

**SENATE BILL NO. 349**

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

**BY THE SENATE TRANSPORTATION COMMITTEE**

**Introduced: 3/18/02**

**Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to refusal to submit to a chemical test and to administration of a**  
2 **chemical test to a person arrested for the offense of driving while intoxicated; and**  
3 **providing for an effective date."**

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

5 \* **Section 1.** AS 04.11.494(e) is amended to read:

6 (e) A person is disqualified as described under (b)(9) of this section due to the  
7 person's criminal record if less than

8 (1) two years **have** [HAS] elapsed from the person's unconditional  
9 discharge due to a conviction or adjudication as a delinquent for any of the following  
10 offenses or a law or ordinance from another jurisdiction with similar elements:

11 (A) driving while intoxicated under AS 28.35.030 or refusal to  
12 submit to a chemical test under **former** AS 28.35.032; or

13 (B) a crime involving domestic violence, as that term is defined  
14 under AS 18.66.990, or violating a protective order under AS 11.56.740;

1 (2) five years **have** [HAS] elapsed from the person's unconditional  
 2 discharge due to a conviction or adjudication as a delinquent for any of the following  
 3 offenses or a law or ordinance from another jurisdiction with similar elements:

4 (A) a felony violation or a felony attempt to commit a violation  
 5 of AS 11.41; or

6 (B) a misdemeanor violation of or a misdemeanor attempt to  
 7 violate a provision in this title; or

8 (3) 10 years **have** [HAS] elapsed from the person's unconditional  
 9 discharge due to a conviction or adjudication as a delinquent for a felony violation or a  
 10 felony attempt to violate a provision of this title or a law or ordinance from another  
 11 jurisdiction with similar elements.

12 \* **Sec. 2.** AS 04.16.050(k)(3) is amended to read:

13 (3) "previously convicted" means a conviction or an adjudication as a  
 14 delinquent for a violation of AS 11.71, AS 28.35.030, **former** 28.35.032, 28.35.280 -  
 15 28.35.290, or a law or ordinance in another jurisdiction with substantially similar  
 16 elements.

17 \* **Sec. 3.** AS 12.55.039(a) is amended to read:

18 (a) In addition to any fine or other penalty prescribed by law, a defendant who  
 19 pleads guilty or nolo contendere to, forfeits bail for, or is convicted of a

20 (1) felony shall be assessed a surcharge of \$100;

21 (2) violation of a misdemeanor offense under AS 28.33.030,  
 22 28.33.031, **or** AS 28.35.030, [OR 28.35.032], or a violation of a municipal ordinance  
 23 comparable to a misdemeanor offense under AS 28.33.030, 28.33.031, **or**  
 24 AS 28.35.030 [, OR 28.35.032] and adopted under AS 28.01.010, shall be assessed a  
 25 surcharge of \$75;

26 (3) misdemeanor or a violation of a municipal ordinance if a sentence  
 27 of incarceration may be imposed for the misdemeanor or ordinance violation, other  
 28 than a provision identified in (2) of this subsection, shall be assessed a surcharge of  
 29 \$50;

30 (4) misdemeanor for which a sentence of incarceration may not be  
 31 imposed, a violation or an infraction under state law, or a violation of a municipal

1 ordinance imposing a penalty authorized by AS 29.25.070(a) if a sentence of  
 2 incarceration may not be imposed for the ordinance violation, shall be assessed a  
 3 surcharge of \$10 if the fine or bail forfeiture amount for the offense is \$30 or more.

4 \* **Sec. 4.** AS 12.55.102(d) is amended to read:

5 (d) The court may include the cost of the ignition interlock device as a part of  
 6 the fine required to be imposed against the defendant under AS 28.35.030(b) or (n)  
 7 [OR 28.35.032(g) OR (p)].

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

9 (a) A law enforcement officer shall read a notice, and deliver a copy of it, to a  
 10 person operating a motor vehicle, commercial motor vehicle, or aircraft, if a chemical  
 11 test administered under AS 28.33.031(a) or AS 28.35.031(a) or (g) produces a result  
 12 described in AS 28.35.030(a)(2); or a chemical test administered under  
 13 AS 28.33.031(a) produces a result described in AS 28.33.030(a)(2) [; OR THE  
 14 PERSON REFUSES TO SUBMIT TO A CHEMICAL TEST AUTHORIZED  
 15 UNDER AS 28.33.031(a) OR AS 28.35.031(a) OR (g)]. The notice must advise that

16 (1) the department intends to revoke the person's driver's license,  
 17 privilege to drive, or privilege to obtain a license, refuse to issue an original license to  
 18 the person, or disqualify the person;

19 (2) the person has the right to administrative review of the action taken  
 20 against the person's license or determination not to issue an original license;

21 (3) if the person has a driver's license or a nonresident privilege to  
 22 drive, the notice itself is a temporary driver's license that expires seven days after it is  
 23 delivered to the person, except that, if the person was operating a commercial motor  
 24 vehicle, the person will be ordered out of service for 24 hours under AS 28.33.130;

25 (4) revocation of the person's driver's license, privilege to drive, or  
 26 privilege to obtain a license, a determination not to issue an original license, or a  
 27 disqualification of the person, takes effect seven days after delivery of the notice to the  
 28 person unless the person, within seven days, requests an administrative review.

29 \* **Sec. 6.** AS 28.15.165(c) is amended to read:

30 (c) Unless the person has obtained a temporary permit or stay of a  
 31 departmental action under AS 28.15.166, if the chemical test administered under

1 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in  
 2 AS 28.35.030(a)(2) [OR THE PERSON REFUSED TO SUBMIT TO A CHEMICAL  
 3 TEST AUTHORIZED UNDER AS 28.33.031(a) OR AS 28.35.031(a) OR (g)], the  
 4 department shall revoke the person's license, privilege to drive, or privilege to obtain a  
 5 license, shall refuse to issue an original license, and, if the chemical test administered  
 6 under AS 28.33.031(a) produced a result described in AS 28.33.030(a)(2) [OR THE  
 7 PERSON REFUSED TO SUBMIT TO A CHEMICAL TEST AUTHORIZED  
 8 UNDER AS 28.33.031(a)], shall disqualify the person. The department's action takes  
 9 effect seven days after delivery to the person of the notice required under (a) of this  
 10 section, and after receipt of a sworn report of a law enforcement officer

11 (1) that a chemical test administered under AS 28.33.031(a) or  
 12 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2) or [,] that a  
 13 chemical test administered under AS 28.33.031(a) produced a result described in  
 14 AS 28.33.030(a)(2), [OR THAT A PERSON REFUSED TO SUBMIT TO A  
 15 CHEMICAL TEST AUTHORIZED UNDER AS 28.33.031(a) OR AS 28.35.031(a)  
 16 OR (g)];

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

18 (3) describing the

19 (A) circumstances surrounding the arrest and the grounds for  
 20 the officer's belief that the person operated a motor vehicle, commercial motor  
 21 vehicle, or aircraft while intoxicated in violation of AS 28.33.030 or  
 22 AS 28.35.030; or

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

26 \* **Sec. 7.** AS 28.15.165(d) is amended to read:

27 (d) The period of revocation of a driver's license, privilege to drive, privilege  
 28 to obtain a license, refusal to issue an original license, or disqualification shall be for  
 29 the appropriate minimum period for court revocations under AS 28.15.181(c) or court  
 30 disqualifications under AS 28.33.140. A department hearing officer may grant limited  
 31 license privileges in accordance with the standards set out in AS 28.15.201 to a person

1 whose driver's license or nonresident privilege to drive was revoked under this section.  
 2 The department may terminate a revocation imposed under this section and issue a  
 3 driver's license to the person[,] if the license, privilege to drive, or privilege to obtain a  
 4 license was revoked for an offense described in AS 28.15.181(a)(5) [OR (8)] and the  
 5 person meets the conditions set out for termination of a revocation by the court under  
 6 AS 28.15.181(f).

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

8 (g) The hearing for review of action by the department under AS 28.15.165  
 9 shall be limited to the issues of whether the law enforcement officer had reasonable  
 10 grounds to believe that the person was operating a motor vehicle or commercial motor  
 11 vehicle that was involved in an accident causing death or serious physical injury to  
 12 another, or that the person was operating a motor vehicle, commercial motor vehicle,  
 13 or aircraft while intoxicated in violation of AS 28.33.030 or AS 28.35.030 and  
 14 whether

15 (1) [THE PERSON REFUSED TO SUBMIT TO A CHEMICAL  
 16 TEST AUTHORIZED UNDER AS 28.33.031(a) OR AS 28.35.031(a) OR (g) AFTER  
 17 BEING ADVISED THAT REFUSAL WOULD RESULT IN DISQUALIFICATION  
 18 OR THE SUSPENSION, REVOCATION, OR DENIAL OF THE PERSON'S  
 19 LICENSE, PRIVILEGE TO DRIVE, OR PRIVILEGE TO OBTAIN A LICENSE,  
 20 AND THAT THE REFUSAL IS A MISDEMEANOR;

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

23 (2) [(3)] the chemical test administered under AS 28.33.031(a)  
 24 produced a result described in AS 28.33.030(a)(2).

25 \* **Sec. 9.** AS 28.15.181(a) is amended to read:

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

28 (1) manslaughter or negligent homicide resulting from driving a motor  
 29 vehicle;

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

31 (3) failure to stop and give aid as required by law when a motor

1 vehicle accident results in the death or personal injury of another;

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

4 (5) operating a motor vehicle or aircraft while intoxicated;

5 (6) reckless driving;

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

8 (8) [REFUSAL TO SUBMIT TO A CHEMICAL TEST  
9 AUTHORIZED UNDER AS 28.33.031(a) OR AS 28.35.031(a) WHILE UNDER  
10 ARREST FOR OPERATING A MOTOR VEHICLE, COMMERCIAL MOTOR  
11 VEHICLE, OR AIRCRAFT WHILE INTOXICATED, OR AUTHORIZED UNDER  
12 AS 28.35.031(g);

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

15 (9) [(10)] vehicle theft in the first degree in violation of AS 11.46.360  
16 or vehicle theft in the second degree in violation of AS 11.46.365.

17 \* **Sec. 10.** AS 28.15.181(b) is amended to read:

18 (b) A court convicting a person of an offense described in (a)(1) - (4), (6), (7),  
19 or (9) [(10)] of this section shall revoke that person's driver's license, privilege to  
20 drive, or privilege to obtain a license for not less than 30 days for the first conviction,  
21 unless the court determines that the person's ability to earn a livelihood would be  
22 severely impaired and a limitation under AS 28.15.201 can be placed on the license  
23 that will enable the person to earn a livelihood without excessive danger to the public.  
24 If a court limits a person's license under this subsection, it shall do so for not less than  
25 60 days. Upon a subsequent conviction of a person for any offense described in (a)(1)  
26 - (4), (6), (7), or 9 [(10)] of this section occurring within 10 years after a prior  
27 conviction, the court shall revoke the person's license, privilege to drive, or privilege  
28 to obtain a license and may not grant the person limited license privileges for the  
29 following periods:

30 (1) not less than one year for the second conviction; and

31 (2) not less than three years for a third or subsequent conviction.

1 \* **Sec. 11.** AS 28.15.181(c) is amended to read:

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

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

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

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

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

17 \* **Sec. 12.** AS 28.15.181(d) is amended to read:

18 (d) A court convicting a person of an offense described in (a)(8) [(a)(9)] of  
 19 this section shall revoke that person's driver's license, privilege to drive, or privilege to  
 20 obtain a license for not less than the minimum period under AS 28.15.291(b)(4).

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

22 (f) The court may terminate a revocation for an offense described in (a)(5)  
 23 [OR (8)] of this section if

24 (1) the person's license, privilege to drive, or privilege to obtain a  
 25 license has been revoked for the minimum periods set out in (c) of this section; and

26 (2) the person complies with the provisions of AS 28.15.211(d) and  
 27 (e).

28 \* **Sec. 14.** AS 25.15.183(a) is amended to read:

29 (a) If a peace officer has probable cause to believe that a person who is at least  
 30 14 years of age but not yet 21 years of age has operated a vehicle after consuming  
 31 alcohol in violation of AS 28.35.280, [OR REFUSED TO SUBMIT TO A

1 CHEMICAL TEST UNDER AS 28.35.285,] and the peace officer has cited the person  
 2 or arrested the person for the offense, the peace officer shall read a notice and deliver a  
 3 copy to the person. The notice must advise that

4 (1) the department intends to revoke the person's driver's license or  
 5 permit, privilege to drive, or privilege to obtain a license or permit;

6 (2) the person has the right to administrative review of the revocation;

7 (3) if the person has a driver's license or permit, the notice itself is a  
 8 temporary driver's license or permit that expires 10 days after it is delivered to the  
 9 person;

10 (4) revocation of the person's driver's license or permit, privilege to  
 11 drive, or privilege to obtain a license or permit, takes effect 10 days after delivery of  
 12 the notice to the person unless the person, within 10 days, requests an administrative  
 13 review;

14 (5) if the person has been cited under AS 28.35.280 [OR UNDER  
 15 AS 28.35.285], that person, under AS 28.35.290, may not operate a motor vehicle,  
 16 aircraft, or watercraft during the 24 hours following issuance of the citation.

17 \* **Sec. 15.** AS 28.15.184(g) is amended to read:

18 (g) The hearing for review of a revocation by the department under  
 19 AS 28.15.183 shall be limited to the issues of whether the person was at least 14 years  
 20 of age but not yet 21 years of age and whether the person operated a vehicle after  
 21 consuming alcohol in violation of AS 28.35.280 [OR REFUSED TO SUBMIT TO A  
 22 CHEMICAL TEST OF BREATH IN VIOLATION OF AS 28.35.285].

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

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

28 (1) the revocation was for a violation of AS 28.15.181(a)(5) [AND  
 29 NOT FOR A VIOLATION OF AS 28.15.181(a)(8)];

30 (2) the person has not been previously convicted; in this paragraph,  
 31 "previously convicted" has the meaning given in AS 28.35.030 and also includes

1 convictions based on laws presuming that the person was under the influence of  
 2 intoxicating liquor if there was 0.08 percent or more by weight of alcohol in the  
 3 person's blood;

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

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

9 (5) the court or the department determines that the person is enrolled in  
 10 and is in compliance with, or has successfully completed, an alcoholism education and  
 11 rehabilitation treatment program.

12 \* **Sec. 17.** AS 28.15.211(d) is amended to read:

13 (d) At the end of a period of revocation or limitation following a revocation, a  
 14 person whose driver's license has been revoked may apply to the department for the  
 15 issuance of a new license, but shall submit to reexamination, pay all required fees  
 16 including a reinstatement fee, and, if the license was revoked under  
 17 AS 28.15.181(a)(5) [OR (8)], submit proof of

18 (1) enrollment in and compliance with or completion of an alcoholism  
 19 education and rehabilitation treatment program approved under AS 47.37 if the person  
 20 was sentenced under AS 28.15.181(c)(1); or

21 (2) completion of and payment for an alcoholism education and  
 22 rehabilitation treatment program approved under AS 47.37 if the person was convicted  
 23 under AS 28.15.181(c)(2) - (4).

24 \* **Sec. 18.** AS 28.33.031(a) is repealed and reenacted to read:

25 (a) A person who operates a commercial motor vehicle in this state, if lawfully  
 26 arrested for an offense arising out of acts alleged to have been committed when the  
 27 person was operating the commercial motor vehicle while intoxicated, may be  
 28 chemically tested for impairment. The test or tests may be administered at the  
 29 direction of a law enforcement officer who has reasonable grounds to believe that the  
 30 person was operating a commercial motor vehicle while intoxicated in violation of  
 31 AS 28.33.030 or AS 28.35.030;

1 \* **Sec. 19.** AS 28.33.031(b) is amended to read:

2 (b) [REFUSAL TO SUBMIT TO A CHEMICAL TEST AUTHORIZED  
3 UNDER THIS SECTION IS PUNISHABLE UNDER AS 28.35.032.] A chemical test  
4 may be administered without consent under AS 28.35.035. A person who is  
5 disqualified as the result of department action under AS 28.15.165, following a test  
6 administered under this section, can obtain review of that action under AS 28.15.166.

7 \* **Sec. 20.** AS 28.33.140(a) is amended to read:

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

11 (1) operating a commercial motor vehicle while intoxicated in  
12 violation of AS 28.33.030;

13 (2) [REFUSAL TO SUBMIT TO A CHEMICAL TEST IN  
14 VIOLATION OF AS 28.35.032;

15 (3)] operating a motor vehicle while intoxicated in violation of  
16 AS 28.35.030;

17 (3) [(4)] leaving the scene of an accident in violation of AS 28.35.060,  
18 or failing to file, or providing false information in, an accident report in violation of  
19 AS 28.35.110;

20 (4) [(5)] a felony under state or federal law, which was facilitated  
21 because the person used a commercial motor vehicle;

22 (5) [(6)] a serious traffic violation; or

23 (6) [(7)] driving after being placed out of service in violation of  
24 regulations adopted under AS 28.05.011.

25 \* **Sec. 21.** AS 28.33.140(b) is amended to read:

26 (b) A finding by a court that there is proof by a preponderance of the evidence  
27 that a person was operating a commercial motor vehicle at the time that the  
28 commercial motor vehicle was involved in an offense listed in (a)(2) - (5) [(a)(2) - (6)]  
29 of this section, is sufficient to disqualify the person under this section.

30 \* **Sec. 22.** AS 28.33.140(c) is amended to read:

31 (c) A court convicting a person of an offense described in (a)(5) [(a)(6)] of

1 this section shall disqualify that person from driving a commercial motor vehicle for  
 2 not less than 60 days if the person has been previously convicted once, and 120 days if  
 3 the person has been previously convicted more than once. As used in this subsection,  
 4 "previously convicted" means having been convicted in this or another jurisdiction,  
 5 within three years preceding the date of the present offense, of an offense described in  
 6 (a)(5) [(a)(6)] of this section, or of another law or ordinance with substantially similar  
 7 elements, arising out of a separate incident.

8 \* **Sec. 23.** AS 28.33.140(d) is amended to read:

9 (d) A court convicting a person of an offense described in (a)(1) - (4) [(a)(1) -  
 10 (5)] of this section shall disqualify that person from driving a commercial motor  
 11 vehicle for not less than one year for a first offense, except that, if the offense was

12 (1) facilitated by a commercial motor vehicle transporting a hazardous  
 13 substance that required that placards be placed on the vehicle under 49 U.S.C. 5101 -  
 14 5127, the period of disqualification is not less than three years;

15 (2) a felony offense that involved the manufacture, distribution, or  
 16 dispensing, or possession with intent to manufacture, distribute, or dispense, a  
 17 controlled substance, the disqualification is for life and the license may not be  
 18 reinstated under (g) of this section.

19 \* **Sec. 24.** AS 28.33.140(e) is amended to read:

20 (e) A court convicting a person of an offense described in (a)(1) - (4) [(a)(1) -  
 21 (5)] of this section shall disqualify that person from driving a commercial motor  
 22 vehicle for life if the person has been previously convicted. As used in this  
 23 subsection, "previously convicted" means having been convicted in this or another  
 24 jurisdiction of an offense described in (a)(1) - (4) [(a)(1) - (5)] of this section, or of  
 25 another law or ordinance with substantially similar elements.

26 \* **Sec. 25.** AS 28.33.140(h) is amended to read:

27 (h) A disqualified driver reinstated under (g) of this section who is  
 28 subsequently convicted of a disqualifying offense described in (a)(1) - (4) [(a)(1) - (5)]  
 29 of this section is permanently disqualified for life and is ineligible to again apply for  
 30 reinstatement under (g) of this section.

31 \* **Sec. 26.** AS 28.33.140(j) is amended to read:

1 (j) A court convicting a person of an offense described in (a)(6) [(a)(7)] of this  
 2 section shall disqualify that person from driving a commercial motor vehicle for the  
 3 following periods: (1) if the person has not been previously convicted of violating an  
 4 out-of-service order, not less than 90 days; (2) if the person has been previously  
 5 convicted once of violating an out-of-service order, not less than one year; (3) if the  
 6 person has been previously convicted more than once of violating an out-of-service  
 7 order, not less than three years. In this subsection, "previously convicted" means  
 8 having been convicted in this or another jurisdiction of an offense described in (a)(6)  
 9 [(a)(7)] of this section within 10 years preceding the date of the present offense.

10 \* **Sec. 27.** AS 28.35.030(o)(4) is amended to read:

11 (4) "previously convicted" means having been convicted in this or  
 12 another jurisdiction of any of the following offenses; however, convictions for any of  
 13 these offenses, if arising out of a single transaction and a single arrest, are considered  
 14 one previous conviction:

15 (A) operating a motor vehicle, aircraft, or watercraft while  
 16 intoxicated, in violation of this section or in violation of another law or  
 17 ordinance with similar elements, except that the other law or ordinance may  
 18 provide for a lower level of alcohol in the person's blood or breath than  
 19 imposed under (a)(2) of this section;

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

23 (C) operating a commercial motor vehicle while intoxicated in  
 24 violation of AS 28.33.030 or in violation of another law or ordinance with  
 25 similar elements, except that the other law or ordinance may provide for a  
 26 lower level of alcohol in the person's blood or breath than imposed under  
 27 AS 28.33.030(a)(2).

28 \* **Sec. 28.** AS 28.35.035(a) is amended to read:

29 (a) If a person is under arrest for [AN OFFENSE ARISING OUT OF ACTS  
 30 ALLEGED TO HAVE BEEN COMMITTED WHILE THE PERSON WAS]  
 31 operating a motor vehicle, aircraft, or watercraft while intoxicated, [AND THAT

1 ARREST RESULTS FROM AN ACCIDENT THAT CAUSES DEATH OR  
 2 PHYSICAL INJURY TO ANOTHER PERSON,] a chemical test may be administered  
 3 without the consent of the person arrested to determine the amount of alcohol in that  
 4 person's breath or blood or to determine the presence of controlled substances in that  
 5 person's blood and urine.

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

7 (b) A person who is unconscious [OR OTHERWISE IN A CONDITION  
 8 RENDERING THAT PERSON INCAPABLE OF REFUSAL] is considered not to  
 9 have withdrawn the consent provided under AS 28.33.031(a) or AS 28.35.031(a) or  
 10 (g) and a chemical test may be administered to determine the amount of alcohol in that  
 11 person's breath or blood or to determine the presence of controlled substances in that  
 12 person's blood and urine. A person who is unconscious or otherwise incapable of  
 13 refusal need not be placed under arrest before a chemical test may be administered.

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

15 (a) After conviction of an offense under AS 28.35.030 or **former** 28.35.032,  
 16 the state may move the court to order the forfeiture of the motor vehicle [,] or aircraft  
 17 involved in the commission of the offense if the convicted person has been previously  
 18 convicted in this or another jurisdiction of more than one of the following offenses or  
 19 has more than once been previously convicted of one of the following offenses:

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

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

24 \* **Sec. 31.** AS 28.35.038 is amended to read:

25 **Sec. 28.35.038. Municipal impoundment and forfeiture.** Notwithstanding  
 26 other provisions in this title, a municipality may adopt an ordinance providing for the  
 27 impoundment or forfeiture of a motor vehicle [,] or aircraft [,] involved in the  
 28 commission of an offense under AS 28.35.030 [, 28.35.032,] or an ordinance with  
 29 elements substantially similar to AS 28.35.030 [OR 28.35.032]. An ordinance  
 30 adopted under this section is not required to be consistent with this title or regulations  
 31 adopted under this title.

1 \* **Sec. 32.** AS 28.35.290(a) is amended to read:

2 (a) A person who has been cited for minor operating a vehicle after consuming  
3 alcohol under AS 28.35.280 [OR FOR REFUSAL TO SUBMIT TO A CHEMICAL  
4 TEST OF BREATH UNDER AS 28.35.285] may not operate a motor vehicle, aircraft,  
5 or watercraft during the 24 hours following issuance of the citation.

6 \* **Sec. 33.** AS 28.35.032, 28.35.035(c) and 28.35.285 are repealed.

7 \* **Sec. 34.** This Act takes effect July 1, 2002.