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1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 354 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to the privilege to drive and to  
obtain a license; to penalties for driving while that  
license or privilege is suspended, canceled, or  
revoked, or driving in violation of a limitation; and  
increasing the penalties for certain persons con-  
victed of driving while intoxicated or refusing to  
submit to a chemical test; and providing for an  
effective date."

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

15 \* Section 1. AS 28.15.165(a) is amended to read:

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(a) If a chemical test administered under AS 28.35.031(a) to a  
person driving a motor vehicle for which a driver's license is re-  
quired produces a result described in AS 28.35.030(a)(2) or if a  
person under arrest for driving a motor vehicle for which a driver's  
license is required refuses to submit to a chemical test under AS 28.-  
35.031(a), a law enforcement officer shall read a notice and deliver a  
copy to the person. The notice must [SHALL] advise that

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(1) the department intends to revoke the person's driver's  
license, privilege to drive, privilege to obtain a license, or nonres-  
ident privilege to drive, or refuse to issue an original license to  
the person;

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(2) the person has the right to administrative review of  
the revocation or determination not to issue an original license;

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(3) the notice itself is a temporary driver's license that

1 expires seven days after it is delivered to the person;

2 (4) revocation of the person's driver's license, privilege  
3 to drive, privilege to obtain a license, or nonresident privilege to  
4 drive, or a determination not to issue an original license takes  
5 [SHALL TAKE] effect upon expiration of the temporary driver's license  
6 unless the person within seven days requests an administrative review.

7 \* Sec. 2. AS 28.15.165(c) is repealed and reenacted to read:

8 (c) The department shall revoke the person's license, privilege  
9 to drive, privilege to obtain a license, or nonresident privilege to  
10 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 upon receipt of a sworn report of a  
13 law enforcement officer that states

14 (1) that a chemical test under AS 28.35.031(a) produced a  
15 result described in AS 28.35.030(a)(2) or that a person refused to  
16 submit to a chemical test under AS 28.35.031(a);

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

19 (3) the circumstances surrounding the arrest and the  
20 grounds for the officer's belief that the person was driving, while  
21 intoxicated, a motor vehicle for which a driver's license is required.

22 \* Sec. 3. AS 28.15.181(a) is amended to read:

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

26 (1) manslaughter or negligent homicide resulting from  
27 driving a motor vehicle;

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

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

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

6           (5) driving a motor vehicle while intoxicated;

7           (6) reckless driving;

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

10           (8) refusal to submit to a chemical test under AS 28.35.-  
11 032;

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

14 \* Sec. 4. AS 28.15.181(e) is repealed and reenacted to read:

15           (e) A court revoking a driver's license under (c) of this sec-  
16 tion, or sustaining the action of the department under AS 28.15.-  
17 165(c), may grant limited license privileges

18           (1) for the final 60 days during which the license was  
19 revoked if the person, during the preceding 10 years, has not been  
20 previously convicted more than once of an offense described in (a)(5)  
21 or (8) of this section or under another law or ordinance with substan-  
22 tially similar elements;

23           (2) for the final five years during which the license was  
24 revoked if

25           (A) the person, during the preceding 10 years, has  
26 been previously convicted more than once of an offense described  
27 in (a)(5) or (8) of this section or under another law or ordi-  
28 nance with substantially similar elements; and

29           (B) the court determines that the person has

1           successfully completed an alcoholism education and rehabilitation  
2           treatment program.

3       \* Sec. 5. AS 28.15.181 is amended by adding a new subsection to read:

4           (g) The court may order the grant of a limited license privilege  
5           under (e) of this section only if the

6                   (1) revocation was for driving while intoxicated or for  
7           refusal to submit to a chemical test for breath under AS 28.35.032;

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

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

13       \* Sec. 6. AS 28.15.291(a) is amended to read:

14           (a) A person may not drive a motor vehicle on a highway or  
15           vehicular way or area at a time when that person's driver's license,  
16           [OR] privilege to drive, or privilege to obtain a license has been  
17           canceled, suspended, or revoked in this or another jurisdiction, or  
18           when driving in violation of a limitation placed upon that person's  
19           license, [OR] privilege to drive, or privilege to obtain a license in  
20           this or another jurisdiction. Except as provided in (c) of this  
21           section, upon conviction of a violation of this section, the court  
22           shall impose a sentence of imprisonment of (1) not less than 72 hours  
23           if the person has not been previously convicted in this or another  
24           jurisdiction under this or another law or ordinance with substantially  
25           similar elements; (2) not less than 10 consecutive days if, within the  
26           preceding 10 years, the person has been previously convicted once in  
27           this or another jurisdiction under this or another law or ordinance  
28           with substantially similar elements; and (3) not less than 20 consecu-  
29           tive days if, within the preceding 10 years, the person has been

1 previously convicted more than once in this or another jurisdiction  
2 under this or another law or ordinance with substantially similar  
3 elements [10 DAYS]. The execution of sentence may not be suspended  
4 nor may probation or parole be granted until the minimum imprisonment  
5 provided in this section has been served; nor may imposition of sen-  
6 tence be suspended. In addition, the person's license, [OR] privilege  
7 to drive, or privilege to obtain a license shall be revoked, and the  
8 person may not be issued a new license nor may the privilege to drive  
9 be restored for an additional period of not less than 90 days [ONE  
10 YEAR] after the date that the person would have been entitled to  
11 restoration of driving privileges.

12 \* Sec. 7. AS 28.15.291(c) is amended to read:

13 (c) The court shall impose a sentence of imprisonment of not  
14 less than 20 [30] days and a fine of not less than \$500 upon con-  
15 viction of a violation of this section if the person's driver's li-  
16 cense, privilege to drive, or privilege to obtain a license was re-  
17 voked under circumstances described in AS 28.15.181(c)(1). The court  
18 shall impose a sentence of imprisonment of not less than 30 [90] days  
19 and a fine of not less than \$1,000 upon conviction of a violation of  
20 this section if the person's driver's license, privilege to drive, or  
21 privilege to obtain a license was revoked under circumstances de-  
22 scribed in AS 28.15.181(c)(2) or (3). The execution of sentence may  
23 not be suspended nor may probation or parole be granted until the  
24 minimum imprisonment provided in this subsection has been served.  
25 Imposition of sentence may not be suspended. In addition, the per-  
26 son's privilege to drive shall be revoked for an additional period of  
27 not less than 90 days [ONE YEAR] after the date that the person would  
28 have been entitled to restoration of driving privileges if the person  
29 had not been convicted under this section.

1 \* Sec. 8. AS 28.35.030(b) is amended to read:

2 (b) Except as provided in (h) of this section, driving [DRIVING]  
3 while intoxicated is a class A misdemeanor.

4 \* Sec. 9. AS 28.35.030(c) is amended to read:

5 (c) Upon conviction under this section the court shall impose a  
6 minimum sentence of imprisonment of not less than 72 consecutive hours  
7 and a fine of not less than \$250 if the person has not been previously  
8 convicted in this or another jurisdiction of driving while intoxicated  
9 under this or another law or ordinance with substantially similar  
10 elements or refusal to submit to a chemical test under AS 28.35.032 or  
11 another law or ordinance with substantially similar elements. Upon  
12 conviction under this section the court shall impose a minimum sen-  
13 tence of imprisonment of not less than 20 consecutive days and a fine  
14 of not less than \$500 if, within the preceding 10 years, the person  
15 has been previously convicted once in this or another jurisdiction of  
16 driving while intoxicated under this or another law or ordinance with  
17 substantially similar elements or refusal to submit to a chemical test  
18 under AS 28.35.032 or another law or ordinance with substantially  
19 similar elements. Upon conviction under this section the court shall  
20 impose a minimum sentence of imprisonment of not less than 90 [30]  
21 consecutive days and a fine of not less than \$1,000 if, within the  
22 preceding 10 years, the person has been previously convicted in this  
23 or another jurisdiction of more than one of the following offenses or  
24 has more than once been previously convicted of one of the following  
25 offenses: (1) driving while intoxicated under this or another law or  
26 ordinance with substantially similar elements; (2) refusal to submit  
27 to a chemical test under AS 28.35.032 or another law or ordinance with  
28 substantially similar elements. The execution of sentence may not be  
29 suspended nor may probation be granted except on condition that the

1 minimum imprisonment provided in this section is served. Imposition of  
2 sentence may not be suspended. In addition, if the offense involved  
3 driving a motor vehicle for which a driver's license is required, the  
4 person's driver's license shall be revoked in accordance with AS 28.-  
5 15.181 and the vehicle used in commission of the offense may be for-  
6 feited under AS 28.35.036. In addition, the court shall order, and a  
7 person convicted under this section shall undertake, for a term spec-  
8 ified by the court, that program of alcohol education or rehabilita-  
9 tion that the court, after consideration of any information compiled  
10 under (d) of this section, finds appropriate.

11 \* Sec. 10. AS 28.35.030 is amended by adding a new subsection to read:

12 (h) A person who, within the preceding 10 years, has been previ-  
13 ously convicted three or more times in this or another jurisdiction of  
14 the offense of driving while intoxicated or an offense under another  
15 law or ordinance with substantially similar elements is guilty of a  
16 class C felony. Upon conviction under this section the court shall  
17 impose a minimum sentence of imprisonment of not less than six months.

18 \* Sec. 11. AS 28.35.032(g) is amended to read:

19 (g) Upon conviction of a person under this section, the court  
20 shall impose a minimum sentence of imprisonment of not less than 72  
21 consecutive hours and a fine of not less than \$250 if the person has  
22 not been previously convicted in this or another jurisdiction of  
23 driving while intoxicated under AS 28.35.030 or another law or ordi-  
24 nance with substantially similar elements or refusal to submit to a  
25 chemical test under this section or another law or ordinance with  
26 substantially similar elements. Upon conviction under this section the  
27 court shall impose a minimum sentence of imprisonment of not less than  
28 20 consecutive days and a fine of not less than \$500 if, within the  
29 preceding 10 years, the person has been previously convicted once in

1 this or another jurisdiction of driving while intoxicated under  
2 AS 28.35.030 or another law or ordinance with substantially similar  
3 elements or refusal to submit to a chemical test under this section or  
4 another law or ordinance with substantially similar elements. Upon  
5 conviction under this section the court shall impose a minimum sen-  
6 tence of imprisonment of not less than 90 [30] consecutive days and a  
7 fine of not less than \$1,000 if, within the previous 10 years, the  
8 person has been previously convicted in this or another jurisdiction  
9 of more than one of the following offenses or has more than once been  
10 previously convicted of one of the following offenses: (1) driving  
11 while intoxicated under AS 28.35.030 or another law or ordinance with  
12 substantially similar elements; (2) refusal to submit to a chemical  
13 test under this section or another law or ordinance with substantially  
14 similar elements. The execution of sentence may not be suspended nor  
15 may probation be granted except on condition that the minimum impris-  
16 onment provided in this section is served. Imposition of sentence may  
17 not be suspended. If the offense involved driving a motor vehicle for  
18 which a driver's license is required, the person's driver's license  
19 shall be revoked under AS 28.15.181. In addition, the court shall  
20 order, and a person convicted under this section shall undertake, for  
21 a term specified by the court, that program of alcohol education or  
22 rehabilitation that the court, after consideration of any information  
23 compiled under (h) of this section, finds appropriate. The sentence  
24 imposed by the court under this subsection shall run consecutively  
25 with any other sentence of imprisonment imposed on the committed  
26 person.

27 \* Sec. 12. This Act takes effect January 1, 1989.