

HOUSE BILL NO. 445

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/4/94

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to operating or driving a motor vehicle, commercial motor
2 vehicle, aircraft, or watercraft."

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

4 * Section 1. AS 28.15.165(a) is amended to read:

5 (a) A law enforcement officer shall read a notice, and deliver a copy of it, to
6 a person operating a motor vehicle, commercial motor vehicle, or aircraft, if a
7 chemical test administered under AS 28.33.031(a) or AS 28.35.031(a) or (g) produces
8 a result described in AS 28.35.030(a)(2); a chemical test administered under
9 AS 28.33.031(a) produces a result described in AS 28.33.030(a)(2); or the person
10 refuses to submit to a chemical test authorized under AS 28.33.031(a) [AS 28.33.031]
11 or AS 28.35.031(a) or (g) [AS 28.35.032]. The notice must advise that

12 (1) the department intends to revoke the person's driver's license,
13 privilege to drive, or privilege to obtain a license, refuse to issue an original license
14 to the person, or disqualify the person;

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

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

7 (4) revocation of the person's driver's license, privilege to drive, or
8 privilege to obtain a license, a determination not to issue an original license, or a
9 disqualification of the person, takes effect seven days after delivery of the notice to the
10 person unless the person, within seven days, requests an administrative review.

11 * Sec. 2. AS 28.15.165(c) is amended to read:

12 (c) Unless the person has obtained a temporary permit or stay of a
13 departmental action under AS 28.15.166, if the chemical test administered under
14 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in
15 AS 28.35.030(a)(2) or the person refused to submit to a chemical test authorized
16 under AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032], the
17 department shall revoke the person's license, privilege to drive, or privilege to obtain
18 a license, shall refuse to issue an original license, and, if the chemical test administered
19 under AS 28.33.031(a) produced a result described in AS 28.33.030(a)(2) or the person
20 refused to submit to a chemical test authorized under AS 28.33.031(a)
21 [AS 28.33.031], shall disqualify the person. The department's action takes effect seven
22 days after delivery to the person of the notice required under (a) of this section, and
23 after receipt of a sworn report of a law enforcement officer

24 (1) that a chemical test administered under AS 28.33.031(a) or
25 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2), that a
26 chemical test administered under AS 28.33.031(a) produced a result described in
27 AS 28.33.030(a)(2), or that a person refused to submit to a chemical test authorized
28 under AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032];

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

30 (3) describing the

31 (A) circumstances surrounding the arrest and the grounds for the

1 officer's belief that the person operated a motor vehicle, commercial motor
2 vehicle, or aircraft while intoxicated in violation of AS 28.33.030 or
3 AS 28.35.030; or

4 (B) grounds for the officer's belief that the person operated
5 a motor vehicle that was involved in an accident causing death or serious
6 physical injury to another person.

7 * Sec. 3. AS 28.15.166(g) is amended to read:

8 (g) The hearing for review of action by the department under AS 28.15.165
9 shall be limited to the issues of whether the law enforcement [ARRESTING] officer
10 had reasonable grounds to believe that the person was operating a motor vehicle that
11 was involved in an accident causing death or serious physical injury to another,
12 or that the person was operating a motor vehicle, commercial motor vehicle, or
13 aircraft while intoxicated in violation of AS 28.33.030 or AS 28.35.030 and whether

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

19 (2) the chemical test administered [AUTHORIZED] under
20 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in
21 AS 28.35.030(a)(2); or

22 (3) the chemical test administered [AUTHORIZED] under
23 AS 28.33.031(a) produced a result described in AS 28.33.030(a)(2).

24 * Sec. 4. AS 28.15.181(a) is amended to read:

25 (a) Conviction of any of the following offenses is grounds for the immediate
26 revocation of a driver's license, privilege to drive, or privilege to obtain a license:

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

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

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

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

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

4 (6) reckless driving;

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

7 (8) refusal to submit to a chemical test authorized under
8 AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032 WHILE
9 UNDER ARREST FOR OPERATING A MOTOR VEHICLE, COMMERCIAL
10 MOTOR VEHICLE, OR AIRCRAFT WHILE INTOXICATED];

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

13 * Sec. 5. AS 28.33.031(a) is amended to read:

14 (a) A person who operates a commercial motor vehicle in this state is
15 considered to have given consent to a chemical test or tests

16 (1) of the person's breath if lawfully arrested for an offense arising out
17 of acts alleged to have been committed when the person was operating the commercial
18 motor vehicle while intoxicated; the [. THE] test or tests may be administered at the
19 direction of a law enforcement officer who has reasonable grounds to believe that the
20 person was operating a commercial motor vehicle while intoxicated in violation of
21 AS 28.33.030 or AS 28.35.030;

22 (2) of the person's breath and blood for the purpose of determining
23 the alcoholic content of the person's breath and blood and is considered to have
24 given consent to a chemical test or tests of the person's blood and urine for the
25 purpose of determining the presence of controlled substances in the person's
26 blood and urine if the person is involved in a motor vehicle accident that causes
27 death or serious physical injury to another person; the test or tests may be
28 administered at the direction of a law enforcement officer who has reasonable
29 grounds to believe that the person was operating a commercial motor vehicle that
30 was involved in an accident causing death or serious physical injury to another
31 person.

1 * **Sec. 6. AS 28.33.190 is amended to read:**

2 **Sec. 28.33.190. DEFINITIONS. In this chapter [AS 28.33.100 - 28.33.190],**

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

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

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

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

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

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

18 (7) "employer" means a person who

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

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

26 (8) "hazardous substance" means a substance found by the United
27 States Secretary of Transportation to be hazardous for purposes of 49 U.S.C. 1801 -
28 1813 (Hazardous Materials Transportation Act);

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

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

31 (B) whether or not the vehicle is in motion, or is capable of

1 being moved, to be in actual physical control, or to attempt to affect the
2 movement, of a commercial motor vehicle; and

3 (10) "serious traffic violation" means

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

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

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

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

13 * Sec. 7. AS 28.35.031 is amended by adding a new subsection to read:

14 (g) A person who operates or drives a motor vehicle in this state shall be
15 considered to have given consent to a chemical test or tests of the person's breath and
16 blood for the purpose of determining the alcoholic content of the person's breath and
17 blood and shall be considered to have given consent to a chemical test or tests of the
18 person's blood and urine for the purpose of determining the presence of controlled
19 substances in the person's blood and urine if the person is involved in a motor vehicle
20 accident that causes death or serious physical injury to another person. The test or
21 tests may be administered at the direction of a law enforcement officer who has
22 reasonable grounds to believe that the person was operating or driving a motor vehicle
23 in this state that was involved in an accident causing death or serious physical injury
24 to another person.

25 * Sec. 8. AS 28.35.032(a) is amended to read:

26 (a) If a person under arrest for operating a motor vehicle or aircraft while
27 intoxicated refuses the request of a law enforcement officer to submit to a chemical
28 test authorized under AS 28.33.031(a)(1) [AS 28.33.031(a)] or AS 28.35.031(a), or
29 if a person involved in a motor vehicle accident that causes death or serious
30 physical injury to another person refuses the request of a law enforcement officer
31 to submit to a chemical test authorized under AS 28.33.031(a)(2) or

1 **AS 28.35.031(g)**, after being advised by the officer that the refusal will[, IF THAT
2 **PERSON WAS ARRESTED WHILE OPERATING A MOTOR VEHICLE OR**
3 **AIRCRAFT,]** result in the denial or revocation of the driver's license, privilege to
4 drive, or privilege to obtain a license, that the refusal may be used against the person
5 in a civil or criminal action or proceeding arising out of an act alleged to have been
6 committed by the person while operating a motor vehicle or [, AN] aircraft[, OR A
7 WATERCRAFT] while intoxicated, and that the refusal is a crime, a chemical test may
8 not be given, except as provided by AS 28.35.035. If a person under arrest for
9 operating a watercraft while intoxicated refuses the request of a law enforcement
10 officer to submit to a chemical test authorized under AS 28.35.031(a), after being
11 advised by the officer that the refusal may be used against the person in a civil
12 or criminal action or proceeding arising out of an act alleged to have been
13 committed by the person while operating a watercraft while intoxicated, and that
14 the refusal is a crime, a chemical test may not be given, except as provided by
15 AS 28.35.035.

16 * Sec. 9. AS 28.35.032(e) is amended to read:

17 (e) The refusal of a person to submit to a chemical test authorized under
18 AS 28.33.031(a) or AS 28.35.031(a) or (g) [OF BREATH UNDER (a) OF THIS
19 SECTION] is admissible evidence in a civil or criminal action or proceeding arising
20 out of an act alleged to have been committed by the person while operating or driving
21 a motor vehicle or operating an aircraft or watercraft while intoxicated.

22 * Sec. 10. AS 28.35.032(f) is amended to read:

23 (f) Refusal to submit to a [THE] chemical test [OF BREATH] authorized by
24 AS 28.33.031(a) or AS 28.35.031(a) or (g) is a class A misdemeanor.

25 * Sec. 11. AS 28.35.032(j) is amended to read:

26 (j) For purposes of this section, convictions for operating or driving while
27 intoxicated under AS 28.33.030 or AS 28.35.030 and for refusal to submit to a
28 chemical test [OF BREATH] under this section, if arising out of a single transaction
29 and a single arrest, are considered one previous conviction.

30 * Sec. 12. AS 28.35.035(a) is amended to read:

31 (a) If a person is under arrest for an offense arising out of acts alleged to have

1 been committed while the person was operating a motor vehicle, aircraft, or watercraft
2 while intoxicated, and that arrest results from an accident that causes death or physical
3 injury to another person, a chemical test may be administered without the consent of
4 the person arrested to determine the amount of alcohol in that person's breath or blood
5 or to determine the presence of controlled substances in that person's blood and
6 urine.

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

8 (b) A person who is unconscious or otherwise in a condition rendering that
9 person incapable of refusal is considered not to have withdrawn the consent provided
10 under AS 28.33.031(a) or AS 28.35.031(a) or (g) and a chemical test may be
11 administered to determine the amount of alcohol in that person's breath or blood or
12 to determine the presence of controlled substances in that person's blood and
13 urine. A person who is unconscious or otherwise incapable of refusal need not be
14 placed under arrest before a chemical test may be administered.

15 * Sec. 14. AS 28.35.036(b) is amended to read:

16 (b) For purposes of this section, convictions for both driving while intoxicated
17 and for refusal to submit to a chemical test authorized [OF BREATH] under
18 AS 28.35.031(a) or (g), if arising out of a single transaction and a single arrest, are
19 considered one previous conviction.

20 * Sec. 15. AS 28.35 is amended by adding a new section to read:

21 Sec. 28.35.039. DEFINITION FOR AS 28.35.029 - 28.35.039. In
22 AS 28.35.029 - 28.35.039, "controlled substance" has the meaning given in
23 AS 28.33.190.

24 * Sec. 16. AS 28.40.100(a) is amended by adding a new paragraph to read:

25 (24) "serious physical injury" means the same as in AS 11.81.900(b).

26 * Sec. 17. AS 28.35.030(m)(1) is repealed.