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Referred: Transportation
and Judiciary

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1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

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HOUSE BILL NO. 317

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to operating a commercial motor vehicle carrying a cargo of hazardous substances, a vessel or an aircraft for compensation, or a train, while under the influence of an intoxicating substance; and relating to the duties of the operator immediately after an accident or unlawful discharge of oil or another hazardous substance."

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

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* Section 1. AS 28.35.030(a) is amended to read:

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(a) Except as provided in AS 28.35.039, a [A] person commits the crime of driving while intoxicated if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

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(1) while under the influence of intoxicating liquor, or any controlled substance listed in AS 11.71.140 - 11.71.190;

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(2) when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.10 percent or more by weight of alcohol in the person's blood or 100 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.10 grams or more of alcohol per 210 liters of the person's breath; or

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(3) while the person is under the combined influence of intoxicating liquor and another substance.

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* Sec. 2. AS 28.35.031(a) is amended to read:

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(a) Except as provided in (g) of this section, a [A] person who

1 operates or drives a motor vehicle in this state or who operates an
2 aircraft as defined in AS 28.35.030(g)(1) or who operates a watercraft
3 as defined in AS 28.35.030(g)(2) shall be considered to have given
4 consent to a chemical test or tests of the person's breath for the
5 purpose of determining the alcoholic content of the person's blood or
6 breath if lawfully arrested for an offense arising out of acts alleged
7 to have been committed while the person was operating or driving a
8 motor vehicle or operating an aircraft or a watercraft while intox-
9 icated. The test or tests shall be administered at the direction of a
10 law enforcement officer who has reasonable grounds to believe that the
11 person was operating or driving a motor vehicle or operating an air-
12 craft or a watercraft in this state while intoxicated.

13 * Sec. 3. AS 28.35.031 is amended by adding a new subsection to read:

14 (g) A person who operates an aircraft, commercial motor vehicle
15 carrying a cargo of hazardous substances, train, or vessel as defined
16 in AS 28.35.900 is considered to have given consent to a chemical test
17 or tests for the purpose of determining the alcohol and controlled
18 substance content of the person's blood or breath if the aircraft,
19 commercial motor vehicle, train, or vessel causes damage to person or
20 property or unlawfully discharges oil or another hazardous substance.
21 The test or tests shall be administered at the direction of a law
22 enforcement officer who has reasonable grounds to believe that the
23 aircraft, commercial motor vehicle, train, or vessel caused damage to
24 person or property or unlawfully discharged oil or another hazardous
25 substance, or that the person was operating a commercial vehicle while
26 under the influence of an intoxicating substance as described in
27 AS 28.35.039. As used in this subsection, "oil" has the meaning given
28 in AS 46.04.120.

29 * Sec. 4. AS 28.35.033(c) is amended to read:

1 (c) The provisions of (a) and (e) of this section may not be
2 construed to limit the introduction of any other competent evidence
3 bearing upon the question of whether the person was or was not under
4 the influence of intoxicating liquor.

5 * Sec. 5. AS 28.35.033 is amended by adding a new subsection to read:

6 (e) Upon the trial of a civil or criminal action or proceeding
7 arising out of acts alleged to have been committed by a person while
8 operating a commercial vehicle while under the influence of an intox-
9 icating substance as described in AS 28.35.039, the following rules
10 apply with regard to the amount of alcohol in the person's blood or
11 breath at the time alleged:

12 (1) if there was less than 0.01 percent by weight of alco-
13 hol in the person's blood, or less than 1 milligram of alcohol per 100
14 milliliters of the person's blood, or less than 0.01 grams of alcohol
15 per 210 liters of the person's breath, that fact does not give rise to
16 any presumption that the person was or was not under the influence of
17 an intoxicating substance, but that fact may be considered with other
18 competent evidence in determining whether the person was under the
19 influence of an intoxicating substance;

20 (2) if there was 0.01 percent or more by weight of alcohol
21 in the person's blood, or 1 milligram or more of alcohol per 100
22 milliliters of the person's blood, or 0.01 grams or more of alcohol
23 per 210 liters of the person's breath, it is presumed that the person
24 was under the influence of an intoxicating substance.

25 * Sec. 6. 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 driving a
28 motor vehicle while intoxicated, or while the person was operating a
29 commercial vehicle under the influence of an intoxicating substance as

1 described in AS 28.35.039, and that arrest results from an accident
2 that causes death or physical injury to another person, a chemical
3 test may be administered without the consent of the person arrested to
4 determine the amount of alcohol or controlled substance in that per-
5 son's breath or blood.

6 * Sec. 7. AS 28.35.035(b) is amended to read:

7 (b) A person who is unconscious or otherwise in a condition
8 rendering that person incapable of refusal is considered not to have
9 withdrawn the consent provided under AS 28.35.031(a) and (g) and a
10 chemical test may be administered to determine the amount of alcohol
11 or controlled substance in that person's breath or blood. A person
12 who is unconscious or otherwise incapable of refusal need not be
13 placed under arrest before a chemical test may be administered.

14 * Sec. 8. AS 28.35 is amended by adding a new section to Article 2 to
15 read:

16 Sec. 28.35.039. OPERATING COMMERCIAL VEHICLE WHILE UNDER INFLU-
17 ENCE OF INTOXICATING SUBSTANCE. (a) A person commits the crime of
18 operating a commercial vehicle while under the influence of an intox-
19 icating substance if the person operates or drives a commercial motor
20 vehicle carrying a cargo of hazardous substances, or operates a vessel
21 or an aircraft for compensation, or operates a train

22 (1) while under the influence of intoxicating liquor, or
23 any controlled substance listed in AS 11.71.140 - 11.71.190;

24 (2) when, as determined by a chemical test taken within six
25 hours after the alleged offense was committed, there is 0.01 percent
26 or more by weight of alcohol in the person's blood or 1 milligram or
27 more of alcohol per 100 milliliters of blood, or when there is 0.01
28 grams or more of alcohol per 210 liters of the person's breath;

29 (3) when the person has consumed an alcoholic beverage or

1 controlled substance within the preceding 12 hours; or

2 (4) while under the combined influence of intoxicating
3 liquor and another substance.

4 (b) Operating a commercial vehicle while under the influence of
5 an intoxicating substance is a class A misdemeanor.

6 (c) If a person refuses the request of a law enforcement officer
7 to submit to a chemical test under AS 28.35.031(g), after being
8 advised by the officer that the refusal may be used against the person
9 in a civil or criminal action or proceeding arising out of an act
10 alleged to have been committed by the person while operating a commer-
11 cial vehicle under the influence of an intoxicating substance under
12 (a) of this section, and that the refusal is a misdemeanor, a chemical
13 test may not be given, except as provided by AS 28.35.035.

14 (d) The refusal of a person to submit to a chemical test under
15 (c) of this section is admissible evidence in a civil or criminal
16 action or proceeding arising out of an act alleged to have been com-
17 mitted by the person while operating a commercial vehicle under the
18 influence of an intoxicating substance as described in (a) of this
19 section.

20 (e) Refusal to submit to a chemical test authorized by AS 28.-
21 35.031(g) is a class A misdemeanor.

22 * Sec. 9. AS 28.35 is amended by adding new sections to read:

23 Sec. 28.35.055. ACTION OF OPERATOR OF COMMERCIAL VEHICLE IMMEDI-
24 ATELY AFTER ACCIDENT. (a) A person who operates a commercial motor
25 vehicle carrying a cargo of hazardous substances, or who operates a
26 vessel or an aircraft for compensation, or who operates a train, that
27 is involved in an accident resulting in damage to person or property,
28 or that unlawfully discharges oil or another hazardous substance

29 (1) shall immediately stop the vehicle, vessel, aircraft,

1 or train at the scene of the accident or unlawful discharge, and shall
2 remain at the scene of the accident or unlawful discharge until a
3 peace officer arrives at the scene;

4 (2) shall immediately, by the quickest means of communica-
5 tion give notice of the accident or unlawful discharge to the local
6 police department if the accident occurs within a municipality, other-
7 wise to the Department of Public Safety; and

8 (3) may not consume an alcoholic beverage or controlled
9 substance during the 12 hours following the accident unless the person
10 has submitted to a chemical test or tests of the person's blood or
11 breath as required under AS 28.35.031(g).

12 (b) A person who knowingly violates this section is guilty of a
13 class A misdemeanor.

14 (c) This section does not relieve the operator of a commercial
15 motor vehicle from the obligations and penalties imposed under AS 28.-
16 35.060 - 28.35.130.

17 ARTICLE 6. GENERAL PROVISIONS.

18 Sec. 28.35.900. DEFINITIONS. In this chapter,

19 (1) "alcoholic beverage" means spirituous, vinous, malt, or
20 other fermented or distilled liquids, whatever the origin, that are
21 intended for human consumption as a beverage and that contain alcohol,
22 whether produced commercially or privately;

23 (2) "commercial motor vehicle" means a motor vehicle or a
24 combination of a motor vehicle and one or more other vehicles

25 (A) used in commerce to transport passengers or prop-
26 erty upon a highway or vehicular way in the state; and

27 (B) which has a gross vehicle weight rating or gross
28 combination weight rating greater than 10,000 pounds;

29 (3) "compensation" means payment for services including

1 wages or other remuneration but not including reimbursement for actual
2 expenses incurred;

3 (4) "discharge" means spilling, leaking, pumping, pouring,
4 emitting, emptying, or dumping;

5 (5) "gross combination weight rating" means the value
6 specified by the manufacturer as the loaded weight of a combination
7 vehicle, except that, if a value has not been specified by the man-
8 ufacturer, the gross combination weight rating is determined by adding
9 the gross vehicle weight rating of the power unit and the total weight
10 of the towed unit and the load on the towed unit;

11 (6) "gross vehicle weight rating" means the value specified
12 by the manufacturer as the loaded weight of a single vehicle;

13 (7) "hazardous substance" means a substance found by the
14 United States secretary of transportation to be hazardous for purposes
15 of 49 U.S.C. 1801 - 1813 (Hazardous Materials Transportation Act);

16 (8) "operate an aircraft" means to use, navigate, pilot, or
17 taxi an aircraft in the airspace over this state or upon the land or
18 water inside this state;

19 (9) "operate a train" means to be employed as an engineer,
20 a conductor, or a brakeman and to be on a train under power inside
21 this state;

22 (10) "operate a vessel" means to be employed as a pilot,
23 master, or crewmember, and to be on a vessel in any water, fresh or
24 salt, inland or coastal, inside the territorial limits or under the
25 jurisdiction of this state;

26 (11) "vessel" means all foreign or domestic vessels, except
27 (A) a cannery tender, fishing tender, or fishing
28 vessel of not more than 500 gross tons, when actually engaged in
29 the fishing industry; and

1 (B) a vessel of not more than 5,000 gross tons used in
2 processing and assembling fishery products, when not carrying
3 flammable or combustible liquid cargo in bulk.