STATE OF NEW YORK
INSURANCE DEPARTMENT
160 WEST BROADWAY
NEW YORK, NEW YORK 10013-3393

Circular Letter
No. 10 (1997)
April 30, 1997

TO: ALL AUTHORIZED PRIVATE PASSENGER AUTOMOBILE INSURERS IN NEW YORK STATE

RE: REQUIRED INFORMATIONAL STATEMENT ON THE CONSEQUENCES OF DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

Pursuant to Section 312(1) of the Vehicle and Traffic Law, upon issuance or renewal of a private passenger automobile insurance policy subject to Section 3425 of the Insurance Law, insurers are required to provide every insured with an informational statement, outlining the legal and financial consequences of convictions for operating a motor vehicle while under the influence of alcohol or drugs. This statute also requires the Insurance Department to prepare and supply such an informational statement to insurers, after consultation with the Commissioner of Motor Vehicles.

The most recent relevant changes were enacted by Chapter 196 of the Laws of 1996 which added a new Section 1192-a to the Vehicle and Traffic Law. This new legislation specifically prohibits the operation of a motor vehicle by anyone under age 21 after consuming alcohol. A person under age 21 is deemed to have consumed alcohol if chemical testing registers a blood alcohol content (BAC) between .02% - .07%. Such person would then be subject to the appropriate penalty after a hearing by the Department of Motor Vehicles. However, this is not considered a criminal offense. Also, in Chapter 312 of the Laws of 1994, Section 1193(2)(e) of the Vehicle and Traffic Law was amended by adding a new subparagraph 7 which requires a court to suspend a driver's license at arraignment if the driver's BAC level was found to be .10% or more by chemical testing at the time of arrest. Accordingly, Circular Letter No. 8 (1992) which previously addressed this subject is superseded by this Circular Letter, to which is attached a prescribed notice that updates the information on such penalties. Insurers must provide this informational statement to their insureds.

The penalties reflected in this informational statement became effective for all violations on or after November 1, 1996. Companies should furnish this statement to all newly written insureds no later than July 1, 1997, and to all other insureds with the next renewal or billing notice sent to them on or after August 1, 1997. Insurers may revise the format of the statement to accommodate their internal operating systems and mailing procedures, but any variation in the text of the attached statement must be submitted to the Insurance Department for review. Such submission shall include a letter pointing out deviations from the attached statement.

Very truly yours,

Stewart Keir, CPCU, CFE, CIE
Assistant Deputy Superintendent & Chief
Property and Casualty Bureau

TO ALL OPERATORS OF MOTOR VEHICLES IN NEW YORK STATE

As your insurance company, we are required by law to advise you of the legal and financial consequences of being convicted for operating a motor vehicle while under the influence of alcohol or drugs. We strongly endorse the message conveyed by the law -- that it doesn't pay to drink and drive.

Alcohol or drug impairment is a major problem involving not only the impaired driver, but other innocent drivers and pedestrians. We are constantly reminded of the serious consequences of drinking and driving, yet property damage, injuries and deaths caused by alcohol or drug-impaired driving continue to be a major problem. In fact, studies (such as those published in "Fatality Facts 1995" by the Insurance Institute for Highway Safety) show that 36% of fatally injured drivers had a blood alcohol content of .10% or more.

New York State has recently passed laws requiring the court to suspend a driver's license, pending prosecution, for excessive blood alcohol content at the time of arrest. Also, New York State has specifically imposed penalties for persons under the age of 21 who operate a motor vehicle after consuming alcohol.

Please familiarize yourself, and anyone else who operates your vehicle, with this important information. Please remember: **If you drink, don't drive!**

BASIC PENALTIES, DEGREE OF IMPAIRMENT AND INSURANCE PENALTIES

When your license is revoked by the Department of Motor Vehicles, you will be required to pay a $50 fee at the time of re-application, unless you participate in the New York State Alcohol and Drug Rehabilitation Program, known as the Drinking Driver Program. This fee is non-refundable even if your application is denied, and is in addition to any fines imposed by the courts.

If you have been drinking or taking drugs and cause a death or serious injury as a result of a traffic accident, you may face felony charges of vehicular manslaughter or vehicular assault. Conviction of such a charge could result in a $15,000 fine and/or up to fifteen years in prison.

If you attend the Drinking Driver Program, you must pay an administrative fee of $75 and a course tuition fee of $175. In addition, if you are required to obtain an evaluation and/or treatment for alcohol-related problems, you must also pay for these additional services.

If you drive while your license is suspended or revoked for DWI (Driving While Intoxicated), DWAI (Driving While Ability Impaired), or for refusing a chemical test, you face a mandatory jail term of 7 to 180 days or probation, and a mandatory fine of $500-$1000.

If you are under the age of 21 and deemed to have consumed alcohol (.02%-.07% blood alcohol content) while operating a motor vehicle, your license will be suspended for six months

for a first time offense. If you have two such offenses, your license will be revoked for a period of one year or until you reach the age of 21, whichever is greater.

If you are convicted of an alcohol-related offense outside of New York State, your license will be revoked in New York State for a minimum period of ninety (90) days. This is in addition to any fines and/or jail sentences imposed by a court in the state in which the incident occurred, or any action against your driving privilege in that state.

HOW MANY DRINKS MAKE YOU LEGALLY INTOXICATED?

In New York State, in addition to the common law offense of driving while intoxicated, there is an equivalent offense if you operate a motor vehicle with a blood alcohol content (BAC) of .10% or more. You may be convicted of this offense whether or not you are intoxicated or impaired. New York State also prohibits the operation of a motor vehicle while impaired by alcohol (DWAI). A BAC result of more than .05% but less than .10% is **evidence** of impairment but is not required to **prove** impairment.

Any amount of drinking will affect your judgment and coordination. The degree of impairment depends on four basic factors:

(a) how much you drink;
(b) how long you drink;
(c) eating before or during drinking, as food slows absorption of alcohol; and
(d) your body weight.

A 12-ounce can of beer, 5-ounce glass of wine, or a shot of 86-proof liquor all contain the same amount of alcohol. Your body metabolizes about one drink each hour. Only time will truly sober you up, not coffee, a walk, or a cold shower.

Therefore, if you consume more than one drink per hour, the likelihood is that you are at least DWAI if you weigh around 110 pounds and had 2 drinks, or DWAI if you had 3 drinks and weigh 170 pounds or more. As a rule of thumb for an average 140-160 pound person, BAC level rises .02% per hour per drink.

As an example, a 140-pound person who consumes 5 drinks in a two-hour period will have a .08% BAC (deducting .02% for the passage of time). Even if no more alcohol is consumed, that individual may not safely drive for at least 4 hours. Remember, <u>any</u> elevation in BAC will impair your judgment and coordination.

ALCOHOL/DRUG-RELATED CONVICTIONS AND YOUR AUTOMOBILE INSURANCE POLICY

Suspension or revocation of your driver's license (or the driver's license of any person who normally operates an automobile insured under your policy) is just cause for your insurance company to **<u>cancel your automobile insurance policy</u>**.

A conviction of driving while impaired or intoxicated through the use of alcohol or drugs will probably result in non-renewal of your insurance policy, and in your inability to obtain insurance with another company in the voluntary market. You will then find yourself relegated to the New York Automobile Insurance Plan (Assigned Risk Plan), at a substantially higher cost.

Currently, under the Assigned Risk Plan, a conviction of operating a motor vehicle while intoxicated or impaired by the use of alcohol or drugs will result in a **75% surcharge, increasing your automobile insurance premiums for three years**. Most automobile insurance companies will also surcharge your premiums substantially for any convictions of operating a motor vehicle while under the influence of alcohol or drugs.

NO-FAULT EXCLUSIONS

Still another reason for not driving in an intoxicated or impaired condition due to drinking or drugs, is that No-Fault benefits will not be available to you if you are injured as a result. Any basic economic loss (medical expenses, wage loss, other necessary expenses, death benefit) attributable to your own bodily injury would be outside of the No-Fault system. If you permit a non-DWI or non-DWAI person to drive your vehicle for you, then full No-Fault benefits will be available to you and all occupants of your vehicle in case of an accident.

Here, then, are the sobering facts:

FINES AND IMPRISONMENT PENALTIES FOR ALCOHOL/DRUG-RELATED DRIVING OFFENSES AS OF NOVEMBER 1, 1996

According to the New York State Vehicle and Traffic Law, the following penalties will be imposed for the noted violations:

DRIVING WHILE INTOXICATED (DWI) - All Vehicles

VIOLATION	MANDATORY FINE	MAXIMUM JAIL TERM	MANDATORY ACTION AGAINST LICENSE
First violation	$500-$1000	1 Year (Misdemeanor)	- Revoked at least 6 months - If CDL*, 1 year revocation - 1 year CDL disqualification
Two or more violations in 10 years	$1000-$5000	4 Years (Felony)	-Revoked at least 1 year - Permanent CDL disqualification

*Commercial Driver's License

DRIVING WHILE ABILITY IMPAIRED (DWAI) - Private Passenger Vehicle

VIOLATION	MANDATORY FINE	MAXIMUM JAIL TERM	MANDATORY ACTION AGAINST LICENSE
First violation	$300-$500	15 Days (Traffic Infraction)	-Suspended 90 days - If CDL, 1 year revocation - 1 year CDL disqualification
Violations within 5 years of any convictions for DWI or DWAI	$500-$750	30 Days (Traffic Infraction)	- Revoked at least 6 months - Permanent CDL disqualification
Violations within 10 years of any two or more convictions for DWI or DWAI	$750-$1500	180 Days (Misdemeanor)	-Revoked at least 6 months if current violation occurred within 10 years of the previous conviction - Permanent CDL disqualification

COMMERCIAL MOTOR VEHICLE

VIOLATION	MANDATORY FINE	MAXIMUM JAIL TERM	MANDATORY ACTION AGAINST LICENSE
Per se - Level 1 (.04% - .07% BAC)	$300-$500	15 Days (Traffic Infraction)	- 1 year CDL disqualification -1 year CDL revocation
Per se - Level II (more than .07% but less than .10%BAC)	$500-$1500	180 Days (misdemeanor)	- 1 year CDL disqualification - 1 year revocation

OPERATING A MOTOR VEHICLE UNDER THE AGE OF 21 AFTER CONSUMING ALCOHOL - Private Passenger Vehicle

VIOLATION	MANDATORY FINE	MAXIMUM JAIL TERM	MANDATORY ACTION AGAINST LICENSE
First violation	$125	N/A	- Suspended 6 months
Two or more violations	$125	N/A	- 1 year revocation or until the person reaches age 21, whichever is greater

CHEMICAL TEST REFUSAL

VIOLATION	MANDATORY FINE	MANDATORY ACTION AGAINST LICENSE
First refusal	$300	- revoked at least 6 months - if under the age of 21, 1 year revocation - if commercial motor vehicle, 1 year revocation
Refusal with prior alcohol-related incident within the past five years	$750	- revoked at least 1 year

Penalties (including fines and jail terms) may be higher for multiple offenses and for violations while transporting certain types of passengers or material.