



# LAWS OF ALASKA

2004

**Source**

HCS CSSB 170(FIN) am H

**Chapter No.**

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**AN ACT**

Relating to the justification of defense of self or others, immunity from prosecution, probation, discretionary parole, and the right to representation in certain criminal proceedings; relating to violation of a custodian's duty; relating to sexual abuse of a minor; relating to release of information concerning certain cases involving a minor; relating to local options regarding alcoholic beverages, the offense of furnishing or delivery of alcoholic beverages to a person under 21 years of age, and forfeiture of property used in, and money or other items of value used in financial transactions derived from, violation of certain laws relating to alcoholic beverages; relating to assault by means of a dangerous instrument; relating to operating or driving a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, to the refusal to submit to a chemical test, and to the presumptions concerning the chemical analysis of breath or blood; increasing the duration of certain provisions of domestic violence protective orders from six months to one year; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1



## **AN ACT**

1 Relating to the justification of defense of self or others, immunity from prosecution,  
2 probation, discretionary parole, and the right to representation in certain criminal proceedings;  
3 relating to violation of a custodian's duty; relating to sexual abuse of a minor; relating to  
4 release of information concerning certain cases involving a minor; relating to local options  
5 regarding alcoholic beverages, the offense of furnishing or delivery of alcoholic beverages to  
6 a person under 21 years of age, and forfeiture of property used in, and money or other items  
7 of value used in financial transactions derived from, violation of certain laws relating to  
8 alcoholic beverages; relating to assault by means of a dangerous instrument; relating to  
9 operating or driving a motor vehicle, aircraft, or watercraft while under the influence of an  
10 alcoholic beverage, inhalant, or controlled substance, to the refusal to submit to a chemical  
11 test, and to the presumptions concerning the chemical analysis of breath or blood; increasing

1 the duration of certain provisions of domestic violence protective orders from six months to  
2 one year; and providing for an effective date.

3  
4 \* **Section 1.** AS 04.11.010(c) is amended to read:

5 (c) **Unless a municipality or established village has adopted a more**  
6 **restrictive local option under AS 04.11.491(g), in** [IN] a criminal prosecution for  
7 possession of alcoholic beverages for sale in violation of (a) of this section, the fact  
8 that a person

9 **(1) possessed more than 12 liters of distilled spirits, 24 liters or more**  
10 **of wine, or 12 gallons or more of malt beverages in an area where the sale of alcoholic**  
11 **beverages is restricted or prohibited under AS 04.11.491 creates a presumption that**  
12 **the person possessed the alcoholic beverages for sale;**

13 **(2) sends, transports, or brings more than 12 liters of distilled**  
14 **spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages to an**  
15 **area where the sale of alcoholic beverages is restricted or prohibited under**  
16 **AS 04.11.491 creates a presumption that the person sent, transported, or brought**  
17 **the alcoholic beverages for sale in the area.**

18 \* **Sec. 2.** AS 04.11.010 is amended by adding a new subsection to read:

19 (d) In this section,

20 (1) "bring" has the meaning given in AS 04.11.499;

21 (2) "send" has the meaning given in AS 04.11.499;

22 (3) "transport" has the meaning given in AS 04.11.499.

23 \* **Sec. 3.** AS 04.11.150(g) is amended to read:

24 (g) If a shipment is to an area that has restricted the sale of alcoholic  
25 beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2), a package store  
26 licensee, agent, or employee may not ship to a purchaser more than 10 and one-half  
27 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt  
28 beverages in a calendar month, **or a lower amount of distilled spirits, wine, or malt**  
29 **beverages if the municipality or established village has adopted the lower amount**  
30 **by local option under AS 04.11.491(g).**

1     \* **Sec. 4.** AS 04.11.491 is amended by adding a new subsection to read:

2             (g) If a municipality or established village has adopted a local option under  
3             (a)(1), (2), (3), or (4), or (b)(1), (2), or (3) of this section, the municipality or  
4             established village, as part of the local option question or questions placed before the  
5             voters, may

6                     (1) adopt an amount of alcoholic beverages that may be imported that  
7                     is less than the amounts set out in AS 04.11.150(g);

8                     (2) adopt an amount of alcoholic beverages that would give rise to a  
9                     presumption that the person possessed the alcoholic beverages for sale; the amounts  
10                    adopted under this paragraph may be lower than those set out in AS 04.11.010(c);

11                    (3) opt to not apply a class C felony to violations of AS 04.16.051 that  
12                    apply solely by reason of the municipality or established village adopting a local  
13                    option under this section.

14     \* **Sec. 5.** AS 04.11.508(b) is amended to read:

15             (b) If the perimeter of an established village determined under (a) of this  
16             section includes any area that is

17                     (1) within a municipality

18                             (A) that has adopted a local option, the local option adopted  
19                             by the municipality applies in the overlapping area;

20                             (B) the local option adopted by the established village does  
21                             not apply in the overlapping area;

22                     (2) within the perimeter of another established village and, if the  
23                     other established village has

24                             (A) also adopted a local option under AS 04.11.491, the  
25                             local option of the established village that is less restrictive applies in the  
26                             overlapping area;

27                             (B) not adopted a local option under AS 04.11.491, the local  
28                             option does not apply in the overlapping area [OR WITHIN THE  
29                    PERIMETER OF ANOTHER ESTABLISHED VILLAGE, THE  
30                    PERIMETER DESCRIBED UNDER (a) OF THIS SECTION IS LIMITED  
31                    TO AN AREA THAT INCLUDES ONLY THE ESTABLISHED VILLAGE].

1     \* **Sec. 6.** AS 04.11.508(c) is amended to read:

2             (c) If the board determines that the perimeter of an established village as  
3             provided under (a) and (b) of this section does not accurately reflect the perimeter of  
4             the established village, the board may establish the perimeter of the established village  
5             and the areas of overlapping perimeter described under (b) of this section for  
6             purposes of applying a local option selected under this chapter.

7     \* **Sec. 7.** AS 04.16.051(d) is amended to read:

8             (d) A person acting with criminal negligence who violates this section is guilty  
9             of a class C felony if

10                 (1) within the five years preceding the violation, the person has been  
11                 previously convicted under

12                         (A) this section; or

13                         (B) a law or ordinance of this or another jurisdiction with  
14                         elements substantially similar to this section; [OR]

15                 (2) the person who receives the alcoholic beverage negligently causes  
16                 serious physical injury to or the death of another person while under the influence of  
17                 the alcoholic beverage received in violation of this section; in this paragraph,

18                         (A) "negligently" means acting with civil negligence; and

19                         (B) "serious physical injury" has the meaning given in  
20                 AS 11.81.900; or

21                 **(3) the violation occurs within the boundaries of a municipality or**  
22                 **the perimeter of an established village that has adopted a local option under**  
23                 **AS 04.11.491 and has not opted out of applying a class C felony to violations of**  
24                 **this section under AS 04.11.491(g).**

25     \* **Sec. 8.** AS 04.16.220(a) is amended to read:

26             (a) The following are subject to forfeiture:

27                 (1) alcoholic beverages manufactured, sold, offered for sale or  
28                 possessed for sale, bartered or exchanged for goods and services in this state in  
29                 violation of AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or  
30                 otherwise stored in violation of AS 04.21.060; alcoholic beverages sold, or offered for  
31                 sale in violation of a local option adopted under AS 04.11.491; alcoholic beverages

1 transported into the state and sold to persons not licensed under this chapter in  
2 violation of AS 04.16.170(b);

3 (2) materials and equipment used in the manufacture, sale, offering for  
4 sale, possession for sale, barter or exchange of alcoholic beverages for goods and  
5 services in this state in violation of AS 04.11.010; materials and equipment used in the  
6 stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060;  
7 materials and equipment used in the sale or offering for sale of an alcoholic beverage  
8 in an area in violation of a local option adopted under AS 04.11.491;

9 (3) aircraft, vehicles, or vessels used to transport, or facilitate the  
10 transportation of

11 (A) alcoholic beverages manufactured, sold, offered for sale or  
12 possessed for sale, bartered or exchanged for goods and services in this state in  
13 violation of AS 04.11.010;

14 (B) property stocked, warehoused, or otherwise stored in  
15 violation of AS 04.21.060;

16 (C) alcoholic beverages imported into a municipality or  
17 established village in violation of AS 04.11.499;

18 (4) alcoholic beverages found on licensed premises that do not bear  
19 federal excise stamps if excise stamps are required under federal law;

20 (5) alcoholic beverages, materials or equipment used in violation of  
21 AS 04.16.175;

22 **(6) money, securities, negotiable instruments, or other things of**  
23 **value used in financial transactions derived from activity prohibited under**  
24 **AS 04.11.010 or in violation of a local option adopted under AS 04.11.491.**

25 \* **Sec. 9.** AS 04.16.220(e) is amended to read:

26 (e) The owner of property subject to forfeiture under (a) **or (i)** of this section  
27 is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in  
28 an action under (d) of this section, the owner shows that the owner

29 **(1)** was not a party to the violation;

30 **(2)** [AND] had no actual knowledge **or reasonable cause to believe**  
31 that the property was used or was to be used in violation of the law; **and**

1                   **(3) had no actual knowledge or reasonable cause to believe that the**  
2                   **person committing the violation had**

3                   **(A) a criminal record for violating this title; or**

4                   **(B) committed other violations of this title.**

5       \* **Sec. 10.** AS 04.16.220(f) is amended to read:

6                   (f) A person other than the owner holding, or the assignee of, a lien, mortgage,  
7                   conditional sales contract on, or the right to possession to property subject to forfeiture  
8                   under (a) **or (i)** of this section is entitled to relief from the forfeiture in the nature of  
9                   remission of the forfeiture if, in an action under (d) of this section, the person shows  
10                  that the person

11                  **(1)** was not a party to the violation subjecting the property to  
12                  forfeiture;

13                  **(2)** [AND] had no actual knowledge **or reasonable cause to believe**  
14                  that the property was [USED OR WAS] to be used in violation of the law; **and**

15                  **(3) had no actual knowledge or reasonable cause to believe that the**  
16                  **person committing the violation had**

17                  **(A) a criminal record for violating this title; or**

18                  **(B) committed other violations of this title.**

19       \* **Sec. 11.** AS 04.16.220 is amended by adding new subsections to read:

20                  (i) Upon conviction for a violation of AS 04.11.010 or 04.11.499, if an  
21                  aircraft, vehicle, or watercraft is subject to forfeiture under (a) of this section, the court  
22                  shall, subject to remission to innocent parties under this section,

23                          (1) order the forfeiture of an aircraft to the state;

24                          (2) order the forfeiture of a vehicle or watercraft if

25                                  (A) the defendant has a prior felony conviction for a violation  
26                                  of AS 11.41 or a similar law in another jurisdiction;

27                                  (B) the defendant is on felony probation or parole;

28                                  (C) the defendant has a prior conviction for violating  
29                                  AS 04.11.010 or 04.11.499; or

30                                  (D) the quantity of alcohol transported in violation of this title  
31                                  was twice the presumptive amounts in AS 04.11.010(c).



1 (j) Notwithstanding (i) of this section, a court is not required to order the  
2 forfeiture of a vehicle or watercraft if the court determines that

3 (1) the vehicle or watercraft is the sole means of transportation for a  
4 family residing in a village;

5 (2) the court may impose conditions that will prevent the defendant's  
6 use of the vehicle or watercraft; and

7 (3) either

8 (A) a member of the family would be entitled to remission  
9 under this section if the family member were an owner of or held a security  
10 interest in the vehicle or watercraft; or

11 (B) if a member of the family would not be entitled to  
12 remission, the family member was unable as a practical matter to stop the  
13 violation making the vehicle or watercraft subject to forfeiture.

14 (k) When forfeiting property under (a), (d), or (i) of this section, a court may  
15 award to a municipal law enforcement agency that participated in the arrest or  
16 conviction of the defendant, the seizure of property, or the identification of property  
17 for seizure, (1) the property if the property is worth \$5,000 or less and is not money or  
18 some other thing that is divisible, or (2) up to 75 percent of the property or the value of  
19 the property if the property is worth more than \$5,000 or is money or some other thing  
20 that is divisible. In determining the percentage a municipal law enforcement agency  
21 may receive under this subsection, the court shall consider the municipal law  
22 enforcement agency's total involvement in the case relative to the involvement of the  
23 state.

24 (l) In this section, "village" means a community of fewer than 1,000 persons  
25 located off the interconnected state road system.

26 \* **Sec. 12.** AS 09.50.020(a) is amended to read:

27 (a) A person who is guilty of contempt is punishable by a fine of not more  
28 than \$300 or by imprisonment for not more than six months. However, when the  
29 contempt is one mentioned in AS 09.50.010(3) - (12), or in an action before a  
30 magistrate, the person is punishable by a fine of not more than \$100 unless it appears  
31 that a right or remedy of a party to an action or proceeding was defeated or prejudiced

1 by the contempt, in which case the penalty shall be as prescribed for contempts  
2 described in AS 09.50.010(1) **and** [,] (2) [, AND (13)].

3 \* **Sec. 13.** AS 11.41.220(a) is amended to read:

4 (a) A person commits the crime of assault in the third degree if that person

5 (1) recklessly

6 (A) places another person in fear of imminent serious physical  
7 injury by means of a dangerous instrument;

8 (B) causes physical injury to another person by means of a  
9 dangerous instrument; or

10 (C) while being 18 years of age or older

11 (i) causes physical injury to a child under 10 years of  
12 age and the injury reasonably requires medical treatment;

13 (ii) causes physical injury to a child under 10 years of  
14 age on more than one occasion;

15 (2) with intent to place another person in fear of death or serious  
16 physical injury to the person or the person's family member makes repeated threats to  
17 cause death or serious physical injury to another person; [OR]

18 (3) while being 18 years of age or older, knowingly causes physical  
19 injury to a child under 16 years of age but at least 10 years of age and the injury  
20 reasonably requires medical treatment; **or**

21 **(4) with criminal negligence causes serious physical injury under**  
22 **AS 11.81.900(b)(55)(B) to another person by means of a dangerous instrument.**

23 \* **Sec. 14.** AS 11.41.438(a) is amended to read:

24 (a) An offender commits the crime of sexual abuse of a minor in the third  
25 degree if

26 (1) **being under 16 years of age, the offender engages in sexual**  
27 **penetration with a person who is under 13 years of age and at least three years**  
28 **younger than the offender;**

29 **(2)** being 16 years of age or older, the offender engages in sexual  
30 contact with a person who is 13, 14, or 15 years of age and at least three years younger  
31 than the offender; or

1                   **(3)** [(2)] being 18 years of age or older, the offender engages in sexual  
2 penetration with a person who is 16 or 17 years of age and at least three years younger  
3 than the offender, and the offender occupies a position of authority in relation to the  
4 victim.

5   \* **Sec. 15.** AS 11.41.440(a) is amended to read:

6                   (a) An offender commits the crime of sexual abuse of a minor in the fourth  
7 degree if

8                         (1) being under 16 years of age, the offender engages in [SEXUAL  
9 PENETRATION OR] sexual contact with a person who is under 13 years of age and  
10 at least three years younger than the offender; or

11                        (2) being 18 years of age or older, the offender engages in sexual  
12 contact with a person who is 16 or 17 years of age and at least three years younger  
13 than the offender, and the offender occupies a position of authority in relation to the  
14 victim.

15   \* **Sec. 16.** AS 11.56 is amended by adding a new section to read:

16                   **Sec. 11.56.758. Violation of custodian's duty.** (a) A person commits the  
17 crime of violation of custodian's duty if the person knowingly fails, when acting as a  
18 custodian appointed by the court for a released person under AS 12.30, to report  
19 immediately as directed by the court that the person released has violated a condition  
20 of release.

21                       (b) Violation of custodian's duty is

22                                 (1) a class A misdemeanor if the released person is charged with a  
23 felony;

24                                 (2) a class B misdemeanor if the released person is charged with a  
25 misdemeanor.

26   \* **Sec. 17.** AS 11.81.330(a) is amended to read:

27                   (a) A person may use nondeadly force upon another when and to the extent the  
28 person reasonably believes it is necessary for self defense against what the person  
29 reasonably believes to be the use of unlawful force by the other, unless

30                         (1) the force involved was the product of mutual combat not  
31 authorized by law;

1 (2) the person claiming the defense of justification provoked the  
2 other's conduct with intent to cause physical injury to the other; [OR]

3 (3) the person claiming the defense of justification was the initial  
4 aggressor; or

5 (4) the force applied was the result of using a deadly weapon the  
6 person claiming the defense of justification possessed while

7 (A) acting alone or with others to further a felony criminal  
8 objective of the person or one or more other persons; or

9 (B) a participant in a felony transaction or purported  
10 transaction or in immediate flight from a felony transaction or purported  
11 transaction in violation of AS 11.71.

12 \* Sec. 18. AS 12.30.020(b)(1) is amended to read:

13 (1) place the person in the custody of a designated person or  
14 organization agreeing as a custodian to supervise the person; the court shall,  
15 personally and in writing, inform the custodian about the duties required of a  
16 custodian, and that failure to report immediately in accordance with the terms of the  
17 order that the person released has violated a condition of release may result in the  
18 custodian's being held criminally liable [IN CONTEMPT] under AS 11.56.758  
19 [AS 09.50.010];

20 \* Sec. 19. AS 12.30.020 is amended by adding a new subsection to read:

21 (i) The court shall issue written or oral findings to demonstrate why conditions  
22 provided under (b)(1) of this section needed to be imposed.

23 \* Sec. 20. AS 12.50.101(a) is amended to read:

24 (a) If a witness refuses, on the basis of the privilege against self-incrimination,  
25 to testify or provide other information in a criminal proceeding before or ancillary to a  
26 court or grand jury of this state, and a judge issues an order under (b) of this section,  
27 the witness may not refuse to comply with the order on the basis of the privilege  
28 against self-incrimination. If the witness fully complies with the order, the witness  
29 may not be prosecuted for an offense about which the witness is compelled to  
30 testify [NO TESTIMONY OR OTHER INFORMATION COMPELLED UNDER  
31 THE ORDER, OR INFORMATION DIRECTLY OR INDIRECTLY DERIVED

1 FROM THAT TESTIMONY OR OTHER INFORMATION, MAY BE USED  
2 AGAINST THE WITNESS IN A CRIMINAL CASE], except in a prosecution based  
3 on perjury, giving a false statement [,] or otherwise knowingly providing false  
4 information, or hindering prosecution.

5 \* **Sec. 21.** AS 12.50.101(e) is amended to read:

6 (e) **In** [AS USED IN] this section,

7 **(1) "higher-level felony" means an unclassified or class A felony;**

8 **(2) "lower-level felony" means a class B or class C felony;**

9 **(3) "other information" means books, papers, documents, records,**  
10 **recordings, or other similar material;**

11 **(4) "proffer" means a written or oral statement by the attorney for**  
12 **the witness, stating the attorney's good faith belief of the substance of the**  
13 **witness's testimony or other information.**

14 \* **Sec. 22.** AS 12.50.101 is amended by adding new subsections to read:

15 (f) If a witness refuses, or there is reason to believe the witness will refuse, to  
16 testify or provide other information based on the privilege against self-incrimination,  
17 and if the attorney general or the attorney general's designee has not applied for an  
18 order under (b) of this section, the court shall inform the witness of the right to be  
19 represented by an attorney, and that an attorney will be appointed for the witness if the  
20 witness qualifies for counsel under AS 18.85. The court shall recess the proceeding to  
21 allow the witness to consult with the attorney for the witness.

22 (g) If the attorney general or the attorney general's designee declines to seek  
23 an order under (b) of this section after the witness has had an opportunity to consult  
24 with an attorney, and the witness continues to refuse to testify or provide other  
25 information, the court shall hold a hearing to determine the validity of the claim of  
26 privilege by the witness. The hearing shall be in camera.

27 (h) At the hearing under (g) of this section, the attorney for the witness, in the  
28 form of a proffer, shall describe the testimony or other information that the witness  
29 claims is privileged. The proffer must include a description of how the testimony or  
30 other information could connect the witness with a crime. The proffer is privileged  
31 and inadmissible for any other purpose. If the proffer establishes a factual basis that

1       there is a real or substantial danger that the testimony or other information to be  
2       compelled would support a conviction or would furnish a link in the chain of evidence  
3       leading to conviction for a crime, the court may find that the witness has a valid claim  
4       of privilege.

5               (i) If the court finds that the witness has a valid claim of privilege, it shall  
6       advise an attorney designated by the attorney general of that finding and inform the  
7       attorney of the category or categories of offense to which the privilege applies: a  
8       higher-level felony, a lower-level felony, or a misdemeanor. If the designated attorney  
9       decides that granting immunity to the witness is appropriate, the designated attorney  
10      shall inform the prosecution of that decision, and shall deliver or cause to be delivered  
11      a letter to the witness, or an attorney for the witness, granting immunity to the witness.  
12      The designated attorney may not disclose the category of offense to anyone.

13   \* **Sec. 23.** AS 18.66.100(b) is amended to read:

14               (b) When a petition for a protective order is filed, the court shall schedule a  
15      hearing and provide at least 10 days' notice to the respondent of the hearing and of the  
16      respondent's right to appear and be heard, either in person or by an attorney. If the  
17      court finds by a preponderance of evidence that the respondent has committed a crime  
18      involving domestic violence against the petitioner, regardless of whether the  
19      respondent appears at the hearing, the court may order any relief available under (c) of  
20      this section. The provisions of a protective order issued under

21                       (1) (c)(1) of this section are effective until further order of the court;

22                       (2) (c)(2) - (16) of this section are effective for **one year** [SIX  
23      MONTHS] unless earlier dissolved by court order.

24   \* **Sec. 24.** AS 18.85.100 is amended by adding a new subsection to read:

25               (f) Notwithstanding (a) of this section, an indigent person is entitled to the  
26      representation and necessary services and facilities of representation as provided in (a)  
27      of this section when the person is a witness who refuses or there is reason to believe  
28      will refuse to testify or provide other information based on the privilege against self-  
29      incrimination.

30   \* **Sec. 25.** AS 28.35.030(a) is amended to read:

31               (a) A person commits the crime of driving while under the influence of an

1       alcoholic beverage, inhalant, or controlled substance if the person operates or drives a  
2       motor vehicle or operates an aircraft or a watercraft

3               (1) while under the influence of an alcoholic beverage, intoxicating  
4       liquor, inhalant, or any controlled substance, **singly or in combination; or**

5               (2) **and if** [WHEN], as determined by a chemical test taken within four  
6       hours after the alleged **operating or driving** [OFFENSE WAS COMMITTED], there  
7       is 0.08 percent or more by weight of alcohol in the person's blood or 80 milligrams or  
8       more of alcohol per 100 milliliters of blood, or **if** [WHEN] there is 0.08 grams or more  
9       of alcohol per 210 liters of the person's breath [; OR

10              (3) WHILE THE PERSON IS UNDER THE COMBINED  
11       INFLUENCE OF AN ALCOHOLIC BEVERAGE, AN INTOXICATING LIQUOR,  
12       AN INHALANT, AND A CONTROLLED SUBSTANCE].

13   \* **Sec. 26.** AS 28.35.030(n) is amended to read:

14              (n) A person is guilty of a class C felony if the person is convicted under (a) of  
15       this section and **either** has been previously convicted two or more times since  
16       January 1, 1996, and within the 10 years preceding the date of the present offense, **or**  
17       **punishment under this subsection or under AS 28.35.032(p) was previously**  
18       **imposed within the last 10 years.** For purposes of determining minimum sentences  
19       based on previous convictions, the provisions of (r)(4) of this section apply. Upon  
20       conviction, the court

21              (1) shall impose a fine of not less than \$10,000 and a minimum  
22       sentence of imprisonment of not less than

23                      (A) 120 days if the person has been previously convicted twice;

24                      (B) 240 days if the person has been previously convicted three  
25       times;

26                      (C) 360 days if the person has been previously convicted four  
27       or more times;

28              (2) may not

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

1 (B) suspend imposition of sentence;

2 (3) shall permanently revoke the person's driver's license, privilege to  
3 drive, or privilege to obtain a license subject to restoration of the license under (o) of  
4 this section;

5 (4) may order that the person, while incarcerated or as a condition of  
6 probation or parole, take a drug or combination of drugs, intended to prevent the  
7 consumption of an alcoholic beverage; a condition of probation or parole imposed  
8 under this paragraph is in addition to any other condition authorized under another  
9 provision of law;

10 (5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft,  
11 or aircraft used in the commission of the offense, subject to remission under  
12 AS 28.35.037; and

13 (6) shall order the department to revoke the registration for any vehicle  
14 registered by the department in the name of the person convicted under this  
15 subsection; if a person convicted under this subsection is a registered co-owner of a  
16 vehicle or is registered as a co-owner under a business name, the department shall  
17 reissue the vehicle registration and omit the name of the person convicted under this  
18 subsection.

19 \* **Sec. 27.** AS 28.35.030 is amended by adding a new subsection to read:

20 (s) In a prosecution under (a) of this section, a person may introduce evidence  
21 on the amount of alcohol consumed before or after operating or driving the motor  
22 vehicle, aircraft, or watercraft to rebut or explain the results of a chemical test, but the  
23 consumption of alcohol before operating or driving may not be used as a defense that  
24 the chemical test did not measure the blood alcohol at the time of the operating or  
25 driving. Consumption of alcohol after operating or driving the motor vehicle, aircraft,  
26 or watercraft may be used to raise such a defense.

27 \* **Sec. 28.** AS 28.35.032(p) is amended to read:

28 (p) A person is guilty of a class C felony if the person is convicted under this  
29 section and **either** has been previously convicted two or more times since January 1,  
30 1996, and within the 10 years preceding the date of the present offense, **or**  
31 **punishment under this subsection or under AS 28.35.030(n) was previously**



1 **imposed within the last 10 years.** For purposes of determining minimum sentences  
2 based on previous convictions, the provisions of AS 28.35.030(r)(4) apply. Upon  
3 conviction,

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

6 (A) 120 days if the person has been previously convicted twice;

7 (B) 240 days if the person has been previously convicted three  
8 times;

9 (C) 360 days if the person has been previously convicted four  
10 or more times;

11 (2) the court may not

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

15 (B) suspend imposition of sentence;

16 (3) the court shall permanently revoke the person's driver's license,  
17 privilege to drive, or privilege to obtain a license subject to restoration under (q) of  
18 this section;

19 (4) the court may order that the person, while incarcerated or as a  
20 condition of probation or parole, take a drug, or combination of drugs, intended to  
21 prevent consumption of an alcoholic beverage; a condition of probation or parole  
22 imposed under this paragraph is in addition to any other condition authorized under  
23 another provision of law;

24 (5) the sentence imposed by the court under this subsection shall run  
25 consecutively with any other sentence of imprisonment imposed on the person;

26 (6) the court shall order forfeiture under AS 28.35.036, of the motor  
27 vehicle, aircraft, or watercraft used in the commission of the offense, subject to  
28 remission under AS 28.35.037; and

29 (7) the court shall order the department to revoke the registration for  
30 any vehicle registered by the department in the name of the person convicted under  
31 this subsection; if a person convicted under this subsection is a registered co-owner of

1 a vehicle, the department shall reissue the vehicle registration and omit the name of  
2 the person convicted under this subsection.

3 \* **Sec. 29.** AS 28.35.033(c) is amended to read:

4 (c) **Except as provided in AS 28.35.030(s), the** [THE] provisions of (a) of  
5 this section may not be construed to limit the introduction of any other competent  
6 evidence bearing upon the question of whether the person was or was not under the  
7 influence of intoxicating liquor.

8 \* **Sec. 30.** AS 47.12.310 is amended by adding a new subsection to read:

9 (k) A state or municipal agency, other than a state or municipal law  
10 enforcement agency, or authorized employee may disclose to the public information  
11 regarding a case as may be necessary to protect the safety of the public provided the  
12 disclosure is authorized by regulations adopted by the department.

13 \* **Sec. 31.** AS 09.50.010(13) is repealed.

14 \* **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to  
15 read:

16 APPLICABILITY. (a) The changes made in secs. 7 - 11, 13 - 15, 17, and 25 of this  
17 Act apply to offenses committed on or after the respective effective date of those sections.

18 (b) Sections 26 and 28 of this Act apply to offenses occurring on or after the effective  
19 date of those sections, except that previous punishment, referred to in AS 28.35.030(n), as  
20 amended by sec. 26 of this Act, and in AS 28.35.032(p), as amended by sec. 28 of this Act,  
21 includes punishment imposed before, on, or after the effective date of secs. 26 and 28 of this  
22 Act.

23 (c) Sections 16, 18, and 19 of this Act apply to custodians who fail to report on or  
24 after the effective date of secs. 16, 18, and 19 of this Act, for persons released for offenses  
25 committed before, on, or after the effective date of secs. 16, 18, and 19 of this Act.

26 (d) The changes made in secs. 20, 22, 24, 27, and 29 of this Act apply to criminal  
27 proceedings for offenses committed before, on, or after the effective date of those sections.

28 (e) Section 30 of this Act applies to an offense occurring before, on, or after the  
29 effective date of that section.

30 \* **Sec. 33.** Sections 1 - 22 and 24 - 32 of this Act take effect July 1, 2004.