

CS FOR SENATE BILL NO. 279(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/25/94

Referred: Finance

Sponsor(s): SENATE 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 classifying certain driving while intoxicated
3 offenses as felonies; to motor vehicle forfeiture; and providing for an effective
4 date."

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

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

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

14 (1) the department intends to revoke the person's driver's license,

1 privilege to drive, or privilege to obtain a license, refuse to issue an original license
2 to the person, or disqualify the person;

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

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

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

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

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

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

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

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(3) describing the

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

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

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

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

(1) 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] after being advised that refusal would result in disqualification or the suspension, revocation, or denial of the person's license, privilege to drive, or privilege to obtain a license, and that the refusal is a misdemeanor;

(2) the chemical test administered [AUTHORIZED] 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

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

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

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

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

- 1 (2) a felony in the commission of which a motor vehicle is used;
2 (3) failure to stop and give aid as required by law when a motor
3 vehicle accident results in the death or personal injury of another;
4 (4) perjury or making a false affidavit or statement under oath to the
5 department under a law relating to motor vehicles;
6 (5) operating a motor vehicle or aircraft while intoxicated;
7 (6) reckless driving;
8 (7) using a motor vehicle in unlawful flight to avoid arrest by a peace
9 officer;
10 (8) refusal to submit to a chemical test authorized under
11 AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032 WHILE
12 UNDER ARREST FOR OPERATING A MOTOR VEHICLE, COMMERCIAL
13 MOTOR VEHICLE, OR AIRCRAFT WHILE INTOXICATED];
14 (9) driving while license, privilege to drive, or privilege to obtain a
15 license, canceled, suspended, or revoked, or in violation of a limitation.

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

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

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

25 (2) of the person's breath and blood for the purpose of determining
26 the alcoholic content of the person's breath and blood, and of the person's blood
27 and urine, for the purpose of determining the presence of controlled substances
28 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
30 or tests may be administered at the direction of a law enforcement officer who
31 has reasonable grounds to believe that the person was operating a commercial

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

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

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

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

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

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

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

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

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

20 (7) "employer" means a person who

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

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

28 (8) "hazardous substance" means a substance found by the United
29 States Secretary of Transportation to be hazardous for purposes of 49 U.S.C. 1801 -
30 1813 (Hazardous Materials Transportation Act);

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

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

5 (10) "serious traffic violation" means

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

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

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

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

15 * Sec. 7. AS 28.35.030(b) is amended to read:

16 (b) Except as provided under (n) of this section, driving [DRIVING] while
17 intoxicated is a class A misdemeanor. Upon conviction

18 (1) the court shall impose a minimum sentence of imprisonment of

19 (A) not less than 72 consecutive hours and a fine of not less
20 than \$250 if the person has not been previously convicted;

21 (B) not less than 20 days and a fine of not less than \$500 if the
22 person has been previously convicted once [;

23 (C) NOT LESS THAN 60 DAYS AND A FINE OF NOT LESS
24 THAN \$1,000 IF THE PERSON HAS BEEN PREVIOUSLY CONVICTED
25 TWICE;

26 (D) NOT LESS THAN 120 DAYS AND A FINE OF NOT
27 LESS THAN \$2,000 IF THE PERSON HAS BEEN PREVIOUSLY
28 CONVICTED THREE TIMES;

29 (E) NOT LESS THAN 240 DAYS AND A FINE OF NOT
30 LESS THAN \$3,000 IF THE PERSON HAS BEEN PREVIOUSLY
31 CONVICTED FOUR TIMES;

1 (F) NOT LESS THAN 360 DAYS AND A FINE OF NOT
2 LESS THAN \$4,000 IF THE PERSON HAS BEEN PREVIOUSLY
3 CONVICTED MORE THAN FOUR TIMES];

4 (2) the court may not

5 (A) suspend execution of sentence or grant probation except on
6 condition that the person serve the minimum imprisonment under (1) of this
7 subsection;

8 (B) suspend imposition of sentence;

9 (3) the court shall revoke the person's driver's license, privilege to
10 drive, or privilege to obtain a license under AS 28.15.181 [AND MAY ORDER THE
11 MOTOR VEHICLE OR AIRCRAFT THAT WAS USED IN COMMISSION OF THE
12 OFFENSE TO BE FORFEITED UNDER AS 28.35.036].

13 * Sec. 8. AS 28.35.030 is amended by adding new subsections to read:

14 (n) A person is guilty of a class C felony if the person is convicted of driving
15 while intoxicated and has been previously convicted two or more times. Upon
16 conviction the court

17 (1) shall impose a minimum sentence of imprisonment of 360 days and
18 a fine of not less than \$1,000;

19 (2) may not

20 (A) suspend execution of sentence or grant probation except on
21 condition that the person serve the minimum imprisonment under (1) of this
22 subsection; or

23 (B) suspend imposition of sentence;

24 (3) shall revoke the person's driver's license, privilege to drive, or
25 privilege to obtain a license under AS 28.15.181; and

26 (4) may order as a condition of probation that the person take antabuse
27 or a similar drug intended to prevent the consumption of an alcoholic beverage; a
28 condition of probation imposed under this paragraph is in addition to any other
29 condition authorized under another provision of law.

30 (o) If the court imposes a sentence of imprisonment under (b) or (n) of this
31 section, the court shall also order forfeiture of the vehicle used in the commission of

1 the offense, subject to remission under AS 28.35.037.

2 * Sec. 9. AS 28.35.031 is amended by adding a new subsection to read:

3 (g) A person who operates or drives a motor vehicle in this state shall be
4 considered to have given consent to a chemical test or tests of the person's breath and
5 blood for the purpose of determining the alcoholic content of the person's breath and
6 blood and shall be considered to have given consent to a chemical test or tests of the
7 person's blood and urine for the purpose of determining the presence of controlled
8 substances in the person's blood and urine if the person is involved in a motor vehicle
9 accident that causes death or serious physical injury to another person. The test or
10 tests may be administered at the direction of a law enforcement officer who has
11 reasonable grounds to believe that the person was operating or driving a motor vehicle
12 in this state that was involved in an accident causing death or serious physical injury
13 to another person.

14 * Sec. 10. AS 28.35.032(a) is amended to read:

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

1 or criminal action or proceeding arising out of an act alleged to have been
2 committed by the person while operating a watercraft while intoxicated, and that
3 the refusal is a crime, a chemical test may not be given, except as provided by
4 AS 28.35.035.

5 * Sec. 11. AS 28.35.032(e) is amended to read:

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

11 * Sec. 12. AS 28.35.032(f) is amended to read:

12 (f) Except as provided under (g) of this section, refusal [REFUSAL] to
13 submit to a [THE] chemical test [OF BREATH] authorized by AS 28.33.031(a) or
14 AS 28.35.031(a) or (g) is a class A misdemeanor.

15 * Sec. 13. AS 28.35.032(g) is amended to read:

16 (g) Upon conviction under this section

17 (1) the court shall impose a minimum sentence of imprisonment of

18 (A) not less than 72 consecutive hours and a fine of not less
19 than \$250 if the person has not been previously convicted;

20 (B) not less than 20 days and a fine of not less than \$500 if the
21 person has been previously convicted once [;

22 (C) NOT LESS THAN 60 DAYS AND A FINE OF NOT LESS
23 THAN \$1,000 IF THE PERSON HAS BEEN PREVIOUSLY CONVICTED
24 TWICE;

25 (D) NOT LESS THAN 120 DAYS AND A FINE OF NOT
26 LESS THAN \$2,000 IF THE PERSON HAS BEEN PREVIOUSLY
27 CONVICTED THREE TIMES [;

28 (E) NOT LESS THAN 240 DAYS AND A FINE OF NOT
29 LESS THAN \$3,000 IF THE PERSON HAS BEEN PREVIOUSLY
30 CONVICTED FOUR TIMES;

31 (F) NOT LESS THAN 360 DAYS AND A FINE OF NOT

1 LESS THAN \$4,000 IF THE PERSON HAS BEEN PREVIOUSLY
2 CONVICTED MORE THAN FOUR TIMES];

3 (2) the court may not

4 (A) suspend execution of the sentence required by (1) of this
5 subsection or grant probation, except on condition that the person serve the
6 minimum imprisonment under (1) of this subsection; or

7 (B) suspend imposition of sentence;

8 (3) the court shall revoke the person's driver's license, privilege to
9 drive, or privilege to obtain a license under AS 28.15.181 [, AND MAY ORDER THE
10 MOTOR VEHICLE OR AIRCRAFT THAT WAS USED IN COMMISSION OF THE
11 OFFENSE BE FORFEITED UNDER AS 28.35.036]; and

12 (4) the sentence imposed by the court under this subsection shall run
13 consecutively with any other sentence of imprisonment imposed on the person.

14 * Sec. 14. AS 28.35.032(j) is amended to read:

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

19 * Sec. 15. AS 28.35.032 is amended by adding new subsections to read:

20 (q) A person is guilty of a class C felony if the person is convicted under this
21 section and has been previously convicted two or more times. Upon conviction,

22 (1) the court shall impose a minimum sentence of imprisonment of 360
23 days and a fine of not less than \$1,000;

24 (2) the court may not

25 (A) suspend execution of the sentence required by (1) of this
26 subsection or grant probation, except on condition that the person serve the
27 minimum imprisonment under (1) of this subsection; or

28 (B) suspend imposition of sentence;

29 (3) the court shall revoke the person's driver's license, privilege to
30 drive, or privilege to obtain a license under AS 28.15.181;

31 (4) the court may order as a condition of probation that the person take

1 antabuse or a similar drug intended to prevent consumption of an alcoholic beverage;
2 a condition of probation imposed under this paragraph is in addition to any other
3 condition authorized under another provision of law; and

4 (5) the sentence imposed by the court under this subsection shall run
5 consecutively with any other sentence of imprisonment imposed on the person.

6 (r) If the court imposes a sentence of imprisonment under (g) or (q) of this
7 section, the court shall also order forfeiture of the vehicle used in the commission of
8 the offense, subject to remission under AS 28.35.037.

9 * Sec. 16. AS 28.35.035(a) is amended to read:

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

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

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

25 * Sec. 18. AS 28.35.036 is repealed and reenacted to read:

26 Sec. 28.35.036. FORFEITURE OF MOTOR VEHICLE OR AIRCRAFT. (a)
27 Upon forfeiture of a motor vehicle or aircraft under AS 28.35.030(o) or 28.35.032(r),
28 the court shall require the surrender of the registration and certificate of title of that
29 motor vehicle or aircraft. The registration and certificate of title shall be delivered to
30 the department.

31 (b) Forfeiture of a motor vehicle or aircraft under AS 28.35.030(o) or

1 28.35.032(r) extinguishes the rights or claims of a person with an ascertainable interest
2 in the motor vehicle or aircraft, unless the person seeks remission of the forfeiture
3 under AS 28.35.037 within 90 days after the person receives notice of the right of
4 remission under AS 28.35.037. Remission of forfeiture does not apply to a person
5 convicted under AS 28.35.030(o) or 28.35.032(r) whose vehicle or aircraft is forfeited.

6 (c) If not released under AS 28.35.037, a motor vehicle or aircraft forfeited
7 under AS 28.35.030(o) or 28.35.032(r) may be disposed of by the department by

8 (1) selling the motor vehicle or aircraft; proceeds from the sale shall be
9 deposited into the general fund;

10 (2) taking custody of the property and authorizing its use by the state
11 or another political subdivision of the state; or

12 (3) destroying property that is harmful to the public.

13 * Sec. 19. AS 28.35.037(a) is repealed and reenacted to read:

14 (a) Upon forfeiture of a motor vehicle or aircraft under AS 28.35.030(o) or
15 28.35.032(r), the state shall provide written notice within 30 days to each person with
16 an ascertainable ownership or security interest in the motor vehicle or aircraft, other
17 than the person convicted of the offense resulting in forfeiture, that

18 (1) the vehicle or aircraft has been forfeited;

19 (2) the person has a right to intervene to protect an interest in the motor
20 vehicle or aircraft under (b) of this section; and

21 (3) failure to seek remission of forfeiture within 90 days will extinguish
22 the rights of the person to the vehicle or aircraft.

23 * Sec. 20. AS 28.35.037(b) is amended to read:

24 (b) At the request of a person with an ownership or security interest in a
25 vehicle or aircraft forfeited under AS 28.35.030(o) or 28.35.032(r), other than the
26 person convicted of the offense resulting in forfeiture, the court shall schedule a
27 hearing in a timely manner to determine if remission of forfeiture shall be
28 ordered as provided under this section. At the hearing, a person who claims an
29 ownership or security interest in the motor vehicle, or aircraft, must establish by a
30 preponderance of the evidence that

31 (1) the petitioner has an interest in the motor vehicle, or aircraft,

1 acquired in good faith;

2 (2) a person other than the petitioner was convicted of the offense that
3 resulted in the forfeiture; and

4 (3) before parting with the motor vehicle, or aircraft, the petitioner did
5 not know or have reasonable cause to believe that it would be used in the commission
6 of an offense.

7 * **Sec. 21.** AS 28.35 is amended by adding a new section to article 2 to read:

8 Sec. 28.35.039. DEFINITION FOR AS 28.35.029 - 28.35.039. In
9 AS 28.35.029 - 28.35.039, "controlled substance" has the meaning given in
10 AS 28.33.190.

11 * **Sec. 22.** AS 28.40.100(a) is amended by adding a new paragraph to read:

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

14 * **Sec. 23.** AS 28.35.030(m)(1) and 28.35.037(d) are repealed.

15 * **Sec. 24.** APPLICABILITY. The amendments made by secs. 7, 8, 13, and 15 - 16 of this
16 Act apply to offenses that are committed on or after the effective date of this Act, except that
17 references to previous convictions include convictions occurring before, on, or after the
18 effective date of this Act.

19 * **Sec. 25.** This Act takes effect July 1, 1994.