

HOUSE BILL NO. 358

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE KELLY

Introduced: 1/28/98

Referred: Transportation

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to impoundment or forfeiture of a motor vehicle, aircraft, or
2 watercraft; and providing for an effective date."

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

4 * **Section 1. FINDINGS AND PURPOSE.** (a) The legislature finds that

5 (1) drunk driving is a serious threat to public safety and causes major property
6 damage and many deaths in the state;

7 (2) motor vehicle, aircraft, or watercraft used in the commission of a drunk
8 driving offense are dangerous instruments and should be impounded and in certain cases
9 forfeited to the state;

10 (3) the enactment of impoundment or forfeiture laws is a reasonable method
11 to achieve the goal of reducing the number of people who commit drunk driving offenses.

12 (b) It is the purpose of this Act to

13 (1) promote public safety by reducing the number of people who drink and
14 drive;

1 (2) deter drunk driving by impounding and in certain cases forfeiting motor
2 vehicle, aircraft, or watercraft used in the commission of drunk driving offenses.

3 * **Sec. 2.** AS 04.21.065(a) is amended to read:

4 (a) A holder of one of the following types of licenses or permits shall post on
5 the licensed or designated premises two separate warning signs as described in (b) of
6 this section **and the two separate warning signs described under (m) of this**
7 **section:**

8 (1) beverage dispensary license;

9 (2) restaurant or eating place license;

10 (3) club license;

11 (4) brewery license; this paragraph applies only to a brewery that
12 permits a person to sample portions of the brewery's product;

13 (5) package store license;

14 (6) common carrier dispensary license;

15 (7) recreational site license;

16 (8) pub license;

17 (9) winery license; this paragraph applies only to a winery that permits
18 a person to sample portions of the winery's product;

19 (10) caterer's permit;

20 (11) special events permit;

21 (12) conditional contractor's permit;

22 (13) another license or permit issued by the board authorizing
23 consumption of alcoholic beverages.

24 * **Sec. 3.** AS 04.21.065 is amended by adding a new subsection to read:

25 (m) A licensee shall display at conspicuous places on licensed premises two
26 signs warning that a motor vehicle may be seized in cases of driving while intoxicated
27 or refusal to submit to chemical tests. One of these warning signs shall be at least 18
28 inches by 24 inches in size and must read in lettering at least two inches high and in
29 contrasting colors "DRIVE DRUNK - LOSE YOUR CAR." The sign described in the
30 preceding sentence must carry a logo or illustration approved by the board that shows
31 an automobile being towed. The second warning sign shall be at least 14 inches by

1 18 inches and must read in letters at least one-quarter inch high and in contrasting
2 colors "WARNING: IF YOU DRIVE WHILE INTOXICATED OR LET ANYONE
3 DRIVE YOUR VEHICLE WHILE INTOXICATED, YOU WILL LOSE YOUR
4 VEHICLE. The police SEIZE cars and trucks driven by intoxicated drivers. A motor
5 vehicle will be IMPOUNDED for 30 days for the driver's first DWI offense. A motor
6 vehicle will be FORFEITED if the driver has been previously convicted of DWI in the
7 past (10) years."

8 * **Sec. 4.** AS 12.30.020 is amended by adding new subsections to read:

9 (i) In addition to the conditions of release imposed under (b) of this section,
10 the conditions of release established for a person charged with a violation of
11 AS 28.35.030 or 28.35.032 must include at a minimum an order that the person's
12 interest, if any, in the motor vehicle, aircraft, or watercraft alleged in an oral statement
13 by a police officer, criminal complaint, information, or indictment to have been used
14 in the commission of the offense be forfeited if the person does not appear as ordered.
15 This subsection applies to any release before judgment of conviction on a charge of
16 violating AS 28.35.030 or 28.35.032, including any release on the person's own
17 recognizance.

18 (j) The judicial officer who sets the conditions of release for a person arrested
19 for a violation of AS 28.35.030 or 28.35.032 shall, in addition to the conditions of
20 release required under (b) of this section, set a motor vehicle, aircraft, or watercraft
21 return bond for the motor vehicle, aircraft, or watercraft alleged in an oral statement
22 of a police officer or criminal complaint, information, or indictment to have been used
23 in the commission of the offense if the records of the Department of Public Safety, or
24 the records of an agency with similar responsibilities in another state, show that the
25 person arrested for the offense has any interest in the motor vehicle, aircraft, or
26 watercraft. The purpose of setting a motor vehicle, aircraft, or watercraft return bond
27 is to secure the presence of the motor vehicle, aircraft, or watercraft pending trial and
28 to provide security to be forfeited along with the proceeds of a sale, transfer, or
29 encumbrance if the person's interest in the motor vehicle, aircraft, or watercraft is sold,
30 transferred, or encumbered after the motor vehicle, aircraft, or watercraft has been
31 released pending trial. A person who secures the release of a motor vehicle, aircraft,

1 or watercraft under a motor vehicle, aircraft, or watercraft return bond must return the
2 motor vehicle, aircraft, or watercraft to the custody of the state upon order of the court.
3 If the motor vehicle's, aircraft's, or watercraft's release has been obtained through the
4 posting of a motor vehicle, aircraft, or watercraft return bond and the motor vehicle,
5 aircraft, or watercraft is not returned as required by the court's order after a judgment
6 of conviction, the state may, in addition to obtaining the forfeited bond funds, seize
7 the motor vehicle, aircraft, or watercraft to implement the impoundment or forfeiture
8 ordered by the court. If the person has not been previously convicted, the judicial
9 officer setting the motor vehicle, aircraft, or watercraft return bond shall order that the
10 requirement of the motor vehicle, aircraft, or watercraft return bond shall automatically
11 expire 30 days after the motor vehicle, aircraft, or watercraft has been seized if the
12 motor vehicle, aircraft, or watercraft has not been released under a motor vehicle,
13 aircraft, or watercraft return bond. The motor vehicle, aircraft, or watercraft return
14 bond set under this subsection may only be posted by a person alleged to have used
15 the motor vehicle, aircraft, or watercraft while violating AS 28.35.030 or 28.35.032 or
16 by a person who agrees to return the motor vehicle, aircraft, or watercraft upon order
17 of the court upon penalty of forfeiture of the bond. A motor vehicle, aircraft, or
18 watercraft return bond may only be posted in cash and must be set at a minimum of
19 (1) \$250 if the person has not been previously convicted; (2) \$500 if the person has
20 been previously convicted and the motor vehicle, aircraft, or watercraft is 20 years old
21 or older; (3) \$1,000 if the person has been previously convicted and the motor vehicle,
22 aircraft, or watercraft is 15 years old or older but less than 20 years old; (4) \$1,500
23 if the person has been previously convicted and the motor vehicle, aircraft, or
24 watercraft is 10 years old or older but less than 15 years old; (5) \$2,000 if the person
25 has been previously convicted and the motor vehicle, aircraft, or watercraft is five
26 years old or older but less than 10 years old; and (6) \$2,500 if the person has been
27 previously convicted and the motor vehicle, aircraft, or watercraft is less than five
28 years old. In this subsection, "previously convicted" has the meaning given in
29 AS 28.35.030.

30 (k) A motor vehicle, aircraft, or watercraft return bond may be set above the
31 minimum provided under (j) of this section if the motor vehicle, aircraft, or watercraft

1 appears to have an unusually high value for its age. A motor vehicle, aircraft, or
2 watercraft for which a bond is required under (j) of this section may not be released
3 pending trial until (1) the person seeking release of the motor vehicle, aircraft, or
4 watercraft has provided proof of ownership of the motor vehicle, aircraft, or watercraft
5 and paid or provided proof of payment of the motor vehicle, aircraft, or watercraft
6 return bond and towing and storage fees, including the \$160 administrative fee to
7 offset the department's processing costs; or (2) the court makes a specific finding that
8 the seizure of the motor vehicle, aircraft, or watercraft was legally unjustified and the
9 specific finding follows a contested hearing or is established by a stipulation between
10 the parties. If a motor vehicle, aircraft, or watercraft has not been impounded for a
11 longer period than the motor vehicle, aircraft, or watercraft would be impounded if the
12 person were convicted, the court may not delete the requirement of the motor vehicle,
13 aircraft, or watercraft return bond or exonerate a posted motor vehicle, aircraft, or
14 watercraft return bond until the motor vehicle, aircraft, or watercraft for which bond
15 has been posted is returned to the department under a court order. In this subsection,
16 "legally unjustified" means there was no reasonable suspicion for the stop or probable
17 cause for the arrest.

18 (l) A motor vehicle, aircraft, or watercraft that is subject to a court order
19 setting a motor vehicle, aircraft, or watercraft return bond under (j) of this section and
20 has not been released under that order is subject to the disposal provisions of
21 AS 28.10.502(c) if a criminal complaint, information, or indictment is not filed by the
22 date and time of the scheduled arraignment alleging a violation of AS 28.35.030 or
23 28.35.032, or if the count of the criminal complaint, information, or indictment
24 alleging a violation of AS 28.35.030 or 28.35.032 is amended upon motion of the
25 prosecution, is dismissed by the prosecution, or is resolved by the acquittal of the
26 person alleged to have violated AS 28.35.030 or 28.35.032. A motor vehicle, aircraft,
27 or watercraft return bond expires on the date and time of the scheduled arraignment
28 if a criminal complaint, information, or indictment alleging a violation of AS 28.35.030
29 or 28.35.032 is filed by the date and time of the scheduled arraignment.

30 * **Sec. 5.** AS 28.35.030(b) is amended to read:

31 (b) Except as provided under (n) of this section, driving while intoxicated is

1 a class A misdemeanor. Upon conviction

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

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

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

7 (C) not less than 60 days and a fine of not less than \$1,000 if
8 the person has been previously convicted twice and is not subject to
9 punishment under (n) of this section;

10 (D) not less than 120 days and a fine of not less than \$2,000
11 if the person has been previously convicted three times and is not subject to
12 punishment under (n) of this section;

13 (E) not less than 240 days and a fine of not less than \$3,000 if
14 the person has been previously convicted four times and is not subject to
15 punishment under (n) of this section;

16 (F) not less than 360 days and a fine of not less than \$4,000 if
17 the person has been previously convicted more than four times and is not
18 subject to punishment under (n) of this section;

19 (2) the court may not

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

23 (B) suspend imposition of sentence;

24 (3) the court shall revoke the person's driver's license, privilege to
25 drive, or privilege to obtain a license under AS 28.15.181, **shall order the motor**
26 **vehicle, aircraft, or watercraft used in the commission of the offense impounded**
27 **as required under AS 28.35.036**, and may order the motor vehicle, [OR] aircraft, **or**
28 **watercraft** that was used in commission of the offense to be forfeited under
29 **AS 28.35.037**;

30 **(4) the court shall order that any motor vehicle, aircraft, or**
31 **watercraft return bond that has been posted under AS 12.30.020(j) to secure the**

1 release of the motor vehicle, aircraft, or watercraft be forfeited to the state if the
2 motor vehicle, aircraft, or watercraft subject to the motor vehicle, aircraft, or
3 watercraft return bond is not returned to the custody of the state within five days
4 after the sentencing; the court shall order that any motor vehicle, aircraft, or
5 watercraft return bond posted to secure the release of the motor vehicle, aircraft,
6 or watercraft be exonerated when the motor vehicle, aircraft, or watercraft has
7 been returned to the custody of the state as required by this paragraph; the court
8 may also order that any proceeds of any sale, transfer, or encumbrance of the
9 motor vehicle, aircraft, or watercraft be forfeited to the state if the motor vehicle,
10 aircraft, or watercraft has been sold, transferred, or encumbered while the motor
11 vehicle, aircraft, or watercraft has been subject to a motor vehicle, aircraft, or
12 watercraft return bond; a motor vehicle, aircraft, or watercraft ordered
13 impounded under AS 28.35.036 may not be released until after the person seeking
14 release of the motor vehicle, aircraft, or watercraft has satisfied the release
15 provisions of AS 12.30.020(k); any order of impoundment under AS 28.35.036 or
16 forfeiture under AS 28.35.037 is subject to the rights of lienholders and coowners
17 who are not the person convicted under this section as those rights are
18 adjudicated in proceedings under AS 28.35.037; if the state has brought a civil
19 action under AS 28.35.037 seeking forfeiture as against all those with an interest
20 in the motor vehicle, aircraft, or watercraft except the person charged with a
21 violation of this section, that civil action shall provide the sole forum in which
22 lienholders and coowners who claim an interest in the motor vehicle, aircraft, or
23 watercraft but are not the person charged with a violation of this section can seek
24 relief; in this paragraph, "interest in the motor vehicle, aircraft, or watercraft"
25 means a right, claim, or title to the motor vehicle, aircraft, or watercraft or a
26 legal share in the motor vehicle, aircraft, or watercraft that the oral statement of
27 a police officer, complaint, indictment, or information alleges was used in the
28 commission of a violation of this section [AS 28.35.036].

29 * Sec. 6. AS 28.35.030(n) is amended to read:

30 (n) A person is guilty of a class C felony if the person is convicted of driving
31 while intoxicated and has been previously convicted two or more times. For purposes

1 of determining if a person has been previously convicted, the provisions of (o)(4) of
 2 this section apply, except that only convictions occurring within five years preceding
 3 the date of the present offense may be included. Upon conviction the court

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

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

15 (B) suspend imposition of sentence;

16 (3) shall revoke the person's driver's license, privilege to drive, or
 17 privilege to obtain a license under AS 28.15.181(c);

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

22 (5) may also order **impoundment** [FORFEITURE] under AS 28.35.036
 23 of the **motor** vehicle, [OR] aircraft, **or watercraft** used in the commission of the
 24 offense, **or forfeiture of the motor vehicle, aircraft, or watercraft** [SUBJECT TO
 25 REMISSION] under AS 28.35.037.

26 * **Sec. 7.** AS 28.35.032(g) is amended to read:

27 (g) Upon conviction under this section

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

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

31 (B) not less than 20 days and a fine of not less than \$500 if the

1 person has been previously convicted once;

2 (C) not less than 60 days and a fine of not less than \$1,000 if
3 the person has been previously convicted twice and is not subject to
4 punishment under (q) of this section;

5 (D) not less than 120 days and a fine of not less than \$2,000
6 if the person has been previously convicted three times and is not subject to
7 punishment under (q) of this section;

8 (E) not less than 240 days and a fine of not less than \$3,000 if
9 the person has been previously convicted four times and is not subject to
10 punishment under (q) of this section;

11 (F) not less than 360 days and a fine of not less than \$4,000 if
12 the person has been previously convicted more than four times and is not
13 subject to punishment under (q) of this section;

14 (2) the court may not

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

18 (B) suspend imposition of sentence;

19 (3) the court shall revoke the person's driver's license, privilege to
20 drive, or privilege to obtain a license under AS 28.15.181, **shall order the motor**
21 **vehicle, aircraft, or watercraft used in the commission of the offense impounded**
22 **as required under AS 28.35.036**, and may order the motor vehicle, [OR] aircraft, **or**
23 **watercraft** that was used in commission of the offense be forfeited under
24 **AS 28.35.037** [AS 28.35.036]; [AND]

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

27 **(5) the court shall order that any motor vehicle, aircraft, or**
28 **watercraft return bond that has been posted to secure the release of the motor**
29 **vehicle, aircraft, or watercraft be forfeited to the state if the motor vehicle,**
30 **aircraft, or watercraft subject to the motor vehicle, aircraft, or watercraft return**
31 **bond is not returned to the custody of the state within five days after the**

1 sentencing; the court shall order that any motor vehicle, aircraft, or watercraft
2 return bond posted to secure the release of the motor vehicle, aircraft, or
3 watercraft be exonerated when the motor vehicle, aircraft, or watercraft has been
4 returned to the custody of the state as required by this paragraph; the court may
5 also order that any proceeds of any sale, transfer, or encumbrance of the motor
6 vehicle, aircraft, or watercraft be forfeited to the state if the motor vehicle,
7 aircraft, or watercraft has been sold, transferred, or encumbered while the motor
8 vehicle, aircraft, or watercraft has been subject to a motor vehicle, aircraft, or
9 watercraft return bond; a motor vehicle, aircraft, or watercraft ordered
10 impounded under AS 28.35.036 may not be released until after the person seeking
11 release of the motor vehicle, aircraft, or watercraft has satisfied the release
12 provisions of AS 12.30.020(k); an order of impoundment under AS 28.35.036 or
13 forfeiture under AS 28.35.037 is subject to the rights of lienholders and coowners
14 who are not the person convicted of a violation of this section as those rights are
15 adjudicated in proceedings under AS 28.35.037; if the state has brought a civil
16 action under AS 28.35.037 seeking impoundment or forfeiture as against all those
17 with an interest in the motor vehicle, aircraft, or watercraft except the person
18 charged with a violation of this section, that civil action shall provide the sole
19 forum in which lienholders and coowners who claim an interest in the motor
20 vehicle, aircraft, or watercraft but are not the person charged with a violation of
21 this section can seek relief; in this paragraph, "interest in the motor vehicle,
22 aircraft, or watercraft" has the meaning given in AS 28.35.030(b)(4).

23 * Sec. 8. AS 28.35.032(p) is amended to read:

24 (p) A person is guilty of a class C felony if the person is convicted under this
25 section and has been previously convicted two or more times within the five years
26 preceding the date of the present offense. For purposes of determining minimum
27 sentences based on previous convictions, the provisions of AS 28.35.030(o)(4) apply.
28 Upon conviction,

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

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

1 (B) 240 days if the person has been previously convicted three
2 times;

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

5 (2) the court may not

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

9 (B) suspend imposition of sentence;

10 (3) the court shall revoke the person's driver's license, privilege to
11 drive, or privilege to obtain a license under AS 28.15.181(c);

12 (4) the court may order as a condition of probation or parole that the
13 person take a drug, or combination of drugs, intended to prevent consumption of an
14 alcoholic beverage; a condition of probation imposed under this paragraph is in
15 addition to any other condition authorized under another provision of law;

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

18 (6) the court may also order **impoundment** [FORFEITURE] under
19 AS 28.35.036, of the **motor** vehicle, [OR] aircraft, **or watercraft** used in the
20 commission of the offense, **or forfeiture of the motor vehicle, aircraft, or**
21 **watercraft** [SUBJECT TO REMISSION] under AS 28.35.037.

22 * **Sec. 9.** AS 28.35.036 is repealed and reenacted to read:

23 **Sec. 28.35.036. Impoundment of a motor vehicle, aircraft, or watercraft.**

24 (a) A motor vehicle, aircraft, or watercraft may be impounded if the impoundment is
25 incident to a valid arrest by a peace officer and there is probable cause to believe the
26 motor vehicle, aircraft, or watercraft was operated or driven by a person while
27 committing a violation of AS 28.35.030 or 28.35.032. A motor vehicle, aircraft, or
28 watercraft impounded under this subsection may not be held for more than two days,
29 unless a court orders continuation of the impoundment.

30 (b) If a person is convicted under AS 28.35.030 or 28.35.032, the court shall
31 order impoundment of the motor vehicle, aircraft, or watercraft involved in the

1 commission of the offense for a period of at least 30 days.

2 (c) Notwithstanding any other provisions of law, costs of impoundment
3 incurred by the state shall be waived by the state or, if already collected, refunded by
4 the state, if the person operating the motor vehicle, aircraft, or watercraft during the
5 incident that resulted in impoundment is not convicted of a violation of AS 28.35.030
6 or 28.35.032.

7 (d) A motor vehicle, aircraft, or watercraft ordered impounded under this
8 section that is not claimed at the end of the court-ordered period of impoundment may
9 be disposed of under the provisions of this section. If the contents of the motor
10 vehicle, aircraft, or watercraft have not been recovered before disposal, the contents
11 may be disposed of with the motor vehicle, aircraft, or watercraft. Personal property
12 in a motor vehicle, aircraft, or watercraft that is subject to a motor vehicle, aircraft, or
13 watercraft return bond and that has not been released under the motor vehicle, aircraft,
14 or watercraft return bond can be recovered only by the owner of the motor vehicle,
15 aircraft, or watercraft and only upon payment of a fee charged for monitoring the
16 recovery of the personal property. The fee shall be set by contract between the towing
17 and storage contractor and the state if it is not established by the Department of Public
18 Safety. The fee shall be recoverable by the owner of the motor vehicle, aircraft, or
19 watercraft if a court makes a specific finding that the seizure of the motor vehicle,
20 aircraft, or watercraft was legally unjustified following a contested hearing or under
21 a stipulation between the parties.

22 (e) A motor vehicle, aircraft, or watercraft that is impounded and that has not
23 been released under (g) of this section shall be held in the custody of the Department
24 of Public Safety or a private corporation authorized by the Department of Public Safety
25 to retain custody of the motor vehicle, aircraft, or watercraft, subject only to an order
26 of a court of competent jurisdiction. If a motor vehicle, aircraft, or watercraft is seized
27 under this section, the Department of Public Safety or an authorized designee may

28 (1) remove the motor vehicle, aircraft, or watercraft and any contents
29 of the motor vehicle, aircraft, or watercraft to a place designated by the court; or

30 (2) take custody of the motor vehicle, aircraft, or watercraft and any
31 contents of the motor vehicle, aircraft, or watercraft and remove it to an appropriate

1 location for disposition in accordance with law.

2 (f) A private corporation may not make or perform a contract to tow, store, or
 3 retain custody of a motor vehicle, aircraft, or watercraft not seized or impounded under
 4 this section, if any of the owners of that private corporation have been convicted of
 5 a felony or a crime involving larceny, theft, or receiving and concealing stolen
 6 property within 10 years before the date of execution of the contract or during the term
 7 of the contract. A private corporation may not make or perform a contract to tow,
 8 store, or retain custody of a motor vehicle, aircraft, or watercraft seized or impounded
 9 under this section if an employee of the private corporation has been convicted of a
 10 felony or a crime involving larceny, theft, or receiving and concealing stolen property
 11 within five years before the date of execution of the contract or during the term of the
 12 contract.

13 (g) Unless a motor vehicle, aircraft, or watercraft is released under an
 14 agreement under AS 28.35.037(j), the person seeking possession of a motor vehicle,
 15 aircraft, or watercraft impounded by the state must obtain an order authorizing release
 16 of the motor vehicle, aircraft, or watercraft. A release may not be granted unless the
 17 applicant can satisfy the release provisions established under AS 12.30.020(k).

18 * **Sec. 10.** AS 28.35.037 is repealed and reenacted to read:

19 **Sec. 28.35.037. Forfeiture of a motor vehicle, aircraft, or watercraft.** (a)
 20 After a person is convicted of an offense under AS 28.35.030 or 28.35.032, the state
 21 shall move the court to order that the person's interest in the motor vehicle, aircraft,
 22 or watercraft involved in the commission of the offense be forfeited to the state if the
 23 person has any interest in the motor vehicle, aircraft, or watercraft and the convicted
 24 person has within the 10 years preceding the date of the present offense been
 25 previously convicted in this or another jurisdiction of one of the following offenses:

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

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

30 (b) Upon receipt of a motion for forfeiture allowed under (a) of this section,
 31 the court shall schedule a hearing on the matter and shall notify the state and the

1 convicted person of the time and place set for the hearing.

2 (c) In addition to forfeiture in conjunction with a criminal proceeding under
3 (b) of this section, the Department of Public Safety may seek forfeiture of a motor
4 vehicle, aircraft, or watercraft in a civil action or in an administrative action if the
5 person who operates or drives the motor vehicle, aircraft, or watercraft involved in a
6 violation of AS 28.35.030 or 28.35.032 has been previously convicted as provided
7 under (a) of this section and is not the registered or actual owner of the motor vehicle,
8 aircraft, or watercraft. After commencement of an administrative forfeiture action, the
9 Department of Public Safety shall provide notice as described under (e) and (f) of this
10 section and shall schedule a hearing on the matter. The prevailing party in an
11 administrative forfeiture action shall be awarded the same costs and attorney fees that
12 would be awarded under the Alaska Rules of Civil Procedure. Upon request of the
13 Department of Public Safety or a claimant, a civil proceeding seeking forfeiture of a
14 motor vehicle, aircraft, or watercraft shall be delayed until conclusion of any pending
15 criminal charges arising out of the incident giving rise to the forfeiture proceedings.

16 (d) An administrative hearing required under (c) of this section shall be held
17 before a hearing officer designated by the commissioner of public safety. Upon the
18 consent of the administrative director of the state court system, the commissioner of
19 public safety may designate a district court judge or a magistrate to serve as the
20 hearing officer. The hearing officer shall have authority to

- 21 (1) administer oaths and affirmations;
22 (2) examine witnesses and take testimony;
23 (3) receive relevant evidence;
24 (4) issue subpoenas, take depositions, or cause depositions or
25 interrogatories to be taken;
26 (5) regulate the course and conduct of the hearing;
27 (6) make a final ruling on the issue.

28 (e) Upon receiving notice from the court of the time and place set for a
29 forfeiture hearing under (b) of this section, or upon initiating a civil action or an
30 administrative forfeiture action under (c) of this section, the state shall provide to every
31 person who has, according to the records of the department, an ownership or security

1 interest in the motor vehicle, aircraft, or watercraft written notice that includes

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

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

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

6 (4) notice of the right to appear to protect the interest in the motor
7 vehicle, aircraft, or watercraft.

8 (f) If the registered owner of the motor vehicle, aircraft, or watercraft subject
9 to a forfeiture action cannot be determined from the records of the department, the
10 state shall publish a notice of the forfeiture action for two consecutive weeks in a
11 newspaper of general circulation in the judicial district in which the forfeiture action
12 is filed. The notice must include a description of the motor vehicle, aircraft, or
13 watercraft, the time and place of impoundment, and directions as to whom to contact
14 for more information.

15 (g) A person who fails to enter an appearance in a forfeiture action within 20
16 days after receiving written notice required under (e) of this section or 20 days after
17 completion of the notice required under (f) of this section, whichever is later, waives
18 the right to object to the forfeiture action. A party who requests a hearing in a civil
19 forfeiture action shall be deemed to have received notice of the civil action as required
20 by (f) of this section. A party who secures the release of a motor vehicle, aircraft, or
21 watercraft pending a hearing shall accept service of notice of the civil action as a
22 condition of release of the motor vehicle, aircraft, or watercraft. For a regulated
23 lienholder, the requirement of notice of claim and answer is met by filing the
24 information required under (s) of this section and including a statement of the original
25 amount of the loan giving rise to the lien and the current balance of that loan.

26 (h) At a forfeiture hearing required under (b) or (c) of this section, a person
27 other than the defendant who claims an ownership or security interest in the motor
28 vehicle, aircraft, or watercraft must establish by a preponderance of the evidence that

29 (1) the person has an interest in the motor vehicle, aircraft, or
30 watercraft acquired in good faith;

31 (2) a person other than the claimant was convicted of the offense that

1 resulted in the forfeiture;

2 (3) before parting with possession of the motor vehicle, aircraft, or
3 watercraft the person did not know or have reasonable cause to believe that it would
4 be used in the commission of an offense; and

5 (4) the costs of impoundment have been paid as required under
6 AS 28.35.036.

7 (i) If the state is seeking forfeiture of a motor vehicle, aircraft, or watercraft
8 in a hearing required under (b) or (c) of this section and the person who was in
9 possession of the motor vehicle, aircraft, or watercraft during the commission of the
10 offense was driving with a suspended license in violation of AS 28.15.291 or was the
11 spouse, child, or sibling of a person with an ownership or security interest in the motor
12 vehicle, aircraft, or watercraft, it is rebuttably presumed that the person holding the
13 ownership or security interest did know or have reasonable cause to believe that the
14 motor vehicle, aircraft, or watercraft would be used in the commission of an offense.

15 (j) The state may enter into an agreement with the registered owner or
16 lienholder of a motor vehicle, aircraft, or watercraft to resolve a civil impound or
17 forfeiture action and permit release of the motor vehicle, aircraft, or watercraft. Any
18 agreement allowed under this subsection must include

19 (1) proof of ownership or, if a lienholder, the right to repossess the
20 vehicle, aircraft, or watercraft, and acceptance by the owner or lienholder of
21 responsibility for meeting the requirements of (h)(4) of this section;

22 (2) agreement that the owner or lienholder will prevent the individual
23 arrested for or charged with a violation of AS 28.35.030 or 28.35.032 from operating
24 the motor vehicle, aircraft, or watercraft until the individual is properly licensed; and

25 (3) acknowledgment by the owner or lienholder that failure to fulfill
26 an obligation under the agreement may result in forfeiture of the motor vehicle,
27 aircraft, or watercraft at the option of the state; this paragraph does not apply to a
28 regulated lienholder.

29 (k) An acquittal or a conviction of a lesser offense in a criminal proceeding
30 for a violation of AS 28.35.030 or 28.35.032 provides a defense in a civil proceeding
31 seeking impoundment or forfeiture of the motor vehicle, aircraft, or watercraft if that

1 civil proceeding is based on the same conduct that forms the basis for the criminal
2 charge.

3 (l) A claimant who is not charged with a violation of AS 28.35.030 or
4 28.35.032 may petition for setting or revision of bail release of a motor vehicle,
5 aircraft, or watercraft before a civil action is filed. A petition allowed under this
6 subsection shall be made to a court of competent jurisdiction.

7 (m) If the state is seeking forfeiture of a motor vehicle, aircraft, or watercraft
8 under this section and a person satisfies the requirements of (h) of this section, the
9 court or the Department of Public Safety shall release the motor vehicle, aircraft, or
10 watercraft to the person together with title to the motor vehicle, aircraft, or watercraft
11 if

12 (1) the person is an owner or co-owner of the motor vehicle, aircraft,
13 or watercraft;

14 (2) the value of the person's interest exceeds the value of the motor
15 vehicle, aircraft, or watercraft; or

16 (3) the value of the interest is less than the value of the motor vehicle,
17 aircraft, or watercraft and the person agrees to sell the motor vehicle, aircraft, or
18 watercraft and pay the state the value of the offender's interest in the motor vehicle,
19 aircraft, or watercraft.

20 (n) Upon forfeiture of a motor vehicle, aircraft, or watercraft the court or the
21 Department of Public Safety shall require the surrender of the registration and
22 certificate of title of that motor vehicle, aircraft, or watercraft. The registration and
23 certificate of title shall be delivered to the department.

24 (o) A motor vehicle, aircraft, or watercraft forfeited under this section may be
25 disposed of by the Department of Public Safety as provided under this subsection.
26 Before disposing of a motor vehicle, aircraft, or watercraft forfeited under this section,
27 the Department of Public Safety shall make an inventory of the contents of any motor
28 vehicle, aircraft, or watercraft seized. Property forfeited under this section includes
29 both the motor vehicle, aircraft, or watercraft that is the subject of the forfeiture action
30 and the contents of the motor vehicle, aircraft, or watercraft if those contents have not
31 been recovered before the date of the disposal. The Department of Public Safety may

1 (1) sell the property at an auction conducted by an auctioneer not
2 employed by the impound contractor and use the proceeds for payment of all proper
3 expenses of seizure, custody, the costs of the auction, court costs, and attorney fees;
4 if the sale is arranged for by the impound contractor, the Department of Public Safety
5 shall receive at least 30 percent of the proceeds of any sale of forfeited motor vehicles,
6 aircraft, or watercraft following deduction for the costs charged by the auctioneer for
7 the auction of the motor vehicles, aircraft, or watercraft regardless of whether the costs
8 of impound and storage exceed the value of the motor vehicles, aircraft, or watercraft
9 sold;

10 (2) take custody of the property and use it in the enforcement of the
11 municipal and state criminal codes; or

12 (3) destroy the property.

13 (p) Within 30 days of the issuance of the final determination of the
14 Department of Public Safety, a person aggrieved by the determination may file an
15 appeal in superior court for judicial review of the hearing officer's determination. The
16 judicial review shall be on the record, without taking additional testimony. The court
17 may reverse the Department of Public Safety's determination if the court finds that the
18 Department of Public Safety misinterpreted the law, acted in an arbitrary and
19 capricious manner, or made a determination unsupported by the evidence in the record.

20 (q) Forfeiture of a motor vehicle, aircraft, or watercraft under this section
21 extinguishes the rights of all claimants or creditors who do not appear at the forfeiture
22 hearing under (b) or (c) of this section.

23 (r) For purposes of this section, convictions both for driving while intoxicated
24 under AS 28.35.030 and for refusal to submit to a chemical test authorized under
25 AS 28.35.031(a) or (g), if arising out of a single transaction and a single arrest, are
26 considered one conviction.

27 (s) A claimant who is a regulated lienholder meets the burden of proof
28 required under (h) of this section by filing with the court a copy of the motor
29 vehicle's, aircraft's, or watercraft's certificate of title or other security instrument
30 reflecting the lien, together with an affidavit stating the amount of the lien and stating
31 that the claimant is a regulated lienholder and was not in possession of the motor

1 vehicle, aircraft, or watercraft at the time of the act that resulted in the seizure of the
2 motor vehicle, aircraft, or watercraft. The presumption provided in (i) of this section
3 does not apply to a regulated lienholder.

4 (t) Nothing in this section shall be construed to place upon a regulated
5 lienholder a duty to inquire into the driving record of any loan applicant or any
6 member of the loan applicant's family or household, and failure to do so may not be
7 used as evidence against the regulated lienholder in any forfeiture proceeding or other
8 civil action. Knowledge from other sources of the loan applicant's driving record is
9 usable only to the extent that it is relevant under (h) of this section.

10 (u) Property subject to the interest of a regulated lienholder whose interest has
11 not been forfeited may not be disposed of as provided in this section except with the
12 consent of the regulated lienholder. A regulated lienholder's interest in a motor
13 vehicle, aircraft, or watercraft may not be subject to forfeiture in any case where

14 (1) the individual who allegedly used the motor vehicle, aircraft, or
15 watercraft in violation of AS 28.35.030 or 28.35.032 is not the person whose dealings
16 with the lienholder gave rise to the lien; or

17 (2) the motor vehicle, aircraft, or watercraft that the individual was
18 driving, operating, or in actual physical control of at the time of the alleged violation
19 was not the motor vehicle, aircraft, or watercraft involved in the offense giving rise
20 to a conviction under AS 28.35.030 or 28.35.032.

21 (v) A claimant may petition the court for sale of a motor vehicle, aircraft, or
22 watercraft before final disposition of court proceedings. The court shall grant a
23 petition for sale upon a finding that the sale is in the best interest of the state.
24 Proceeds from the sale plus interest to the date of final disposition of the court
25 proceedings become the subject of the forfeiture action.

26 (w) Property forfeited and sold at auction under this section shall be sold by
27 an auctioneer approved before the auction by the Department of Public Safety. Before
28 the auction, the Department of Public Safety must approve in advance the auctioneer's
29 costs or the method for determining the auctioneer's costs. The impound contractor
30 shall provide to the Department of Public Safety a notarized copy of the auctioneer's
31 report of the auction signed by the auctioneer. The Department of Public Safety shall

1 certify the proper disposal of property forfeited under this section.

2 (x) In a contested forfeiture proceeding concerning a motor vehicle, aircraft,
3 or watercraft titled in the names of more than one owner on the certificate of title, if
4 one of the owners has an interest that is forfeited, the court (1) may, subject to (m) of
5 this section, order the forfeiture of the entire interest of all the owners in a motor
6 vehicle, aircraft, or watercraft that is titled in the names of more than one owner in the
7 disjunctive; (2) shall, subject to (m) of this section, order the forfeiture of the interest
8 of any owner in a motor vehicle, aircraft, or watercraft that is titled in the names of
9 more than one owner in the conjunctive; owners of a motor vehicle, aircraft, or
10 watercraft titled in the names of more than one owner in the conjunctive are presumed
11 to own the motor vehicle, aircraft, or watercraft in equal shares. In circumstances
12 described in this subsection, the court shall order that the motor vehicle, aircraft, or
13 watercraft be sold at public auction and further order that the proceeds from the sale
14 of the motor vehicle, aircraft, or watercraft be held by the Department of Public
15 Safety; after deduction of the reasonable costs of the auction, an amount of the
16 proceeds of the auction for the sale of that motor vehicle, aircraft, or watercraft that
17 is equal to the percentage interest of the owner whose interest has not been forfeited
18 shall be returned if the owner whose interest has not been forfeited applies to the
19 department within 60 days of the auction; if the owner whose interest has not been
20 forfeited does not apply within that period, those funds become the property of the
21 state subject to the rights of any other claimant to those funds.

22 (y) A person who has secured the release of a motor vehicle, aircraft, or
23 watercraft under a motor vehicle, aircraft, or watercraft return bond under this section
24 and who wilfully fails to return that motor vehicle, aircraft, or watercraft when ordered
25 by a court or an administrative hearing officer, is guilty of a violation. Each day that
26 a motor vehicle, aircraft, or watercraft is not returned constitutes a separate offense
27 under this subsection.

28 (z) In this section,

29 (1) "legally unjustified" means there was no

30 (A) reasonable suspicion for the stop; or

31 (B) probable cause for the arrest;

1 (2) "regulated lienholder" means an entity whose lien on the motor
2 vehicle, aircraft, or watercraft is a result of lending activities that are subject to
3 regulation by the National Credit Union Administration, the Comptroller of the
4 Currency, federal banking regulators, the Federal Trade Commission, or the
5 Department of Commerce and Economic Development.

6 * **Sec. 11.** This Act takes effect July 1, 1998.