



# LAWS OF ALASKA

1990

**Source**

SCS CSHB 53(Jud)

**Chapter No.**

119

## AN ACT

Relating to the privilege to drive, driver licensing, driving while intoxicated, and other procedures and matters related to driving and operating aircraft and watercraft and the revocation of driving privileges; amending Alaska Rules of Appellate Procedure 603 and 611(d); and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 14

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 14, 1990  
Actual Effective Date: January 1, 1991

## AN ACT

Relating to the privilege to drive, driver licensing, driving while intoxicated, and other procedures and matters related to driving and operating aircraft and watercraft and the revocation of driving privileges; amending Alaska Rules of Appellate Procedure 603 and 611(d); and providing for an effective date.

\* Section 1. AS 28.05.011 is amended to read:

Sec. 28.05.011. DUTY OF COMMISSIONER TO ADOPT REGULATIONS. The commissioner shall, unless otherwise provided by statute, adopt regulations in compliance with the Administrative Procedure Act (AS 44.62) necessary to carry out the provisions of this title and other statutes the administration of which is vested in the department. The regulations must include, but are not limited to:

(1) rules of the road relating to the driving, stopping, standing, parking, and other conduct of vehicles, to pedestrians, and to official traffic control devices;

(2) minimum equipment for vehicles, including, but not limited to, minimum standards of compliance to be met by manufacturers and vehicle sales and repairs businesses;

(3) inspection of vehicles, and the removal of vehicles from areas of public use when they are found to be in a defective or unsafe condition;

1 (4) registration, titling, transfer, and abandonment of  
2 vehicles;

3 (5) licensng of drivers of vehicles and procedures for  
4 obtaining limited license privileges;

5 (6) financial responsibility relating to vehicles;

6 (7) management of records of the department required for  
7 the administration of this title and regulations adopted under this  
8 title, including provisions for ensuring the accuracy of information  
9 contained in automated and manual information retrieval systems;

10 (8) [REPEALED];

11 (9)] definitions of words and phrases used in this title  
12 and in regulations adopted under this title unless otherwise provided  
13 by statute;

14 (9) [(10)] registration of motor vehicle, trailer, and  
15 semi-trailer dealers; and

16 (10) [(11)] certification and regulation of junk yards.

17 \* Sec. 2. AS 28.15.071 is amended by adding a new subsection to read:

18 (e) This section does not apply to a person under 18 years of  
19 age who is legally emancipated under AS 09.55.590 or a similar law in  
20 another jurisdiction.

21 \* Sec. 3. AS 28.15.165(a) is amended to read:

22 (a) If a chemical test administered under AS 28.35.031(a) to a  
23 person operating [DRIVING] a motor vehicle or aircraft [FOR WHICH A  
24 DRIVER'S LICENSE IS REQUIRED] produces a result described in AS 28.-  
25 35.030(a)(2) or if a person under arrest for operating [DRIVING] a  
26 motor vehicle or aircraft [FOR WHICH A DRIVER'S LICENSE IS REQUIRED]  
27 refuses to submit to a chemical test under AS 28.35.031(a), a law  
28 enforcement officer shall read a notice and deliver a copy to the  
29 person. The notice must advise that

(1) the department intends to revoke the person's driver's license, [OR NONRESIDENT] privilege to drive, or privilege to obtain a license, or refuse to issue an original license to the person;

(2) the person has the right to administrative review of the revocation or determination not to issue an original license;

(3) if the person has a driver's license or a nonresident privilege to drive, the notice itself is a temporary driver's license that expires seven days after it is delivered to the person;

(4) revocation of the person's driver's license, [OR NONRESIDENT] privilege to drive, or privilege to obtain a license, or a determination not to issue an original license takes [SHALL TAKE] effect seven days after delivery of the notice to the person [UPON EXPIRATION OF THE TEMPORARY DRIVER'S LICENSE] unless the person, within seven days, requests an administrative review.

\* Sec. 4. AS 28.15.165(c) is repealed and reenacted to read:

(c) The department shall revoke the person's license, privilege to drive, or privilege to obtain a license, or refuse to issue an original license, effective seven days after delivery to the person of the notice required under (a) of this section, upon receipt of a sworn report of a law enforcement officer

(1) that a chemical test under AS 28.35.031(a) produced a result described in AS 28.35.030(a)(2) or that a person refused to submit to a chemical test under AS 28.35.031(a);

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

(3) describing the circumstances surrounding the arrest and the grounds for the officer's belief that the person was intoxicated while operating a motor vehicle or aircraft.

\* Sec. 5. AS 28.15.165(d) is amended to read:

1 (d) The period of revocation of a driver's license, privilege to  
2 drive, or privilege to obtain a license by the department under this  
3 section shall be for the appropriate minimum period for court revoca-  
4 tions under AS 28.15.181(c). A department hearing officer may grant  
5 limited license privileges in accordance with the standards set out in  
6 AS 28.15.201 to a person whose driver's license or nonresident privi-  
7 lege to drive was revoked under this section.

8 \* Sec. 6. AS 28.15.166(a) is amended to read:

9 (a) A person who has received a notice under AS 28.15.165(a) may  
10 make a written request for administrative review of the department's  
11 action under AS 28.15.165(c) or for limited license privileges under  
12 AS 28.15.165(d). If the person's driver's license has not been previ-  
13 ously surrendered to the department, it shall be surrendered to the  
14 department at the time the request for review is made.

15 \* Sec. 7. AS 28.15.166(b) is amended to read:

16 (b) A request for review of the department's revocation under  
17 AS 28.15.165 shall be made within seven days after receipt of the  
18 notice under AS 28.15.165 or the right to review is waived and the  
19 action of the department under AS 28.15.165(c) is final. If a written  
20 request for a review is made after expiration of the seven-day period,  
21 and if it is accompanied by the applicant's verified statement ex-  
22 plaining the failure to make a timely request for a review, the de-  
23 partment shall receive and consider the request. If the department  
24 finds that the person was unable to make a timely request because of  
25 lack of actual notice of the revocation or because of factors of  
26 physical incapacity such as hospitalization or incarceration, the  
27 department shall waive the period of limitation, reopen the matter,  
28 and grant the review request. An initial request for limited license  
29 privileges may be made at any time. Subsequent requests for limited

license privileges may not be made unless the applicant demonstrates a significant change in circumstances.

\* Sec. 8. AS 28.15.166(g) is amended to read:

(g) The hearing for review of a revocation by the department under AS 28.15.165 [UNDER THIS SECTION] shall be limited to the issues of whether the arresting officer had reasonable grounds to believe that the person was operating [DRIVING] a motor vehicle or aircraft while intoxicated and whether

(1) the person refused to submit to a chemical test under AS 28.35.031(a) after being advised that refusal would result in the suspension, revocation, or denial of the person's license, [OR NON-RESIDENT] privilege to drive, or privilege to obtain a license, and that the refusal is a misdemeanor; or

(2) the chemical test authorized under AS 28.35.031(a) and administered to the person produced a result described in AS 28.35.-030(a)(2).

\* Sec. 9. AS 28.15.166(j) is amended to read:

(j) If the issues set out in (g) of this section are determined in the affirmative by a preponderance of the evidence, the hearing officer shall sustain the action of the department. If one or more of the issues is determined in the negative, the department's revocation action shall be rescinded.

\* Sec. 10. AS 28.15.166(n) is repealed and reenacted to read:

(n) The filing of an appeal under (m) of this section or a petition for review does not automatically stay the department's order or revocation. The court may grant a stay of the order or revocation only upon a motion and hearing, and upon a finding that there is a reasonable probability that the petitioner will prevail on the merits and that the petitioner will suffer irreparable harm if the order is

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1 not stayed.

2 \* Sec. 11. AS 28.15.181(a) is amended to read:

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

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

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

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

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

15 (5) operating [DRIVING] a motor vehicle or aircraft while  
16 intoxicated;

17 (6) reckless driving;

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

20 (8) refusal to submit to a chemical test under AS 28.35.032  
21 while under arrest for operating a motor vehicle or aircraft while  
22 intoxicated;

23 (9) driving while license canceled, suspended, revoked or  
24 in violation of a limitation.

25 \* Sec. 12. AS 28.15.181(b) is amended to read:

26 (b) A court convicting a person of an offense described in  
27 (a)(1) - (4), (6), or (7) of this section shall revoke that person's  
28 driver's license, privilege to drive, or privilege to obtain a license  
29 for not less than 30 days for the first conviction, unless the court

determines that the person's ability to earn a livelihood would be severely impaired and a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public. If a court limits a person's license under this subsection, it shall do so for not less than 60 days. Upon a subsequent conviction of a person for any offense described in (a)(1) - (4), (6), or (7) of this section occurring within 10 years after a prior conviction, the court shall revoke the person's license, privilege to drive, or privilege to obtain a license and may not grant the person limited license privileges for the following periods:

- (1) not less than one year for the second conviction; and
- (2) not less than three years for a third or subsequent conviction.

\* Sec. 13. AS 28.15.181(c) is amended to read:

(c) A court convicting a person of an offense described in (a)(5) or (8) of this section arising out of the operation of a motor vehicle or aircraft [FOR WHICH A DRIVER'S LICENSE IS REQUIRED] shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license. The revocation may be concurrent with or consecutive to an administrative revocation under AS 28.15.165. The court may not, except as provided in AS 28.15.201 [(e) OF THIS SECTION], grant limited license privileges during the minimum period of revocation. The minimum periods of revocation are [FOR THE FOLLOWING PERIODS]:

- (1) at least 90 days if the person has not been previously convicted;
- (2) at least one year if the person has been previously convicted once;
- (3) at least five years if the person has been previously

1 convicted twice;

2 (4) at least 10 years if the person has been previously  
3 convicted more than twice [NOT LESS THAN 90 DAYS IF, WITHIN THE PRE-  
4 CEDING 10 YEARS, THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF AN  
5 OFFENSE

6 (A) DESCRIBED IN (a)(5) OR (8) OF THIS SECTION; OR

7 (B) UNDER A LAW OR ORDINANCE IN ANOTHER JURISDICTION  
8 WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED IN  
9 (a)(5) OR (8) OF THIS SECTION;

10 (2) NOT LESS THAN ONE YEAR IF, WITHIN THE PRECEDING 10  
11 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF ONE OFFENSE

12 (A) DESCRIBED IN (a)(5) OR (8) OF THIS SECTION; OR

13 (B) UNDER A LAW OR ORDINANCE IN ANOTHER JURISDICTION  
14 WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED IN  
15 (a)(5) OR (8) OF THIS SECTION;

16 (3) NOT LESS THAN 10 YEARS IF, WITHIN THE PRECEDING 10  
17 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF MORE THAN ONE OF  
18 THE FOLLOWING OFFENSES OR HAS MORE THAN ONCE BEEN PREVIOUSLY CONVICTED  
19 OF ONE OF THE FOLLOWING OFFENSES:

20 (A) AN OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS  
21 SECTION; OR

22 (B) AN OFFENSE UNDER ANOTHER LAW OR ORDINANCE IN  
23 ANOTHER JURISDICTION WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN  
24 OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS SECTION].

25 \* Sec. 14. AS 28.15.181(d) is amended to read:

26 (d) A court convicting a person of an offense described in  
27 (a)(9) of this section shall revoke that person's driver's license,  
28 privilege to drive, or privilege to obtain a license for not less than  
29 the minimum period under AS 28.15.291(b)(4) [AS 28.15.291(c)].

\* Sec. 15. AS 28.15.181(f) is amended to read:

(f) In [FOR PURPOSES OF] this section, "previously convicted" means having been convicted in this or another jurisdiction, within 10 years preceding the date of the present offense, of operating a motor vehicle, aircraft, or watercraft while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements; convictions for both operating a motor vehicle, aircraft, or watercraft [DRIVING] while intoxicated and for refusal to submit to a chemical test of breath [UNDER AS 28.35.031(a)], if arising out of a single transaction and a single arrest, are considered one previous conviction.

\* Sec. 16. AS 28.15.201(a) is amended to read:

(a) A court of competent jurisdiction, or a hearing officer under AS 28.15.165, may, for good cause, impose limitations upon the driver's license of a person that will enable the person to earn a livelihood without excessive risk or danger to the public. However, no limitation may be placed upon a driver's license until after a review has been made of the person's driving record and other relevant information, nor may a limitation be imposed when a statute specifically prohibits the limitation of a license for a violation of its provisions. In determining whether to grant limited license privileges, a court or hearing officer may consider all the relevant facts, including whether the person

(1) is enrolled in an alcoholism treatment program in which the person receives antabuse or a similar chemical substance intended to produce an aversion to alcohol in the treatment of alcoholism;

(2) is ordered to operate a motor vehicle only with an ignition interlock device or similar equipment designed to prevent a

1 motor vehicle from being operated by a person who has consumed an  
2 alcoholic beverage;

3 (3) is participating in a program of random testing de-  
4 signed to detect the presence of alcohol.

5 \* Sec. 17. AS 28.15.201(b) is amended to read:

6 (b) A court or hearing officer imposing a limitation under this  
7 section shall

8 (1) require the surrender of the driver's license; and

9 (2) issue to the licensee a certificate valid for the  
10 duration of the limitation.

11 \* Sec. 18. AS 28.15.201 is amended by adding new subsections to read:

12 (d) A court revoking a driver's license under AS 28.15.181(c),  
13 or a hearing officer revoking a driver's license under AS 28.15.-  
14 165(c), may grant limited license privileges if (1) the court or the  
15 hearing officer determines that the person's ability to earn a liveli-  
16 hood would be severely impaired; (2) a limitation under (a) of this  
17 section can be placed on the license that will enable the person to  
18 earn a livelihood without excessive danger to the public; and (3) the  
19 court or hearing officer determines that the person has successfully  
20 completed an alcoholism education and rehabilitation treatment pro-  
21 gram. Limited license privileges may only be granted to the person  
22 for the final 60 days during which the license was revoked if the  
23 person has not been previously convicted more than once, for the final  
24 two years during which the license was revoked if the person has not  
25 been previously convicted more than twice, and for the final five  
26 years during which the license was revoked if the person has not been  
27 previously convicted more than five times. The court or the hearing  
28 officer may not grant limited license privileges if the person has  
29 been previously convicted more than six times.

(e) Notwithstanding (d) of this section, a court revoking a driver's license under AS 28.15.181(c), or a hearing officer revoking a driver's license under AS 28.15.165(c), may grant limited license privileges for the final seven years during which the license was revoked if

(1) the person has been previously convicted twice and not more than twice;

(2) the court or hearing officer determines that the person's ability to earn a livelihood would be severely impaired and a limitation under (a) of this section can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public;

(3) the conviction for which the license was revoked occurred before the effective date of this Act; and

(4) the court or hearing officer determines that the person has successfully completed an alcoholism education and rehabilitation treatment program.

(f) In this section, "previously convicted" means having been convicted in this or another jurisdiction, within 10 years preceding the date of the present offense, of operating a motor vehicle, aircraft, or watercraft while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under AS 28.35.032 while under arrest for operating a motor vehicle, aircraft, or watercraft or another law or ordinance with substantially similar elements.

\* Sec. 19. AS 28.15.211(a) is amended to read:

(a) Except for a point system suspension or revocation under AS 28.15.221 - 28.15.241 and unless provided otherwise by law, and unless the suspension or revocation was for a cause that has been

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1 removed, a person whose driver's license, [OR] privilege to drive, or  
2 privilege to obtain a license [A MOTOR VEHICLE IN THIS STATE] has been  
3 suspended or revoked may not apply for a new license, and [NOR MAY]  
4 the person's driving privilege may not be restored, until the expira-  
5 tion of

6 (1) one month from the date on which the license, privilege  
7 to drive, or privilege to obtain a license was suspended or revoked  
8 for a first conviction of the particular offense from which the sus-  
9 pension or revocation resulted;

10 (2) three months from the date on which the license, privi-  
11 lege to drive, or privilege to obtain a license was suspended or  
12 revoked for a second conviction within 12 consecutive months of the  
13 same offense from which the suspension or revocation resulted;

14 (3) one year from the date on which the license, privilege  
15 to drive, or privilege to obtain a license was suspended or revoked  
16 for a third or subsequent conviction within 12 consecutive months of  
17 the same offense from which the suspension or revocation resulted.

18 \* Sec. 20. AS 28.15.211(b) is amended to read:

19 (b) A limitation, suspension, or revocation of a driver's li-  
20 cence, privilege to drive, or privilege to obtain a license imposed by  
21 a court takes effect on the date of final judgment, except that if  
22 another limitation, suspension, or revocation [OF LICENSE] is in  
23 effect on the date of final judgment, the effective date of the last  
24 imposed limitation, suspension, or revocation is at the end of the  
25 last day of the previous limitation, suspension, or revocation unless  
26 the court specifies otherwise.

27 \* Sec. 21. AS 28.15.221 is amended to read:

28 Sec. 28.15.221. POINT SYSTEM. (a) For the purpose of identify-  
29 ing habitually reckless or negligent drivers and habitual or frequent

violators of traffic laws, the commissioner shall adopt regulations establishing a uniform system for the suspension, revocation, limitation, or denial of a driver's license, privilege to drive, or privilege to obtain a license [OR DRIVING PRIVILEGE] by assigning demerit points for convictions for violations of traffic laws that are required to be reported to the department under AS 28.15.191 and AS 28.-37.130.

(b) The regulations adopted under (a) of this section shall include a designated level of point accumulation which identifies drivers who are habitually reckless or negligent or who are habitual or frequent violators of traffic laws, so as to show a disrespect for traffic laws and a disregard for the safety of other persons. In formulating the point system authorized by this section, the commissioner shall, in the interest of interstate uniformity, provide for suspension, revocation or denial of a driver's license, privilege to drive, or privilege to obtain a license [OR PRIVILEGE] for an accumulation of 12 or more points as a result of offenses committed during any consecutive 12-month period or 18 or more points as a result of offenses committed during any 24-month period.

\* Sec. 22. AS 28.15.291 is repealed and reenacted to read:

Sec. 28.15.291. DRIVING WHILE LICENSE CANCELED, SUSPENDED, REVOKED, OR IN VIOLATION OF A LIMITATION. (a) A person is guilty of a class A misdemeanor if the person

(1) drives a motor vehicle on a highway or vehicular way or area at a time when that person's driver's license, privilege to drive, or privilege to obtain a license has been canceled, suspended, or revoked in this or another jurisdiction; or

(2) drives in violation of a limitation placed upon that person's license or privilege to drive in this or another

jurisdiction.

(b) Upon conviction under (a) of this section, the court

(1) shall impose a minimum sentence of imprisonment

(A) if the person has not been previously convicted, of not less than 10 days with 10 days suspended, including a mandatory condition of probation that the defendant complete not less than 80 hours of community work service;

(B) if the person has been previously convicted, of not less than 10 days;

(C) if the person's driver's license, privilege to drive, or privilege to obtain a license was revoked under circumstances described in AS 28.15.181(c)(1), or if the person was driving in violation of a limited license issued under AS 28.15.201(d) following that revocation, of not less than 20 days with 10 days suspended, and a fine of not less than \$500, including a mandatory condition of probation that the defendant complete not less than 80 hours of community work service;

(D) if the person's driver's license, privilege to drive, or privilege to obtain a license was revoked under circumstances described in AS 28.15.181(c)(2), (3), or (4) or if the person was driving in violation of a limited license issued under AS 28.15.201(d) following that revocation, of not less than 30 days and a fine of not less than \$1,000;

(2) may impose additional conditions of probation;

(3) may not

(A) suspend execution of sentence or grant probation except on condition that the person serve a minimum term of imprisonment and perform required community work service as provided in (1) of this subsection;

(B) suspend imposition of sentence; and

(4) shall revoke the person's license, privilege to drive, or privilege to obtain a license, and the person may not be issued a new license nor may the privilege to drive or obtain a license be restored for an additional period of not less than 90 days after the date that the person would have been entitled to restoration of driving privileges.

(c) In this section, "previously convicted" means having been convicted in this or another jurisdiction, within 10 years preceding the date of the present offense, of a violation of this section or another law or ordinance with substantially similar elements.

\* Sec. 23. AS 28.35.030(b) is repealed and reenacted to read:

(b) Driving while intoxicated is a class A misdemeanor. Upon conviction

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

(A) not less than 72 consecutive hours and a fine of not less than \$250 if the person has not been previously convicted;

(B) not less than 20 days and a fine of not less than \$500 if the person has been previously convicted once;

(C) not less than 60 days and a fine of not less than \$1,000 if the person has been previously convicted twice;

(D) not less than 120 days and a fine of not less than \$2,000 if the person has been previously convicted three times;

(E) not less than 240 days and a fine of not less than \$3,000 if the person has been previously convicted four times;

(F) not less than 360 days and a fine of not less than \$4,000 if the person has been previously convicted more than four

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1 times;

2 (2) the court may not

3 (A) suspend execution of sentence or grant probation  
4 except on condition that the person serve the minimum imprison-  
5 ment under (1) of this subsection;

6 (B) suspend imposition of sentence;

7 (3) the court shall revoke the person's driver's license,  
8 privilege to drive, or privilege to obtain a license under AS 28.15.-  
9 181, and may order the motor vehicle or aircraft that was used in  
10 commission of the offense to be forfeited under AS 28.35.036.

11 \* Sec. 24. AS 28.35.030(h) is amended to read:

12 (h) In this section,

13 (1) "operate an aircraft" means to use, navigate, pilot, or  
14 taxi an aircraft in the airspace over this state, or upon the land or  
15 water inside this state;

16 (2) "operate a watercraft" means to navigate or use a  
17 vessel used or capable of being used as a means of transportation on  
18 water for recreational or commercial purposes on all waters, fresh or  
19 salt, inland or coastal, inside the territorial limits or under the  
20 jurisdiction of the state;

21 (3) "previously convicted" means having been convicted in  
22 this or another jurisdiction, within 10 years preceding the date of  
23 the present offense, of operating a motor vehicle, aircraft, or water-  
24 craft while intoxicated under this section or another law or ordinance  
25 with substantially similar elements, or of refusal to submit to a  
26 chemical test under AS 28.35.032 or another law or ordinance with  
27 substantially similar elements; convictions for both operating a motor  
28 vehicle, aircraft, or watercraft while intoxicated and for refusal to  
29 submit to a chemical test of breath, if arising out of a single

transaction and a single arrest, are considered one previous conviction.

\* Sec. 25. AS 28.35.030 is amended by adding new subsections to read:

(i) The court shall order a person convicted under this section to satisfy the screening, evaluation, referral, and program requirements of an agency authorized by the court to make referrals for rehabilitative treatment or to provide rehabilitative treatment.

(j) A program of inpatient treatment may be required by the authorized agency under (i) of this section only if authorized in the judgment, and may not exceed the maximum term of inpatient treatment specified in the judgment. A person who has been referred for inpatient treatment under this subsection may make a written request to the sentencing court asking the court to review the referral. The request for review shall be made within seven days of the agency's referral, and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(k) If a person fails to satisfy the requirements of an authorized agency under (j) of this section, the court

(1) may impose any portion of a suspended sentence;

(2) may punish the failure as contempt of court under AS 09.50.010 or as a violation of a condition of probation;

(3) shall order the revocation or suspension of the person's driver's license, privilege to drive, and privilege to obtain a license until the requirements are satisfied.

\* Sec. 26. AS 28.35.032(a) is amended to read:

(a) If a person under arrest refuses the request of a law enforcement officer to submit to a chemical test under AS 28.35.031(a), after being advised by the officer that the refusal will, if that

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1 person was arrested while operating [OR DRIVING] a motor vehicle or  
2 aircraft [FOR WHICH A DRIVER'S LICENSE IS REQUIRED], result in the  
3 denial or revocation of the license or nonresident privilege to drive,  
4 that the refusal may be used against the person in a civil or criminal  
5 action or proceeding arising out of an act alleged to have been com-  
6 mitted by the person while operating [OR DRIVING] a motor vehicle, [OR  
7 OPERATING] an aircraft or a watercraft while intoxicated, and that the  
8 refusal is a crime [MISDEMEANOR], a chemical test may not be given,  
9 except as provided by AS 28.35.035.

10 \* Sec. 27. AS 28.35.032(g) is repealed and reenacted to read:

11 (g) Upon conviction under this section

12 (1) the court shall impose a minimum sentence of imprison-  
13 ment of

14 (A) not less than 72 consecutive hours and a fine of  
15 not less than \$250 if the person has not been previously convict-  
16 ed;

17 (B) not less than 20 days and a fine of not less than  
18 \$500 if the person has been previously convicted once;

19 (C) not less than 60 days and a fine of not less than  
20 \$1,000 if the person has been previously convicted twice;

21 (D) not less than 120 days and a fine of not less than  
22 \$2,000 if the person has been previously convicted three times;

23 (E) not less than 240 days and a fine of not less than  
24 \$3,000 if the person has been previously convicted four times;

25 (F) not less than 360 days and a fine of not less than  
26 \$4,000 if the person has been previously convicted more than four  
27 times;

28 (2) the court may not

29 (A) suspend execution of the sentence required by (1)

of this subsection or grant probation, except on condition that the person serve the minimum imprisonment under (1) of this subsection; or

(B) suspend imposition of sentence;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.-181, and may order the motor vehicle or aircraft that was used in commission of the offense be forfeited under AS 28.35.036; and

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

\* Sec. 28. AS 28.35.032 is amended by adding new subsections to read:

(1) The court shall order a person convicted under this section to satisfy the screening, evaluation, referral, and program requirements of an agency authorized by the court to make referrals for rehabilitative treatment or to provide rehabilitative treatment.

(m) A program of inpatient treatment may be required by the authorized agency under (1) of this section only if authorized in the judgment, and may not exceed the maximum term of inpatient treatment specified in the judgment. A person who has been referred for inpatient treatment under this subsection may make a written request to the sentencing court asking the court to review the referral. The request for review shall be made within seven days of the agency's referral, and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(n) If a person fails to satisfy the requirements of an authorized agency under (m) of this section, the court

(1) may impose any portion of a suspended sentence;

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(2) may punish the failure as contempt of court under AS 09.50.010 or as a violation of a condition of probation;

(3) shall order the revocation or suspension of the person's driver's license, privilege to drive, and privilege to obtain a license until the requirements are satisfied.

(o) In this section, "previously convicted" means having been convicted in this or another jurisdiction, within 10 years preceding the date of the present offense, of operating a motor vehicle, aircraft, or watercraft while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements; convictions for both operating a motor vehicle, aircraft, or watercraft while intoxicated and for refusal to submit to a chemical test of breath, if arising out of a single transaction and a single arrest, are considered one previous conviction.

\* Sec. 29. AS 28.35.035(a) is amended to read:

(a) If a person is under arrest for an offense arising out of acts alleged to have been committed while the person was operating [DRIVING] a motor vehicle, aircraft, or watercraft while intoxicated, and that arrest results from an accident that causes death or physical injury to another person, a chemical test may be administered without the consent of the person arrested to determine the amount of alcohol in that person's breath or blood.

\* Sec. 30. AS 28.35.036(a) is amended to read:

(a) After conviction of an offense under AS 28.35.030 or 28.-35.032 [INVOLVING A MOTOR VEHICLE OF A TYPE FOR WHICH A DRIVER'S LICENSE IS REQUIRED], the state may move the court to order the forfeiture of the motor vehicle, or aircraft involved in the commission

of the offense if the convicted person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses:

(1) driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements; or

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

\* Sec. 31. AS 28.35.037 is amended to read:

Sec. 28.35.037. REMISSION OF FORFEITURES. (a) Upon receiving notice from the court of the time and place set for a hearing under AS 28.35.036, the state shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle, or aircraft, written notice that includes

(1) a description of the motor vehicle, or aircraft;

(2) the time and place of the forfeiture hearing;

(3) the legal authority under which the motor vehicle, or aircraft, may be forfeited;

(4) notice of the right to intervene to protect the interest in the motor vehicle, or aircraft.

(b) At the hearing, a person who claims an ownership or security interest in the motor vehicle, or aircraft, must establish by a preponderance of the evidence that

(1) the petitioner has an interest in the motor vehicle, or aircraft, acquired in good faith;

(2) a person other than the petitioner was convicted of the offense that resulted in the forfeiture; and

(3) before parting with the motor vehicle, or aircraft, the petitioner did not know or have reasonable cause to believe that

1 it would be used in the commission of an offense.

2 (c) If a person satisfies the requirements of (b) of this sec-  
3 tion, the court shall order that an amount equal to the value of the  
4 petitioner's interest in the motor vehicle, or aircraft, be paid to  
5 the petitioner or the court shall order that the motor vehicle, or  
6 aircraft, be released to the petitioner together with title to the  
7 motor vehicle, or aircraft.

8 (d) Forfeiture of a motor vehicle, or aircraft, under AS 28.35.-  
9 036 is without prejudice to the rights, and does not extinguish the  
10 claims of a creditor with an interest in the motor vehicle, or air-  
11 craft.

12 \* Sec. 32. AS 28.35.038 is amended to read:

13 Sec. 28.35.038. MUNICIPAL IMPOUNDMENT AND FORFEITURE. Notwith-  
14 standing other provisions in this title, a municipality may adopt an  
15 ordinance providing for the impoundment or forfeiture of a motor  
16 vehicle, or aircraft, involved in the commission of an offense under  
17 AS 28.35.030, 28.35.032, or an ordinance with elements substantially  
18 similar to AS 28.35.030 or 28.35.032. An ordinance adopted under this  
19 section is not required to be consistent with this title or regu-  
20 lations adopted under this title.

21 \* Sec. 33. AS 28.40.100(a)(5) is repealed and reenacted to read:

22 (5) "driver's license" or "license," when used in relation  
23 to driver licensing, means a license or permit to drive a motor vehi-  
24 cle, or the privilege to drive or to obtain a license to drive a motor  
25 vehicle, under the laws of this state, whether or not a person holds a  
26 valid license issued in this or another jurisdiction;

27 \* Sec. 34. AS 28.15.166(1), 28.15.181(e), AS 28.35.030(c), and 28.35.-  
28 030(f) are repealed.

29 \* Sec. 35. The provisions of sec. 10 of this Act have the effect of  
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changing Alaska Rules of Appellate Procedure 603 and 611(d) by prohibiting an automatic stay of the administrative revocation of a driver's license pending appeal or petition for review and by limiting the power of the court to stay the administrative revocation of a driver's license.

\* Sec. 36. APPLICABILITY. The provisions of this Act apply to judicial proceedings and administrative proceedings by the Department of Public Safety relating to offenses that are committed after December 31, 1990.

\* Sec. 37. This Act takes effect January 1, 1991.