

HOUSE BILL NO. 445 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Amended: 4/25/94

Introduced: 2/4/94

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative or court revocation of a driver's license
2 resulting from operation of a motor vehicle, commercial motor vehicle, or aircraft;
3 relating to chemical testing of a person's breath, urine, or blood if the person
4 is involved in a motor vehicle accident that causes death or serious physical
5 injury; relating to definitions applicable to commercial motor vehicle laws; relating
6 to chemical testing of a person's breath, urine, or blood without the person's
7 consent; and relating to the use in a civil or criminal action of the refusal of
8 a person to submit to a chemical test."

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

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

11 (a) A law enforcement officer shall read a notice, and deliver a copy of it, to
12 a person operating a motor vehicle, commercial motor vehicle, or aircraft, if a

chemical test administered under AS 28.33.031(a) or AS 28.35.031(a) or (g) produces a result described in AS 28.35.030(a)(2); a chemical test administered under AS 28.33.031(a) produces a result described in AS 28.33.030(a)(2); or the person refuses to submit to a chemical test authorized under AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032]. The notice must advise that

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

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

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

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

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

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

1 (1) that a chemical test administered under AS 28.33.031(a) or
2 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2), that a
3 chemical test administered under AS 28.33.031(a) produced a result described in
4 AS 28.33.030(a)(2), or that a person refused to submit to a chemical test authorized
5 under AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032];

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

7 (3) describing the

8 (A) circumstances surrounding the arrest and the grounds for the
9 officer's belief that the person operated a motor vehicle, commercial motor
10 vehicle, or aircraft while intoxicated in violation of AS 28.33.030 or
11 AS 28.35.030; or

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

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

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

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

28 (2) the chemical test administered [AUTHORIZED] under
29 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in
30 AS 28.35.030(a)(2); or

31 (3) the chemical test administered [AUTHORIZED] under

1 AS 28.33.031(a) produced a result described in AS 28.33.030(a)(2).

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

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

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

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

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

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

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

13 (6) reckless driving;

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

16 (8) refusal to submit to a chemical test authorized under
17 AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) [AS 28.35.032] while under arrest
18 for operating a motor vehicle, commercial motor vehicle, or aircraft while intoxicated,
19 or authorized under AS 28.35.031(g);

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

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

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

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

31 (2) of the person's breath and blood for the purpose of determining

1 the alcoholic content of the person's breath and blood and is considered to have
2 given consent to a chemical test or tests of the person's blood and urine for the
3 purpose of determining the presence of controlled substances in the person's
4 blood and urine if the person is involved in a motor vehicle accident that causes
5 death or serious physical injury to another person; the test or tests may be
6 administered at the direction of a law enforcement officer who has reasonable
7 grounds to believe that the person was operating a commercial motor vehicle that
8 was involved in an accident causing death or serious physical injury to another
9 person.

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

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

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

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

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

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

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

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

27 (7) "employer" means a person who

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

31 (B) acts as an agent of someone who provides compensation to

1 a person who operates a commercial motor vehicle, with authority to allow,
2 require, permit, assign, or authorizes the person being compensated to operate
3 a commercial motor vehicle;

4 (8) "hazardous substance" means a substance found by the United
5 States Secretary of Transportation to be hazardous for purposes of 49 U.S.C. 1801 -
6 1813 (Hazardous Materials Transportation Act);

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

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

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

12 (10) "serious traffic violation" means

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

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

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

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

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

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

1 in this state that was involved in an accident causing death or serious physical injury
2 to another person.

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

4 (a) If a person under arrest for operating a motor vehicle or aircraft while
5 intoxicated refuses the request of a law enforcement officer to submit to a chemical
6 test authorized under AS 28.33.031(a)(1) [AS 28.33.031(a)] or AS 28.35.031(a), or
7 if a person involved in a motor vehicle accident that causes death or serious
8 physical injury to another person refuses the request of a law enforcement officer
9 to submit to a chemical test authorized under AS 28.33.031(a)(2) or
10 AS 28.35.031(g), after being advised by the officer that the refusal will[, IF THAT
11 PERSON WAS ARRESTED WHILE OPERATING A MOTOR VEHICLE OR
12 AIRCRAFT,] result in the denial or revocation of the driver's license, privilege to
13 drive, or privilege to obtain a license, that the refusal may be used against the person
14 in a civil or criminal action or proceeding arising out of an act alleged to have been
15 committed by the person while operating a motor vehicle or [, AN] aircraft[, OR A
16 WATERCRAFT] while intoxicated, and that the refusal is a crime, a chemical test may
17 not be given, except as provided by AS 28.35.035. If a person under arrest for
18 operating a watercraft while intoxicated refuses the request of a law enforcement
19 officer to submit to a chemical test authorized under AS 28.35.031(a), after being
20 advised by the officer that the refusal may be used against the person in a civil
21 or criminal action or proceeding arising out of an act alleged to have been
22 committed by the person while operating a watercraft while intoxicated, and that
23 the refusal is a crime, a chemical test may not be given, except as provided by
24 AS 28.35.035.

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

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

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

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

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

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

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

9 (a) If a person is under arrest for an offense arising out of acts alleged to have
10 been committed while the person was operating a motor vehicle, aircraft, or watercraft
11 while intoxicated, and that arrest results from an accident that causes death or physical
12 injury to another person, a chemical test may be administered without the consent of
13 the person arrested to determine the amount of alcohol in that person's breath or blood
14 or to determine the presence of controlled substances in that person's blood and
15 urine.

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

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

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

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

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

30 Sec. 28.35.039. DEFINITION FOR AS 28.35.029 - 28.35.039. In
31 AS 28.35.029 - 28.35.039, "controlled substance" has the meaning given in

1 AS 28.33.190.

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

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

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