

**HOUSE CS FOR CS FOR SENATE BILL NO. 261 (JUDICIARY) am H**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Amended: 3/25/92**

**Offered: 3/23/92**

**Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the authority of the Department of Public Safety to adopt regulations  
2 concerning commercial motor vehicle safety and licensing, and regulations necessary to qualify for  
3 federal highway funds; to operating commercial motor vehicles; to the definitions of 'previously  
4 convicted' and 'controlled substance' as they relate to motor vehicle licenses and to offenses  
5 regarding the operation of motor vehicles, aircraft, and watercraft; amending Alaska Rule of  
6 Appellate Procedure 603; and providing for an effective date."

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

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

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

13 \* Sec. 2. AS 28.15.165 is amended to read:

1           Sec. 28.15.165. ADMINISTRATIVE REVOCATIONS AND DISQUALIFICATIONS  
2 RESULTING FROM CHEMICAL SOBRIETY TESTS AND REFUSALS TO SUBMIT TO  
3 TESTS. (a) A law enforcement officer shall read a notice, and deliver a copy of it, to a  
4 person operating a motor vehicle, commercial motor vehicle, or aircraft, if a chemical test  
5 administered under AS 28.33.031(a) or AS 28.35.031(a) produces a result described in  
6 AS 28.35.030(a)(2); a chemical test administered under AS 28.33.031(a) produces a result  
7 described in AS 28.33.030(a)(2); or the person refuses to submit to a chemical test under  
8 AS 28.33.031 or AS 28.35.032 [IF A CHEMICAL TEST ADMINISTERED UNDER  
9 AS 28.35.031(a) TO A PERSON OPERATING A MOTOR VEHICLE OR AIRCRAFT  
10 PRODUCES A RESULT DESCRIBED IN AS 28.35.030(a)(2) OR IF A PERSON UNDER  
11 ARREST FOR OPERATING A MOTOR VEHICLE OR AIRCRAFT REFUSES TO SUBMIT  
12 TO A CHEMICAL TEST UNDER AS 28.35.031(a), A LAW ENFORCEMENT OFFICER  
13 SHALL READ A NOTICE AND DELIVER A COPY TO THE PERSON]. The notice must  
14 advise that

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

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

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

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

28           (b) After reading the notice under (a) of this section, the law enforcement officer shall  
29 seize the person's driver's license if it is in the person's possession and shall deliver it to the  
30 department with a sworn report describing the circumstances under which it was seized. If the  
31 person was operating a commercial motor vehicle, the officer shall order the person out of

1 service under AS 28.33.130.

2 (c) Unless the person has obtained a temporary permit or stay of a departmental  
3 action under AS 28.15.166, if the chemical test administered under AS 28.33.031(a) or  
4 AS 28.35.031(a) produced a result described in AS 28.35.030(a)(2) or the person refused to  
5 submit to a test under AS 28.33.031 or AS 28.35.032, the [THE] department shall revoke the  
6 person's license, privilege to drive, or privilege to obtain a license, shall [OR] refuse to issue an  
7 original license, and, if the chemical test administered under AS 28.33.031(a) produced a  
8 result described in AS 28.33.030(a)(2) or the person refused to submit to a test under  
9 AS 28.33.031, shall disqualify the person. The department's action takes effect  
10 [EFFECTIVE] seven days after delivery to the person of the notice required under (a) of this  
11 section, and after [UPON] receipt of a sworn report of a law enforcement officer

12 (1) that a chemical test under AS 28.33.031(a) or AS 28.35.031(a) produced a  
13 result described in AS 28.35.030(a)(2), that a chemical test under AS 28.33.031(a) produced  
14 a result described in AS 28.33.030(a)(2), or that a person refused to submit to a chemical test  
15 under AS 28.33.031 or AS 28.35.032 [AS 28.35.031(a)];

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

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

21 (d) The period of revocation of a driver's license, privilege to drive, [OR] privilege to  
22 obtain a license, refusal to issue an original license, or disqualification [BY THE  
23 DEPARTMENT UNDER THIS SECTION] shall be for the appropriate minimum period for court  
24 revocations under AS 28.15.181(c) or court disqualifications under AS 28.33.140. A  
25 department hearing officer may grant limited license privileges in accordance with the standards  
26 set out in AS 28.15.201 to a person whose driver's license or nonresident privilege to drive was  
27 revoked under this section.

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

29 (b) A request for review of the department's action [REVOCATION] under  
30 AS 28.15.165 shall be made within seven days after receipt of the notice under AS 28.15.165 or  
31 the right to review is waived and the action of the department under AS 28.15.165(c) is final.

1 If a written request for a review is made after expiration of the seven-day period, and if it is  
2 accompanied by the applicant's verified statement explaining the failure to make a timely request  
3 for a review, the department shall receive and consider the request. If the department finds that  
4 the person was unable to make a timely request because of lack of actual notice of the  
5 department's action [REVOCACTION] or because of factors of physical incapacity such as  
6 hospitalization or incarceration, the department shall waive the period of limitation, reopen the  
7 matter, and grant the review request. An initial request for limited license privileges may be  
8 made at any time. Subsequent requests for limited license privileges may not be made unless  
9 the applicant demonstrates a significant change in circumstances.

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

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

15 (1) the person refused to submit to a chemical test under AS 28.33.031 or  
16 AS 28.35.032 [AS 28.35.031(a)] after being advised that refusal would result in disqualification  
17 or the suspension, revocation, or denial of the person's license, privilege to drive, or privilege  
18 to obtain a license, and that the refusal is a misdemeanor; [OR]

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

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

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

24 (j) If the issues set out in (g) of this section are determined in the affirmative by a  
25 preponderance of the evidence, the hearing officer shall sustain the action of the department. If  
26 one or more of the issues is determined in the negative, the department's [REVOCACTION] action  
27 shall be rescinded.

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

29 (n) The filing of an appeal under (m) of this section or a petition for review does not  
30 automatically stay the department's order or revocation. The court may grant a stay of the order  
31 or revocation only upon a motion and hearing, and upon a finding that there is a reasonable

1 probability that the petitioner will prevail on the merits, [AND] that the petitioner will suffer  
2 irreparable harm if the order is not stayed, and in a case where the petitioner operates a  
3 commercial motor vehicle that the public can be adequately protected by conditions  
4 imposed by the court.

5 \* Sec. 7. AS 28.15.171(a) is amended to read:

6 (a) The privilege of driving a motor vehicle on a highway or vehicular way or area of  
7 this state given to a person licensed in another jurisdiction is subject to suspension, revocation,  
8 disqualification, or limitation by the department or a court in the same manner and for the same  
9 reasons as a driver's license issued under this chapter.

10 \* Sec. 8. AS 28.15.171 is amended by adding a new subsection to read:

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

18 \* Sec. 9. AS 28.15.181(a) is amended to read:

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

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

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

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

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

27 (5) operating a motor vehicle or aircraft while intoxicated;

28 (6) reckless driving;

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

30 (8) refusal to submit to a chemical test under AS 28.33.031 or AS 28.35.032  
31 while under arrest for operating a motor vehicle, commercial motor vehicle, or aircraft while

1 intoxicated;

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

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

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

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

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

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

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

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

19 \* Sec. 13. AS 28.15 is amended by adding a new section to article 2 to read:

20 Sec. 28.15.219. DEFINITIONS. In AS 28.15.161 - 28.15.219,

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

23 (2) "disqualification" has the meaning given in AS 28.33.190;

24 (3) "disqualified" has the meaning given in AS 28.33.190.

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

26 (c) In this section, "previously convicted" means having been convicted in this or another  
27 jurisdiction, within 10 years preceding the date of the present offense, of a violation of this  
28 section, of AS 28.33.150, or another law or ordinance with substantially similar elements.

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

30 ARTICLE 1A. OPERATING COMMERCIAL MOTOR VEHICLE  
31 WHILE INTOXICATED; IMPLIED CONSENT; PRESUMPTIONS.

1           **Sec. 28.33.030. OPERATING A COMMERCIAL MOTOR VEHICLE WHILE**  
2 **INTOXICATED. (a) A person commits the crime of operating a commercial motor vehicle**  
3 **while intoxicated if the person operates a commercial motor vehicle**

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

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

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

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

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

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

26           (b) Refusal to submit to a chemical test authorized under this section is punishable under  
27 AS 28.35.032. A chemical test may be administered without consent under AS 28.35.035. A  
28 person who is disqualified as the result of department action under AS 28.15.165, following a  
29 test administered under this section, can obtain review of that action under AS 28.15.166.

30           (c) A person who operates a commercial motor vehicle is considered to have given  
31 consent to a preliminary breath test, at the direction of a law enforcement officer, for the purpose

1 of determining the alcoholic content of the person's blood or breath. A law enforcement officer  
2 may administer a preliminary breath test if the officer has reasonable grounds to believe that the  
3 person's ability to operate a commercial motor vehicle is impaired by the ingestion of alcoholic  
4 beverages and that

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

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

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

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

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

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

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

26 (1) if there was less than 0.04 percent by weight of alcohol in the person's blood,  
27 or less than 40 milligrams of alcohol per 100 milliliters of the person's blood, or less than 0.04  
28 grams of alcohol per 210 liters of the person's breath, that fact does not give rise to a  
29 presumption that the person was or was not under the influence of an intoxicating liquor, but that  
30 fact may be considered with other competent evidence in determining whether the person was  
31 under the influence of an intoxicating liquor;

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

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

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

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

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

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

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

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

25 (2) has held a valid driver's license at least one year before the date of application  
26 or meets the experience qualifications established by the department;

27 (3) has successfully completed all required driving tests and written and physical  
28 examinations;

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

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

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

4 (1) this section or AS 28.15 in an application to the department for a commercial  
5 driver's license; or

6 (2) AS 28.33.110(c) in an application for employment.

7 \* Sec. 18. AS 28.33.120 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

25 (A) consumed or was under the influence of

26 (i) an alcoholic beverage;

27 (ii) a controlled substance not prescribed by a physician; or

28 (iii) a controlled substance prescribed by a physician that might  
29 impair a person's ability to operate a commercial motor vehicle; or

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

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

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

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

7 (b) An employer, or a peace officer, who has reasonable grounds to believe that a person  
8 has violated (a) of this section, shall immediately give the person a written notice ordering the  
9 person out of service. If it is not possible to issue a written out of service order, a verbal order  
10 may be issued. An employer may not knowingly allow, require, permit, assign, or authorize a  
11 person to operate a commercial motor vehicle or be on-duty during a period in which

12 (1) the person has been ordered out of service under this section; or

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

15 (c) A person who is ordered out of service

16 (1) may not operate a commercial motor vehicle or be on-duty for 24 hours  
17 following issuance of the out of service order; and

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

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

20 (B) within 30 days to the division of motor vehicles if the person  
21 possesses a commercial motor vehicle license.

22 (d) In this section, "on-duty" means the period of time in which a person is

23 (1) required by the person's employer to be ready to immediately operate a  
24 commercial motor vehicle, including time spent waiting to be assigned to operate a commercial  
25 motor vehicle;

26 (2) inspecting, servicing, or conditioning a commercial motor vehicle;

27 (3) in or upon a commercial motor vehicle, except time spent resting in a sleeper  
28 berth;

29 (4) loading or unloading, or supervising the loading or unloading of, a commercial  
30 motor vehicle, or giving or receiving receipts for shipments loaded or unloaded;

31 (5) taking action, as required by state or federal law, following an accident

1 involving a commercial motor vehicle; or

2 (6) repairing or obtaining assistance for a disabled commercial motor vehicle.

3 Sec. 28.33.140. COURT DISQUALIFICATIONS FROM DRIVING A COMMERCIAL  
4 MOTOR VEHICLE. (a) In addition to the court action provided in AS 28.15.181, conviction  
5 of any of the following offenses is grounds for immediate disqualification from driving a  
6 commercial motor vehicle for the periods set out in this section:

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

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

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

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

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

15 (6) a serious traffic violation.

16 (b) A finding by a court that there is proof by a preponderance of the evidence that a  
17 person was operating a commercial motor vehicle at the time that the commercial motor vehicle  
18 was involved in an offense listed in (a)(2) - (6) of this section, is sufficient to disqualify the  
19 person under this section.

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

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

30 (1) was facilitated by a commercial motor vehicle transporting a hazardous  
31 substance that required that placards be placed on the vehicle under 49 U.S.C. 1801 - 1813

1 (Hazardous Materials Transportation Act), the period of disqualification is not less than three  
2 years;

3 (2) was a felony offense that involved the manufacture, distribution, or dispensing,  
4 or possession with intent to manufacture, distribute, or dispense, a controlled substance, the  
5 disqualification is for life and the license may not be reinstated under (g) of this section.

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

11 (f) A person who is disqualified under this section may not obtain a limited license under  
12 AS 28.15.201 to permit driving a commercial motor vehicle.

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

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

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

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

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

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

27 Sec. 28.33.150. DRIVING A COMMERCIAL MOTOR VEHICLE WITHOUT BEING  
28 LAWFULLY LICENSED. (a) A person is guilty of a class A misdemeanor if the person drives  
29 a commercial motor vehicle in this state

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

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

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

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

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

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

12 (1) shall impose a minimum sentence of imprisonment

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

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

18 (2) may impose additional conditions of probation;

19 (3) may not

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

23 (B) suspend imposition of sentence; and

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

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

31 \* Sec. 20. AS 28.33.190 is repealed and reenacted to read:

1                   **Sec. 28.33.190. DEFINITIONS. In AS 28.33.100 - 28.33.190,**

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

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

4                   (3) "controlled substance" means any substance listed as being controlled under  
5 AS 11.71 or 21 U.S.C. 812 - 813, or determined under federal regulations to be controlled for  
6 purposes of 21 U.S.C. 801 - 813 (Controlled Substances Act);

7                   (4) "disqualification" means a withdrawal of the privilege to drive a commercial  
8 motor vehicle;

9                   (5) "disqualified" means that a person's privilege to drive a commercial motor  
10 vehicle has been withdrawn;

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

15                   (7) "employer" means a person who

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

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

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

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

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

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

30                   (10) "serious traffic violation" means

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

1 (B) reckless or negligent driving, in violation of AS 28.35.040 or  
2 28.35.045 or an ordinance with substantially similar elements;

3 (C) violation of a provision of this title, or a regulation adopted under this  
4 title, relating to improper lane changes or following too closely, or an ordinance with  
5 substantially similar elements; or

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

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

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

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

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

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

18 (4) if the open bottle, can, or other receptacle is in the possession of a passenger  
19 in a [COMMERCIAL] motor vehicle for which the owner receives direct monetary  
20 compensation and that has a capacity of 12 or more persons.

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

22 (a) A person commits the crime of driving while intoxicated if the person operates or  
23 drives a motor vehicle or operates an aircraft or a watercraft

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

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

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

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

2 (k) In this section,

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

4 (2) "operate an aircraft" means to use, navigate, pilot, or taxi an aircraft in the  
5 airspace over this state, or upon the land or water inside this state;

6 (3) [(2)] "operate a watercraft" means to navigate or use a vessel used or capable  
7 of being used as a means of transportation on water for recreational or commercial purposes on  
8 all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of  
9 the state;

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

15 (A) operating a motor vehicle, aircraft, or watercraft while  
16 intoxicated, in violation of this section;

17 (B) refusal to submit to a chemical test in violation of AS 28.35.032;

18 or

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

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

30 (a) If a person under arrest refuses the request of a law enforcement officer to submit to  
31 a chemical test under AS 28.33.031(a) or AS 28.35.031(a), after being advised by the officer that

1 the refusal will, if that person was arrested while operating a motor vehicle or aircraft, result in  
2 the denial or revocation of the driver's license, privilege to drive, or privilege to obtain a license,  
3 that the refusal may be used against the person in a civil or criminal action or proceeding arising  
4 out of an act alleged to have been committed by the person while operating a motor vehicle, an  
5 aircraft, or a watercraft while intoxicated, and that the refusal is a crime, a chemical test may not  
6 be given, except as provided by AS 28.35.035.

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

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

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

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

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

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

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

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

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

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

26 \* Sec. 31. Section 6 of this Act has the effect of changing Alaska Rule of Appellate Procedure 603  
27 by providing that the court shall impose conditions to adequately protect the public before granting a stay  
28 of a license revocation ordered under AS 28.15.166 where the petitioner operates a commercial motor  
29 vehicle.

30 \* Sec. 32. This Act takes effect April 1, 1992.