

Offered: 6/1/83
Referred: Finance

Original sponsors: Abood, Furnace,
Lindauer, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 SENATE CS FOR CS FOR HOUSE BILL NO. 6 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL
6 For an Act entitled: "An Act relating to driving a motor vehicle."

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

8 * Section 1. AS 28.05.051(b) is amended to read:

9 (b) The commissioner, officers and employees of the department
10 designated by the commissioner, judges and employees of a court, and
11 all peace officers, may take possession of a certificate of title,
12 [OR] registration or license issued by this jurisdiction that [WHICH]
13 has been revoked, canceled, limited or suspended, or [WHICH] is ficti-
14 tious, stolen or altered.

15 * Sec. 2. AS 28.15.081(a) is amended to read:

16 (a) The department shall examine every applicant for a driver's
17 license. The examination shall include a test of the applicant's (1)
18 eyesight, (2) [HIS] ability to read and understand official traffic
19 control devices, (3) [HIS] knowledge of safe driving practices, (4)
20 knowledge of the effects of alcohol and drugs on drivers and the
21 dangers of driving under the influence of alcohol or drugs, and (5)
22 knowledge of the laws relating to driving while intoxicated and the
23 traffic laws and regulations of this state. The examination [, AND]
24 may include a demonstration of ability to exercise ordinary and rea-
25 sonable control in the driving of a motor vehicle of the type and
26 general class of vehicles for which the applicant seeks a license.
27 However, an applicant who has not been previously issued a driver's
28 license by this or another jurisdiction must demonstrate [HIS] abil-
29 ity, and must present medical information that [WHICH] the department

1 reasonably requires to determine [HIS] fitness to safely drive a motor
2 vehicle of the type and general class of vehicles for which the appli-
3 cant [HE] seeks a license.

4 * Sec. 3. AS 28.15 is amended by adding new sections to read:

5 Sec. 28.15.165. ADMINISTRATIVE REVOCATIONS RESULTING FROM CHEMI-
6 CAL SOBRIETY TESTS AND REFUSALS TO SUBMIT TO TESTS. (a) If a chemi-
7 cal test administered under AS 28.35.031(a) to a person driving a
8 motor vehicle for which a driver's license is required produces a
9 result described in AS 28.35.030(a)(2) or if a person under arrest for
10 driving a motor vehicle for which a driver's license is required
11 refuses to submit to a chemical test under AS 28.35.031(a), the law
12 enforcement officer shall read a notice and deliver a copy to the
13 person. The notice shall advise that

14 (1) the department intends to revoke the person's driver's
15 license or nonresident privilege to drive, or refuse to issue an
16 original license to the person;

17 (2) the person has the right to obtain court review of the
18 revocation or determination not to issue an original license;

19 (3) the notice itself is a temporary driver's license that
20 expires seven days after it is delivered to the person;

21 (4) revocation of the person's driver's license or nonresi-
22 dent privilege to drive, or a determination not to issue an original
23 license shall take effect upon expiration of the temporary driver's
24 license unless the person within seven days initiates court proceed-
25 ings to rescind the action.

26 (b) After reading the notice under (a) of this section, the law
27 enforcement officer shall seize the person's driver's license if it is
28 in the person's possession and shall deliver it to the department with
29 a sworn report describing the circumstances under which it was seized.

1 (c) Upon receipt of a sworn report of a law enforcement officer
2 that a chemical test under AS 28.35.031(a) produced a result described
3 in AS 28.35.030(a)(2) or that a person refused to submit to a chemical
4 test under AS 28.35.031(a), that notice under (a) of this section was
5 provided to the person, and that contains a statement of the circum-
6 stances surrounding the arrest and the grounds upon which the offi-
7 cer's belief that the person was driving while intoxicated a motor
8 vehicle for which a driver's license is required was based, the
9 department shall revoke the person's license or nonresident privilege
10 to drive a motor vehicle in the state, or refuse to issue an original
11 license effective upon expiration of the temporary driver's license
12 issued under (a) of this section.

13 (d) The period of revocation of a driver's license by the de-
14 partment under this section shall be determined in accordance with
15 guidelines for court revocations under AS 28.15.181(c).

16 Sec. 28.15.166. COURT REVIEW OF REVOCATION. (a) A person who
17 has received a notice under AS 28.15.165(a) may make a written request
18 for court review of the department's action under AS 28.15.165(c). If
19 the person's driver's license has not been previously surrendered to
20 the department, it shall be surrendered to the court at the time the
21 request for review is made.

22 (b) A request for review shall be made within seven days after
23 receipt of the notice under AS 28.15.165 or the right to review is
24 waived and the action of the department under AS 28.15.165(c) is
25 final. If a written request for a review is made after expiration of
26 the seven-day period, and if it is accompanied by the applicant's
27 verified statement explaining the failure to make a timely request for
28 a review, the court shall receive and consider the request. If the
29 court finds that the person was unable to make a timely request due to

1 lack of actual notice of the revocation or due to factors of physical
2 incapacity such as hospitalization or incarceration, the court shall
3 waive the period of limitation, reopen the matter, and grant the
4 review request.

5 (c) Upon receipt of a request for review, if it appears that the
6 person holds a valid driver's license and that the driver's license
7 has been surrendered, the court shall issue a temporary driver's
8 permit that is valid until the scheduled date for the review. If
9 necessary, the court may issue additional temporary permits to stay
10 the effective date of the action of the department under AS 28.15.-
11 165(c) until the final order after the review is issued.

12 (d) The court review under this section shall be limited to the
13 issues of whether there was probable cause to believe that the person
14 was driving a motor vehicle while intoxicated and whether

15 (1) the person refused to submit to a chemical test under
16 AS 28.35.031(a); or

17 (2) the chemical test authorized under AS 28.35.031(a) and
18 administered to the person produced a result described in
19 AS 28.35.030(a)(2).

20 (e) If the issues set out in (d) of this section are determined
21 in the affirmative by a preponderance of the evidence, the court shall
22 sustain the action of the department. If one or more of the issues is
23 determined in the negative, the department's action shall be
24 rescinded.

25 (f) If the action of the department in revoking a nonresident's
26 privilege to drive a motor vehicle is sustained by the court, the
27 department shall give written notice of action taken to the motor
28 vehicle administrator of the state of the person's residence and to
29 any state in which that person has a driver's license.

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

2 (a) Conviction of any of the [THE] following offenses is [ARE]
3 grounds for the immediate [SUSPENSION OR] revocation of a driver's
4 license:

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

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

9 (3) failure to stop and give aid as required by law [UNDER
10 THE LAWS OF THIS STATE] when a motor vehicle accident results in the
11 death or personal injury of another;

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

15 (5) [OPERATING OR] driving a motor vehicle while intoxi-
16 cated;

17 (6) reckless driving; [OR]

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

20 (8) refusal to submit to a chemical test under AS 28.35.-
21 032;

22 (9) driving while license canceled, suspended, revoked or
23 in violation of a limitation.

24 * Sec. 5. AS 28.15.181(b) is amended to read:

25 (b) A court convicting a person of an offense described in
26 [UNDER] (a)(1) - (4), (6), or (7) of this section shall revoke that
27 person's driver's license for [A PERIOD OF] not less than 30 days for
28 the first conviction, unless the court determines that the person's
29 ability to earn a livelihood would be severely impaired and a

1 limitation under AS 28.15.201 can be placed on the license that
2 [WHICH] will enable the person to earn a livelihood without excessive
3 [RISK OR] danger to the public. If a court limits a person's license
4 under this subsection, it shall do so for [A PERIOD OF] not less than
5 60 [30] days. Upon a subsequent conviction of a person for any
6 offense described in [UNDER] (a)(1) - (4), (6), or (7) of this section
7 occurring within 10 years after a prior conviction, the court shall
8 revoke the person's license and may not grant the person [ANY] limited
9 license privileges for the following periods:

- 10 (1) not less than one year for the second conviction; and
11 (2) not less than three years for a third or subsequent
12 conviction.

13 * Sec. 6. AS 28.15.181(c) is repealed and reenacted to read:

14 (c) A court convicting a person of an offense described in
15 (a)(5) or (8) of this section arising out of the operation of a motor
16 vehicle for which a driver's license is required shall revoke that
17 person's driver's license and may not, except as provided in (e) of
18 this section, grant limited license privileges for the following
19 periods:

- 20 (1) not less than 90 days if, within the preceding 10
21 years, the person has not previously been convicted of an offense
22 (A) described in (a)(5) or (8) of this section; or
23 (B) under a law or ordinance in another jurisdiction
24 with elements substantially similar to an offense described in
25 (a)(5) or (8) of this section;
26 (2) not less than one year if, within the preceding 10
27 years, the person has been previously convicted of one offense
28 (A) described in (a)(5) or (8) of this section; or
29 (B) under a law or ordinance in another jurisdiction

1 with elements substantially similar to an offense described in
2 (a)(5) or (8) of this section;

3 (3) not less than 10 years if, within the preceding 10
4 years, the person has been previously convicted of more than one of
5 the following offenses or has more than once been previously convicted
6 of one of the following offenses:

7 (A) an offense described in (a)(5) or (8) of this sec-
8 tion; or

9 (B) an offense under another law or ordinance in
10 another jurisdiction with elements substantially similar to an
11 offense described in (a)(5) or (8) of this section.

12 * Sec. 7. AS 28.15.181 is amended by adding new subsections to read:

13 (d) A court convicting a person of an offense described in
14 (a)(9) of this section shall revoke that person's driver's license for
15 not less than the minimum period under AS 28.15.291(c).

16 (e) A court revoking a driver's license under (c)(1) of this
17 section, or sustaining the action of the department under AS 28.15.-
18 165(c), may grant limited license privileges for the final 60 days
19 during which the license is revoked if the

20 (1) revocation was for driving while intoxicated but not if
21 the revocation was for refusal to submit to a chemical test of breath
22 under AS 28.35.032;

23 (2) court determines that the person's ability to earn a
24 livelihood would be severely impaired; and

25 (3) court determines that a limitation under AS 28.15.201
26 can be placed on the license that will enable the person to earn a
27 livelihood without excessive danger to the public.

28 * Sec. 8. AS 28.15.201(b)(1) is amended to read:

29 (1) require the surrender of the driver's license [AND, IF

1 THE PERSON IS CONVICTED OF AN OFFENSE UNDER AS 28.15.181(a)(5), REVOKE
2 THAT PERSON'S LICENSE FOR A PERIOD OF NOT LESS THAN 60 DAYS]; and

3 * Sec. 9. AS 28.15.201(c) is amended to read:

4 (c) After the termination of a limitation as shown on the certi-
5 ficate issued under (b) of this section, the license of a person on
6 whom a limitation was imposed is revoked until the person receives a
7 new [NO LONGER BOUND BY THE LIMITATION AND MAY APPLY FOR A DUPLICATE]
8 license in accordance with AS 28.20.240 [UNDER AS 28.15.141 OR, IF
9 OTHERWISE ELIGIBLE, FOR A NEW LICENSE IF THE LICENSE WAS REVOKED FOR
10 CONVICTION OF AN OFFENSE UNDER AS 28.15.181(a)(5) AND LIMITED LICENSE
11 PRIVILEGES WERE GRANTED UNDER AS 28.15.181(c)].

12 * Sec. 10. AS 28.15.291 is amended to read:

13 Sec. 28.15.291. DRIVING WHILE LICENSE CANCELED, SUSPENDED,
14 REVOKED OR IN VIOLATION OF LIMITATION. (a) A [NO] person may not
15 drive a motor vehicle on a highway or vehicular way or area [IN THIS
16 STATE] at a time when that person's [HIS] driver's license, or privi-
17 lege to drive [IN THIS STATE IF HE IS LICENSED IN ANOTHER JURISDIC-
18 TION,] has been canceled, suspended or revoked in this or another
19 jurisdiction, or when [HE IS] driving in violation of a limitation
20 placed upon that person's [HIS] license or privilege to drive in this
21 or [, EVEN WHEN HE IS DRIVING UNDER A LICENSE ISSUED IN] another
22 jurisdiction. Except as provided in (c) of this section, upon [UPON]
23 conviction of a violation of this section, the court shall impose a
24 [MINIMUM] sentence of imprisonment of not less than 10 days. The exe-
25 cution of sentence may not be suspended nor may probation or parole be
26 granted until the minimum imprisonment provided in this section has
27 been served; nor may imposition of sentence be suspended [, EXCEPT
28 UPON THE CONDITION THAT THE DEFENDANT BE IMPRISONED FOR NO LESS THAN
29 THE MINIMUM PERIOD PROVIDED FOR IN THIS SECTION]. In addition, the

1 person's [HIS] license or privilege to drive shall be revoked, and the
2 person [HE] may not be issued a new license nor may the [HIS] privi-
3 lege to drive be restored for an additional period of not less than
4 one year after the date that the person [HE] would have been entitled
5 to restoration of [HIS] driving privileges.

6 (b) When a person's license is canceled, limited, suspended or
7 revoked, that person [HE] shall be informed by the department or the
8 court that [WHICH] takes the action at the time of the action that,
9 upon a conviction of driving on a highway or vehicular way or area in
10 this state at a time when that person's [HIS] driver's license or
11 privilege to drive in this state has been canceled, suspended or
12 revoked, or upon a conviction of driving in violation of a limitation
13 of the [HIS] license, that person [HE] will be subject to the manda-
14 tory minimum sentence of [10-DAY] imprisonment under [(a) OF] this
15 section.

16 * Sec. 11. AS 28.15.291 is amended by adding a new subsection to read:

17 (c) The court shall impose a sentence of imprisonment of not
18 less than 30 days and a fine of not less than \$500 upon conviction of
19 a violation of this section if the person's driver's license was
20 revoked under circumstances described in AS 28.15.181(c)(1). The
21 court shall impose a sentence of imprisonment of not less than 90 days
22 and a fine of not less than \$1,000 upon conviction of a violation of
23 this section if the person's driver's license was revoked under
24 circumstances described in AS 28.15.181(c)(2) or (3). The execution
25 of sentence may not be suspended nor may probation or parole be
26 granted until the minimum imprisonment provided in this subsection has
27 been served. Imposition of sentence may not be suspended. In
28 addition, the person's privilege to drive shall be revoked for an
29 additional period of not less than one year after the date that the

1 person would have been entitled to restoration of driving privileges
2 if the person had not been convicted under this section.

3 * Sec. 12. AS 28.20.240 is amended to read:

4 Sec. 28.20.240. PROOF REQUIRED WHEN DRIVING PRIVILEGE [USE OF
5 LICENSE] IS RESTRICTED. Whenever under a law of this state the li-
6 cense of a person is suspended, revoked, limited under AS 28.15.201,
7 or canceled for any reason, the department may not issue to that
8 person a new or renewal of license [IN HIS NAME] until permitted to do
9 so under the motor vehicle laws of this state. A period of suspen-
10 sion, revocation, [LIMITATION,] or cancellation [UNDER THIS SECTION]
11 continues until proof of financial responsibility for the future is
12 provided. Upon expiration of a period of limitation, the license
13 remains revoked until proof of financial responsibility for the future
14 is provided.

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

16 (2) when, as determined by a chemical test taken within
17 four hours after the alleged offense was committed, there is 0.10
18 percent or more by weight of alcohol in the person's blood or 100
19 milligrams or more of alcohol per 100 milliliters of blood, or when
20 there is 0.10 grams or more of alcohol per 210 liters of the person's
21 breath; or

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

23 (c) Upon conviction under this section the court shall impose a
24 minimum sentence of imprisonment of not less than 72 consecutive hours
25 and a fine of not less than \$250 if the person has not been previously
26 convicted in this or another jurisdiction of driving while intoxicated
27 under this or another law or ordinance with substantially similar
28 elements or refusal to submit to a chemical test under AS 28.35.032
29 or another law or ordinance with substantially similar elements. Upon

1 [A SUBSEQUENT] conviction under this section the court shall impose a
2 minimum sentence of imprisonment of not less than 20 consecutive days
3 and a fine of not less than \$500 if, within the preceding 10 years,
4 the person has been previously convicted once in this or another
5 jurisdiction [WITHIN FIVE YEARS AFTER A CONVICTION] of driving while
6 intoxicated under this or another law or ordinance with substantially
7 similar elements or [IN THIS OR ANY OTHER STATE OR CONVICTION OF]
8 refusal to submit to a chemical test under AS 28.35.032 or another law
9 or ordinance with substantially similar elements. Upon conviction
10 under this section [OF BREATH UNDER AS 28.35.032,] the court shall
11 impose a minimum sentence of imprisonment of not less than 30 [10]
12 consecutive days and a fine of not less than \$1,000 if, within the
13 preceding 10 years, the person has been previously convicted in this
14 or another jurisdiction of more than one of the following offenses or
15 has more than once been previously convicted of one of the following
16 offenses: (1) driving while intoxicated under this or another law or
17 ordinance with substantially similar elements; (2) refusal to submit
18 to a chemical test under AS 28.35.032 or another law or ordinance with
19 substantially similar elements [UNLESS THE SUBSEQUENT CONVICTION IS
20 WITHIN ONE YEAR OF THE PREVIOUS CONVICTION, IN WHICH CASE THE COURT
21 SHALL IMPOSE A MINIMUM SENTENCE OF IMPRISONMENT OF NOT LESS THAN 20
22 CONSECUTIVE DAYS]. The execution of sentence may not be suspended nor
23 may probation be granted except on condition that [UNTIL] the minimum
24 imprisonment provided in this section is [HAS BEEN] served. Impos-
25 sition of sentence may not be suspended [, EXCEPT UPON THE CONDITION
26 THAT THE DEFENDANT BE IMPRISONED FOR NO LESS THAN THE MINIMUM PERIOD
27 PROVIDED IN THIS SECTION]. In addition, if the offense involved
28 driving a motor vehicle for which a driver's license is required, the
29 person's driver's [HIS OPERATOR'S] license shall be revoked in

1 accordance with AS 28.15.181 and the vehicle used in commission of the
2 offense may be forfeited under AS 28.35.036. In addition, the court
3 shall order, and a person convicted under this section [STATUTE] shall
4 undertake, for a term specified by the court, that program of alcohol
5 education or rehabilitation that [WHICH] the court, after considera-
6 tion of any information compiled under (d) of this section, finds
7 appropriate.

8 * Sec. 15. AS 28.35.031 is amended by adding new subsections to read:

9 (b) A person who operates or drives a motor vehicle in this
10 state shall be considered to have given consent to a preliminary
11 breath test for the purpose of determining the alcoholic content of
12 the person's blood or breath. A law enforcement officer may
13 administer a preliminary breath test at the scene of the incident if
14 the officer has reasonable grounds to believe that a person's ability
15 to operate a motor vehicle is impaired by the ingestion of alcoholic
16 beverages and that the person

17 (1) was driving a motor vehicle that is involved in an
18 accident; or

19 (2) committed a moving traffic violation.

20 (c) Before administering a preliminary breath test under (b) of
21 this section, the officer shall advise the person that refusal may be
22 used against the person in a civil or criminal action arising out of
23 the incident and that refusal is an infraction. If the person refuses
24 to submit to the test, the test shall not be administered.

25 (d) The result of the test under (b) of this section may be used
26 by the law enforcement officer to determine whether the driver should
27 be arrested.

28 (e) Refusal to submit to a preliminary breath test at the
29 request of a law enforcement officer is an infraction.

1 (f) If a driver is arrested, the provisions of AS 28.35.031(a)
2 apply. The preliminary breath test authorized in this section is in
3 addition to any tests authorized under AS 28.35.031(a).

4 * Sec. 16. AS 28.35.032(a) is amended to read:

5 (a) If a person under arrest refuses the request of a law en-
6 forcement officer to submit to a chemical test under AS 28.35.031(a)
7 [OF BREATH AS PROVIDED IN AS 28.35.031], after being advised by the
8 officer that the refusal will, if that person was arrested while
9 operating or driving a motor vehicle for which a driver's license is
10 required, result in the [SUSPENSION,] denial or revocation of the
11 license or nonresident privilege to drive, that the refusal may be
12 used against the person in a civil or criminal action or proceeding
13 arising out of an act alleged to have been committed by the person
14 while operating or driving a motor vehicle or operating an aircraft or
15 a watercraft while intoxicated, and that the refusal is a misdemeanor,
16 a chemical test shall not be given, except as provided by AS 28.35.-
17 035.

18 * Sec. 17. AS 28.35.032(b) is amended to read:

19 (b) Upon receipt of a sworn report of a law enforcement officer
20 that a person has refused to submit to a chemical test authorized
21 under AS 28.35.031(a) [AS 28.35.031], containing a statement of the
22 circumstances surrounding the arrest and the grounds upon which the
23 law enforcement officer's belief was based that the person was
24 operating or driving a motor vehicle in violation of AS 28.35.030, the
25 Department of Public Safety shall notify the person that the person's
26 license or nonresident privilege to drive or operate a motor vehicle
27 in the the state is revoked or suspended, or that no original license
28 or permit will be issued for 90 days [THREE MONTHS]. In the same
29 notice the department shall inform the person that the person may

1 initiate a proceeding in the district court to rescind the
2 department's action. The court proceeding shall be without jury and
3 shall be limited to the issues of whether

4 (1) the arresting officer had reasonable grounds to believe
5 the arrested person had been operating or driving a motor vehicle in
6 the state while intoxicated;

7 (2) the arrested person refused to submit to the breath
8 test upon request of the officer after being advised that refusal
9 would result in the suspension, revocation, or denial of the person's
10 license or nonresident privilege to drive and that the refusal is a
11 misdemeanor; and

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

17 * Sec. 18. AS 28.35.032(d) is amended to read:

18 (d) If the person who refuses to submit to the chemical test
19 authorized by AS 28.35.031(a) [AS 28.35.031] has been convicted in
20 this or any other state of operating or driving a motor vehicle while
21 intoxicated or of refusal to submit to a chemical test of breath under
22 this section, the period of suspension or revocation for the person's
23 license, nonresident privilege to drive, or denial of original license
24 shall be one year.

25 * Sec. 19. AS 28.35.032(f) is amended to read:

26 (f) Refusal to submit to the chemical test of breath authorized
27 by AS 28.35.031(a) [AS 28.35.031] is a class A misdemeanor.

28 * Sec. 20. AS 28.35.032(g) is amended to read:

29 (g) Upon conviction of a person under this section, the court

1 shall impose a minimum sentence of imprisonment of not less than 72
2 consecutive hours and a fine of not less than \$250 if the person has
3 not been previously convicted in this or another jurisdiction of
4 driving while intoxicated under AS 28.35.030 or another law or ordi-
5 nance with substantially similar elements or refusal to submit to a
6 chemical test under this section or another law or ordinance with
7 substantially similar elements. Upon [A SUBSEQUENT] conviction under
8 this section the court shall impose a minimum sentence of imprisonment
9 of not less than 20 consecutive days and a fine of not less than \$500
10 if, within the preceding 10 years, the person has been previously con-
11 victed once in this or another jurisdiction [WITHIN FIVE YEARS AFTER A
12 CONVICTION UNDER THIS SECTION OR] of driving while intoxicated under
13 AS 28.35.030 or another law or ordinance with substantially similar
14 elements or refusal to submit to a chemical test under this section or
15 another law or ordinance with substantially similar elements. Upon
16 conviction under this section the court shall impose a minimum sen-
17 tence of imprisonment of not less than 30 consecutive days and a fine
18 of not less than \$1,000 if, within the previous 10 years, the person
19 has been previously convicted in this or another jurisdiction of more
20 than one of the following offenses or has more than once been pre-
21 viously convicted of one of the following offenses: (1) driving while
22 intoxicated under AS 28.35.030 or another law or ordinance with sub-
23 stantially similar elements; (2) refusal to submit to a chemical test
24 under this section or another law or ordinance with substantially
25 similar elements [IN THIS OR ANY OTHER STATE, THE COURT SHALL IMPOSE A
26 MINIMUM SENTENCE OF IMPRISONMENT OF NOT LESS THAN 10 CONSECUTIVE DAYS
27 UNLESS THE SUBSEQUENT CONVICTION IS WITHIN ONE YEAR OF THE PREVIOUS
28 CONVICTION, IN WHICH CASE THE COURT SHALL IMPOSE A MINIMUM SENTENCE OF
29 IMPRISONMENT OF NOT LESS THAN 20 CONSECUTIVE DAYS]. The execution of

1 sentence may not be suspended nor may probation be granted except on
2 condition that [UNTIL] the minimum imprisonment provided in this
3 section is [HAS BEEN] served. Imposition of sentence may not be
4 suspended. If the offense involved driving a motor vehicle for which
5 a driver's license is required, the person's driver's license shall be
6 revoked under AS 28.15.181 [, EXCEPT UPON THE CONDITION THAT THE
7 DEFENDANT BE IMPRISONED FOR NO LESS THAN THE MINIMUM PERIOD PROVIDED
8 IN THIS SECTION]. In addition, the court shall order, and a person
9 convicted under this section shall undertake, for a term specified by
10 the court, that program of alcohol education or rehabilitation that
11 the court, after consideration of any information compiled under (h)
12 of this section, finds appropriate. The sentence imposed by the court
13 under this subsection shall run consecutively with any other sentence
14 of imprisonment imposed on the committed person.

15 * Sec. 21. AS 28.35.034 is amended to read:

16 Sec. 28.35.034. SURRENDER OF LICENSE OR PERMIT [PERIOD OF REVO-
17 CATION]. A person whose license or permit to operate or drive a motor
18 vehicle has been [SUSPENDED OR] revoked under AS 28.15.165 or AS 28.-
19 15.181 [THE PROVISIONS OF AS 28.35.032] shall surrender the [HIS]
20 license or permit to the department on receipt of notice of the revo-
21 cation. [SUCH A PERSON IS INELIGIBLE FOR AN OPERATOR'S LICENSE OR
22 PERMIT FOR THREE MONTHS FOLLOWING THE DATE ON WHICH THE LICENSE OR
23 PERMIT WAS RECEIVED BY THE DEPARTMENT, UNLESS THE DISTRICT COURT FINDS
24 THAT EXTENUATING CIRCUMSTANCES EXIST WHICH WOULD CAUSE EXTREME HARD-
25 SHIP, IN WHICH CASE THE SUSPENSION OR REVOCATION MAY BE MODIFIED OR
26 NULLIFIED.] After the [THREE MONTHS'] period of revocation has ex-
27 pired, the person may make application for a new license as provided
28 by law.

29 * Sec. 22. AS 28.35.035 is amended to read:

1 Sec. 28.35.035. ADMINISTRATION OF CHEMICAL TESTS WITHOUT CON-
2 SENT. (a) If a person is under arrest for an offense arising out of
3 acts alleged to have been committed while the person was driving a
4 motor vehicle [THE CRIME OF DRIVING] while intoxicated, and that
5 arrest results from an accident that causes death or physical injury
6 to another person, a chemical test may be administered without the
7 consent of the person arrested to determine the amount of alcohol in
8 that person's breath or blood.

9 (b) A person who is unconscious or otherwise in a condition
10 rendering that person incapable of refusal is considered not to have
11 withdrawn the consent provided under AS 28.35.031(a) [AS 28.35.031]
12 and a chemical test may be administered to determine the amount of
13 alcohol in that person's breath or blood. A person who is unconscious
14 or otherwise incapable of refusal need not be placed under arrest
15 before a chemical test may be administered.

16 (c) If a chemical test is administered to a person under (a) or
17 (b) of this section, that person is not subject to the penalties for
18 refusal to submit to a chemical test provided by AS 28.35.032 and
19 28.35.034.

20 * Sec. 23. AS 28.35 is amended by adding new sections to read:

21 Sec. 28.35.036. FORFEITURE OF MOTOR VEHICLE. (a) After convic-
22 tion of an offense under AS 28.35.030 or AS 28.35.032 involving a
23 motor vehicle of a type for which a driver's license is required, the
24 state may move the court to order the forfeiture of the motor vehicle
25 involved in the commission of the offense if the convicted person has
26 been previously convicted in this or another jurisdiction of more than
27 one of the following offenses or has more than once been previously
28 convicted of one of the following offenses:

29 (1) driving while intoxicated under AS 28.35.030 or another

1 law or ordinance with substantially similar elements; or

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

4 (b) Upon receipt of a motion for forfeiture, the court shall
5 schedule a hearing on the matter and shall notify the state and the
6 convicted person of the time and place set for the hearing. At the
7 hearing, the court may order the forfeiture of the motor vehicle if
8 the court, sitting without a jury, determines by a preponderance of
9 the evidence that the forfeiture of the motor vehicle will serve one
10 or more of the following purposes:

11 (1) deterrence of the convicted person from the commission
12 of future offenses under AS 28.35.030;

13 (2) protection of the safety and welfare of the public;

14 (3) deterrence of other persons who are potential offenders
15 under AS 28.35.030; or

16 (4) expression of public condemnation of the serious or
17 aggravated nature of the convicted person's conduct.

18 (c) Upon forfeiture of a motor vehicle the court shall require
19 the surrender of the registration and certificate of title of that
20 motor vehicle. The registration and certificate of title shall be
21 delivered to the department.

22 (d) If not released under AS 28.35.037, a motor vehicle for-
23 feited under this section may be disposed of at the discretion of the
24 department.

25 Sec. 28.35.037. REMISSION OF FORFEITURES. (a) Upon receiving
26 notice from the court of the time and place set for a hearing under
27 AS 28.35.036, the state shall provide to every person who has an
28 ascertainable ownership or security interest in the motor vehicle
29 written notice that includes

- 1 (1) a description of the motor vehicle;
2 (2) the time and place of the forfeiture hearing;
3 (3) the legal authority under which the motor vehicle may
4 be forfeited;
5 (4) notice of the right to intervene to protect the inter-
6 est in the motor vehicle.

7 (b) At the hearing, a person who claims an ownership or security
8 interest in the motor vehicle must establish by a preponderance of the
9 evidence that

10 (1) the petitioner has an interest in the motor vehicle
11 acquired in good faith;

12 (2) a person other than the petitioner was convicted of the
13 offense that resulted in the forfeiture; and

14 (3) before parting with the motor vehicle, the petitioner
15 did not know or have reasonable cause to believe that it would be used
16 in the commission of an offense.

17 (c) If a person satisfies the requirements of (b) of this sec-
18 tion, the court shall order that an amount equal to the value of the
19 petitioner's interest in the motor vehicle be paid to the petitioner
20 or the court shall order that the motor vehicle be released to the
21 petitioner together with title to the motor vehicle.

22 (d) Forfeiture of a motor vehicle under AS 28.35.036 is without
23 prejudice to the rights, and does not extinguish the claims, of a
24 creditor with an interest in the motor vehicle.

25 Sec. 28.35.038. MUNICIPAL IMPOUNDMENT AND FORFEITURE. Notwith-
26 standing other provisions in this title, a municipality may adopt an
27 ordinance providing for the impoundment or forfeiture of a motor
28 vehicle involved in the commission of an offense under AS 28.35.030,
29 28.35.032, or an ordinance with elements substantially similar to

1 AS 28.35.030 or AS 28.35.032. An ordinance adopted under this section
2 is not required to be consistent with this title or regulations adopt-
3 ed under this title.

4 * Sec. 24. AS 28.15.211(a)(4) and AS 28.35.032(b),(c), and (d) are re-
5 pealed.