

Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE  
2 CS FOR HOUSE BILL NO. 317 (Transportation)  
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 operating a motor vehicle, ves-  
7 sel, aircraft, or train; to the open container law;  
8 and to the duties of a commercial motor vehicle  
9 operator immediately after an accident or unlawful  
10 discharge of a hazardous substance."

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

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

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

16 (1) while under the influence of intoxicating liquor, or  
17 any controlled substance [LISTED IN AS 11.71.140 - 11.71.190];

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

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

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

27 (a) Except as provided in (g) of this section, a [A] person who  
28 operates or drives a motor vehicle in this state or who operates an  
29 aircraft as defined in AS 28.35.030(h)(1) or who operates a watercraft

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

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

12 (g) A person who operates an aircraft, commercial motor vehicle,  
13 train, or vessel is considered to have given consent to a chemical  
14 test or tests for the purpose of determining the alcohol and con-  
15 trolled substance content of the person's blood or breath if lawfully  
16 arrested for a violation of AS 28.35.039, or if the aircraft, commer-  
17 cial motor vehicle, train, or vessel causes damage to a person or  
18 property or unlawfully discharges a hazardous substance. The test or  
19 tests shall be administered at the direction of a law enforcement  
20 officer who has reasonable grounds to believe that the aircraft,  
21 commercial motor vehicle, train, or vessel caused damage to a person  
22 or property or unlawfully discharged a hazardous substance, or that  
23 the person violated AS 28.35.039.

24 \* Sec. 4. AS 28.35.032(f) is amended to read:

25 (f) Refusal to submit to the chemical test of breath authorized  
26 by AS 28.35.031(a) or (g) is a class A misdemeanor.

27 \* Sec. 5. AS 28.35.033(c) is amended to read:

28 (c) The provisions of (a) and (g) of this section may not be  
29 construed to limit the introduction of any other competent evidence

1 bearing upon the question of whether the person was or was not under  
2 the influence of intoxicating liquor.

3 \* Sec. 6. AS 28.35.033 is amended by adding a new subsection to read:

4 (g) Upon the trial of a civil or criminal action or proceeding  
5 arising out of acts alleged to have been committed by a person in  
6 violation of AS 28.35.039, the following rules apply with regard to  
7 the amount of alcohol in the person's blood or breath at the time  
8 alleged:

9 (1) if there was less than 0.04 percent by weight of alco-  
10 hol in the person's blood, or less than 40 milligrams of alcohol per  
11 100 milliliters of the person's blood, or less than 0.04 grams of  
12 alcohol per 210 liters of the person's breath, that fact does not give  
13 rise to any presumption that the person was or was not under the  
14 influence of an intoxicating substance, but that fact may be con-  
15 sidered with other competent evidence in determining whether the  
16 person was under the influence of an intoxicating substance;

17 (2) if there was 0.04 percent or more by weight of alcohol  
18 in the person's blood, or 40 milligrams or more of alcohol per 100  
19 milliliters of the person's blood, or 0.04 grams or more of alcohol  
20 per 210 liters of the person's breath, it is presumed that the person  
21 was under the influence of an intoxicating substance.

22 \* Sec. 7. AS 28.35.035(a) is amended to read:

23 (a) If a person is under arrest for an offense arising out of  
24 acts alleged to have been committed while the person was driving a  
25 motor vehicle while intoxicated, or in violation of AS 28.35.039, and  
26 that arrest results from an accident that causes death or physical  
27 injury to another person, a chemical test may be administered without  
28 the consent of the person arrested to determine the amount of alcohol  
29 or controlled substance in that person's breath or blood.

1 \* Sec. 8. AS 28.35.035(b) is amended to read:

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

9 \* Sec. 9. AS 28.35 is amended by adding a new section to article 2 to  
10 read:

11 Sec. 28.35.039. OPERATING A TRAIN, COMMERCIAL VEHICLE, AIRCRAFT,  
12 OR VESSEL WHILE INTOXICATED. (a) A person commits the crime of  
13 operating a commercial vehicle while intoxicated if the person oper-  
14 ates or drives a commercial motor vehicle, operates a vessel or an  
15 aircraft for compensation, or operates a train

16 (1) while under the influence of intoxicating liquor, or a  
17 controlled substance;

18 (2) when, as determined by a chemical test taken within six  
19 hours after the alleged offense was committed, there is 0.04 percent  
20 or more by weight of alcohol in the person's blood or 40 milligrams or  
21 more of alcohol per 100 milliliters of blood, or when there is 0.04  
22 grams or more of alcohol per 210 liters of the person's breath; or

23 (3) while under the combined influence of intoxicating  
24 liquor and a controlled substance.

25 (b) Operating a commercial vehicle while intoxicated is a class  
26 A misdemeanor.

27 (c) If a person refuses the request of a law enforcement officer  
28 to submit to a chemical test under AS 28.35.031(g), after being advis-  
29 ed by the officer that the refusal may be used against the person in a

1 civil or criminal action or proceeding arising out of an act alleged  
2 to have been committed by the person in violation of (a) of this  
3 section, and that the refusal is a misdemeanor, a chemical test may  
4 not be given, except as provided by AS 28.35.035.

5 (d) The refusal of a person to submit to a chemical test under  
6 (c) of this section is admissible evidence in a civil or criminal  
7 action or proceeding arising out of an act alleged to have been com-  
8 mitted by the person in violation of (a) of this section.

9 \* Sec. 10. AS 28.35 is amended by adding a new section to read:

10 Sec. 28.35.055. ACTION OF OPERATOR OF COMMERCIAL VEHICLE IMMEDI-  
11 ATELY AFTER ACCIDENT. (a) A person who operates a commercial motor  
12 vehicle, or who operates a vessel or an aircraft for compensation, or  
13 who operates a train, that is involved in an accident resulting in  
14 damage to a person or property, or that unlawfully discharges a haz-  
15 ardous substance

16 (1) shall immediately stop the vehicle, vessel, aircraft,  
17 or train at the scene of the accident or unlawful discharge, and shall  
18 remain at the scene of the accident or unlawful discharge until a  
19 peace officer arrives at the scene or a peace officer authorizes the  
20 person to leave the scene; this paragraph does not apply to a person  
21 who moves a vehicle, vessel, aircraft, or train after an accident or  
22 unlawful discharge, or who leaves the scene of an accident or unlawful  
23 discharge, to avoid further damage to a person or property or further  
24 discharge;

25 (2) shall immediately, by the quickest means of communica-  
26 tion, give notice of the accident or unlawful discharge to the local  
27 police department if the accident or unlawful discharge occurs within  
28 a municipality, or if the accident does not occur within a municipal-  
29 ity, to the Department of Public Safety; and

1           (3) may not consume an alcoholic beverage or controlled  
2 substance during the six hours following the accident or unlawful  
3 discharge unless the person has first submitted to a chemical test or  
4 tests of the person's blood or breath as required under AS 28.35.-  
5 031(g).

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

8           (c) This section does not relieve the operator of a commercial  
9 motor vehicle from the obligations and penalties imposed under AS 28.-  
10 35.060 - 28.35.130.

11 \* Sec. 11. AS 28.35 is amended by adding a new section to read:

12                           ARTICLE 6. GENERAL PROVISIONS.

13           Sec. 28.35.900. DEFINITIONS. In this chapter, except as other-  
14 wise provided,

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

19           (2) "commercial motor vehicle" means a motor vehicle or a  
20 combination of a motor vehicle and one or more other vehicles used to  
21 transport passengers or property on a highway, vehicular way or area,  
22 that (A) has a gross vehicle weight rating or gross combination weight  
23 rating greater than 10,000 pounds; (B) is designed to transport more  
24 than 15 passengers, including the driver; or (C) is used in the trans-  
25 portation of hazardous substances; "commercial motor vehicle" does not  
26 include an emergency or fire vehicle that is necessary to the preser-  
27 vation of life or property, a farm vehicle, or a recreational vehicle  
28 used exclusively for noncommercial purposes;

29           (3) "commercial purposes" means an activity for which a

1 person receives direct monetary compensation or an activity for which  
2 a person receives no direct monetary compensation but is incidental to  
3 and done in furtherance of the person's primary business;

4 (4) "compensation" means payment for services including  
5 wages or other remuneration but not including reimbursement for actual  
6 expenses;

7 (5) "controlled substance" has the meaning given in AS 11.-  
8 71.900;

9 (6) "discharge" means spilling, leaking, pumping, pouring,  
10 emitting, emptying, or dumping;

11 (7) "farm vehicle" means a vehicle owned and operated by a  
12 farmer and used to transport agricultural products, farm machinery, or  
13 farm supplies a distance of not more than 150 miles to or from the  
14 vehicle owner's farm; "farm vehicle" does not include a vehicle used  
15 as a common or contract motor carrier;

16 (8) "gross combination weight rating" means the value  
17 specified by the manufacturer as the loaded weight of a combination  
18 vehicle, except that, if a value has not been specified by the man-  
19 ufacturer, the gross combination weight rating is determined by adding  
20 the gross vehicle weight rating of the power unit and the total weight  
21 of the towed unit and the load on the towed unit;

22 (9) "gross vehicle weight rating" means the value specified  
23 by the manufacturer as the loaded weight of a single vehicle;

24 (10) "hazardous substance" has the meaning given in AS 46.-  
25 03.826;

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

29 (12) "operate a train" means to be employed as an engineer,

1 a conductor, or a brakeman and to be on a train under power inside  
2 this state;

3 (13) "operate a vessel" means to be employed as a pilot,  
4 master, or crewmember on a vessel in any water, fresh or salt, inland  
5 or coastal, inside the territorial limits or under the jurisdiction of  
6 this state;

7 (14) "vessel" means all foreign or domestic vessels, except

8 (A) a cannery tender, fishing tender, or fishing  
9 vessel of not more than 500 gross tons, when actually engaged in  
10 the fishing industry; and

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