e) The person tested may have a physician, or a qualified technician, chemist,
15 registered nurse, or other qualified person of the person's own choosing administer a
16 chemical test in addition to the test administered at the direction of a law enforcement
17 officer. The failure or inability to obtain an additional test by a person does not
18 preclude the admission of evidence relating to the test taken at the direction of a law
19 enforcement officer; the fact that the person under arrest sought to obtain such an
20 additional test, and failed or was unable so to do, is likewise admissible in evidence.
21 The person who administers the chemical test shall clearly and expressly inform
22 the person tested of that person's right to an independent test described under
23 this subsection, and, if the person being tested requests an independent test, the
24 department shall make reasonable and good-faith efforts to assist the person
25 being tested in contacting a person qualified to perform an independent chemical
26 test of the person's breath or blood.

27 * Sec. 51. AS 28.35.035(a) is amended to read:

28 (a) If a person is under arrest for an offense arising out of acts alleged to have
29 been committed while the person was operating a motor vehicle, aircraft, or watercraft
30 while under the influence of an alcoholic beverage, inhalant, or controlled
31 substance [INTOXICATED], and that arrest results from an accident that causes

1 death or physical injury to another person, a chemical test may be administered
2 without the consent of the person arrested to determine the amount of alcohol in that
3 person's breath or blood or to determine the presence of controlled substances in that
4 person's blood and urine.

5 * Sec. 52. AS 28.35.036(a) is amended to read:

6 (a) After conviction of an offense under AS 28.35.030 or 28.35.032, the court
7 [STATE] may [MOVE THE COURT TO] order the forfeiture of the motor vehicle,
8 [OR] aircraft, or watercraft involved in the commission of the offense and shall
9 order forfeiture of the motor vehicle, aircraft, or watercraft if the convicted
10 person has been previously convicted twice in this or another jurisdiction [OF MORE
11 THAN ONE OF THE FOLLOWING OFFENSES] or has [MORE THAN ONCE]
12 been previously convicted twice of one of the following offenses:

13 (1) driving while under the influence of an alcoholic beverage,
14 inhalant, or controlled substance [INTOXICATED] under AS 28.35.030 or another
15 law or ordinance with substantially similar elements; or

16 (2) refusal to submit to a chemical test under AS 28.35.032 or another
17 law or ordinance with substantially similar elements.

18 * Sec. 53. AS 28.35.036(e) is amended to read:

19 (e) If not released under AS 28.35.037, a motor vehicle, aircraft, or
20 watercraft forfeited under this section may be disposed of at the discretion of the
21 Department of Public Safety. Disposal under this subsection includes, by way of
22 example and not of limitation,

23 (1) sale, as a unit or in parts, including sale at an auction, and the
24 proceeds deposited into the general fund;

25 (2) transfer to a state or municipal law enforcement agency;

26 (3) being declared surplus and transferred to the Department of
27 Administration; or

28 (4) being destroyed.

29 * Sec. 54. AS 28.35.038 is amended to read:

30 Sec. 28.35.038. **Municipal impoundment and forfeiture.** Notwithstanding
31 other provisions in this title, a municipality may adopt an ordinance providing for the

1 impoundment or forfeiture of a motor vehicle [,] or aircraft [,] involved in the
2 commission of an offense under AS 28.35.030, 28.35.032, or an ordinance with
3 elements substantially similar to AS 28.35.030 or 28.35.032. An ordinance adopted
4 under this section may include a fee for the administrative costs incurred by the
5 municipality and is not required to be consistent with this title or regulations adopted
6 under this title.

7 * Sec. 55. AS 28.35.039(2) is amended to read:

8 (2) "alcohol safety action program" means a program for alcohol and
9 substance abuse screening, referral, and monitoring developed and implemented
10 or approved by the Department of Health and Social Services under AS 47.37
11 [DESIGNATED BY THE COMMISSIONER OF HEALTH AND SOCIAL
12 SERVICES AS AN ALCOHOL SAFETY ACTION PROGRAM].

13 * Sec. 56. AS 47.37.040(14) is amended to read:

14 (14) cooperate with the Department of Public Safety and the
15 Department of Transportation and Public Facilities in establishing and conducting
16 programs designed to deal with the problem of persons operating motor vehicles while
17 under the influence of an alcoholic beverage, inhalant, or controlled substance
18 [INTOXICATED OR UNDER THE INFLUENCE OF DRUGS], and develop and
19 approve alcohol information courses required to be taken by drivers under AS 28.15 or
20 made available to drivers to reduce points assessed for violation of traffic laws;

21 ** Sec. 57. AS 47.37.040 is amended by adding a new paragraph to read:

22 (20) develop and implement, or designate, in cooperation with other
23 state or local agencies, an alcohol safety action program that provides alcohol and
24 substance abuse screening, referral, and monitoring services to persons who have been
25 referred by a court in connection with a charge or conviction of a misdemeanor
26 involving the use of a motor vehicle, aircraft, or watercraft and alcohol or a controlled
27 substance, or referred by an agency of the state with the responsibility for
28 administering motor vehicle laws in connection with a driver's license action involving
29 the use of alcohol or a controlled substance.

30 * Sec. 58. AS 47.37.130(b) is amended to read:

31 (b) The program of the division must include

1 (1) emergency treatment provided by a facility affiliated with or part of
2 the medical service of a general hospital;

3 (2) inpatient treatment;

4 (3) intermediate treatment; [AND]

5 (4) outpatient and follow-up treatment; and

6 (5) standards for alcohol safety action programs; the standards
7 may vary in their requirements and stringency according to the population, price
8 level, remoteness, access to transportation, and availability of ancillary services of
9 the area to be served; a program must meet the applicable standards before it is
10 approved by the division as an alcohol safety action program; the standards
11 required under this paragraph shall be established in a manner that provides
12 protection of the health, safety, and well-being of clients of the affected programs
13 and protection for the affected programs from exposure to malpractice and
14 liability actions.

15 * Sec. 59. AS 47.37.130 is amended by adding new subsections to read:

16 (h) The division shall

17 (1) inspect, on a regular basis, approved public and private alcohol
18 safety action programs at reasonable times and in a reasonable manner; and

19 (2) maintain a list of approved public and private alcohol safety action
20 programs.

21 (i) An approved public and private alcohol safety action program shall file
22 with the division on request data, statistics, schedules, and information that the
23 division reasonably requires. An approved program that fails without good cause to
24 furnish any data, statistics, schedules, or information as requested, or files fraudulent
25 returns of them, shall be removed from the list of approved programs.

26 (j) The director, after holding a hearing under the provisions of AS 44.62
27 (Administrative Procedure Act), may suspend, revoke, limit, restrict, or refuse to grant
28 an approval for an alcohol safety action program for failure to meet standards
29 established under (b) of this section.

30 * Sec. 60. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 APPLICABILITY. (a) Section 6 of this Act applies to registration of a motor vehicle
2 that occurs on or after the effective date of this Act.

3 (b) This Act applies to offenses committed on or after the effective date of this Act,
4 except that references to previous convictions include convictions occurring before, on, or
5 after the effective date of this Act.

6 * **Sec. 61.** This Act takes effect July 1, 2001.

AMENDMENTS REMAINING 3/31/01

16 - Rokeberg - contains civil forfeiture and brings refusal statutes in line with DUI provisions of bill.

Some sections of this amendment will need to be conformed to amendments already adopted (such as treatment limits & others). Please make mention of this so it is clear that members are permitting necessary changes.

#24 - Berkowitz - As diversion program deleted, no longer necessary.

#25 - Berkowitz - needs to be withdrawn or not offered, part of diversion program deletion.

#32 - Berkowitz - done in Amendment #11

#33 - Berkowitz - done in Amendment 34 amended

#36 - Rokeberg - seizure of plates resulting from chemical tests and refusal. Sets up system similar to driver's license revocation. To run concurrent with driver's license revocation. Allows co-owner to register vehicle w/out name of person under influence

#37 - Rokeberg - Amendment to amendment #7, adopted 3/26, to permit discretion of Judge to suspend up to 50% of minimum fines set forth in HB 4.

#38 - Berkowitz - Persons convicted of DUI not eligible for PFD. You wanted to add reference to .032 so that persons convicted of refusal are also not eligible. This starts with first offense.

#39 - Rokeberg - suggested language for enabler section to cover domestic violence situation.

#40 - Rokeberg - lowers minimum sentences for felony DUI. Still increases from current sentence as follows:

**Previously convicted twice is now 120 days;
amendment raises to 180 days**

**Previously convicted three times is now 240
days; amendment raises to 360 days**

**Previously convicted four times or more is
now 360 days; amendment raises to 440 days**

**Should take corrections fiscal note on this portion
of bill from \$2.1 million to \$986,400.**

**#41 - Rokeberg - when we deleted diversion program,
we deleted the \$1500 fine for first time and left it at
\$500. This puts it at \$1500 for first time DUI.
Remember this would be impacted by the 50%
amendment.**