

Original sponsor(s): REP. ULMER, Koponen, Collins

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 53 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND 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 operat-
9 ing aircraft and watercraft and the revocation of
10 driving privileges; amending Alaska Rules of Appel-
11 late Procedure 603 and 611(d); and providing for an
12 effective date."

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

14 * Section 1. AS 28.05.011 is amended to read:

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

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

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

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

1 (4) registration, titling, transfer, and abandonment of
2 vehicles;

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

5 (6) financial responsibility relating to vehicles;

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

10 (8) [REPEALED;

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

14 (9) [(10)] registration of motor vehicle, trailer, and
15 semi-trailer dealers; and

16 (10) [(11)] certification and regulation of junk yards.

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

18 (a) If a chemical test administered under AS 28.35.031(a) to a
19 person operating [DRIVING] a motor vehicle or aircraft [FOR WHICH A
20 DRIVER'S LICENSE IS REQUIRED] produces a result described in AS 28.-
21 35.030(a)(2) or if a person under arrest for operating [DRIVING] a
22 motor vehicle or aircraft [FOR WHICH A DRIVER'S LICENSE IS REQUIRED]
23 refuses to submit to a chemical test under AS 28.35.031(a), a law
24 enforcement officer shall read a notice and deliver a copy to the
25 person. The notice must advise that

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

29 (2) the person has the right to administrative review of

1 the revocation or determination not to issue an original license;

2 (3) if the person has a driver's license or a nonresident
3 privilege to drive, the notice itself is a temporary driver's license
4 that expires seven days after it is delivered to the person;

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

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

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

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

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

22 (3) describing the circumstances surrounding the arrest and
23 the grounds for the officer's belief that the person was intoxicated
24 while operating a motor vehicle or aircraft.

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

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

1 limited license privileges in accordance with the standards set out in
2 AS 28.15.201 to a person whose driver's license or nonresident privi-
3 lege to drive was revoked under this section.

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

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

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

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

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

29 (g) The hearing for review of a revocation by the department

1 under AS 28.15.165 [UNDER THIS SECTION] shall be limited to the issues
2 of whether the arresting officer had reasonable grounds to believe
3 that the person was operating [DRIVING] a motor vehicle or aircraft
4 while intoxicated and whether

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

10 (2) the chemical test authorized under AS 28.35.031(a) and
11 administered to the person produced a result described in AS 28.35.-
12 030(a)(2).

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

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

19 * Sec. 9. AS 28.15.166(n) is repealed and reenacted to read:

20 (n) The filing of an appeal under (m) of this section or a
21 petition for review does not automatically stay the department's order
22 or revocation. The court may grant a stay of the order or revocation
23 only upon a motion and hearing, and upon a finding that there is a
24 reasonable probability that the petitioner will prevail on the merits
25 and that the petitioner will suffer irreparable harm if the order is
26 not stayed.

27 * Sec. 11. AS 28.15.181(a) is amended to read:

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

1 privilege to obtain a license:

2 (1) manslaughter or negligent homicide resulting from
3 driving a motor vehicle;

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

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

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

11 (5) operating [DRIVING] a motor vehicle or aircraft while
12 intoxicated;

13 (6) reckless driving;

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

16 (8) refusal to submit to a chemical test under AS 28.35.032
17 while under arrest for operating a motor vehicle or aircraft while
18 intoxicated;

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

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

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

1 under this subsection, it shall do so for not less than 60 days. Upon
2 a subsequent conviction of a person for any offense described in
3 (a)(1) - (4), (6), or (7) of this section occurring within 10 years
4 after a prior conviction, the court shall revoke the person's license,
5 privilege to drive, or privilege to obtain a license and may not grant
6 the person limited license privileges for the following periods:

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

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

11 (c) A court convicting a person of an offense described in
12 (a)(5) or (8) of this section arising out of the operation of a motor
13 vehicle or aircraft [FOR WHICH A DRIVER'S LICENSE IS REQUIRED] shall
14 revoke that person's driver's license, privilege to drive, or privi-
15 lege to obtain a license. The revocation may be concurrent with or
16 consecutive to an administrative revocation under AS 28.15.165. The
17 court may not, except as provided in AS 28.15.201 [(e) OF THIS SEC-
18 TION], grant limited license privileges during the minimum period of
19 revocation. The minimum periods of revocation are [FOR THE FOLLOWING
20 PERIODS]:

- 21 (1) at least 90 days if the person has not been previously
22 convicted;
23 (2) at least one year if the person has been previously
24 convicted once;
25 (3) at least five years if the person has been previously
26 convicted twice;
27 (4) at least 10 years if the person has been previously
28 convicted more than twice [NOT LESS THAN 90 DAYS IF, WITHIN THE PRE-
29 CEDING 10 YEARS, THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF AN

1 OFFENSE

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

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

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

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

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

12 (3) NOT LESS THAN 10 YEARS IF, WITHIN THE PRECEDING 10
13 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF MORE THAN ONE OF
14 THE FOLLOWING OFFENSES OR HAS MORE THAN ONCE BEEN PREVIOUSLY CONVICTED
15 OF ONE OF THE FOLLOWING OFFENSES:

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

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

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

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

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

27 (f) In [FOR PURPOSES OF] this section, "previously convicted"
28 means having been convicted in this or another jurisdiction, within 10
29 years preceding the date of the present offense, of operating a motor

1 vehicle, aircraft, or watercraft while intoxicated under AS 28.35.030
2 or another law or ordinance with substantially similar elements, or of
3 refusal to submit to a chemical test under AS 28.35.032 or another law
4 or ordinance with substantially similar elements; convictions for both
5 operating a motor vehicle, aircraft, or watercraft [DRIVING] while
6 intoxicated and for refusal to submit to a chemical test of breath
7 [UNDER AS 28.35.031(a)], if arising out of a single transaction and a
8 single arrest, are considered one previous conviction.

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

10 (a) A court of competent jurisdiction, or a hearing officer
11 under AS 28.15.165, may, for good cause, impose limitations upon the
12 driver's license of a person that will enable the person to earn a
13 livelihood without excessive risk or danger to the public. However,
14 no limitation may be placed upon a driver's license until after a
15 review has been made of the person's driving record and other relevant
16 information, nor may a limitation be imposed when a statute specifi-
17 cally prohibits the limitation of a license for a violation of its
18 provisions. In determining whether to grant limited license privi-
19 leges, a court or hearing officer may consider all the relevant facts,
20 including whether the person

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

24 (2) is ordered to operate a motor vehicle only with an
25 ignition interlock device or similar equipment designed to prevent a
26 motor vehicle from being operated by a person who has consumed an
27 alcoholic beverage;

28 (3) is participating in a program of random testing de-
29 signed to detect the presence of alcohol.

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

2 (b) A court or hearing officer imposing a limitation under this
3 section shall

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

5 (2) issue to the licensee a certificate valid for the
6 duration of the limitation.

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

8 (d) A court revoking a driver's license under AS 28.15.181(c),
9 or a hearing officer revoking a driver's license under AS 28.15.-
10 165(c), may grant limited license privileges (1) only if the court or
11 the hearing officer determines that the person's ability to earn a
12 livelihood would be severely impaired and a limitation under (a) of
13 this section can be placed on the license that will enable the person
14 to earn a livelihood without excessive danger to the public; (2) to
15 the person (A) for the final 60 days during which the license was
16 revoked if the person has not been previously convicted more than
17 once; (B) for the final two years during which the license was revoked
18 if the person has not been previously convicted more than twice; (C)
19 for the final five years during which the license was revoked if the
20 person has not been previously convicted more than five times, and the
21 court determines that the person has successfully completed an alco-
22 holism education and rehabilitation treatment program. The court may
23 not grant limited license privileges if the person has been previously
24 convicted more than six times.

25 (e) In this section, "previously convicted" means having been
26 convicted in this or another jurisdiction, within 10 years preceding
27 the date of the present offense, of operating a motor vehicle,
28 aircraft, or watercraft while intoxicated under AS 28.35.030 or
29 another law or ordinance with substantially similar elements, or of

1 refusal to submit to a chemical test under AS 28.35.032 while under
2 arrest for operating a motor vehicle, aircraft, or watercraft or
3 another law or ordinance with substantially similar elements.

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

5 (a) Except for a point system suspension or revocation under
6 AS 28.15.221 - 28.15.241 and unless provided otherwise by law, and
7 unless the suspension or revocation was for a cause that has been
8 removed, a person whose driver's license, [OR] privilege to drive, or
9 privilege to obtain a license [A MOTOR VEHICLE IN THIS STATE] has been
10 suspended or revoked may not apply for a new license, and [NOR MAY]
11 the person's driving privilege may not be restored, until the expira-
12 tion of

13 (1) one month from the date on which the license, privilege
14 to drive, or privilege to obtain a license was suspended or revoked
15 for a first conviction of the particular offense from which the sus-
16 pension or revocation resulted;

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

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

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

26 (b) A limitation, suspension, or revocation of a driver's li-
27 cense, privilege to drive, or privilege to obtain a license imposed by
28 a court takes effect on the date of final judgment, except that if
29 another limitation, suspension, or revocation [OF LICENSE] is in

1 effect on the date of final judgment, the effective date of the last
2 imposed limitation, suspension, or revocation is at the end of the
3 last day of the previous limitation, suspension, or revocation unless
4 the court specifies otherwise.

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

6 Sec. 28.15.221. POINT SYSTEM. (a) For the purpose of identify-
7 ing habitually reckless or negligent drivers and habitual or frequent
8 violators of traffic laws, the commissioner shall adopt regulations
9 establishing a uniform system for the suspension, revocation, limita-
10 tion, or denial of a driver's license, privilege to drive, or privi-
11 lege to obtain a license [OR DRIVING PRIVILEGE] by assigning demerit
12 points for convictions for violations of traffic laws that are re-
13 quired to be reported to the department under AS 28.15.191 and AS 28.-
14 37.130.

15 (b) The regulations adopted under (a) of this section shall
16 include a designated level of point accumulation which identifies
17 drivers who are habitually reckless or negligent or who are habitual
18 or frequent violators of traffic laws, so as to show a disrespect for
19 traffic laws and a disregard for the safety of other persons. In
20 formulating the point system authorized by this section, the commis-
21 sioner shall, in the interest of interstate uniformity, provide for
22 suspension, revocation or denial of a driver's license, privilege to
23 drive, or privilege to obtain a license [OR PRIVILEGE] for an accumu-
24 lation of 12 or more points as a result of offenses committed during
25 any consecutive 12-month period or 18 or more points as a result of
26 offenses committed during any 24-month period.

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

28 Sec. 28.15.291. DRIVING WHILE LICENSE CANCELED, SUSPENDED,
29 REVOKED, OR IN VIOLATION OF A LIMITATION. (a) A person is guilty of

1 a class A misdemeanor if the person

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

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

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

10 (1) shall impose a minimum sentence of imprisonment

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

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

17 (C) if the person's driver's license, privilege to
18 drive, or privilege to obtain a license was revoked under circum-
19 stances described in AS 28.15.181(c)(1), or if the person was
20 driving in violation of a limited license issued under AS 28.15.-
21 201(d) following that revocation, of not less than 20 days with
22 10 days suspended, and a fine of not less than \$500, including a
23 mandatory condition of probation that the defendant complete not
24 less than 80 hours of community work service;

25 (D) if the person's driver's license, privilege to
26 drive, or privilege to obtain a license was revoked under circum-
27 stances described in AS 28.15.181(c)(2), (3), or (4) or if the
28 person was driving in violation of a limited license issued under
29 AS 28.15.201(d) following that revocation, of not less than 30

1 days and a fine of not less than \$1,000;
2 (2) may impose additional conditions of probation;
3 (3) may not
4 (A) suspend execution of sentence;
5 (B) grant probation except on condition that the
6 person serve the minimum imprisonment provided in (1) of this
7 subsection;
8 (C) suspend imposition of sentence; and
9 (4) shall revoke the person's license, privilege to drive,
10 or privilege to obtain a license, and the person may not be issued a
11 new license nor may the privilege to drive or obtain a license be
12 restored for an additional period of not less than 90 days after the
13 date that the person would have been entitled to restoration of driv-
14 ing privileges.

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

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

20 (b) Driving while intoxicated is a class A misdemeanor. Upon
21 conviction

22 (1) the court shall impose a minimum sentence of imprison-
23 ment of

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

27 (B) not less than 20 days and a fine of not less than
28 \$500 if the person has been previously convicted once;

29 (C) not less than 60 days and a fine of not less than

1 \$1,000 if the person has been previously convicted twice;
2 (D) not less than 120 days and a fine of not less than
3 \$2,000 if the person has been previously convicted three times;
4 (E) not less than 240 days and a fine of not less than
5 \$3,000 if the person has been previously convicted four times;
6 (F) not less than 360 days and a fine of not less than
7 \$4,000 if the person has been previously convicted more than four
8 times;

9 (2) the court may not
10 (A) suspend execution of sentence;
11 (B) grant probation except on condition that the
12 person serve the minimum imprisonment under (1) of this subsec-
13 tion;

14 (C) suspend imposition of sentence;
15 (3) the court shall revoke the person's driver's license,
16 privilege to drive, or privilege to obtain a license under AS 28.15.-
17 181, and may order the motor vehicle, aircraft, or watercraft that was
18 used in commission of the offense to be forfeited under AS 28.35.036.

19 * Sec. 23. AS 28.35.030(h) is amended to read:

20 (h) In this section,
21 (1) "operate an aircraft" means to use, navigate, pilot, or
22 taxi an aircraft in the airspace over this state, or upon the land or
23 water inside this state;

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

29 (3) "previously convicted" means having been convicted in

1 this or another jurisdiction, within 10 years preceding the date of
2 the present offense, of operating a motor vehicle, aircraft, or water-
3 craft while intoxicated under this section or another law or ordinance
4 with substantially similar elements, or of refusal to submit to a
5 chemical test under AS 28.35.032 or another law or ordinance with
6 substantially similar elements; convictions for both operating a motor
7 vehicle, aircraft, or watercraft while intoxicated and for refusal to
8 submit to a chemical test of breath, if arising out of a single trans-
9 action and a single arrest, are considered one previous conviction.

10 * Sec. 24. AS 28.35.030 is amended by adding new subsections to read:

11 (i) The court shall order a person convicted under this section
12 to satisfy the screening, evaluation, referral, program, and fee
13 requirements of an agency authorized by the court to make referrals
14 for rehabilitative treatment.

15 (j) A program of inpatient treatment may be required by the
16 referral agency under (i) of this section only if authorized in the
17 judgment, and may not exceed the maximum term of inpatient treatment
18 specified in the judgment. A person who has been referred for inpa-
19 tient treatment under this subsection may make a written request to
20 the sentencing court asking the court to review the referral. The
21 request for review shall be made within seven days of the agency's
22 referral, and shall specifically set out the grounds upon which the
23 request for review is based. The court may order a hearing on the
24 request for review.

25 (k) If a person fails to satisfy the requirements of an au-
26 thorized agency under (j) of this section, the court

27 (1) may impose any portion of a suspended sentence;

28 (2) may punish the failure as contempt of court under
29 AS 09.50.010 or as a violation of a condition of probation;

1 (3) shall order the revocation or suspension of the per-
2 son's driver's license, privilege to drive, and privilege to obtain a
3 license until the requirements are satisfied.

4 * Sec. 25. 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 after being advised by the officer that the refusal will, if that
8 person was arrested while operating [OR DRIVING] a motor vehicle or
9 aircraft [FOR WHICH A DRIVER'S LICENSE IS REQUIRED], result in the
10 denial or revocation of the license or nonresident privilege to drive,
11 that the refusal may be used against the person in a civil or criminal
12 action or proceeding arising out of an act alleged to have been com-
13 mitted by the person while operating [OR DRIVING] a motor vehicle, [OR
14 OPERATING] an aircraft or a watercraft while intoxicated, and that the
15 refusal is a crime [MISDEMEANOR], a chemical test may not be given,
16 except as provided by AS 28.35.035.

17 * Sec. 26. AS 28.35.032(g) is repealed and reenacted to read:

18 (g) Upon conviction under this section

19 (1) the court shall impose a minimum sentence of imprison-
20 ment of

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

24 (B) not less than 20 days and a fine of not less than
25 \$500 if the person has been previously convicted once;

26 (C) not less than 60 days and a fine of not less than
27 \$1,000 if the person has been previously convicted twice;

28 (D) not less than 120 days and a fine of not less than
29 \$2,000 if the person has been previously convicted three times;

1 (E) not less than 240 days and a fine of not less than
2 \$3,000 if the person has been previously convicted four times;

3 (F) not less than 360 days and a fine of not less than
4 \$4,000 if the person has been previously convicted more than four
5 times;

6 (2) the court may not

7 (A) suspend execution of the sentence required by (1)
8 of this subsection;

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

12 (C) suspend imposition of sentence;

13 (3) the court shall revoke the person's driver's license,
14 privilege to drive, or privilege to obtain a license under AS 28.15.-
15 181, and may order the motor vehicle, aircraft, or watercraft that was
16 used in commission of the offense be forfeited under AS 28.35.036; and

17 (4) 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. 27. AS 28.35.032 is amended by adding new subsections to read:

21 (1) The court shall order a person convicted under this section
22 to satisfy the screening, evaluation, referral, program, and fee
23 requirements of an agency authorized by the court to make referrals
24 for rehabilitative treatment.

25 (m) A program of inpatient treatment may be required by the
26 referral agency under (1) of this section only if authorized in the
27 judgment, and may not exceed the maximum term of inpatient treatment
28 specified in the judgment. A person who has been referred for inpa-
29 tient treatment under this subsection may make a written request to

1 the sentencing court asking the court to review the referral. The
2 request for review shall be made within seven days of the agency's
3 referral, and shall specifically set out the grounds upon which the
4 request for review is based. The court may order a hearing on the
5 request for review.

6 (n) If a person fails to satisfy the requirements of an au-
7 thorized agency under (m) of this section, the court

8 (1) may impose any portion of a suspended sentence;

9 (2) may punish the failure as contempt of court under
10 AS 09.50.010 or as a violation of a condition of probation;

11 (3) shall order the revocation or suspension of the per-
12 son's driver's license, privilege to drive, and privilege to obtain a
13 license until the requirements are satisfied.

14 (o) In this section, "previously convicted" means having been
15 convicted in this or another jurisdiction, within 10 years preceding
16 the date of the present offense, of operating a motor vehicle, air-
17 craft, or watercraft while intoxicated under AS 28.35.030 or another
18 law or ordinance with substantially similar elements, or of refusal to
19 submit to a chemical test under this section or another law or ordi-
20 nance with substantially similar elements; convictions for both op-
21 erating a motor vehicle, aircraft, or watercraft while intoxicated and
22 for refusal to submit to a chemical test of breath, if arising out of
23 a single transaction and a single arrest, are considered one previous
24 conviction.

25 * Sec. 28. AS 28.35.035(a) is amended to read:

26 (a) If a person is under arrest for an offense arising out of
27 acts alleged to have been committed while the person was operating
28 [DRIVING] a motor vehicle, aircraft, or watercraft while intoxicated,
29 and that arrest results from an accident that causes death or physical

1 injury to another person, a chemical test may be administered without
2 the consent of the person arrested to determine the amount of alcohol
3 in that person's breath or blood.

4 * Sec. 29. AS 28.35.036(a) is amended to read:

5 (a) After conviction of an offense under AS 28.35.030 or 28.-
6 35.032 [INVOLVING A MOTOR VEHICLE OF A TYPE FOR WHICH A DRIVER'S
7 LICENSE IS REQUIRED], the state may move the court to order the for-
8 feiture of the motor vehicle, aircraft, or watercraft involved in the
9 commission of the offense if the convicted person has been previously
10 convicted in this or another jurisdiction of more than one of the
11 following offenses or has more than once been previously convicted of
12 one of the following offenses:

13 (1) driving while intoxicated under AS 28.35.030 or another
14 law or ordinance with substantially similar elements; or

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

17 * Sec. 30. AS 28.35.037 is amended to read:

18 Sec. 28.35.037. REMISSION OF FORFEITURES. (a) Upon receiving
19 notice from the court of the time and place set for a hearing under
20 AS 28.35.036, the state shall provide to every person who has an
21 ascertainable ownership or security interest in the motor vehicle,
22 aircraft, or watercraft written notice that includes

23 (1) a description of the motor vehicle, aircraft, or water-
24 craft;

25 (2) the time and place of the forfeiture hearing;

26 (3) the legal authority under which the motor vehicle,
27 aircraft, or watercraft may be forfeited;

28 (4) notice of the right to intervene to protect the inter-
29 est in the motor vehicle, aircraft, or watercraft.

1 (b) At the hearing, a person who claims an ownership or security
2 interest in the motor vehicle, aircraft, or watercraft must establish
3 by a preponderance of the evidence that

4 (1) the petitioner has an interest in the motor vehicle,
5 aircraft, or watercraft acquired in good faith;

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

8 (3) before parting with the motor vehicle, aircraft, or
9 watercraft, the petitioner did not know or have reasonable cause to
10 believe that it would be used in the commission of an offense.

11 (c) If a person satisfies the requirements of (b) of this sec-
12 tion, the court shall order that an amount equal to the value of the
13 petitioner's interest in the motor vehicle, aircraft, or watercraft be
14 paid to the petitioner or the court shall order that the motor vehi-
15 cle, aircraft, or watercraft be released to the petitioner together
16 with title to the motor vehicle, aircraft, or watercraft.

17 (d) Forfeiture of a motor vehicle, aircraft, or watercraft under
18 AS 28.35.036 is without prejudice to the rights, and does not extin-
19 guish the claims of a creditor with an interest in the motor vehicle,
20 aircraft, or watercraft.

21 * Sec. 31. AS 28.35.038 is amended to read:

22 Sec. 28.35.038. MUNICIPAL IMPOUNDMENT AND FORFEITURE. Notwith-
23 standing other provisions in this title, a municipality may adopt an
24 ordinance providing for the impoundment or forfeiture of a motor
25 vehicle, aircraft, or watercraft involved in the commission of an
26 offense under AS 28.35.030, 28.35.032, or an ordinance with elements
27 substantially similar to AS 28.35.030 or 28.35.032. An ordinance
28 adopted under this section is not required to be consistent with this
29 title or regulations adopted under this title.

1 * Sec. 32. AS 28.40.100(a)(5) is repealed and reenacted to read:
2 (5) "driver's license" or "license," when used in relation
3 to driver licensing, means a license or permit to drive a motor vehi-
4 cle, or the privilege to drive or to obtain a license to drive a motor
5 vehicle, under the laws of this state, whether or not a person holds a
6 valid license issued in this or another jurisdiction;

7 * Sec. 33. AS 28.15.166(1), 28.15.181(e), AS 28.35.030(c), and 28.35.-
8 030(f) are repealed.

9 * Sec. 34. The provisions of sec. 9 of this Act have the effect of
10 changing Alaska Rules of Appellate Procedure 603 and 611(d) by prohibiting
11 an automatic stay of the administrative revocation of a driver's license
12 pending appeal or petition for review and by limiting the power of the
13 court to stay the administrative revocation of a driver's license.

14 * Sec. 35. APPLICABILITY. The provisions of this Act apply to judicial
15 proceedings and administrative proceedings by the Department of Public
16 Safety relating to offenses that are committed after December 31, 1990.

17 * Sec. 36. This Act takes effect January 1, 1991.