

CS FOR HOUSE BILL NO. 61(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 2/15/94
Referred: Rules

Sponsor(s): REPRESENTATIVES NORDLUND, Ulmer, Brown

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the offense of operating a commercial motor vehicle while
2 intoxicated and the offense of operating a motor vehicle, aircraft, or watercraft
3 while intoxicated; relating to presumptions arising from the amount of alcohol in
4 a person's breath or blood; relating to chemical testing of a person's breath; and
5 providing for an effective date."

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

7 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that the number of
8 persons who are drinking and driving in an impaired condition is a matter of serious concern,
9 and that there is a rational relationship between establishing a lower limit of alcohol
10 consumption and reducing the number of alcohol-related accidents and fatalities.

11 (b) It is the purpose of this Act to promote the general welfare and public safety by
12 imposing a more restrictive legal limit on alcohol consumption above which the person will
13 lose the privilege to drive.

1 * Sec. 2. AS 28.33.030(a) is amended to read:

2 (a) A person commits the crime of operating a commercial motor vehicle while
3 intoxicated if the person operates a commercial motor vehicle

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

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

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

13 * Sec. 3. AS 28.35.030(a) is amended to read:

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

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

18 (2) when, as determined by a chemical test taken within four hours
19 after the alleged offense was committed, there is at the time the test is taken 0.08
20 [0.10] percent or more by weight of alcohol in the person's blood or 80 [100]
21 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.08 [0.10]
22 grams or more of alcohol per 210 liters of the person's breath; or

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

25 * Sec. 4. AS 28.35.033(a) is amended to read:

26 (a) Upon the trial of a civil or criminal action or proceeding arising out of acts
27 alleged to have been committed by a person while operating or driving a motor vehicle
28 or operating an aircraft or a watercraft while intoxicated, the amount of alcohol in the
29 person's blood or breath at the time alleged shall give rise to the following
30 presumptions:

31 (1) If there was 0.04 [0.05] percent or less by weight of alcohol in the

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2 (a) A person commits the crime of operating a commercial motor vehicle while
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5 substance;

6 (2) when, as determined by a chemical test taken within four hours
7 after the alleged offense was committed, there is at the time the test is taken 0.04
8 percent or more by weight of alcohol in the person's blood or 40 milligrams or more
9 of alcohol per 100 milliliters of blood, or when there is 0.04 grams or more of alcohol
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15 operates or drives a motor vehicle or operates an aircraft or a watercraft

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

18 (2) when, as determined by a chemical test taken within four hours
19 after the alleged offense was committed, there is at the time the test is taken **0.08**
20 [0.10] percent or more by weight of alcohol in the person's blood or **80** [100]
21 milligrams or more of alcohol per 100 milliliters of blood, or when there is **0.08** [0.10]
22 grams or more of alcohol per 210 liters of the person's breath; or

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

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27 alleged to have been committed by a person while operating or driving a motor vehicle
28 or operating an aircraft or a watercraft while intoxicated, the amount of alcohol in the
29 person's blood or breath at the time alleged shall give rise to the following
30 presumptions:

31 (1) If there was 0.04 [0.05] percent or less by weight of alcohol in the

1 person's blood, or 40 [50] milligrams or less of alcohol per 100 milliliters of the
2 person's blood, or 0.04 [0.05] grams or less of alcohol per 210 liters of the person's
3 breath, it shall be presumed that the person was not under the influence of intoxicating
4 liquor.

5 (2) If there was in excess of 0.04 [0.05] percent but less than 0.08
6 [0.10] percent by weight of alcohol in the person's blood, or in excess of 40 [50] but
7 less than 80 [100] milligrams of alcohol per 100 milliliters of the person's blood, or
8 in excess of 0.04 [0.05] grams but less than 0.08 [0.10] grams of alcohol per 210 liters
9 of the person's breath, that fact does not give rise to any presumption that the person
10 was or was not under the influence of intoxicating liquor, but that fact may be
11 considered with other competent evidence in determining whether the person was
12 under the influence of intoxicating liquor.

13 (3) [REPEALED

14 (4)] If there was 0.08 [0.10] percent or more by weight of alcohol in
15 the person's blood, or 80 [100] milligrams or more of alcohol per 100 milliliters of the
16 person's blood, or 0.08 [0.10] grams or more of alcohol per 210 liters of the person's
17 breath, it shall be presumed that the person was under the influence of intoxicating
18 liquor.

19 * Sec. 5. AS 28.40 is amended by adding a new section to read:

20 Sec. 28.40.060. BREATH TEST ERROR MARGIN. If an offense described
21 under this title requires that a chemical test of the person's breath produce a particular
22 result and the chemical test has an inherent margin of error that is equal to or less than
23 one percent, the standards of the statute are not affected by the inherent margin of
24 error.

25 * Sec. 6. This Act takes effect September 1, 1994.