

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

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 SENATE CS FOR 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10 (8) [REPEALED;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 28.15.071 is amended by adding a new subsection to read:

18 (e) This section does not apply to a person under 18 years of  
19 age who is legally emancipated under AS 09.55.590 or a similar law in  
20 another jurisdiction.

21 \* Sec. 3. AS 28.15.165(a) is amended to read:

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

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

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

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

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

15 \* Sec. 4. AS 28.15.165(c) is repealed and reenacted to read:

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

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

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

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

29 \* Sec. 5. AS 28.15.165(d) is amended to read:

1 (d) The period of revocation of a driver's license, privilege to  
2 drive, or privilege to obtain a license by the department under this  
3 section shall be for the appropriate minimum period for court revoca-  
4 tions under AS 28.15.181(c). A department hearing officer may grant  
5 limited license privileges in accordance with the standards set out in  
6 AS 28.15.201 to a person whose driver's license or nonresident privi-  
7 lege to drive was revoked under this section.

8 \* Sec. 6. AS 28.15.166(a) is amended to read:

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

15 \* Sec. 7. AS 28.15.166(b) is amended to read:

16 (b) A request for review of the department's revocation under  
17 AS 28.15.165 shall be made within seven days after receipt of the  
18 notice under AS 28.15.165 or the right to review is waived and the  
19 action of the department under AS 28.15.165(c) is final. If a written  
20 request for a review is made after expiration of the seven-day period,  
21 and if it is accompanied by the applicant's verified statement ex-  
22 plaining the failure to make a timely request for a review, the de-  
23 partment shall receive and consider the request. If the department  
24 finds that the person was unable to make a timely request because of  
25 lack of actual notice of the revocation or because of factors of  
26 physical incapacity such as hospitalization or incarceration, the  
27 department shall waive the period of limitation, reopen the matter,  
28 and grant the review request. An initial request for limited license  
29 privileges may be made at any time. Subsequent requests for limited

1 license privileges may not be made unless the applicant demonstrates a  
2 significant change in circumstances.

3 \* Sec. 8. AS 28.15.166(g) is amended to read:

4 (g) The hearing for review of a revocation by the department  
5 under AS 28.15.165 [UNDER THIS SECTION] shall be limited to the issues  
6 of whether the arresting officer had reasonable grounds to believe  
7 that the person was operating [DRIVING] a motor vehicle or aircraft  
8 while intoxicated and whether

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

14 (2) the chemical test authorized under AS 28.35.031(a) and  
15 administered to the person produced a result described in AS 28.35.-  
16 030(a)(2).

17 \* Sec. 9. AS 28.15.166(j) is amended to read:

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

23 \* Sec. 10. AS 28.15.166(n) is repealed and reenacted to read:

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

1 not stayed.

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

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

6 (1) manslaughter or negligent homicide resulting from  
7 driving a motor vehicle;

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

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

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

15 (5) operating [DRIVING] a motor vehicle or aircraft while  
16 intoxicated;

17 (6) reckless driving;

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

20 (8) refusal to submit to a chemical test under AS 28.35.032  
21 while under arrest for operating a motor vehicle or aircraft while  
22 intoxicated;

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

25 \* Sec. 12. AS 28.15.181(b) is amended to read:

26 (b) A court convicting a person of an offense described in  
27 (a)(1) - (4), (6), or (7) of this section shall revoke that person's  
28 driver's license, privilege to drive, or privilege to obtain a license  
29 for not less than 30 days for the first conviction, unless the court

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

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

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

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

- 25 (1) at least 90 days if the person has not been previously  
26 convicted;  
27 (2) at least one year if the person has been previously  
28 convicted once;  
29 (3) at least five years if the person has been previously

1 convicted twice:

2 (4) at least 10 years if the person has been previously  
3 convicted more than twice [NOT LESS THAN 90 DAYS IF, WITHIN THE PRE-  
4 CEDING 10 YEARS, THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF AN  
5 OFFENSE

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

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

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

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

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

16 (3) NOT LESS THAN 10 YEARS IF, WITHIN THE PRECEDING 10  
17 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF MORE THAN ONE OF  
18 THE FOLLOWING OFFENSES OR HAS MORE THAN ONCE BEEN PREVIOUSLY CONVICTED  
19 OF ONE OF THE FOLLOWING OFFENSES:

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

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

25 \* Sec. 14. AS 28.15.181(d) is amended to read:

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

1 \* Sec. 15. AS 28.15.181(f) is amended to read:

2 (f) In [FOR PURPOSES OF] this section, "previously convicted"  
3 means having been convicted in this or another jurisdiction, within 10  
4 years preceding the date of the present offense, of operating a motor  
5 vehicle, aircraft, or watercraft while intoxicated under AS 28.35.030  
6 or another law or ordinance with substantially similar elements, or of  
7 refusal to submit to a chemical test under AS 28.35.032 or another law  
8 or ordinance with substantially similar elements; convictions for both  
9 operating a motor vehicle, aircraft, or watercraft [DRIVING] while  
10 intoxicated and for refusal to submit to a chemical test of breath  
11 [UNDER AS 28.35.031(a)], if arising out of a single transaction and a  
12 single arrest, are considered one previous conviction.

13 \* Sec. 16. AS 28.15.201(a) is amended to read:

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

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

28 (2) is ordered to operate a motor vehicle only with an  
29 ignition interlock device or similar equipment designed to prevent a

1 motor vehicle from being operated by a person who has consumed an  
2 alcoholic beverage;

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

5 \* Sec. 17. AS 28.15.201(b) is amended to read:

6 (b) A court or hearing officer imposing a limitation under this  
7 section shall

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

9 (2) issue to the licensee a certificate valid for the  
10 duration of the limitation.

11 \* Sec. 18. AS 28.15.201 is amended by adding new subsections to read:

12 (d) A court revoking a driver's license under AS 28.15.181(c),  
13 or a hearing officer revoking a driver's license under AS 28.15.-  
14 165(c), may grant limited license privileges if (1) the court or the  
15 hearing officer determines that the person's ability to earn a liveli-  
16 hood would be severely impaired; (2) a limitation under (a) of this  
17 section can be placed on the license that will enable the person to  
18 earn a livelihood without excessive danger to the public; and (3) the  
19 court or hearing officer determines that the person has successfully  
20 completed an alcoholism education and rehabilitation treatment pro-  
21 gram. Limited license privileges may only be granted to the person  
22 for the final 60 days during which the license was revoked if the  
23 person has not been previously convicted more than once, for the final  
24 two years during which the license was revoked if the person has not  
25 been previously convicted more than twice, and for the final five  
26 years during which the license was revoked if the person has not been  
27 previously convicted more than five times. The court or the hearing  
28 officer may not grant limited license privileges if the person has  
29 been previously convicted more than six times.

1 (e) Notwithstanding (d) of this section, a court revoking a  
2 driver's license under AS 28.15.181(c), or a hearing officer revoking  
3 a driver's license under AS 28.15.165(c), may grant limited license  
4 privileges for the final seven years during which the license was  
5 revoked if

6 (1) the person has been previously convicted twice and not  
7 more than twice;

8 (2) the court or hearing officer determines that the per-  
9 son's ability to earn a livelihood would be severely impaired and a  
10 limitation under (a) of this section can be placed on the license that  
11 will enable the person to earn a livelihood without excessive danger  
12 to the public;

13 (3) the conviction for which the license was revoked oc-  
14 curred before the effective date of this Act; and

15 (4) the court or hearing officer determines that the person  
16 has successfully completed an alcoholism education and rehabilitation  
17 treatment program.

18 (f) In this section, "previously convicted" means having been  
19 convicted in this or another jurisdiction, within 10 years preceding  
20 the date of the present offense, of operating a motor vehicle, air-  
21 craft, or watercraft while intoxicated under AS 28.35.030 or another  
22 law or ordinance with substantially similar elements, or of refusal to  
23 submit to a chemical test under AS 28.35.032 while under arrest for  
24 operating a motor vehicle, aircraft, or watercraft or another law or  
25 ordinance with substantially similar elements.

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

27 (a) Except for a point system suspension or revocation under  
28 AS 28.15.221 - 28.15.241 and unless provided otherwise by law, and  
29 unless the suspension or revocation was for a cause that has been

1 removed, a person whose driver's license, [OR] privilege to drive, or  
2 privilege to obtain a license [A MOTOR VEHICLE IN THIS STATE] has been  
3 suspended or revoked may not apply for a new license, and [NOR MAY]  
4 the person's driving privilege may not be restored, until the expira-  
5 tion of

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

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

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

18 \* Sec. 20. AS 28.15.211(b) is amended to read:

19 (b) A limitation, suspension, or revocation of a driver's li-  
20 cence, privilege to drive, or privilege to obtain a license imposed by  
21 a court takes effect on the date of final judgment, except that if  
22 another limitation, suspension, or revocation [OF LICENSE] is in  
23 effect on the date of final judgment, the effective date of the last  
24 imposed limitation, suspension, or revocation is at the end of the  
25 last day of the previous limitation, suspension, or revocation unless  
26 the court specifies otherwise.

27 \* Sec. 21. AS 28.15.221 is amended to read:

28 Sec. 28.15.221. POINT SYSTEM. (a) For the purpose of identify-  
29 ing habitually reckless or negligent drivers and habitual or frequent

1 violators of traffic laws, the commissioner shall adopt regulations  
2 establishing a uniform system for the suspension, revocation, limita-  
3 tion, or denial of a driver's license, privilege to drive, or privi-  
4 lege to obtain a license [OR DRIVING PRIVILEGE] by assigning demerit  
5 points for convictions for violations of traffic laws that are re-  
6 quired to be reported to the department under AS 28.15.191 and AS 28.-  
7 37.130.

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

20 \* Sec. 22. AS 28.15.291 is repealed and reenacted to read:

21 Sec. 28.15.291. DRIVING WHILE LICENSE CANCELED, SUSPENDED,  
22 REVOKED, OR IN VIOLATION OF A LIMITATION. (a) A person is guilty of  
23 a class A misdemeanor if the person

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

28 (2) drives in violation of a limitation placed upon that  
29 person's license or privilege to drive in this or another

1 jurisdiction.

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

3 (1) shall impose a minimum sentence of imprisonment

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

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

10 (C) if the person's driver's license, privilege to  
11 drive, or privilege to obtain a license was revoked under circum-  
12 stances described in AS 28.15.181(c)(1), or if the person was  
13 driving in violation of a limited license issued under AS 28.15.-  
14 201(d) following that revocation, of not less than 20 days with  
15 10 days suspended, and a fine of not less than \$500, including a  
16 mandatory condition of probation that the defendant complete not  
17 less than 80 hours of community work service;

18 (D) if the person's driver's license, privilege to  
19 drive, or privilege to obtain a license was revoked under circum-  
20 stances described in AS 28.15.181(c)(2), (3), or (4) or if the  
21 person was driving in violation of a limited license issued under  
22 AS 28.15.201(d) following that revocation, of not less than 30  
23 days and a fine of not less than \$1,000;

24 (2) may impose additional conditions of probation;

25 (3) may not

26 (A) suspend execution of sentence or grant probation  
27 except on condition that the person serve a minimum term of  
28 imprisonment and perform required community work service as  
29 provided in (1) of this subsection;

1 (B) suspend imposition of sentence; and

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

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

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

13 (b) Driving while intoxicated is a class A misdemeanor. Upon  
14 conviction

15 (1) the court shall impose a minimum sentence of imprison-  
16 ment of

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

20 (B) not less than 20 days and a fine of not less than  
21 \$500 if the person has been previously convicted once;

22 (C) not less than 60 days and a fine of not less than  
23 \$1,000 if the person has been previously convicted twice;

24 (D) not less than 120 days and a fine of not less than  
25 \$2,000 if the person has been previously convicted three times;

26 (E) not less than 240 days and a fine of not less than  
27 \$3,000 if the person has been previously convicted four times;

28 (F) not less than 360 days and a fine of not less than  
29 \$4,000 if the person has been previously convicted more than four

1 times;  
2 (2) the court may not  
3 (A) suspend execution of sentence or grant probation  
4 except on condition that the person serve the minimum imprison-  
5 ment under (1) of this subsection;  
6 (B) suspend imposition of sentence;  
7 (3) the court shall revoke the person's driver's license,  
8 privilege to drive, or privilege to obtain a license under AS 28.15.-  
9 181, and may order the motor vehicle or aircraft that was used in  
10 commission of the offense to be forfeited under AS 28.35.036.

11 \* Sec. 24. AS 28.35.030(h) is amended to read:

12 (h) In this section,  
13 (1) "operate an aircraft" means to use, navigate, pilot, or  
14 taxi an aircraft in the airspace over this state, or upon the land or  
15 water inside this state;

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

21 (3) "previously convicted" means having been convicted in  
22 this or another jurisdiction, within 10 years preceding the date of  
23 the present offense, of operating a motor vehicle, aircraft, or water-  
24 craft while intoxicated under this section or another law or ordinance  
25 with substantially similar elements, or of refusal to submit to a  
26 chemical test under AS 28.35.032 or another law or ordinance with  
27 substantially similar elements; convictions for both operating a motor  
28 vehicle, aircraft, or watercraft while intoxicated and for refusal to  
29 submit to a chemical test of breath, if arising out of a single

1 transaction and a single arrest, are considered one previous convic-  
2 tion.

3 \* Sec. 25. AS 28.35.030 is amended by adding new subsections to read:

4 (i) The court shall order a person convicted under this section  
5 to satisfy the screening, evaluation, referral, and program require-  
6 ments of an agency authorized by the court to make referrals for  
7 rehabilitative treatment or to provide rehabilitative treatment.

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

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

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

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

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

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

27 (a) If a person under arrest refuses the request of a law en-  
28 forcement officer to submit to a chemical test under AS 28.35.031(a),  
29 after being advised by the officer that the refusal will, if that

1 person was arrested while operating [OR DRIVING] a motor vehicle or  
2 aircraft [FOR WHICH A DRIVER'S LICENSE IS REQUIRED], result in the  
3 denial or revocation of the license or nonresident privilege to drive,  
4 that the refusal may be used against the person in a civil or criminal  
5 action or proceeding arising out of an act alleged to have been com-  
6 mitted by the person while operating [OR DRIVING] a motor vehicle, [OR  
7 OPERATING] an aircraft or a watercraft while intoxicated, and that the  
8 refusal is a crime [MISDEMEANOR], a chemical test may not be given,  
9 except as provided by AS 28.35.035.

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

11 (g) Upon conviction under this section

12 (1) the court shall impose a minimum sentence of imprison-  
13 ment of

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

17 (B) not less than 20 days and a fine of not less than  
18 \$500 if the person has been previously convicted once;

19 (C) not less than 60 days and a fine of not less than  
20 \$1,000 if the person has been previously convicted twice;

21 (D) not less than 120 days and a fine of not less than  
22 \$2,000 if the person has been previously convicted three times;

23 (E) not less than 240 days and a fine of not less than  
24 \$3,000 if the person has been previously convicted four times;

25 (F) not less than 360 days and a fine of not less than  
26 \$4,000 if the person has been previously convicted more than four  
27 times;

28 (2) the court may not

29 (A) suspend execution of the sentence required by (1)

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

4 (B) suspend imposition of sentence;

5 (3) the court shall revoke the person's driver's license,  
6 privilege to drive, or privilege to obtain a license under AS 28.15.-  
7 181, and may order the motor vehicle or aircraft that was used in  
8 commission of the offense be forfeited under AS 28.35.036; and

9 (4) the sentence imposed by the court under this subsection  
10 shall run consecutively with any other sentence of imprisonment im-  
11 posed on the person.

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

13 (1) The court shall order a person convicted under this section  
14 to satisfy the screening, evaluation, referral, and program require-  
15 ments of an agency authorized by the court to make referrals for  
16 rehabilitative treatment or to provide rehabilitative treatment.

17 (m) A program of inpatient treatment may be required by the  
18 authorized agency under (1) of this section only if authorized in the  
19 judgment, and may not exceed the maximum term of inpatient treatment  
20 specified in the judgment. A person who has been referred for inpa-  
21 tient treatment under this subsection may make a written request to  
22 the sentencing court asking the court to review the referral. The  
23 request for review shall be made within seven days of the agency's  
24 referral, and shall specifically set out the grounds upon which the  
25 request for review is based. The court may order a hearing on the  
26 request for review.

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

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

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

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

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

17 \* Sec. 29. AS 28.35.035(a) is amended to read:

18 (a) If a person is under arrest for an offense arising out of  
19 acts alleged to have been committed while the person was operating  
20 [DRIVING] a motor vehicle, aircraft, or watercraft while intoxicated,  
21 and that arrest results from an accident that causes death or physical  
22 injury to another person, a chemical test may be administered without  
23 the consent of the person arrested to determine the amount of alcohol  
24 in that person's breath or blood.

25 \* Sec. 30. AS 28.35.036(a) is amended to read:

26 (a) After conviction of an offense under AS 28.35.030 or 28.-  
27 35.032 [INVOLVING A MOTOR VEHICLE OF A TYPE FOR WHICH A DRIVER'S  
28 LICENSE IS REQUIRED], the state may move the court to order the for-  
29 feiture of the motor vehicle, or aircraft involved in the commission

1 of the offense if the convicted person has been previously convicted  
2 in this or another jurisdiction of more than one of the following  
3 offenses or has more than once been previously convicted of one of the  
4 following offenses:

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

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

9 \* Sec. 31. AS 28.35.037 is amended to read:

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

15 (1) a description of the motor vehicle, or aircraft;

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

17 (3) the legal authority under which the motor vehicle, or  
18 aircraft, may be forfeited;

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

21 (b) At the hearing, a person who claims an ownership or security  
22 interest in the motor vehicle, or aircraft, must establish by a pre-  
23 ponderance of the evidence that

24 (1) the petitioner has an interest in the motor vehicle, or  
25 aircraft, acquired in good faith;

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

28 (3) before parting with the motor vehicle, or aircraft,  
29 the petitioner did not know or have reasonable cause to believe that

1 it would be used in the commission of an offense.

2 (c) If a person satisfies the requirements of (b) of this sec-  
3 tion, the court shall order that an amount equal to the value of the  
4 petitioner's interest in the motor vehicle, or aircraft, be paid to  
5 the petitioner or the court shall order that the motor vehicle, or  
6 aircraft, be released to the petitioner together with title to the  
7 motor vehicle, or aircraft.

8 (d) Forfeiture of a motor vehicle, or aircraft, under AS 28.35.-  
9 036 is without prejudice to the rights, and does not extinguish the  
10 claims of a creditor with an interest in the motor vehicle, or air-  
11 craft.

12 \* Sec. 32. AS 28.35.038 is amended to read:

13 Sec. 28.35.038. MUNICIPAL IMPOUNDMENT AND FORFEITURE. Notwith-  
14 standing other provisions in this title, a municipality may adopt an  
15 ordinance providing for the impoundment or forfeiture of a motor  
16 vehicle, or aircraft, involved in the commission of an offense under  
17 AS 28.35.030, 28.35.032, or an ordinance with elements substantially  
18 similar to AS 28.35.030 or 28.35.032. An ordinance adopted under this  
19 section is not required to be consistent with this title or regu-  
20 lations adopted under this title.

21 \* Sec. 33. AS 28.40.100(a)(5) is repealed and reenacted to read:

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

27 \* Sec. 34. AS 28.15.166(1), 28.15.181(e), AS 28.35.030(c), and 28.35.-  
28 030(f) are repealed.

29 \* Sec. 35. The provisions of sec. 10 of this Act have the effect of

1 changing Alaska Rules of Appellate Procedure 603 and 611(d) by prohibiting  
2 an automatic stay of the administrative revocation of a driver's license  
3 pending appeal or petition for review and by limiting the power of the  
4 court to stay the administrative revocation of a driver's license.

5 \* Sec. 36. APPLICABILITY. The provisions of this Act apply to judicial  
6 proceedings and administrative proceedings by the Department of Public  
7 Safety relating to offenses that are committed after December 31, 1990.

8 \* Sec. 37. This Act takes effect January 1, 1991.