

Table 1.112

Statutory provisions related to alcohol use and driving

By State, as of Jan. 1, 2002

State	Preliminary breath test law	Administrative per se at:	Blood alcohol concentration levels as evidence in State courts		Open container law	Anti-consumption law	Dram shop law
			Illegal per se at:	Presumption at:			
Alabama		0.08	0.08	0.08	S		S
Alaska	S	0.08	0.08	0.08	S <sup>a</sup>	S <sup>a</sup>	S
Arizona	S	0.08	0.08	0.08	S	S	S
Arkansas		0.08	0.08			S	(b,c)
California	S	0.08 <sup>d</sup>	0.08	0.08	S	S	S <sup>e</sup>
Colorado	S	0.10	0.10	0.05, 0.10 <sup>f</sup>		S	S
Connecticut		0.10	0.10 <sup>g</sup>				S <sup>h</sup>
Delaware	S	0.10 <sup>i</sup>	0.10	0.10 <sup>j</sup>		S <sup>a</sup>	
District of Columbia	S	0.05 <sup>j</sup>	0.08	0.05 <sup>j</sup>	S	S	(b)
Florida	S	0.08	0.08	0.08 <sup>j</sup>	S	S	S <sup>k</sup>
Georgia		0.08	0.08		S	S	S
Hawaii	S	0.08	0.08	0.08 <sup>l</sup>	S	S	(b)
Idaho		0.08	0.08		S	S	S
Illinois	S	0.08	0.08	0.08	S	S <sup>m</sup>	S <sup>h</sup>
Indiana	S <sup>n</sup>	0.08	0.08	0.08 <sup>o</sup>	S <sup>p</sup>	S <sup>a</sup>	S
Iowa	S	0.10	0.10		S	S	S
Kansas	S	0.08	0.08	0.08 <sup>j</sup>	S	S	
Kentucky	S	(q)	0.08		S	S	S
Louisiana		0.10	0.10	0.10	S <sup>a</sup>	S <sup>a</sup>	S <sup>r</sup>
Maine		0.08	0.08		S	S	S <sup>h</sup>
Maryland	S	0.08	0.08	0.07 <sup>s</sup>	S <sup>m</sup>	S <sup>a</sup>	
Massachusetts		0.08		0.08	S		(b)
Michigan	S		0.10	0.07, 0.10 <sup>f</sup>	S	S	S
Minnesota	S	0.10	0.10		S	S	S
Mississippi	S	0.10	0.10				S
Missouri	S	0.08	0.08	0.08 <sup>j</sup>		S <sup>a</sup>	S
Montana	S		0.10	0.10	S <sup>t</sup>	S <sup>t</sup>	S
Nebraska	S	0.08	0.08		S	S	
Nevada	S	0.10	0.10		S	S <sup>a</sup>	
New Hampshire	S	0.08	0.08	0.08 <sup>j</sup>	S		S
New Jersey			0.10		S	S	S
New Mexico		0.08	0.08		S	S	S
New York	S	(q)	0.10	0.07, 0.10 <sup>u</sup>	S	S	S <sup>h,v</sup>
North Carolina	S	0.08	0.08		S	S	S <sup>h,v</sup>
North Dakota	S	0.10	0.10		S	S	S
Ohio		0.10	0.10		S	S	S
Oklahoma		0.08	0.08	0.05, 0.08 <sup>w</sup>	S	S	(b)
Oregon		0.08	0.08	0.08 <sup>x</sup>	S	S	S
Pennsylvania	S		0.10		S	S	S
Rhode Island	S		0.08		S		S
South Carolina		0.15	0.10	0.10 <sup>y</sup>	S	S	(z)
South Dakota	S		0.10	0.10	S	S	
Tennessee			0.10	0.10, 0.08 <sup>aa</sup>	S <sup>a</sup>	S <sup>a</sup>	S
Texas		0.08	0.08		S		S <sup>m</sup>
Utah		0.08	0.08		S	S	S <sup>h</sup>
Vermont	S	0.08	0.08	0.08 <sup>y</sup>		S <sup>a</sup>	S
Virginia	S	0.08	0.08	0.08		S <sup>a</sup>	
Washington		0.08	0.08		S	S	(b,k)
West Virginia	S	0.10 <sup>ab</sup>	0.10	0.10 <sup>o</sup>		S	(b)
Wisconsin	S	0.10 <sup>ac</sup>	0.10 <sup>ac</sup>	0.10 <sup>ad</sup>	S	S	S <sup>e</sup>
Wyoming		0.10	0.10		S <sup>a</sup>	S <sup>a</sup>	S <sup>ae</sup>

Note: These data were collected through a review of the statutory provisions of the 50 States, the District of Columbia, and Puerto Rico.

In the table, "S" indicates that such a provision is provided expressly by statute. A blank indicates that no statutory or case law provisions exist. "Preliminary breath test" laws refer to a breath test given by a law enforcement officer to a suspected drunk driver prior to an arrest for a drunk driving offense. These results are used, along with other evidence, by the officer to determine if there is probable cause to arrest the driver. "Administrative per se" laws allow State driver licensing agencies to either suspend or revoke a driver's license based on the specified blood alcohol concentration (BAC) or on other criteria related to alcohol or drug use and driving. Such action is independent of licensing action resulting from a criminal conviction for a drunk driving offense. The evidentiary weight given to BAC levels generally falls into one of two categories. "Illegal per se" laws make it a criminal offense to operate a motor vehicle at or above the specified alcohol concentration level in either the blood, breath, or urine. Under these laws, the specified level is considered conclusive evidence of intoxication in a court of law.

"Presumption" indicates that the specified level of alcohol concentration in a driver's blood, breath, or urine creates a presumption of intoxication in a court of law. Statutory provisions of several jurisdictions treat the 0.10 level as both presumptive and illegal per se evidence of driving under the influence. This appears to be the result of States having adopted one of the standards without amending statutes that had previously authorized the other standard. In such cases, the actual statutes should be consulted for clarification. "Open container law" refers to laws prohibiting the possession of open containers of alcoholic beverages in the passenger compartment of a motor vehicle. "Anti-consumption law" refers to laws prohibiting the consumption of alcoholic beverages in the passenger compartment of a motor vehicle. "Dram shop law" refers to laws that provide that a person who serves alcoholic beverages to an intoxicated individual may be liable for damages and injuries caused in a motor vehicle accident.

In all jurisdictions, use of a controlled substance or use of a controlled substance in conjunction with alcohol also constitutes the basis for a driving while intoxicated charge. Most jurisdictions have established more stringent BAC levels for operators of commercial motor vehicles, as well as juvenile motor vehicle operators. Statutes should be consulted for the full text and meaning of specific provisions.

Table 1.112

## Statutory provisions related to alcohol use and driving

By State, as of Jan. 1, 2002--Continued

<p><sup>a</sup>Applies to drivers only.</p> <p><sup>b</sup>Adopted via case law decisions.</p> <p><sup>c</sup>Case law has been modified by statute.</p> <p><sup>d</sup>Applies only to persons age 21 and older.</p> <p><sup>e</sup>Applies only to the actions of intoxicated minors.</p> <p><sup>f</sup>The lower number is driving while impaired; the higher is driving while under the influence.</p> <p><sup>g</sup>0.07 if the driver has a previous violation of driving under the influence at 0.10 or greater.</p> <p><sup>h</sup>This State has a statute that places a monetary limit on the amount of damages that can be awarded in dram shop liability actions.</p> <p><sup>i</sup>Constitutes conclusive evidence of a driving while intoxicated offense.</p> <p><sup>j</sup>Constitutes prima facie evidence of driving while under the influence.</p> <p><sup>k</sup>Applies only to the actions of intoxicated minors or persons known to be habitually addicted to alcohol.</p> <p><sup>l</sup>Competent evidence of driving while intoxicated.</p> <p><sup>m</sup>Limited application.</p> <p><sup>n</sup>Applies only to drunk driving offenses that are related to either an injury or death.</p> <p><sup>o</sup>Has both prima facie and presumptive evidence laws with blood alcohol concentration at this level.</p> <p><sup>p</sup>Provided the driver has an alcohol concentration of 0.04 or more.</p> <p><sup>q</sup>Alternative before driving while intoxicated criminal adjudication licensing action by the courts.</p> <p><sup>r</sup>The statute appears to have limited actions to those committed by minors.</p>	<p><sup>s</sup>An alcohol concentration equal to or greater than 0.07 but less than 0.10 constitutes prima facie evidence of driving while under the influence.</p> <p><sup>t</sup>Appears to be limited to persons operating "common carriers."</p> <p><sup>u</sup>Constitutes prima facie evidence of impairment.</p> <p><sup>v</sup>Applies specifically to the actions of intoxicated minors, but the law does not foreclose developing case law as to other types of dram shop action.</p> <p><sup>w</sup>The lower number is driving while impaired; the higher is prima facie evidence of driving under the influence.</p> <p><sup>x</sup>Not less than 0.08 constitutes being under the influence of intoxicating liquor.</p> <p><sup>y</sup>This blood alcohol level is an inference of driving while intoxicated.</p> <p><sup>z</sup>Possible via case law. Applies to actions of intoxicated minors.</p> <p><sup>aa</sup>For a first offense, an alcohol concentration of 0.10 or more; for a subsequent offense, an alcohol concentration of 0.08 or more.</p> <p><sup>ab</sup>Or under the influence of alcohol.</p> <p><sup>ac</sup>First and second offense 0.10; third offense 0.08; subsequent offenses 0.02.</p> <p><sup>ad</sup>0.10 is prima facie evidence for first and second offenses. 0.08 is prima facie evidence for third and subsequent offenses.</p> <p><sup>ae</sup>Liability limited to the actions of persons who are under 21 years old.</p>
---	--

Source: U.S. Department of Transportation, National Highway Traffic Safety Administration, *Digest of State Alcohol-Highway Safety Related Legislation, Current as of January 1, 2002* (Washington, DC: U.S. Department of Transportation, 2002), pp. 2-1--2-4. Table adapted by SOURCEBOOK staff.