

SENATE BILL NO. 261

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 4/22/91
Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to operating commercial motor vehicles, motor vehicles, aircraft, and
2 watercraft; and providing for an effective date."

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

4 * **Section 1.** AS 28.05.011 is amended by adding a new paragraph to read:

5 (11) regulations necessary to implement a commercial motor vehicle safety
6 inspection program, a commercial motor vehicle driver's licensing program, and other
7 requirements imposed by federal law or regulation that are needed to avoid loss or withholding
8 of federal highway money.

9 * **Sec. 2.** AS 28.15.165 is amended to read:

10 **Sec. 28.15.165. ADMINISTRATIVE REVOCATIONS AND DISQUALIFICATIONS**
11 **RESULTING FROM CHEMICAL SOBRIETY TESTS AND REFUSALS TO SUBMIT TO**
12 **TESTS. (a) A law enforcement officer shall read a notice, and deliver a copy of it, to a**
13 **person operating a motor vehicle, commercial motor vehicle, or aircraft, if (1) a chemical**
14 **test administered under AS 28.33.031(a) or AS 28.35.031(a) produces a result described in**

1 AS 28.35.030(a)(2): (2) a chemical test administered under AS 28.33.031(a) produces a result
2 described in AS 28.33.030(a)(2); or (3) if the person refuses to submit to a chemical test
3 under AS 28.35.032. [IF A CHEMICAL TEST ADMINISTERED UNDER AS 28.35.031(a) TO
4 A PERSON OPERATING A MOTOR VEHICLE OR AIRCRAFT PRODUCES A RESULT
5 DESCRIBED IN AS 28.35.030(a)(2) OR IF A PERSON UNDER ARREST FOR OPERATING
6 A MOTOR VEHICLE OR AIRCRAFT REFUSES TO SUBMIT TO A CHEMICAL TEST
7 UNDER AS 28.35.031(a), A LAW ENFORCEMENT OFFICER SHALL READ A NOTICE
8 AND DELIVER A COPY TO THE PERSON.] The notice must advise that

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

12 (2) the person has the right to an administrative review of the action taken
13 against the person's license [REVOCAION] or determination not to issue an original license;

14 (3) if the person has a driver's license or a nonresident privilege to drive, the
15 notice itself is a temporary driver's license that expires seven days after it is delivered to the
16 person, except that if the person was operating a commercial motor vehicle the person will
17 be placed out-of-service for 24 hours under AS 28.33.130;

18 (4) revocation of the person's driver's license, privilege to drive, or privilege to
19 obtain a license, [OR] a determination not to issue an original license, or a disqualification of
20 the person, takes effect seven days after delivery of the notice to the person unless the person,
21 within seven days, requests an administrative review.

22 (b) After reading the notice under (a) of this section, the law enforcement officer shall
23 seize the person's driver's license if it is in the person's possession and shall deliver it to the
24 department with a sworn report describing the circumstances under which it was seized. If the
25 person was operating a commercial motor vehicle, the officer shall place the person out-of-
26 service under AS 28.33.130.

27 (c) Unless the person has obtained a temporary permit or stay of a departmental
28 action under AS 28.15.166, if the chemical test administered under AS 28.33.031(a) or
29 AS 28.35.031(a) produced a result described in AS 28.35.030(a)(2) or the person refused to
30 submit to a test under AS 28.35.032, the [THE] department shall revoke the person's license,
31 privilege to drive, or privilege to obtain a license, shall [OR] refuse to issue an original license,

1 or, if the chemical test administered under AS 28.33.031(a) produced a result described in
2 AS 28.33.030(a)(2), shall disqualify the person. The department's action takes effect
3 [EFFECTIVE] seven days after delivery to the person of a notice required under (a) of this
4 section, and after [UPON] receipt of a sworn report of a law enforcement officer

5 (1) that a chemical test under AS 28.33.031(a) or AS 28.35.031(a) produced a
6 result described in AS 28.35.030(a)(2), that a chemical test under AS 28.33.031(a) produced
7 a result described in AS 28.33.030(a)(2), or that a person refused to submit to a chemical test
8 under AS 28.35.032 [28.35.031(a)];

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

10 (3) describing the circumstances surrounding the arrest and the grounds for the
11 officer's belief that the person operated a motor vehicle, commercial motor vehicle, or
12 aircraft while intoxicated in violation of AS 28.33.030 or AS 28.35.030 [WAS
13 INTOXICATED WHILE OPERATING A MOTOR VEHICLE OR AIRCRAFT].

14 (d) The period of revocation of a driver's license, privilege to drive, [OR] privilege to
15 obtain a license, refusal to issue an original license, or disqualification [BY THE
16 DEPARTMENT UNDER THIS SECTION] shall be for the appropriate minimum period for court
17 revocations under AS 28.15.181(c) or court disqualifications under AS 28.33.140. Unless a
18 person is disqualified by a court under AS 28.33.140, a [A] department hearing officer may
19 grant limited license privileges in accordance with the standards set out in AS 28.15.201 [TO A
20 PERSON WHOSE DRIVER'S LICENSE OR NONRESIDENT PRIVILEGE TO DRIVE WAS
21 REVOKED UNDER THIS SECTION].

22 * Sec. 3. AS 28.15.166(b) is amended to read:

23 (b) A request for a review of the department's action [REVOCATION] under
24 AS 28.15.165 shall be made within seven days after receipt of the notice under AS 28.15.165 or
25 the right to review is waived and the action of the department under AS 28.15.165(c) is final.
26 If a written request for a review is made after expiration of the seven-day period, and if it is
27 accompanied by the applicant's verified statement explaining the failure to make a timely request
28 for a review, the department shall receive and consider the request. If the department finds that
29 the person was unable to make a timely request because of lack of actual notice of the
30 department's action [REVOCATION] or because of factors of physical incapacity such as
31 hospitalization or incarceration, the department shall waive the period of limitation, reopen the

1 matter, and grant the review request. An initial request for limited license privileges may be
2 made at any time. Subsequent requests for limited license privileges may not be made unless
3 the applicant demonstrates a significant change in circumstances.

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

5 (g) The hearing for review of action [A REVOCATION] by the department under
6 AS 28.15.165 shall be limited to the issues of whether the arresting officer had reasonable
7 grounds to believe that the person was operating a motor vehicle, commercial motor vehicle,
8 or aircraft while intoxicated in violation of AS 28.33.030 or AS 28.35.030 and whether

9 (1) the person refused to submit to a chemical test under AS 28.35.032
10 [28.35.031(a)] after being advised that refusal would result in disqualification or the suspension,
11 revocation, or denial of the person's license, privilege to drive, or privilege to obtain a license,
12 and that the refusal is a misdemeanor; [OR]

13 (2) the chemical test authorized under AS 28.33.031(a) or AS 28.35.031(a)
14 [AND ADMINISTERED TO THE PERSON] produced a result described in AS 28.35.030(a)(2);
15 or

16 (3) the chemical test authorized under AS 28.33.031(a) produced a result
17 described in AS 28.33.030(a)(2).

18 * Sec. 5. AS 28.15.166(j) is amended to read:

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

23 * Sec. 6. AS 28.15.166(n) is amended to read:

24 (n) The filing of an appeal under (m) of this section or a petition for review does not
25 automatically stay the department's order or revocation. The court may grant a stay of the order
26 or revocation only upon a motion and hearing, and upon a finding that there is a reasonable
27 probability that the petitioner will prevail on the merits, [AND] that the petitioner will suffer
28 irreparable harm if the order is not stayed, and that if the petitioner operates a commercial
29 motor vehicle the public can be adequately protected by conditions imposed by the court.

30 * Sec. 7. AS 28.15.171 is amended to read:

31 Sec. 28.15.171. SUSPENDING PRIVILEGES OF A PERSON LICENSED IN

1 ANOTHER JURISDICTION; REPORTING CONVICTIONS, SUSPENSIONS,
2 DISQUALIFICATIONS. AND REVOCATIONS. (a) The privilege of driving a motor vehicle
3 on a highway or vehicular way or area of this state given to a person licensed in another
4 jurisdiction is subject to suspension, revocation, disqualification, or limitation by the department
5 or a court in the same manner and for the same reasons as a driver's license issued under this
6 chapter.

7 (b) The department may, upon receiving the record of a conviction of a person licensed
8 in another jurisdiction for a vehicle, driver, or traffic offense in this state, or upon suspending
9 or revoking the person's driving privilege, forward a copy of the record or suspension or
10 revocation to the motor vehicle administrator for the jurisdiction in which the person convicted
11 is licensed.

12 (c) If a person licensed to operate a commercial motor vehicle in another
13 jurisdiction is convicted in this state of a traffic offense, whether or not involving a
14 commercial motor vehicle, or if the person is disqualified by this state for a period of 60
15 days or more, the department shall, within 10 days after notification of the conviction or
16 the disqualification, notify appropriate authorities in the state that issued the license.
17 Within the 10-day period the department shall also notify the United States Department of
18 Transportation if the disqualification is for 60 days or more.

19 * Sec. 8. AS 28.15.181(a) is amended to read:

20 (a) Conviction of any of the following offenses is grounds for the immediate revocation
21 of a driver's license, privilege to drive, or privilege to obtain a license: [;]

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

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

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

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

28 (5) operating a motor vehicle, commercial motor vehicle, or aircraft while
29 intoxicated, in violation of AS 28.33.030 or AS 28.35.030;

30 (6) reckless driving;

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

1 (8) refusal to submit to a chemical test under AS 28.35.032 while under arrest for
2 operating a motor vehicle, commercial motor vehicle, or aircraft while intoxicated;

3 (9) driving while license, privilege to drive, or privilege to obtain a license,
4 canceled, suspended, or revoked, or in violation of a limitation.

5 * Sec. 9. AS 28.15.181(c) is amended to read:

6 (c) A court convicting a person of an offense described in (a)(5) or (8) of this section
7 arising out of the operation of a motor vehicle, commercial motor vehicle, or aircraft shall
8 revoke that person's driver's license, privilege to drive, or privilege to obtain a license. The
9 revocation may be concurrent with or consecutive to an administrative revocation under
10 AS 28.15.165. The court may not, except as provided in AS 28.15.201, grant limited license
11 privileges during the minimum period of revocation. The minimum periods of revocation are:

- 12 (1) at least 90 days if the person has not been previously convicted;
- 13 (2) at least one year if the person has been previously convicted once;
- 14 (3) at least five years if the person has been previously convicted twice;
- 15 (4) at least 10 years if the person has been previously convicted more than twice.

16 * Sec. 10. AS 28.15.181(d) is amended to read:

17 (d) A court convicting a person of an offense described in (a)(9) of this section shall
18 revoke that person's driver's license, privilege to drive, or privilege to obtain a license for not
19 less than the minimum period under AS 28.15.291(b)(4) or AS 28.33.150.

20 * Sec. 11. AS 28.15.181(f) is repealed and reenacted to read:

21 (f) In this section, "previously convicted" has the meaning given in AS 28.35.030.

22 * Sec. 12. AS 28.15.201(f) is repealed and reenacted to read:

23 (f) In this section, "previously convicted" has the meaning given in AS 28.35.030.

24 * Sec. 13. AS 28.15 is amended by adding a new section to read:

25 Sec. 28.15.219. DEFINITIONS. In AS 28.15.161 - 28.15.219

26 (1) "disqualify" means that a person's privilege to drive a commercial motor
27 vehicle is withdrawn;

28 (2) "disqualification" means the same as in AS 28.33.190;

29 (3) "disqualified" means the same as in AS 28.33.190.

30 * Sec. 14. AS 28.15.291(c) is amended to read:

31 (c) In this section, "previously convicted" means having been convicted in this or another

1 jurisdiction, within 10 years preceding the date of the present offense, of a violation of this
2 section, of AS 28.33.150, or another law or ordinance with substantially similar elements.

3 * **Sec. 15.** AS 28.33 is amended by adding new sections to read:

4 Article 1A. OPERATING COMMERCIAL MOTOR VEHICLE
5 WHILE INTOXICATED; IMPLIED CONSENT; PRESUMPTIONS

6 Sec. 28.33.030. OPERATING A COMMERCIAL MOTOR VEHICLE WHILE
7 INTOXICATED. (a) A person commits the crime of operating a commercial motor vehicle
8 while intoxicated if the person operates a commercial motor vehicle

9 (1) while under the influence of intoxicating liquor or any controlled substance;

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

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

16 (b) Operating a commercial motor vehicle while intoxicated is a class A misdemeanor.

17 (c) The sentencing of a person convicted under this section must be in accordance with
18 the minimum periods of imprisonment, fines, rehabilitative treatment, and other provisions of
19 AS 28.35.030, as if the person had been convicted of a violation of AS 28.35.030. For purposes
20 of sentencing, convictions for operating a commercial motor vehicle while intoxicated under this
21 section, and for refusal to submit to a chemical test under AS 28.33.032, if arising out of a single
22 transaction, are considered one previous conviction.

23 Sec. 28.33.031. IMPLIED CONSENT FOR OPERATORS OF COMMERCIAL MOTOR
24 VEHICLES. (a) A person who operates a commercial motor vehicle in this state is considered
25 to have given consent to a chemical test or tests of the person's breath if lawfully arrested for
26 an offense arising out of acts alleged to have been committed when the person was operating the
27 commercial motor vehicle while intoxicated. The test or tests may be administered at the
28 direction of a law enforcement officer who has reasonable grounds to believe that the person was
29 operating a commercial motor vehicle while intoxicated in violation of AS 28.33.030 or
30 AS 28.35.030.

31 (b) Refusal to submit to a chemical test authorized under this section is punishable under

1 AS 28.35.032. A chemical test may be administered without consent under AS 28.35.035. A
2 person who is disqualified as the result of department action under AS 28.15.165, following a
3 test administered under this section, can obtain review of that action under AS 28.35.166.

4 (c) A person who operates a commercial motor vehicle is considered to have given
5 consent to a preliminary breath test, at the direction of a law enforcement officer, for the purpose
6 of determining the alcoholic content of the person's blood or breath. A law enforcement officer
7 may administer a preliminary breath test if the officer has reasonable grounds to believe that the
8 person's ability to operate a commercial motor vehicle is impaired by the ingestion of alcoholic
9 beverages and that

10 (1) the commercial motor vehicle caused injury to person or property;

11 (2) the person violated the provisions of AS 28.33.130(a) or violated the terms
12 of an out-of-service order issued under AS 28.33.130; or

13 (3) the person unlawfully operated a commercial motor vehicle; in this paragraph,
14 "unlawfully" means in violation of any federal, state, or municipal statute, regulation, or
15 ordinance.

16 (d) Before administering a preliminary breath test under (c) of this section, the officer
17 shall advise the person that refusal may be used against the person in a civil or criminal action
18 arising out of the incident and that refusal is a misdemeanor. If the person refuses to submit to
19 the test, the test may not be administered.

20 (e) The result of the preliminary test under (c) of this section may be used by the law
21 enforcement officer to determine whether the operator should be arrested. If an operator is
22 arrested, the provisions of (a) of this section apply. The preliminary breath test authorized in this
23 section is in addition to any chemical tests authorized under (a) of this section.

24 (f) Refusal to submit to a preliminary breath test at the request of a law enforcement
25 officer is a class B misdemeanor.

26 Sec. 28.33.033. PRESUMPTIONS AND CHEMICAL ANALYSIS OF BREATH OR
27 BLOOD. (a) Upon the trial of a civil or criminal action or proceedings arising out of acts
28 alleged to have been committed by a person operating a commercial motor vehicle while
29 intoxicated in violation of AS 28.33.030, the following rules apply with regard to the amount of
30 alcohol in the person's blood or breath at the time alleged:

31 (1) if there was less than 0.04 percent by weight of alcohol in the person's blood,

1 or less than 40 milligrams of alcohol per 100 milliliters of the person's blood, or less than 0.04
2 grams of alcohol per 210 liters of the person's breath, that fact does not give rise to any
3 presumption that the person was or was not under the influence of an intoxicating liquor, but that
4 fact may be considered with other competent evidence in determining whether the person was
5 under the influence of an intoxicating liquor;

6 (2) if there was 0.04 percent or more by weight of alcohol in the person's blood,
7 or 40 milligrams or more of alcohol per 100 milliliters of the person's blood, or 0.04 grams or
8 more of alcohol per 210 liters of the person's breath, it is presumed that the person was under
9 the influence of an intoxicating liquor.

10 (b) For purposes of this chapter, percent by weight of alcohol in the blood is based upon
11 milligrams of alcohol per 100 milliliters of blood.

12 (c) The provisions of (a) of this section may not be construed to limit the introduction
13 of any other competent evidence bearing upon the question of whether the person was or was not
14 under the influence of intoxicating liquor.

15 (d) The person tested may have a physician, or a qualified technician, chemist, registered
16 nurse, or other qualified person of the person's own choosing administer a chemical test in
17 addition to the test administered at the direction of a law enforcement officer. The failure or
18 inability to obtain an additional test by a person does not preclude the admission of evidence
19 relating to the test taken at the direction of a law enforcement officer; the fact that the person
20 under arrest sought to obtain such an additional test, and failed or was unable so to do, is
21 likewise admissible in evidence.

22 (e) Upon the request of the person who submits to a chemical test at the request of a law
23 enforcement officer, full information concerning the test, including the results of it, must be made
24 available to the person or person's attorney.

25 * Sec. 16. AS 28.33.100(a) is amended to read:

26 (a) A person may not drive [OPERATE] a commercial motor vehicle until the person
27 applies for and is issued a license for that purpose under AS 28.15.041. The department may not
28 issue a license to drive [OPERATE] a commercial motor vehicle unless the applicant

29 (1) is at least 19 years of age;

30 (2) has held a valid driver's license at least one year before the date of the
31 application;

1 (3) has successfully completed all required driving tests and written and physical
2 examinations;

3 (4) either does not have a driver's license issued by another jurisdiction or
4 surrenders all driver's licenses issued by other jurisdictions.

5 * Sec. 17. AS 28.33.100 is amended by adding a new subsection to read:

6 (e) The department shall disqualify a person for a period of 60 consecutive days, and
7 shall reevaluate the person's application or license to drive a commercial motor vehicle, if the
8 department determines that the person knowingly provided false information

9 (1) required under this section or AS 28.15 in an application to the department
10 for a commercial driver's license; or

11 (2) required under 28.33.110(c) in an application for employment.

12 * Sec. 18. AS 28.33.120 is amended to read:

13 Sec. 28.33.120. RESPONSIBILITIES OF EMPLOYERS OF COMMERCIAL MOTOR
14 VEHICLE DRIVER. An employer of a commercial motor vehicle driver

15 (1) shall require an applicant for employment to provide the information required
16 under AS 28.33.110(c);

17 (2) may not knowingly allow, require, permit, assign, or authorize, a driver to
18 drive [OPERATE] a commercial motor vehicle during a period in which

19 (A) the driver's license is suspended, revoked, or canceled by a state;

20 (B) the driver has lost the privilege to drive [OPERATE] a commercial
21 motor vehicle in a state;

22 (C) the driver has been disqualified from driving [OPERATING] a
23 commercial motor vehicle; [OR]

24 (D) the driver has more than one driver's license; or

25 (E) the driver is not licensed to drive a commercial motor vehicle.

26 * Sec. 19. AS 28.33 is amended by adding new sections to read:

27 Sec. 28.33.130. OUT-OF-SERVICE ORDERS. (a) A person may not operate a
28 commercial motor vehicle or be on-duty

29 (1) if, within the preceding four hours, the person

30 (A) consumed or was under the influence of

31 (i) an alcoholic beverage;

1 (ii) a controlled substance not prescribed by a physician; or
2 (iii) a controlled substance prescribed by a physician that might
3 impair a person's ability to operate a commercial motor vehicle; or

4 (B) had any measurable alcohol concentration within the blood or breath
5 or any detectable presence of alcohol; or

6 (2) while in possession of an alcoholic beverage or a controlled substance not
7 prescribed by a physician unless

8 (A) the alcoholic beverage or controlled substance is manifested and
9 documented as part of an authorized shipment of cargo; or

10 (B) under AS 04, the alcoholic beverage may be legally served to
11 passengers being carried for hire.

12 (b) An employer, or a peace officer, who has reasonable grounds to believe that a person
13 is in violation of (a) of this section, shall immediately give the person a written notice placing
14 the person out-of-service. If it is not possible to issue a written out-of-service order, a verbal
15 order may be issued. An employer may not knowingly allow, require, permit, assign, or
16 authorize a person to operate a commercial motor vehicle during a period in which

17 (1) the person has been placed out-of-service under this section; or

18 (2) the person has violated (a) of this section, even if an out-of-service order has
19 not been issued.

20 (c) A person who is placed out-of-service

21 (1) may not operate a commercial motor vehicle for 24 hours following issuance
22 of the out-of-service order; and

23 (2) shall report that fact, in writing,

24 (A) within 24 hours to the person's employer; and

25 (B) within 30 days to the division of motor vehicles.

26 (d) In this section, "on-duty" means the period of time in which a person, as part of the
27 person's employment, is ready to immediately operate a commercial motor vehicle and is subject
28 by the person's employer to being allowed, required, permitted, assigned, or authorized to
29 immediately operate a commercial motor vehicle.

30 Sec. 28.33.140. COURT DISQUALIFICATIONS FROM DRIVING A COMMERCIAL
31 MOTOR VEHICLE. (a) In addition to the court action provided in AS 28.15.181, conviction

1 of any of the following offenses is grounds for immediate disqualification from driving a
2 commercial motor vehicle for the periods set out in this section:

3 (1) operating a commercial motor vehicle while intoxicated in violation of
4 AS 28.33.030;

5 (2) refusal to submit to a chemical test in violation of AS 28.35.032;

6 (3) operating a motor vehicle while intoxicated, in violation of AS 28.35.030;

7 (4) leaving the scene of an accident in violation of AS 28.35.060, or failing to
8 file, or providing false information in, an accident report in violation of AS 28.35.110;

9 (5) a felony under state or federal law, which was facilitated because the
10 person used a commercial motor vehicle; or

11 (6) a serious traffic violation, as defined in AS 28.33.190.

12 (b) A finding by a court that there is proof by a preponderance of the evidence that a
13 person was operating a commercial motor vehicle, and the commercial motor vehicle was
14 involved in an offense listed in (a)(2) - (6) of this section, is sufficient to disqualify the person
15 under this section.

16 (c) A court convicting a person of an offense described in (a)(6) of this section shall
17 disqualify that person from driving a commercial motor vehicle for not less than 60 days if the
18 person has been once previously convicted, and 120 days if the person has been twice previously
19 convicted. As used in this subsection, "previously convicted" means having been convicted in
20 this or another jurisdiction, within three years preceding the date of the present offense, of an
21 offense described in (a)(6) of this section, or of another law or ordinance with substantially
22 similar elements, arising out of a separate incident.

23 (d) A court convicting a person of an offense described in (a)(1) - (5) of this section
24 shall disqualify that person from driving a commercial motor vehicle for not less than one year
25 for a first offense, except that if the offense

26 (1) was facilitated by a commercial motor vehicle transporting a hazardous
27 substance that required that placards be placed on the vehicle under 49 U.S.C. 1801 - 1813
28 (Hazardous Materials Transportation Act), the period of disqualification is not less than three
29 years;

30 (2) was a felony offense that involved the manufacture, distribution, or dispensing,
31 or possession with intent to manufacture, distribute, or dispense, a controlled substance, the

1 disqualification is for life and the license may not be reinstated under (g) of this section.

2 (e) A court convicting a person of an offense described in (a)(1) - (5) of this section
3 shall disqualify that person from driving a commercial motor vehicle for life if the person has
4 been previously convicted. As used in this subsection, "previously convicted" means having been
5 convicted in this or another jurisdiction of an offense described in (a)(1) - (5) of this section, or
6 of another law or ordinance with substantially similar elements.

7 (f) A person who is disqualified under this section may not obtain a limited license
8 under AS 28.15.201 to permit driving a commercial motor vehicle. However, a court that
9 disqualifies a person from driving a commercial motor vehicle, but takes no other action affecting
10 the person's ability to drive a non-commercial motor vehicle, may issue the person a limited
11 license under AS 28.15.201, permitting driving of non-commercial motor vehicles.

12 (g) A person disqualified for life under (e) of this section may apply to the department
13 for reinstatement of a commercial driver's license if

14 (1) the person has successfully completed an appropriate rehabilitation program
15 satisfactory to the department;

16 (2) the person has not committed a felony offense, or a misdemeanor offense
17 involving operation of a motor vehicle, during the period of disqualification; and

18 (3) the person has undergone a minimum disqualification period of 10 years.

19 (h) A disqualified driver reinstated under (g) of this section who is subsequently
20 convicted of a disqualifying offense described in (a)(1) - (5) of this section is permanently
21 disqualified for life and is ineligible to again apply for reinstatement under (g) of this section.

22 (i) In addition to the requirements of AS 28.15.191, a court that disqualifies a person
23 from driving a commercial motor vehicle shall require the surrender of the license, and shall
24 immediately forward it to the department with the record of conviction and notification of the
25 effective date of the disqualification.

26 Sec. 28.33.150. DRIVING A COMMERCIAL MOTOR VEHICLE WITHOUT A
27 COMMERCIAL MOTOR VEHICLE DRIVER'S LICENSE, OR IN VIOLATION OF A
28 CANCELLATION, SUSPENSION, REVOCATION, LIMITATION, DISQUALIFICATION, OR
29 OUT-OF-SERVICE ORDER. (a) A person is guilty of a class A misdemeanor if the person
30 drives a commercial motor vehicle in this state

31 (1) without being licensed or privileged in this state to drive a commercial motor

1 vehicle;

2 (2) during a period when that person's driver's license, privilege to drive, or
3 privilege to obtain a license has been canceled, suspended, or revoked in this or another
4 jurisdiction;

5 (3) in violation of a limitation placed upon that person's license or privilege to
6 drive in this or another jurisdiction;

7 (4) during a period when that person has been disqualified from driving a
8 commercial motor vehicle by a court or an administrative agency in this or another jurisdiction;
9 or

10 (5) in violation of an out-of-service order issued under AS 28.33.130, or a law
11 in another jurisdiction having substantially similar requirements.

12 (b) Upon conviction under (a)(2) - (5) of this section, the court

13 (1) shall impose a minimum sentence of imprisonment

14 (A) if the person has not been previously convicted, of not less than 20
15 days with 10 days suspended, including a mandatory condition of probation that the
16 defendant complete not less than 80 hours of community work service; or

17 (B) if the person has been previously convicted, of not less than 60 days
18 and a fine of \$1,000;

19 (2) may impose additional conditions of probation;

20 (3) may not

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

24 (B) suspend imposition of sentence; and

25 (4) shall revoke the person's license, privilege to drive, or privilege to obtain a
26 license, and the person may not be issued a new license nor may the privilege to drive or obtain
27 a license be restored for an additional period of not less than 90 days after the date that the
28 person would have been entitled to restoration of driving privileges.

29 (c) In this section, "previously convicted" means having been convicted in this or another
30 jurisdiction, within 10 years preceding the date of the present offense, of a violation of this
31 section, AS 28.15.291, or another law or ordinance with substantially similar elements.

1 * **Sec. 20.** AS 28.33.190 is amended by adding new paragraphs to read:

2 (3) "alcoholic beverage" has the meaning given in AS 04.21.080(b);

3 (4) "commercial motor vehicle" has the meaning given in AS 28.40.100;

4 (5) "controlled substance" means any substance listed as being controlled under
5 AS 11.71 or 21 U.S.C. 812, or determined under federal regulations to be controlled for purposes
6 of 21 U.S.C. 801 - 812 (Controlled Substances Act);

7 (6) "drive a commercial motor vehicle" means to affect the movement, attempt
8 to affect the movement, or to be in actual physical control, of a commercial motor vehicle in
9 motion, excluding slight motion incidental to loading, unloading, servicing, or inspecting the
10 vehicle;

11 (7) "employer" means a person who

12 (A) provides compensation to a person who operates a commercial motor
13 vehicle, including wages or other remuneration, whether through an employment
14 relationship or by contract; or

15 (B) acts as an agent of someone who provides compensation to a person
16 who operates a commercial motor vehicle, with authority to allow, require, permit, assign,
17 or authorize the person being compensated to operate a commercial motor vehicle;

18 (8) "hazardous substance" means a substance found by the United States Secretary
19 of Transportation to be hazardous for purposes of 49 U.S.C. 1801 - 1813 (Hazardous Materials
20 Transportation Act);

21 (9) "operating a commercial motor vehicle" means

22 (A) to drive a commercial motor vehicle; or

23 (B) whether or not the vehicle is in motion, or is capable of being moved,
24 to be in actual physical control, or to attempt to affect the movement, of a commercial
25 motor vehicle; and

26 (10) "serious traffic violation" means

27 (A) speeding 15 miles per hour or more above the posted limit;

28 (B) reckless or negligent driving, in violation of AS 28.35.040 or
29 28.35.045 or an ordinance with substantially similar elements;

30 (C) violation of a provision of this title, or a regulation adopted under this
31 title, relating to improper lane changes or following too closely, or an ordinance with

1 substantially similar elements; or

2 (D) violation of a law or ordinance relating to traffic control, which was
3 determined by the court by a preponderance of the evidence to have been a factor in
4 causing physical injury to a person.

5 * Sec. 21. AS 28.35.029(b) is amended to read:

6 (b) Except as provided in AS 28.33.130, a [A] person may transport an open bottle, can,
7 or other receptacle containing an alcoholic beverage

8 (1) in the trunk of a motor vehicle;

9 (2) on a motor driven cycle, or behind the last upright seat in a motor home,
10 station wagon, hatchback, or similar trunkless vehicle, if the open bottle, can, or other receptacle
11 is enclosed within another container;

12 (3) behind a solid partition that separates the vehicle driver from the area
13 normally occupied by passengers; or

14 (4) if the open bottle, can, or other receptacle is in the possession of a paying
15 passenger in a [COMMERCIAL MOTOR] vehicle that has a capacity of 12 or more persons.

16 * Sec. 22. AS 28.35.030(a) is amended to read:

17 (a) In addition to the provisions applied only to operators of commercial motor
18 vehicles in AS 28.33.030, a [A] person commits the crime of driving while intoxicated if the
19 person operates or drives a motor vehicle or operates an aircraft or a watercraft

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

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

26 (3) while the person is under the combined influence of intoxicating liquor and
27 a controlled [ANOTHER] substance.

28 * Sec. 23. AS 28.35.030(k) is amended to read:

29 (k) In this section,

30 (1) "controlled substance" has the meaning given in AS 28.33.190;

31 (2) [(1)] "operate an aircraft" means to use, navigate, pilot, or taxi an aircraft in

1 the airspace over this state, or upon the land or water inside this state;

2 (3) [(2)] "operate a watercraft" means to navigate or use a vessel used or capable
3 of being used as a means of transportation on water for recreational or commercial purposes on
4 all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of
5 the state;

6 (4) [(3)] "previously convicted" means having been convicted in this or another
7 jurisdiction, within 10 years preceding the date of the present offense, of any of the following
8 offenses, or of another law or ordinance with substantially similar elements; however,
9 convictions for any of these offenses, if arising out of a single transaction and a single
10 arrest, are considered one previous conviction:

11 (A) operating a motor vehicle, aircraft, or watercraft while
12 intoxicated, in violation of this section:

13 (B) refusal to submit to a chemical test in violation of AS 28.35.032:

14 or

15 (C) operating a commercial motor vehicle while intoxicated in
16 violation of AS 28.33.030 [OPERATING A MOTOR VEHICLE, AIRCRAFT, OR
17 WATERCRAFT WHILE INTOXICATED UNDER THIS SECTION OR ANOTHER
18 LAW OR ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, OR OF
19 REFUSAL TO SUBMIT TO A CHEMICAL TEST UNDER AS 28.35.032 OR
20 ANOTHER LAW OR ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS:
21 CONVICTIONS FOR BOTH OPERATING A MOTOR VEHICLE, AIRCRAFT, OR
22 WATERCRAFT WHILE INTOXICATED AND FOR REFUSAL TO SUBMIT TO A
23 CHEMICAL TEST OF BREATH, IF ARISING OUT OF A SINGLE TRANSACTION
24 AND A SINGLE ARREST, ARE CONSIDERED ONE PREVIOUS CONVICTION].

25 * Sec. 24. AS 28.35.032(a) is amended to read:

26 (a) If a person under arrest refuses the request of a law enforcement officer to submit to
27 a chemical test under AS 28.33.031(a) or AS 28.35.031(a), after being advised by the officer that
28 the refusal will, if that person was arrested while operating a motor vehicle or aircraft, result in
29 the denial or revocation of the driver's license, privilege to drive, or privilege to obtain a license,
30 that the refusal may be used against the person in a civil or criminal action or proceeding arising
31 out of an act alleged to have been committed by the person while operating a motor vehicle, an

1 aircraft, or a watercraft while intoxicated, and that the refusal is a crime, a chemical test may not
2 be given, except as provided by AS 28.35.035.

3 * Sec. 25. AS 28.35.032(f) is amended to read:

4 (f) Refusal to submit to the chemical test of breath authorized by AS 28.33.031(a) or
5 AS 28.35.031(a) is a class A misdemeanor.

6 * Sec. 26. AS 28.35.032(j) is amended to read:

7 (j) For purposes of this section, convictions for operating or [BOTH] driving while
8 intoxicated under AS 28.33.030 or AS 28.35.030 and for refusal to submit to a chemical test of
9 breath under this section [AS 28.35.031(a)], if arising out of a single transaction and a single
10 arrest, are considered one previous conviction.

11 * Sec. 27. AS 28.35.032(o) is repealed and reenacted to read:

12 (o) In this section, "previously convicted" has the meaning given in AS 28.35.030.

13 * Sec. 28. AS 28.35.035(b) is amended to read:

14 (b) A person who is unconscious or otherwise in a condition rendering that person
15 incapable of refusal is considered not to have withdrawn the consent provided under
16 AS 28.33.031(a) or AS 28.35.031(a) and a chemical test may be administered to determine the
17 amount of alcohol in that person's breath or blood. A person who is unconscious or otherwise
18 incapable of refusal need not be placed under arrest before a chemical test may be administered.

19 * Sec. 29. AS 28.35.029(c)(2) is repealed.

20 * Sec. 30. Convictions for offenses committed before the effective date of this Act are considered
21 previous convictions for purposes of this Act.

22 * Sec. 31. This Act takes effect January 1, 1992.