

CS FOR HOUSE BILL NO. 4(TRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Offered: 2/28/01

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVE ROKEBERG

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to offenses involving operating a motor vehicle, aircraft, or watercraft
2 while under the influence of an alcoholic beverage or controlled substance; relating to
3 court records of a conviction involving a violation of the Alaska Uniform Vehicle Code
4 or another law, regulation, or ordinance regulating the driving of vehicles; relating to
5 implied consent to take a chemical test; relating to registration of motor vehicles;
6 relating to presumptions arising from the amount of alcohol in a person's breath or
7 blood; relating to the definition of 'controlled substance' for purposes of the Alaska
8 Uniform Vehicle Code; and providing for an effective date."

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

10 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
11 to read:

12 FINDINGS AND INTENT. (a) The legislature finds that

1 (1) driving on state highways is a privilege granted to citizens;

2 (2) in order to keep the privilege of driving on state highways, a citizen must
3 follow state laws regarding safe driving;

4 (3) in 1998, there were 71 vehicle-related deaths in the state, and 31 were
5 alcohol-related;

6 (4) in 1999, there were 76 vehicle-related deaths in the state, and 40 were
7 alcohol-related;

8 (5) from 1998 to 1999, the number of traffic fatalities in Alaska rose by nine
9 percent;

10 (6) Alaska ranks in the top 15 states in terms of alcohol-related traffic
11 fatalities;

12 (7) habitual offenders do most of the harm.

13 (b) It is the intent of this Act to reduce the number of alcohol-related traffic accidents
14 and fatalities.

15 * **Sec. 2.** AS 09.60.070(c)(14) is amended to read:

16 (14) driving while **under the influence of an alcoholic beverage or**
17 **controlled substance** [INTOXICATED] or another crime resulting from the operation
18 of a motor vehicle, boat, or airplane when the offender is **under the influence of an**
19 **alcoholic beverage or controlled substance** [INTOXICATED];

20 * **Sec. 3.** AS 12.25.033 is amended to read:

21 **Sec. 12.25.033. Arrest without warrant for operating vehicle while under**
22 **the influence of an alcoholic beverage or controlled substance** [INTOXICATED].

23 A peace officer may arrest a person without a warrant, whether or not the offense is
24 committed in the presence of the officer, when the officer has probable cause to
25 believe that the person to be arrested has committed the crime of operating a motor
26 vehicle, an aircraft, or a watercraft in violation of AS 28.35.030 or a similar city or
27 borough ordinance, if the violation is alleged to have occurred less than eight hours
28 before the time of arrest.

29 * **Sec. 4.** AS 12.55.125(c) is amended to read:

30 (c) A defendant convicted of a class A felony may be sentenced to a definite
31 term of imprisonment of not more than 20 years, and shall be sentenced to the

1 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
2 12.55.175:

3 (1) if the offense is a first felony conviction and does not involve
4 circumstances described in (2) of this subsection, five years;

5 (2) if the offense is a first felony conviction

6 (A) other than for manslaughter and the defendant possessed a
7 firearm, used a dangerous instrument, or caused serious physical injury during
8 the commission of the offense, or knowingly directed the conduct constituting
9 the offense at a uniformed or otherwise clearly identified peace officer, fire
10 fighter, correctional employee, emergency medical technician, paramedic,
11 ambulance attendant, or other emergency responder who was engaged in the
12 performance of official duties at the time of the offense, seven years;

13 (B) for manslaughter and the conduct resulting in the
14 conviction was knowingly directed towards a child under the age of 16, seven
15 years;

16 **(C) for manslaughter and the conduct resulting in the**
17 **conviction involved driving while under the influence of an alcoholic**
18 **beverage or controlled substance, seven years;**

19 (3) if the offense is a second felony conviction, 10 years;

20 (4) if the offense is a third felony conviction and the defendant is not
21 subject to sentencing under (l) of this section, 15 years.

22 * **Sec. 5.** AS 18.67.101 is amended to read:

23 **Sec. 18.67.101. Incidents and offenses to which this chapter applies.** The
24 board may order the payment of compensation in accordance with the provisions of
25 this chapter for personal injury or death that resulted from

26 (1) an attempt on the part of the applicant to prevent the commission of
27 crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police
28 officer to do so, or aiding a victim of crime; or

29 (2) the commission or attempt on the part of one other than the
30 applicant to commit any of the following offenses:

31 (A) murder in any degree;

- 1 (B) manslaughter;
- 2 (C) criminally negligent homicide;
- 3 (D) assault in any degree;
- 4 (E) kidnapping;
- 5 (F) sexual assault in any degree;
- 6 (G) sexual abuse of a minor;
- 7 (H) robbery in any degree;
- 8 (I) threats to do bodily harm; or
- 9 (J) driving while **under the influence of an alcoholic**

10 **beverage or controlled substance** [INTOXICATED] or another crime
 11 resulting from the operation of a motor vehicle, boat, or airplane when the
 12 offender is **under the influence of an alcoholic beverage or controlled**
 13 **substance** [INTOXICATED].

14 * **Sec. 6.** AS 28.10.041 is amended by adding a new subsection to read:

15 (d) The department shall refuse to register a vehicle if the applicant

16 (1) does not have a valid driver's license and the applicant's license or
 17 privilege to obtain a license has been suspended or revoked; or

18 (2) fails to register the vehicle using the applicant's first, middle, and
 19 last name or a business name.

20 * **Sec. 7.** AS 28.15.046(d) is amended to read:

21 (d) The department may not issue a license to an applicant who has been
 22 convicted of driving while **under the influence of an alcoholic beverage or**
 23 **controlled substance** [INTOXICATED] under AS 28.35.030 within two years of the
 24 time of application or to an applicant who has two or more convictions for driving
 25 while **under the influence of an alcoholic beverage or controlled substance**
 26 [INTOXICATED] within 10 years of the time of application.

27 * **Sec. 8.** AS 28.15.081(a) is amended to read:

28 (a) The department shall examine every applicant for a driver's license. The
 29 examination must include a test of the applicant's (1) eyesight, (2) ability to read and
 30 understand official traffic control devices, (3) knowledge of safe driving practices, (4)
 31 knowledge of the effects of alcohol and drugs on drivers and the dangers of driving

1 under the influence of alcohol or drugs, (5) knowledge of the laws on driving while
 2 **under the influence of an alcoholic beverage or controlled substance**
 3 [INTOXICATED], (6) knowledge of the laws on financial responsibility and
 4 mandatory motor vehicle liability insurance, and (7) knowledge of the traffic laws and
 5 regulations of the state. The examination may include a demonstration of ability to
 6 exercise ordinary and reasonable control in the driving of a motor vehicle of the type
 7 and general class of vehicles for which the applicant seeks a license. However, an
 8 applicant who has not been previously issued a driver's license by this or another
 9 jurisdiction shall demonstrate ability and shall present medical information that the
 10 department reasonably requires to determine fitness to safely drive a motor vehicle of
 11 the type and general class of vehicles for which the applicant seeks a license.

12 * **Sec. 9.** AS 28.15.165(c) is amended to read:

13 (c) Unless the person has obtained a temporary permit or stay of a
 14 departmental action under AS 28.15.166, if the chemical test administered under
 15 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in
 16 AS 28.35.030(a)(2) or the person refused to submit to a chemical test authorized under
 17 AS 28.33.031(a) or AS 28.35.031(a) or (g), the department shall revoke the person's
 18 license, privilege to drive, or privilege to obtain a license, shall refuse to issue an
 19 original license, and, if the chemical test administered under AS 28.33.031(a)
 20 produced a result described in AS 28.33.030(a)(2) or the person refused to submit to a
 21 chemical test authorized under AS 28.33.031(a), shall disqualify the person. The
 22 department's action takes effect seven days after delivery to the person of the notice
 23 required under (a) of this section, and after receipt of a sworn report of a law
 24 enforcement officer

25 (1) that a chemical test administered under AS 28.33.031(a) or
 26 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2), that a
 27 chemical test administered under AS 28.33.031(a) produced a result described in
 28 AS 28.33.030(a)(2), or that a person refused to submit to a chemical test authorized
 29 under AS 28.33.031(a) or AS 28.35.031(a) or (g);

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

31 (3) describing the

1 (A) circumstances surrounding the arrest and the grounds for
 2 the officer's belief that the person operated a motor vehicle, commercial motor
 3 vehicle, or aircraft while **under the influence of an alcoholic beverage or**
 4 **controlled substance** [INTOXICATED] in violation of AS 28.33.030 or
 5 AS 28.35.030; or

6 (B) grounds for the officer's belief that the person operated a
 7 motor vehicle or commercial motor vehicle that was involved in an accident
 8 causing death or serious physical injury to another person.

9 * **Sec. 10.** AS 28.15.166(g) is amended to read:

10 (g) The hearing for review of action by the department under AS 28.15.165
 11 shall be limited to the issues of whether the law enforcement officer had **probable**
 12 **cause** [REASONABLE GROUNDS] to believe that the person was operating a motor
 13 vehicle or commercial motor vehicle that was involved in an accident causing death or
 14 serious physical injury to another, or that the person was operating a motor vehicle,
 15 commercial motor vehicle, or aircraft while **under the influence of an alcoholic**
 16 **beverage or controlled substance** [INTOXICATED] in violation of AS 28.33.030 or
 17 AS 28.35.030 and whether

18 (1) the person refused to submit to a chemical test authorized under
 19 AS 28.33.031(a) or AS 28.35.031(a) or (g) after being advised that refusal would
 20 result in disqualification or the suspension, revocation, or denial of the person's
 21 license, privilege to drive, or privilege to obtain a license, and that the refusal is a
 22 misdemeanor;

23 (2) the chemical test administered under AS 28.33.031(a) or
 24 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2); or

25 (3) the chemical test administered under AS 28.33.031(a) produced a
 26 result described in AS 28.33.030(a)(2).

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

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

30 (1) manslaughter or negligent homicide resulting from driving a motor
 31 vehicle;

- 1 (2) a felony in the commission of which a motor vehicle is used;
- 2 (3) failure to stop and give aid as required by law when a motor
3 vehicle accident results in the death or personal injury of another;
- 4 (4) perjury or making a false affidavit or statement under oath to the
5 department under a law relating to motor vehicles;
- 6 (5) operating a motor vehicle or aircraft while **under the influence of**
7 **an alcoholic beverage or controlled substance** [INTOXICATED];
- 8 (6) reckless driving;
- 9 (7) using a motor vehicle in unlawful flight to avoid arrest by a peace
10 officer;
- 11 (8) refusal to submit to a chemical test authorized under
12 AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle,
13 commercial motor vehicle, or aircraft while **under the influence of an alcoholic**
14 **beverage or controlled substance** [INTOXICATED], or authorized under
15 AS 28.35.031(g);
- 16 (9) driving while license, privilege to drive, or privilege to obtain a
17 license, canceled, suspended, or revoked, or in violation of a limitation;
- 18 (10) vehicle theft in the first degree in violation of AS 11.46.360 or
19 vehicle theft in the second degree in violation of AS 11.46.365.

20 * **Sec. 12.** AS 28.15.181(c) is amended to read:

21 (c) A court convicting a person of an offense described in (a)(5) or (8) of this
22 section arising out of the operation of a motor vehicle, commercial motor vehicle, or
23 aircraft shall revoke that person's driver's license, privilege to drive, or privilege to
24 obtain a license. The revocation may be concurrent with or consecutive to an
25 administrative revocation under AS 28.15.165. The court may not, except as provided
26 in AS 28.15.201, grant limited license privileges during the minimum period of
27 revocation. The minimum periods of revocation are [:]

28 (1) **not less than 45 days if the person has not been previously**
29 **convicted and if the court has suspended the execution of the sentence of**
30 **imprisonment under AS 28.35.030(b)(1)(A)(i);**

31 (2) **not less than 90 days if the person has not been previously**

1 convicted **and if the court has not suspended the execution of the sentence of**
 2 **imprisonment under AS 28.35.030(b)(1)(A)(i);**

3 **(3)** [(2)] not less than one year if the person has been previously
 4 convicted once;

5 **(4)** [(3)] not less than 3 years if the person has been previously
 6 convicted twice;

7 **(5)** [(4)] not less than 5 years if the person has been previously
 8 convicted more than twice.

9 * **Sec. 13.** AS 28.15.191(a) is amended to read:

10 (a) A court that convicts a person of an offense under this title or a regulation
 11 adopted under this title, or another law or regulation of this state, or a municipal
 12 ordinance that regulates the driving of vehicles, shall forward a record of the
 13 conviction to the department **by the end of the following business day.** A conviction
 14 of a standing or parking offense need not be reported.

15 * **Sec. 14.** AS 28.15.201(d) is amended to read:

16 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain
 17 a license under **AS 28.15.181(c)(2), (3), (4), or (5)** [AS 28.15.181(c)], or the
 18 department when revoking a driver's license, privilege to drive, or privilege to obtain a
 19 license under AS 28.15.165(c), may grant limited license privileges for the final 60
 20 days during which the license is revoked if

21 (1) the revocation was for a violation of AS 28.15.181(a)(5) and not
 22 for a violation of AS 28.15.181(a)(8);

23 (2) the person has not been previously convicted; in this paragraph,
 24 "previously convicted" has the meaning given in AS 28.35.030 and also includes
 25 convictions based on laws presuming that the person was under the influence of
 26 intoxicating liquor if there was 0.08 percent or more by weight of alcohol in the
 27 person's blood;

28 (3) the court or the department determines that the person's ability to
 29 earn a livelihood would be severely impaired without a limited license;

30 (4) the court or the department determines that a limitation under (a) of
 31 this section can be placed on the license that will enable the person to earn a livelihood

1 without excessive danger to the public; and

2 (5) the court or the department determines that the person **has met** [IS
3 ENROLLED IN AND IS IN COMPLIANCE WITH, OR HAS SUCCESSFULLY
4 COMPLETED, AN] alcoholism **screening, evaluation, referral, and** [EDUCATION
5 AND REHABILITATION TREATMENT] program **requirements of the**
6 **Department of Health and Social Services under AS 28.35.030(h).**

7 * **Sec. 15.** AS 28.15.201 is amended by adding a new subsection to read:

8 (e) A court revoking a driver's license, privilege to drive, or privilege to obtain
9 a license under AS 28.15.181(c)(1), or the department when revoking a driver's
10 license, privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may
11 grant limited license privileges for the final 30 days during which the license is
12 revoked, if the person's driver's license is not revoked, suspended, denied, or canceled
13 under another provision of law. During the remainder of the probationary period
14 imposed under AS 28.35.030(b)(1)(A)(i) that follows the period of revocation
15 imposed under AS 28.15.181(c)(1), a person may only obtain limited license
16 privileges. The court revoking the license and privileges may grant limited license
17 privileges necessary to enable the person to earn a livelihood without excessive risk or
18 danger to the public. If the court grants limited license privileges, the court shall
19 require that the person only operate a vehicle that is equipped with a properly
20 functioning ignition interlock device and shall issue to the person a certificate valid for
21 the duration of the probation. The person who has received limited license privileges
22 under this subsection shall comply with AS 28.20 relating to proof of financial
23 responsibility. Upon successful completion of probation, the person may apply for a
24 new license under AS 28.15.211.

25 * **Sec. 16.** AS 28.15.211(d) is amended to read:

26 (d) At the end of a period of revocation or limitation following a revocation, a
27 person whose driver's license has been revoked may apply to the department for the
28 issuance of a new license, but shall submit to reexamination, pay all required fees
29 including a reinstatement fee, and, if the license was revoked under
30 AS 28.15.181(a)(5) or (8), submit proof **to the court or the department that the**
31 **person has met the alcoholism screening, evaluation, referral, and program**

1 **requirements of the Department of Health and Social Services under**
 2 **AS 28.35.030(h)** [OF

3 (1) ENROLLMENT IN AND COMPLIANCE WITH OR
 4 COMPLETION OF AN ALCOHOLISM EDUCATION AND REHABILITATION
 5 TREATMENT PROGRAM APPROVED UNDER AS 47.37 IF THE PERSON WAS
 6 SENTENCED UNDER AS 28.15.181(c)(1); OR

7 (2) COMPLETION OF AND PAYMENT FOR AN ALCOHOLISM
 8 EDUCATION AND REHABILITATION TREATMENT PROGRAM APPROVED
 9 UNDER AS 47.37 IF THE PERSON WAS CONVICTED UNDER
 10 AS 28.15.181(c)(2) - (4)].

11 * **Sec. 17.** AS 28.15.271(b) is amended to read:

12 (b) In addition to the fees under (a) of this section,

13 (1) a person who renews a driver's license by mail shall pay a fee of
 14 \$1;

15 (2) a person who applies for a limited driver's license under
 16 AS 28.15.201 shall pay a fee of \$100; and

17 (3) a person who applies for reinstatement of a driver's license under
 18 AS 28.15.211 shall pay a fee of

19 (A) \$100 if the person's driver's license has, within the 10 years
 20 preceding the application, been suspended, revoked, or limited under the
 21 provisions of this chapter, **except as provided by (C) of this paragraph**, only
 22 once; [OR]

23 (B) \$250 if the person's driver's license has, within the 10 years
 24 preceding the application, been suspended, revoked, or limited under the
 25 provisions of this chapter, **except as provided by (D) of this paragraph**, two
 26 or more times;

27 **(C) \$200 if the person's driver's license has, within the 10**
 28 **years preceding the application, been revoked under AS 28.35.030 only**
 29 **once; or**

30 **(D) \$500 if the person's driver's license has, within the 10**
 31 **years preceding the application, been revoked under AS 28.35.030 two or**

1 more times.

2 * **Sec. 18.** AS 28.15.281 is amended by adding a new subsection to read:

3 (c) A person who violates (b) of this section by knowingly allowing a person
4 who is not validly licensed as a result of a conviction under AS 28.35.030(n) to drive a
5 motor vehicle is, upon conviction, guilty of a class A misdemeanor, and the court shall

6 (1) revoke the person's driver's license, privilege to drive, or privilege
7 to obtain a license for 30 days;

8 (2) impose a minimum fine of \$1,000; and

9 (3) if the person has been previously convicted under this section,
10 require the person to complete an alcoholism program required under
11 AS 28.35.030(h).

12 * **Sec. 19.** AS 28.15.291(b) is amended to read:

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

14 (1) shall impose a minimum sentence of imprisonment

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

19 (B) if the person has been previously convicted, of not less than
20 10 days;

21 (C) if the person's driver's license, privilege to drive, or
22 privilege to obtain a license was revoked under circumstances described in
23 AS 28.15.181(c)(1) or (2) [AS 28.15.181(c)(1),] or if the person was driving in
24 violation of a limited license issued under AS 28.15.201(d) or (e) following
25 that revocation, of not less than 20 days with 10 days suspended, and a fine of
26 not less than \$500, including a mandatory condition of probation that the
27 defendant complete not less than 80 hours of community work service;

28 (D) if the person's driver's license, privilege to drive, or
29 privilege to obtain a license was revoked under circumstances described in
30 AS 28.15.181(c)(3), (4), or (5) [AS 28.15.181(c)(2), (3), OR (4)] or if the
31 person was driving in violation of a limited license issued under

1 AS 28.15.201(d) following that revocation, of not less than 30 days and a fine
2 of not less than \$1,000;

3 (2) may impose additional conditions of probation;

4 (3) may not

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

8 (B) suspend imposition of sentence; and

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

14 * **Sec. 20.** AS 28.33.030 is amended to read:

15 **Sec. 28.33.030. Operating a commercial motor vehicle while under the**
16 **influence of an alcoholic beverage or controlled substance [INTOXICATED].** (a)
17 A person commits the crime of operating a commercial motor vehicle while **under the**
18 **influence of an alcoholic beverage or controlled substance [INTOXICATED]** if the
19 person operates a commercial motor vehicle

20 (1) while under the influence of **an alcoholic beverage**
21 **[INTOXICATING LIQUOR]** or any controlled substance;

22 (2) when, as determined by a chemical test taken within four hours
23 after the alleged offense was committed, there is 0.04 percent or more by weight of
24 alcohol in the person's blood or 40 milligrams or more of alcohol per 100 milliliters of
25 blood, or when there is 0.04 grams or more of alcohol per 210 liters of the person's
26 breath; or

27 (3) while under the combined influence of **an alcoholic beverage**
28 **[INTOXICATING LIQUOR]** and a controlled substance.

29 (b) Operating a commercial motor vehicle while **under the influence of an**
30 **alcoholic beverage or controlled substance [INTOXICATED]** is a class A
31 misdemeanor.

1 (c) The sentencing of a person convicted under this section shall be in
 2 accordance with the minimum periods of imprisonment, fines, rehabilitative treatment,
 3 and other provisions of AS 28.35.030, as if the person had been convicted of a
 4 violation of AS 28.35.030. For purposes of sentencing, convictions for operating a
 5 commercial motor vehicle while **under the influence of an alcoholic beverage or**
 6 **controlled substance** [INTOXICATED] under this section, and for refusal to submit
 7 to a chemical test under AS 28.33.032, if arising out of a single transaction, are
 8 considered one previous conviction.

9 * **Sec. 21.** AS 28.33.031(a) is amended to read:

10 (a) A person who operates a commercial motor vehicle in this state is
 11 considered to have given consent to a chemical test or tests

12 (1) of the person's breath if lawfully arrested for an offense arising out
 13 of acts alleged to have been committed when the person was operating the commercial
 14 motor vehicle while **under the influence of an alcoholic beverage or controlled**
 15 **substance** [INTOXICATED]; the test or tests may be administered at the direction of
 16 a law enforcement officer who has **probable cause** [REASONABLE GROUNDS] to
 17 believe that the person was operating a commercial motor vehicle while **under the**
 18 **influence of an alcoholic beverage or controlled substance** [INTOXICATED] in
 19 violation of AS 28.33.030 or AS 28.35.030;

20 (2) of the person's breath and blood for the purpose of determining the
 21 alcoholic content of the person's breath and blood and is considered to have given
 22 consent to a chemical test or tests of the person's blood and urine for the purpose of
 23 determining the presence of controlled substances in the person's blood and urine if
 24 the person is involved in a motor vehicle accident that causes death or serious physical
 25 injury to another person; the test or tests may be administered at the direction of a law
 26 enforcement officer who has **probable cause** [REASONABLE GROUNDS] to
 27 believe that the person was operating a commercial motor vehicle that was involved in
 28 an accident causing death or serious physical injury to another person.

29 * **Sec. 22.** AS 28.33.031(c) is amended to read:

30 (c) A person who operates a commercial motor vehicle is considered to have
 31 given consent to a preliminary breath test, at the direction of a law enforcement

1 officer, for the purpose of determining the alcoholic content of the person's blood or
 2 breath. A law enforcement officer may administer a preliminary breath test if the
 3 officer has **probable cause** [REASONABLE GROUNDS] to believe that the person's
 4 ability to operate a commercial motor vehicle is impaired by the ingestion of alcoholic
 5 beverages and that

6 (1) the commercial motor vehicle caused injury to person or property;

7 (2) the person violated the provisions of AS 28.33.130(a) or violated
 8 the terms of an out-of-service order issued under AS 28.33.130; or

9 (3) the person unlawfully operated a commercial motor vehicle; in this
 10 paragraph, "unlawfully" means in violation of any federal, state, or municipal statute,
 11 regulation, or ordinance.

12 * **Sec. 23.** AS 28.33.033(a) is amended to read:

13 (a) Upon the trial of a civil or criminal action or proceedings arising out of
 14 acts alleged to have been committed by a person operating a commercial motor
 15 vehicle while **under the influence of an alcoholic beverage** [INTOXICATED] in
 16 violation of AS 28.33.030, the following rules apply with regard to the amount of
 17 alcohol in the person's blood or breath at the time alleged:

18 (1) if there was less than 0.04 percent by weight of alcohol in the
 19 person's blood, or less than 40 milligrams of alcohol per 100 milliliters of the person's
 20 blood, or less than 0.04 grams of alcohol per 210 liters of the person's breath, that fact
 21 does not give rise to a presumption that the person was or was not under the influence
 22 of an **alcoholic beverage** [INTOXICATING LIQUOR], but that fact may be
 23 considered with other competent evidence in determining whether the person was
 24 under the influence of an **alcoholic beverage** [INTOXICATING LIQUOR];

25 (2) if there was 0.04 percent or more by weight of alcohol in the
 26 person's blood, or 40 milligrams or more of alcohol per 100 milliliters of the person's
 27 blood, or 0.04 grams or more of alcohol per 210 liters of the person's breath, it is
 28 presumed that the person was under the influence of an **alcoholic beverage**
 29 [INTOXICATING LIQUOR].

30 * **Sec. 24.** AS 28.33.033(c) is amended to read:

31 (c) The provisions of (a) of this section may not be construed to limit the

1 introduction of any other competent evidence bearing upon the question of whether
 2 the person was or was not under the influence of **an alcoholic beverage**
 3 **[INTOXICATING LIQUOR]**.

4 * **Sec. 25.** AS 28.33.140(a) is amended to read:

5 (a) In addition to the court action provided in AS 28.15.181, conviction of any
 6 of the following offenses is grounds for immediate disqualification from driving a
 7 commercial motor vehicle for the periods set out in this section:

8 (1) operating a commercial motor vehicle while **under the influence**
 9 **of an alcoholic beverage or controlled substance** **[INTOXICATED]** in violation of
 10 AS 28.33.030;

11 (2) refusal to submit to a chemical test in violation of AS 28.35.032;

12 (3) operating a motor vehicle while **under the influence of an**
 13 **alcoholic beverage or controlled substance** **[INTOXICATED]** in violation of
 14 AS 28.35.030;

15 (4) leaving the scene of an accident in violation of AS 28.35.060, or
 16 failing to file, or providing false information in, an accident report in violation of
 17 AS 28.35.110;

18 (5) a felony under state or federal law, which was facilitated because
 19 the person used a commercial motor vehicle;

20 (6) a serious traffic violation; or

21 (7) driving after being placed out of service in violation of regulations
 22 adopted under AS 28.05.011.

23 * **Sec. 26.** AS 28.35.030(a) is amended to read:

24 (a) A person commits the crime of driving while **under the influence of an**
 25 **alcoholic beverage or controlled substance** **[INTOXICATED]** if the person operates
 26 or drives a motor vehicle or operates an aircraft or a watercraft

27 (1) while under the influence of **an alcoholic beverage**, intoxicating
 28 liquor, or any controlled substance;

29 (2) when, as determined by a chemical test taken within four hours
 30 after the alleged offense was committed, there is **0.08** [0.10] percent or more by
 31 weight of alcohol in the person's blood or **80** [100] milligrams or more of alcohol per

1 100 milliliters of blood, or when there is **0.08** [0.10] grams or more of alcohol per 210
 2 liters of the person's breath; or

3 (3) while the person is under the combined influence of **an alcoholic**
 4 **beverage, an** intoxicating liquor, and a controlled substance.

5 * **Sec. 27.** AS 28.35.030(b) is amended to read:

6 (b) Except as provided under (n) of this section, driving while **under the**
 7 **influence of an alcoholic beverage or controlled substance** [INTOXICATED] is a
 8 class A misdemeanor. Upon conviction,

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

10 (A) not less than 72 consecutive hours and a fine of not less
 11 than **\$500** [\$250] if the person has not been previously convicted, **except that**
 12 **if**

13 **(i) there were no aggravating circumstances**
 14 **associated with the acts upon which the conviction is based and, as**
 15 **determined by a chemical test taken within four hours after the**
 16 **alleged offense was committed, there is 0.08 percent but not more**
 17 **than 0.1 percent by weight of alcohol in the person's blood or 80**
 18 **milligrams but not more than 100 milligrams of alcohol per 100**
 19 **milliliters of blood, or when there is 0.08 grams but not more than**
 20 **0.10 grams of alcohol per 210 liters of the person's breath, the**
 21 **court shall suspend the execution of the sentence of imprisonment**
 22 **upon the condition that the person successfully completes one year**
 23 **of probation during which the person does not commit an alcohol-**
 24 **related offense or a traffic offense, the person successfully**
 25 **completes the program requirements imposed under (h) of this**
 26 **section, the person pays the cost of treatment required under (h) of**
 27 **this section, the person performs three days of community service,**
 28 **and the person pays the fine imposed by the court under this**
 29 **subparagraph; upon determination by the court that the person**
 30 **has satisfied the terms of probation, the court shall discharge the**
 31 **defendant; however, if the court determines that the terms of**

1 **probation have not been satisfied within one year from the date on**
 2 **which the terms were set by the court, the court shall require the**
 3 **execution of the sentence of imprisonment determined under this**
 4 **subparagraph;**

5 **(ii) the person had, as determined by a chemical test**
 6 **taken within four hours after the alleged offense was committed,**
 7 **more than 0.10 percent by weight of alcohol in the person's blood**
 8 **or more than 100 milligrams of alcohol per 100 milliliters of blood,**
 9 **or when there are more than 0.10 grams of alcohol per 210 liters of**
 10 **the person's breath, the court shall impose a fine of \$1,500;**

11 (B) not less than **30 days, or not less than** 20 days **if the**
 12 **person performs 10 days of community service,** and a fine of not less than
 13 **\$3,000** [\$500] if the person has been previously convicted once;

14 [(C) NOT LESS THAN 60 DAYS AND A FINE OF NOT
 15 LESS THAN \$1,000 IF THE PERSON HAS BEEN PREVIOUSLY
 16 CONVICTED TWICE AND IS NOT SUBJECT TO PUNISHMENT UNDER
 17 (n) OF THIS SECTION;

18 (D) NOT LESS THAN 120 DAYS AND A FINE OF NOT
 19 LESS THAN \$2,000 IF THE PERSON HAS BEEN PREVIOUSLY
 20 CONVICTED THREE TIMES AND IS NOT SUBJECT TO PUNISHMENT
 21 UNDER (n) OF THIS SECTION;

22 (E) NOT LESS THAN 240 DAYS AND A FINE OF NOT
 23 LESS THAN \$3,000 IF THE PERSON HAS BEEN PREVIOUSLY
 24 CONVICTED FOUR TIMES AND IS NOT SUBJECT TO PUNISHMENT
 25 UNDER (n) OF THIS SECTION;

26 (F) NOT LESS THAN 360 DAYS AND A FINE OF NOT
 27 LESS THAN \$4,000 IF THE PERSON HAS BEEN PREVIOUSLY
 28 CONVICTED MORE THAN FOUR TIMES AND IS NOT SUBJECT TO
 29 PUNISHMENT UNDER (n) OF THIS SECTION;]

30 (2) the court may not, **except as provided under (1)(A)(i) of this**
 31 **subsection,**

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

4 (B) suspend imposition of sentence;

5 (3) the court shall revoke the person's driver's license, privilege to
 6 drive, or privilege to obtain a license under AS 28.15.181, and may order the motor
 7 vehicle or aircraft that was used in commission of the offense to be forfeited under
 8 AS 28.35.036.

9 * **Sec. 28.** AS 28.35.030(d) is amended to read:

10 (d) Except as prohibited by federal law or regulation, every provider of
 11 treatment programs to which persons are ordered under [(h) OF] this section shall
 12 supply the **judge, prosecutor, defendant, and an agency involved in the**
 13 **defendant's treatment with information and reports concerning the defendant's**
 14 **past and present assessment, treatment, and progress** [ALASKA COURT
 15 SYSTEM WITH THE INFORMATION REGARDING THE CONDITION AND
 16 TREATMENT OF THOSE PERSONS AS THE SUPREME COURT MAY
 17 REQUIRE BY RULE]. Information compiled under this subsection is confidential
 18 and may only be used **in connection with court proceedings involving the**
 19 **defendant or the defendant's treatment** [BY A COURT IN SENTENCING A
 20 PERSON CONVICTED UNDER THIS SECTION, OR BY AN OFFICER OF THE
 21 COURT IN PREPARING A PRESENTENCE REPORT FOR THE USE OF THE
 22 COURT IN SENTENCING A PERSON CONVICTED UNDER THIS SECTION].

23 * **Sec. 29.** AS 28.35.030(h) is amended to read:

24 (h) The court shall order a person convicted under this section to satisfy the
 25 screening, evaluation, referral, and program requirements of an alcohol safety action
 26 program if such a program is available in the community where the person resides, or
 27 a private or public treatment facility approved by the division of alcoholism and drug
 28 abuse, of the Department of Health and Social Services, under AS 47.37 to make
 29 referrals for rehabilitative treatment or to provide rehabilitative treatment. **The**
 30 **Department of Health and Social Services shall, by regulation, establish**
 31 **standards for clinically appropriate treatment required under this subsection.**

1 The treatment standards established under this subsection must include
 2 compliance with alcohol or drug treatment, anger management, counseling,
 3 parent training, and domestic violence prevention. If a person is convicted under
 4 (n) of this section, the court shall order the person to be evaluated as required by this
 5 subsection before the court imposes sentence for the offense. Treatment required
 6 under this subsection shall occur, as much as possible, when the person is
 7 incarcerated. The cost of treatment required under this subsection shall be paid
 8 to the state by the person being treated. The cost of treatment required to be
 9 paid to the state under this subsection may not exceed \$2,000. Upon the person's
 10 conviction, the court shall include reimbursement of the cost of treatment as a
 11 part of the sentence. Except for reimbursement from a permanent fund dividend
 12 as provided in this subsection, payment of the cost of treatment is not required if
 13 the court determines the person is indigent. For costs of treatment that are not
 14 paid by the person as required by this subsection, the state shall seek
 15 reimbursement from the person's permanent fund dividend as provided in
 16 AS 43.23.065. In this subsection, "cost of treatment" does not include costs
 17 incurred as a result of treatment not required under the treatment standards
 18 established under this subsection.

19 * **Sec. 30.** AS 28.35.030(k) is amended to read:

20 (k) Imprisonment required under (b)(1)(A) or (B) of this section shall be
 21 served at a community residential center or, if a community residential center is not
 22 available, at another appropriate place determined by the commissioner of corrections.
 23 The cost of imprisonment resulting from the sentence imposed under (b)(1) of this
 24 section shall be paid to the state by the person being sentenced provided, however, that
 25 the cost of imprisonment required to be paid under this subsection may not exceed
 26 **\$2,000** [\$1,000]. Upon the person's conviction, the court shall include the costs of
 27 imprisonment as a part of the judgment of conviction. Except for reimbursement from
 28 a permanent fund dividend as provided in this subsection, payment of the cost of
 29 imprisonment is not required if the court determines the person is indigent. For costs
 30 of imprisonment that are not paid by the person as required by this subsection, the
 31 state shall seek reimbursement from the person's permanent fund dividend as provided

1 under AS 43.23.065. While at the community residential center or other appropriate
 2 place, a person sentenced under (b)(1)(A) of this section shall perform at least 24
 3 hours of community service work, and a person sentenced under (b)(1)(B) of this
 4 section shall perform at least 160 hours of community service work, as required by the
 5 director of the community residential center or other appropriate place. In this
 6 subsection, "appropriate place" means a facility with 24-hour on-site staff supervision
 7 that is specifically adapted to provide a residence, and includes a correctional center,
 8 [RESIDENTIAL TREATMENT FACILITY, HOSPITAL,] halfway house, group
 9 home, work farm, work camp, or other place that provides varying levels of
 10 restriction; **"appropriate place" does not mean a residential treatment facility or a**
 11 **hospital.**

12 * **Sec. 31.** AS 28.35.030(n) is amended to read:

13 (n) A person is guilty of a class C felony if the person is convicted **under (a)**
 14 **of this section** [OF DRIVING WHILE INTOXICATED] and has been previously
 15 convicted two or more times **since January 1, 1996, and** within the **10** [FIVE] years
 16 preceding the date of the present offense. For purposes of determining minimum
 17 sentences based on previous convictions, the provisions of (o)(4) of this section apply.
 18 Upon conviction, the court

19 (1) shall impose a fine of not less than **\$10,000** [\$5,000] and a
 20 minimum sentence of imprisonment of not less than

21 (A) **240** [120] days if the person has been previously convicted
 22 twice;

23 (B) **480** [240] days if the person has been previously convicted
 24 three times;

25 (C) **two years** [360 DAYS] if the person has been previously
 26 convicted four or more times;

27 (2) may not

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

31 (B) suspend imposition of sentence;

1 (3) shall **permanently** revoke the person's driver's license, privilege to
 2 drive, or privilege to obtain a license **subject to restoration of the license under (p)**
 3 **of this section** [UNDER AS 28.15.181(c)];

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

8 (5) **shall** [MAY] also order forfeiture under AS 28.35.036 of the
 9 vehicle, **watercraft**, or aircraft used in the commission of the offense, subject to
 10 remission under AS 28.35.037; **and**

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

16 * **Sec. 32.** AS 28.35.030(o) is amended to read:

17 (o) In this section,

18 (1) REPEALED

19 (2) "operate an aircraft" means to [USE,] navigate, pilot, or taxi an
 20 aircraft in the airspace over this state, or upon the land or water inside this state;

21 (3) "operate a watercraft" means to navigate [OR USE] a vessel used
 22 or capable of being used as a means of transportation on water for recreational or
 23 commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial
 24 limits or under the jurisdiction of the state;

25 (4) "previously convicted" means having been convicted in this or
 26 another jurisdiction, [WITHIN 10 YEARS PRECEDING THE DATE OF THE
 27 PRESENT OFFENSE,] of any of the following offenses; however, convictions for any
 28 of these offenses, if arising out of a single transaction and a single arrest, are
 29 considered one previous conviction:

30 (A) operating a motor vehicle, aircraft, or watercraft while
 31 **under the influence of an alcoholic beverage or controlled substance**

1 [INTOXICATED,] in violation of this section or in violation of another law or
 2 ordinance with similar elements, except that the other law or ordinance may
 3 provide for a lower level of alcohol in the person's blood or breath than
 4 imposed under (a)(2) of this section;

5 (B) refusal to submit to a chemical test in violation of
 6 AS 28.35.032 or in violation of another law or ordinance with similar
 7 elements; or

8 (C) operating a commercial motor vehicle while **under the**
 9 **influence of an alcoholic beverage or controlled substance**
 10 [INTOXICATED] in violation of AS 28.33.030 or in violation of another law
 11 or ordinance with similar elements, except that the other law or ordinance may
 12 provide for a lower level of alcohol in the person's blood or breath than
 13 imposed under AS 28.33.030(a)(2).

14 * **Sec. 33.** AS 28.35.030 is amended by adding new subsections to read:

15 (p) Upon request, the department shall review a driver's license revocation
 16 imposed under (n)(3) of this section and shall restore the driver's license if

17 (1) the license has been revoked for a period of at least 10 years;

18 (2) the person has not been convicted of a criminal offense since the
 19 license was revoked; and

20 (3) the person provides proof of financial responsibility.

21 (q) A person who fails to satisfy alcoholism treatment requirements imposed
 22 by the court or an authorized agency under (h) of this section is not eligible for good
 23 time deductions credited under AS 33.20.

24 (r) If a person is convicted under this section and has been previously
 25 convicted, the court shall order the person to surrender the registration plates for any
 26 vehicle registered or co-registered in the person's name. The person shall surrender
 27 the registration plates to the department by the close of the next business day. A
 28 person other than the person convicted under this section who applies to register a
 29 motor vehicle that has registration plates that were required to be surrendered under
 30 this section but that were not surrendered as required by this subsection may not
 31 register the vehicle unless the person registering the vehicle provides proof

1 satisfactory to the department that the person did not know that the registration plates
2 were required to be surrendered under this subsection or the person pays twice the
3 applicable registration fee required under AS 28.10.421.

4 * **Sec. 34.** AS 28.35.031(a) is amended to read:

5 (a) A person who operates or drives a motor vehicle in this state or who
6 operates an aircraft as defined in AS 28.35.030(o) [AS 28.35.030(o)(2)] or who
7 operates a watercraft as defined in AS 28.35.030(o) [AS 28.35.030(o)(3)] shall be
8 considered to have given consent to a chemical test or tests of the person's breath for
9 the purpose of determining the alcoholic content of the person's blood or breath if
10 lawfully arrested for an offense arising out of acts alleged to have been committed
11 while the person was operating or driving a motor vehicle or operating an aircraft or a
12 watercraft while under the influence of an alcoholic beverage or controlled
13 substance [INTOXICATED] or if lawfully arrested under AS 28.35.280 for the
14 offense of minor operating a vehicle after consuming alcohol. The test or tests shall
15 be administered at the direction of a law enforcement officer who has probable cause
16 [REASONABLE GROUNDS] to believe that the person was operating or driving a
17 motor vehicle or operating an aircraft or a watercraft in this state while under the
18 influence of an alcoholic beverage or controlled substance [INTOXICATED] or
19 that the person was a minor operating a vehicle after consuming alcohol.

20 * **Sec. 35.** AS 28.35.031(b) is amended to read:

21 (b) A person who operates or drives a motor vehicle in this state or who
22 operates an aircraft or watercraft shall be considered to have given consent to a
23 preliminary breath test for the purpose of determining the alcoholic content of the
24 person's blood or breath. A law enforcement officer may administer a preliminary
25 breath test at the scene of the incident if the officer has probable cause
26 [REASONABLE GROUNDS] to believe that a person's ability to operate a motor
27 vehicle, aircraft, or watercraft is impaired by the ingestion of alcoholic beverages and
28 that the person

29 (1) was operating or driving a motor vehicle, aircraft, or watercraft that
30 is involved in an accident;

31 (2) committed a moving traffic violation or unlawfully operated an

1 aircraft or watercraft; in this paragraph, "unlawfully" means in violation of any
 2 federal, state, or municipal statute, regulation, or ordinance, except for violations that
 3 do not provide reason to believe that the operator's ability to operate the aircraft or
 4 watercraft was impaired by the ingestion of alcoholic beverages; or

5 (3) was operating or driving a motor vehicle in violation of
 6 AS 28.35.029(a).

7 * **Sec. 36.** AS 28.35.031(g) is amended to read:

8 (g) A person who operates or drives a motor vehicle in this state shall be
 9 considered to have given consent to a chemical test or tests of the person's breath and
 10 blood for the purpose of determining the alcoholic content of the person's breath and
 11 blood and shall be considered to have given consent to a chemical test or tests of the
 12 person's blood and urine for the purpose of determining the presence of controlled
 13 substances in the person's blood and urine if the person is involved in a motor vehicle
 14 accident that causes death or serious physical injury to another person. The test or
 15 tests may be administered at the direction of a law enforcement officer who has
 16 **probable cause** [REASONABLE GROUNDS] to believe that the person was
 17 operating or driving a motor vehicle in this state that was involved in an accident
 18 causing death or serious physical injury to another person.

19 * **Sec. 37.** AS 28.35.031 is amended by adding a new subsection to read:

20 (h) Nothing in this section shall be construed to restrict searches or seizures
 21 under a warrant issued by a judicial officer.

22 * **Sec. 38.** AS 28.35.032(a) is amended to read:

23 (a) If a person under arrest for operating a motor vehicle or aircraft while
 24 **under the influence of an alcoholic beverage or controlled substance**
 25 [INTOXICATED] refuses the request of a law enforcement officer to submit to a
 26 chemical test authorized under AS 28.33.031(a)(1) or AS 28.35.031(a), or if a person
 27 involved in a motor vehicle accident that causes death or serious physical injury to
 28 another person refuses the request of a law enforcement officer to submit to a
 29 chemical test authorized under AS 28.33.031(a)(2) or AS 28.35.031(g), after being
 30 advised by the officer that the refusal will result in the denial or revocation of the
 31 driver's license, privilege to drive, or privilege to obtain a license, that the refusal may

1 be used against the person in a civil or criminal action or proceeding arising out of an
 2 act alleged to have been committed by the person while operating a motor vehicle or
 3 aircraft while **under the influence of an alcoholic beverage or controlled substance**
 4 [INTOXICATED], and that the refusal is a crime, a chemical test may not be given,
 5 except as provided by AS 28.35.035. If a person under arrest for operating a watercraft
 6 while **under the influence of an alcoholic beverage or controlled substance**
 7 [INTOXICATED] refuses the request of a law enforcement officer to submit to a
 8 chemical test authorized under AS 28.35.031(a), after being advised by the officer that
 9 the refusal may be used against the person in a civil or criminal action or proceeding
 10 arising out of an act alleged to have been committed by the person while operating a
 11 watercraft while **under the influence of an alcoholic beverage or controlled**
 12 **substance** [INTOXICATED], and that the refusal is a crime, a chemical test may not
 13 be given, except as provided by AS 28.35.035.

14 * **Sec. 39.** AS 28.35.032(e) is amended to read:

15 (e) The refusal of a person to submit to a chemical test authorized under
 16 AS 28.33.031(a) or AS 28.35.031(a) or (g) is admissible evidence in a civil or criminal
 17 action or proceeding arising out of an act alleged to have been committed by the
 18 person while operating or driving a motor vehicle or operating an aircraft or watercraft
 19 while **under the influence of an alcoholic beverage or controlled substance**
 20 [INTOXICATED].

21 * **Sec. 40.** AS 28.35.032(j) is amended to read:

22 (j) For purposes of this section, convictions for operating or driving while
 23 **under the influence of an alcoholic beverage or controlled substance**
 24 [INTOXICATED] under AS 28.33.030 or AS 28.35.030 and for refusal to submit to a
 25 chemical test under this section, if arising out of a single transaction and a single
 26 arrest, are considered one previous conviction.

27 * **Sec. 41.** AS 28.35.033(a) is amended to read:

28 (a) Upon the trial of a civil or criminal action or proceeding arising out of acts
 29 alleged to have been committed by a person while operating or driving a motor vehicle
 30 or operating an aircraft or a watercraft while **under the influence of an alcoholic**
 31 **beverage or controlled substance** [INTOXICATED], the amount of alcohol in the

1 person's blood or breath at the time alleged shall give rise to the following
2 presumptions:

3 (1) If there was 0.04 [0.05] percent or less by weight of alcohol in the
4 person's blood, or 40 [50] milligrams or less of alcohol per 100 milliliters of the
5 person's blood, or 0.04 [0.05] grams or less of alcohol per 210 liters of the person's
6 breath, it shall be presumed that the person was not under the influence of an
7 alcoholic beverage [INTOXICATING LIQUOR].

8 (2) If there was in excess of 0.04 [0.05] percent but less than 0.08
9 [0.10] percent by weight of alcohol in the person's blood, or in excess of 40 [50] but
10 less than 80 [100] milligrams of alcohol per 100 milliliters of the person's blood, or in
11 excess of 0.04 [0.05] grams but less than 0.08 [0.10] grams of alcohol per 210 liters of
12 the person's breath, that fact does not give rise to any presumption that the person was
13 or was not under the influence of an alcoholic beverage [INTOXICATING
14 LIQUOR], but that fact may be considered with other competent evidence in
15 determining whether the person was under the influence of an alcoholic beverage
16 [INTOXICATING LIQUOR].

17 (3) [REPEALED]

18 (4) If there was 0.08 [0.10] percent or more by weight of alcohol in
19 the person's blood, or 80 [100] milligrams or more of alcohol per 100 milliliters of the
20 person's blood, or 0.08 [0.10] grams or more of alcohol per 210 liters of the person's
21 breath, it shall be presumed that the person was under the influence of an alcoholic
22 beverage [INTOXICATING LIQUOR].

23 * **Sec. 42.** AS 28.35.033(e) is amended to read:

24 (e) The person tested may have a physician, or a qualified technician, chemist,
25 registered nurse, or other qualified person of the person's own choosing administer a
26 chemical test in addition to the test administered at the direction of a law enforcement
27 officer. The failure or inability to obtain an additional test by a person does not
28 preclude the admission of evidence relating to the test taken at the direction of a law
29 enforcement officer; the fact that the person under arrest sought to obtain such an
30 additional test, and failed or was unable so to do, is likewise admissible in evidence.

31 **The person who administers the chemical test shall clearly and expressly inform**

1 **the person tested of that person's right to an independent test described under**
 2 **this subsection, and, if the person being tested requests an independent test, the**
 3 **department shall make reasonable and good-faith efforts to assist the person**
 4 **being tested in contacting a person qualified to perform an independent chemical**
 5 **test of the person's breath or blood.**

6 * **Sec. 43.** AS 28.35.035(a) is amended to read:

7 (a) If a person is under arrest for an offense arising out of acts alleged to have
 8 been committed while the person was operating a motor vehicle, aircraft, or watercraft
 9 while **under the influence of an alcoholic beverage or controlled substance**
 10 [INTOXICATED], and that arrest results from an accident that causes death or
 11 physical injury to another person, a chemical test may be administered without the
 12 consent of the person arrested to determine the amount of alcohol in that person's
 13 breath or blood or to determine the presence of controlled substances in that person's
 14 blood and urine.

15 * **Sec. 44.** AS 28.35.035(c) is amended to read:

16 (c) If a chemical test is administered to a person under (a), [OR] (b), **or (d)** of
 17 this section, that person is not subject to the penalties for refusal to submit to a
 18 chemical test provided by AS 28.35.032.

19 * **Sec. 45.** AS 28.35.035 is amended by adding a new subsection to read:

20 (d) If a person is under arrest for operating a motor vehicle, aircraft, or
 21 watercraft while intoxicated and exigent circumstances preclude the administration of
 22 a chemical test of the person's breath under AS 28.33.031(a) or AS 28.35.031(a), a
 23 chemical test may be administered without the consent of the person arrested for the
 24 purpose of determining the amount of alcohol in that person's blood or to determine
 25 the presence of a controlled substance in the person's blood or urine.

26 * **Sec. 46.** AS 28.35.036(a) is amended to read:

27 (a) After conviction of an offense under AS 28.35.030 or 28.35.032, the state
 28 **shall** [MAY] move the court to order the forfeiture of the motor vehicle [,] or aircraft
 29 involved in the commission of the offense if the convicted person has been previously
 30 convicted in this or another jurisdiction [OF MORE THAN ONE OF THE
 31 FOLLOWING OFFENSES] or has [MORE THAN ONCE] been previously convicted

1 of one of the following offenses:

2 (1) driving while **under the influence of an alcoholic beverage or**
 3 **controlled substance** [INTOXICATED] under AS 28.35.030 or another law or
 4 ordinance with substantially similar elements; or

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

7 * **Sec. 47.** AS 28.35 is amended by adding a new section to read:

8 **Article 7. Alaska Repeat Offender Status System.**

9 **Sec. 28.35.300. Alaska driving while under the influence offenders status**
 10 **system.** The department shall establish and maintain a database of persons who are
 11 convicted under AS 28.35.030(n). The database shall be accessible to the public for
 12 the purpose of determining if a person is prohibited by law from registering a vehicle.

13 * **Sec. 48.** AS 28.40.100(a) is amended by adding new paragraphs to read:

14 (26) "controlled substance" includes a hazardous volatile material or
 15 substance that has been knowingly smelled or inhaled;

16 (27) "hazardous volatile material or substance" has the meaning given
 17 in AS 47.37.270.

18 * **Sec. 49.** AS 47.37.040(14) is amended to read:

19 (14) cooperate with the Department of Public Safety and the
 20 Department of Transportation and Public Facilities in establishing and conducting
 21 programs designed to deal with the problem of persons operating motor vehicles while
 22 **under the influence of an alcoholic beverage or controlled substance**
 23 [INTOXICATED OR UNDER THE INFLUENCE OF DRUGS], and develop and
 24 approve alcohol information courses required to be taken by drivers under AS 28.15 or
 25 made available to drivers to reduce points assessed for violation of traffic laws;

26 * **Sec. 50.** The uncodified law of the State of Alaska is amended by adding a new section to
 27 read:

28 APPLICABILITY. (a) Section 6 of this Act applies to registration of a motor vehicle
 29 that occurs on or after the effective date of this Act.

30 (b) This Act applies to offenses committed on or after the effective date of this Act,
 31 except that references to previous convictions include convictions occurring before, on, or

- 1 after the effective date of this Act.
- 2 * **Sec. 51.** Section 47 of this Act takes effect July 1, 2002.
- 3 * **Sec. 52.** Except as provided in sec. 51 of this Act, this Act takes effect July 1, 2001.