

1 IN THE HOUSE

BY ULMER AND KOPONEN

2 HOUSE BILL NO. 53

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the privilege to drive, driver  
7 licensing, driving while intoxicated, and other  
8 procedures and matters related to driving and the  
9 revocation of driving privileges; relating to operat-  
10 ing an aircraft or watercraft; and providing for an  
11 effective date."

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

13 \* Section 1. AS 28.05.011 is amended to read:

14 Sec. 28.05.011. DUTY OF COMMISSIONER TO ADOPT REGULATIONS. The  
15 commissioner shall, unless otherwise provided by statute, adopt regu-  
16 lations in compliance with the Administrative Procedure Act (AS 44.62)  
17 necessary to carry out the provisions of this title and other statutes  
18 the administration of which is vested in the department. The regula-  
19 tions shall include, but not be limited to:

20 (1) rules of the road relating to the driving, stopping,  
21 standing, parking, and other conduct of vehicles, to pedestrians, and  
22 to official traffic control devices;

23 (2) minimum equipment for vehicles, including, but not  
24 limited to, minimum standards of compliance to be met by manufacturers  
25 and vehicle sales and repairs businesses;

26 (3) inspection of vehicles, and the removal of vehicles  
27 from areas of public use when they are found to be in a defective or  
28 unsafe condition;

29 (4) registration, titling, transfer, and abandonment of  
H

vehicles;

(5) licensing of drivers of vehicles and procedures for obtaining limited license privileges;

(6) financial responsibility relating to vehicles;

(7) management of records of the department required for the administration of this title and regulations adopted under this title, including provisions for insuring the accuracy of information contained in automated and manual information retrieval systems;

(8) [REPEALED];

(9) definitions of words and phrases used in this title and in regulations adopted under this title unless otherwise provided by statute;

(9) [(10)] registration of motor vehicle, trailer, and semi-trailer dealers; and

(10) [(11)] certification and regulation of junk yards.

\* Sec. 2. AS 28.15.165(a) is amended to read:

(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 required 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 shall advise that

(1) the department intends to revoke the person's driver's license, [OR NONRESIDENT] privilege to drive, or privilege to obtain a license, or refuse to issue an original license to the person;

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

(3) if the person has a driver's license or a nonresident

1 privilege to drive, the notice itself is a temporary driver's license  
2 that expires seven days after it is delivered to the person;

3 (4) revocation of the person's driver's license, [OR NON-  
4 RESIDENT] privilege to drive, or privilege to obtain a license, or a  
5 determination not to issue an original license takes [SHALL TAKE]  
6 effect seven days after delivery of the notice to the person [UPON  
7 EXPIRATION OF THE TEMPORARY DRIVER'S LICENSE] unless the person,  
8 within seven days, requests an administrative review.

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

10 (c) The department shall revoke the person's license, privilege  
11 to drive, or privilege to obtain a license, or refuse to issue an  
12 original license, effective seven days after delivery to the person of  
13 the notice required under (a) of this section, upon receipt of a sworn  
14 report of a law enforcement officer

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

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

20 (3) describing the circumstances surrounding the arrest and  
21 the grounds for the officer's belief that the person was intoxicated  
22 while operating or driving a motor vehicle for which a driver's li-  
23 cense is required.

24 \* Sec. 4. AS 28.15.165(d) is amended to read:

25 (d) The period of revocation of a driver's license, privilege to  
26 drive, or privilege to obtain a license by the department under this  
27 section shall be for the appropriate minimum period for court revoca-  
28 tions under AS 28.15.181(c). A department hearing officer may grant  
29 limited license privileges in accordance with the standards set out in

1 AS 28.15.201 to a person whose driver's license or nonresident privi-  
2 lege to drive was revoked under this section.

3 \* Sec. 5. AS 28.15.166(a) is amended to read:

4 (a) A person who has received a notice under AS 28.15.165(a) may  
5 make a written request for administrative review of the department's  
6 action under AS 28.15.165(c) or for limited license privileges under  
7 AS 28.15.165(d). If the person's driver's license has not been previ-  
8 ously surrendered to the department, it shall be surrendered to the  
9 department at the time the request for review is made.

10 \* Sec. 6. AS 28.15.166(b) is amended to read:

11 (b) A request for review of the department's revocation under  
12 AS 28.15.165 shall be made within seven days after receipt of the  
13 notice under AS 28.15.165 or the right to review is waived and the  
14 action of the department under AS 28.15.165(c) is final. If a written  
15 request for a review is made after expiration of the seven-day period,  
16 and if it is accompanied by the applicant's verified statement ex-  
17 plaining the failure to make a timely request for a review, the  
18 department shall receive and consider the request. If the department  
19 finds that the person was unable to make a timely request because of  
20 lack of actual notice of the revocation or because of factors of  
21 physical incapacity such as hospitalization or incarceration, the  
22 department shall waive the period of limitation, reopen the matter,  
23 and grant the review request. An initial request for limited license  
24 privileges may be made at any time. Subsequent requests for limited  
25 license privileges may not be made unless the applicant demonstrates a  
26 significant change in circumstances.

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

28 (g) The hearing for review of a revocation by the department  
29 under AS 28.15.165 [UNDER THIS SECTION] shall be limited to the issues

1 of whether the arresting officer had reasonable grounds to believe  
2 that the person was driving a motor vehicle while intoxicated and  
3 whether

4 (1) the person refused to submit to a chemical test under  
5 AS 28.35.031(a) after being advised that refusal would result in the  
6 suspension, revocation, or denial of the person's license, [OR NON-  
7 RESIDENT] privilege to drive, or privilege to obtain a license, and  
8 that the refusal is a misdemeanor; or

9 (2) the chemical test authorized under AS 28.35.031(a) and  
10 administered to the person produced a result described in AS 28.35.-  
11 030(a)(2).

12 \* Sec. 8. AS 28.15.166(j) is amended to read:

13 (j) If the issues set out in (g) of this section are determined  
14 in the affirmative by a preponderance of the evidence, the hearing  
15 officer shall sustain the action of the department. If one or more of  
16 the issues is determined in the negative, the department's revocation  
17 action shall be rescinded.

18 \* Sec. 9. AS 28.15.166(n) is amended to read:

19 (n) The filing of an appeal under (m) of this section does not  
20 automatically stay the department's [REVOCATION] order. The court may  
21 grant a stay of the order only upon a motion and hearing, and upon a  
22 finding that there is a reasonable probability that the petitioner  
23 will prevail on the merits and that the petitioner will suffer irrepa-  
24 rable harm if the order is not stayed.

25 \* Sec. 10. AS 28.15.181(a) is amended to read:

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

29 (1) manslaughter or negligent homicide resulting from

1 driving a motor vehicle;

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

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

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

9 (5) driving a motor vehicle while intoxicated;

10 (6) reckless driving;

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

13 (8) refusal to submit to a chemical test under AS 28.35.-  
14 032;

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

17 \* Sec. 11. AS 28.15.181(b) is amended to read:

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

1 privilege to drive, or privilege to obtain a license and may not grant  
2 the person limited license privileges for the following periods:

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

6 \* Sec. 12. AS 28.15.181(c) is amended to read:

7 (c) A court convicting a person of an offense described in  
8 (a)(5) or (8) of this section arising out of the operation of a motor  
9 vehicle for which a driver's license is required shall revoke that  
10 person's driver's license, privilege to drive, or privilege to obtain  
11 a license. The revocation may be concurrent with or consecutive to an  
12 administrative revocation under AS 28.15.165. The court may not,  
13 except as provided in AS 28.15.201 [(e) OF THIS SECTION], grant limit-  
14 ed license privileges for the following periods:

15 (1) at least 90 days if the person has not previously been  
16 convicted;

17 (2) at least one year if the person has been previously  
18 convicted once;

19 (3) at least 10 years if the person has been previously  
20 convicted more than once [NOT LESS THAN 90 DAYS IF, WITHIN THE PRECED-  
21 ING 10 YEARS, THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF AN  
22 OFFENSE

23 (A) DESCRIBED IN (a)(5) OR (8) OF THIS SECTION; OR

24 (B) UNDER A LAW OR ORDINANCE IN ANOTHER JURISDICTION  
25 WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED IN  
26 (a)(5) OR (8) OF THIS SECTION;

27 (2) NOT LESS THAN ONE YEAR IF, WITHIN THE PRECEDING 10  
28 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF ONE OFFENSE

29 (A) DESCRIBED IN (a)(5) or (8) OF THIS SECTION; OR

1 (B) UNDER A LAW OR ORDINANCE IN ANOTHER JURISDICTION  
2 WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED IN  
3 (a)(5) OR (8) OF THIS SECTION;

4 (3) NOT LESS THAN 10 YEARS IF, WITHIN THE PRECEDING 10  
5 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF MORE THAN ONE OF  
6 THE FOLLOWING OFFENSES OR HAS MORE THAN ONCE BEEN PREVIOUSLY CONVICTED  
7 OF ONE OF THE FOLLOWING OFFENSES:

8 (A) AN OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS  
9 SECTION; OR

10 (B) AN OFFENSE UNDER ANOTHER LAW OR ORDINANCE IN  
11 ANOTHER JURISDICTION WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN  
12 OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS SECTION].

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

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

18 \* Sec. 14. AS 28.15.181(f) is amended to read:

19 (f) In [FOR PURPOSES OF] this section, "previously convicted"  
20 means having been convicted in this or another jurisdiction, within 10  
21 years preceding the date of the present offense, of driving while  
22 intoxicated under AS 28.35.030 or another law or ordinance with sub-  
23 stantially similar elements, or of refusal to submit to a chemical  
24 test under AS 28.35.032 or another law or ordinance with substantially  
25 similar elements; convictions for both driving while intoxicated and  
26 for refusal to submit to a chemical test of breath [UNDER AS 28.35.-  
27 031(a)], if arising out of a single transaction and a single arrest,  
28 are considered one previous conviction.

29 \* Sec. 15. AS 28.15.201(a) is amended to read:

1 (a) A court of competent jurisdiction, or a hearing officer  
2 under AS 28.15.165, may, for good cause, impose limitations upon the  
3 driver's license of a person which will enable the person to earn a  
4 livelihood without excessive risk or danger to the public. However,  
5 no limitation may be placed upon a driver's license until after a  
6 review has been made of the person's driving record and other relevant  
7 information, nor may a limitation be imposed when a statute specifi-  
8 cally prohibits the limitation of a license for a violation of its  
9 provisions. In determining whether to grant limited license privi-  
10 leges, a court or hearing officer may consider whether the person

11 (1) is enrolled in an alcoholism treatment program in which  
12 the person receives antabuse or a similar chemical substance intended  
13 to produce an aversion to alcohol in the treatment of alcoholism;

14 (2) operates a motor vehicle with an ignition interlock  
15 device or similar equipment designed to prevent a motor vehicle from  
16 being operated by a person who has consumed an alcoholic beverage;

17 (3) is participating in a program of random urine testing  
18 designed to detect the presence of alcohol.

19 \* Sec. 16. AS 28.15.201(b) is amended to read:

20 (b) A court or hearing officer imposing a limitation under this  
21 section shall

22 (1) require the surrender of the driver's license; and

23 (2) issue to the licensee a certificate valid for the  
24 duration of the limitation.

25 \* Sec. 17. AS 28.15.201 is amended by adding new subsections to read:

26 (d) A court revoking a driver's license under AS 28.15.181(c),  
27 or sustaining the action of the department under AS 28.15.165(c), may  
28 grant limited license privileges

29 (1) only if the court determines that the person's ability

1 to earn a livelihood would be severely impaired and a limitation under  
2 (a) of this section can be placed on the license that will enable the  
3 person to earn a livelihood without excessive danger to the public;

4 (2) to the person

5 (A) for the final 60 days during which the license was  
6 revoked if the person has not been previously convicted more than  
7 once;

8 (B) for the final five years during which the license  
9 was revoked if the person has been previously convicted more than  
10 once, and the court determines that the person has successfully  
11 completed an alcoholism education and rehabilitation treatment  
12 program.

13 (e) In this section, "previously convicted" means having been  
14 convicted in this or another jurisdiction, within 10 years preceding  
15 the date of the present offense, of driving while intoxicated under  
16 AS 28.35.030 or another law or ordinance with substantially similar  
17 elements, or of refusal to submit to a chemical test under AS 28.35.-  
18 032 or another law or ordinance with substantially similar elements.

19 \* Sec. 18. AS 28.15.211(a) is amended to read:

20 (a) Except for a point system suspension or revocation under  
21 AS 28.15.221 - 28.15.241 and unless provided otherwise by law, and  
22 unless the suspension or revocation was for a cause that has been  
23 removed, a person whose driver's license, [OR] privilege to drive, or  
24 privilege to obtain a license [A MOTOR VEHICLE IN THIS STATE] has been  
25 suspended or revoked may not apply for a new license, and [NOR MAY]  
26 the person's driving privilege may not be restored, until the expira-  
27 tion of

28 (1) one month from the date on which the license, privilege  
29 to drive, or privilege to obtain a license was suspended or revoked

1 for a first conviction of the particular offense from which the sus-  
2 pension or revocation resulted;

3 (2) three months from the date on which the license, privi-  
4 lege to drive, or privilege to obtain a license was suspended or  
5 revoked for a second conviction within 12 consecutive months of the  
6 same offense from which the suspension or revocation resulted;

7 (3) one year from the date on which the license, privilege  
8 to drive, or privilege to obtain a license was suspended or revoked  
9 for a third or subsequent conviction within 12 consecutive months of  
10 the same offense from which the suspension or revocation resulted.

11 \* Sec. 19. AS 28.15.211(b) is amended to read:

12 (b) A limitation, suspension, or revocation of a driver's li-  
13 cence, privilege to drive, or privilege to obtain a license imposed by  
14 a court takes effect on the date of final judgment, except that if  
15 another limitation, suspension, or revocation [OF LICENSE] is in  
16 effect on the date of final judgment, the effective date of the last  
17 imposed limitation, suspension, or revocation is at the end of the  
18 last day of the previous limitation, suspension, or revocation unless  
19 the court specifies otherwise.

20 \* Sec. 20. AS 28.15.221 is amended to read:

21 Sec. 28.15.221. POINT SYSTEM. (a) For the purpose of identify-  
22 ing habitually reckless or negligent drivers and habitual or frequent  
23 violators of traffic laws, the commissioner shall adopt regulations  
24 establishing a uniform system for the suspension, revocation, limita-  
25 tion or denial of a driver's license, privilege to drive, or privilege  
26 to obtain a license [OR DRIVING PRIVILEGE] by assigning demerit points  
27 for convictions for violations of traffic laws which are required to  
28 be reported to the department under AS 28.15.191 and AS 28.37.130.

29 (b) The regulations adopted under (a) of this section shall

1 include a designated level of point accumulation which identifies  
2 drivers who are habitually reckless or negligent or who are habitual  
3 or frequent violators of traffic laws, so as to show a disrespect for  
4 traffic laws and a disregard for the safety of other persons. In  
5 formulating the point system authorized by this section, the commis-  
6 sioner shall, in the interest of interstate uniformity, provide for  
7 suspension, revocation or denial of a driver's license, privilege to  
8 drive, or privilege to obtain a license [OR PRIVILEGE] for an accumu-  
9 lation of 12 or more points as a result of offenses committed during  
10 any consecutive 12-month period or 18 or more points as a result of  
11 offenses committed during any 24-month period.

12 \* Sec. 21. AS 28.15.291 is repealed and reenacted to read:

13 Sec. 28.15.291. DRIVING IN VIOLATION OF LICENSE OR PRIVILEGE TO  
14 DRIVE. (a) A person is guilty of a class A misdemeanor if the person

15 (1) drives a motor vehicle on a highway or vehicular way or  
16 area at a time when that person's driver's license, privilege to  
17 drive, or privilege to obtain a license has been canceled, suspended,  
18 or revoked in this or another jurisdiction; or

19 (2) drives in violation of a limitation placed upon that  
20 person's license or privilege to drive in this or another jurisdic-  
21 tion.

22 (b) Upon conviction under (a) of this section, the court

23 (1) shall impose a minimum sentence of imprisonment

24 (A) if the person has not been previously convicted,  
25 of not less than 10 days with 10 days suspended, including a  
26 mandatory condition of probation that the defendant complete not  
27 less than 80 hours of community work service;

28 (B) if the person has been previously convicted, of  
29 not less than 10 days;

1 (C) if the person's driver's license, privilege to  
2 drive, or privilege to obtain a license was revoked under circum-  
3 stances described in AS 28.15.181(c)(1), of not less than 20 days  
4 with 10 days suspended, and a fine of not less than \$500, includ-  
5 ing a mandatory condition of probation that the defendant com-  
6 plete not less than 80 hours of community work service;

7 (D) if the person's driver's license, privilege to  
8 drive, or privilege to obtain a license was revoked under circum-  
9 stances described in AS 28.15.181(c)(2) or (3), of not less than  
10 30 days and a fine of not less than \$1,000;

11 (2) may impose additional conditions of probation;

12 (3) may not

13 (A) suspend execution of sentence;

14 (B) grant probation except on condition that the  
15 person serve the minimum imprisonment provided in (1) of this  
16 subsection;

17 (C) suspend imposition of sentence; and

18 (4) shall revoke the person's license, privilege to drive,  
19 or privilege to obtain a license, and the person may not be issued a  
20 new license nor may the privilege to drive or obtain a license be  
21 restored for an additional period of not less than 90 days after the  
22 date that the person would have been entitled to restoration of driv-  
23 ing privileges.

24 (c) In this section, "previously convicted" means having been  
25 convicted in this or another jurisdiction, within 10 years preceding  
26 the date of the present offense, of a violation of this section or  
27 another law or ordinance with substantially similar elements.

28 \* Sec. 22. AS 28.35.030(b) is repealed and reenacted to read:

29 (b) Except as provided in (c) of this section, driving while

1 intoxicated is a class A misdemeanor. Upon conviction

2 (1) the court shall impose a minimum sentence of imprison-  
3 ment of

4 (A) not less than 72 consecutive hours and a fine of  
5 not less than \$250 if the person has not been previously convict-  
6 ed;

7 (B) not less than 20 days and a fine of not less than  
8 \$500 if the person has been previously convicted once;

9 (C) not less than 60 days and a fine of not less than  
10 \$1,000 if the person has been previously convicted twice;

11 (D) not less than 120 days and a fine of not less than  
12 \$2,000 if the person has been previously convicted three times;

13 (E) not less than 240 days and a fine of not less than  
14 \$3,000 if the person has been previously convicted four times;

15 (2) the court may not

16 (A) suspend execution of sentence;

17 (B) grant probation except on condition that the  
18 person serve the minimum imprisonment under (1) of this subsec-  
19 tion;

20 (C) suspend imposition of sentence;

21 (3) if the offense involved driving a motor vehicle for  
22 which a driver's license is required, the court

23 (A) shall direct that the person's driver's license,  
24 privilege to drive, or privilege to obtain a license be revoked  
25 in accordance with AS 28.15.181; and

26 (B) may order the vehicle that was used in commission  
27 of the offense to be forfeited under AS 28.35.036;

28 (4) the court shall order, and the person convicted under  
29 this section is required to undertake, for a term specified by the

1 court, a program of alcohol education or rehabilitation that the  
2 court, after consideration of any information compiled under (d) of  
3 this section, finds appropriate.

4 \* Sec. 23. AS 28.35.030(c) is repealed and reenacted to read:

5 (c) A person is guilty of a class C felony if the person is  
6 convicted of driving while intoxicated and has been previously con-  
7 victed five or more times.

8 \* Sec. 24. AS 28.35.030(g) is amended to read:

9 (g) In this section,

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

13 (2) "operate a watercraft" means to navigate or use a  
14 vessel used or capable of being used as a means of transportation on  
15 water for recreational or commercial purposes on all waters, fresh or  
16 salt, inland or coastal, inside the territorial limits or under the  
17 jurisdiction of the state;

18 (3) "previously convicted" means having been convicted in  
19 this or another jurisdiction, within 10 years preceding the date of  
20 the present offense, of driving while intoxicated under this section  
21 or another law or ordinance with substantially similar elements, or of  
22 refusal to submit to a chemical test under AS 28.35.032 or another law  
23 or ordinance with substantially similar elements; convictions for both  
24 driving while intoxicated and for refusal to submit to a chemical test  
25 of breath, if arising out of a single transaction and a single arrest,  
26 are considered one previous conviction.

27 \* Sec. 25. AS 28.35.032(a) is amended to read:

28 (a) If a person under arrest refuses the request of a law  
29 enforcement officer to submit to a chemical test under

1 AS 28.35.031(a), after being advised by the officer that the refusal  
2 will, if that person was arrested while operating or driving a motor  
3 vehicle for which a driver's license is required, result in the denial  
4 or revocation of the license or nonresident privilege to drive, that  
5 the refusal may be used against the person in a civil or criminal  
6 action or proceeding arising out of an act alleged to have been com-  
7 mitted by the person while operating or driving a motor vehicle or  
8 operating an aircraft or a watercraft while intoxicated, and that the  
9 refusal is a crime [MISDEMEANOR], a chemical test may not be given,  
10 except as provided by AS 28.35.035.

11 \* Sec. 26. AS 28.35.032(f) is amended to read:

12 (f) Except as provided in (k) of this section, refusal [RE-  
13 FUSAL] to submit to the chemical test of breath authorized by AS 28.-  
14 35.031(a) is a class A misdemeanor.

15 \* Sec. 27. AS 28.35.032(g) is repealed and reenacted to read:

16 (g) Upon conviction under this section

17 (1) the court shall impose a minimum sentence of imprison-  
18 ment of

19 (A) not less than 72 consecutive hours and a fine of  
20 not less than \$250 if the person has not been previously convict-  
21 ed;

22 (B) not less than 20 days and a fine of not less than  
23 \$500 if the person has been previously convicted once;

24 (C) not less than 60 days and a fine of not less than  
25 \$1,000 if the person has been previously convicted twice;

26 (D) not less than 120 days and a fine of not less than  
27 \$2,000 if the person has been previously convicted three times;

28 (E) not less than 240 days and a fine of not less than  
29 \$3,000 if the person has been previously convicted four times;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

(2) the court may not  
(A) suspend execution of the sentence required by (1)  
of this subsection;

(B) grant probation, except on condition that the  
person serve the minimum imprisonment under (1) of this subsec-  
tion; or

(C) suspend imposition of sentence;

(3) if the offense involved driving a motor vehicle for  
which a driver's license is required, the court

(A) shall direct that the person's driver's license,  
privilege to drive, or privilege to obtain a license be revoked  
in accordance with AS 28.15.181; and

(B) may order the vehicle that was used in commission  
of the offense be forfeited under AS 28.35.036;

(4) the court shall order, and the person convicted under  
this section is required to undertake, for a term specified by the  
court, that program of alcohol education or rehabilitation that the  
court, after consideration of any information compiled under (h) of  
this section, finds appropriate; and

(5) the sentence imposed by the court under this subsection  
shall run consecutively with any other sentence of imprisonment  
imposed on the person.

\* Sec. 28. AS 28.35.032 is amended by adding new subsections to read:

(k) A person is guilty of a class C felony if the person is  
convicted under this section and has been previously convicted five or  
more times. The sentence imposed under this subsection shall run  
consecutively with any other sentence of imprisonment imposed on the  
person.

(l) In this section, "previously convicted" means having been

1 convicted in this or another jurisdiction, within 10 years preceding  
2 the date of the present offense, of driving while intoxicated under  
3 AS 28.35.030 or another law or ordinance with substantially similar  
4 elements, or of refusal to submit to a chemical test under this sec-  
5 tion or another law or ordinance with substantially similar elements;  
6 convictions for both driving while intoxicated and for refusal to  
7 submit to a chemical test of breath, if arising out of a single trans-  
8 action and a single arrest, are considered one previous conviction.

9 \* Sec. 29. AS 28.40.100(a)(5) is repealed and reenacted to read:

10 (5) "driver's license" or "license," when used in relation  
11 to driver licensing, means a license or permit to drive a motor vehi-  
12 cle, or the privilege to drive or to obtain a license to drive a motor  
13 vehicle, under the laws of this state, whether or not a person holds a  
14 valid license issued in this or another jurisdiction;

15 \* Sec. 30. AS 28.15.166(1), 28.15.181(e), and AS 28.35.030(f) are re-  
16 pealed.

17 \* Sec. 31. **APPLICABILITY.** The provisions of this Act apply to judicial  
18 proceedings and administrative proceedings by the Department of Public  
19 Safety relating to offenses that are committed after December 31, 1989.

20 \* Sec. 32. This Act takes effect January 1, 1990.  
21  
22  
23  
24  
25  
26  
27  
28  
29