

STATE:	ALASKA
General Reference:	Alaska Statutes
<u>Basis for a DWI Charge:</u>	
Standard DWI Offense:	Under the influence of an alcoholic beverage §28.35.030(a)(1)
Illegal Per Se Law (BAC/BrAC):	≥.08 ^{23,24and25} §28.35.030(a)(2)
Presumption (BAC/BrAC):	≥.08 §28.35.033(a)(3)-A-
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) any controlled substance or (2) an alcohol beverage, intoxicating liquor, an inhalant, and a controlled substance §28.35.030(a)(1) and (3)
<u>Chemical Breath Tests for Alcohol Concentration:</u>	
Preliminary Breath Test Law:	Yes §28.35.031(b) Also applies to CMV operators §28.33.031
Implied Consent Law: Arrest Required (Yes/No):	Yes §28.35.031
Implied Consent Law Applies to Drugs (Yes/No):	No Except as noted in “Other Information” below.
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal and Civil Cases) §§28.35.032(e) and 28.35.285(c)
Other Information:	A “chemical test” for either alcohol or a controlled substance may be

²³ The law defines the drunk-driving offense as the crime of “driving while intoxicated” which includes driving while under the influence of an alcoholic beverage, inhalant or any intoxicating liquor/controlled substance or illegal per se at an alcohol concentration ≥.08 grams per deciliter. §28.35.030. An inhalant is defined as “hazardous volatile material or substance” §28.35.030(o).

²⁴ This State’s illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 g/dL or more.

²⁵ Alcohol concentration is based upon either “percent by weight” of alcohol in the blood, in grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §28.35.030(a)(2) Under §28.35.033(b), “percent by weight of alcohol” in the blood is defined as grams of alcohol per 100 milliliters of blood.

Special Note: This State's implied consent law also requires that a driver submit to a chemical test or tests (1) of breath or blood for alcohol content or (2) of blood or urine for a controlled substance if there is “probable cause to believe the person was operating or driving a motor vehicle in this State involved in an accident causing death or serious physical injury to another person.” The sanctions for violating this requirement are the same as for violating the regular implied consent provisions. §28.35.031(g) However, the Alaska Court of Appeals has held that this provision violates the both U.S. Constitution's (4th Amendment) and the Alaska Constitution's prohibitions against unreasonable searches and seizures, because it does not provide for individual suspicion of criminal activity before a search can be undertaken. *Blank v. State*, 3 P.3d 359 (Alaska App. 2000)

administered to a person (or a CMV operator) without consent if that person has been arrested for a DWI offense where there has been an accident involving death or physical injury to another person. §§28.35.035(a), 28.33.031(b) and *Municipality of Anchorage v. Ray*, 854 P.2d 740 (Alaska App. 1993) A warrantless arrest must be supported by probable cause or the arrest and subsequent fruits are illegal. *Schoenthaler v. State*, 2000 Alas. App.LEXIS96 (2000), 12.25.033

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood: **No** Except as per the Special Note above.
 Urine: **No** Except as per the Special Note above.
 Other: **None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**
 Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** §§28.35.030(h) and 28.35.032(1)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
 Criminal Sanctions (Fine/Jail): **Infraction** (non-criminal offense) – Not more than **\$300** §§28.35.031(e) and 28.4.050(c) and (d)

Administrative Licensing Action (Susp/Rev): **None**

Other: Refusal §28.35.031(c) Also applies to CMV operators. §28.33.031(d) Refusal to submit to a PBT may be admitted into evidence at either a criminal or civil proceeding. It is a Class B misdemeanor for a CMV operator to refuse to submit to a PBT. §28.33.031(f) The sanctions for this offense are as follows: Jail – not more than **90 days**; fine – not more than **\$1,000**. §§12.55.035(b)(4) and 12.55.135(b)

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

Class A misdemeanor – Not more than **1 year** imprisonment/not more than **\$5,000** fine;²⁶ Class C felony – if third or subsequent refusal within 10 years – Not more than **5 years**/not more than **\$50,000** fine §§12.55.035, 12.55.125, 12.55.135 and 28.35.032(f) and (q) The jail and fine sanctions (including minimum mandatory sanctions), confinement in a community residential center, cost of incarceration (where applicable) for first and subsequent refusal offenses²⁷ are the same as for DWI offenses. These sanctions run concurrently with any other sanctions. §28.35.032(f) and (g)(4)²⁸.

Administrative Licensing Action (Susp/Rev):

Revocation §§28.15.165(a)(l) and 28.15.181(a)(8) First Refusal – 90 days (mand) License revocation periods, including the minimum mandatory periods, vehicle forfeiture for second and subsequent refusals are the same as for first and subsequent revocations for DWI offense convictions. §28.15.165(d) **State Forfeiture** of the vehicle used in subsequent refusal offenses. This action is not mandatory. §28.35.036

Other:

Sanctions Following a Conviction for a DWI Offense:

See Footnote No. ²⁹ and Electronic Monitoring.

Criminal Sanctions:

²⁶ If the person successfully completes a court-ordered treatment program, the court may suspend up to 75 percent of the mandatory minimum sentence and up to 75 percent of the minimum fines required. § 28.35.030(p)

²⁷ For either DWI offense convictions or for convictions for refusal to submit to a chemical test, a previous offense is considered to be either a previous chemical test refusal or a previous DWI conviction. §§28.35.030(k)(4), 28.35.032(o) and 28.35.036(b)

²⁸ **Persons Under 21 Years Old.** A person > 14 but < 21 years old commits an “infraction” by refusing to submit to a chemical test after having been arrested for the offense of operating a motor vehicle after having consumed any quantity of alcohol. The sanctions for this offense are either a fine of not more than \$1,000 or community service. Community service may be offered to the defendant as an alternative to all or part of the fine sanction. §28.35.285(d) In addition, the driver's license is revoked via an administrative procedure for the following mandatory periods: first revocation – 90 days; second revocation – 1 year; and, third revocation - 3 years. §28.15.183(d)

²⁹ For either DWI offense convictions or for convictions for refusal to submit to a chemical test, a previous offense is considered to be either a previous chemical test refusal or a previous DWI conviction. §§28.35.030(k)(4), 28.35.032(o) and 28.35.036(b).

Imprisonment/Fine:

I. Class A Misdemeanor – Not more than **1 year**/not more than **\$10,000**
 II. Class C felony if third or subsequent offense within 10 years – Not more than **5 years**/not more than **\$50,000**.
 Defendants pleading guilty to DUI who successfully complete a court-ordered treatment program may be granted reduced sentences. This may only be done twice, the victim (if any) must be notified, and the court must find “that the treatment plan approximated the severity of the minimum period of imprisonment”.
 §§12.55.035, 12.55.125, 12.55.135 and 28.35.030

Mandatory Minimum Term:

I. Class A Misdemeanor offenses:³⁰ first offense – **72 consecutive hours**³¹; second offense – **20 days**; third offense – **60 days**; fourth offense – **120 days**; fifth offense – **240 days**; sixth and subsequent offense – **360 days**³²
 II. Class C felony offenses: third offense – **120 days**; fourth offense – **240 days**; fifth and subsequent offense – **360 days**
 §§28.35.030(b) and (n) and 28.35.032(g) and (p)

Mandatory Minimum Fine (\$):

I. Class A Misdemeanor offenses: first offense – **\$1500**; second offense – **\$3000**; third offense – **\$4000**; fourth

³⁰ The mandatory sanctions for a misdemeanor offense only apply if the offender has not been convicted of a felony offense. §§28.35.030(b) and (n) and 28.35.032(g) and (p)

³¹ If possible, this incarceration sentence is to be served in a community residential center. §§28.35.030(k) and 28.35.032(p)

³² If a person successfully completes a certain court-ordered treatment program, the court may suspend up to 75 percent of the mandatory minimum sentence and up to 50 percent of the mandatory fine §28.35.030(q)

Persons Under 21 Years Old. A person ≥ 14 but < 21 years old commits an “infraction” (1) by operating a motor vehicle after having consumed any quantity of alcohol or (2) by operating a motor vehicle within 24 hours after having either been cited for or refused to submit to a chemical test for such offense. The sanctions for these offenses are either a fine of not more than \$1,000 or community service. Community service may be offered to the defendant as an alternative to all or part of the fine sanction. §§28.35.280(a) and (d) and 28.35.290(a) and (d) In addition, for the offense of operating a motor vehicle “after having consumed any quantity of alcohol,” the driver’s license is revoked via an administrative procedure for the following periods: first revocation-30 days (mand); second revocation – 60 days (mand); third revocation – 90 days (60 days mandatory with limited driving privileges after this period); and, fourth or subsequent revocation – 1 year (60 days mandatory with limited driving privileges after this period). §28.15.183(d) and (f)

Electronic Monitoring. A person who is ordered to serve a definite term of imprisonment may be allowed to serve all or part of this term by “electronic monitoring.” §12.55.015(e)(2).

offense – \$5000; fifth offense – \$6000; sixth and subsequent offense – \$7000
 II. Class C felony offenses (third or subsequent offense within 10 years) – **\$10,000**

Other Penalties:
 Community Service:

Yes³³ first offense – At least **24 hours**;
second offense – At least **160 hours**
 §§28.35.030(k) and 28.35.032(o)
 Discretionary for subsequent offenses.
 §12.55.055

Restitution:
 (e.g., Victim's Fund)

Yes The court may order a defendant to pay direct compensation to a victim(s).
 §12.55.045

Other:

Ignition Interlock. As a condition of probation, if granted, the court may order a defendant to only operate motor vehicles equipped with “ignition interlock” devices. However, mandatory licensing sanctions still apply.
 §12.55.102(a)

Incarceration Costs. Except for indigent defendants, an offender may be required to pay the cost of their incarceration. However, such cost is limited to a maximum of \$2000.
 §§28.35.030(k) and 28.35.032(o)

EMS, Police, Fire Department Costs. A defendant may be ordered to pay the reasonable costs of any “emergency response” associated with an accident related to the drunk-driving offense. An “emergency response” includes emergency medical, law enforcement and fire department services. §28.35.030

Court-Ordered Drug Therapy. A court may order a defendant, while incarcerated, on parole, or probation to “take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage.” §28.35.030(b)4

Double Jeopardy. Based upon the same factual situation, a person who has been subjected to licensing action under the administrative per se law may also be subsequently prosecuted for a drunk-driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Zerkel*, 900 P.2d744 (Alaska App. 1995) Likewise, a person who has first been subjected to administrative licensing action for refusing to submit to a

³³ This community service is not an alternative to the mandatory minimum terms of imprisonment. For third and subsequent offenses, the length and type of community service is discretionary with the court.

chemical test under the implied consent law may also be subsequently prosecuted under this law, for the criminal offense of refusing to submit to such a test. This subsequent criminal trial does not constitute double jeopardy. *Arron v. City of Ketchikan*, 927 P.2d 335 (Alaska App. 1996)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action

Administrative Per Se Law: **Yes \geq .08 (BAC/BrAC) §28.15.165(a)(l) and (d)** Licensing revocation periods, including the minimum mandatory periods, for first and subsequent administrative actions are the same as for first and subsequent revocations for DWI offense convictions.

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): **Revocation** §28.15.181(a)(5)and(c)

Term of License Withdrawal (Days, Months, Years, etc.): First offense – Not less than **90 days**; second offense (within 10 years) – Not less than **1 year**; third offense(within 10 years) permanent subject to restoration under certain circumstances §28.35.030(77)(3); 28.35.030(p)

Mandatory Minimum Term of Withdrawal: First offense – **90 days** or **30 days** followed by a limited occupational license for 60 days with participation in an alcohol education and treatment program §28 (within 10 years) – **3 years**; fourth and subsequent offense (within 10 years) – **5 years**

Other:

Rehabilitation:

Alcohol Education: **Yes**³⁴ §28.35.030(c)

Alcohol Treatment: **Yes** §28.35.030(c)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses

(CDL): A person is “disqualified” from operating a CMV for not less than 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has either a percent by weight of alcohol in the blood \geq .04, a blood alcohol concentration \geq 40 milligrams of alcohol per 100 milliliters of blood, or a breath alcohol concentration of \geq .04 grams of alcohol per 210 liters of breath, (2) is under the influence of intoxicating liquor or any controlled substance or (3) refuses to submit to a breath test. For either (1) a second violation or (2) a combination of two violations of any of the above listed items, the “disqualification” is for life (10 years mand). For either (1) a subsequent violation or (2) a combination of more than two violations of any of the above listed items, there is a mandatory lifetime “disqualification”. A person who operates a

³⁴ For any DWI or refusal conviction, before the license is restored, a defendant may be required to complete either an alcohol education or treatment program the court feels is appropriate for that defendant. §28.15.211(d) A defendant may participate in this rehabilitation program either while incarcerated or while on probation. §§12.55.015(a)(10), 12.55.100(a)(5), 28.35.030(j) and 28.35.032(m)

CMV with a BAC/BrAC $\geq .04$ while under the influence of any controlled substance or who refuses to submit to a breath test is also subject to the regular DWI/implicit consent law criminal and administrative (licensing) sanctions, including all mandatory sanctions. In addition, a CMV operator who has any “measurable” or “detectable” amount of alcohol in the system must be placed “out-of-service” for 24 hours. This State’s CDL implicit consent law also requires that a CMV operator submit to a chemical test or tests (1) of the breath or blood for alcohol content or (2) of the blood or urine for a controlled substance if there is “probable cause to believe that the driver was operating a CMV while under the influence of an alcoholic beverage, inhalant, or controlled substance if the person was operating or driving a motor vehicle in this State that was involved in an accident causing death or serious physical injury to another person.” But a similar provision in the regular implicit consent law, §28.35.031(g), was declared unconstitutional by the Alaska-Court of Appeals. §§28.15.165, 28.15.219, 28.33.030, 28.33.031(a)(1) and (2), 28.33.130, 28.33.140 and 28.35.032(f)

Vehicle Impoundment/Confiscation:	Yes -mandatory for Class C felonies §28.35.030(n)(5)
Authorized by Specific Statutory Authority:	Yes State Forfeiture of the vehicle used in DWI offenses. §28.35.036; 28.35.030(n)(5)
Terms Upon Which Vehicle Will Be Released:	N/A
Other:	Local Forfeiture. Under §28.01.015, municipalities may enact ordinances to impound/forfeit motor vehicles for violations of local DWI/chemical test refusal laws. §28.01.015
Miscellaneous Sanctions Not Included Elsewhere:	None
<u>Other Criminal Actions Related to DWI:</u>	
<u>Homicide by Vehicle:</u>	
State Has Such a Law:	Yes for manslaughter and conduct resulting in the conviction involved driving while under the influence Class A felony; not more than 20 years ³⁵
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	
Mandatory Minimum Term:	7 years
Fine (\$ Range):	
Mandatory Minimum Fine:	
Administrative Licensing Action:	License revocation for a conviction of manslaughter resulting from the operation of a motor vehicle. §28.15.181 (a)(1) and (b).
Type of Action:	

³⁵ In some circumstances, a DWI-related death may be considered second degree murder. *Puzewicz v. State*, 856 P.2d 1178 (Alaska App. 1993); *Foxglove v. State*, 939 P.2d 669 (Alaska App. 1997).

Length of Term of
Licensing Withdrawal:

Mandatory Action--Minimum
Length of License Withdrawal:

Other:

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

See Footnote No. ³⁶.

Sanction:

Criminal:

Imprisonment (Term):

Class A Misdemeanor – Not more than
1 year §§12.55.135(a) and 28.15.291

Mandatory Minimum Term
of Imprisonment:

10 days Also a mandatory period of 80
hours of community service.
§28.15.291(b)(1)(C) and (b)(3).

Fine (\$ Range):

Not more than **\$5,000** §§12.55.035(b)(3)

Mandatory Minimum Fine:

\$500 §28.15.291(b)(1)(C)and(b)(3).

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Revocation §28.15.291(b)(4)

Length of Term of License

Withdrawal Action:

Original revocation **extended not less
than 90 days**

Mandatory Term of License

Withdrawal Action:

Original revocation **extended not less
than 90 days.**

Forfeiture:

The court may order forfeiture.
§28.15.291(b)(5)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

³⁶ It is Class A misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail term ≤1 year or a fine ≤\$5,000. The following mandatory sanctions are imposed: first offense, - jail for 20 days (10 days suspended) plus not less than 80 hours of community service; and, a subsequent offense (within 10 years) - a 60-day jail term and a fine of \$1,000. And, for both first and subsequent offenders, driving privileges cannot be restored for an additional 90 days. §§12.55.035, 12.55.135 and 28.33.150(a)(4), (a)(5), (b)(4) and (c).

Sanctions Following a Conviction of Driving While on Habitual Offender Status:
 Imprisonment (Term):

Mandatory Minimum Term of Imprisonment:
 Fine (\$ Range):
 Mandatory Minimum Fine (\$):
 Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:
Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No): **No**
 BAC Chemical Test Is Given to the Following Persons:
 Driver:
 Vehicle Passengers:
 Pedestrian:

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§04.16.051, .052 and .060
 Minimum Age (Years) Possession: **21** There are exemptions for parents or physicians furnishing alcoholic beverages to minors. §§04.16.050, .051 and .052
 Minimum Age (Years) Consumption: **21** There are exemptions for parents or physicians furnishing alcoholic beverages to minors. §§04.16.050, .051 and .052

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes**
I. Persons Who Hold Licenses Under the Alcoholic Beverage Law -
 The law limits liability to situations where a licensee has served alcoholic beverages either (1) to a person under 21 years old or (2) to a drunken person in a “criminally negligent” manner. §§04.16.030, 04.21.020(a) and 04.21.080(a)(1)³⁷ & ³⁸
II. Alcoholic Beverage Law Violators-
 Persons who serve alcoholic beverages to individuals without obtaining the appropriate licenses are “strictly liable”

³⁷ *Kavorkian v. Tommy's Elbow Room, Inc.*, 694 P.2d 160 (Alaska 1985) (rehearing, 711 P.2d 521 (Alaska 1985)).

³⁸ The dram shop law, §04.21.020(a), has been held constitutional. *Gonzales v. Safeway Stores, Inc.*, 882 P.2d 389 (Alaska 1994)

“Dram Shop Law” Concept Has Been Adopted
Via a Change to the Common
Law Rule by Action of the
Highest Court of Record in the State
(Case Citation):

Dram Shop Actions-Social Hosts:

Criminal Action Against Owner
or Employees of Establishments
that Serve Alcoholic Beverages
to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Administrative Actions Against Owners
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License

Withdrawal:

Criminal Actions Against Owners
or Employees of Establishments that
Serve Alcoholic Beverages or the
Wrong Type of Alcoholic Beverage
to Those Persons Under the Minimum
Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

for any resulting injuries sustained by
such individuals. §04.21.020(b)

No Previous case, *Nazareo v. Urie*,
638 P.2d 671 (Alaska 1981), was
indirectly abrogated by the dram
shop statute.

No³⁹ §04.16.020 and *Mulvihill v.
Union Oil Co.*, 859 P.2d 1310
(Alaska 1993)

Class A misdemeanor §§04.16.030
and 04.16.180

Not more than **1 year** §12.55.135(a)

Not more than **\$10,000** §12.55.035(b)(3)

For organizations – not more than
\$200,000 for offenses not resulting in
death; for offenses resulting in death –
not more than \$1 million.

§12. 55. 035(c)(1)(B)

Yes §04.16.180

First conviction-45-day suspension;
second conviction-90-day suspension;
third and/or subsequent convictions- No
time limit specified in statute. {The
suspensions and revocations are not
mandatory.} §04.16.180

Class A Misdemeanor §§04.16.052 and
04.16.180

Not more than **1 year** §12.55. 135(a)

³⁹ Under §04.21.020(a), a social host is not liable for the injuries sustained by an intoxicated guest.
Chokwak v. Worley, 912 P.2d 1248 (Alaska 1996).

Fine (\$ Range):	Not more than \$10,000 §12.55.035(b)(3) For organizations – not more than \$200,000. §12.55.035(c)(1)(B)
<u>Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes §04.16.180
Length of Term License Withdrawal:	<u>First conviction-45-day suspension;</u> <u>second conviction-90-day suspension;</u> <u>third and/or subsequent conviction – no</u> time limit specified in statute.
<u>Anti-Happy Hour Laws/Regulations:</u>	Yes §04.16.015
<u>Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverage in the Passenger Compartment of a Vehicle:</u>	
Open Container Law (Yes/No):	Yes Drivers only §28.35.029
Anti-Consumption Law (Yes/No):	Yes Drivers only 13 Alaska Administrative Code 02.545(a)