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Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 611 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to operating a motor vehicle, air-
7 craft, or watercraft while intoxicated."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 02.30.030(a) is amended to read:

10 (a) No person may operate an aircraft in the air or on the ground
11 or water in violation of AS 28.35.030 [WHILE UNDER THE INFLUENCE OF IN-
12 TOXICATING LIQUOR, NARCOTICS, OR OTHER HABIT-FORMING DRUGS], or operate
13 an aircraft in the air or on the ground or water in a careless or reck-
14 less manner so as to endanger the life or property of another. In a pro-
15 ceeding charging careless or reckless operation of aircraft in violation
16 of this section, the court, in determining whether the operation was
17 careless or reckless, shall consider the standards for safe operation of
18 aircraft prescribed by federal statutes or regulations governing aero-
19 nautics.

20 * Sec. 2. AS 02.30.040 is amended to read:

21 Sec. 02.30.040. PENALTIES. A person violating any of the provi-
22 sions of this chapter is guilty of a misdemeanor and upon conviction is
23 punishable by a fine of not more than \$500 unless that person is con-
24 victed of a violation of AS 28.35.030, in which case he shall be sen-
25 tenced in accordance with AS 28.35.030.

26 * Sec. 3. AS 05.25.060(b) is amended to read:

27 (b) A person may not operate a watercraft whether for recreational
28 purposes or any other purpose in violation of AS 28.35.030 or manipulate
29 water skis, a surfboard, or a similar device on the waters of the state

1 while under the influence of any intoxicating liquor, narcotic drug,
2 barbiturate or marijuana.

3 * Sec. 4. AS 05.25.090 is amended to read:

4 Sec. 05.25.090. PENALTIES. A person who violates any provision of
5 this chapter is guilty of a misdemeanor and is punishable by a fine of
6 not more than \$500, or by imprisonment of not more than six months, or
7 by both, for each violation unless that person is convicted of a viola-
8 tion of AS 28.35.030, in which case he shall be sentenced in accordance
9 with AS 28.35.030.

10 * Sec. 5. AS 09.65.095(a) is amended to read:

11 (a) No civil or criminal action arising out of battery may be
12 brought against a health care provider for the act of taking a blood
13 sample if the sample is taken

14 (1) at the request of a police officer under the circum-
15 stances specified in AS 28.35.035 or when the arresting officer has a
16 search warrant or court order authorizing the taking of the blood sample;
17 and

18 (2) without the use of excessive or unreasonable force.

19 * Sec. 6. AS 12.25.033 is amended to read:

20 Sec. 12.25.033. GROUNDS FOR ARREST BY PEACE OFFICER WITHOUT WAR-
21 RANT. A peace officer may arrest a person without a warrant, whether or
22 not the offense is committed in the presence of the officer, when the
23 officer has probable cause to believe that the person to be arrested has
24 committed the crime of operating a motor vehicle, an aircraft, or a
25 watercraft in violation of AS 28.35.030 or a similar city or borough
26 ordinance, if the violation is alleged to have occurred less than eight
27 hours before the time of arrest.

28 * Sec. 7. AS 28.15.181(a)(5) is amended to read:

29 (5) operating or driving [OR OPERATING] a motor vehicle while

1 intoxicated [UNDER THE INFLUENCE OF ALCOHOL OR ANOTHER DRUG];

2 * Sec. 8. AS 28.15.181(b) is amended to read:

3 (b) A court convicting a person of an offense under (a)(1) - (4),
4 (6), or (7) [(a)(1) - (7)] of this section shall revoke that person's
5 driver's license for a period of not less than 30 days for the first
6 conviction, unless the court determines that the person's ability to
7 earn a livelihood would be severely impaired and a limitation under
8 AS 28.15.201 can be placed on the license which will enable the person
9 to earn a livelihood without excessive risk or danger to the public. If
10 a court limits a person's license under this subsection, it shall do so
11 for a period of not less than 30 days. Upon a subsequent conviction of a
12 person for any offense under (a)(1) - (4), (6), or (7) [(a)] of this
13 section, the court shall revoke the person's license and may not grant
14 him any limited license privileges for the following periods:

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

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

18 * Sec. 9. AS 28.15.181 is amended by adding a new subsection to read:

19 (c) A court convicting a person of an offense under (a)(5) of this
20 section shall revoke that person's driver's license for a period of not
21 less than 30 days for the first conviction. If the court determines
22 that the person's ability to earn a livelihood would be severely impaired
23 and a limitation under AS 28.15.201 can be placed on the license that
24 will enable the person to earn a livelihood without excessive risk or
25 danger to the public, the court shall revoke the person's license but
26 may modify the revocation by a grant of limited license privileges. If
27 limited license privileges are granted under this subsection, the period
28 of revocation and the period of limited license privileges may not be
29 less than 60 days. If the person has been previously convicted in this

1 or another jurisdiction of operating or driving a motor vehicle while
2 intoxicated or for refusal to submit to a chemical test of breath under
3 AS 28.35.032, the court shall revoke the person's license and may not
4 grant him any limited license privileges for the following periods:

- 5 (1) not less than one year for the second conviction; and
6 (2) not less than three years for a third or subsequent
7 conviction.

8 * Sec. 10. AS 28.15.201(b) is amended to read:

9 (b) A court imposing a limitation under this section shall (1)
10 require the surrender of the driver's license and, if the person is con-
11 victed of an offense under AS 28.15.181(a)(5), revoke that person's
12 license for a period of not less than 60 days; and (2) [SHALL] issue to
13 the licensee a certificate valid for the duration of the limitation.

14 * Sec. 11. AS 28.15.201(c) is amended to read:

15 (c) After the termination of a limitation as shown on the certifi-
16 cate issued under (b) of this section, a person on whom a limitation was
17 imposed is no longer bound by the limitation and may apply for a dupli-
18 cate license under AS 28.15.141 or, if otherwise eligible, for a new
19 license if the license was revoked for conviction of an offense under
20 AS 28.15.181(a)(5) and limited license privileges were granted under
21 AS 28.15.181(c).

22 * Sec. 12. AS 28.15.211(a)(4) is amended to read:

23 (4) three months from the date on which the license was
24 revoked for refusal to submit to a chemical test as required in AS 28.-
25 35.032; however, if the person who refuses to submit to the chemical
26 test [, WITHIN TWO YEARS PREVIOUS TO HIS ARREST,] has been convicted in
27 this or another jurisdiction of driving a motor vehicle while intox-
28 icated or of refusal to submit to a chemical test of breath under AS 28.-
29 35.032, the period of revocation for his license of privilege to drive

1 is not less than one year.

2 * Sec. 13. AS 28.35.030(a) is amended to read:

3 (a) A person commits the crime of driving while intoxicated if he
4 operates or drives a motor vehicle or operates an aircraft or a water-
5 craft

6 (1) while under the influence of intoxicating liquor, depres-
7 sant, hallucinogenic, stimulant or narcotic drugs as defined in AS
8 17.10.230(13) and AS 17.12.150(3);

9 (2) when there is 0.10 percent or more by weight of alcohol
10 in his blood or 100 milligrams or more of alcohol per 100 milliliters of
11 his blood, or when there is 0.10 grams or more of alcohol per 210 liters
12 of his breath; or

13 (3) while he is under the combined influence of intoxicating
14 liquor and another substance.

15 * Sec. 14. AS 28.35.030(c) is amended to read:

16 (c) Upon conviction under this section the court shall impose a
17 minimum sentence of imprisonment of not less than 72 [THREE] consecutive
18 hours [DAYS]. Upon a subsequent conviction within five years after a
19 conviction of driving while intoxicated in this or any other state or
20 conviction of refusal to submit to a chemical test of breath under
21 AS 28.35.032 [UNDER THIS SECTION], the court shall impose a minimum
22 sentence of imprisonment of not less than 10 consecutive days unless
23 the subsequent conviction is within one year of the previous conviction,
24 in which case the court shall impose a minimum sentence of imprisonment
25 of not less than 20 consecutive days. The execution of sentence may not
26 be suspended nor may probation be granted until the minimum imprisonment
27 provided in this section has been served. Imposition of sentence may
28 not be suspended, except upon the condition that the defendant be impris-
29 oned for no less than the minimum period provided in this section. In

1 addition, his operator's license shall be revoked in accordance with
2 AS 28.15.181. In addition, a person convicted under this statute shall
3 undertake, for a term specified by the court, that program of alcohol
4 education or rehabilitation which the court, after consideration of any
5 information compiled under (d) of this section, finds appropriate.

6 * Sec. 15. AS 28.35.030 is amended by adding new subsections to read:

7 (e) A person who is sentenced to imprisonment for 72 consecutive
8 hours upon a first conviction under (c) of this section and who is not
9 released from imprisonment after 72 hours may not bring an action against
10 the state or a municipality or its agents, officers, or employees for
11 damages resulting from the additional period of confinement if

12 (1) the employee or employees who released the person exer-
13 cised due care and, in releasing the person, followed the standard
14 release procedures of the prison facility; and

15 (2) the additional period of confinement did not exceed 12
16 hours.

17 (f) For purposes of this section,

18 (1) "operate an aircraft" means to use, navigate, pilot, or
19 taxi an aircraft in the airspace over this state, or upon the land or
20 water inside this state;

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

26 * Sec. 16. AS 28.35.031 is amended to read:

27 Sec. 28.35.031. IMPLIED CONSENT. A person who operates or drives
28 a motor vehicle in this state or who operates an aircraft as defined by
29 AS 28.35.030(f)(1) or who operates a watercraft as described by AS 28.-

1 35.030(f)(2) shall be considered to have given consent to a chemical
2 test or tests of his breath for the purpose of determining the alcoholic
3 content of his blood or breath if lawfully arrested for an offense
4 arising out of acts alleged to have been committed while the person was
5 operating or driving a motor vehicle or operating an aircraft or a
6 watercraft while intoxicated. The test or tests shall be administered
7 at the direction of a law enforcement officer who has reasonable grounds
8 to believe that the person was operating or driving a motor vehicle
9 or operating an aircraft or a watercraft in this state while intoxicated.

10 * Sec. 17. AS 28.35.032 is amended to read:

11 Sec. 28.35.032. REFUSAL TO SUBMIT TO CHEMICAL TEST. (a) If a
12 person under arrest refuses the request of a law enforcement officer to
13 submit to a chemical test of his breath as provided in AS 28.35.031,
14 after being advised by the officer that his refusal will, if that per-
15 son was arrested while operating or driving a motor vehicle, result in
16 the suspension, denial or revocation of his license or his nonresident
17 privilege to drive, [AND] that the refusal may be used against him in a
18 civil or criminal action or proceeding arising out of an act alleged to
19 have been committed by him while operating or driving a motor vehicle
20 or operating an aircraft or a watercraft while intoxicated, and that the
21 refusal is a misdemeanor [UNDER THE INFLUENCE OF INTOXICATING LIQUOR], a
22 chemical test shall not be given, except as provided by AS 28.35.035.

23 (b) Upon receipt of a sworn report of a law enforcement officer
24 that a person has refused to submit to a chemical test authorized under
25 AS 28.35.031, containing a statement of the circumstances surrounding
26 the arrest and the grounds upon which his belief was based that the
27 person was operating or driving a motor vehicle in violation of AS 28.-
28 35.030, the Department of Public Safety shall notify the person that his
29 license or nonresident privilege to drive or operate a motor vehicle in

1 the state is revoked or suspended, or that no original license or permit
2 will be issued for three months. In the same notice the department
3 shall inform the person that he may initiate a proceeding in the district
4 court to rescind the department's action. The court proceeding shall be
5 without jury and shall be limited to the issues of whether

6 (1) the arresting officer had reasonable grounds to believe
7 the arrested person had been operating or driving a motor vehicle in the
8 state while intoxicated [UNDER THE INFLUENCE OF INTOXICATING LIQUOR];

9 (2) the arrested person refused to submit to the breath test
10 upon request of the officer after being advised that his refusal would
11 result in the suspension, revocation, or denial of his license or non-
12 resident privilege to drive and that the refusal is a misdemeanor; and

13 (3) the accused defendant was informed fairly of the nature
14 of the tests, the accuracy of the methods, machines, equipment involved,
15 the expertise of the person administering the tests, or operator of the
16 machines, and the accused given such other reasonable information as may
17 be requested by him.

18 (c) If the issues set out in (b)(1), (2) and (3) of this section
19 are determined in the affirmative, the court shall sustain the action of
20 the department. If one or more of the issues are determined in the
21 negative, the department's action shall be rescinded. If the action of
22 the department in suspending or revoking a nonresident's privilege to
23 operate or drive a motor vehicle in this state is sustained by the
24 court, the department shall give information in writing of the action
25 taken to the motor vehicle administrator of the state of the person's
26 residence and to any state in which he has a license.

27 (d) If the person who refuses to submit to the chemical test
28 authorized by AS 28.35.031 [, WITHIN TWO YEARS PREVIOUS TO HIS ARREST,]
29 has been convicted in this or any other state of operating or driving a

1 motor vehicle while intoxicated or of refusal to submit to a chemical
2 test of breath under this section, the period of suspension or revoca-
3 tion for his license, nonresident privilege to drive, or denial of origi-
4 nal license shall be one year.

5 (e) The refusal of a person to submit to a chemical test of his
6 breath under (a) of this section is admissible evidence in a civil or
7 criminal action or proceeding arising out of an act alleged to have been
8 committed by the person while operating or driving a motor vehicle
9 or operating an aircraft or watercraft while intoxicated [UNDER THE
10 INFLUENCE OF INTOXICATING LIQUOR].

11 (f) Refusal to submit to the chemical test of breath authorized by
12 AS 28.35.031 is a class A misdemeanor.

13 (g) Upon conviction of a person under this section, the court
14 shall impose a minimum sentence of imprisonment of not less than 72
15 consecutive hours. Upon a subsequent conviction within five years
16 after a conviction under this section or of driving while intoxicated
17 in this or any other state, the court shall impose a minimum sentence
18 of imprisonment of not less than 10 consecutive days unless the sub-
19 sequent conviction is within one year of the previous conviction, in
20 which case the court shall impose a minimum sentence of imprisonment
21 of not less than 20 consecutive days. The execution of sentence may
22 not be suspended nor may probation be granted until the minimum im-
23 prisonment provided in this section has been served. Imposition of
24 sentence may not be suspended, except upon the condition that the
25 defendant be imprisoned for no less than the minimum period provided
26 in this section. In addition, a person convicted under this statute
27 shall undertake, for a term specified by the court, that program of
28 alcohol education or rehabilitation which the court, after consider-
29 ation of any information compiled under (h) of this section, finds

1 appropriate. The sentence imposed by the court under this subsection
2 shall run consecutively with any other sentence of imprisonment im-
3 posed on that person.

4 (h) Except as prohibited by federal law or regulation, every
5 provider of treatment programs to which persons are ordered under (g) of
6 this section shall supply the Alaska court system with the information
7 regarding the condition and treatment of those persons as the supreme
8 court may require by rule. Information compiled under this subsection
9 is confidential and may only be used by a court in sentencing a person
10 convicted under (g) of this section, or by an officer of the court in
11 preparing a pre-sentence report for the use of the court in sentencing
12 a person convicted under (g) of this section.

13 (i) A person who is sentenced to imprisonment for 72 consecutive
14 hours under (g) of this section and who is not released from imprison-
15 ment after 72 hours may not bring an action against the state or a muni-
16 cipality or its agents, officers, or employees for damages resulting
17 from the additional period of confinement if

18 (1) the employee or employees who released the person exer-
19 cised due care and, in releasing the person, followed the standard
20 release procedures of the prison facility; and

21 (2) the additional period of confinement did not exceed 12
22 hours.

23 * Sec. 18. AS 28.35.033(a) is amended to read:

24 (a) Upon the trial of a civil or criminal action or proceeding
25 arising out of acts alleged to have been committed by a person while
26 operating or driving a motor vehicle or operating an aircraft or a
27 watercraft while intoxicated [UNDER THE INFLUENCE OF INTOXICATING
28 LIQUOR], the amount of alcohol in the person's blood or breath at the
29 time alleged shall give rise to the following presumptions:

1 (1) If there was 0.05 percent or less by weight of alcohol in
2 the person's blood, or 50 milligrams or less of alcohol per 100 milli-
3 liters of his blood, or 0.05 grams or less of alcohol per 210 liters of
4 his breath, it shall be presumed that the person was not under the in-
5 fluence of intoxicating liquor.

6 (2) If there was in excess of 0.05 percent but less than 0.10
7 percent by weight of alcohol in the person's blood, or in excess of 50
8 but less than 100 milligrams of alcohol per 100 milliliters of his
9 blood, or in excess of 0.05 grams but less than 0.10 grams of alcohol
10 per 210 liters of his breath, that fact does not give rise to any pre-
11 sumption that the person was or was not under the influence of intoxicat-
12 ing liquor, but that fact may be considered with other competent evidence
13 in determining whether the person was under the influence of intoxicating
14 liquor.

15 (3) (repealed)

16 (4) If there was 0.10 percent or more by weight of alcohol
17 in the person's blood, or 100 milligrams or more of alcohol per 100 mil-
18 liliters of his blood, or 0.10 grams or more of alcohol per 210 liters
19 of his breath it shall be presumed that the person was under the influ-
20 ence of intoxicating liquor.

21 * Sec. 19. AS 28.35.033(b) is amended to read:

22 (b) For purposes of this chapter [SECTION], percent by weight of
23 alcohol in the blood shall be based upon milligrams of alcohol per 100
24 milliliters [CUBIC CENTIMETERS] of blood.

25 * Sec. 20. AS 28.35.033(d) is amended to read:

26 (d) To be considered valid under the provisions of this section
27 the chemical analysis of the person's breath or blood shall have been
28 performed according to methods approved by the Department of Health and
29 Social Services. The Department of Health and Social Services is autho-

1 rized to approve satisfactory techniques, methods, and standards of
2 training necessary to ascertain the qualifications of individuals to
3 conduct the analysis. If it is established at trial that a chemical
4 analysis of breath or blood was performed according to approved methods
5 by a person trained according to techniques, methods and standards of
6 training approved by the Department of Health and Social Services, there
7 is a presumption that the test results are valid and further foundation
8 for introduction of the evidence is unnecessary.

9 * Sec. 21. AS 28.35 is amended by adding a new section to read:

10 Sec. 28.35.035. ADMINISTRATION OF CHEMICAL TESTS WITHOUT CONSENT.

11 (a) If a person is under arrest for the crime of driving while intox-
12 icated and that arrest results from an accident that causes death or
13 physical injury to another person, a chemical test may be administered
14 without the consent of the person arrested to determine the amount of
15 alcohol in that person's breath or blood.

16 (b) A person who is unconscious or otherwise in a condition ren-
17 dering him incapable of refusal is considered not to have withdrawn the
18 consent provided under AS 28.35.031 and a chemical test may be admin-
19 istered to determine the amount of alcohol in that person's breath or
20 blood.

21 (c) If a chemical test is administered to a person under (a) or
22 (b) of this section, that person is not subject to the penalties for
23 refusal to submit to a chemical test provided by AS 28.35.032 and
24 28.35.034.