

CS FOR HOUSE BILL NO. 4(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/5/01

Referred: 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, inhalant, or controlled substance;**
3 **relating to court records of a conviction involving a violation of the Alaska Uniform**
4 **Vehicle Code or another law, regulation, or ordinance regulating the driving of vehicles;**
5 **relating to implied consent to take a chemical test; relating to operating a motor vehicle**
6 **without a driver's license; relating to registration of motor vehicles; relating to**
7 **presumptions arising from the amount of alcohol in a person's breath or blood; relating**
8 **to alcoholism treatment for offenders convicted of certain offenses involving operating a**
9 **motor vehicle, aircraft, or watercraft; and providing for an effective date."**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **Sec. 12.25.033. Arrest without warrant for operating vehicle while under**
24 **the influence of an alcoholic beverage, inhalant, or controlled substance**
25 **[INTOXICATED].** A peace officer may arrest a person without a warrant, whether
26 or not the offense is committed in the presence of the officer, when the officer has
27 probable cause to believe that the person to be arrested has committed the crime of
28 operating a motor vehicle, an aircraft, or a watercraft in violation of AS 28.35.030 or a
29 similar city or borough ordinance, if the violation is alleged to have occurred less than
30 eight hours before the time of arrest.

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

1 (c) A defendant convicted of a class A felony may be sentenced to a definite
 2 term of imprisonment of not more than 20 years, and shall be sentenced to the
 3 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
 4 12.55.175:

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

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

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

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

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

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

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

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

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

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

31 (2) the commission or attempt on the part of one other than the

1 applicant to commit any of the following offenses:

2 (A) murder in any degree;

3 (B) manslaughter;

4 (C) criminally negligent homicide;

5 (D) assault in any degree;

6 (E) kidnapping;

7 (F) sexual assault in any degree;

8 (G) sexual abuse of a minor;

9 (H) robbery in any degree;

10 (I) threats to do bodily harm; or

11 (J) driving while **under the influence of an alcoholic**

12 **beverage, inhalant, or controlled substance** [INTOXICATED] or another

13 crime resulting from the operation of a motor vehicle, boat, or airplane when

14 the offender is **under the influence of an alcoholic beverage, inhalant, or**

15 **controlled substance** [INTOXICATED].

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

17 (d) The department shall refuse to register a vehicle if the applicant fails to
18 register the vehicle using the applicant's first, middle, and last name or a business
19 name.

20 * **Sec. 7.** AS 28.10 is amended by adding a new section to read:

21 **Sec. 28.10.453. Seizure of registration plates resulting from chemical**
22 **sobriety tests and refusals to submit to tests.** (a) If a law enforcement officer seizes
23 a driver's license under AS 28.15.165, the officer shall also seize the registration plates
24 for the motor vehicle the person was operating and shall deliver the registration plates
25 to the department if the person is a registered owner or co-owner of the vehicle.

26 (b) The law enforcement officer who seizes registration plates under this
27 section shall

28 (1) issue a temporary permit in a distinctive color under which the
29 vehicle may be operated that expires seven days after it is delivered to the person; and

30 (2) give the person written notice that, unless the person, within seven
31 days, requests an administrative review under AS 28.15.166, the department shall

1 suspend the registration for the motor vehicle and retain possession of the motor
2 vehicle registration plates as provided under (d) of this section.

3 (c) Unless the person has obtained a stay of a departmental action under
4 AS 28.15.166, if the chemical test administered under AS 28.33.031(a) or
5 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2) or the
6 person refused to submit to a chemical test authorized under AS 28.33.031(a) or
7 AS 28.35.031(a) or (g), the department shall revoke the registration for the motor
8 vehicle. The department's action takes effect seven days after delivery to the person of
9 the notice required under (b) of this section, and after receipt of a sworn report of a
10 law enforcement officer as described under AS 28.15.165(c).

11 (d) The period of revocation of a motor vehicle registration under this section
12 shall be for the appropriate minimum period for driver's license revocations under
13 AS 28.15.181(c) or court disqualifications under AS 28.33.140. A department hearing
14 officer may grant limited motor vehicle registration privileges to a person whose
15 motor vehicle registration was revoked under this section in accordance with the
16 standards set out in AS 28.15.201 for granting limited driver's license privileges.

17 (e) The department shall allow a person who is an owner or co-owner of a
18 motor vehicle and who is not the person who was operating the motor vehicle when
19 the registration plates were seized under (a) of this section to register the motor
20 vehicle without the name of the person who was operating the vehicle when the
21 registration plates were seized under (a) of this section. If a person registers a motor
22 vehicle under this subsection, the department shall reissue the registration plates
23 seized under (a) of this section.

24 * **Sec. 8.** AS 28.15.046(d) is amended to read:

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

31 * **Sec. 9.** AS 28.15.081(a) is amended to read:

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

16 * **Sec. 10.** AS 28.15.165(c) is amended to read:

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

29 (1) that a chemical test administered under AS 28.33.031(a) or
 30 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2), that a
 31 chemical test administered under AS 28.33.031(a) produced a result described in

1 AS 28.33.030(a)(2), or that a person refused to submit to a chemical test authorized
2 under AS 28.33.031(a) or AS 28.35.031(a) or (g);

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

4 (3) describing the

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

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

13 * **Sec. 11.** AS 28.15.166(a) is amended to read:

14 (a) A person who has received a notice under **AS 28.10.453(b) or**
15 AS 28.15.165(a) may make a written request **(1)** for administrative review of the
16 department's action under **AS 28.10.453(c) or** AS 28.15.165(c); or for **(2)** limited
17 **motor vehicle registration privileges under AS 28.10.453(d) or for limited** license
18 privileges under AS 28.15.165(d). If the person's driver's license has not been
19 previously surrendered to the department, it shall be surrendered to the department at
20 the time the request for review is made.

21 * **Sec. 12.** AS 28.15.166(b) is amended to read:

22 (b) A request for review of the department's action under **AS 28.10.453 or**
23 AS 28.15.165 shall be made within seven days after receipt of the notice under
24 **AS 28.10.453 or** AS 28.15.165, or the right to review is waived and the action of the
25 department under **AS 28.10.453(c) or** AS 28.15.165(c) is final. If a written request for
26 a review is made after expiration of the seven-day period, and if it is accompanied by
27 the applicant's verified statement explaining the failure to make a timely request for a
28 review, the department shall receive and consider the request. If the department finds
29 that the person was unable to make a timely request because of lack of actual notice of
30 the department's action or because of factors of physical incapacity such as
31 hospitalization or incarceration, the department shall waive the period of limitation,

1 reopen the matter, and grant the review request. An initial request for limited license
 2 privileges may be made at any time. Subsequent requests for limited license
 3 privileges may not be made unless the applicant demonstrates a significant change in
 4 circumstances.

5 * **Sec. 13.** AS 28.15.166(c) is amended to read:

6 (c) Upon receipt of a request for review, if it appears that the person holds a
 7 valid driver's license **or motor vehicle registration plates** and that the driver's license
 8 **or motor vehicle registration plates have** [HAS] been surrendered, the department
 9 shall issue a temporary driver's permit **or motor vehicle registration** that is valid until
 10 the scheduled date for the review. A person who has requested a review under this
 11 section may request, and the department may grant for good cause, a delay in the date
 12 of the hearing. If necessary, the department may issue additional temporary permits to
 13 stay the effective date of its action under AS 28.15.165(c) until the final order after the
 14 review is issued.

15 * **Sec. 14.** AS 28.15.166(g) is amended to read:

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

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

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

31 (3) the chemical test administered under AS 28.33.031(a) produced a

1 result described in AS 28.33.030(a)(2).

2 * **Sec. 15.** AS 28.15.181(a) is amended to read:

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

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

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

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

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

12 (5) operating a motor vehicle or aircraft while **under the influence of**
13 **an alcoholic beverage, inhalant, or controlled substance** [INTOXICATED];

14 (6) reckless driving;

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

17 (8) refusal to submit to a chemical test authorized under
18 AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle,
19 commercial motor vehicle, or aircraft while **under the influence of an alcoholic**
20 **beverage, inhalant, or controlled substance** [INTOXICATED], or authorized under
21 AS 28.35.031(g);

22 (9) driving while license, privilege to drive, or privilege to obtain a
23 license, canceled, suspended, or revoked, or in violation of a limitation;

24 (10) vehicle theft in the first degree in violation of AS 11.46.360 or
25 vehicle theft in the second degree in violation of AS 11.46.365.

26 * **Sec. 16.** AS 28.15.181(c) is amended to read:

27 (c) A court convicting a person of an offense described in (a)(5) or (8) of this
28 section arising out of the operation of a motor vehicle, commercial motor vehicle, or
29 aircraft shall revoke that person's driver's license, privilege to drive, or privilege to
30 obtain a license. The revocation may be concurrent with or consecutive to an
31 administrative revocation under AS 28.15.165. The court may not, except as provided

1 in AS 28.15.201, grant limited license privileges during the minimum period of
 2 revocation. **Except as provided under AS 28.35.030(n)(3) and 28.35.032(p)(3), the**
 3 [THE] minimum periods of revocation are [:]

4 (1) not less than 90 days if the person has not been previously
 5 convicted;

6 (2) not less than one year if the person has been previously convicted
 7 once;

8 (3) not less than 3 years if the person has been previously convicted
 9 twice;

10 (4) not less than 5 years if the person has been previously convicted
 11 more than twice.

12 * **Sec. 17.** AS 28.15.191(a) is amended to read:

13 (a) A court that convicts a person of an offense under this title or a regulation
 14 adopted under this title, or another law or regulation of this state, or a municipal
 15 ordinance that regulates the driving of vehicles, shall forward a record of the
 16 conviction to the department **within five working days**. A conviction of a standing or
 17 parking offense need not be reported.

18 * **Sec. 18.** AS 28.15.201(d) is amended to read:

19 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain
 20 a license under AS 28.15.181(c), or the department when revoking a driver's license,
 21 privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant
 22 limited license privileges for the final 60 days during which the license is revoked if

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

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

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

1 (4) the court or the department determines that a limitation under (a) of
 2 this section can be placed on the license that will enable the person to earn a livelihood
 3 without excessive danger to the public; and

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

9 * **Sec. 19.** AS 28.15.211(d) is amended to read:

10 (d) At the end of a period of revocation or limitation following a revocation, a
 11 person whose driver's license has been revoked may apply to the department for the
 12 issuance of a new license, but shall submit to reexamination, pay all required fees
 13 including a reinstatement fee, and, if the license was revoked under
 14 AS 28.15.181(a)(5) or (8), submit proof **to the court or the department that the**
 15 **person has met the alcoholism screening, evaluation, referral, and program**
 16 **requirements of the Department of Health and Social Services under**
 17 **AS 28.35.030(h)** [OF

18 (1) ENROLLMENT IN AND COMPLIANCE WITH OR
 19 COMPLETION OF AN ALCOHOLISM EDUCATION AND REHABILITATION
 20 TREATMENT PROGRAM APPROVED UNDER AS 47.37 IF THE PERSON WAS
 21 SENTENCED UNDER AS 28.15.181(c)(1); OR

22 (2) COMPLETION OF AND PAYMENT FOR AN ALCOHOLISM
 23 EDUCATION AND REHABILITATION TREATMENT PROGRAM APPROVED
 24 UNDER AS 47.37 IF THE PERSON WAS CONVICTED UNDER
 25 AS 28.15.181(c)(2) - (4)].

26 * **Sec. 20.** AS 28.15.271(b) is amended to read:

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

28 (1) a person who renews a driver's license by mail shall pay a fee of
 29 \$1;

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

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

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

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

11 **(C) \$200 if the person's driver's license has, within the 10**
12 **years preceding the application, been revoked under AS 28.35.030 or**
13 **28.35.032 only once; or**

14 **(D) \$500 if the person's driver's license has, within the 10**
15 **years preceding the application, been revoked under AS 28.35.030 or**
16 **28.35.032 two or more times.**

17 * Sec. 21. AS 28.15.281(b) is amended to read:

18 (b) A person may not authorize or knowingly permit a motor vehicle owned
19 by the person or under the control of the person to be driven in this state by a person
20 who is not validly licensed. **This subsection does not apply to a victim of domestic**
21 **violence who authorizes or permits a motor vehicle to be driven due to fear of the**
22 **perpetrator of the domestic violence. In this subsection, "domestic violence" has**
23 **the meaning given in AS 18.66.990.**

24 * Sec. 22. AS 28.33.030 is amended to read:

25 **Sec. 28.33.030. Operating a commercial motor vehicle while under the**
26 **influence of an alcoholic beverage, inhalant, or controlled substance**
27 **[INTOXICATED].** (a) A person commits the crime of operating a commercial
28 motor vehicle while **under the influence of an alcoholic beverage, inhalant, or**
29 **controlled substance** [INTOXICATED] if the person operates a commercial motor
30 vehicle

31 (1) while under the influence of **an alcoholic beverage, inhalant,**

1 [INTOXICATING LIQUOR] or any controlled substance;

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

7 (3) while under the combined influence of **an alcoholic beverage,**
8 **inhalant,** [INTOXICATING LIQUOR] and a controlled substance.

9 (b) Operating a commercial motor vehicle while **under the influence of an**
10 **alcoholic beverage, inhalant, or controlled substance** [INTOXICATED] is a class
11 A misdemeanor.

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

20 * **Sec. 23.** AS 28.33.031(a) is amended to read:

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

23 (1) of the person's breath if lawfully arrested for an offense arising out
24 of acts alleged to have been committed when the person was operating the commercial
25 motor vehicle while **under the influence of an alcoholic beverage, inhalant, or**
26 **controlled substance** [INTOXICATED]; the test or tests may be administered at the
27 direction of a law enforcement officer who has **probable cause** [REASONABLE
28 GROUNDS] to believe that the person was operating a commercial motor vehicle
29 while **under the influence of an alcoholic beverage, inhalant, or controlled**
30 **substance** [INTOXICATED] in violation of AS 28.33.030 or AS 28.35.030;

31 (2) of the person's breath and blood for the purpose of determining the

1 alcoholic content of the person's breath and blood and is considered to have given
 2 consent to a chemical test or tests of the person's blood and urine for the purpose of
 3 determining the presence of controlled substances in the person's blood and urine if
 4 the person is involved in a motor vehicle accident that causes death or serious physical
 5 injury to another person; the test or tests may be administered at the direction of a law
 6 enforcement officer who has **probable cause** [REASONABLE GROUNDS] to
 7 believe that the person was operating a commercial motor vehicle that was involved in
 8 an accident causing death or serious physical injury to another person.

9 * **Sec. 24.** AS 28.33.031(c) is amended to read:

10 (c) A person who operates a commercial motor vehicle is considered to have
 11 given consent to a preliminary breath test, at the direction of a law enforcement
 12 officer, for the purpose of determining the alcoholic content of the person's blood or
 13 breath. A law enforcement officer may administer a preliminary breath test if the
 14 officer has **probable cause** [REASONABLE GROUNDS] to believe that the person's
 15 ability to operate a commercial motor vehicle is impaired by the ingestion of alcoholic
 16 beverages and that

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

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

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

23 * **Sec. 25.** AS 28.33.033(a) is amended to read:

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

29 (1) if there was less than 0.04 percent by weight of alcohol in the
 30 person's blood, or less than 40 milligrams of alcohol per 100 milliliters of the person's
 31 blood, or less than 0.04 grams of alcohol per 210 liters of the person's breath, that fact

1 does not give rise to a presumption that the person was or was not under the influence
 2 of an **alcoholic beverage** [INTOXICATING LIQUOR], but that fact may be
 3 considered with other competent evidence in determining whether the person was
 4 under the influence of an **alcoholic beverage** [INTOXICATING LIQUOR];

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

10 * **Sec. 26.** AS 28.33.033(c) is amended to read:

11 (c) The provisions of (a) of this section may not be construed to limit the
 12 introduction of any other competent evidence bearing upon the question of whether
 13 the person was or was not under the influence of **an alcoholic beverage**
 14 [INTOXICATING LIQUOR].

15 * **Sec. 27.** AS 28.33.140(a) is amended to read:

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

19 (1) operating a commercial motor vehicle while **under the influence**
 20 **of an alcoholic beverage, inhalant, or controlled substance** [INTOXICATED] in
 21 violation of AS 28.33.030;

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

23 (3) operating a motor vehicle while **under the influence of an**
 24 **alcoholic beverage, inhalant, or controlled substance** [INTOXICATED] in
 25 violation of AS 28.35.030;

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

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

31 (6) a serious traffic violation; or

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

3 * **Sec. 28.** AS 28.35.030(a) is amended to read:

4 (a) A person commits the crime of driving while **under the influence of an**
5 **alcoholic beverage, inhalant, or controlled substance** [INTOXICATED] if the
6 person operates or drives a motor vehicle or operates an aircraft or a watercraft

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

9 (2) when, as determined by a chemical test taken within four hours
10 after the alleged offense was committed, there is **0.08** [0.10] percent or more by
11 weight of alcohol in the person's blood or **80** [100] milligrams or more of alcohol per
12 100 milliliters of blood, or when there is **0.08** [0.10] grams or more of alcohol per 210
13 liters of the person's breath; or

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

16 * **Sec. 29.** AS 28.35.030(b) is amended to read:

17 (b) Except as provided under (n) of this section, driving while **under the**
18 **influence of an alcoholic beverage, inhalant, or controlled substance**
19 [INTOXICATED] is a class A misdemeanor. **Except as provided under (r) of this**
20 **section, upon** [UPON] conviction,

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

22 (A) not less than 72 consecutive hours and a fine of not less
23 than **\$1,500** [\$250] if the person has not been previously convicted;

24 (B) not less than **30 days, or not less than 20 days** **if the court**
25 **orders the person to perform 10 days of community service as authorized**
26 **under AS 12.55.055**, and a fine of not less than **\$3,000** [\$500] if the person
27 has been previously convicted once;

28 (C) not less than 60 days and a fine of not less than **\$4,000**
29 [\$1,000] if the person has been previously convicted twice and is not subject to
30 punishment under (n) of this section;

31 (D) not less than 120 days and a fine of not less than **\$5,000**

1 [\$2,000] if the person has been previously convicted three times and is not
2 subject to punishment under (n) of this section;

3 (E) not less than 240 days and a fine of not less than **\$6,000**
4 [\$3,000] if the person has been previously convicted four times and is not
5 subject to punishment under (n) of this section;

6 (F) not less than 360 days and a fine of not less than **\$7,000**
7 [\$4,000] if the person has been previously convicted more than four times and
8 is not subject to punishment under (n) of this section;

9 (2) the court may not

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

13 (B) suspend imposition of sentence;

14 (3) the court shall revoke the person's driver's license, privilege to
15 drive, or privilege to obtain a license under AS 28.15.181, and may order **that** the
16 motor vehicle, [OR] aircraft, **or watercraft** that was used in commission of the
17 offense to be forfeited under AS 28.35.036;

18 **(4) the court shall, if the person has been previously convicted**

19 **(A) order the motor vehicle, aircraft, or watercraft used in**
20 **the commission of the offense forfeited under AS 28.35.036 or shall order**
21 **the motor vehicle, aircraft, or watercraft taken to the owner's residence or**
22 **property and immobilized for the period of time that the person's driver's**
23 **license is revoked; the court shall also require the person to pay any**
24 **administrative costs of keeping the motor vehicle, aircraft, or watercraft**
25 **immobilized; or**

26 **(B) two or more times, order the motor vehicle, aircraft, or**
27 **watercraft used in the commission of the offense forfeited under**
28 **AS 28.35.036.**

29 * **Sec. 30.** AS 28.35.030(d) is amended to read:

30 (d) Except as prohibited by federal law or regulation, every provider of
31 treatment programs to which persons are ordered under [(h) OF] this section shall

1 supply the judge, prosecutor, defendant, and an agency involved in the
 2 defendant's treatment with information and reports concerning the defendant's
 3 past and present assessment, treatment, and progress [ALASKA COURT
 4 SYSTEM WITH THE INFORMATION REGARDING THE CONDITION AND
 5 TREATMENT OF THOSE PERSONS AS THE SUPREME COURT MAY
 6 REQUIRE BY RULE]. Information compiled under this subsection is confidential
 7 and may only be used in connection with court proceedings involving the
 8 defendant's treatment [BY A COURT IN SENTENCING A PERSON
 9 CONVICTED UNDER THIS SECTION, OR BY AN OFFICER OF THE COURT IN
 10 PREPARING A PRESENTENCE REPORT FOR THE USE OF THE COURT IN
 11 SENTENCING A PERSON CONVICTED UNDER THIS SECTION].

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

13 (h) The court shall order a person convicted under this section to satisfy the
 14 screening, evaluation, referral, and program requirements of an alcohol safety action
 15 program if such a program is available in the community where the person resides, or
 16 a private or public treatment facility approved by the division of alcoholism and drug
 17 abuse, of the Department of Health and Social Services, under AS 47.37 to make
 18 referrals for rehabilitative treatment or to provide rehabilitative treatment. If a person
 19 is convicted under (n) of this section, the court shall order the person to be evaluated
 20 as required by this subsection before the court imposes sentence for the offense.
 21 Treatment required under this subsection shall occur, as much as possible, when
 22 the person is incarcerated. The cost of treatment required under this subsection
 23 shall be paid to the state by the person being treated. The cost of treatment
 24 required to be paid to the state under this subsection may not exceed \$10,000;
 25 however, the cost of treatment must include at least \$150 for the cost of an
 26 alcohol safety action program if the program is available. Upon the person's
 27 conviction, the court shall include reimbursement of the cost of treatment as a
 28 part of the sentence. Except for reimbursement from a permanent fund dividend
 29 as provided in this subsection, payment of the cost of treatment is not required if
 30 the court determines the person is indigent. For costs of treatment that are not
 31 paid by the person as required by this subsection, the state shall seek

1 **reimbursement from the person's permanent fund dividend as provided in**
 2 **AS 43.23.065. This subsection does not apply to costs of treatment incurred by a**
 3 **person if the cost is incurred as a result of treatment not required under this**
 4 **subsection.**

5 * **Sec. 32.** AS 28.35.030(k) is amended to read:

6 (k) Imprisonment required under (b)(1)(A) or (B) of this section shall be
 7 served at a community residential center or, if a community residential center is not
 8 available, at another appropriate place determined by the commissioner of corrections.
 9 The cost of imprisonment resulting from the sentence imposed under (b)(1) of this
 10 section shall be paid to the state by the person being sentenced provided, however, that
 11 the cost of imprisonment required to be paid under this subsection may not exceed
 12 **\$2,000** [\$1,000]. Upon the person's conviction, the court shall include the costs of
 13 imprisonment as a part of the judgment of conviction. Except for reimbursement from
 14 a permanent fund dividend as provided in this subsection, payment of the cost of
 15 imprisonment is not required if the court determines the person is indigent. For costs
 16 of imprisonment that are not paid by the person as required by this subsection, the
 17 state shall seek reimbursement from the person's permanent fund dividend as provided
 18 under AS 43.23.065. While at the community residential center or other appropriate
 19 place, a person sentenced under (b)(1)(A) of this section shall perform at least 24
 20 hours of community service work, and a person sentenced under (b)(1)(B) of this
 21 section shall perform at least 160 hours of community service work, as required by the
 22 director of the community residential center or other appropriate place. In this
 23 subsection, "appropriate place" means a facility with 24-hour on-site staff supervision
 24 that is specifically adapted to provide a residence, and includes a correctional center,
 25 residential treatment facility, hospital, halfway house, group home, work farm, work
 26 camp, or other place that provides varying levels of restriction.

27 * **Sec. 33.** AS 28.35.030(n) is amended to read:

28 (n) A person is guilty of a class C felony if the person is convicted **under (a)**
 29 **of this section** [OF DRIVING WHILE INTOXICATED] and has been previously
 30 convicted two or more times **since January 1, 1996, and** within the **10** [FIVE] years
 31 preceding the date of the present offense. For purposes of determining minimum

1 sentences based on previous convictions, the provisions of (o)(4) of this section apply.

2 **Except as provided under (r) of this section, upon** [UPON] conviction, the court

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

5 (A) **180** [120] days if the person has been previously convicted
6 twice;

7 (B) **360** [240] days if the person has been previously convicted
8 three times;

9 (C) **440** [360] days if the person has been previously convicted
10 four 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 **permanently** revoke the person's driver's license, privilege to
17 drive, or privilege to obtain a license **subject to restoration of the license under (p)**
18 **of this section** [UNDER AS 28.15.181(c)];

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

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

26 **(6) shall order the department to revoke the registration for any**
27 **vehicle registered by the department in the name of the person convicted under**
28 **this subsection; if a person convicted under this subsection is a registered co-**
29 **owner of a vehicle or is registered as a co-owner under a business name, the**
30 **department shall reissue the vehicle registration and omit the name of the person**
31 **convicted under this subsection.**

1 * **Sec. 34.** AS 28.35.030(o) is amended to read:

2 (o) In this section,

3 (1) **"inhalant" has the meaning given to the phrase "hazardous**
 4 **volatile material or substance" in AS 47.37.270;** [REPEALED]

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

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

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

16 (A) operating a motor vehicle, aircraft, or watercraft while
 17 **under the influence of an alcoholic beverage, inhalant, or controlled**
 18 **substance** [INTOXICATED,] in violation of this section or in violation of
 19 another law or ordinance with similar elements, except that the other law or
 20 ordinance may provide for a lower level of alcohol in the person's blood or
 21 breath than imposed under (a)(2) of this section;

22 (B) refusal to submit to a chemical test in violation of
 23 AS 28.35.032 or in violation of another law or ordinance with similar
 24 elements; or

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

31 * **Sec. 35.** AS 28.35.030 is amended by adding new subsections to read:

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

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

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

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

7 (q) If a person is convicted under this section and has been previously
8 convicted, the court shall order the person to surrender the registration plates for any
9 vehicle registered or co-registered in the person's name. The person shall surrender
10 the registration plates to the department by the close of the next business day. A
11 person other than the person convicted under this section who applies to register a
12 motor vehicle that has registration plates that were required to be surrendered under
13 this section but that were not surrendered as required by this subsection may not
14 register the vehicle unless the person registering the vehicle provides proof
15 satisfactory to the department that the person did not know that the registration plates
16 were required to be surrendered under this subsection or the person pays twice the
17 applicable registration fee required under AS 28.10.421.

18 (r) The court may suspend

19 (1) a portion of the mandatory minimum sentence required under
20 (b)(1) or (n)(1) of this section if the court determines that the person has successfully
21 completed a therapeutic court program; and

22 (2) up to 50 percent of the minimum fines required under (b)(1) or
23 (n)(1) of this section.

24 (s) For purposes of this section, the director of the division within the
25 department responsible for administration of this section or a person designated by the
26 director may request and receive criminal justice information available under
27 AS 12.62. In this subsection, "criminal justice information" has the meaning given in
28 AS 12.62.900.

29 * **Sec. 36.** AS 28.35.031(a) is amended to read:

30 (a) A person who operates or drives a motor vehicle in this state or who
31 operates an aircraft as defined in AS 28.35.030(o) [AS 28.35.030(o)(2)] or who

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

* **Sec. 37.** AS 28.35.031(b) is amended to read:

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

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

(2) committed a moving traffic violation or unlawfully operated an aircraft or watercraft; in this paragraph, "unlawfully" means in violation of any federal, state, or municipal statute, regulation, or ordinance, except for violations that do not provide reason to believe that the operator's ability to operate the aircraft or watercraft was impaired by the ingestion of alcoholic beverages; or

(3) was operating or driving a motor vehicle in violation of

1 AS 28.35.029(a).

2 * **Sec. 38.** AS 28.35.031(g) is amended to read:

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

14 * **Sec. 39.** AS 28.35.031 is amended by adding a new subsection to read:

15 (h) Nothing in this section shall be construed to restrict searches or seizures
 16 under a warrant issued by a judicial officer, in addition to a test permitted under this
 17 section.

18 * **Sec. 40.** AS 28.35.032(a) is amended to read:

19 (a) If a person under arrest for operating a motor vehicle or aircraft while
 20 **under the influence of an alcoholic beverage, inhalant, or controlled substance**
 21 [INTOXICATED] refuses the request of a law enforcement officer to submit to a
 22 chemical test authorized under AS 28.33.031(a)(1) or AS 28.35.031(a), or if a person
 23 involved in a motor vehicle accident that causes death or serious physical injury to
 24 another person refuses the request of a law enforcement officer to submit to a
 25 chemical test authorized under AS 28.33.031(a)(2) or AS 28.35.031(g), after being
 26 advised by the officer that the refusal will result in the denial or revocation of the
 27 driver's license, privilege to drive, or privilege to obtain a license, that the refusal may
 28 be used against the person in a civil or criminal action or proceeding arising out of an
 29 act alleged to have been committed by the person while operating a motor vehicle or
 30 aircraft while **under the influence of an alcoholic beverage, inhalant, or controlled**
 31 **substance** [INTOXICATED], and that the refusal is a crime, a chemical test may not

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

10 * **Sec. 41.** AS 28.35.032(e) is amended to read:

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

17 * **Sec. 42.** AS 28.35.032(g) is amended to read:

18 (g) **Except as provided under (t) of this section, upon** [UPON] conviction
 19 under this section,

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

21 (A) not less than 72 consecutive hours and a fine of not less
 22 than **\$1,500** [\$250] if the person has not been previously convicted;

23 (B) not less than **30 days, or not less than** 20 days **if the court**
 24 **orders the person to perform 10 days of community service as authorized**
 25 **under AS 12.55.055,** and a fine of not less than **\$3,000** [\$500] if the person
 26 has been previously convicted once;

27 (C) not less than 60 days and a fine of not less than **\$4,000**
 28 [\$1,000] if the person has been previously convicted twice and is not subject to
 29 punishment under (p) of this section;

30 (D) not less than 120 days and a fine of not less than **\$5,000**
 31 [\$2,000] if the person has been previously convicted three times and is not

1 subject to punishment under (p) of this section;

2 (E) not less than 240 days and a fine of not less than **\$6,000**
 3 [~~\$3,000~~] if the person has been previously convicted four times and is not
 4 subject to punishment under (p) of this section;

5 (F) not less than 360 days and a fine of not less than **\$7,000**
 6 [~~\$4,000~~] if the person has been previously convicted more than four times and
 7 is not subject to punishment under (p) of this section;

8 (2) the court may not

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

12 (B) suspend imposition of sentence;

13 (3) the court shall revoke the person's driver's license, privilege to
 14 drive, or privilege to obtain a license under AS 28.15.181, and may order **that** the
 15 motor vehicle, ~~aircraft,~~ **or watercraft** that was used in commission of the
 16 offense be forfeited under AS 28.35.036; [AND]

17 (4) **the court shall, if the person has been previously convicted**

18 **(A) order the motor vehicle, aircraft, or watercraft used in**
 19 **the commission of the offense forfeited under AS 28.35.036 or shall order**
 20 **the motor vehicle, aircraft, or watercraft taken to the owner's residence or**
 21 **property and immobilized for the period of time that the person's driver's**
 22 **license is revoked; the court shall also require the person to pay any**
 23 **administrative costs of keeping the motor vehicle, aircraft, or watercraft**
 24 **immobilized; or**

25 **(B) two or more times, order the motor vehicle, aircraft, or**
 26 **watercraft used in the commission of the offense forfeited under**
 27 **AS 28.35.036;**

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

30 * **Sec. 43.** AS 28.35.032(h) is amended to read:

31 (h) Except as prohibited by federal law or regulation, every provider of

1 treatment programs to which persons are ordered under [(l) OF] this section shall
 2 supply the **judge, prosecutor, defendant, and an agency involved in the**
 3 **defendant's treatment with information and reports concerning the defendant's**
 4 **past and present assessment, treatment, and progress** [ALASKA COURT
 5 SYSTEM WITH THE INFORMATION REGARDING THE CONDITION AND
 6 TREATMENT OF THOSE PERSONS AS THE SUPREME COURT MAY
 7 REQUIRE BY RULE]. Information compiled under this subsection is confidential
 8 and may only be used **in connection with court proceedings involving the**
 9 **defendant's treatment** [BY A COURT IN SENTENCING A PERSON
 10 CONVICTED UNDER THIS SECTION, OR BY AN OFFICER OF THE COURT IN
 11 PREPARING A PRE-SENTENCE REPORT FOR THE USE OF THE COURT IN
 12 SENTENCING A PERSON CONVICTED UNDER THIS SECTION].

13 * **Sec. 44.** AS 28.35.032(j) is amended to read:

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

19 * **Sec. 45.** AS 28.35.032(l) is amended to read:

20 (l) The court shall order a person convicted under this section to satisfy the
 21 screening, evaluation, referral, and program requirements of an alcohol safety action
 22 program if such a program is available in the community where the person resides, or
 23 a private or public treatment facility approved by the division of alcoholism and drug
 24 abuse, of the Department of Health and Social Services, under AS 47.37 to make
 25 referrals for rehabilitative treatment or to provide rehabilitative treatment. If a person
 26 is convicted under (p) of this section, the court shall order the person to be evaluated
 27 as required by this subsection before the court imposes sentence for the offense.
 28 **Treatment required under this subsection shall occur, as much as possible, when**
 29 **the person is incarcerated. The cost of treatment required under this subsection**
 30 **shall be paid to the state by the person being treated. The cost of treatment**
 31 **required to be paid to the state under this subsection may not exceed \$10,000;**

1 however, the cost of treatment must include at least \$150 for the cost of an
 2 alcohol safety action program if the program is available. Upon the person's
 3 conviction, the court shall include reimbursement of the cost of treatment as a
 4 part of the sentence. Except for reimbursement from a permanent fund dividend
 5 as provided in this subsection, payment of the cost of treatment is not required if
 6 the court determines the person is indigent. For costs of treatment that are not
 7 paid by the person as required by this subsection, the state shall seek
 8 reimbursement from the person's permanent fund dividend as provided in
 9 AS 43.23.065. This subsection does not apply to costs of treatment incurred by a
 10 person if the cost is incurred as a result of treatment not required under this
 11 subsection.

12 * **Sec. 46.** AS 28.35.032(o) is amended to read:

13 (o) Imprisonment required under (g)(1)(A) or (B) of this section shall be
 14 served at a community residential center, or if a community residential center is not
 15 available, at another appropriate place determined by the commissioner of corrections.
 16 The cost of imprisonment resulting from the sentence imposed under (g)(1) of this
 17 section shall be paid to the state by the person being sentenced provided, however, that
 18 the cost of imprisonment required to be paid under this subsection may not exceed
 19 **\$2,000** [\$1,000]. Upon the person's conviction, the court shall include the costs of
 20 imprisonment as a part of the judgment of conviction. Except for reimbursement from
 21 a permanent fund dividend as provided in this subsection, payment of the cost of
 22 imprisonment is not required if the court determines the person is indigent. For costs
 23 of imprisonment that are not paid by the person as required by this subsection, the
 24 state shall seek reimbursement from the person's permanent fund dividend as provided
 25 under AS 43.23.065. While at the community residential center or other appropriate
 26 place, a person sentenced under (g)(1)(A) of this section shall perform at least 24
 27 hours of community service work and a person sentenced under (g)(1)(B) of this
 28 section shall perform at least 160 hours of community service work, as required by the
 29 director of the community residential center or other appropriate place. In this
 30 subsection, "appropriate place" means a facility with 24-hour on-site staff supervision
 31 that is specifically adapted to provide a residence, and includes a correctional center,

1 residential treatment facility, hospital, halfway house, group home, work farm, work
2 camp, or other place that provides varying levels of restriction.

3 * **Sec. 47.** AS 28.35.032(p) is amended to read:

4 (p) A person is guilty of a class C felony if the person is convicted under this
5 section and has been previously convicted two or more times **since January 1, 1996,**
6 **and** within the **10** [FIVE] years preceding the date of the present offense. For
7 purposes of determining minimum sentences based on previous convictions, the
8 provisions of AS 28.35.030(o)(4) apply. **Except as provided under (t) of this**
9 **section, upon** [UPON] conviction,

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

12 (A) **180** [120] days if the person has been previously convicted
13 twice;

14 (B) **360** [240] days if the person has been previously convicted
15 three times;

16 (C) **440** [360] days if the person has been previously convicted
17 four or more times;

18 (2) the court may not

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

22 (B) suspend imposition of sentence;

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

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

30 (5) the sentence imposed by the court under this subsection shall run
31 consecutively with any other sentence of imprisonment imposed on the person; [AND]

1 (6) the court **shall** [MAY] also order forfeiture under AS 28.35.036, of
 2 the **motor** vehicle, [OR] aircraft, **or watercraft** used in the commission of the offense,
 3 subject to remission under AS 28.35.037; **and**

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

9 * **Sec. 48.** AS 28.35.032 is amended by adding new subsections to read:

10 (r) Upon request, the department shall review a driver's license revocation
 11 imposed under (p)(3) of this section and may restore the driver's license if

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

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

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

16 (s) If a person is convicted under this section and has been previously
 17 convicted, the court shall order the person to surrender the registration plates for any
 18 vehicle registered or co-registered in the person's name. The person shall surrender
 19 the registration plates to the department by the close of the next business day. A
 20 person other than the person convicted under this section who applies to register a
 21 motor vehicle that has registration plates that were required to be surrendered under
 22 this section but that were not surrendered as required by this subsection may not
 23 register the vehicle unless the person registering the vehicle provides proof
 24 satisfactory to the department that the person did not know that the registration plates
 25 were required to be surrendered under this subsection or the person pays twice the
 26 applicable registration fee required under AS 28.10.421.

27 (t) The court may suspend

28 (1) a portion of the mandatory minimum sentence required under
 29 (g)(1) or (p)(1) of this section if the court determines that the person has successfully
 30 completed a therapeutic court program; and

31 (2) up to 50 percent of the minimum fine required under (g)(1) and

1 (p)(1) of this section.

2 * **Sec. 49.** AS 28.35.033(a) is amended to read:

3 (a) Upon the trial of a civil or criminal action or proceeding arising out of acts
4 alleged to have been committed by a person while operating or driving a motor vehicle
5 or operating an aircraft or a watercraft while **under the influence of an alcoholic**
6 **beverage, inhalant, or controlled substance** [INTOXICATED], the amount of
7 alcohol in the person's blood or breath at the time alleged shall give rise to the
8 following presumptions:

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

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

23 (3) [REPEALED]

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

29 * **Sec. 50.** AS 28.35.033(e) is amended to read:

30 (e) The person tested may have a physician, or a qualified technician, chemist,
31 registered nurse, or other qualified person of the person's own choosing administer a

1 chemical test in addition to the test administered at the direction of a law enforcement
 2 officer. The failure or inability to obtain an additional test by a person does not
 3 preclude the admission of evidence relating to the test taken at the direction of a law
 4 enforcement officer; the fact that the person under arrest sought to obtain such an
 5 additional test, and failed or was unable so to do, is likewise admissible in evidence.

6 **The person who administers the chemical test shall clearly and expressly inform**
 7 **the person tested of that person's right to an independent test described under**
 8 **this subsection, and, if the person being tested requests an independent test, the**
 9 **department shall make reasonable and good-faith efforts to assist the person**
 10 **being tested in contacting a person qualified to perform an independent chemical**
 11 **test of the person's breath or blood.**

12 * **Sec. 51.** AS 28.35.035(a) is amended to read:

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

21 * **Sec. 52.** AS 28.35.036(a) is amended to read:

22 (a) After conviction of an offense under AS 28.35.030 or 28.35.032, the **court**
 23 [STATE] may [MOVE THE COURT TO] order the forfeiture of the motor vehicle,
 24 [OR] aircraft, **or watercraft** involved in the commission of the offense **and shall**
 25 **order forfeiture of the motor vehicle, aircraft, or watercraft** if the convicted
 26 person has been previously convicted **twice** in this or another jurisdiction [OF MORE
 27 THAN ONE OF THE FOLLOWING OFFENSES] or has [MORE THAN ONCE]
 28 been previously convicted **twice** of one of the following offenses:

29 (1) driving while **under the influence of an alcoholic beverage,**
 30 **inhalant, or controlled substance** [INTOXICATED] under AS 28.35.030 or another
 31 law or ordinance with substantially similar elements; or

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

3 * **Sec. 53.** AS 28.35.036(e) is amended to read:

4 (e) If not released under AS 28.35.037, a motor vehicle, aircraft, or
5 watercraft forfeited under this section may be disposed of at the discretion of the
6 Department of Public Safety. Disposal under this subsection includes, by way of
7 example and not of limitation,

8 (1) sale, as a unit or in parts, including sale at an auction, and the
9 proceeds deposited into the general fund;

10 (2) transfer to a state or municipal law enforcement agency;

11 (3) being declared surplus and transferred to the Department of
12 Administration; or

13 (4) being destroyed.

14 * **Sec. 54.** AS 28.35.038 is amended to read:

15 **Sec. 28.35.038. Municipal impoundment and forfeiture.** Notwithstanding
16 other provisions in this title, a municipality may adopt an ordinance providing for the
17 impoundment or forfeiture of a motor vehicle [,] or aircraft [,] involved in the
18 commission of an offense under AS 28.35.030, 28.35.032, or an ordinance with
19 elements substantially similar to AS 28.35.030 or 28.35.032. An ordinance adopted
20 under this section may include a fee for the administrative costs incurred by the
21 municipality and is not required to be consistent with this title or regulations adopted
22 under this title.

23 * **Sec. 55.** AS 28.35.039(2) is amended to read:

24 (2) "alcohol safety action program" means a program for alcohol and
25 substance abuse screening, referral, and monitoring developed and implemented
26 or approved by the Department of Health and Social Services under AS 47.37
27 [DESIGNATED BY THE COMMISSIONER OF HEALTH AND SOCIAL
28 SERVICES AS AN ALCOHOL SAFETY ACTION PROGRAM].

29 * **Sec. 56.** AS 47.37.040(14) is amended to read:

30 (14) cooperate with the Department of Public Safety and the
31 Department of Transportation and Public Facilities in establishing and conducting

1 programs designed to deal with the problem of persons operating motor vehicles while
 2 **under the influence of an alcoholic beverage, inhalant, or controlled substance**
 3 **[INTOXICATED OR UNDER THE INFLUENCE OF DRUGS]**, and develop and
 4 approve alcohol information courses required to be taken by drivers under AS 28.15 or
 5 made available to drivers to reduce points assessed for violation of traffic laws;

6 * **Sec. 57.** AS 47.37.040 is amended by adding a new paragraph to read:

7 (20) develop and implement, or designate, in cooperation with other
 8 state or local agencies, an alcohol safety action program that provides alcohol and
 9 substance abuse screening, referral, and monitoring services to persons who have been
 10 referred by a court in connection with a charge or conviction of a misdemeanor
 11 involving the use of a motor vehicle, aircraft, or watercraft and alcohol or a controlled
 12 substance, or referred by an agency of the state with the responsibility for
 13 administering motor vehicle laws in connection with a driver's license action involving
 14 the use of alcohol or a controlled substance.

15 * **Sec. 58.** AS 47.37.130(b) is amended to read:

16 (b) The program of the division must include

17 (1) emergency treatment provided by a facility affiliated with or part of
 18 the medical service of a general hospital;

19 (2) inpatient treatment;

20 (3) intermediate treatment; [AND]

21 (4) outpatient and follow-up treatment; **and**

22 **(5) standards for alcohol safety action programs; the standards**
 23 **may vary in their requirements and stringency according to the population, price**
 24 **level, remoteness, access to transportation, and availability of ancillary services of**
 25 **the area to be served; a program must meet the applicable standards before it is**
 26 **approved by the division as an alcohol safety action program; the standards**
 27 **required under this paragraph shall be established in a manner that provides**
 28 **protection of the health, safety, and well-being of clients of the affected programs**
 29 **and protection for the affected programs from exposure to malpractice and**
 30 **liability actions.**

31 * **Sec. 59.** AS 47.37.130 is amended by adding new subsections to read:

1 (h) The division shall

2 (1) inspect, on a regular basis, approved public and private alcohol
3 safety action programs at reasonable times and in a reasonable manner; and

4 (2) maintain a list of approved public and private alcohol safety action
5 programs.

6 (i) An approved public and private alcohol safety action program shall file
7 with the division on request data, statistics, schedules, and information that the
8 division reasonably requires. An approved program that fails without good cause to
9 furnish any data, statistics, schedules, or information as requested, or files fraudulent
10 returns of them, shall be removed from the list of approved programs.

11 (j) The director, after holding a hearing under the provisions of AS 44.62
12 (Administrative Procedure Act), may suspend, revoke, limit, restrict, or refuse to grant
13 an approval for an alcohol safety action program for failure to meet standards
14 established under (b) of this section.

15 * **Sec. 60.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

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

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

22 * **Sec. 61.** This Act takes effect July 1, 2001.