

SENATE CS FOR HOUSE BILL NO. 445(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/7/94
Referred: Rules

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to operating or driving a motor vehicle, commercial motor
 2 vehicle, aircraft, or watercraft; to motor vehicle forfeiture; and providing for an
 3 effective date."

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

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

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

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

1 to the person, or disqualify the person;

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

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

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

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

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

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

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

31 (3) describing the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (6) reckless driving;

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

9 (8) refusal to submit to a chemical test authorized under
10 AS 28.33.031(a)(1), AS 28.35.031(a), or [AS 28.33.031 OR] AS 28.35.032 while
11 under arrest for operating a motor vehicle, commercial motor vehicle, or aircraft while
12 intoxicated, or as authorized under AS 28.33.031(a)(2) or AS 28.35.031(g);

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

injury to another person.

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

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

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

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

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

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

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

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

(7) "employer" means a person who

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

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

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

(9) "operating a commercial motor vehicle" means

(A) to drive a commercial motor vehicle; or

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

4 (10) "serious traffic violation" means

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

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

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

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

14 * Sec. 7. AS 28.35.030(a) is amended to read:

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

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

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

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

26 * Sec. 8. AS 28.35.031 is amended by adding a new subsection to read:

27 (g) A person who operates or drives a motor vehicle in this state shall be
28 considered to have given consent to a chemical test or tests of the person's breath and
29 blood for the purpose of determining the alcoholic content of the person's breath and
30 blood and shall be considered to have given consent to a chemical test or tests of the
31 person's blood and urine for the purpose of determining the presence of controlled

1 substances in the person's blood and urine if the person is involved in a motor vehicle
2 accident that causes death or serious physical injury to another person. The test or
3 tests may be administered at the direction of a law enforcement officer who has
4 reasonable grounds to believe that the person was operating or driving a motor vehicle
5 in this state that was involved in an accident causing death or serious physical injury
6 to another person.

7 * Sec. 9. AS 28.35.032(a) is amended to read:

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

29 * Sec. 10. AS 28.35.032(e) is amended to read:

30 (e) The refusal of a person to submit to a chemical test authorized under
31 AS 28.33.031(a) or AS 28.35.031(a) or (g) [OF BREATH UNDER (a) OF THIS

1 SECTION] is admissible evidence in a civil or criminal action or proceeding arising
2 out of an act alleged to have been committed by the person while operating or driving
3 a motor vehicle or operating an aircraft or watercraft while intoxicated.

4 * Sec. 11. AS 28.35.032(f) is amended to read:

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

7 * Sec. 12. AS 28.35.032(j) is amended to read:

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

12 * Sec. 13. AS 28.35.033(a) is amended to read:

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

18 (1) If there was 0.04 [0.05] percent or less by weight of alcohol in the
19 person's blood, or 40 [50] milligrams or less of alcohol per 100 milliliters of the
20 person's blood, or 0.04 [0.05] grams or less of alcohol per 210 liters of the person's
21 breath, it shall be presumed that the person was not under the influence of intoxicating
22 liquor.

23 (2) If there was in excess of 0.04 [0.05] percent but less than 0.08
24 [0.10] percent by weight of alcohol in the person's blood, or in excess of 40 [50] but
25 less than 80 [100] milligrams of alcohol per 100 milliliters of the person's blood, or
26 in excess of 0.04 [0.05] grams but less than 0.08 [0.10] grams of alcohol per 210 liters
27 of the person's breath, that fact does not give rise to any presumption that the person
28 was or was not under the influence of intoxicating liquor, but that fact may be
29 considered with other competent evidence in determining whether the person was
30 under the influence of intoxicating liquor.

31 (3) [REPEALED]

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

6 * Sec. 14. AS 28.35.035(a) is amended to read:

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

14 * Sec. 15. AS 28.35.035(b) is amended to read:

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

22 * Sec. 16. AS 28.35 is amended by adding a new section to article 2 to read:

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

26 * Sec. 17. AS 28.40.100(a) is amended by adding a new paragraph to read:

27 (24) "serious physical injury" has the meaning given in
28 AS 11.81.900(b).

29 * Sec. 18. AS 28.35.030(m)(1) is repealed.

30 * Sec. 19. REQUIRED STUDY AND REPORT. (a) The Department of Public Safety,
31 in conjunction with the Department of Law, the Department of Corrections, the Alaska Court

1 System, and the Alaska State Legislature, shall perform a comprehensive review of the
2 following issues by December 31, 1994:

3 (1) the means by which the mandatory forfeiture of vehicles used in the
4 commission of offenses related to driving while intoxicated may be implemented; and

5 (2) the means by which felony penalties may be applied to certain offenses
6 related to driving while intoxicated.

7 (b) The review required under (a) of this section shall consider the fiscal effect on the
8 state, deterrence of convicted and potential offenders, relevant policies of other governing
9 bodies, and potential funding sources. Also, the Department of Public Safety shall present a
10 report to the Nineteenth Alaska State Legislature that summarizes the conclusions of the
11 review described in this section and that recommends specific legislative action.

12 * Sec. 20. APPLICABILITY. The amendments made by this Act apply to offenses that
13 are committed on or after the effective date of this Act, except that references to previous
14 convictions include convictions occurring before, on, or after the effective date of this Act.

15 * Sec. 21. This Act takes effect July 1, 1994.