

SENATE BILL NO. 177

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY SENATOR WARD

Introduced: 4/6/01

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to driving while intoxicated and to presumptions arising from the**
2 **amount of alcohol in a person's breath or blood; and providing for an effective date."**

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

4 *** Section 1.** AS 28.15.181(a) is amended to read:

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

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

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

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

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

14 (5) operating a motor vehicle or aircraft while intoxicated **in violation**

1 **of AS 28.35.030(a);**

2 (6) reckless driving;

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

5 (8) refusal to submit to a chemical test authorized under
6 AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle,
7 commercial motor vehicle, or aircraft while intoxicated, or authorized under
8 AS 28.35.031(g);

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

11 (10) vehicle theft in the first degree in violation of AS 11.46.360 or
12 vehicle theft in the second degree in violation of AS 11.46.365;

13 **(11) habitual driving while intoxicated in violation of**
14 **AS 28.35.030(p).**

15 * **Sec. 2.** AS 28.15.181 is amended by adding a new subsection to read:

16 (i) A court convicting a person of an offense described in (a)(11) of this
17 section shall permanently revoke that person's driver's license, privilege to drive, or
18 privilege to obtain a license.

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

20 (a) **Except as provided under (p) of this section, a** [A] person commits the
21 crime of driving while intoxicated if the person operates or drives a motor vehicle or
22 operates an aircraft or a watercraft

23 (1) while under the influence of intoxicating liquor [,] or any
24 controlled substance;

25 (2) when, as determined by a chemical test taken within four hours
26 after the alleged offense was committed, there is **0.08** [0.10] percent or more by
27 weight of alcohol in the person's blood or **80** [100] milligrams or more of alcohol per
28 100 milliliters of blood, or when there is **0.08** [0.10] grams or more of alcohol per 210
29 liters of the person's breath; or

30 (3) while the person is under the combined influence of intoxicating
31 liquor and a controlled substance.

1 * **Sec. 4.** AS 28.35.030(b) is amended to read:

2 (b) Except as provided under (n) of this section, driving while intoxicated
 3 **under (a) of this section or habitual driving while intoxicated under (p) of this**
 4 **section** is a class A misdemeanor. Upon conviction,

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

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

8 (B) not less than 20 days and a fine of not less than **\$1,500**
 9 [\$500] if the person has been previously convicted **under (a) or (p) of this**
 10 **section** once;

11 (C) not less than 60 days and a fine of not less than **\$2,000**
 12 [\$1,000] if the person has been previously convicted **under (a) or (p) of this**
 13 **section** twice and is not subject to punishment under (n) of this section;

14 (D) not less than 120 days and a fine of not less than **\$3,000**
 15 [\$2,000] if the person has been previously convicted **under (a) or (p) of this**
 16 **section** three times and is not subject to punishment under (n) of this section;

17 (E) not less than 240 days and a fine of not less than **\$4,000**
 18 [\$3,000] if the person has been previously convicted **under (a) or (p) of this**
 19 **section** four times and is not subject to punishment under (n) of this section;

20 (F) not less than 360 days and a fine of not less than **\$4,500**
 21 [\$4,000] if the person has been previously convicted **under (a) or (p) of this**
 22 **section** more than four times and is not subject to punishment under (n) of this
 23 section;

24 (2) the court may not

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

28 (B) suspend imposition of sentence;

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

1 AS 28.35.036.

2 * **Sec. 5.** AS 28.35.030 is amended by adding a new subsection to read:

3 (p) A person commits the crime of habitual driving while intoxicated if the
4 person has been previously convicted of driving while intoxicated and operates or
5 drives a motor vehicle or operates an aircraft or a watercraft when, as determined by a
6 chemical test taken within four hours after the alleged offense was committed, there is
7 0.04 percent or more by weight of alcohol in the person's blood or 40 milligrams or
8 more of alcohol per 100 milliliters of blood, or when there is 0.04 grams or more of
9 alcohol per 210 liters of the person's breath.

10 * **Sec. 6.** AS 28.35.033(a) is amended to read:

11 (a) Upon the trial of a civil or criminal action or proceeding arising out of acts
12 alleged to have been committed by a person while operating or driving a motor vehicle
13 or operating an aircraft or a watercraft while intoxicated, the amount of alcohol in the
14 person's blood or breath at the time alleged shall give rise to the following
15 presumptions:

16 (1) If there was 0.04 [0.05] percent or less by weight of alcohol in the
17 person's blood, or 40 [50] milligrams or less of alcohol per 100 milliliters of the
18 person's blood, or 0.04 [0.05] grams or less of alcohol per 210 liters of the person's
19 breath, it shall be presumed that the person was not under the influence of intoxicating
20 liquor.

21 (2) If there was in excess of 0.04 [0.05] percent but less than 0.08
22 [0.10] percent by weight of alcohol in the person's blood, or in excess of 40 [50] but
23 less than 80 [100] milligrams of alcohol per 100 milliliters of the person's blood, or in
24 excess of 0.04 [0.05] grams but less than 0.08 [0.10] grams of alcohol per 210 liters of
25 the person's breath, that fact does not give rise to any presumption that the person was
26 or was not under the influence of intoxicating liquor, but that fact may be considered
27 with other competent evidence in determining whether the person was under the
28 influence of intoxicating liquor.

29 (3) [REPEALED]

30 (4) If there was 0.08 [0.10] percent or more by weight of alcohol in
31 the person's blood, or 80 [100] milligrams or more of alcohol per 100 milliliters of the

1 person's blood, or 0.08 [0.10] grams or more of alcohol per 210 liters of the person's
2 breath, it shall be presumed that the person was under the influence of intoxicating
3 liquor.

4 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 **APPLICABILITY.** This Act applies to offenses committed on or after the effective
7 date of this Act, except that references to previous convictions include convictions occurring
8 before, on, or after the effective date of this Act.

9 * **Sec. 8.** This Act takes effect July 1, 2001.