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1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 354 (Judiciary)

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

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obtain a license; to penalties for driving while that

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license or privilege is suspended, canceled, or

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revoked, or driving in violation of a limitation;

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increasing the penalties for certain persons con-

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vinced of driving while intoxicated or refusing to

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submit to a chemical test; making amendments relating

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to references to convictions for similar offenses

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under the Alaska Uniform Vehicle Code; and providing

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for an effective date."

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

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* Section 1. AS 28.15.046(e) is amended to read:

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(e) For purposes of determining whether an applicant has been

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convicted of an offense listed under (c) or (d) of this section, a

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conviction under prior state law or in another jurisdiction of an

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offense having elements [SUBSTANTIALLY] similar to those of the of-

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fenses listed in (c) or (d) of this section is considered a convic-

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tion.

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* Sec. 2. 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

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person driving a motor vehicle for which a driver's license is re-

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quired produces a result described in AS 28.35.030(a)(2) or if a

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person under arrest for driving a motor vehicle for which a driver's

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license is required refuses to submit to a chemical test under

1 AS 28.35.031(a), a law enforcement officer shall read a notice and
2 deliver a copy to the person. The notice must [SHALL] advise that

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

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

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

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

16 * Sec. 3. AS 28.15.165(c) is repealed and reenacted to read:

17 (c) The department shall revoke the person's license, privilege
18 to drive, privilege to obtain a license, or nonresident privilege to
19 drive a motor vehicle in the state, or refuse to issue an original
20 license effective upon expiration of the temporary driver's license
21 issued under (a) of this section upon receipt of a sworn report of a
22 law enforcement officer that states

23 (1) that a chemical test under AS 28.35.031(a) produced a
24 result described in AS 28.35.030(a)(2) or that a person refused to
25 submit to a chemical test under AS 28.35.031(a);

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

28 (3) the circumstances surrounding the arrest and the
29 grounds for the officer's belief that the person was driving, while

1 intoxicated, a motor vehicle for which a driver's license is required.

2 * Sec. 4. AS 28.15.166(1) is repealed and reenacted to read:

3 (1) A hearing officer revoking a driver's license because a
4 chemical test administered to the person produced a result described
5 in AS 28.35.030(a)(2) or because the person refused to submit to a
6 chemical test may grant limited license privileges under this sub-
7 section. The hearing officer may grant the limited license privileges
8 if the hearing officer determines that the person's ability to earn a
9 livelihood would be severely impaired and a limitation under AS 28.-
10 15.201 can be placed on the license that will enable the person to
11 earn a livelihood without excessive danger to the public. The limited
12 license privileges may be restored to the person

13 (1) for the final 60 days during which the license was
14 revoked if the person, during the preceding 10 years, has not been
15 previously convicted more than once of an offense described in AS 28.-
16 15.181(a)(5) or (8) or under another law or ordinance with similar
17 elements;

18 (2) for the final five years during which the license was
19 revoked if

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

24 (B) the hearing officer or the commissioner determines
25 that the person has successfully completed an alcoholism educa-
26 tion and rehabilitation treatment program; in determining whether
27 compliance with this subparagraph warrants restoration of limited
28 license privileges, the hearing officer or the commissioner may
29 also consider whether the person

1 (i) is enrolled in an alcoholism treatment pro-
2 gram in which the person receives antabuse or a similar
3 chemical substance intended to produce an aversion to alco-
4 hol in the treatment of alcoholism; or

5 (ii) operates a motor vehicle with an ignition
6 interlock device or similar equipment designed to prevent a
7 motor vehicle from being operated by a person who has con-
8 sumed an alcoholic beverage.

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

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

13 (1) manslaughter or negligent homicide resulting from
14 driving a motor vehicle;

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

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

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

22 (5) driving a motor vehicle while intoxicated;

23 (6) reckless driving;

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

26 (8) refusal to submit to a chemical test under AS 28.35.-
27 032;

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

1 * Sec. 6. AS 28.15.181(c) is amended to read:

2 (c) A court convicting a person of an offense described in
3 (a)(5) or (8) of this section arising out of the operation of a motor
4 vehicle for which a driver's license is required shall revoke that
5 person's driver's license. The revocation may be concurrent with or
6 consecutive to an administrative revocation under AS 28.15.165. The
7 court may not, except as provided in (e) of this section, grant limit-
8 ed license privileges for the following periods:

9 (1) not less than 90 days if, within the preceding 10
10 years, the person has not previously been convicted of an offense

11 (A) described in (a)(5) or (8) of this section; or

12 (B) under a law or ordinance in another jurisdiction
13 with elements [SUBSTANTIALLY] similar to an offense described in
14 (a)(5) or (8) of this section;

15 (2) not less than one year if, within the preceding 10
16 years, the person has been previously convicted of one offense

17 (A) described in (a)(5) or (8) of this section; or

18 (B) under a law or ordinance in another jurisdiction
19 with elements [SUBSTANTIALLY] similar to an offense described in
20 (a)(5) or (8) of this section;

21 (3) not less than 10 years if, within the preceding 10
22 years, the person has been previously convicted of more than one of
23 the following offenses or has more than once been previously convicted
24 of one of the following offenses:

25 (A) an offense described in (a)(5) or (8) of this
26 section; or

27 (B) an offense under another law or ordinance in
28 another jurisdiction with elements [SUBSTANTIALLY] similar to an
29 offense described in (a)(5) or (8) of this section.

1 * Sec. 7. AS 28.15.181(e) is repealed and reenacted to read:

2 (e) A court revoking a driver's license under (c) of this sec-
3 tion, or sustaining the action of the department under AS 28.15.-
4 165(c), may grant limited license privileges

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

10 (2) for the final five years during which the license was
11 revoked if

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

16 (B) the court determines that the person has success-
17 fully completed an alcoholism education and rehabilitation treat-
18 ment program; in determining whether compliance with this sub-
19 paragraph warrants a grant of limited license privileges, the
20 court may also consider whether the person

21 (i) is enrolled in an alcoholism treatment pro-
22 gram in which the person receives antabuse or a similar
23 clinical substance intended to produce an aversion to alco-
24 hol in the treatment of the alcoholism; or

25 (ii) operates a motor vehicle with an ignition
26 interlock device or similar equipment designed to prevent a
27 motor vehicle from being operated by a person who has con-
28 sumed an alcoholic beverage.

29 * Sec. 8. AS 28.15.181 is amended by adding a new subsection to read:

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

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

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

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

10 * Sec. 9. AS 28.15.291(a) is amended to read:

11 (a) A person may not drive a motor vehicle on a highway or
12 vehicular way or area at a time when that person's driver's license,
13 [OR] privilege to drive, or privilege to obtain a license has been
14 canceled, suspended, or revoked in this or another jurisdiction, or
15 when driving in violation of a limitation placed upon that person's
16 license, [OR] privilege to drive, or privilege to obtain a license in
17 this or another jurisdiction. Except as provided in (c) of this
18 section, upon conviction of a violation of this section, the court
19 shall impose a sentence of imprisonment of (1) not less than 72 hours
20 if, within the previous 10 years, the person has not been previously
21 convicted in this or another jurisdiction under this or another law or
22 ordinance with similar elements; (2) not less than 10 consecutive days
23 if, within the preceding 10 years, the person has been previously
24 convicted once in this or another jurisdiction under this or another
25 law or ordinance with similar elements; and (3) not less than 20
26 consecutive days if, within the preceding 10 years, the person has
27 been previously convicted more than once in this or another jurisdic-
28 tion under this or another law or ordinance with similar elements [10
29 DAYS]. The execution of sentence may not be suspended nor may

1 probation or parole be granted until the minimum imprisonment provided
2 in this section has been served; nor may imposition of sentence be
3 suspended. In addition, the person's license, [OR] privilege to
4 drive, or privilege to obtain a license shall be revoked, and the
5 person may not be issued a new license nor may the privilege to drive
6 be restored for an additional period of not less than 90 days [ONE
7 YEAR] after the date that the person would have been entitled to
8 restoration of driving privileges.

9 * Sec. 10. AS 28.15.291(c) is amended to read:

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

27 * Sec. 11. AS 28.35.030(b) is amended to read:

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

1 * Sec. 12. AS 28.35.030(c) is repealed and reenacted to read:

2 (c) Upon conviction under this section,

3 (1) the court shall enter judgment as follows:

4 (A) if, within the preceding 10 years, the person has
5 not been previously convicted in this or another jurisdiction of
6 driving while intoxicated under this or another law with similar
7 elements or of refusal to submit to a chemical test under AS 28.-
8 35.032 or another law or ordinance with similar elements, the
9 court shall impose

10 (i) a minimum sentence of imprisonment of not less
11 than 72 hours; and

12 (ii) a fine of not less than \$250;

13 (B) if, within the preceding 10 years, the person has
14 been previously convicted once in this or another jurisdiction of
15 driving while intoxicated under this or another law or ordinance
16 with similar elements or of refusal to submit to a chemical test
17 under AS 28.35.032 or another law or ordinance with similar
18 elements, the court shall impose

19 (i) a minimum sentence of imprisonment of not less
20 than 20 consecutive days; and

21 (ii) a fine of not less than \$1000;

22 (C) if, within the preceding 10 years, the person has
23 been previously convicted twice in this or another jurisdiction
24 of driving while intoxicated under this or another law or ordi-
25 nance with similar elements or of refusal to submit to a chemical
26 test under AS 28.35.032 or another law or ordinance with similar
27 elements, or has been previously convicted twice of a combination
28 of these offenses, the court shall impose

29 (i) a minimum sentence of imprisonment of not less

1 than 100 consecutive days; and

2 (ii) a fine of not less than \$1000;

3 (D) if, within the preceding 10 years, the person has
4 been previously convicted three times in this or another jurisdic-
5 tion of driving while intoxicated under this or another law or
6 ordinance with similar elements or of refusal to submit to a
7 chemical test under AS 28.35.032 or another law or ordinance with
8 similar elements, or has been previously convicted three times of
9 a combination of these offenses, the court shall impose

10 (i) a minimum sentence of imprisonment of not
11 less than 120 days; and

12 (ii) a fine of not less than \$1000;

13 (E) if, within the preceding 10 years, the person has
14 been previously convicted four times in this or another jurisdic-
15 tion of driving while intoxicated under this or another law or
16 ordinance with similar elements or of refusal to submit to a
17 chemical test under AS 28.35.032 or another law or ordinance with
18 similar elements, or has been previously convicted four times of
19 a combination of these offenses, the court shall impose

20 (i) a minimum sentence of imprisonment of not
21 less than 180 days; and

22 (ii) a minimum fine of not less than \$1000;

23 (2) the court may not

24 (A) suspend execution of sentence;

25 (B) grant probation except on condition that the
26 person serve the minimum imprisonment provided in (1) of this
27 subsection;

28 (C) suspend imposition of sentence;

29 (3) if the offense involved driving a motor vehicle for

1 which a driver's license is required,

2 (A) the court shall direct that the person's driver's
3 license be revoked in accordance with AS 28.15.181; and

4 (B) the court may order the vehicle used in commission
5 of the offense to be forfeited under AS 28.35.036;

6 (4) the court shall order, and the person convicted under
7 this section shall undertake, for a term specified by the court, that
8 program of alcohol education or rehabilitation that the court, after
9 consideration of any information compiled under (d) of this section,
10 finds appropriate.

11 * Sec. 13. AS 28.35.030 is amended by adding a new subsection to read:

12 (h) A person is guilty of a class C felony if, within the pre-
13 ceding 10 years, the person has been previously convicted five or more
14 times in this or another jurisdiction of

15 (1) the offense of driving while intoxicated under this or
16 another law or ordinance with similar elements;

17 (2) refusal to submit to a chemical test under AS 28.35.032
18 or another law or ordinance with similar elements; or

19 (3) a combination of the offenses set out in (1) and (2) of
20 this subsection.

21 * Sec. 14. AS 28.35.032(f) is amended to read:

22 (f) Except as provided in (k) of this section, refusal [REFUSAL]
23 to submit to the chemical test of breath authorized by AS 28.35.031(a)
24 is a class A misdemeanor.

25 * Sec. 15. AS 28.35.032(g) is repealed and reenacted to read:

26 (g) Upon conviction under this section,

27 (1) the court shall enter judgment as directed in AS 28.-
28 35.030(c)(1);

29 (2) the court may not

1 (A) suspend execution of sentence;

2 (B) grant probation except on condition that the
3 person serve the minimum imprisonment required under (1) of this
4 subsection;

5 (C) suspend imposition of sentence;

6 (3) if the offense involved driving a motor vehicle for
7 which a driver's license is required,
8 (A) the court shall direct that the person's driver's
9 license be revoked in accordance with AS 28.15.181; and
10 (B) the court may order the vehicle used in commission
11 of the offense to be forfeited under AS 28.35.036;

12 (4) the court shall order, and the person convicted under
13 this section shall undertake, for a term specified by the court, that
14 program of alcohol education or rehabilitation that the court, after
15 consideration of any information compiled under (h) of this section,
16 finds appropriate; and
17 (5) the sentence imposed by the court under this subsection
18 shall run consecutively with any other sentence of imprisonment im-
19 posed on the person.

20 * Sec. 16. AS 28.35.032 is amended by adding new subsections to read:

21 (k) A person is guilty of a class C felony if, within the pre-
22 ceding 10 years, the person has been previously convicted five or more
23 times in this or another jurisdiction of
24 (1) the offense of refusal to submit to a chemical test
25 under this section or another law or ordinance with similar elements;
26 (2) driving while intoxicated under AS 28.35.030 or another
27 law or ordinance with similar elements; or
28 (3) a combination of the offenses set out in (1) and (2) of
29 this subsection.

1 (1) The sentence imposed by the court under (k) of this section
2 shall run consecutively with any other sentence of imprisonment im-
3 posed on the person.

4 * Sec. 17. AS 28.35.036(a) is amended to read:

5 (a) After conviction of an offense under AS 28.35.030 or AS 28.-
6 35.032 involving a motor vehicle of a type for which a driver's li-
7 cense is required, the state may move the court to order the forfei-
8 ture of the motor vehicle involved in the commission of the offense if
9 the convicted person has been previously convicted in this or another
10 jurisdiction of more than one of the following offenses or has more
11 than once been previously convicted of one of the following offenses:

12 (1) driving while intoxicated under AS 28.35.030 or another
13 law or ordinance with [SUBSTANTIALLY] similar elements; or

14 (2) refusal to submit to a chemical test under AS 28.35.032
15 or another law or ordinance with [SUBSTANTIALLY] similar elements.

16 * Sec. 18. AS 28.35.038 is amended to read:

17 Sec. 28.35.038. MUNICIPAL IMPOUNDMENT AND FORFEITURE. Notwith-
18 standing other provisions in this title, a municipality may adopt an
19 ordinance providing for the impoundment or forfeiture of a motor
20 vehicle involved in the commission of an offense under AS 28.35.030,
21 28.35.032, or an ordinance with elements [SUBSTANTIALLY] similar to
22 AS 28.35.030 or AS 28.35.032. An ordinance adopted under this section
23 is not required to be consistent with this title or regulations adopt-
24 ed under this title.

25 * Sec. 19. AS 28.37.140(c) is amended to read:

26 (c) If the laws of a party state do not provide for offenses or
27 violations denominated or described in precisely the words employed in
28 (a) of this section, the party state shall construe the denominations
29 and descriptions appearing in (a) of this section as being applicable

1 to and identifying the offenses or violations of a [SUBSTANTIALLY]
2 similar nature, and the laws of the party state shall contain the
3 provisions necessary to ensure that full force and effect is given to
4 this section.

5 * Sec. 20. AS 28.40.100(a)(5) is repealed and reenacted to read:

6 (5) "driver's license", or "license" when used in relation
7 to driver licensing, means a license or permit to drive a motor
8 vehicle, or the privilege to drive or to obtain a license to drive a
9 motor vehicle, under the laws of this state, whether or not a person
10 holds a valid license issued in this or another jurisdiction;

11 * Sec. 21. This Act takes effect January 1, 1989.