H B 53

STATE OF ALASKA
THE LEGISLATURE

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Mary Van Nimwegen

HB 53

House Transportation	1/17/89
House Trans	1/19/89
House Trans	1/24/89

Date Referred: January 9, 1989 FURTHER REFERRALS: JUDICIARY / FINANCE

Date of Committee Action: 01/24/89

The TRANSPORTATION Committee recommends that: HB 53

HOUSE BILL NO. 53 [DRIVERS LICENSE/DRIVING OFFENSES]
"An Act relating to the privilege to drive, driver licensing, driving while intoxicated, and other procedures and matters related to driving and the revocation of driving privileges; relating to operating an aircraft or watercraft; and providing for an effective date."

[✓] be replaced with c/s HB 53 (Transportation) [✓] the same title [ ] a new title

[ ] have attached amendment(s)

[✓] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
[✓] fiscal impact corrections
[✓] zero fiscal note Pub. Safety
[ ] zero with analysis

APPROVES PREVIOUS:
[ ] fiscal note(s) published:
_____
[ ] zero fiscal notes(s) published:
_____

SIGNING DO PASS:

GRUSSENDORF
FOSTER
CATO

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

Bill Hudson - Do Rec. HUDSON
Loren A. Leman - NO Rec. LEMAN

Bette Cato
Chairman's signature

Alaska State Legislature

House of Representatives

Committee on Transportation
JANUARY 24, 1989

Rep. Bette Cato, Chairman

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4858

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COMMITTEE CALENDAR:

HB 53: "An Act relating to the privilege to drive, driver licensing, driving while intoxicated, and other procedures and matters related to driving and the revocation of driving privileges; relating to operating an aircraft or watercraft; and providing for an effective date."

HB 11: "An act relating to motor vehicle license plates for veterans."

FOR THIS MEETING, YOU HAVE BEEN GIVEN:

Folder 1

Item #1: HB 53
#2: Fiscal Note:Public Safety
#3: Fiscal note:Corrections
#4: Statutes
#5: Sectional Analysis
#6: Comparison sheet
#7: Summary sheet-Sixth DWI Conviction
#8: Journal Articles
** #9: Sectional Analysis of C/S HB 53
** #10: Work draft C/S HB 53
** #11: Fiscal note from Dept. of Corrections
** #12: Analysis from Department of Corrections
** #13: Fiscal note from Dept. of Public Safety

Folder 2

Item #1: HB 11
#2: Fiscal Note:Public Safety
#3: Position Paper:Public Safety
#4: Statutes
#5: Sample of Plates
#6: Letters of Support
** #7: Sectional analysis C/S HB 11
** #8: Work draft C/S HB 11
** #9: Fiscal note and position paper

Alaska State Legislature

JAN 1 1 1989

Committees:
Chair State Affairs
V. Chair Judiciary
Telecommunications
Special Ethics
Legislative Council
Finance Subcommittee for the University of Alaska
Joint Committee on Economic Recovery

P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

REPRESENTATIVE FRAN ULMER

M E M O R A N D U M

TO: Rep. Bette Cato, Chairman
House Transportation Committee

FROM: Rep. Fran Ulmer

DATE: January 9, 1988

RE: HB 53

I would like to request that HB 53, relating to the privilege to drive and driving while intoxicated, be scheduled in House Transportation as soon as possible. As you know, this is a very complex and time consuming issue and since this legislation has three committee referrals, I would like to get it started going through the legislative process early this session.

Thank you for your consideration

MANDATORY MINIMUM

COMPARISON OF PROPOSED PENALTIES FOR DWI OFFENDERS

	Current law	HB 53	HB 26	HB 2
1st DWI	3 days in jail 90 day loss/license $250 fine Earn back last 60	3 days in jail 90 day loss/license Earn back last 60* (2) $250 fine		ILS court option
2nd DWI	20 days in jail 1 year loss/license $500 fine	20 days in jail 1 year loss license Earn back last 60 days* (2) $500 fine		ILS court option
3rd DWI	30 days in jail 10 yr loss/license $1000 fine (1)* discretionary forf.	60 days in jail 10 yr loss/license Earn back last 5 years* (2) $1000 fine (1)*	mandatory forfeiture of vehicle	ILS court option
4th	30 days in jail 10 yr loss/license $1000 fine (1)*	120 days in jail 10 yr loss license $2000 fine ~~Earn back last 5 years~~ (1)*		ILS court option
5th	30 days in jail 10 yr loss/license $1000 fine (1)*	240 days in jail 10 yr loss license $3000 fine ~~Earn back last 5 years~~ (1)*		ILS court option
6th DWI	30 days in jail 10 yr loss/license $1000 fine (1)*	Class C felony		ILS court option

(2)* for limited license
- ct considers
  - ILS
  - ambulance
  - random urine tests

AMENDMENT #1

Offered in the HOUSE
by Grussendorf

TO: HB 53

Page 10, line 9:

After the word "has" insert the word not .

Page 10, line 10:

Delete the word "once" and insert the word twice .

AMENDMENT #2

Offered in the HOUSE
by Grussendorf

TO: HB 53

Page 14, lines 13 and 14:

Delete all material.

Page 15, line 7:

Delete the word "five" and insert the word four .

SUMMARY OF HB 2 AND HOUSE BILL 26

House bill 2 - " An act relating to ignition interlock devices."

This bill would provide the court with additional power to require the defendant to install an ignition interlock device. HB 2 does not make installation of the device mandatory. It would be up to the judge to decide when he/she feels this device should be installed.

SEC 12.55.102 (HB 2, Line 15, Page 2)

"The court may order as a condition of probation that a defendant convicted of an offense involving the use, consumption, or possession of an alcoholic beverage may not operate a motor vehicle during the period of probation unless the vehicle is equipped with a properly functioning, monitored, and maintained ignition interlock device."

House Bill 26 - "An act relating to motor vehicle forfeiture

HB 26 would require forfeiture of the motor vehicle used in commission of the offense upon a third DWI conviction. Currently under HB 26 this forfeiture would be mandatory upon the third conviction.

HB 26 does not change any of the existing penalties for third time offenders. This vehicle forfeiture would be in addition to the current penalties - 30 days in jail, $1,000 fine and 10 year loss of license."

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 53
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: An Act relating to the privilege to drive . . . .
Sponsor: Rep. Ulmer
Requestor: House Trans.

Agency Affected: Public Safety
BRU: Motor Vehicles
Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

It is anticipated there will be a slight increase in the number of requests for limited licenses. This will be handled by the Driver Improvement office with current staff.

1/13/89

Prepared by: Bill Brown
Division: Motor Vehicles
Phone: 465-4335
Date: 01/13/89

Approved by Commissioner: D.A.H. for Arthur English
Agency: Department of Public Safety
Date: 1-13-89

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : HB 53
PUBLISH DATE : _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title : An Act relating to the privilege to drive
Sponsor : Rep. Ulmer
Requestor : House Transportation

Agency Affected : Corrections
BRU : _____
Components : _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached

Bette Cato

Prepared by : Representative Bette Cato
Division : Chairman. House Transportation Committee
Phone : 465-4858
Date : 1/16/89

Approved by Commissioner : Susan E. Knighton
Agency : Department of Corrections
Date : 1/16/89

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

page ____ of ____

1988 Supplemental

Chapter 15. Drivers' Licenses.

Article
1. Issuance, Expiration and Renewal of Licenses (§§ 28.15.031 — 28.15.071, 28.15.101)
2. Cancellation, Suspension, Revocation or Limitation of Drivers' Licenses (§§ 28.15.171, 28.15.185, 28.15.191)
3. Point System (§§ 28.15.221, 28.15.231)
4. Fees (§ 28.15.271)

Article 1. Issuance, Expiration and Renewal of Licenses.

Section
31. Persons not to be licensed
41. Classification of drivers' licenses
46. Licensing of school bus drivers
51. Instruction permit, temporary driver's license and special driver's permit
61. Application for driver's license or instruction permit; notice of anatomical gift procedure
71. Application of minors
101. Expiration and renewal of driver's license

Sec. 28.15.011. Drivers must be licensed.

NOTES TO DECISIONS

Subsection (a) construed. — The provisions of subsection (a) constitute a broad statement of the legislature's intent, in enacting the motor vehicle code, to adopt a statutory scheme that deals with the licensing of Alaska drivers in a comprehensive and uniform manner; this subsection is not a legislative commitment to the philosophical concept of an innate privilege to drive. Roberts v. State, Ct. App. Op. No. 870 (File No. A-342), 700 P.2d 815 (1985).

Driver's license is valuable property interest which may not be taken without due process of law. Webb v. State, Sup. Ct. Op. No. 3338 (File No. S-1714), P.2d (1988).

An airboat is not a motor vehicle for which a driver's license is required. State v. Stagno, Ct. App. Op. No. 725 (File No. A-1585), P.2d (1987).

Cited in Caulkins v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3233 (File No. S-1586), 743 P.2d 366 (1987).

Sec. 28.15.031. Persons not to be licensed. (a) The department may not issue a driver's license to a person who is under the age of 16 years, except that the department may issue a permit under AS 28.15.051 or a restricted license under AS 28.15.121.

(b) The department may not issue an original or duplicate driver's license to, nor renew or reinstate the driver's license of, a person

(1) whose license is suspended or revoked, except as otherwise provided in this chapter;

(2) who fails to appear in court for the adjudication of a certain vehicle, driver or traffic offense when the person's appearance is required by statute, regulation or court rule;

(3) who is an habitual user of alcohol or another drug to such a degree that the person is incapable of safely driving a motor vehicle;

(4) *[Repealed, § 4 ch 42 SLA 1988.]*

(5) when the department, based upon medical evidence, has determined that because of the person's physical or mental disability the person is not able to drive a motor vehicle safely;

(6) who is unable to understand official traffic control devices as displayed in this state or who does not have a fair knowledge of traffic laws and regulations, as demonstrated by an examination;

(7) who has knowingly made a false statement in the person's application for a license or has committed fraud in connection with the person's application for, or in obtaining or attempting to obtain, a license, or who has not applied under oath on the form provided for the purpose of obtaining or attempting to obtain a license or permit; or

(8) who is required under AS 28.20 to furnish proof of financial responsibility and who has not done so. (§ 19 ch 178 SLA 1978; am § 4 ch 42 SLA 1988)

Effect of amendments. — The 1988 amendment repealed former subsection (b)(4), relating to persons with mental disabilities or diseases.

Sec. 28.15.041. Classification of drivers' licenses. (a) The commissioner shall provide by regulation for the classification of drivers' licenses. The regulations shall specify license classifications which are reasonably necessary for the safe operation of the various types, sizes and combinations of motor vehicles. The regulations shall also establish medical standards, standards of driving conduct and proficiency, and other standards governing the issuance, renewal, or denial of these licenses. The department may examine each applicant to determine the applicant's qualifications according to the class of license applied for, and upon issuing a driver's license the department shall indicate on the license the classification for which an applicant for a license has qualified by examination. The regulations and any subsequent modifications under this section become effective only if approved by a concurrent resolution adopted by a majority vote of each house of the legislature.

(b) A person may not drive a motor vehicle when in use for the transportation of persons for compensation until the person has applied for and has been issued a license for that purpose under (a) of this section. The department may not issue a license under this subsection unless the applicant is at least 19 years of age, has had at least one year of driving experience, and the department is satisfied as to the applicant's good character, competence and fitness to be licensed; nor may the department issue the license until proper application has been made and all required driving, written, and physical examinations have been successfully completed. A license issued under this subsection expires on September 1 of the year following issuance. Application for renewal may be made by submitting to the department the results of a current physical examination and paying the required fee.

(c) A person may not drive a commercial motor vehicle until the person applies for and is issued a license for that purpose under (a) of this section. The department may not issue a license under this subsection unless the applicant is at least 19 years of age, has held a valid driver's license at least one year, and has successfully completed all required driving tests and written and physical examinations. In this subsection, "commercial motor vehicle" has the meaning given in AS 28.32.900. (§ 19 ch 178 SLA 1978; am § 2 ch 104 SLA 1985; am § 2 ch 19 SLA 1986)

Effect of amendments. — The 1985 amendment added subsection (c).

The 1986 amendment deleted "school bus transporting school children, or a bus transporting school-age children or another" preceding "motor vehicle" in the first sentence of subsection (b).

NOTES TO DECISIONS

The regulations established by the commissioner do not provide for a driver's license for an airboat. State v. Stagno, Ct. App. Op. No. 726 (File No. A-1585), P.2d (1987).

Sec. 28.15.046. Licensing of school bus drivers. (a) In addition to the requirements of AS 28.15.041(a), a person may not drive a school bus transporting school children to or from a public school to enable them to participate in class or a school activity, or a bus transporting school children to or from a public school for classroom studies until the person has applied for and has been issued a license for that purpose under this section. This subsection does not apply to a person or motor vehicle exempted under regulations adopted by the commissioner. In this subsection "classroom studies" means curriculum studies that take place in a public school building.

(b) The department may not issue a license under this section unless the applicant

(1) is at least 19 years of age;

(2) has had a license to operate a motor vehicle at least one year before the date of application;

(3) has successfully completed all required driving, written, and physical examinations;

(4) has submitted information sufficient to complete a background check consisting of a fingerprint check of national criminal records and state criminal records of the state or states in which the applicant has resided for the past two years;

(5) has completed a state approved school bus driver training course established under AS 14.07.020(a)(14) or has for the previous two years been licensed by the state to operate a school bus.

(c) The department may not issue a license under this section to an applicant who has been convicted of any of the following offenses within 20 years of the time of application:

(1) sexual abuse of a minor in any degree (AS 11.41.434 — 11.41.440);

(2) sexual assault in any degree (AS 11.41.410 or 11.41.420);

(3) incest (AS 11.41.450);

(4) unlawful exploitation of a minor (AS 11.41.455);

(5) contributing to the delinquency of a minor (AS 11.51.130);

(6) a felony involving possession of a controlled or imitation controlled substance (AS 11.71 or AS 11.73);

(7) a felony or misdemeanor involving distribution of a controlled or imitation controlled substance (AS 11.71 or AS 11.73);

(8) promoting prostitution in the first or second degree (AS 11.66.110 or 11.66.120).

(d) The department may not issue a license to an applicant who has been convicted of driving while intoxicated (AS 28.35.030) within two

years of the time of application or to an applicant who has two or more convictions for driving while intoxicated within 10 years of the time of application.

(e) For purposes of determining whether an applicant has been convicted of an offense listed under (c) or (d) of this section, a conviction under prior state law or in another jurisdiction of an offense having elements substantially similar to those of the offenses listed in (c) or (d) of this section is considered a conviction.

(f) Costs of conducting the background check required under (b)(4) of this section shall be paid by the applicant. A license issued under this section expires on September 1 of the year following issuance. Application for renewal may be made by submitting to the department the results of a current physical examination and paying the required fee. (§ 3 ch 19 SLA 1986; am § 1 ch 13 SLA 1988)

Effect of amendments. — The 1988 amendment, effective March 27, 1988, in subsection (a), added the last two sentences and rewrote the first sentence.

Sec. 28.15.051. Instruction permit, temporary driver's license and special driver's permit. (a) Except as provided in (b) of this section, a person who is at least 14 years of age may apply to the department for an instruction permit. The department may, after the applicant has successfully passed all parts of the examination under AS 28.15.081 other than the driving test, issue to the applicant an instruction permit. The permit allows a person, while having the permit in the person's immediate possession, to drive a specified type or class of motor vehicle on a highway or vehicular way or area for a period not to exceed two years. The permittee must be accompanied by a person at least 19 years of age who has been licensed at least one year to drive the type or class of vehicle being used, who is capable of exercising control over the vehicle and who occupies a seat beside the driver, or who accompanies and immediately supervises the driver when the permittee drives a motorcycle. An instruction permit may be renewed.

(b) The department, upon receiving proper application, may issue a restricted instruction permit effective for a school year or for a more restricted period to an applicant who is at least 14 years of age and who is enrolled in a driver education program which includes practice driving and is approved by the department. The restricted instruction permit allows the permittee, when the permittee has the permit in the permittee's immediate possession, to drive a specified type or class of motor vehicle; however, an approved instructor must occupy a seat beside the permittee or, if the permittee is driving a motorcycle, the permittee must be accompanied by and under the immediate supervision of an approved instructor.

(c) The department may issue a temporary driver's license to an applicant for a driver's license permitting the applicant to drive a

specified type or class of motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's eligibility to receive a driver's license. The temporary license must be in the applicant's immediate possession while the applicant is driving a motor vehicle. A temporary driver's license is invalid when the applicant's license has been issued or has been refused for good cause.

(d) The department may issue a special driver's permit to a person who is at least 14 years of age with the consent of the person's parents, guardians, or spouse who is 18 years of age or older, for the purpose of driving a motor-driven cycle. This permit may be issued upon application and successful completion of all prescribed tests and fees, and is valid for the same period of time as a driver's license. The permit is not valid in a municipality that by ordinance prohibits the driving of a motor-driven cycle by a person under the age of 16 years; a borough may adopt the ordinance on a nonareawide basis only, unless the power to adopt it on an areawide basis is acquired under AS 29.35.300 — 29.35.330 or former AS 29.33.250 — 29.33.290.

(e) Notwithstanding other provisions of this chapter, the department may issue a special driver's license to a person who is under the age of 16 years because of the circumstances of hardship. Special licenses to be issued because of hardship shall be determined on an individual basis by the commissioner. (§ 19 ch 178 SLA 1978; am § 50 ch 74 SLA 1985; am § 10 ch 60 SLA 1986)

Effect of amendments. — The 1985 amendment in subsection (d) substituted "that" for "which" preceding "by ordinance" and inserted "AS 29.35.300 — 29.35.330 or former" in the last sentence.

The 1986 amendment in the first sentence of subsection (d) substituted a comma for "or" following "parents" and inserted ", or spouse who is 18 years of age or older."

Sec. 28.15.061. Application for driver's license or instruction permit; notice of anatomical gift procedure. (a) Application for an instruction permit or for a driver's license must be made on a form furnished by the department and must be accompanied by the fee required under AS 28.15.271.

(b) An application under (a) of this section shall

(1) contain the applicant's full name, date and place of birth, sex, and mailing and residence addresses;

(2) state whether the applicant has been previously licensed as a driver and, if so, when and by what jurisdiction;

(3) state whether any previous driver's license issued to the applicant has ever been suspended or revoked or whether an application for a driver's license has ever been refused and, if so, the date of and reason for the suspension, revocation, or refusal; and

(4) contain other information which the department may reasonably require to determine the applicant's identity, competency, and eligibility.

(c) When an application is received from a person previously licensed in another jurisdiction, the department may request a copy of the applicant's driving record from the other jurisdiction. Upon receipt of that record by the department, it becomes a part of the driver's record in this state with the same effect as if the record originated in this state.

(d) An employee of the department who processes a driver's license application, other than an application received by mail, shall ask the applicant orally whether the applicant wishes to execute an anatomical gift. The department shall make known to all applicants the procedure for executing a gift under AS 13.50 (Uniform Anatomical Gifts Act) by displaying posters in the offices in which applications are taken, by providing a brochure or other written information to each person who applies in person or by mail, and, if requested, by providing oral advice.

(e) At the time of application for a driver's license or an instruction permit, or renewal of a driver's license or an instruction permit, the department shall provide the applicant written information explaining the state's financial responsibility law, the mandatory automobile insurance requirement, and potential penalties for failure to comply with the law. (§ 19 ch 178 SLA 1978; am §§ 5, 17 ch 70 SLA 1984; am § 9 ch 43 SLA 1988)

Effect of amendments. — The 1988 amendment repealed and reenacted subsection (d), which formerly related to the same subject matter.

Sec. 28.15.071. Application of minors. (a) The application of a person under the age of 18 years for an instruction permit or driver's license must be signed by the father, mother, guardian, or spouse who is 18 years of age or older, or if there is no parent, guardian, or spouse, then by another responsible adult who is willing to assume the obligation imposed under this section upon a person signing the application. The application must be signed and verified before a person authorized to administer oaths, or be signed in the presence of an authorized representative of the department.

(b) Any negligence or wilful misconduct of a person under the age of 18 years when driving a motor vehicle in this state is imputed to the person who signed the application of the person for a permit or license, and that person is jointly and severally liable for damage caused by the negligence or wilful misconduct of the person under the age of 18 years, except as provided in (c) of this section.

(c) If a minor deposits, or there is deposited on behalf of the minor, proof of financial responsibility for the minor's driving of a motor

vehicle, in the form and amount required in AS 28.20, then the department may accept the application of the minor signed as required under (a) of this section, and, while proof of financial responsibility is maintained, the parent, guardian, spouse, or other responsible adult is not subject to the liability imposed under (b) of this section.

(d) A person who signs the application of a minor for a driver's license may file with the department a verified written request that the license of the minor be canceled. When the license is canceled, the person who signed the application is relieved from liability under (b) of this section. (§ 19 ch 178 SLA 1978; am §§ 11, 12 ch 60 SLA 1986)

Effect of amendments. — The 1986 amendment in the first sentence of subsection (a) inserted "or spouse who is 18 years of age or older," and ", or spouse," and made related word and punctuation changes and in subsection (c) inserted ", spouse."

Sec. 28.15.101. Expiration and renewal of driver's license. (a) Except as otherwise provided in this chapter, a driver's license expires on the licensee's birthday in the fifth year following issuance of the license. A license may be renewed within one year of its expiration upon proper application, payment of the required fee, and except when a license is renewed under (c) of this section, successful completion of a test of the licensee's eyesight.

(b) The department may defer the expiration of the driver's license of a person who is outside the state under terms and conditions which the department shall prescribe by regulation.

(c) A driver's license may be renewed by mail if the licensee complies with (a) of this section, except that a license may not be renewed by mail if

(1) the applicant's license, within the previous five years, has been revoked by a court after conviction for an offense under AS 28.15.181(a) or another law or ordinance with substantially similar elements;

(2) the applicant's license, within the previous five years, has been suspended, revoked, or denied by the department under AS 28.15.165 or 28.15.251;

(3) the applicant, within the previous five years, has been convicted of a moving traffic violation;

(4) the most recent renewal of the applicant's license was by mail; or

(5) the applicant is 69 years of age or older on the expiration date of the driver's license being renewed. (§ 19 ch 178 SLA 1978; am §§ 1, 2 ch 32 SLA 1988)

Effect of amendments. — The 1988 amendment, effective January 1, 1989, repealed and reenacted subsection (a), formerly relating to the same subject matter, and added subsection (c).

Sec. 28.15.131. License to be carried and exhibited on demand.

NOTES TO DECISIONS

Cited in Reuecker v. State, Ct. App. Op. No. 636 (File No. A-1248), P.2d (1988).

Article 2. Cancellation, Suspension, Revocation or Limitation of Drivers' Licenses.

Section
171. Suspending privileges of a person licensed in another jurisdiction, reporting convictions, suspensions, and revocations
186. Court revocation of a minor's license to drive
191. Court reports to department

Sec. 28.15.165. Administrative revocations resulting from chemical sobriety tests and refusals to submit to tests.

NOTES TO DECISIONS

"Motor vehicle for which driver's license is required." — When viewed in context, the phrase "a motor vehicle for which a driver's license is required" refers to a type of motor vehicle, rather than to the vehicle's location. Caulkins v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3233 (File No. S-1586), 743 P.2d 366 (1987).

Revocation for operating in parking lot. — The Department of Public Safety may revoke the driver's license of an intoxicated person who operates a motor vehicle in a privately owned parking lot held open to the public. Caulkins v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3233 (File No. S-1586), 743 P.2d 366 (1987).

Admission of suppressed test results held improper. — Because no breath sample was preserved and no second test was given to the defendant, the hearing officer's decision to admit breathalyzer test results which had been suppressed on due process grounds in a criminal prosecution was improper in a subsequent license revocation hearing. Briggs v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3?61 (File No. S-1243), P.2d (1987).

Applied in Champion v. Department of Pub. Safety, Sup. Ct. Op. No. 3074 (File No. S-868), P.2d (1986).

Quoted in Barcott v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3212 (File No. S-1692), 741 P.2d 226 (1987); Tulowetzke v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3234 (File No. S-1754), 743 P.2d 368 (1987); State, Dep't of Pub. Safety v. Conley, Sup. Ct. Op. No. 3297 (File No. S-1791), P.2d (1988).

Sec. 28.15.166. Administrative review of revocation.

NOTES TO DECISIONS

Due process considerations. — Since the same procedural safeguards apply in civil driver's license revocation proceedings for driving while intoxicated as apply in criminal prosecutions for that offense, due process requires consideration of the margin of error inherent in the breath testing procedure used. Barcott v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3212 (File No. S-1692), 741 P.2d 226 (1987).

Applied in Champion v. Department of Pub. Safety, Sup. Ct. Op. No. 3074 (File No. S-868), P.2d (1986); Barcott v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3212 (File No. S-1692), 741 P.2d 226 (1987).

Quoted in State, Dep't of Pub. Safety v. Conley, Sup. Ct. Op. No. 3297 (File No. S-1791), P.2d (1988).

Cited in Tulowetzke v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3234 (File No. S-1754), 743 P.2d 368 (1987).

Sec. 28.15.171. Suspending privileges of a person licensed in another jurisdiction; reporting convictions, suspensions, and revocations. (a) The privilege of driving a motor vehicle on a highway or vehicular way or area of this state given to a person licensed in another jurisdiction is subject to suspension, revocation, or limitation by the department or a court in the same manner and for the same reasons as a driver's license issued under this chapter.

(b) The department may, upon receiving the record of a conviction of a person licensed in another jurisdiction for a vehicle, driver, or traffic offense in this state, or upon suspending or revoking the person's driving privilege, forward a copy of the record or suspension or revocation to the motor vehicle administrator for the jurisdiction in which the person convicted is licensed. (§ 19 ch 178 SLA 1978; am § 13 ch 60 SLA 1986)

Effect of amendments. — The 1986 amendment in subsection (a) substituted a comma for "or" following "suspension" and inserted ", or limitation" and "or a court."

Sec. 28.15.181. Court suspensions, revocations, and limitations.

NOTES TO DECISIONS

Magistrate erred in concluding subsection (c)(3) applied to a defendant who at the time of his two current offenses had not been convicted of more than one driving while intoxicated offense. Thomas v. State, Ct. App. Op. No. 433 (File No. A-553), 694 P.2d 789 (1985).

Revocation beyond life of license. — Once a license is validly revoked, the revocation remains in effect for the full period ordered, regardless of whether the originally valid license might otherwise have expired at some point during the period of revocation. Fielding v. State, Ct. App. Op. No. 697 (File No. A-1664), P.2d (1987).

Consecutive periods of revocation. — The DWI provision does not expressly require consecutive periods of revocation; however, there is no indication that the legislature intended different treatment under this section than that which it clearly provided for under AS 28.15.291, and there is no reason to distinguish between revocations under these two statutes. Fielding v. State, Ct. App. Op. No. 697 (File No. A-1664), P.2d (1987).

Presumptive sentencing statutes as aid in interpreting subsection (c). — See Tulowetzke v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3234 (File No. S-1754), 743 P.2d 368 (1987).

Prior convictions entered simultaneously. — All prior driving while intoxicated convictions must be counted separately for purposes of driver's license revocation following a subsequent conviction, regardless of whether the prior convictions were entered simultaneously. Tulowetzke v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3234 (File No. S-1754), 743 P.2d 368 (1987).

Violation of limited license after conviction for driving while intoxicated. — A person who drives in violation of a limited license that is issued following a conviction for driving while intoxicated (DWI) is subject to a minimum jail term of ten days. State v. Robertson, Ct. App. Op. No. 778 (File No. A-2330), P.2d (1988).

Applied in State v. Stagno, Ct. App. Op. No. 725 (File No. A-1585), P.2d (1987).

Cited in Caulkins v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3233 (File No. S-1586), 743 P.2d 366 (1987); State v. Waalkes, Ct. App. Op. No. 782 (File No. A-2142), P.2d (1988); State, Dep't of Pub. Safety v. Conley, Sup. Ct. Op. No. 3297 (File No. S-1791), P.2d (1988).

Sec. 28.15.185. Court revocation of a minor's license to drive. (a) A person who is at least 13 years of age but not older than 17 years of age who is adjudicated by a juvenile court of misconduct involving a controlled substance under AS 11.71 or possession or consumption of alcohol under AS 04.16.050 is subject to revocation of the person's driver's license under (b) of this section.

(b) The court shall impose the revocation for an offense described in (a) of this section as follows:

(1) for a first conviction or adjudication, the revocation may be for a period not to exceed 90 days;

(2) for a second or subsequent conviction or adjudication, the revocation may be for a period not to exceed one year.

(c) Upon conviction or adjudication of an offense listed in (a) of this section the court may, upon petition of the person, review the revocation and may restore the driver's license, except a court may not restore the driver's license until

(1) at least one-half of the period of revocation imposed under this section has expired; and

(2) the person has taken and successfully completed a state approved program of drug rehabilitation if convicted of misconduct involving a controlled substance under AS 11.71, or alcohol rehabilitation if convicted of possession or consumption of alcohol under AS 04.16.050; this paragraph does not apply to a person who resides in an area that does not offer a state approved drug or alcohol rehabilitation program or a person that the court determines does not need alcohol or drug rehabilitation.

(d) Notwithstanding the provisions of AS 28.20.240 and 28.20.250, upon conviction of an offense specified in (a) of this section, the department may not require proof of financial responsibility before restoring or issuing the person's driver's license. (§ 1 ch 130 SLA 1988)

Effective dates. — Section 5, ch. 130, SLA 1988, provides "This Act takes effect September 1, 1988."

Sec. 28.15.191. Court reports to department. (a) A court which convicts a person of an offense under this title or a regulation adopted under this title, or another law or regulation of this state, or a municipal ordinance which regulates the driving of vehicles, shall forward a record of the conviction to the department. A conviction of a standing or parking offense need not be reported.

(b) A conviction on a plea of nolo contendere accepted by the court or a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which has not been vacated is equivalent to a conviction for purposes of this chapter.

(c) A court which suspends, revokes, or limits a driver's license shall require the surrender of the license, and shall immediately forward it to the department with the record of conviction and notification of the effective date of the suspension, revocation or limitation as determined under AS 28.15.211(b).

(d) A court which limits a driver's license, in addition to the actions required under (c) of this section, shall issue to the licensee a form specifying the court's limitations imposed upon a person's driver's license, and shall immediately forward to the department a copy of the limitations imposed upon the license.

(e) A court shall report to the department every change of name authorized by it, and the name, address, age, description, and driver's license number if available, of every person adjudged to be afflicted with or suffering from a mental disability or disease, or to be an habitual user of alcohol or another drug. The department shall prescribe and furnish the forms for making these reports.

(f) A municipality that accepts a fine payment after a plea of no contest to a charge of a violation of a municipal ordinance for which a scheduled fine has been established shall forward a record of the payment to the department; however, a conviction for a standing or parking offense need not be reported. (§ 19 ch 178 SLA 1978; am § 9 ch 76 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, added subsection (f).

Sec. 28.15.211. Periods of limitation, suspension or revocation; opportunity for hearing and surrender of license.

NOTES TO DECISIONS

Cited in State v. Robertson, Ct. App. Op. No. 778 (File No. A-2330), P.2d (1988).

Article 3. Point System.

Section
221 Point system
231 Assessment of points, driver improvement interview

Sec. 28.15.221. Point system. (a) For the purpose of identifying habitually reckless or negligent drivers and habitual or frequent violators of traffic laws, the commissioner shall adopt regulations establishing a uniform system for the suspension, revocation, limitation or denial of a driver's license or driving privilege by assigning demerit points for convictions for violations of traffic laws which are required to be reported to the department under AS 28.15.191 and AS 28.37.130.

(b) The regulations adopted under (a) of this section shall include a designated level of point accumulation which identifies drivers who are habitually reckless or negligent or who are habitual or frequent violators of traffic laws, so as to show a disrespect for traffic laws and a disregard for the safety of other persons. In formulating the point system authorized by this section, the commissioner shall, in the interest of interstate uniformity, provide for suspension, revocation or denial of a driver's license or privilege for an accumulation of 12 or more points as a result of offenses committed during any consecutive 12-month period or 18 or more points as a result of offenses committed during any 24-month period. (§ 19 ch 178 SLA 1978; am § 14 ch 60 SLA 1986)

Effect of amendments. — The 1986 amendment added "and AS 28.37.130" at the end of subsection (a).

NOTES TO DECISIONS

Cited in Gregory v. State, Ct. App. Op. No. 614 (File No. A-1102), 717 P.2d 428 (1986).

Sec. 28.15.231. Assessment of points, driver improvement interview. (a) Notice of each assessment of points may be given, but notice shall be given when the point accumulation reaches 50 per cent of the number at which suspension, revocation or denial is required under AS 28.15.221(b), and a driver who has reached that level of point accumulation shall be identified as a problem driver. The department may require a problem driver to appear for a driver improvement interview. The purpose of that interview is to assist the person who is identified as a problem driver in overcoming substandard driving habits. An interview under this subsection is to be conducted in an informal manner. A driver must comply with any reasonable recommendations designed to improve the driver's driving abilities which are made to the driver during the interview.

(b) Points may not be assessed for violating a provision of a state law or regulation or a municipal ordinance regulating standing, parking, equipment, size or weight; nor may points be assessed for violations by pedestrians, passengers or bicycle riders, or for violations of provisions relating to the preservation of the condition of traffic-control devices on the highways. Points shall be assessed for violations of oversize or overweight permits relating only to restrictions upon speed or hours of operation.

(c) If a licensee is convicted of two or more traffic violations committed on a single occasion, the licensee shall be assessed points for one offense only, and if the offenses involved have different point values, the licensee shall be assessed for the offense having the greater point value.

(d) The time periods provided for in this section for the accumulation of points shall be based upon the date of violation, but points may not be assessed until after conviction, either upon a plea of guilty, nolo contendere, or a forfeiture of bail, or as a result of a trial, for violation of the traffic laws.

(e) The points assessed and the application of them against the licensee by the department under this section are in addition to, and not in substitution for, other provisions of this chapter and are not a substitute for any penalty imposed by a court.

(f) The notice required under (a) of this section may be given by first class mail. (§ 19 ch 178 SLA 1978; am § 15 ch 60 SLA 1986)

Effect of amendments. — The 1986 amendment added subsection (f).

Article 4. Fees.

Section
271 Fees

Sec. 28.15.271. Fees. (a) The fees for drivers' licenses and permits, including but not limited to renewals, are as follows:

(1) all classes of drivers' licenses $10;
(2) motor-driven cycles ..... $ 3;
(3) instruction permit ..... $ 3;
(4) duplicate of driver's license or instruction permit ..... $ 3;
(5) temporary license and renewal of permit ..... $ 3;
(6) school bus driver's permit ..... $ 3.

(b) In addition to the fees under (a) of this section, a person who renews a driver's license by mail shall be charged a fee of $1. (§ 19 ch 178 SLA 1978; am § 16 ch 60 SLA 1986; am § 3 ch 32 SLA 1988)

Effect of amendments. — The 1988 amendment, effective January 1, 1989, added subsection (b).

Article 5. Driver License Violations.

Sec. 28.15.291. Driving while license canceled, suspended, revoked or in violation of limitation.

NOTES TO DECISIONS

Mandatory minimum sentencing provisions held constitutional. — See Resecker v. State, Ct. App. Op. No. 636 (File No. A-1248), P.2d (1986).

Required mental state. — Proof of criminal negligence is the required mental state to show a violation of AS 28.15.291. Gregory v. State, Ct. App. Op. No. 614 (File No. A-1102), 717 P.2d 428 (1986).

Probable cause to arrest for driving with revoked license. — See Ford v. State, Ct. App. Op. No. 474 (File No. A-496), 699 P.2d 889 (1985).

Prerequisite to suspension. — A driver's license or privilege to drive cannot properly be suspended unless the driver was in fact licensed or otherwise actually privileged to drive a motor vehicle within the state. Roberts v. State, Ct. App. Op. No. 478 (File No. A-342), 700 P.2d 815 (1985).

Revocation beyond life of license. — Once a license is validly revoked, the revocation remains in effect for the full period ordered, regardless of whether the originally valid license might otherwise have expired at some point during the period of revocation. Fielding v. State, Ct. App. Op. No. 697 (File No. A-1664), P.2d (1987).

By prescribing a one-year period of revocation upon conviction of driving while his license was revoked (DWLR), and by expressly requiring that period to be added to the period already in existence at the time of the offense, this section makes clear the legislature's intent to treat the added period as an extension of original revocation. In effect, then, the additional period of revocation relates back to the original revocation; as long as the original revocation will be valid, even if, when it is ordered, the defendant technically no longer has a license to revoke. Fielding v. State, Ct. App. Op. No. 682 (File No. A-1664), P.2d (1987).

Conviction affirmed though notice of suspension of license not received. — Where the appellant had been furnished with written notice of the financial responsibility law as required by AS 28.20.050 and had expressly been told that his license would be suspended if he did not comply with the financial responsibility statute, his conviction under this section was affirmed even though he never received formal notice of suspension of his license, when the post office made three unsuccessful attempts at delivery to the appellant's address of record. Alexander v. State, Ct. App. Op. No. 573 (File No. A-696), 712 P.2d 416 (1986).

Conviction and sentence affirmed. — See Resecker v. State, Ct. App. Op. No. 636 (File No. A-1248), P.2d (1986).

Minimum jail term for violation after conviction for driving while intoxicated. — A person who drives in violation of a limited license that is issued following a conviction for driving while intoxicated (DWI) is subject to a minimum jail term of ten days. State v. Robertson, Ct. App. Op. No. 778 (File No. A-2330), P.2d (1988).

Conviction reversed. — The fact that a defendant's license had been suspended for driving while intoxicated did not have probative value in evaluating the defendant's conduct at the time of arrest for violating this section; and the trial judge abused his discretion in admitting the evidence of two prior convictions for driving while intoxicated because the jury might have been prejudiced. It could not be said that the error was harmless, so the conviction was reversed. Nelson v. State, Ct. App. Op. No. 427 (File No. A-264), 691 P.2d 1056 (1984).

Conviction and sentence reversed since "vehicular way or area," an element of subsection (a), does not include a privately owned parking lot. Conner v. State, Ct. App. Op. No. 451 (File No. A-574), 696 P.2d 680 (1985).

Cited in Witt v. State, Ct. App. Op. No. 433 (File No. A-482), 692 P.2d 976 (1984); Dunlop v. State, Sup. Ct. Op. No. 3068 (File Nos. S-923, S-1163), 721 P.2d 604 (1986); Yancy v. State, Ct. App. Op. No. 687 (File Nos. A-1392, A-1413), P.2d (1987).

Chapter 15. Drivers' Licenses.

Article
1. Issuance, Expiration and Renewal of Licenses (§§ 28.15.011 — 28.15.151)
2. Cancellation, Suspension, Revocation or Limitation of Drivers' Licenses (§§ 28.15.161 — 28.15.211)
3. Point System (§§ 28.15.221 — 28.15.261)
4. Fees (§ 28.15.271)
5. Driver License Violations (§§ 28.15.281 — 28.15.291)

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 96 et seq.

60 C.J.S., Motor Vehicles, §§ 146 to 164.50.

Article 1. Issuance, Expiration and Renewal of Licenses.

Section
11. Drivers must be licensed
21. Persons exempt from driver licensing
31. Persons not to be licensed
41. Classification of drivers' licenses
51. Instruction permit, temporary driver's license and special driver's permit
61. Application for driver's license or instruction permit; notice of anatomical gift procedure
71. Application of minors
81. Examination of applicants
91. Department may require re-examination
101. Expiration and renewal of driver's license; re-examination
111. Licenses issued to drivers; anatomical gift document
121. Restricted driver's license
131. License to be carried and exhibited on demand
141. Duplicate driver's license
151. Records to be kept by the department

Sec. 28.15.010. License required. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.011. Drivers must be licensed. (a) A person may not be denied the privilege to drive a motor vehicle upon a highway in this state, except as prescribed by law.

(b) Every person exercising the person's privilege to drive, or exercising any degree of physical control of a motor vehicle upon a highway, vehicular way or area, or other public property in this state, is required to have in the possession of the person a valid Alaska driver's license issued under the provisions of this chapter for the type or class of vehicle driven, unless expressly exempted by law from this requirement.

(c) A person licensed under the provisions of this chapter may exercise in this state the privilege to drive a motor vehicle and is subject to the restrictions prescribed by this chapter. A municipality may not require a person to obtain any other driver's license to drive or operate a motor vehicle in this state. (§ 19 ch 178 SLA 1978)

NOTES TO DECISIONS

Maximum penalties for subsection (b) violations. — Although a violation of subsection (b) carries no mandatory minimum sentence equivalent to the 10-day jail sentence and one-year license revocation of AS 28.15.291(a), the available maximum penalties under AS 28.35.230(a) and (b) are the same. Francis v. Municipality of Anchorage, Ct. App. Op. No. 70 (File No. 5659), 641 P.2d 226 (1982).

Cited in Lowry v. State, Ct. App. Op. No. 181 (File Nos. 6328, 6434), 665 P.2d 780 (1982).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 97, 98.

60 C.J.S., Motor Vehicles, §§ 147 to 149.

Civil rights and liabilities as affected by failure to comply with regulations as to licensing of operator, 16 ALR 1108, 35 ALR 62, 38 ALR 1038, 43 ALR 1153, 54 ALR 374, 58 ALR 532, 61 ALR 1190, 78 ALR 1028, 87 ALR 1469, 111 ALR 1258, 163 ALR 1375.

Validity of statute relating to granting or revocation of license or permit to operate automobile, 71 ALR 616, 108 ALR 1162, 125 ALR 1459.

Lack of automobile operator's license as evidence of negligence, 73 ALR 162, 29 ALR2d 963.

Validity and construction of statute making it a criminal offense for the operator of a motor vehicle not to carry or display his operator's license, 6 ALR3d 506.

Secs. 28.15.015, 28.15.020. Medical exams; exemptions. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.021. Persons exempt from driver licensing. The following persons are exempt from driver licensing under this chapter:

(1) an employee of the United States government while operating a motor vehicle owned by or leased to the United States government and being operated on official business, unless the employee is required by the United States government or an agency of that government to have a state driver's license;

(2) a nonresident who is at least 16 years of age and who has a valid driver's license issued by another jurisdiction; however, an Alaska driver's license must be obtained by the end of a 90-day period after entry into the state;

(3) a member of the armed forces of the United States who has valid driver's license issued by another jurisdiction when the permanent residence of the member is maintained in that jurisdiction;

(4) a person when driving an implement of husbandry, as defined by regulation, which is only temporarily driven or moved on a highway. (§ 19 ch 178 SLA 1978)

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 104 to 108.

60 C.J.S., Motor Vehicles, §§ 150 to 153.

Constitutionality and construction of statutes with respect to nonresident motor vehicle operators' or drivers' licenses, 82 ALR 1392.

Sec. 28.15.030. Persons not to be licensed. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.031. Persons not to be licensed. (a) The department may not issue a driver's license to a person who is under the age of 16 years, except that the department may issue a permit under AS 28.15.051 or a restricted license under AS 28.15.121.

(b) The department may not issue an original or duplicate driver's license to, nor renew or reinstate the driver's license of, a person

(1) whose license is suspended or revoked, except as otherwise provided in this chapter;

(2) who fails to appear in court for the adjudication of a certain vehicle, driver or traffic offense when the person's appearance is required by statute, regulation or court rule;

(3) who is an habitual user of alcohol or another drug to such a degree that the person is incapable of safely driving a motor vehicle;

(4) who has previously been adjudged to be afflicted with, or suffering from, a mental disability or a disease and who has not, at the time of application for the license, been restored to competency by the methods provided by law;

(5) when the department, based upon medical evidence, has determined that because of the person's physical or mental disability the person is not able to drive a motor vehicle safely;

(6) who is unable to understand official traffic control devices as displayed in this state or who does not have a fair knowledge of traffic laws and regulations, as demonstrated by an examination;

(7) who has knowingly made a false statement in the person's application for a license or has committed fraud in connection with the person's application for, or in obtaining or attempting to obtain, a license, or who has not applied under oath on the form provided for the purpose of obtaining or attempting to obtain a license or permit; or

(8) who is required under AS 28.20 to furnish proof of financial responsibility and who has not done so. (§ 19 ch 178 SLA 1978)

NOTES TO DECISIONS

Stated in Commercial Fisheries Entry Comm'n v. Apokedak, Sup. Ct. Op. No. 2011 (File No. 4464), 606 P.2d 1255 (1980).

Collateral references. — 7A Am Jur 2d, Automobiles and Highway Traffic, §§ 108 to 111.

60 C.J.S., Motor Vehicles, §§ 154, 155.

Constitutionality of statute which makes proof of financial responsibility condition of granting, or of nonsuspension of, automobile registration license, or driver's license, 115 ALR 1376, 35 ALR2d 1011.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 ALR3d 452.

Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 ALR3d 475.

Sec. 28.15.040. Instruction permits and temporary licenses. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.041. Classification of drivers' licenses. (a) The commissioner shall provide by regulation for the classification of drivers' licenses. The regulations shall specify license classifications which are reasonably necessary for the safe operation of the various types, sizes and combinations of motor vehicles. The regulations shall also establish medical standards, standards of driving conduct and proficiency, and other standards governing the issuance, renewal, or denial of these licenses. The department may examine each applicant to determine the applicant's qualifications according to the class of license applied for, and upon issuing a driver's license the department shall indicate on the license the classification for which an applicant for a license has qualified by examination. The regulations and any subsequent modifications under this section become effective only if approved by a concurrent resolution adopted by a majority vote of each house of the legislature.

(b) A person may not drive a school bus transporting school children, or a bus transporting school-age children or another motor vehicle when in use for the transportation of persons for compensation until the person has applied for and has been issued a license for that purpose under (a) of this section. The department may not issue a license under this subsection unless the applicant is at least 19 years of age, has had at least one year of driving experience, and the department is satisfied as to the applicant's good character, competence and fitness to be licensed; nor may the department issue the license until proper application has been made and all required driving, written, and physical examinations have been successfully completed. A license issued under this subsection expires on September 1 of the year following issuance. Application for renewal may be made by submitting to the department the results of a current physical examination and paying the required fee. (§ 19 ch 178 SLA 1978)

Sec. 28.15.050. Applications. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.051. Instruction permit, temporary driver's license and special driver's permit. (a) Except as provided in (b) of this section, a person who is at least 14 years of age may apply to the department for an instruction permit. The department may, after the applicant has successfully passed all parts of the examination under AS 28.15.081 other than the driving test, issue to the applicant an instruction permit. The permit allows a person, while having the permit in the person's immediate possession, to drive a specified type

or class of motor vehicle on a highway or vehicular way or area for a period not to exceed two years. The permittee must be accompanied by a person at least 19 years of age who has been licensed at least one year to drive the type or class of vehicle being used, who is capable of exercising control over the vehicle and who occupies a seat beside the driver, or who accompanies and immediately supervises the driver when the permittee drives a motorcycle. An instruction permit may be renewed.

(b) The department, upon receiving proper application, may issue a restricted instruction permit effective for a school year or for a more restricted period to an applicant who is at least 14 years of age and who is enrolled in a driver education program which includes practice driving and is approved by the department. The restricted instruction permit allows the permittee, when the permittee has the permit in the permittee's immediate possession, to drive a specified type or class of motor vehicle; however, an approved instructor must occupy a seat beside the permittee or, if the permittee is driving a motorcycle, the permittee must be accompanied by and under the immediate supervision of an approved instructor.

(c) The department may issue a temporary driver's license to an applicant for a driver's license permitting the applicant to drive a specified type or class of motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's eligibility to receive a driver's license. The temporary license must be in the applicant's immediate possession while the applicant is driving a motor vehicle. A temporary driver's license is invalid when the applicant's license has been issued or has been refused for good cause.

(d) The department may issue a special driver's permit to a person who is at least 14 years of age with the consent of the person's parents or guardians for the purpose of driving a motor-driven cycle. This permit may be issued upon application and successful completion of all prescribed tests and fees, and is valid for the same period of time as a driver's license. The permit is not valid in a municipality which by ordinance prohibits the driving of a motor-driven cycle by a person under the age of 16 years; a borough may adopt the ordinance on a nonareawide basis only, unless the power to adopt it on an areawide basis is acquired under AS 29.33.250 — 29.33.290.

(e) Notwithstanding other provisions of this chapter, the department may issue a special driver's license to a person who is under the age of 16 years because of the circumstances of hardship. Special licenses to be issued because of hardship shall be determined on an individual basis by the commissioner. (§ 19 ch 178 SLA 1978)

NOTES TO DECISIONS

Cited in Francis v. Municipality of Anchorage, Ct. App. Op. No. 70 (File No. 5659), 641 P.2d 226 (1982).

Collateral references. — 60 C.J.S., Motor Vehicles, § 155.

Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 ALR3d 475.

Sec. 28.15.060. Applications of minors. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.061. Application for driver's license or instruction permit; notice of anatomical gift procedure. (a) Application for an instruction permit or for a driver's license must be made on a form furnished by the department and must be accompanied by the fee required under AS 28.15.271.

(b) An application under (a) of this section shall

(1) contain the applicant's full name, date and place of birth, sex, and mailing and residence addresses;

(2) state whether the applicant has been previously licensed as a driver and, if so, when and by what jurisdiction;

(3) state whether any previous driver's license issued to the applicant has ever been suspended or revoked or whether an application for a driver's license has ever been refused and, if so, the date of and reason for the suspension, revocation, or refusal; and

(4) contain other information which the department may reasonably require to determine the applicant's identity, competency, and eligibility.

(c) When an application is received from a person previously licensed in another jurisdiction, the department may request a copy of the applicant's driving record from the other jurisdiction. Upon receipt of that record by the department, it becomes a part of the driver's record in this state with the same effect as if the record originated in this state.

(d) The department shall, by placement of posters and brochures in the office where the application is taken, make known to the applicant the procedure necessary to complete a document of gift under the Uniform Anatomical Gifts Act (AS 13.50).

(e) At the time of application for a driver's license or an instruction permit, or renewal of a driver's license or an instruction permit, the department shall provide the applicant written information explaining the state's financial responsibility law, the mandatory automobile insurance requirement, and potential penalties for failure to comply with the law. (§ 19 ch 178 SLA 1978; am §§ 5, 17 ch 70 SLA 1984)

Effect of amendments. — The 1984 amendment, effective January 1, 1985, added subsection (e).

Postponed amendments. — Section 17, ch. 70, SLA 1984, effective January 1, 1989, repeals subsection (e).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 99.

60 C.J.S., Motor Vehicles, § 156.

Sec. 28.15.070. Examination. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.071. Application of minors. (a) The application of a person under the age of 18 years for an instruction permit or driver's license must be signed by the father, mother or guardian, or if there is no parent or guardian then by another responsible adult who is willing to assume the obligation imposed under this section upon a person signing the application. The application must be signed and verified before a person authorized to administer oaths, or be signed in the presence of an authorized representative of the department.

(b) Any negligence or wilful misconduct of a person under the age of 18 years when driving a motor vehicle in this state is imputed to the person who signed the application of the person for a permit or license, and that person is jointly and severally liable for damage caused by the negligence or wilful misconduct of the person under the age of 18 years, except as provided in (c) of this section.

(c) If a minor deposits, or there is deposited on behalf of the minor, proof of financial responsibility for the minor's driving of a motor vehicle, in the form and amount required in AS 28.20, then the department may accept the application of the minor signed as required under (a) of this section, and, while proof of financial responsibility is maintained, the parent, guardian or other responsible adult is not subject to the liability imposed under (b) of this section.

(d) A person who signs the application of a minor for a driver's license may file with the department a verified written request that the license of the minor be canceled. When the license is canceled, the person who signed the application is relieved from liability under (b) of this section. (§ 19 ch 178 SLA 1978)

Collateral references. — Construction and effect of statutes which make parent, custodian, or other person signing minor's application for vehicle operator's license liable for licensee's negligence or wilful misconduct, 26 ALR2d 1320.

Sec. 28.15.080. Issuance. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.081. Examination of applicants. (a) The department shall examine every applicant for a driver's license. The examination shall include a test of the applicant's (1) eyesight, (2) ability to read and understand official traffic control devices, (3) knowledge of safe driving practices, (4) knowledge of the effects of alcohol and drugs on drivers and the dangers of driving under the influence of alcohol or drugs, (5) knowledge of the laws on driving while intoxicated, (6) knowledge of the laws on financial responsibility and mandatory automobile liability insurance, and, (7) the traffic laws and regulations of this state. The examination may include a demonstration of ability to exercise ordinary and reasonable control in the driving of a motor vehicle of the type and general class of vehicles for which the applicant seeks a license. However, an applicant who has not been previously issued a driver's license by this or another jurisdiction must demonstrate ability, and must present medical information that the department reasonably requires to determine fitness to safely drive a motor vehicle of the type and general class of vehicles for which the applicant seeks a license.

(b) The commissioner shall adopt regulations under the procedures established by AS 44.62 necessary to implement this section and the department may obtain the services of, and consult with, medical authorities whose specialties relate to driving abilities for the purpose of making the medical determinations necessary under this section or AS 28.15.091 or 28.15.101. Regulations adopted under this section must be approved by a concurrent resolution adopted by majority vote of each house of the legislature before becoming effective. The requirements of the eyesight test under this section may also be satisfied by presenting the current certification of a licensed physician or optometrist that the applicant's vision meets or exceeds the standards established by the department. The commissioner shall request and receive assistance from the commissioner of health and social services in implementing this section.

(c) A requirement for a medical examination under this chapter is satisfied if the applicant is the holder of a current and valid first- or second-class medical certificate issued under federal aviation regulations and has satisfied any applicable requirement of the Department of Education relating to tests for tuberculosis if applicable.

(d) The department may enter into agreements with other state agencies, municipalities, or qualified persons for the purpose of conducting the examinations required under this chapter. (§ 19 ch 178 SLA 1978; am § 2 ch 77 SLA 1983; am §§ 6, 17 ch 70 SLA 1984)

Effect of amendments. — The 1983 amendment in the second sentence of subsection (a) added the (1), (2), and (3) designations to existing language, added ", (4) knowledge of the effects ... (4) driving while intoxicated," and created the present third sentence from the end of the former second sentence. The amendment also made minor word changes.

The 1984 amendment, effective January 1, 1985, substituted "(5) knowledge of the laws on driving while intoxicated, (6) knowledge of the laws on financial responsibility and mandatory automobile liability insurance, and, (7)" for "and (5) knowledge of the laws relating to driving while intoxicated and" in the second sentence in subsection (a).

Postponed amendments. — Section 17, ch. 70, SLA 1984, effective January 1, 1989, repeals (a)(6) of this section.

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 111.

60 C.J.S., Motor Vehicles, § 156.

Sec. 28.15.090. Access to license. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.091. Department may require re-examination. If the department has good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, it may upon written notice of at least 10 days to the licensee require the licensee to submit to an examination. Upon conclusion of the examination, the department shall take action as may be appropriate and may cancel the license of the person, or may issue a restricted license under AS 28.15.121, or restrict the type or class of vehicles that the person may drive. If the licensee refuses or neglects to submit to examination, the department may suspend the driver's license until the licensee complies with the requirements of re-examination. (§ 19 ch 178 SLA 1978)

Collateral references. — 7A Am Jur 2d, Automobiles and Highway Traffic, § 111

Sec. 28.15.100. Duplicates. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.101. Expiration and renewal of driver's license; re-examination. (a) Unless otherwise provided in this chapter, a driver's license expires on the licensee's date of birth in the fifth year following issuance of the license. A license is renewable within one year of its expiration upon proper application, successful completion of a test of the licensee's eyesight, and payment of the required fee.

(b) The department may defer the expiration of the driver's license of a person who is outside the state under terms and conditions which the department shall prescribe by regulation. (§ 19 ch 178 SLA 1978)

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 102, 103.
60 C.J.S., Motor Vehicles, § 156.

Sec. 28.15.110. Restrictions. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.111. Licenses issued to drivers; anatomical gift document. (a) Upon successful completion of the application and all required examinations, and upon payment of the required fee, the department shall issue to every qualified applicant a driver's license indicating the type or general class of vehicles which the licensee may drive. The license shall display

(1) a distinguishing number assigned to the license;

(2) the licensee's full name, address, date of birth, brief physical description, and color photograph; and

(3) either a facsimile of the signature of the licensee or a space upon which the licensee must write the licensee's usual signature with pen and ink. A license is not valid until signed by the licensee. If facilities

are not available for the taking of the photograph required under this section, the department shall endorse on the license, the words "valid without photograph."

(b) The department shall provide, at the time that an operator's license is issued, a form for a document by which the owner of a license may make an anatomical gift under AS 13.50. The document (1) may not be larger than an operator's license, (2) shall contain sufficient space for the signature of two witnesses to the donor's act of execution of the document, and (3) shall provide a means by which the donor may cancel the gift. If the document making an anatomical gift is executed by the applicant, it shall be sealed in plastic and attached to the license. A symbol indicating the existence of the anatomical gift document shall be displayed in the lower right-hand corner on the face of the driver's license. (§ 19 ch 178 SLA 1978)

Sec. 28.15.120. Expiration. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.121. Restricted driver's license. (a) The department, upon issuing a driver's license, may for good cause impose restrictions suitable to the licensee's driving ability with respect to special mechanical control devices required on a motor vehicle which the licensee drives. The department may impose other restrictions applicable to the licensee that it determines to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The department may issue a special restricted license or may set out restrictions on the usual license form.

(c) The department may, upon receiving satisfactory evidence of a violation of the restrictions on a license restricted or issued under this section, suspend the restricted license for a period not to exceed 30 days.

(d) A person may not drive a motor vehicle in violation of the restrictions imposed on a restricted license. (§ 19 ch 178 SLA 1978)

Sec. 28.15.130. School bus drivers. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.131. License to be carried and exhibited on demand. A licensee shall have the licensee's driver's license in immediate possession at all times when driving a motor vehicle, and shall present the license for inspection upon the demand of a peace officer or other authorized representative of the department identified as such to the licensee by the officer or representative. However, a person charged with violating this section may not be convicted if the person produces in court or in the office of the arresting or citing officer, a driver's license previously issued to the person that was valid at the time of the person's arrest or citation. (§ 19 ch 178 SLA 1978)

NOTES TO DECISIONS

A licensing statute cannot be used as a means for obtaining information or evidence not related to the licensing requirement. Schraff v. State, Sup. Ct. Op. No. 1223 (File No. 2263), 544 P.2d 834 (1975), decided under former AS 28.15.090.

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 101, 147.

60 C.J.S., Motor Vehicles, § 157.

Validity, construction, and application of statute regarding failure or refusal of operator of motor vehicle to display license on demand, 143 ALR 1019, 6 ALR3d 506.

Effect of ulterior motive of official in exercising authority to require motorist to exhibit driver's license, 154 ALR 812.

Sec. 28.15.140. Change of name. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.141. Duplicate driver's license. If a valid driver's license issued under this chapter is lost or destroyed, the person to whom the license was issued may, upon payment of the required fee, obtain a duplicate license. A person who recovers an original license for which a duplicate has been issued shall immediately surrender the duplicate to the department. (§ 19 ch 178 SLA 1978)

Sec. 28.15.150. Records. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.151. Records to be kept by the department. (a) The department may maintain a file of

(1) every driver's license application, license or permit and duplicate driver's license issued by it;

(2) every license which has been suspended, revoked, canceled, limited, restricted, or denied, and the reasons for those actions; and

(3) all accident reports required to be forwarded to the department under this title.

(b) The department may also maintain a file of all accident reports, abstracts of court records of convictions of vehicle, driver and traffic offenses, and other information which the department considers necessary to carry out the purposes of this chapter.

(c) The department shall, upon request, subject to the applicable provisions of AS 12.62 and (f) of this section and without charging a fee, furnish a municipal, state or federal administrative or judicial agency with a certified abstract of the driving record of a driver. The abstract shall include a listing of accidents in which the driver has been determined by the department or a court of competent jurisdiction to have been liable, convictions of vehicle, driver and traffic offenses, any actions taken upon the driver's license, and information relating to financial responsibility.

(d) The department shall, upon request and payment of a fee determined by the commissioner, furnish a driver or a person designated by the driver with an abstract or the original copy of the computer printed record of the driver's record as provided in (c) of this section.

(e) *[Repealed, § 2 ch 144 SLA 1980.]*

(f) Except as provided otherwise in this section, information and records under this section are declared confidential and private. (§ 19 ch 178 SLA 1978; am §§ 1, 2 ch 144 SLA 1980)

Effect of amendments. — The 1980 amendment inserted, "or a person designated by the driver" and "or the original copy of the computer printed record" in subsection (d), and repealed subsection (e).

Collateral references. — Inspection of motor vehicle records, right as to, 84 ALR2d 1261.

Sec. 28.15.160. Court reports. [Repealed, § 19 ch 178 SLA 1978.]

Article 2. Cancellation, Suspension, Revocation or Limitation of Drivers' Licenses.

Section

161. Cancellation of driver's license
165. Administrative revocations resulting from chemical sobriety tests and refusals to submit to tests
166. Administrative review of revocation
171. Suspending privileges of a person licensed in another jurisdiction; reporting convictions, suspensions, and revocations
181. Court suspensions, revocations, and limitations
191. Court reports to department
201. Limitation of driver's license
211. Periods of limitation, suspension or revocation; opportunity for hearing and surrender of license

Sec. 28.15.161. Cancellation of driver's license. (a) The department shall cancel a driver's license upon determination that

(1) the licensee is not medically or otherwise entitled to the issuance or retention of the license, or has been adjudged incompetent to drive a motor vehicle;

(2) there is an error or defect in the license;

(3) the licensee failed to give the required or correct information in the licensee's application; or

(4) the license was obtained fraudulently.

(b) The licensee may apply for a new license at any time after cancellation upon removal of the cause for the cancellation. (§ 19 ch 178 SLA 1978)

NOTES TO DECISIONS

Intent of act. — This act plainly expresses the intent that all revocations and suspensions of operators' licenses be the act of the Department of Public Safety. Knudsen v. City of Anchorage, Sup. Ct. Op. Nos. 21, 38 (File No. 58), 358 P.2d 375 (1960), overruled on other points, Roberts v. State, Sup. Ct. Op. No. 574 (File No. 992), 458 P.2d 340 (1969), Glasgow v. State, Sup. Ct. Op. No. 616 (File No. 1049), 469 P.2d 682 (1970), and Baker v. City of Fairbanks, Sup. Ct. Op. No. 618 (File No. 1141), 471 P.2d 386 (1970). These cases were decided under former AS 28.15.170.

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 112 et seq.

60 C.J.S., Motor Vehicles, § 164.1 et seq.

Civil rights and liabilities as affected by failure to comply with regulations as to licensing of automobile operator, 16 ALR 1108, 35 ALR 62, 38 ALR 1038, 43 ALR 1153, 54 ALR 374, 58 ALR 532, 61 ALR 1190, 78 ALR 1028, 87 ALR 1469, 111 ALR 1258, 163 ALR 1375.

Validity of statute relating to granting or revocation of license or permit to operate automobile, 71 ALR 616, 108 ALR 1162, 125 ALR 1459.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 ALR3d 452.

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 ALR3d 361.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 ALR3d 427.

Validity of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of or ability to operate motor vehicle, 86 ALR3d 1251.

Sec. 28.15.165. Administrative revocations resulting from chemical sobriety tests and refusals to submit to tests. (a) If a chemical test administered under AS 28.35.031(a) to a person driving a motor vehicle for which a driver's license is required produces a result described in AS 28.35.030(a)(2) or if a person under arrest for driving a motor vehicle for which a driver's license is required refuses to submit to a chemical test under AS 28.35.031(a), a law enforcement officer shall read a notice and deliver a copy to the person. The notice shall advise that

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

(2) the person has the right to administrative review of the revocation or determination not to issue an original license;

(3) the notice itself is a temporary driver's license that expires seven days after it is delivered to the person;

(4) revocation of the person's driver's license or nonresident privilege to drive, or a determination not to issue an original license shall take effect upon expiration of the temporary driver's license unless the person within seven days requests an administrative review.

(b) After reading the notice under (a) of this section, the law enforcement officer shall seize the person's driver's license if it is in the person's possession and shall deliver it to the department with a sworn report describing the circumstances under which it was seized.

(c) Upon receipt of a sworn report of a law enforcement officer that a chemical test under AS 28.35.031(a) produced a result described in AS 28.35.030(a)(2) or that a person refused to submit to a chemical test under AS 28.35.031(a), that notice under (a) of this section was provided to the person, and that contains a statement of the circumstances surrounding the arrest and the grounds upon which the officer's belief that the person was driving while intoxicated a motor vehicle for which

a driver's license is required was based, the department shall revoke the person's license or nonresident privilege to drive a motor vehicle in the state, or refuse to issue an original license effective upon expiration of the temporary driver's license issued under (a) of this section.

(d) The period of revocation of a driver's license by the department under this section shall be for the appropriate minimum period for court revocations under AS 28.15.181(c). (§ 3 ch 77 SLA 1983)

Sec. 28.15.166. Administrative review of revocation. (a) A person who has received a notice under AS 28.15.165(a) may make a written request for administrative review of the department's action under AS 28.15.165(c). If the person's driver's license has not been previously surrendered to the department, it shall be surrendered to the department at the time the request for review is made.

(b) A request for review shall be made within seven days after receipt of the notice under AS 28.15.165 or the right to review is waived and the action of the department under AS 28.15.165(c) is final. If a written request for a review is made after expiration of the seven-day period, and if it is accompanied by the applicant's verified statement explaining the failure to make a timely request for a review, the department shall receive and consider the request. If the department finds that the person was unable to make a timely request because of lack of actual notice of the revocation or because of factors of physical incapacity such as hospitalization or incarceration, the department shall waive the period of limitation, reopen the matter, and grant the review request.

(c) Upon receipt of a request for review, if it appears that the person holds a valid driver's license and that the driver's license has been surrendered, the department shall issue a temporary driver's permit that is valid until the scheduled date for the review. A person who has requested a review under this section may request, and the department may grant for good cause, a delay in the date of the hearing. If necessary, the department may issue additional temporary permits to stay the effective date of its action under AS 28.15.165(c) until the final order after the review is issued.

(d) A person who has requested a hearing under this section and who fails to appear at the hearing, for reasons other than lack of actual notice of the hearing or physical incapacity such as hospitalization or incarceration, waives the right to a hearing. The determination of the department that is based upon the enforcement officer's report becomes final.

(e) Notwithstanding AS 28.05.141(b), the hearing under this section shall be held at the office of the department nearest to the residence of the person requesting the hearing unless

(1) a district court judge or a magistrate has been designated as a hearing officer in the matter by the commissioner; or

(2) the department and the person agree that the hearing is to be held elsewhere.

(f) A review under this section shall be held before a hearing officer designated by the commissioner. Upon the consent of the administrative director of the state court system, the commissioner may designate a district court judge or a magistrate to serve as the hearing officer. The hearing officer shall have authority to

(1) administer oaths and affirmations;

(2) examine witnesses and take testimony;

(3) receive relevant evidence;

(4) issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;

(5) regulate the course and conduct of the hearing;

(6) make a final ruling on the issue.

(g) The hearing under this section shall be limited to the issues of whether the arresting officer had reasonable grounds to believe that the person was driving a motor vehicle while intoxicated and whether

(1) the person refused to submit to a chemical test under AS 28.35.031(a) after being advised that refusal would result in the suspension, revocation, or denial of the person's license or nonresident privilege to drive and that the refusal is a misdemeanor; or

(2) the chemical test authorized under AS 28.35.031(a) and administered to the person produced a result described in AS 28.35.030(a)(2).

(h) The determination of the hearing officer may be based upon the sworn report of a law enforcement officer. The law enforcement officer need not be present at the hearing unless either the person requesting the hearing or the hearing officer requests in writing before the hearing that the officer be present. If in the course of the hearing it becomes apparent that the testimony of the law enforcement officer is necessary to enable the hearing officer to resolve disputed issues of fact, the hearing may be continued to allow the attendance of the law enforcement officer.

(i) Testimony given by the person at the hearing is not admissible against the person in a criminal trial unless the person's testimony at the trial is inconsistent with that given at the hearing.

(j) If the issues set out in (g) of this section are determined in the affirmative by a preponderance of the evidence, the hearing officer shall sustain the action of the department. If one or more of the issues is determined in the negative, the department's action shall be rescinded.

(k) If the action of the department in revoking a nonresident's privilege to drive a motor vehicle is not administratively contested by the nonresident driver or if the departmental action is sustained by the hearing officer, the department shall give written notice of action taken to the motor vehicle administrator of the state of the person's residence and to any state in which that person has a driver's license.

(l) A hearing officer revoking a driver's license because a chemical test administered to the person produced a result described in AS 28.35.030(a)(2) may grant limited license privileges if the person has not been previously convicted within the preceding 10 years of an offense (A) described in AS 28.15.181(a)(5) or (8); or (B) under a law or ordinance in another jurisdiction with elements substantially similar to an offense described in AS 28.15.181(a)(5) or (8). The privileges may be granted for the final 60 days during which the license is revoked if the hearing officer determines that the person's ability to earn a livelihood would be severely impaired and a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public. A hearing officer may not grant limited license privileges when revoking a driver's license because the person refused to submit to a chemical test.

(m) Notwithstanding AS 28.05.141(d), within 30 days of the issuance of the final determination of the department, a person aggrieved by the determination may file an appeal in superior court for judicial review of the hearing officer's determination. The judicial review shall be on the record, without taking additional testimony. The court may reverse the department's determination if the court finds that the department misinterpreted the law, acted in an arbitrary and capricious manner, or made a determination unsupported by the evidence in the record.

(n) The filing of an appeal under (m) of this section does not automatically stay the department's revocation order. The court may grant a stay of the order only upon a motion and hearing, and upon a finding that there is a reasonable probability that the petitioner will prevail on the merits and that the petitioner will suffer irreparable harm if the order is not stayed. (§ 3 ch 77 SLA 1983)

Sec. 28.15.170. Cancellation. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.171. Suspending privileges of a person licensed in another jurisdiction; reporting convictions, suspensions, and revocations. (a) The privilege of driving a motor vehicle on a highway or vehicular way or area of this state given to a person licensed in another jurisdiction is subject to suspension or revocation by the department in the same manner and for the same reasons as a driver's license issued under this chapter.

(b) The department may, upon receiving the record of a conviction of a person licensed in another jurisdiction for a vehicle, driver, or traffic offense in this state, or upon suspending or revoking the person's driving privilege, forward a copy of the record or suspension or revocation to the motor vehicle administrator for the jurisdiction in which the person convicted is licensed. (§ 19 ch 178 SLA 1978)

Sec. 28.15.180. Suspending privileges of nonresidents. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.181. Court suspensions, revocations, and limitations. (a) Conviction of any of the following offenses is grounds for the immediate revocation of a driver's license:

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

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

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

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

(5) driving a motor vehicle while intoxicated;

(6) reckless driving;

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

(8) refusal to submit to a chemical test under AS 28.35.032;

(9) driving while license canceled, suspended, revoked or in violation of a limitation.

(b) A court convicting a person of an offense described in (a)(1) — (4), (6), or (7) of this section shall revoke that person's driver's license for not less than 30 days for the first conviction, unless the court determines that the person's ability to earn a livelihood would be severely impaired and a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public. If a court limits a person's license under this subsection, it shall do so for not less than 60 days. Upon a subsequent conviction of a person for any offense described in (a)(1) — (4), (6), (7) of this section occurring within 10 years after a prior conviction, the court shall revoke the person's license and may not grant the person limited license privileges for the following periods:

(1) not less than one year for the second conviction; and

(2) not less than three years for a third or subsequent conviction.

(c) A court convicting a person of an offense described in (a)(5) or (8) of this section arising out of the operation of a motor vehicle for which a driver's license is required shall revoke that person's driver's license. The revocation may be concurrent with or consecutive to an administrative revocation under AS 28.15.165. The court may not, except as provided in (e) of this section, grant limited license privileges for the following periods:

(1) not less than 90 days if, within the preceding 10 years, the person has not previously been convicted of an offense

(A) described in (a)(5) or (8) of this section; or

(B) under a law or ordinance in another jurisdiction with elements substantially similar to an offense described in (a)(5) or (8) of this section;

(2) not less than one year if, within the preceding 10 years, the person has been previously convicted of one offense

(A) described in (a)(5) or (8) of this section; or

(B) under a law or ordinance in another jurisdiction with elements substantially similar to an offense described in (a)(5) or (8) of this section;

(3) not less than 10 years if, within the preceding 10 years, the person has been previously convicted of more than one of the following offenses or has more than once been previously convicted of one of the following offenses:

(A) an offense described in (a)(5) or (8) of this section; or

(B) an offense under another law or ordinance in another jurisdiction with elements substantially similar to an offense described in (a)(5) or (8) of this section.

(d) A court convicting a person of an offense described in (a)(9) of this section shall revoke that person's driver's license for not less than the minimum period under AS 28.15.291(c).

(e) A court revoking a driver's license under (c) of this section, or sustaining the action of the department under AS 28.15.165(c), may grant limited license privileges for the final 60 days during which the license is revoked if the

(1) revocation was for driving while intoxicated but not if the revocation was for refusal to submit to a chemical test of breath under AS 28.35.032;

(2) person has not been previously convicted within the preceding 10 years of an offense

(A) described in (a)(5) or (8) of this section; or

(B) under a law or ordinance in another jurisdiction with elements substantially similar to an offense described in (a)(5) or (8) of this section;

(3) court determines that the person's ability to earn a livelihood would be severely impaired; and

(4) court determines that a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public.

(f) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction. (§ 19 ch 178 SLA 1978; am §§ 7 — 9 ch 117 SLA 1982; am §§ 4 — 7 ch 77 SLA 1983)

Effect of amendments. — The 1982 amendment substituted the present provisions of paragraph (a)(5) for the former provisions, which read "driving or operating a motor vehicle while under the influence of alcohol or another drug," substituted "under (a)(1) — (4), (6), or (7) of this section" for "under (a)(1) — (7) of this section" in the first sentence of subsection (b) and for "under (a) of this section" in the third sentence of subsection (b), and added subsection (c).

The 1983 amendment in subsection (a) rewrote the introductory language and added paragraphs (8) and (9); in subsection (b), in the second sentence substituted "60" for "30" and in the last sentence inserted "occurring within 10 years after a prior conviction"; rewrote subsection (c); and added subsections (d), (e), and (f). The

amendment also made minor word changes throughout the section.

NOTES TO DECISIONS

The revocation provisions of former AS 28.15.210(c) were reenacted by the 1978 legislature in subsection (b) of this section. Danks v. State, Sup. Ct. Op. No. 2216 (File No. 4952), 619 P.2d 720 (1980).

For case construing former AS 28.15.210(c), which allowed the trial court no discretion to grant a limited license to drunk driving offenders upon their second and subsequent convictions, see State v. Guarderas, Sup. Ct. Op. No. 1782 (File No. 3738), 589 P.2d 870 (1979); Danks v. State, Sup. Ct. Op. No. 2216 (File No. 4952), 619 P.2d 720 (1980).

In order to invoke the mandatory one-year license revocation penalty of paragraph (b)(1) of this section, the second conviction need not be for the same type of offense as the first conviction. Belarde v. Municipality of Anchorage, Ct. App. Op. No. 52 (File No. 5460), 634 P.2d 567 (1981).

The one-year license revocation penalty of paragraph (b)(1) of this section may follow as a result of a conviction for any of the seven offenses listed under subsection (a) of this section regardless of what offense the initial conviction was predicated upon. Belarde v. Municipality of Anchorage, Ct. App. Op. No. 52 (File No. 5460), 634 P.2d 567 (1981).

Conviction under another state's statute may be used for purposes of enhanced license revocation under subsection (b). Carter v. State, Ct. App. Op. No. 010 (File No. 5144), 625 P.2d 313 (1981).

Application of paragraph (b)(2) held constitutional. — Application of three-year license revocation provision of subsection (b) to defendant whose prior two OMVI (operating a motor vehicle while under the influence of intoxicating liquor or drugs) convictions were in 1974 and 1976 did not violate the constitutional prohibitions against ex post facto laws. Carter v. State, Ct. App. Op. No. 010 (File No. 5144), 625 P.2d 313 (1981).

Stated in Manderson v. State, Ct. App. Op. No. 198 (File No. 6894), 655 P.2d 1320 (1983).

Cited in Swensen v. Municipality of Anchorage, Sup. Ct. Op. No. 2179 (File No. 4675), 616 P.2d 874 (1980); Anderson v. Municipality of Anchorage, Ct. App. Op. No. 89 (File No. 5318), 645 P.2d 205 (1982); Uhde v. State, Ct. App. Op. No. 167 (File No. 5916), 654 P.2d 1323 (1982).

Collateral references. — Validity of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 71 ALR 616, 108 ALR 1162, 125 ALR 1459.

What amounts to conviction or adjudication of guilt for purposes of refusal, revocation, or suspension of automobile driver's license, 113 ALR 1179, 79 ALR2d 866.

Suspension or revocation of driver's license for refusal to take sobriety test, 88 ALR2d 1964.

Sec. 28.15.190. Forwarding surrendered license. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.191. Court reports to department. (a) A court which convicts a person of an offense under this title or a regulation adopted under this title, or another law or regulation of this state, or a municipal ordinance which regulates the driving of vehicles, shall forward a record of the conviction to the department. A conviction of a standing or parking offense need not be reported.

(b) A conviction on a plea of nolo contendere accepted by the court or a forfeiture of bail or collateral deposited to secure a defendant's

appearance in court which has not been vacated is equivalent to a conviction for purposes of this chapter.

(c) A court which suspends, revokes, or limits a driver's license shall require the surrender of the license, and shall immediately forward it to the department with the record of conviction and notification of the effective date of the suspension, revocation or limitation as determined under AS 28.15.211(b).

(d) A court which limits a driver's license, in addition to the actions required under (c) of this section, shall issue to the licensee a form specifying the court's limitations imposed upon a person's driver's license, and shall immediately forward to the department a copy of the limitations imposed upon the license.

(e) A court shall report to the department every change of name authorized by it, and the name, address, age, description, and driver's license number if available, of every person adjudged to be afflicted with or suffering from a mental disability or disease, or to be an habitual user of alcohol or another drug. The department shall prescribe and furnish the forms for making these reports. (§ 19 ch 178 SLA 1978)

NOTES TO DECISIONS

For case where magistrate recommended suspension of driver's license for three years, see Hanrahan v. City of Anchorage, Sup. Ct. Op. No. 121 (File No. 247), 377 P.2d 381 (1962), decided under former AS 28.15.190.

Stated in Anderson v. Municipality of Anchorage, Ct. App. Op. No. 89 (File No. 5318), 645 P.2d 205 (1982).

Sec. 28.15.200. Suspending license upon conviction in another jurisdiction. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.201. Limitation of driver's license. (a) A court of competent jurisdiction may, for good cause, impose limitations upon the driver's license of a person which will enable the person to earn a livelihood without excessive risk or danger to the public. However, no limitation may be placed upon a driver's license until after a review has been made of the person's driving record and other relevant information, nor may a limitation be imposed when a statute specifically prohibits the limitation of a license for a violation of its provisions.

(b) A court imposing a limitation under this section shall (1) require the surrender of the driver's license; and (2) issue to the licensee a certificate valid for the duration of the limitation.

(c) After the termination of a limitation as shown on the certificate issued under (b) of this section, the license of a person on whom a limitation was imposed is revoked until the person receives a new license in accordance with AS 28.20.240. (§ 19 ch 178 SLA 1978; am §§ 10, 11 ch 117 SLA 1982; am §§ 8, 9 ch 77 SLA 1983)

Effect of amendments. — The 1982 amendment, in subsection (b), inserted the item designations, inserted the language beginning "and, if the person is convicted" and ending "period of not less than 60 days" in item (1), and deleted "shall" preceding "issue" in item (2); and in subsection (c), added the language beginning "or, if otherwise eligible" to the end of the subsection.

The 1983 amendment in paragraph (b)(1) deleted language regarding revocation of license for a period not less than 60 days, and rewrote subsection (c).

NOTES TO DECISIONS

For construction with AS 28.15.291(a), which prohibits driving while license is suspended, see Uhde v. State, Ct. App. Op. No. 167 (File No. 5916), 654 P.2d 1323 (1982).

Sec. 28.15.210. Mandatory revocation. [Repealed, § 19 ch. 178 SLA 1978.]

Sec. 28.15.211. Periods of limitation, suspension or revocation; opportunity for hearing and surrender of license. (a) Except for a point system suspension or revocation under AS 28.15.221 — 28.15.241 and unless provided otherwise by law, and unless the suspension or revocation was for a cause that has been removed, a person whose driver's license or privilege to drive a motor vehicle in this state has been suspended or revoked may not apply for a new license nor may the person's driving privilege be restored until the expiration of

(1) one month from the date on which the license was suspended or revoked for a first conviction of the particular offense from which the suspension or revocation resulted;

(2) three months from the date on which the license was suspended or revoked for a second conviction within 12 consecutive months of the same offense from which the suspension or revocation resulted;

(3) one year from the date on which the license was suspended or revoked for a third or subsequent conviction within 12 consecutive months of the same offense from which the suspension or revocation resulted.

(b) A limitation, suspension, or revocation of a driver's license imposed by a court takes effect on the date of final judgment, except that if another limitation, suspension, or revocation of license is in effect on the date of final judgment, the effective date of the last imposed limitation, suspension, or revocation is at the end of the last day of the previous limitation, suspension, or revocation unless the court specifies otherwise.

(c) At the end of a period of suspension or limitation, when that limitation follows a suspension, the person whose license has been suspended or limited may apply to the department and, upon payment of the proper fees, including a reinstatement fee of $100, be issued a duplicate driver's license if the person is otherwise entitled to the license under this title.

(d) At the end of a period of revocation or limitation following a revocation, a person whose driver's license has been revoked may apply to the department for the issuance of a new license, but shall submit to reexamination and pay all required fees including a reinstatement fee of $100.

(e) At the end of a period of limitation, suspension, or revocation under this chapter, the department may not issue a driver's license or a duplicate driver's license to the licensee until the licensee has complied with AS 28.20 relating to proof of financial responsibility.

(f) Unless otherwise provided by law, periods of limitation shall be made at the discretion of the court. (§ 19 ch 178 SLA 1978; am § 12 ch 117 SLA 1982; am § 25 ch 77 SLA 1983; am § 7 ch 70 SLA 1984)

Effect of amendments. — The 1982 amendment, in paragraph (a)(4), deleted "within two years previous to his arrest" following "chemical test" and inserted "or of refusal to submit to a chemical test of breath under AS 28.35.032" and "not less than."

The 1983 amendment repealed paragraph (a)(4).

The 1984 amendment, effective January 1, 1985, in subsection (c), inserted "when that limitation follows a suspension" and substituted "fees, including a reinstatement fee of $100" for "fee"; in subsection (d), inserted "or limitation following a revocation" and added "including a reinstatement fee of $100" at the end; and made a series of technical changes throughout subsections (a), (c), (d), and (e).

NOTES TO DECISIONS

Applied in Uhde v. State, Ct. App. Op. No. 167 (File No. 5916), 654 P.2d 1323 (1982).

Sec. 28.15.220. Discretionary suspension, etc. [Repealed, § 19 ch 178 SLA 1978.]

Article 3. Point System.

Section

221. Point system
231. Assessment of points, driver improvement interview
241. Reduction of points
251. Suspension, revocation, limitation, denial
253. Driver improvement course
255. Proof of financial responsibility
261. Definitions for AS 28.15.221 — 28.15.261

NOTES TO DECISIONS

Applied in McClain v. State, Ct. App. Op. No. 74 (File No. 5740), 641 P.2d 1265 (1982).

Sec. 28.15.221. Point system. (a) For the purpose of identifying habitually reckless or negligent drivers and habitual or frequent violators of traffic laws, the commissioner shall adopt regulations establishing a uniform system for the suspension, revocation, limitation or denial of a driver's license or driving privilege by assigning demerit points for convictions for violations of traffic laws which are required to be reported to the department under AS 28.15.191.

(b) The regulations adopted under (a) of this section shall include a designated level of point accumulation which identifies drivers who are habitually reckless or negligent or who are habitual or frequent violators of traffic laws, so as to show a disrespect for traffic laws and a disregard for the safety of other persons. In formulating the point system authorized by this section, the commissioner shall, in the interest of interstate uniformity, provide for suspension, revocation or denial of a driver's license or privilege for an accumulation of 12 or more points as a result of offenses committed during any consecutive 12-month period or 18 or more points as a result of offenses committed during any 24-month period. (§ 19 ch 178 SLA 1978)

Collateral references. — 7A Am Jur 2d, Automobiles and Highway Traffic, §§ 117, 118.

60 C.J.S., Motor Vehicles, §§ 164 11, 164.13.

Regulations establishing a "point system" as regards suspension or revocation of license of operator of motor vehicle, 5 ALR3d 690.

Validity and construction of legislation authorizing revocation or suspension of operator's license, for "habitual," "persistent," or "frequent" violations of traffic regulations, 9 ALR3d 756.

Sec. 28.15.225. Limited license. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.230. Right of appeal. [Repealed, § 13 ch 17 SLA 1964.]

Sec. 28.15.231. Assessment of points, driver improvement interview. (a) Notice of each assessment of points may be given, but notice shall be given when the point accumulation reaches 50 per cent of the number at which suspension, revocation or denial is required under AS 28.15.221(b), and a driver who has reached that level of point accumulation shall be identified as a problem driver. The department may require a problem driver to appear for a driver improvement interview. The purpose of that interview is to assist the person who is identified as a problem driver in overcoming substandard driving habits. An interview under this subsection is to be conducted in an informal manner. A driver must comply with any reasonable recommendations designed to improve the driver's driving abilities which are made to the driver during the interview.

(b) Points may not be assessed for violating a provision of a state law or regulation or a municipal ordinance regulating standing, parking, equipment, size or weight; nor may points be assessed for violations by

pedestrians, passengers or bicycle riders, or for violations of provisions relating to the preservation of the condition of traffic-control devices on the highways. Points shall be assessed for violations of oversize or overweight permits relating only to restrictions upon speed or hours of operation.

(c) If a licensee is convicted of two or more traffic violations committed on a single occasion, the licensee shall be assessed points for one offense only, and if the offenses involved have different point values, the licensee shall be assessed for the offense having the greater point value.

(d) The time periods provided for in this section for the accumulation of points shall be based upon the date of violation, but points may not be assessed until after conviction, either upon a plea of guilty, nolo contendere, or a forfeiture of bail, or as a result of a trial, for violation of the traffic laws.

(e) The points assessed and the application of them against the licensee by the department under this section are in addition to, and not in substitution for, other provisions of this chapter and are not a substitute for any penalty imposed by a court. (§ 19 ch 178 SLA 1978)

NOTES TO DECISIONS

Failure of the Department of Motor Vehicles to send a midpoint notice pursuant to subsection (a) of this section cannot be raised as a defense in a prosecution for driving with a suspended license under AS 28.15.291(a). McClain v. State, Ct. App. Op. No. 74 (File No. 5740), 641 P.2d 1265 (1982).

Sec. 28.15.240. Suspending licenses of juveniles. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.241. Reduction of points. (a) Two points shall be deducted from a licensee's assessed total if the licensee has not been convicted of a violation of traffic laws which occurred during the 12-month period after the date of the last violation of which the licensee was convicted.

(b) In addition to (a) of this section, two points shall be deducted from the assessed total upon the driver's furnishing to the department adequate proof of successful completion, within 12 months of the date of the driver's last violation, of a driver improvement course approved by the department. No more than one course may be used to obtain a reduction in points in any 12-month period.

(c) One point shall accumulate to the driver's benefit for each 12 consecutive months of licensed, violation-free driving within the five-year period preceding the point calculation. (§ 19 ch 178 SLA 1978; am § 1 ch 8 SLA 1981)

Effect of amendments. — The 1981 amendment deleted "from January 1, 1975" preceding "one point," substituted "twelve consecutive months" for "year" preceding "of licensed" and added "within the five-year period preceding the point calculation" in subsection (c).

Sec. 28.15.250. Reexamination. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.251. Suspension, revocation, limitation, denial. (a) The department shall suspend, revoke, limit, deny, or initiate other remedial action against the driver's license of a person, upon the person's failure to

(1) appear for a driver improvement interview under AS 28.15.231(a); or

(2) comply with reasonable recommendations designed to improve the person's driving abilities which are made to the person during the driver improvement interview.

(b) The department shall suspend, revoke, or deny a driver's license of a person who has been identified through the person's point accumulation as an habitual or frequent violator under AS 28.15.221.

(c) A suspension, revocation, limitation, or denial of, or other action against, a driver's license under AS 28.15.221 — 28.15.261 may not be for more than one year.

(d) If a driver's license is suspended or revoked upon the accumulation of the number of points which require that action under AS 28.15.221 — 28.15.261 and regulations adopted under those sections, a limited license may not be issued to that person during the period of suspension or revocation.

(e) Except for immediate action under AS 28.15.181, when the department proposes to take action against a driver's license under (b) of this section, it shall notify the licensee that the proposed action shall become effective 30 days from the date of the notice, except that the licensee shall have the right, within the 30-day period, to make an oral or written answer or statement in which the licensee may controvert any point or issue and the licensee may present evidence and arguments for the consideration of the department pertinent to the action to be taken or the grounds for the action.

(f) Upon receipt of an oral or written answer or statement from the licensee, the department shall make findings on the matter under consideration and shall notify the person involved of its decision in writing by registered mail. If the department's decision is to sustain an action against the licensee's driver's license, the department shall notify the licensee of the opportunity for a hearing under AS 28.05.121 — 28.05.141. (§ 19 ch 178 SLA 1978)

NOTES TO DECISIONS

Cited in Jeffcoat v. State, Ct. App. Op. No. 63 (File No. 5274), 639 P.2d 308 (1982).

Sec. 28.15.253. Driver improvement course. Upon conviction of a violation of a traffic law that results in a driver accumulating six or more points from offenses committed during any consecutive 12-month period or nine or more points from offenses committed during any 24-month period, on request of the department the court may, in addition to any other penalty authorized by law, require the driver to successfully complete a driver improvement course approved by the department within a period of time prescribed by the court. The department may suspend, revoke, or deny the driver's license of a person who fails to successfully complete the driver improvement course required by the court under this section within the prescribed time period. (§ 1 ch 78 SLA 1982)

Sec. 28.15.255. Proof of financial responsibility. (a) The department may not reinstate a driver's license that has been revoked or suspended under AS 28.15.221 — 28.15.261 until the person whose license has been revoked or suspended provides proof of financial responsibility for the future.

(b) If a driver accumulates six or more points under AS 28.15.221 — 28.15.261 during a 12-month period, the department may require the driver to provide proof of financial responsibility for the future as a condition of retaining a driver's license, and may suspend the driver's license until proof of financial responsibility is provided.

(c) In this section, the term "proof of financial responsibility for the future" has the meaning given in AS 28.20.230(b) and may be established as provided in AS 28.20. (§ 2 ch 78 SLA 1982)

Sec. 28.15.260. Period of suspension. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.261. Definitions for AS 28.15.221 — 28.15.261. In AS 28.15.221 — 28.15.261

(1) "licensee" includes, but is not limited to an applicant for a new driver's license if the applicant's license was revoked under AS 28.15.221 — 28.15.261;

(2) "traffic laws" means statutes, regulations, and municipal ordinances governing the driving or movement of vehicles. (§ 19 ch 178 SLA 1978)

Revisor's notes. — The paragraphs were renumbered in 1984 to achieve alphabetical order.

NOTES TO DECISIONS

Quoted in Anderson v. Municipality of Anchorage, Ct. App. Op. No. 89 (File No. 5318), 645 P.2d 205 (1982).

Sec. 28.15.270. Surrender of license. [Repealed, § 19 ch 178 SLA 1978.]

Article 4. Fees.

Section
271. Fees

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 99.
60 C.J.S., Motor Vehicles, § 158.

Sec. 28.15.271. Fees. The fees for drivers' licenses and permits, including but not limited to renewals, are as follows:

(1) all classes of drivers' licenses . . . . . $ 5;
(2) motor-driven cycles . . . . . $ 2;
(3) instruction permit . . . . . $ 1;
(4) duplicate of driver's license or instruction permit . . . . $ 2;
(5) temporary license and renewal of permit . . . . . $ 1;
(6) school bus driver's permit . . . . . $ 2.

(§ 19 ch 178 SLA 1978)

Cross references. — For fee for reinstatement of suspended operator's license, see AS 28.20.585.

Article 5. Driver License Violations.

Section
281. Unlawful use of license; permitting unauthorized person to drive
291. Driving while license canceled, suspended, revoked or in violation of limitation

Sec. 28.15.280. Use of foreign license. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.281. Unlawful use of license; permitting unauthorized person to drive. (a) A person may not

(1) display, cause or permit to be displayed, or have in the person's possession a canceled, suspended, revoked, fictitious or unlawfully altered driver's license;

(2) display or represent as the person's own a driver's license not issued to the person;

(3) display or present a driver's license other than an Alaska driver's license to a peace officer or to the department when that person has been licensed under this chapter; or

(4) lend the person's driver's license to another person or knowingly permit the use of the license by another.

(b) A person may not authorize or knowingly permit a motor vehicle owned by the person or under the control of the person to be driven in this state by a person who is not validly licensed. (§ 19 ch 178 SLA 1978)

Collateral references. — Civil or criminal liability of one in charge of an automobile who permits an unlicensed person to operate it, 137 A.L.R. 475.

Construction, application, and effect of legislation making it offense to permit unlicensed person to operate motor vehicle, 69 A.L.R.2d 978.

Sec. 28.15.282. Point system. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.283. Suspension, revocation, limitation, denial. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.284. Personal interview. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.285. Conduct of personal interview; findings; hearing request. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.286. Hearing. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.287. Judicial review under point system. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.288. Stay of department action pending hearing or appeal. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.290. Unlawful use of license. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.291. Driving while license canceled, suspended, revoked or in violation of limitation. (a) A person may not drive a motor vehicle on a highway or vehicular way or area at a time when that person's driver's license, or privilege to drive has been canceled, suspended or revoked in this or another jurisdiction, or when driving in violation of a limitation placed upon that person's license or privilege to drive in this or another jurisdiction. Except as provided in (c) of this section, upon conviction of a violation of this section, the court shall impose a sentence of imprisonment of not less than 10 days. The

execution of sentence may not be suspended nor may probation or parole be granted until the minimum imprisonment provided in this section has been served; nor may imposition of sentence be suspended. In addition, the person's license or privilege to drive shall be revoked, and the person may not be issued a new license nor may the privilege to drive be restored for an additional period of not less than one year after the date that the person would have been entitled to restoration of driving privileges.

(b) When a person's license is canceled, limited, suspended or revoked, that person shall be informed by the department or the court that takes the action at the time of the action that, upon a conviction of driving on a highway or vehicular way or area in this state at a time when that person's driver's license or privilege to drive in this state has been canceled, suspended or revoked, or upon a conviction of driving in violation of a limitation of the license, that person will be subject to the mandatory minimum sentence of imprisonment under this section.

(c) The court shall impose a sentence of imprisonment of not less than 30 days and a fine of not less than $500 upon conviction of a violation of this section if the person's driver's license was revoked under circumstances described in AS 28.15.181(c)(1). The court shall impose a sentence of imprisonment of not less than 90 days and a fine of not less than $1,000 upon conviction of a violation of this section if the person's driver's license was revoked under circumstances described in AS 28.15.181(c)(2) or (3). The execution of sentence may not be suspended nor may probation or parole be granted until the minimum imprisonment provided in this subsection has been served. Imposition of sentence may not be suspended. In addition, the person's privilege to drive shall be revoked for an additional period of not less than one year after the date that the person would have been entitled to restoration of driving privileges if the person had not been convicted under this section.

(d) A person convicted of a violation of this section is guilty of a class A misdemeanor. (§ 19 ch 178 SLA 1978; am §§ 10, 11 ch 77 SLA 1983)

Effect of amendments. — The 1983 amendment rewrote subsections (a) and (b) and added subsections (c) and (d).

NOTES TO DECISIONS

Knowledge or intent. — While subsection (a) is silent on its face as to the requirement of knowledge or intent as an element of the offense, an element of mens rea must be read into the statute by implication. Jeffcoat v. State, Ct. App. Op. No. 63 (File No. 5274), 639 P.2d 308 (1982).

Failure of the Department of Motor Vehicles to send a midpoint notice pursuant to AS 28.15.231(a) cannot be raised as a defense in a prosecution for driving with a suspended license under subsection (a) of this section. McClain v. State, Ct. App. Op. No. 74 (File No. 5740), 641 P.2d 1265 (1982).

Maximum penalties. — Although a violation of AS 28.15.011(b) carries no mandatory minimum sentence equivalent to the 10-day jail sentence and one-year license revocation of subsection (a) of this section, the available maximum penalties under AS 28.35.230(a) and (b) are the same. Francis v. Municipality of Anchorage, Ct. App. Op. No. 70 (File No. 5659), 641 P.2d 226 (1982).

Issuance of limited licenses prohibited. — The language of subsection (a) of this section specifically prohibits issuance of limited licenses to persons convicted of driving while license is suspended. Uhde v. State, Ct. App. Op. No. 167 (File No. 5916), 654 P.2d 1323 (1982).

In light of the express prohibition against issuance of limited licenses contained in subsection (a) of this section, one cannot properly rely upon the provisions of AS 28.15.201(a) as an independent source of authority for issuance of limited licenses, since by its own terms, AS 28.15.201(a) does not apply where a statutory provision specifically prohibits issuance of limited licenses. Uhde v. State, Ct. App. Op. No. 167 (File No. 5916), 654 P.2d 1323 (1982).

Time limitation for revocation of license. — The one-year revocation period provided for in subsection (a) of this section is the maximum amount of time a license may be revoked for driving with a suspended license. Manderson v. State, Ct. App. Op. No. 198 (File No. 6894), 655 P.2d 1320 (1983).

The revocation of a vehicle registration for a conviction of driving with a suspended license should not continue beyond the period that the defendant's driver's license is revoked. Manderson v. State, Ct. App. Op. No. 198 (File No. 6894), 655 P.2d 1320 (1983).

Ordinance not in conflict with former AS 28.15.300(a). — Home rule ordinance which prohibited driving a motor vehicle while one's license is suspended or revoked as did former AS 28.15.300(a) but which was not limited to public highways as was former AS 28.15.300(a) was not in conflict with former AS 28.15.300(a) and, therefore, was not invalid. Cremer v. Anchorage, Sup. Ct. Op. No. 1579 (File No. 3597), 575 P.2d 306 (1978).

Cited in Wilson v. State, Ct. App. Op. No. 366 (File Nos. 7523, 7626, 7833), P.2d (1984).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 148.

61A C.J.S., Motor Vehicles, § 639(2).

Lack of proper operator's license as evidence of operator's negligence, 29 ALR2d 963.

Necessity or emergency as defense in prosecution for driving without operator's license or while license is suspended, 61 ALR3d 1041.

Sec. 28.15.300. Driving while license cancelled, suspended or revoked. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.305. Driving in violation of license limitation. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.310. Permitting unauthorized minor to drive. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.320. Permitting unauthorized person to drive. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.330. Making false statement. [Repealed, § 20 ch 241 SLA 1976.]

Sec. 28.15.340. Fees. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.350. Disposition of operators' license fees. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.360. Definitions. [Repealed, § 19 ch 178 SLA 1978.]

1988
Supplemental

Chapter 35. Miscellaneous Provisions.

Article
2. Operating While Intoxicated; Implied Consent (§§ 28.35.029, 28.35.031 — 28.35.033)
3. Reckless and Negligent Driving (§ 28.35.045)
5. Miscellaneous Offenses (§§ 28.35.145, 28.35.235, 28.35.251 — 28.35.255)

Article 2. Operating While Intoxicated; Implied Consent.

Section
29. Open container
31. Implied consent
32. Refusal to submit to chemical test
33. Chemical analysis of breath or blood

Sec. 28.35.029. Open container. (a) A person may not drive a motor vehicle on a highway or vehicular way or area, when there is an open bottle, can, or other receptacle containing an alcoholic beverage in the passenger compartment of the vehicle, except as provided in (b) of this section.

(b) A person may transport an open bottle, can, or other receptacle containing an alcoholic beverage

(1) in the trunk of a motor vehicle;

(2) on a motor driven cycle, or behind the last upright seat in a motor home, station wagon, hatchback, or similar trunkless vehicle, if the open bottle, can, or other receptacle is enclosed within another container;

(3) behind a solid partition that separates the vehicle driver from the area normally occupied by passengers; or

(4) if the open bottle, can, or other receptacle is in the possession of a passenger in a commercial motor vehicle.

(c) In this section

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

(2) "commercial motor vehicle" means a motor vehicle for which the owner receives direct monetary compensation and that has a capacity of 12 or more persons;

(3) "motor vehicle" means a vehicle for which a driver's license is required;

(4) "open" includes having a broken seal;

(5) "passenger compartment" means the area normally occupied by the driver and passengers and includes a utility or glove compartment accessible to the driver or a passenger while the motor vehicle is being operated.

(d) A person who violates (a) of this section is guilty of an infraction. (§ 1 ch 142 SLA 1988)

Sec. 28.35.030. Operating a vehicle, aircraft or watercraft while intoxicated.

NOTES TO DECISIONS

Rebuttable presumption of intoxication. — This section does not establish a conclusion that blood tests become irrelevant if taken more than four hours after the alleged violation; rather, the statute simply reflects the legislative conclusion that a blood test taken within four hours of the alleged infraction is such definitive evidence of intoxication at the time of driving, that the blood test result is sufficient to establish a rebuttable presumption of intoxication. Williams v. State, Ct. App. Op. No. 709 (File No. A-1631), 737 P.2d 360 (1987).

Movability of vehicle. — This section on its face, contains no "movability" requirement, and the definition of "operate" adopted in Jacobson contains no such requirement; and a defendant could be found guilty of driving while intoxicated even though his automobile was stuck in a mudhole and was incapable of movement. Lathan v. State, Ct. App. Op. No. 542 (File No. A-901), 707 P.2d 941 (1985).

Defendant was "in actual physical control" of her vehicle, where she was seated in the driver's seat behind the steering wheel, had possession of the ignition key and was attempting to put the key in the ignition; given these factors of control, it is not necessary that the engine be running. State, Dep't of Pub. Safety v. Conley, Sup. Ct. Op. No. 3297 (File No. S-1791), P.2d (1988).

Police response to what is reasonably interpreted as request for assistance justified. — A trooper's action in engaging his emergency lights and contacting a defendant, following what he reasonably interpreted to be a request for assistance from the defendant's vehicle, is permissible under U.S. Const., Amend. 4 as well as Alaska Const., Art. I, § 14. When a police officer observes facts and circumstances which he actually and reasonably concludes to be a request for contact or assistance, the officer is justified in making that contact, which would not be analyzed as an investigatory stop requiring articulable suspicion. Crauthers v. State, Ct. App. Op. No. 652 (File No. A-1507), 727 P.2d 9 (1986).

Subsection (c) inapplicable to airboats. — A court may not revoke the driver's license of a person convicted of driving while intoxicated on public property in an airboat; an airboat is not a motor vehicle for which a driver's license is required. State v. Stagno, Ct. App. Op. No. 725 (File No. A-1585), P.2d (1987).

Cough medicines as intoxicating liquors. — Nyquil and terpin hydrate, two cough medicines, are intoxicating liquors within the common understanding of that phrase and can be the basis for a conviction of driving while intoxicated. Lambert v. State, Ct. App. Op. No. 441 (File No. A-403), 694 P.2d 791 (1985).

Request for counsel before breathalyzer test. — District court judge's finding that defendant, convicted of driving while intoxicated under municipal code, did not request counsel prior to taking the breathalyzer examination where he never asked to speak to an attorney but asked whether he might need an attorney, with testimony supporting the conclusion that he wondered if he needed an attorney in order to make bail, not because he wanted advice about submitting to a breathalyzer exam, was not clearly erroneous, and superior court judge should not have reversed the conviction. Anchorage v. Erickson, Ct. App. Op. No. 417 (File No. A-512), 690 P.2d 20 (1984).

Right to counsel before breathalyzer test.

It is only where the totality of the arrestee's words constitute a request, express or implied, for an opportunity to contract counsel for the purpose of discussing a breathalyzer examination that an opportunity to consult counsel must be provided prior to administration of the breathalyzer. Once the breathalyzer examination is completed or refused and videotaping finished, the suspect is entitled to the full use of the rights guaranteed by AS 12.25.150(b) and Criminal Rule 5(b). Van Wormer v. State, Ct. App. Op. No. 473 (File No. A-320), 699 P.2d 895 (1985).

Where the judge determined, based on the evidence, that the DWI defendant's statements regarding having somebody present did not relate to a desire to consult with counsel about breathalyzer examinations or field sobriety test, but rather related to having someone present

to observe the administration of the test, perhaps a technician, to insure its validity, the judge was not clearly erroneous in concluding that the defendant did not properly invoke his Copelin rights and that the results of the breathalyzer examination should not be suppressed. Van Wormer v. State, Ct. App. Op. No. 473 (File No. A-320), 699 P.2d 895 (1985).

When breathalyzer test results should be excluded. — The result of a breathalyzer test secured in violation of the right to counsel should be excluded in a civil license revocation proceeding. Whisenhunt v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3260 (File No. S-1467), P.2d (1987).

Parental presence at all court proceedings is a prerequisite to conviction of a minor for a traffic offense, including driving while intoxicated. Aiken v. State, Ct. App. Op. No. 672 (File No. A-1498), 730 P.2d 821 (1987).

Attempted retest may be prerequisite to a motion to suppress intoximeter result on the grounds of alleged inadequacy in the magnesium perchlorate tube (MPT) retention system where the trial court expressly finds that the MPT system is properly functioning, but leaves open the possibility that retained samples might be defective in individual cases. Ansay v. State, Ct. App. Op. No. 598 (File Nos. A-829, A-831), 715 P.2d 1194 (1986).

Cost-free retest not required. — Compliance with Serrano does not require that defendants be furnished a cost-free retest. Ansay v. State, Ct. App. Op. No. 598 (File Nos. A-829, A-831), 715 P.2d 1194 (1986).

Results of police officer's self-administered intoximeter test admissible. — Where a police officer, though not under arrest for driving while intoxicated, administered himself an intoximeter test, the results of that test were properly admitted at trial even though he was not read an implied consent warning and no sample was preserved. Lawrence v. State, Ct. App. Op. No. 603 (File No. A-799), 715 P.2d 1213 (1986).

Preserving breath samples.

In accord with main pamphlet. See Champion v. Department of Pub. Safety, Sup. Ct. Op. No. 3074 (File No. S-868), P.2d (1986).

Retroactive application of Serrano rule. — Where a new rule serves to ensure defendants a fair trial, it must be retroactively applied at least to any case which was not finally disposed of at the time the rule was announced, provided that the defendant raised the point in the trial court. Farleigh v. Municipality of Anchorage, Sup. Ct. Op. No. 3143 (File Nos. S-1162, S-1183), P.2d (1986).

Where defendant's reckless driving conviction was based on precisely the same conduct as his DWI, the offense of reckless driving must be deemed to have merged with the offense of DWI; and it is error to enter a separate judgment of conviction against the defendant on the reckless driving charge. Kalmakoff v. Municipality of Anchorage, Ct. App. Op. No. 588 (File No. A-920), 716 P.2d 261 (1986).

Defendant was a third DWI offender upon his 1987 conviction for driving while intoxicated, where he had been separately charged with DWI in September and November of 1985 and, pursuant to a plea agreement, was sentenced in both cases as if he were a first-time DWI offender. State v. Waalkes, Ct. App. Op. No. 782 (File No. A-2142), P.2d (1988).

Revocation of license for operating motor vehicle in parking lot. — See Caulkins v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3233 (File No. S-1586), 743 P.2d 366 (1987).

Enhanced sentences. — Before a prior conviction for an ostensibly non-criminal infraction, such as a "civil forfeiture," can properly be relied on as the sole basis for imposition of an enhanced mandatory minimum jail term, fundamental fairness under Alaska Const., art. I, § 7 requires the sentencing court to determine that the defendant was afforded the right to counsel in the prior case; an uncounseled conviction is simply too unreliable to be depended on for purposes of imposing a sentence of incarceration, whether that sentence is imposed directly or collaterally. Pananen v. State, Ct. App. Op. No. 551 (File Nos. A-943, A-948), 711 P.2d 528 (1985).

Conditions of probation. — Condition of probation prohibiting one who pled nolo contendere to driving while intoxicated from entering the town where he lived and worked for the term of his probation, one year, without prior written permission from the court was not a reasonable condition and was vacated. The condition was not reasonably related to the nature of the underlying offense, the condition was unnecessarily severe and restrictive, and the condition did not appear to be reasonably related to rehabilitation since there was no evidence to suggest that some endemic characteristic of the town

contributed to the probationer's criminal behavior and the condition was not reasonably related to the protection of the public. Edison v. State, Ct. App. Op. No. 548 (File No. A-940), 709 P.2d 510 (1985).

Applied in Meissner v. State, Ct. App. Op. No. 593 (File Nos. A-1083, A-1084), 715 P.2d 714 (1986); Annas v. State, Ct. App. Op. No. 647 (File No. A-954), 726 P.2d 552 (1986); Yancy v. State, Ct. App. Op. No. 687 (File Nos. A-1392, A-1413), P.2d (1987).

Quoted in Barcott v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3212 (File No. S-1692), 741 P.2d 226 (1987).

Stated in Kavorkian v. Tommy's Elbow Room, Inc., Sup. Ct. Op. No. 2906 (File Nos. S-62, S-79), 694 P.2d 160 (1985).

Cited in Effenbeck v. State, Ct. App. Op. No. 479 (File No. A-597), 700 P.2d 811 (1985); Anderson v. State, Ct. App. Op. No. 585 (File No. A-1028), 713 P.2d 1220 (1986); Morris v. State, Ct. App. Op. No. 694 (File No. A-1668), P.2d (1987); Brown v. State, Ct. App. Op. No. 714 (File No. A-1715), 739 P.2d 182 (1987); Clark v. State, Ct. App. Op. No. 716 (File No. A-1840), 738 P.2d 765 (1987); Selig v. State, Ct. App. Op. No. 786 (File No. A-2057), P.2d (1988).

Sec. 28.35.031. Implied consent. (a) A person who operates or drives a motor vehicle in this state or who operates an aircraft as defined in AS 28.35.030(g)(1) or who operates a watercraft as defined in AS 28.35.030(g)(2) shall be considered to have given consent to a chemical test or tests of the person's breath for the purpose of determining the alcoholic content of the person's blood or breath if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated. The test or tests shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating or driving a motor vehicle or operating an aircraft or a watercraft in this state while intoxicated.

(b) A person who operates or drives a motor vehicle in this state or who operates an aircraft or watercraft shall be considered to have given consent to a preliminary breath test for the purpose of determining the alcoholic content of the person's blood or breath. A law enforcement officer may administer a preliminary breath test at the scene of the incident if the officer has reasonable grounds to believe that a person's ability to operate a motor vehicle, aircraft, or watercraft is impaired by the ingestion of alcoholic beverages and that the person

(1) was operating or driving a motor vehicle, aircraft, or watercraft that is involved in an accident;

(2) committed a moving traffic violation or unlawfully operated an aircraft or watercraft; in this paragraph, "unlawfully" means in violation of any federal, state, or municipal statute, regulation or ordinance, except for violations that do not provide reason to believe that the operator's ability to operate the aircraft or watercraft was impaired by the ingestion of alcoholic beverages; or

(3) was operating or driving a motor vehicle in violation of AS 28.35.029(a).

(c) Before administering a preliminary breath test under (b) of this section, the officer shall advise the person that refusal may be used

against the person in a civil or criminal action arising out of the incident and that refusal is an infraction. If the person refuses to submit to the test, the test shall not be administered.

(d) The result of the test under (b) of this section may be used by the law enforcement officer to determine whether the driver or operator should be arrested.

(e) Refusal to submit to a preliminary breath test at the request of a law enforcement officer is an infraction.

(f) If a driver or operator is arrested, the provisions of (a) of this section apply. The preliminary breath test authorized in this section is in addition to any tests authorized under (a) of this section. (§ 1 ch 83 SLA 1969; am § 11 ch 129 SLA 1980; am § 16 ch 117 SLA 1982; am § 16 ch 77 SLA 1983; am §§ 1 — 4 ch 76 SLA 1985; am § 2 ch 142 SLA 1988)

Revisor's notes. — The last clause of (b)(2) of this section was enacted as AS 28.35.031(g). Reorganized in 1986.

Effect of amendments. — The 1985 amendment in subsection (b) inserted "or who operates an aircraft or watercraft" in the first sentence, inserted "aircraft, or watercraft" in the second sentence, in paragraph (1) inserted "operating or" and "aircraft, or watercraft," and in paragraph (2) added the language beginning "or unlawfully operated"; and in subsections (d) and (f) inserted "or operator."

The 1988 amendment, in subsection (b), deleted "or" at the end of paragraph (1), added "or" at the end of paragraph (2), and added paragraph (3).

Opinions of attorney general. — The Intoximeter 3000, an infrared alcohol breath test apparatus, is a "chemical test" under this section. 1984 Op. Att'y Gen. No. 01.

NOTES TO DECISIONS

Section constitutional. — The portable breath test authorized by this section does not constitute an unreasonable search under the fourth amendment to the United States Constitution. Leslie v. State, Ct. App. Op. No. 570 (File No. A-866), 711 P.2d 575 (1986).

The imposition of criminal penalties upon a motorist for his peaceful refusal to submit to a breath test does not violate his right to equal protection under the law. Burnett v. Municipality of Anchorage, 634 F. Supp. 1029 (D. Alaska 1986).

The implied consent statute clearly serves a legitimate state interest. All drivers lawfully stopped are treated equally, and, from the perspective of the fourth and fourteenth amendments, those drivers are treated no differently from other sorts of persons suspected of committing criminal acts. Burnett v. Municipality of Anchorage, 806 F.2d 1447 (9th Cir. 1986).

Legislative intent. — In the implied consent statutes, the legislature has gone to great lengths to avoid authorizing the police to take blood alcohol tests forcibly from defendants charged with driving while intoxicated; the legislature has, instead, provided extremely strong incentives to a defendant to take a breath test for blood alcohol by providing criminal penalties. Bass v. Municipality of Anchorage, Ct. App. Op. No. 429 (File No. A-273), 692 P.2d 961 (1984).

Consent to breathalyzer test, etc.

Just as a driver's failure to cooperate in the search conducted by means of a breathalyzer test is no impediment to the classification of the proceeding as a search incident to arrest, the absence of cooperation is no bar to the characterization of the taking of breath as a consent search for which consent has already been supplied by the act of driving on Alaska roads. Burnett v. Municipality of Anchorage, 634 F. Supp. 1029 (D. Alaska 1986).

Request for counsel before breathalyzer test. — District court judge's finding that defendant, convicted of driving while intoxicated under municipal code, did not request counsel prior to taking the

breathalyzer examination where he never asked to speak to an attorney but asked whether he might need an attorney, with testimony supporting the conclusion that he wondered if he needed an attorney in order to make bail, not because he wanted advice about submitting to a breathalyzer exam, was not clearly erroneous, and superior court judge should not have reversed the conviction. Anchorage v. Erickson, Ct. App. Op. No. 417 (File No. A-512), 690 P.2d 20 (1984).

Right to counsel before breathalyzer test.

See note to AS 28.35.030 under this catchline, Van Wormer v. State, Ct. App. Op. No. 473 (File No. A-320), 699 P.2d 895 (1985).

The result of a breathalyzer test secured in violation of the right to counsel should be excluded in a civil license revocation proceeding. Whisenhunt v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3260 (File No. S-1467), P.2d (1987).

Use of search warrant.

Implied Consent Statutes in effect at the time of the arrests of defendants in 1980 and 1981 precluded the admission into evidence of chemical sobriety test results obtained pursuant to a search warrant after the arrestees had refused to take such a test. Pena v. State, Sup. Ct. Op. No. 2851 (File Nos. 6174, 7052), 684 P.2d 864 (1984).

Chemical tests not conclusively presumed accurate. — Due process will not allow the results of a chemical test authorized under subsection (a) to be conclusively presumed accurate. Barcott v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3212 (File No. S-1692), 741 P.2d 226 (1987).

Applied in Lawrence v. State, Ct. App. Op. No. 603 (File No. A-799), 715 P.2d 1213 (1986).

Quoted in Brown v. State, Ct. App. Op. No. 714 (File No. A-1715), 739 P.2d 182 (1987); State, Dep't of Pub. Safety v. Conley, Sup. Ct. Op. No. 3297 (File No. S-1791), P.2d (1988).

Cited in Romo v. Municipality of Anchorage, Ct. App. Op. No. 457 (File No. A-462), 697 P.2d 1065 (1985).

Sec. 28.35.032. Refusal to submit to chemical test. (a) If a person under arrest refuses the request of a law enforcement officer to submit to a chemical test under AS 28.35.031(a), after being advised by the officer that the refusal will, if that person was arrested while operating or driving a motor vehicle for which a driver's license is required, result in the denial or revocation of the license or nonresident privilege to drive, that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, and that the refusal is a misdemeanor, a chemical test may not be given, except as provided by AS 28.35.035.

(b) *[Repealed, § 25 ch 77 SLA 1983.]*

(c) *[Repealed, § 25 ch 77 SLA 1983.]*

(d) *[Repealed, § 25 ch 77 SLA 1983.]*

(e) The refusal of a person to submit to a chemical test of breath under (a) of this section is admissible evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or watercraft while intoxicated.

(f) Refusal to submit to the chemical test of breath authorized by AS 28.35.031(a) is a class A misdemeanor.

(g) Upon conviction of a person under this section, the court shall impose a minimum sentence of imprisonment of not less than 72 con-

secutive hours and a fine of not less than $250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than $500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than $1,000 if, within the previous 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Imposition of sentence may not be suspended. If the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked under AS 28.15.181. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (h) of this section, finds appropriate. The sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the committed person.

(h) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under (g) of this section shall supply the Alaska court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under (g) of this section, or by an officer of the court in preparing a pre-sentence report for the use of the court in sentencing a person convicted under (g) of this section.

(i) A person who is sentenced to imprisonment for 72 consecutive hours under (g) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a

municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(j) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction. (§ 1 ch 83 SLA 1969; am § 28 ch 71 SLA 1972; am § 12 ch 129 SLA 1980; am § 17 ch 117 SLA 1982; am §§ 17 — 20, 25 ch 77 SLA 1983; am § 17 ch 60 SLA 1986)

Effect of amendments. — The 1986 amendment substituted "may" for "shall" following "chemical test" near the end of subsection (a).

NOTES TO DECISIONS

Legislative intent. — In the implied consent statutes, the legislature has gone to great lengths to avoid authorizing the police to forcibly take blood alcohol tests from defendants charged with driving while intoxicated; the legislature has, instead, provided extremely strong incentives to a defendant to take a breath test for blood alcohol by providing criminal penalties. Bass v. Municipality of Anchorage, Ct. App. Op. No. 429 (File No. A-273), 692 P.2d 961 (1984).

Imposition of criminal penalties held constitutional. — The imposition of criminal penalties upon a motorist for his peaceful refusal to submit to a breath test does not violate his right to equal protection under the law. Burnett v. Municipality of Anchorage, 634 F. Supp. 1029 (D. Alaska 1986).

Implied consent. — Just as a driver's failure to cooperate in the search conducted by means of a breathalyzer test is no impediment to the classification of the proceeding as a search incident to arrest, the absence of cooperation is no bar to the characterization of the taking of breath as a consent search for which consent has already been supplied by the act of driving on Alaska roads. Burnett v. Municipality of Anchorage, 634 F. Supp. 1029 (D. Alaska 1986).

The implied consent statute clearly serves a legitimate state interest. All drivers lawfully stopped are treated equally, and, from the perspective of the fourth and fourteenth amendments, those drivers are treated no differently from other sorts of persons suspected of committing criminal acts. Burnett v. Municipality of Anchorage, 806 F.2d 1447 (9th Cir. 1986).

"While" defined. — The word "while" in subsection (a) means "for." Brown v. State, Ct. App. Op. No. 714 (File No. A-1715), 739 P.2d 182 (1987).

Request for counsel before breathalyzer test. — District court judge's finding that defendant, convicted of driving while intoxicated under municipal code, did not request counsel prior to taking the breathalyzer examination where he never asked to speak to an attorney but asked whether he might need an attorney, with testimony supporting the conclusion that he wondered if he needed an attorney in order to make bail, not because he wanted advice about submitting to a breathalyzer exam, was not clearly erroneous, and superior court judge should not have reversed the conviction. Anchorage v. Erickson, Ct. App. Op. No. 417 (File No. A-512), 690 P.2d 20 (1984).

Right to counsel before breathalyzer test.

The result of a breathalyzer test secured in violation of the right to counsel should be excluded in a civil license revocation proceeding. Whisenhunt v. State, Dep't of Pub Safety, Sup. Ct. Op. No. 3250 (File No. S-1467), P.2d (1987).

See note to AS 28.35.030 under this catchline, Van Wormer v. State, Ct. App. Op. No. 473 (File No. A-320), 699 P.2d 895 (1985).

Right to contact counsel does not include a right to have counsel physically present while a breath test is administered. Annas v. State, Ct. App. Op. No. 647 (File No. A-954), 726 P.2d 562 (1986).

Admissibility of evidence of refusal. Admission into evidence of defendant's refusal to submit to a breathalyzer test did not violate his fifth amendment right against self-incrimination, even though Alaska has made refusal to submit to a breathalyzer test a separate criminal offense. Deering v. Brown, 839 F.2d 539 (9th Cir. 1988).

Requirements for conviction. — The jury need not find that defendant operated a motor vehicle while under the influence of intoxicating liquor as a condition prerequisite to convicting him or her of refusal to provide a chemical breath test. Brown v. State, Ct. App. Op. No. 714 (File No. A-1715), 739 P.2d 182 (1987).

Probable cause to arrest is not an element of the offense of refusing a chemical test of breath. Brown v. State, Ct. App. Op. No. 714 (File No. A-1715), 739 P.2d 182 (1987).

In order to convict a person of refusing to submit to a chemical test of his or her breath, the state must prove that the individual in question knew or perhaps should have known that the breath test was sought as evidence in connection with an investigation of his or her driving while intoxicated, and, second, that with that culpable mental state, he or she declined the test. Brown v. State, Ct. App. Op. No. 714 (File No. A-1715), 739 P.2d 182 (1987).

Admission of intoxication. — While a trial court might consider defendant's admission of intoxication in mitigation of punishment, it is not a defense to a refusal to provide a chemical breath test. Brown v. State, Ct. App. Op. No. 714 (File No. A-1715), 739 P.2d 182 (1987).

Conviction affirmed. — See McCracken v. State, Ct. App. Op. No. 399 (File No. A-214), 685 P.2d 1275 (1984).

Applied in Skuse v. State, Ct. App. Op. No. 582 (File No. A-885), 714 P.2d 368 (1986).

Cited in Witt v. State, Ct. App. Op. No. 433 (File No. A-482), 692 P.2d 976 (1984).

Sec. 28.35.033. Chemical analysis of breath or blood. (a) Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, the amount of alcohol in the person's blood or breath at the time alleged shall give rise to the following presumptions:

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

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

(3) *[Repealed, § 13 ch 129 SLA 1980.]*

(4) If there was 0.10 percent or more by weight of alcohol in the person's blood, or 100 milligrams or more of alcohol per 100 milliliters

of the person's blood, or 0.10 grams or more of alcohol per 210 liters of the person's breath, it shall be presumed that the person was under the influence of intoxicating liquor.

(b) For purposes of this chapter, percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 100 milliliters of blood.

(c) The provisions of (a) of this section may not be construed to limit the introduction of any other competent evidence bearing upon the question of whether the person was or was not under the influence of intoxicating liquor.

(d) To be considered valid under the provisions of this section the chemical analysis of the person's breath or blood shall have been performed according to methods approved by the Department of Public Safety. The Department of Public Safety is authorized to approve satisfactory techniques, methods, and standards of training necessary to ascertain the qualifications of individuals to conduct the analysis. If it is established at trial that a chemical analysis of breath or blood was performed according to approved methods by a person trained according to techniques, methods, and standards of training approved by the Department of Public Safety, there is a presumption that the test results are valid and further foundation for introduction of the evidence is unnecessary.

(e) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of the person's own choosing administer a chemical test in addition to the test administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person does not preclude the admission of evidence relating to the test taken at the direction of a law enforcement officer; the fact that the person under arrest sought to obtain such an additional test, and failed or was unable so to do, is likewise admissible in evidence.

(f) Upon the request of the person who submits to a chemical test at the request of a law enforcement officer, full information concerning the test, including the results of it, shall be made available to the person or the person's attorney.

(d) To be considered valid under the provisions of this section the chemical analysis of the person's breath or blood shall have been performed according to methods approved by the Department of Public Safety. The Department of Public Safety is authorized to approve satisfactory techniques, methods, and standards of training necessary to ascertain the qualifications of individuals to conduct the analysis. If it is established at trial that a chemical analysis of breath or blood was performed according to approved methods by a person trained according to techniques, methods, and standards of training approved by the Department of Public Safety, there is a presumption that the test results are valid and further foundation for introduction of the evi-

dence is unnecessary. (§ 1 ch 83 SLA 1969; am § 6 ch 104 SLA 1971; am § 13 ch 129 SLA 1980; am §§ 18 — 20 ch 117 SLA 1982; am E.O. No 67, § 2 (1987))

Effect of amendments. — The 1987 amendment substituted "The Department of Public Safety" for "The Department of Health and Social Services" in three places in subsection (d).

NOTES TO DECISIONS

No evidentiary privilege established. — Subsection (a) does not expressly establish an evidentiary privilege, and the Court of Appeals of Alaska stated that it would be inappropriate for the courts to construe subsection (a) as establishing such a privilege by implication. Russell v. Municipality of Anchorage, Ct. App. Op. No. 514 (File No. A-145), 706 P.2d 687 (1985).

Police fully satisfied their obligation to preserve evidence by preserving defendant's breath sample, even where police did not take defendant to the hospital he requested (because the state had no contract with that hospital for blood extraction), but offered to take defendant to one of two other hospitals which offer defendant refused. Ward v. State, Ct. App. Op No. 685 (File No. A-1519), P.2d (1987).

Testing breathalyzer for radio frequency interference. — When a timely and appropriate challenge to admissibility of a breathalyzer test result is made, a municipality must, at a minimum, demonstrate that the breathalyzer instrument in question was tested successfully for radio frequency interference (RFI) at least once in a manner substantially complying with the manufacturer's recommendations, and that none of the conditions for retesting listed in the manufacturer's RFI advisory occurred between the time of the initial RFI test and the challenged breath test. Thayer v. Municipality of Anchorage, Ct. App. Op. No. 395 (File No. 7846), 686 P.2d 721 (1984).

Admission of breath test results where substantial compliance with regulations. — Even where defendant's breath test was administered by an uncertified officer on an intoximeter that was not recalibrated at 60-day intervals as required by 7 AAC 30.050, the test results were still admissible because only substantial compliance with the applicable regulations is required. Herter v. State, Ct. App. Op. No. 592 (File No. A-1134), 716 P.2d 274 (1986).

Suppression of breath test results. — A defendant has the burden of showing that by virtue of some action or inaction on the part of the prosecuting authority, he was not furnished a reasonable means of verifying an adverse breath test result. Once the defendant has sustained his burden of showing that he was not furnished a reasonable means of verification, he has established a prima facie case that the breath test results should be suppressed; and in order to avoid suppression, the governmental agency in question must then prove by a preponderance of the evidence that its failure to provide the defendant an independent means of verifying the result was free of fault. State v. Kerr, Ct. App. Op. No. 561 (File No. A-531), 712 P.2d 400 (1985).

Waiver of objection — In the absence of a specific reservation of the issue during the course of a trial, a party failing to object on foundational grounds to admission of blood- or breath-alcohol test results cannot later object to the application of the statutory presumption of intoxication. Macauly v. State, Ct. App. Op. No. 695 (File No. A-946), P.2d (1987).

Jury should be made aware of statutory presumption. — A jury considering drunk driving, assault (involving motor vehicles), manslaughter, and negligent homicide cases should be made aware of the statutory presumption concerning intoxication in subsection (a). Dreanek v. State, Ct. App. Op. No. 455 (File No A-19), 697 P.2d 1059 (1985).

Jury instructions. — In prosecution for drunk driving manslaughter and second-degree assault, the trial court did not err in instructing the jury that if it found that there was .10% or more alcohol in defendant's blood at the time of the accident, it could infer that he was under the influence of intoxicating liquor. Dreanek v. State, Ct. App. Op. No. 455 (File No. A-19), 697 P.2d 1059 (1985).

Cited in Edgmon v. State, Ct. App. Op. No. 483 (File No. A-16), 702 P.2d 643 (1985).

Sec. 28.35.035. Administration of chemical tests without consent.

NOTES TO DECISIONS

Section should not be read broadly. — In light of the fact that the legislature has gone to great lengths to avoid authorizing the police to forcibly take blood tests, this section should not be read broadly. Bass v. Municipality of Anchorage, Ct. App. Op. No. 429 (File No. A-273), 692 P.2d 961 (1984).

Effect of section. — The legislature has eliminated a driver's ability to refuse a chemical sobriety test when an arrestee is involved in an accident that results in the death of or injury to another person. Pena v. State, Sup. Ct. Op. No. 2851 (File Nos. 6174, 7052), 684 P.2d 864 (1984).

Application of subsection (b). — The fact that it was not practical to offer a defendant a breathalyzer test does not bring the case within subsection (b) of this section; what does seem to fall within subsection (b) is a narrow class of cases where the defendant is unconscious or otherwise incapable of manifesting his intent to refuse. Bass v. Municipality of Anchorage, Ct. App. Op. No. 429 (File No. A-273), 692 P.2d 961 (1984).

The legislature's choice of language seems to be consistent with the theory that subsection (b) of this section was intended to apply only to situations where a blood-alcohol test could be conducted without any violence such as where an arrestee is unconscious. Bass v. Municipality of Anchorage, Ct. App. Op. No. 429 (File No. A-273), 692 P.2d 961 (1984).

Cited in Herter v. State, Ct. App. Op. No. 592 (File No. A-1134), 715 P.2d 274 (1986).

Sec. 28.35.036. Forfeiture of motor vehicle.

NOTES TO DECISIONS

Section inapplicable to airboats. — A court may not forfeit the vehicle of a person convicted of driving while intoxicated on public property in an airboat; an airboat is not "a motor vehicle of a type for which a driver's license is required." State v. Stagno, Ct. App. Op. No. 725 (File No. A-1685), P.2d (1987).

Article 3. Reckless and Negligent Driving.

Section
45 Negligent driving

Sec. 28.35.040. Reckless driving.

NOTES TO DECISIONS

Defendant was "in actual physical control" of her vehicle, where she was seated in the driver's seat behind the steering wheel, had possession of the ignition key and was attempting to put the key in the ignition; given these factors of control, it is not necessary that the engine be running. State, Dep't of Pub. Safety v. Conley, Sup. Ct. Op. No. 3297 (File No. S-1791), P.2d (1988).

Sec. 28.35.045. Negligent driving. (a) A person who drives a motor vehicle in the state in a manner which creates an unjustifiable risk of harm to a person or to property and who, as a result of the creation of the risk, actually endangers a person or property is guilty of negligent driving. An unjustifiable risk is a risk of such a nature and degree that a failure to avoid it constitutes a deviation from the standard of care that a reasonable person would observe in the situation. Proof that a defendant actually endangered a person or property is established by showing that, as a result of the defendant's driving,

(1) an accident occurred;

(2) a person, including the defendant, took evasive action to avoid an accident;

(3) a person, including the defendant, stopped or slowed down suddenly to avoid an accident; or

(4) a person or property, including the defendant or the defendant's property, was otherwise endangered.

(b) The offense of negligent driving is a lesser offense than, and included in, the offense of reckless driving, and a person charged with reckless driving may be convicted of the lesser offense of negligent driving.

(c) A person convicted of negligent driving is guilty of an infraction as provided under AS 28.40.050.

(d) Lawfully conducted automobile, snowmobile, motorcycle or other motor vehicle racing or exhibition events are not subject to the provisions of this section. (§ 7 ch 74 SLA 1974; am § 6 ch 241 SLA 1976; am § 19 ch 144 SLA 1977; am § 43 ch 21 SLA 1985)

Effect of amendments. — The 1985 amendment deleted "and in addition, the court may limit or suspend the person's driver's license under AS 28.15.220(b)" at the end of subsection (c).

Article 4. Duties Following Accidents.

Sec. 28.35.050. Action of operator immediately after accident.

NOTES TO DECISIONS

Effect of intoxication on knowledge. — Trial court did not err in instructing the jurors that they could not consider defendant's intoxication in deciding whether he acted knowingly with regard to the offenses of failing to remain at the scene of an accident and failing to render assistance to an injured person. Williams v. State, Ct. App. Op. No. 709 (File No. A-1631), 737 P.2d 360 (1987).

Applied in Winslow v. State, Ct. App. Op. No. 397 (File No. A-103), 685 P.2d 1273 (1984).

Stated in Dunlop v. State, Sup. Ct. Op. No. 3068 (File Nos. S-923, S-1163), 721 P.2d 604 (1986).

Sec. 28.35.060. Duty of operator to give information and render assistance.

NOTES TO DECISIONS

Ten-year sentence with five years suspended for failure to render assistance affirmed. — See Winslow v. State, Ct. App. Op. No. 397 (File No. A-103), 686 P.2d 1273 (1984).

Intoxication. — Trial court did not err in instructing the jurors that they could not consider defendant's intoxication in deciding whether he acted knowingly with regard to the offenses of failing to remain at the scene of an accident and failing to render assistance to an injured person. Williams v. State, Ct. App. Op. No. 709 (File No. A-1631), 737 P.2d 360 (1987).

Stated in Dunlop v. State, Sup. Ct. Op. No. 3068 (File Nos. S-923, S-1163), 721 P.2d 604 (1986).

Cited in Smith v. State, Ct. App. Op. No. 729 (File No. A-1861), 739 P.2d 1306 (1987).

Article 5. Miscellaneous Offenses.

Section
145. Overtaking and passing school bus
235. Unauthorized use of handicapped parking
251. Contained or confined loads
253. Anti-spray devices required
265. Penalty

Sec. 28.35.145. Overtaking and passing school bus. (a) The driver of a vehicle that approaches from any direction a school bus stopped on a highway or vehicular way or area shall stop not less than 30 feet from the school bus before reaching it when there are in operation on the school bus flashing red lights as required by regulation. The driver may not proceed until the school bus proceeds and the flashing lights are no longer illuminated.

(b) When a school bus is stopped on a highway or vehicular way or area, whether or not there are in operation on the school bus flashing red lights as required by regulation, the driver of a vehicle shall yield the right-of-way to a person crossing a highway, vehicular way, or area to embark on or disembark from the school bus, whether or not the person is crossing within a marked crosswalk.

(c) The driver of a vehicle on a highway with separate roadways is not required to stop when meeting or passing a school bus that is on a different roadway or, if upon a controlled access highway, when a school bus is stopped off the highway in a loading zone that is part of, or adjacent to, the controlled access highway, and pedestrians are not permitted to cross the highway.

(d) A driver convicted under this section is guilty of a class B misdemeanor and, in addition to other penalties as provided by law, is subject to a mandatory assessment of six demerit points under AS 28.15.221 — 28.15.261.

(e) A vehicle owner, or in the case of a leased vehicle a lessee, is guilty of an infraction as described in AS 28.40.050(d) and may be punished by a fine not to exceed $100, if the vehicle owned or leased

by the person is operated in violation of this section. The owner or lessee may not be penalized if the vehicle was stolen, or the driver of the vehicle is convicted under (d) of this section. This subsection does not apply to a lessor of a vehicle if the lessor keeps a record of the name and address of the lessee. A violation of this subsection may not result in the loss of a driver's license or privilege to drive and does not constitute grounds for assessment of demerit points under AS 28.15.221 — 28.15.261. This subsection does not prohibit or limit the prosecution of a vehicle driver for violating (a) or (b) of this section. (§ 1 ch 8 SLA 1986; am § 10 ch 76 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, in the first sentence of subsection (e) inserted "is guilty of an infraction as described in AS 28.40.050(d) and" and substituted "fine" for "civil penalty."

Sec. 28.35.225. Enforcement.

NOTES TO DECISIONS

"Law enforcement officers". — Any member of the police force of an incorporated city or borough is a "law enforcement officer" for purposes of this section. State v. Burke, Ct. App. Op. No. 583 (File No. A-908), 714 P.2d 374 (1986).

An airport police officer is a law enforcement officer for purposes of this section. Clark v. State, Ct. App. Op. No. 716 (File No. A-1840), 738 P.2d 765 (1987).

Enforcement authority. — This section authorizes all "law enforcement officers" to stop any vehicle whose driver has committed a statewide traffic offense in the officer's presence, regardless not only of whether the offense was committed within the territorial limits of the jurisdiction which employed the officer, but also of whether the vehicle is in the territorial limits at the time the officer decides to make the stop. State v. Burke, Ct. App. Op. No. 583 (File No. A-908), 714 P.2d 374 (1986).

Sec. 28.35.235. Unauthorized use of handicapped parking. (a) A person may not park a motor vehicle in a parking place reserved for disabled or medically handicapped persons unless

(1) the person has a special permit issued by the department under AS 28.10.495;

(2) the motor vehicle displays a special license plate issued to disabled or handicapped persons under AS 28.10.181(d); or

(3) the motor vehicle displays a special license plate or permit issued to disabled or handicapped persons by another state, province, territory, or country.

(b) A person who violates this section is guilty of an infraction. Upon conviction the court shall impose a fine of not less than $100. (§ 2 ch 11 SLA 1987)

Sec. 28.35.251. Contained or confined loads. (a) A person may not drive a motor vehicle loaded with sand, gravel, rock, or similar materials on a highway unless

(1) the load is contained or confined to prevent the load from dropping, shifting, leaking, or escaping, except that sand or other substances may be dropped, sprinkled, or sprayed for the purpose of cleaning or maintaining the highway or providing traction; and

(2) the load is subjected to treatment by methods, approved by the commissioner by regulation, designed to settle the load or remove loose material before the vehicle is driven on the highway.

(b) If a cover is used to contain or confine a load being driven on a highway, the cover shall be securely fastened to prevent the cover from becoming loose or detached, or from being a hazard to other users of the highway. (§ 1 ch 62 SLA 1986)

Sec. 28.35.253. Anti-spray devices required. A person may not drive a motor vehicle on a highway unless the vehicle is equipped with fenders, mud flaps, or other anti-spray devices adequate to prevent the vehicle from being a hazard to other users of the highway. (§ 1 ch 62 SLA 1986)

Sec. 28.35.255. Penalty. A person convicted of violating AS 28.35.251 or 28.35.253 is guilty of an infraction. (§ 1 ch 62 SLA 1986)

Chapter 37. Driver License Compact.

Article
1 General Provisions (§§ 28.37.010 — 28.37.040)
2 Compact Terms (§§ 28.37.110 — 28.37.190)

Article 1. General Provisions.

Section
10. Compact enacted
20. Licensing authority
30. Expenses of administrator
40. Executive head

Sec. 28.37.010. Compact enacted. The Driver License Compact is enacted into law and entered into with all other jurisdictions legally joining in it in the form substantially contained in AS 28.37.110 — 28.37.190. (§ 18 ch 60 SLA 1986)

Sec. 28.37.020. Licensing authority. In this chapter the term "licensing authority" with reference to this state means the division of motor vehicles in the Department of Public Safety. The department shall furnish to the appropriate authority of another party state the information or documents reasonably necessary to facilitate the administration of AS 28.37.130 — 28.37.150. (§ 18 ch 60 SLA 1986)

Sec. 28.37.030. Expenses of administrator. The compact administrator provided for in AS 28.37.170 is not entitled to additional compensation on account of service as the administrator, but is entitled to expenses incurred in connection with the duties and responsibilities as the administrator, in the same manner as for expenses incurred in connection with other duties or responsibilities of the office or employment. (§ 18 ch 60 SLA 1986)

Sec. 28.37.040. Executive head. In this chapter, with reference to this state, the term "executive head" means the governor. (§ 18 ch 60 SLA 1986)

Article 2. Compact Terms.

Section
110. Findings and policy statement
120. Compact definitions
130. Reports of convictions
140. Effect of conviction in party state
150. Grounds requiring refusal to issue license
160. Application of other state laws
170. Administrator of compact
180. Compact as law; withdrawal procedure
190. Construction and validity; severability

Sec. 28.37.110. Findings and policy statement. (a) The party states find that

(1) the safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles;

(2) violation of a law or ordinance is evidence that the violator engages in conduct that is likely to endanger the safety of persons and property;

(3) the continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of the party states to

(1) promote compliance with the laws, ordinances, and administrative regulations relating to the operation of motor vehicles by their drivers in each of the jurisdictions where those drivers operate motor vehicles;

(2) make the reciprocal recognition of licenses to drive and eligibility for them more just and equitable by considering the overall compliance with motor vehicle laws, ordinances, and administrative regulations as a condition precedent to the continuance or issuance of a license by reason of which the licensee is authorized or permitted to operate a motor vehicle in the party states. (§ 18 ch 60 SLA 1986)

Sec. 28.37.120. Compact definitions. In this chapter

(1) "conviction" means a conviction of an offense related to the use or operation of a motor vehicle that is prohibited by state law, municipal ordinance, or administrative regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed an offense described in this paragraph, and that is required to be reported to the licensing authority under AS 28.37.130;

(2) "home state" means the state that has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle;

(3) "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. (§ 18 ch 60 SLA 1986)

Sec. 28.37.130. Reports of convictions. The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. The report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code, or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection with the conviction. (§ 18 ch 60 SLA 1986)

Sec. 28.37.140. Effect of conviction in party state. (a) The licensing authority in the home state, for the purposes of suspending, revoking, or limiting the license to operate a motor vehicle, shall give the same effect to the conduct reported under AS 28.37.130 as it would if the conduct had occurred in the home state, in the case of a conviction for

(1) manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree that renders the driver incapable of safely driving a motor vehicle;

(3) any felony in the commission of which a motor vehicle is used;

(4) failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to another conviction, reported under AS 28.37.130, the licensing authority in the home state shall give the effect to the conduct that is provided by the laws of the home state if the offense constituting the conduct report under AS 28.37.130 has elements similar to those of the home state as defined in the home state at the time the

offense constituting the conduct report under AS 28.37.130 was committed.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in (a) of this section, the party state shall construe the denominations and descriptions appearing in (a) of this section as being applicable to and identifying the offenses or violations of a substantially similar nature, and the laws of the party state shall contain the provisions necessary to ensure that full force and effect is given to this section. (§ 18 ch 60 SLA 1986)

Sec. 28.37.150. Grounds requiring refusal to issue license. Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by another party state. The licensing authority in the state where application is made may not issue a license to drive to the applicant if

(1) the applicant has held a license, but the license has been suspended by reason, in whole or in part, of a violation, and the suspension period has not terminated;

(2) the applicant has held a license, but the license has been revoked by reason, in whole or in part, of a violation, and the revocation has not terminated; except that after the expiration of one year from the date the license was revoked, the person may make application for a new license if permitted by law; the licensing authority may refuse to issue a license to an applicant if, after investigation, the licensing authority determines that it will not be safe to grant to the person the privilege of driving a motor vehicle on the public highways;

(3) the applicant is the holder of a license to drive issued by another party state and currently in force, unless the applicant surrenders the license. (§ 18 ch 60 SLA 1986)

Sec. 28.37.160. Application of other state laws. Except as expressly required by provisions of this chapter, nothing in this chapter shall be construed to affect the right of a party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state. (§ 18 ch 60 SLA 1986)

Sec. 28.37.170. Administrator of compact. (a) The head of the licensing authority of each party state shall be the administrator of the compact for that state. The administrators of all party states, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state the information or documents reasonably necessary to facilitate the administration of the compact. (§ 18 ch 60 SLA 1986)

Sec. 28.37.180. Compact as law; withdrawal procedure. (a) The compact shall become effective as to any state in which the compact becomes effective as the law of that state.

(b) A party state may withdraw from the compact by enacting a statute repealing the compact as the law of the state, but a withdrawal may not take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. Withdrawal does not affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring before the withdrawal. (§ 18 ch 60 SLA 1986)

Sec. 28.37.190. Construction and validity; severability. The compact shall be liberally construed so as to effectuate its purposes. The provisions of the compact are severable and if any phrase, clause, sentence, or provision of the compact is declared to be contrary to the constitution of any party state or of the United States or the applicability of it to a government, agency, person or circumstance is held invalid, the validity of the remainder of the compact and the applicability of it to any government, agency, person or circumstance shall not be affected by it. If the compact is held contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (§ 18 ch 60 SLA 1986)

Chapter 40. General Provisions.

Section
50. Penalty for violations of law, regulations, and municipal ordinances
Section
100. Definitions for title

Sec. 28.40.050. Penalty for violations of law, regulations, and municipal ordinances. (a) It is a misdemeanor for a person to violate a provision of this title unless the violation is by this title or other law declared to be a felony or an infraction.

(b) A person convicted of a misdemeanor for a violation of a provision of this title for which another penalty is not specifically provided is punishable by a fine of not more than $500, or by imprisonment for not more than 90 days, or by both. In addition, the privilege to drive or the registration of vehicles may be suspended or revoked.

(c) Unless otherwise specified by law a person convicted of a violation of a regulation adopted under this title, or a municipal ordinance regulating vehicles or traffic when the municipal ordinance does not correspond to a provision of this title, is guilty of an infraction and is punishable by a fine not to exceed $300.

(d) An infraction, as provided for in (c) of this section, is not considered a criminal offense and may not result in imprisonment, nor is a fine imposed for the commission of an infraction considered a penal or criminal punishment; nor may the commission of a single infraction result in the loss of a driver's license or privilege to drive in this state except as may result from the accumulation of points under AS 28.15.221 — 28.15.261, or the registration of vehicles; nor does a person cited with an infraction have a right to trial by jury or to court-appointed counsel.

(e) *[Repealed, § 5 ch 85 SLA 1987.]* (§ 50-1-8 ACLA 1949; am § 12 ch 241 SLA 1976; am §§ 22, 23 ch 144 SLA 1977; am § 5 ch 85 SLA 1987)

Effect of amendments. — The 1987 amendment repealed subsection (e), concerning overweight penalties.

NOTES TO DECISIONS

Prerequisite to suspension of license or privilege to drive. — A driver's license or privilege to drive cannot properly be suspended unless the driver was in fact licensed or otherwise actually privileged to drive a motor vehicle within the state. Roberts v. State, Ct. App. Op. No. 478 (File No. A-342), 700 P.2d 815 (1985).

Generic penalty provision. — Subsection (b) is not a penalty provision dealing specifically with the offense of driving while license suspended; rather it is a generic penalty provision, broadly applicable to violations of all Title 28 provisions for which the specific penalties are given. Roberts v. State, Ct. App. Op. No. 478 (File No. A-342), 700 P.2d 815 (1985).

Sec. 28.40.100. Definitions for title. (a) Unless otherwise specifically defined or unless the context otherwise requires, in this title and in regulations adopted under this title

(1) "cancel" means the annulment or termination by formal action of the department of a certification, registration, license, permit or privilege issued or allowed under this title or regulations adopted under this title, because of an error or defect in the document issued or the application for issuance or because the person holding the document is no longer entitled to it;

(2) "commissioner" means the commissioner of public safety;

(3) "department" means the Department of Public Safety;

(4) "driver" means a person who drives or is in actual physical control of a vehicle;

(5) "driver's license", or "license" when used in relation to driver licensing, means a license, permit, or privilege to obtain a driver's

license, whether or not a person holds a valid license issued in this or another jurisdiction, to drive a motor vehicle under the laws of this state;

(6) "highway" means the entire width between the boundary lines of every way that is publicly maintained when a part of it is open to the public for purposes of vehicular travel, including but not limited to every street and the Alaska state marine highway system but not vehicular ways or areas;

(7) "motor vehicle" means a vehicle which is self-propelled except a vehicle moved by human or animal power;

(8) "motorcycle" means a vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground; the term does not include a tractor;

(9) "motor-driven cycle" means a motorcycle, motor scooter, motorized bicycle, or similar conveyance with a motor attached and having an engine with 50 or less cubic centimeters of displacement;

(10) *[Repealed, § 88 ch 74 SLA 1985.]*

(11) "official traffic-control device" means a sign, signal, marking, or other device not inconsistent with this title, placed or erected by authority of a state or municipal agency or official having jurisdiction, for the purpose of traffic regulating, warning and guiding;

(12) "owner" means a person, other than a lienholder, having the property in or title to a vehicle, including but not limited to a person entitled to the use and possession of a vehicle subject to a security interest in another person, but exclusive of a lessee under a lease not intended as security;

(13) "revoke" means the termination by formal action of the department or a court of a certification, registration, license, permit or privilege issued or allowed under this title or regulations adopted under this title; the certification, registration, license, permit or privilege may not be reissued, renewed or restored during the time for which revoked; however, after that time, an application for a new certificate, registration, license, permit or privilege may be made;

(14) "roadway" means that portion of a highway designed or ordinarily used for vehicular travel, exclusive of the sidewalk, berm, or shoulder, even though the sidewalk, berm, or shoulder is used by persons riding bicycles or other human powered vehicles; and in the event that a highway includes two or more separate roadways, the term refers to each roadway separately but not to all such roadways collectively;

(15) "suspend" means the temporary withdrawal by formal action of the department or a court of a certificate, registration, license, permit or privilege issued or allowed under this title or regulations adopted under this title, effective for a period of time which must be specifically designated by the department or court;

(16) "traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using a highway or vehicular way or area which is open to public use for purposes of travel;

(17) "underinsured motor vehicle" means a motor vehicle licensed for highway use with respect to ownership, operation, maintenance, or use for which there is a bodily injury or property damage insurance policy or a bond applicable at the time of an accident and the amount of insurance or bond

(A) is less than the limit for uninsured and underinsured coverage of the insured's policy; or

(B) has been reduced by payments to persons other than an insured, injured in an accident, to less than the limit for uninsured and underinsured coverage of the insured's policy;

(18) "vehicle" means a device in, upon, or by which a person or property may be transported or drawn upon or immediately over a highway or vehicular way or area except devices used exclusively upon stationary rails or tracks; and

(19) "vehicular way or area" means a way, path or area, other than a highway or private property, which is designated by official traffic control devices or customary usage and which is open to the public for purposes of pedestrian or vehicular travel, and which way or area may be restricted in use to pedestrians, bicycles, or other specific types of vehicles as determined by the department or other agency having jurisdiction over the way, path or area.

(b) The commissioner shall adopt regulations to define other terms which are used in this title and in regulations adopted under this title. (§ 50-1-1 ACLA 1949; am § 3 ch 81 SLA 1973; am §§ 13, 14 ch 241 SLA 1976; am § 1 ch 135 SLA 1977; am § 14 ch 70 SLA 1984; am § 1 ch 13 SLA 1985; am § 88 ch 74 SLA 1985; am § 2 ch 130 SLA 1988)

Effect of amendments. — The first 1985 amendment in paragraph (9) of subsection (a) substituted "50 or less" for "less than 150" and deleted "or with not to exceed five brake-horsepower" at the end of the paragraph.

The second 1985 amendment repealed paragraph (10) of subsection (a), which defined "municipality."

The 1988 amendment, effective September 1, 1988, substituted "permit, or privilege to obtain a driver's license" for "permit or privilege" in subsection (a)(5).

NOTES TO DECISIONS

Applied in Conner v. State, Ct. App. Op. No. 451 (File No. A-574), 696 P.2d 680 (1985); Caulkins v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3233 (File No. S-1586), 743 P.2d 366 (1987).

Cited in State v. Robertson, Ct. App. Op. No. 778 (File No. A-2330), P.2d (1988).

Chapter 35. Miscellaneous Provisions.

Article
1. Offenses Involving Property Rights (§§ 28.35.015 – 28.35.026)
2. Operating While Intoxicated; Implied Consent (§§ 28.35.030 — 28.35.038)
3. Reckless and Negligent Driving (§§ 28.35.040, 28.35.045)
4. Duties Following Accidents (§§ 28.35.050 — 28.35.130)
5. Miscellaneous Offenses (§§ 28.35.135 — 28.35.245)

Article 1. Offenses Involving Property Rights.

Section
15. Tampering with or damaging a vehicle
24. Renting a motor vehicle
26. Failure to return rental vehicle

Sec. 28.35.010. Driving a vehicle without owner's consent. [Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.46.484.]

Sec. 28.35.015. Tampering with or damaging a vehicle. A person, without the right to do so, may not tamper with a vehicle, set or attempt to set a vehicle in motion, or damage a part or component of a vehicle. (§ 5 ch 241 SLA 1976)

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 354, 355.

61A C.J.S., Motor Vehicles, § 673.

What constitutes offense of "tampering" with "motor vehicle" or contents, 42 A.L.R2d 624.

Validity and construction of statute making it a criminal offense to "tamper" with motor vehicle or contents, or to obscure registration plates, 57 A.L.R3d 606.

Sec. 28.35.020. Conviction in larceny prosecution. [Repealed, § 21 ch 166 SLA 1978.]

Sec. 28.35.024. Renting a motor vehicle. (a) A person may not rent a motor vehicle to a person unless the person renting the vehicle is properly licensed under this title or, if a nonresident, the person is properly licensed under the laws of the jurisdiction of a person's residence.

(b) A person may not rent a motor vehicle until the person has inspected the license of the person to whom the vehicle is to be rented, and has verified the identification of the licensee.

(c) Every person renting a motor vehicle shall keep a record of the registration number of the vehicle rented, the name, address and license number of the person to whom the vehicle is rented, and the date and place when and where the license of the intended driver was issued. The record shall be open to inspection by a peace officer or employee of the department acting in an official capacity.

(d) Every person renting a motor vehicle shall comply with the financial responsibility requirements of this title.

(e) [Effective June 8, 1985.] A person who rents motor vehicles to others shall provide child safety devices in sufficient quantity that all persons to whom the vehicles are to be rented can comply with the requirements of AS 28.05.095. (§ 5 ch 241 SLA 1976; am § 2 ch 99 SLA 1984)

Effect of amendments. — The 1984 amendment, effective June 8, 1985, added subsection (e).

Collateral references. — 61A C.J.S., Motor Vehicles, §§ 760e, 768c.

Sec. 28.35.025. Obtaining rental vehicle with intent to defraud. [Repealed, § 25 ch 144 SLA 1977.]

Sec. 28.35.026. Failure to return rental vehicle. (a) A person in possession of a motor vehicle under an agreement in writing which requires the person to return the vehicle to a particular place or at a particular time who refuses or wilfully neglects to return it to the place and at the time specified in the agreement in writing with the intent to deprive the owner of the vehicle or to convert it to the person's own use, or who secretes, converts, sells or attempts to sell the vehicle or any part of it is, upon conviction, punishable by imprisonment for not more than five years, or by a fine of not more than $1,000, or by both.

(b) In this section, "wilfully neglects" means omits, fails, or forbears, with a conscious purpose to injure, or without regard for the rights of the owner, or with indifference whether a wrong is done the owner or not. (§ 1 ch 37 SLA 1964; am § 18 ch 144 SLA 1977)

NOTES TO DECISIONS

This section is not vague. Speidel v. State, Sup. Ct. Op. No. 584 (File No. 1014), 460 P.2d 77 (1969).

Concern of section. — All that this section is concerned with is the protection of one select group of persons in the business community — those who rent automobiles. Speidel v. State, Sup. Ct. Op. No. 584 (File No. 1014), 460 P.2d 77 (1969).

This section does not represent what could be classified as a "public welfare offense." The health, safety and welfare of the public is not involved. Speidel v. State, Sup. Ct. Op. No. 584 (File No. 1014), 460 P.2d 77 (1969).

The basic infirmity of this section prior to the 1977 amendment was apparent. — This section allowed a man to be convicted of a crime though he had acted entirely innocently, inadvertently or negligently. Alex v. State, Sup. Ct. Op. No. 689 (File No. 1224), 484 P.2d 677 (1971).

Under the terminology of this section prior to the 1977 amendment it was possible to be guilty of the offense when there was an entire lack of any conscious deprivation of property or intentional injury. Alex v. State, Sup. Ct. Op. No. 689 (File No. 1224), 484 P.2d 677 (1971).

Under this section prior to the 1977 amendment a person might suffer a felony conviction for a simple negligent failure to act. To make such an act a serious crime without regard to an awareness of wrongdoing or the intentional infliction of injury is inconsistent with the general law. To convict a person of a felony for such an act, without proving criminal intent, is to deprive such person of due process of law. Alex v. State, Sup. Ct. Op. No. 689 (File No. 1224), 484 P.2d 677 (1971).

If one failed to return an automobile out of neglect, without any intention to deprive the owner of his property or to convert property to his own use, or of doing

wrong to the owner, he was made guilty of a felony prior to the 1977 amendment of this section although he might have acted unwittingly or inadvertently or negligently. This was contrary to the general condition of criminal liability which required not only the doing of an act, but also the existence of a guilty mind during the commission of the act. Alex v. State, Sup. Ct. Op. No. 689 (File No. 1224), 484 P.2d 677 (1971).

Extent to which section was valid. — This section prior to the 1977 amendment was valid and might be utilized to impose criminal responsibility on one to the extent that he failed to return a motor vehicle "with conscious purpose to injure" the owner of the vehicle. Speidel v. State, Sup. Ct. Op. No. 584 (File No. 1014), 460 P.2d 77 (1969).

Extent to which section was invalid. — Under the terms of this section prior to the 1977 amendment there was no escape from a felony conviction and a possible five-year prison term for simple neglectful negligent failure to return a rented automobile at the time specified in the rental agreement. To make such an act, without consciousness of wrongdoing or intention to inflict injury, a serious crime, and criminals of those who fall within its interdiction, is inconsistent with the general law. To convict a person of a felony for such an act, without proving criminal intent, is to deprive such person of due process of law. To the extent that this section permitted that to happen, it was invalid and of no effect. However, this section was invalid and ineffective only to the extent mentioned, and not in its entirety. It was severable by virtue of AS 01.10.030. Speidel v. State, Sup. Ct. Op. No. 584 (File No. 1014), 460 P.2d 77 (1969).

In overturning this section, the supreme court adhered to the general rule of law and dictate of justice which requires that to constitute guilt there must be not only a wrongful act but a criminal intention. Alex v. State, Sup. Ct. Op. No. 689 (File No. 1224), 484 P.2d 677 (1971).

The essential purpose of Speidel v. State, Sup. Ct. Op. No. 584 (File No. 1014), 460 P.2d 77 (1969), was to prevent criminal liability for a serious felony from being imposed in a manner akin to strict liability, that is, without regard to the accused's awareness of his conduct and intent to commit the proscribed act. Alex v. State, Sup. Ct. Op. No. 689 (File No. 1224), 484 P.2d 677 (1971).

The gist of the offense under this section is failure to return an automobile with a conscious purpose to injure the owner and not mere failure to pay the rental price. Hence, the constitutional prohibition against imprisonment for debt has not been violated. Speidel v. State, Sup. Ct. Op. No. 584 (File No. 1014), 460 P.2d 77 (1969).

Felonious intent not inherent in offense. — By defining "wilfully neglects" so specifically, the legislature indicated that the ordinary criminal or felonious intent, as in the case of larceny, is not inherent in the offense of failing to return a rented automobile. Speidel v. State, Sup. Ct. Op. No. 584 (File No. 1014), 460 P.2d 77 (1969).

Quoted in State v. Campbell, Sup. Ct. Op. No. 1149 (File No. 2294), 536 P.2d 105 (1975).

Cited in Kimoktoak v. State, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

Collateral references. — Criminal offenses in connection with rental of motor vehicles, 38 ALR3d 949.

Article 2. Operating While Intoxicated; Implied Consent.

Section

30. Operating a vehicle, aircraft or watercraft while intoxicated
31. Implied consent
32. Refusal to submit to chemical test
33. Chemical analysis of blood
34. Surrender of license or permit
35. Administration of chemical tests without consent
36. Forfeiture of motor vehicle
37. Remission of forfeitures
38. Municipal impoundment and forfeiture

Sec. 28.35.030. Operating a vehicle, aircraft or watercraft while intoxicated. (a) A person commits the crime of driving while intoxicated if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of intoxicating liquor, or any controlled substance listed in AS 11.71.140 — 11.71.190;

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

(3) while the person is under the combined influence of intoxicating liquor and another substance.

(b) Driving while intoxicated is a class A misdemeanor.

(c) Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than $250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than $500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than $1,000 if, within the preceding 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under this or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Imposition of sentence may not be suspended. In addition, if the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.15.181 and the vehicle used in commission of the offense may be forfeited under AS 28.35.036. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of

alcohol education or rehabilitation that the court, after consideration of any information compiled under (d) of this section, finds appropriate.

(d) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under (c) of this section shall supply the Alaska court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under (c) of this section, or by an officer of the court in preparing a presentence report for the use of the court in sentencing a person convicted under (c) of this section.

(e) A person who is sentenced to imprisonment for 72 consecutive hours upon a first conviction under (c) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(f) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

(g) In this section,

(1) "operate an aircraft" means to use, navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(2) "operate a watercraft" means to navigate or use a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state. (§ 50-5-3 ACLA 1949; am § 1 ch 107 SLA 1955; am § 1 ch 121 SLA 1967; am § 45 ch 32 SLA 1971; am § 4 ch 74 SLA 1974; am §§ 2, 3 ch 152 SLA 1978; am § 28 ch 94 SLA 1980; am § 10 ch 129 SLA 1980; am § 21 ch 45 SLA 1982; am §§ 13 — 15 ch 117 SLA 1982; am §§ 13 — 15 ch 77 SLA 1983)

Revisor's notes. — In 1984, former subsection (f) was redesignated as present subsection (g) and former subsection (g) was redesignated as present subsection (f).

Cross references. — For sentences for class A misdemeanors, see AS 12.55.035(b)(3) and 12.55.135(a).

Effect of amendments. — The first 1980 amendment, in subsection (a) as it existed prior to the second 1980 amendment, deleted "under AS 11.05.150" from the end of the third sentence and substituted "AS 28.15.181" for "AS 28.15.210(c)" in the fourth sentence.

The second 1980 amendment rewrote the section.

The first 1982 amendment substituted "or any controlled substance listed in AS 11.71.140 — 11.71.190" for "depressant, hallucinogenic, stimulant or narcotic drug as defined in AS 17.10.230(13) and AS 17.12.150(3)" in subsection (a)(1).

The second 1982 amendment added "or operates an aircraft or a watercraft" to the end of the introductory language of subsection (a), and in subsection (c), substituted "72 consecutive hours" for "three consecutive days" at the end of the first sentence, substituted "of driving while intoxicated in this or any other state or conviction of refusal to submit to a chemical test of breath under AS 28.35.032" for "under this section" in the second sentence, and added the language beginning "unless the subsequent conviction is within one year" to the end of the second sentence. The amendment also added subsections (e) and (g).

The 1983 amendment in paragraph (a)(2) inserted ", as determined . . . offense was committed," rewrote subsection (c) and added subsection (f).

Editor's notes. — For declaration of legislative purpose, see § 1, ch. 45, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

Opinions of attorney general. — The term "public street or highway" is sufficiently broad to include subdivision streets dedicated to the public. 1965 Op. Att'y Gen., No. 10.

The Department of Public Safety may enforce this section and AS 28.35.040 on subdivision roads under public use. 1965 Op. Att'y Gen., No. 10.

NOTES TO DECISIONS

Legislative history. — See Van Brunt v. State, Ct. App. Op. No. 149 (File Nos. 6046, 6064, 6189), 653 P.2d 343 (1982).

This section was not enacted in violation of the one-subject rule. Van Brunt v. State, Ct. App. Op. No. 98 (File Nos. 6046, 6064, 6189), 646 P.2d 872 (1982).

The prohibition on driving while under the "combined influence of intoxicating liquor and another substance" is so vague that it fails to proscribe an activity apart from subsection (a)(1), and it cannot be given any construction that would correct this failure. Williford v. State, Sup. Ct. Op. No. 2751 (File No. 5986), 674 P.2d 1329 (1983).

The meaning of "combined influence" is clear. Williford v. State, Sup. Ct. Op. No. 2751 (File No. 5986), 674 P.2d 1329 (1983).

The term "another substance" is unconstitutionally vague because a person is given no notice as to what substances, when used in combination with alcohol, are prohibited. Williford v. State, Sup. Ct. Op. No. 2751 (File No. 5986), 674 P.2d 1329 (1983).

The word "drug" cannot be substituted for "substance," which is not defined under the driving while intoxicated laws, since under the dictionary definitions, "substance" is not synonymous with "drug," but is a much broader term, encompassing all matter, not just medicinal substances. Williford v. State, Sup. Ct. Op. No. 2751 (File No. 5986), 674 P.2d 1329 (1983).

Constitutionality of warrantless arrests for violations. — AS 12.25.033, which permits a police officer to arrest a defendant for violation of this section on probable cause but without a warrant, does not violate Alaska Const., art. I, § 14 prohibiting unreasonable searches and seizures and the corresponding provisions of the federal constitution because these constitutional provisions are not offended by warrantless searches or arrests based on exigent circumstances and the legislature has determined that exigent circumstances exist where there is probable cause to believe a suspect is driving while intoxicated. Proctor v. State, Ct. App. Op. No. 83 (File No. 5718), 643 P.2d 5 (1982).

1980 amendment enacted constitutionally. — The 1980 version of this section, which with three other amendments to the driving while intoxicated statute, was added to a bill changing various state liquor laws (Senate Bill 365: ch. 129, SLA 1980) by the free conference committee, was not enacted in violation of Alaska Const., art. II, § 14 since the constitutional requirement that bills be read three times does not extend to an amended bill when the amendments do not change the subject of the bill. Van Brunt v. State, Ct. App. Op. No. 149 (File Nos. 6046, 6064, 6189), 653 P.2d 343 (1982).

And in accordance with Uniform Rule 42(b). — The 1980 version of this section, which with three other amendments to the driving while intoxicated law was added to Senate Bill 365 (ch. 129, SLA 1980) by the free conference committee, was not enacted in violation of Rule 42(b) of the Uniform Rules of the Alaska State Legislature since the amendment was "germane" to the bill, which changed various state liquor laws. Van Brunt v. State, Ct. App. Op. No. 149 (File Nos. 6046, 6064, 6189), 653 P.2d 343 (1982).

This section prohibits a person who is under the influence of intoxicating liquor being in actual physical control

of a vehicle with its motor running. Jacobson v. State, Sup. Ct. Op. No. 1282 (File No. 2478), 551 P.2d 935 (1976).

Reasonable suspicion of intoxication. — Police officer's suspicion that driver was possibly intoxicated and posed an imminent danger while driving was reasonable. Larson v. State, Ct. App. Op. No. 292 (File No. 7167), 669 P.2d 1334 (1983).

The words "operate" and "drive" have differing connotations and refer to different acts. Jacobson v. State, Sup. Ct. Op. No. 1282 (File No. 2478), 551 P.2d 935 (1976).

As a general proposition, it appears that "to operate" includes a larger class of activities than "to drive." While one who drives a vehicle must necessarily in that process operate it, the reverse is not necessarily so. Jacobson v. State, Sup. Ct. Op. No. 1282 (File No. 2478), 551 P.2d 935 (1976).

A conviction under subsection (a) of this section cannot be based on the use of a drug which had not been specifically designated by regulation as a drug which carried criminal sanctions for its use while driving. Crutchfield v. State, Sup. Ct. Op. No. 2207 (File No. 4474), 627 P.2d 196 (1980).

Right to counsel guaranteed. — When convicted for violating this section, a person may receive a fine of not more than $1,000 or a term of imprisonment for not more than one year, or both. Therefore, such case is one in which the right to counsel is guaranteed an accused by the Alaska Constitution. Gregory v. State, Sup. Ct. Op. No. 1269 (File No. 2467), 550 P.2d 374 (1976).

Right to counsel before breathalyzer test. — When a person is arrested for operating a motor vehicle in violation of state or local drunken driving ordinances, and requests to contact an attorney, the arrestee must be afforded a reasonable opportunity to do so before being required to decide whether or not to submit to a breathalyzer test; and where arrestee is denied that opportunity, subsequently obtained evidence, whether in form of test results or of refusal to take test, must be suppressed. Copelin v. State, Sup. Ct. Op. No. 2617 (File Nos. 5453, 5708), 659 P.2d 1206 (1983).

The statutory right to contact and consult with counsel prior to being required to decide whether or not to submit to a breathalyzer test is not an absolute one, which might involve a delay long enough to impair testing results, but, rather, a limited one of reasonable time and opportunity that can be reconciled with the implied consent statutes. Copelin v. State, Sup. Ct. Op. No. 2617 (File Nos. 5453, 5708), 659 P.2d 1206 (1983).

No right to counsel during video taping of field sobriety tests. — A person suspected of operating a motor vehicle while under the influence of intoxicating liquor [now driving while intoxicated] has no right to have counsel present during the video taping of field sobriety tests performed at the request of the arresting officer. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979); Copelin v. State, Ct. App. Op. No. 343 (File No. A-35), 676 P.2d 608 (1984).

Field sobriety tests distinguished from lineups or taking of handwriting exemplars. — See Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979).

Presumption in breathalyzer result. — Under the wording of AS 28.35.033, the breathalyzer result is clearly viewed as the presumptive equivalent of the amount of alcohol in the person's blood "at the time alleged"; in other words, at the time the offense was committed, not just when the breathalyzer examination was administered. Doyle v. State, Ct. App. Op. No. 43 (File No. 5115), 633 P.2d 306 (1981).

To be charged under this section rather than city of Anchorage Municipal Code 9.28.020 when both provisions apply to the same general facts does not constitute an arbitrary application of the law violative of constitutional safeguards of equal protection. Wester v. State, Sup. Ct. Op. No. 1106 (File No. 2159), 528 P.2d 1179 (1974), cert. denied, 423 U.S. 836, 96 S. Ct. 60, 46 L. Ed. 2d 54 (1975).

When blood-alcohol tests should be suppressed. — Blood-alcohol test findings should be suppressed where the blood was withdrawn from a conscious nonconsenting person without an arrest substantially contemporaneous with the taking. Layland v. State, Sup. Ct. Op. No. 1150 (File No. 2264), 535 P.2d 1043 (1975), aff'd, Sup. Ct. Op. No. 2739, 549 P.2d 1182 (1976), overruled on other grounds, City of Anchorage v. Geber, Sup. Ct. Op. Nos. 3827, 4016, 4037, 4046, 592 P.2d 1192 (1979).

In prosecuting a charge of operating a motor vehicle while under the influence of intoxicating liquor [now driving while intoxicated] law enforcement officials cannot utilize the results of a blood alcohol test, when the blood used in performing

the test was extracted from the accused against his or her will, after refusal to submit to a breathalyzer examination. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979). See notes to AS 28.35.031 — 28.35.033.

Trooper arriving at accident scene cannot arrest for drunk driving without warrant. — The Alaska legislature has classified both reckless driving and operating or driving an automobile under the influence of intoxicating liquor as misdemeanors. Thus, a state trooper who arrived at an accident scene could not arrest a driver without a warrant for either reckless driving or drunk driving since neither of these offenses was committed or attempted in his presence. Layland v. State, Sup. Ct. Op. No. 1150 (File No. 2264), 535 P.2d 1043 (1975), aff'd, Sup. Ct. Op. No. 2739, 549 P.2d 1182 (1976), overruled on other grounds, City of Anchorage v. Geber, Sup. Ct. Op. Nos. 3827, 4016, 4037, 4046, 592 P.2d 1192 (1979).

The fact that a man consumed from seven to ten ounces of whiskey during an 18-hour period was not shown by the evidence to necessarily cause him to be intoxicated. Bertram v. Harris, Sup. Ct. Op. No. 393 (File No. 677), 423 P.2d 909 (1967).

Effect of alcohol consumption after accident is jury question. — The issue of whether and to what extent defendant's consumption of alcohol after the accident but before a breathalyzer examination affected his breathalyzer result was a question which was properly left for the jury. Doyle v. State, Ct. App. Op. No. 43 (File No. 5115), 633 P.2d 306 (1981).

State need not show that defendants knew they were intoxicated. — The state need not show that defendants actually knew that they were under the influence of intoxicating liquor or that their blood or breath alcohol levels were in excess of 0.10. Van Brunt v. State, Ct. App. Op. No. 98 (File Nos. 6046, 6064, 6189), 646 P.2d 872 (1982).

Preserving breath samples. — Due process clause of the Alaska Constitution requires prosecution to make reasonable efforts to preserve breath sample or to take other steps to allow defendant to verify results of breathalyzer test. Municipality of Anchorage v. Serrano, Ct. App. Op. No. 115 (File Nos. 6447, 6724, 6725), 649 P.2d 256 (1982).

Preservation of blood sample. — Where blood sample was taken by and was in possession of hospital where defendant sought treatment following car accident, and where, on the facts of the case, both defendant and state had opportunity to preserve the sample, trial court did not err in ruling that the blood test results were admissible even though the state had not sought preservation of the blood sample. Bradley v. State, Ct. App. Op. No. 248 (File No. 7335), 662 P.2d 993 (1983).

Blood tests as business records. — Results of a hospital blood alcohol test are admissible as business records in driving while intoxicated prosecution upon proper foundation. Bradley v. State, Ct. App. Op. No. 248 (File No. 7335), 662 P.2d 993 (1983).

Evidence that defendant drove erratically and appeared intoxicated to arresting officers was properly admitted since such evidence would tend to corroborate a breathalyzer reading showing an elevated blood alcohol level. Byrne v. State, Ct. App. Op. No. 169 (File No. 6375), 654 P.2d 795 (1982).

Effect of charges for other violations. — Although defendant had been convicted of leaving the scene of an accident and acquitted of failing to exercise care to avoid colliding with another vehicle, collateral estoppel did not preclude defendant's subsequent prosecution for operating a motor vehicle under the influence of intoxicating liquor. Miller v. State, Ct. App. Op. No. 135 (File No. 5429), 652 P.2d 494 (1982).

Lesser included offenses. — Defendant's prior conviction for leaving the scene of an accident and his acquittal for failure to exercise care to avoid colliding with another vehicle did not bar his prosecution for operating a motor vehicle under the influence of intoxicating liquor under the state and federal constitutional provisions prohibiting placing a criminal defendant twice in jeopardy since the state could not have discovered the evidence necessary to convict defendant of operating a motor vehicle under the influence of intoxicating liquor prior to his trial for leaving the scene and failing to avoid the accident in the exercise of due diligence. Miller v. State, Ct. App. Op. No. 135 (File No. 5429), 652 P.2d 494 (1982).

Enhanced license revocation. — Conviction under another state's statute may be used for purposes of enhanced license revocation under AS 28.15.181(b). Carter v. State, Ct. App. Op. No. 010 (File No. 5144), 625 P.2d 313 (1981).

Application of three-year license revocation provision of AS 28.15.181(b) to

defendant whose prior two OMVI (operating a motor vehicle while under the influence of intoxicating liquor or drugs) convictions were in 1974 and 1976 did not violate the constitutional prohibitions against ex post facto laws. Carter v. State, Ct. App. Op. No. 010 (File No. 5144), 625 P.2d 313 (1981).

Local ordinances. — Municipality's ordinance which sought to impose criminal sanctions against persons who drove after consuming alcohol on the sole basis of the quantity of alcohol consumed and without regard to the existence or lack of existence of any actual influence or impairment in driving related to alcohol consumption was inconsistent with the state's statutory framework for drunk driving, under which the crucial element for imposition of criminal penalties was the existence of actual influence or impairment and thus invalid. Simpson v. Municipality of Anchorage, Ct. App. Op. No. 57 (File Nos. 4945, 4946, 5288), 635 P.2d 1197 (1981).

For case construing this section and former AS 28.15.210(c). — See Danks v. State, Sup. Ct. Op. No. 2216 (File No. 4952), 619 P.2d 720 (1980).

Evidence held sufficient to support verdict of guilty. — See Beck v. State, Sup. Ct. Op. No. 310 (File No. 611), 408 P.2d 996 (1965).

Conviction under this section admissible as evidence in proving negligence in subsequent civil action. — See Scott v. Robertson, Sup. Ct. Op. No. 1678 (File No. 3436), 581 P.2d 669 (1978).

Sentence upheld. — Sentence of 120 days' incarceration, three years' license revocation, and a $1,000 fine was not excessive for offense of driving while intoxicated. Kennedy v. State, Ct. App. Op. No. 215 (File No. 6830), 657 P.2d 859 (1983).

Applied in Deere v. United States, 268 F.2d 912 (9th Cir. 1959); State v. Gibson, Sup. Ct. Op. No. 1215 (File No. 2415), 543 P.2d 406 (1975); Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978); Ledbetter v. State, Sup. Ct. Op. No. 1682 (File No. 3500), 581 P.2d 1129 (1978); State v. Gunderens, Sup. Ct. Op. No. 1782 (File No. 3738), 589 P.2d 870 (1979); Keel v. State, Sup. Ct. Op. No. 2063 (File No. 4408), 609 P.2d 555 (1980); Nelson v. State, Ct. App. Op. No. 129 (File No. 6222), 650 P.2d 426 (1982); Ahsoganek v. State, Ct. App. Op. No. 147 (File No. 6601), 652 P.2d 505 (1982); Metzker v. State, Ct. App. Op. No. 208 (File No. 5919), 658 P.2d 147 (1983); Coleman v. State, Ct. App. Op. No. 229 (File No. 7215), 658 P.2d 1364 (1983); Wilson v. State, Ct. App. Op. No. 356 (File Nos. 7523, 7526, 7833), P.2d (1984).

Quoted in City of Fairbanks v. Schrock, Sup. Ct. Op. No. 567 (File No. 1032), 457 P.2d 242 (1969); Solberg v. State, Sup. Ct. Op. No. 1478 (File No. 3199), 568 P.2d 1 (1977); Ebona v. State, Sup. Ct. Op. No. 1606 (File No. 3495), 577 P.2d 698 (1978).

Stated in Godwin v. State, Sup. Ct. Op. No. 1276 (File No. 2793), 554 P.2d 453 (1976); Williams v. State, Sup. Ct. Op. No. 2180 (File No. 4367), 616 P.2d 881 (1980); Pascua v. State, Ct. App. Op. No. 46 (File No. 5154), 633 P.2d 1033 (1981).

Cited in Gullarde v. State, Sup. Ct. Op. No. 794 (File No. 1606), 497 P.2d 93 (1972); State v. Nesse, Superior Court, 1st Jud. Dist., Cr. No. 72-23 (1972); Ravin v. State, Sup. Ct. Op. No. 1156 (File No. 2135), 537 P.2d 494 (1975); Layland v. State, Sup. Ct. Op. No. 1263 (File No. 2739), 549 P.2d 1182 (1976); City of Kodiak v. Jackson, Sup. Ct. Op. No. 1741 (File No. 3480), 584 P.2d 1130 (1978); Westdahl v. State, Sup. Ct. Op. No. 1818 (File No. 3928), 592 P.2d 1214 (1979); Graham v. State, Sup. Ct. Op. No. 2403 (File No. 4092), 633 P.2d 211 (1981); Ketzler v. State, Ct. App. Op. No. 47 (File Nos. 5069, 5118), 634 P.2d 561 (1981); City of Anchorage v. Richards, Ct. App. Op. No. 173 (File Nos. 6387, 6459, 6504, 6540), 654 P.2d 797 (1982); Creary v. State, Ct. App. Op. No. 252 (File Nos. 6777, 6778), 663 P.2d 226 (1983); Jensen v. State, Ct. App. Op. No. 271 (File No. 7488), 667 P.2d 188 (1983); State v. Moran, Ct. App. Op. No. 277 (File No. 7614), 667 P.2d 734 (1983).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 296 et seq.; 19 Am Jur Trials, pp 123-229; 17 Am Jur POF 2d, pp 1-50.

61A C.J.S., Motor Vehicles, §§ 37, 625 to 637.

Driving automobile while intoxicated as a substantive criminal offense, 42 ALR 1498, 49 ALR 1392, 68 ALR 1356, 142 ALR 555.

Effect of statute on civil liability of person driving automobile while under influence of liquor, 56 ALR 327.

Degree or nature of intoxication for

purposes of statute or ordinance making it a criminal offense to operate an automobile while in that condition, 142 ALR 555.

What is a "motor vehicle" within statutes making it an offense to drive while intoxicated, 66 ALR2d 1146.

Right to trial by jury in criminal prosecution for driving while intoxicated or similar offense, 16 ALR3d 1373.

Driving under the influence, or when addicted to the use, of drugs as criminal offense, 17 ALR3d 815.

Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense, 29 ALR3d 938.

What amounts to violation of drunken driving statute in officer's "presence" or "view" so as to permit warrantless arrest, 74 ALR3d 1138.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statute or ordinance, 93 ALR3d 7.

Reckless driving as lesser included offense of driving while intoxicated or similar charge, 10 ALR4th 1252.

Denial of accused's request for initial contact with attorney — drunk driving cases, 18 ALR4th 705.

Sec. 28.35.031. Implied consent. (a) A person who operates or drives a motor vehicle in this state or who operates an aircraft as defined in AS 28.35.030(g)(1) or who operates a watercraft as defined by AS 28.35.030 (g)(2) shall be considered to have given consent to a chemical test or tests of the person's breath for the purpose of determining the alcoholic content of the person's blood or breath if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated. The test or tests shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating or driving a motor vehicle or operating an aircraft or a watercraft in this state while intoxicated.

(b) A person who operates or drives a motor vehicle in this state shall be considered to have given consent to a preliminary breath test for the purpose of determining the alcoholic content of the person's blood or breath. A law enforcement officer may administer a preliminary breath test at the scene of the incident if the officer has reasonable grounds to believe that a person's ability to operate a motor vehicle is impaired by the ingestion of alcoholic beverages and that the person

(1) was driving a motor vehicle that is involved in an accident; or

(2) committed a moving traffic violation.

(c) Before administering a preliminary breath test under (b) of this section, the officer shall advise the person that refusal may be used against the person in a civil or criminal action arising out of the incident and that refusal is an infraction. If the person refuses to submit to the test, the test shall not be administered.

(d) The result of the test under (b) of this section may be used by the law enforcement officer to determine whether the driver should be arrested.

(e) Refusal to submit to a preliminary breath test at the request of a law enforcement officer is an infraction.

(f) If a driver is arrested, the provisions of (a) of this section apply. The preliminary breath test authorized in this section is in addition to any tests authorized under (a) of this section. (§ 1 ch 83 SLA 1969; am § 11 ch 129 SLA 1980; am § 16 ch 117 SLA 1982; am § 16 ch 77 SLA 1983)

Effect of amendments. — The 1980 amendment, in present subsection (a), inserted "or breath" in the first sentence and substituted "intoxicated" for "under the influence of intoxicating liquor" in the first and second sentences.

The 1982 amendment, in present subsection (a), inserted the language beginning "or who operates an aircraft" and ending "described by AS 28.35.030 (f)(2)" in the first sentence and inserted "or operating an aircraft or a watercraft" in the first and second sentences.

The 1983 amendment added subsections (b), (c), (d), (e), and (f).

NOTES TO DECISIONS

Editor's notes. — Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979), and other cases cited in the notes below, were decided prior to the enactment of AS 28.35.035, which authorizes the administration of a chemical test without consent in certain circumstances to determine the amount of alcohol in breath or blood.

Consent to breathalyzer test when driver operates motor vehicle in state. — It is clear from this section that a driver consents to take the breathalyzer test when he operates a motor vehicle in the State of Alaska. State v. Nease, Superior Court, 1st Jud. Dist., Cr. No. 72-23 (1972).

Analysis of this section and AS 28.35.032 demonstrates the legislature's intention that drivers be considered to have consented to a chemical test for determining the alcohol content of their blood and that refusal on the driver's part to submit to such a test will trigger certain specified consequences. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

As the supreme court analyzes the legislature's intent in enacting this section and AS 28.35.032, the sections provide that the operator of a motor vehicle in Alaska has consented to chemical tests of his blood's alcohol content and that after the arrested operator refuses to take the chemical test, he must be advised of the consequences flowing from his contemplated refusal. The arrestee must be permitted to reconsider his refusal in light of that information. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

Application of case law. — Municipality of Anchorage v. Serrano, Ct. App. Op. No. 115 (File No. 6275), 649 P.2d 256 (1982), and Cooley v. Municipality of Anchorage, Ct. App. Op. No. 114 (File Nos. 5859, 6112, 6151), 649 P.2d 251 (1982), apply to only three categories of cases: (1) cases formally joined with those decided in Serrano and Cooley; (2) cases in which suppression had already been ordered on or before August 6, 1982; and (3) cases in which breathalyzer tests were administered after August 6, 1982. State v. Lamb, Ct. App. Op. No. 119 (File No. 7071), 649 P.2d 971 (1982).

Statutes do not explicitly grant right to refuse test. — Neither this section nor AS 28.35.032(a) explicitly grants or recognizes a right on the part of an arrestee to refuse to take a breathalyzer test. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

One required to take a breathalyzer test under this section does not have any statutory or constitutional right to refuse to take it. Pears v. State, Ct. App. Op. No. 309 (File No. 6783), 672 P.2d 903 (1983).

Nor do they impose a duty upon the arresting officer to advise the driver that he has the right to refuse to take the test. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

Neither this section nor AS 28.35.032 requires that the arrested operator be advised he has the right to refuse to take a chemical test for the purpose of determining the alcohol content of his blood. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

One required to take a breathalyzer test under this section does not have to be

advised that he does not have to take examination. Pears v. State, Ct. App. Op. No. 309 (File No. 6783), 672 P.2d 903 (1983).

And the supreme court would not imply a requirement that an arrestee be advised that he has the right to refuse to take a breathalyzer test. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

Given the absence of a specific requirement that arrestees be advised of a right to refuse to undergo the chemical test, it would be inappropriate for this court to engraft such a requirement onto this section. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

Although several states have chosen to provide that the arrestee has a right to refuse to take a breathalyzer test and, further, that the arresting officer must inform him of such right, Alaska's legislature has not adopted such provisos. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

Advice to arrestee confused about rights. — Where an arrested person refuses to submit to a breathalyzer test, the administering officer must inquire into the nature of the refusal and, if it appears that the refusal is based on a confusion about the person's rights, the officer must clearly advise that person that the rights contained in the Miranda warning do not apply to the breathalyzer examination. Graham v. State, Sup. Ct. Op. No. 2403 (File No. 4092), 633 P.2d 211 (1981).

Warnings of consequences of refusal. — While evidence of the warnings given regarding the consequences of refusal to take a breathalyzer test may have been relevant to the issue of mens rea, the absence of more detailed warnings regarding penalties for refusal did not deprive defendant of due process or warrant a directed verdict of acquittal in his favor. Svedlund v. Municipality of Anchorage, Ct. App. Op. No. 301 (File No. 7581), 671 P.2d 378 (1983), construing municipal ordinance.

This section and AS 28.35.032 do not contemplate an evidentiary use of the fact of refusal to submit to a breathalyzer test. Puller v. Municipality of Anchorage, Sup. Ct. Op. No. 1575 (File No. 3232), 574 P.2d 1285 (1978).

Preservation of breath samples. — Due process clause of the Alaska Constitution requires prosecution to make reasonable efforts to preserve breath sample or to take other steps to allow defendant to verify results of breathalyzer test. Municipality of Anchorage v. Serrano, Ct. App. Op. No. 115 (File Nos. 6447, 6724, 6725), 649 P.2d 256 (1982).

Right to counsel before breathalyzer test. — When a person is arrested for operating a motor vehicle in violation of state or local drunken driving ordinances, and requests to contact an attorney, the arrestee must be afforded a reasonable opportunity to do so before being required to decide whether or not to submit to a breathalyzer test; and where arrestee is denied that opportunity, subsequently obtained evidence, whether in form of test results or of refusal to take test, must be suppressed. Copelin v. State, Sup. Ct. Op. No. 2617 (File Nos. 5453, 5708), 259 P.2d 1206 (1983).

The statutory right to contact and consult with counsel prior to being required to decide whether or not to submit to a breathalyzer test is not an absolute one, which might involve a delay long enough to impair testing results, but rather a limited one of reasonable time and opportunity that can be reconciled with the implied consent statutes. Copelin v. State, Sup. Ct. Op. No. 2617 (File Nos. 5453, 5708), 259 P.2d 1206 (1983).

A person suspected of driving while intoxicated had a statutory right to contact an attorney before deciding whether or not to submit to a breathalyzer test if (1) he requested an opportunity to contact an attorney, and (2) granting the request would not involve a delay long enough to impair test results. Svedlund v. Municipality of Anchorage, Ct. App. Op. No. 301 (File No. 7581), 671 P.2d 378 (1983).

A breathalyzer exam is not a "critical stage" at which the constitution requires counsel's presence. Svedlund v. Municipality of Anchorage, Ct. App. Op. No. 301 (File No. 7581), 671 P.2d 378 (1983).

While a defendant has a statutory right to contact counsel, where he never requested an opportunity to contact counsel and there was nothing in the record to show that the police affirmatively interfered with any attempt by defendant to obtain counsel, he was not denied right to counsel. Svedlund v. Municipality of Anchorage, Ct. App. Op. No. 301 (File No. 7581), 671 P.2d 378 (1983).

Miranda rights. — Defendant's constitutional rights were not violated by not informing him of his Miranda rights prior to asking him to take a breathalyzer exam. Svedlund v. Municipality of Anchorage, Ct. App. Op. No. 301 (File No. 7581), 671 P.2d 378 (1983), construing municipal law.

Videotape recording of defendant while a breathalyzer examination was being administered to him and while he performed other sobriety tests, made at state trooper headquarters following defendant's arrest for operating a motor vehicle while under the influence of intoxicating liquor [now driving while intoxicated], did not violate defendant's right to privacy under Alaska Const., art. I, § 22. Palmer v. State, Sup. Ct. Op. No. 2002 (File No. 3651), 604 P.2d 1106 (1979).

The Implied Consent Statute was intended to provide an exclusive method for obtaining direct evidence of a suspect's blood alcohol content, absent his or her express consent to the use of some other form of testing. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979).

No other chemical test allowed after breath test refused. — The express language of AS 28.35.032(a), coupled with the legislative history of the Implied Consent Statute, leads to the conclusion that in enacting the Implied Consent Statute the legislature intended that once a breath test had been refused no other chemical test would be allowed. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979).

In prosecuting a charge of operating a motor vehicle while under the influence of intoxicating liquor [now driving while intoxicated], law enforcement officials cannot utilize the results of a blood alcohol test, when the blood used in performing the test was extracted from the accused against his or her will, after refusal to submit to a breathalyzer examination. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979).

Use of search warrant. — The implied consent statute does not constitute an affirmative prohibition against the independent means of using a search warrant to obtain a sample of blood from a person who has refused to submit to a breathalyzer test after being arrested for an offense arising from an act committed by him while driving under the influence of intoxicating liquor. Pena v. State, Ct. App. Op. No. 245 (File No. 6174), 664 P.2d 169 (1983).

Limitation for purposes other than DWI prosecutions. — AS 28.35.032(a) cannot be restricted to apply solely to driving while intoxicated prosecutions, and to the extent that the statute, by providing that "a chemical test shall not be given" following a breathalyzer refusal, affirmatively limits the manner in which evidence of intoxication may be obtained, its limitation must apply with equal force in all prosecutions "arising out of acts alleged to have been committed while the defendant was operating or driving a motor vehicle while intoxicated." Pena v. State, Ct. App. Op. No. 245 (File No. 6174), 664 P.2d 169 (1983).

This section does not apply just to the offense of driving while intoxicated but also to any offense which arose out of acts which were committed while a person was driving while intoxicated. Pears v. State, Ct. App. Op. No. 309 (File No. 6783), 672 P.2d 903 (1983).

"Chemical test" means any chemical test. — The language of AS 28.35.032(a) stating that after refusal to submit to a test of the breath, "a chemical test shall not be given," means any chemical test, be it of the breath, blood, urine or otherwise, and not just a chemical test of the breath. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979).

Defendant should be permitted to check the specific ampoules used in his breathalyzer test. Lauderdale v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Since they could be evidence of propriety of test. — The test and reference ampoules could be probative evidence of the propriety or impropriety of the breathalyzer test. Lauderdale v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Denial of right to analyze components is reversible error. — Where defendant was charged with operating a motor vehicle while intoxicated, denial of the right to make an analysis of some of the components of the breathalyzer machine, that is to say, to "cross-examine" the results of the test, would be reversible error without any need for a showing of prejudice. It would be a denial of a right to a fair trial, and a fair trial is essential to affording an accused due process of law. Lauderdale v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Discretion of district court properly exercised in requiring production of ampoules used in breathalyzer test. — See Lauderdale v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

District court was correct in suppressing results of breathalyzer test where state unable to produce ampoules used in test. — See Lauderdale

v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Rule announced generally to have prospective effect but also to have partial retroactive effect. — See Lauderdale v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Applied in Nelson v. State, Ct. App. Op. No. 129 (File No. 6222), 650 P.2d 426 (1982).

Quoted in Simpson v. Municipality of Anchorage, Ct. App. Op. No. 57 (File Nos. 4945, 4946, 5288), 635 P.2d 1197 (1981); Lundquist v. Department of Pub. Safety, Sup. Ct. Op. No. 2763 (File No. 7076), 674 P.2d 780 (1983); Jensen v. State, Ct. App. Op. No. 271 (File No. 7488), 667 P.2d 188 (1983).

Cited in Coleman v. State, Ct. App. Op. No. 229 (File No. 7215), 658 P.2d 1364 (1983).

Collateral references. — 60 C.J.S., Motor Vehicles, § 164.16.

Duty of law enforcement officer to offer suspect chemical sobriety test under implied consent law, 95 ALR3d 710.

Sec. 28.35.032. Refusal to submit to chemical test. (a) If a person under arrest refuses the request of a law enforcement officer to submit to a chemical test under AS 28.35.031(a), after being advised by the officer that the refusal will, if that person was arrested while operating or driving a motor vehicle for which a driver's license is required, result in the denial or revocation of the license or nonresident privilege to drive, that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, and that the refusal is a misdemeanor, a chemical test shall not be given, except as provided by AS 28.35.035.

(b) *[Repealed, § 25 ch 77 SLA 1983.]*

(c) *[Repealed, § 25 ch 77 SLA 1983.]*

(d) *[Repealed, § 25 ch 77 SLA 1983.]*

(e) The refusal of a person to submit to a chemical test of breath under (a) of this section is admissible evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or watercraft while intoxicated.

(f) Refusal to submit to the chemical test of breath authorized by AS 28.35.031(a) is a class A misdemeanor.

(g) Upon conviction of a person under this section, the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than $250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than $500 if, within the preceding

10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than $1,000 if, within the previous 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Imposition of sentence may not be suspended. If the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked under AS 28.15.181. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (h) of this section, finds appropriate. The sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the committed person.

(h) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under (g) of this section shall supply the Alaska court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under (g) of this section, or by an officer of the court in preparing a pre-sentence report for the use of the court in sentencing a person convicted under (g) of this section.

(i) A person who is sentenced to imprisonment for 72 consecutive hours under (g) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(j) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under

AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction. (§ 1 ch 83 SLA 1969; am § 28 ch 71 SLA 1972; am § 12 ch 129 SLA 1980; am § 17 ch 117 SLA 1982; am §§ 17 — 20, 25 ch 77 SLA 1983)

Effect of amendments. — The 1980 amendment, in subsection (a), inserted the language beginning "and that the refusal may" and ending "under the influence of intoxicating liquor", in subsection (b), inserted "or driving" in the first sentence and in paragraph (1) and "or operate" in the first sentence, in subsection (c), inserted "or drive" in the last sentence, and in subsection (d) inserted "or driving" and substituted "denial of" for "denial or." The amendment also added subsection (e).

The 1982 amendment, in subsection (a), inserted "if that person was arrested while operating or driving a motor vehicle," substituted "license or nonresident privilege to drive" for "license and" and "motor vehicle or operating an aircraft or a watercraft while intoxicated, and that the refusal is a misdemeanor" for "vehicle under the influence of intoxicating liquor," and added "except as provided by AS 28.35.035" to the end; in subsection (b), substituted "intoxicated" for "under the influence of intoxicating liquor" in paragraph (1) and inserted "or nonresident privilege to drive and that the refusal is a misdemeanor" in paragraph (2); in subsection (d), deleted "within two years previous to his arrest" following "AS 28.35.031" and inserted "or of refusal to submit to a chemical test of breath under this section" and "or revocation"; in subsection (e), substituted "motor vehicle or operating an aircraft or watercraft while intoxicated" for "vehicle under the influence of intoxicating liquor" at the end; and added subsections (f)-(i).

The 1983 amendment, in subsection (a), modified the internal reference following "submit to a chemical test," inserted "for which a driver's license is required" following "driving a motor vehicle," and deleted "suspension," preceding "denial or revocation"; repealed subsections (b), (c), and (d); in subsection (f), revised the internal reference; rewrote subsection (g); and added subsection (j).

Legislative history reports. — For report on ch. 71, SLA 1972 (HCSSB 383 am H), see 1972 House Journal, p. 898.

NOTES TO DECISIONS

Editor's notes. — Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979), cited in the notes below, was decided prior to the enactment of AS 28.35.035, which authorizes the administration of a chemical test without consent in certain circumstances to determine the amount of alcohol in breath or blood.

Purpose of section. — This section, which directs the Department of Public Safety to suspend or revoke the licenses of those who refuse to submit to a breath-analysis, is merely an internal operating procedure that provides a sanction for those persons who refuse to submit to the test in order to compel submission to a test that provides evidence of intoxication; and although this section may have the effect of keeping the roads safe from drunk drivers by suspending the licenses of those who refuse the test, this was not an intended statutory purpose. Lundquist v. Department of Pub. Safety, Sup. Ct. Op. No. 2763 (File No. 7075), 674 P.2d 780 (1983).

The Implied Consent Statute was intended to provide an exclusive method for obtaining direct evidence of a suspect's blood alcohol content, absent his or her express consent to the use of some other form of testing. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979).

Constitutionality of subsection (f). — Subsection (f) of this section is reasonably related to the public purpose of obtaining evidence of drunk driving. Jensen v. State, Ct. App. Op. No. 271 (File No. 7488), 667 P.2d 188 (1983).

Subsection (f) of this section is sufficiently analogous to a statute punishing concealment of evidence such as AS 11.56.610 to satisfy substantive due process. Jensen v. State, Ct. App. Op. No. 271 (File No. 7488), 667 P.2d 188 (1983).

Subsection (f) of this section does not violate the prohibition against cruel and unusual punishment since imposing punishment for refusal to take a breathalyzer test serves the legitimate public goals of deterring such conduct and ensuring that such conduct will not benefit a defendant and the penalty does not result in subjecting a defendant to punishment out of proportion to the conduct in which he has engaged. Jensen v. State, Ct. App. Op. No. 271 (File No. 7488), 667 P.2d 188 (1983).

Punishing a refusal to take a breathalyzer test bears a fair and substantial relation to the legitimate governmental objective of gathering evidence of possible drunken driving and does not deny equal protection. Svedlund v. Municipality of Anchorage, Ct. App. Op. No. 301 (File No. 7581), 671 P.2d 378 (1983), construing municipal provision nearly identical to subsection (f) of this section.

Miranda rights. — Defendant's constitutional rights were not violated by not informing him of his Miranda rights prior to asking him to take a breathalyzer exam. Svedlund v. Municipality of Anchorage, Ct. App. Op. No. 301 (File No. 7581), 671 P.2d 378 (1983), construing municipal law.

No other chemical test allowed after breath test refused. — The express language of subsection (a), coupled with the legislative history of the Implied Consent Statute, leads to the conclusion that in enacting the Implied Consent Statute the legislature intended that once a breath test had been refused no other chemical test would be allowed. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979).

The language of this section providing that, upon a person's refusal to submit to a chemical test of his breath, "a chemical test shall not be given," means that law enforcement officials are precluded from performing other chemical tests in order to determine whether alcohol is present in the person's blood. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979).

In prosecuting a charge of operating a motor vehicle while under the influence of intoxicating liquor [now driving while intoxicated], law enforcement officials cannot utilize the results of a blood alcohol test, when the blood used in performing the test was extracted from the accused against his or her will, after refusal to submit to a breathalyzer examination. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979).

"Chemical test" means any chemical test. — The language of subsection (a) stating that after refusal to submit to a test of the breath, "a chemical test shall not be given," means any chemical test, be it of the breath, blood, urine or otherwise, and not just a chemical test of the breath. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979).

There is no due process requirement that a person be advised of the right to refuse to submit to a breathalyzer examination. Palmer v. State, Sup. Ct. Op. No. 2002 (File No. 3651), 604 P.2d 1106 (1979).

While subsection (a) of this section prohibits the giving of any other blood test when the person arrested refuses to submit to a breathalyzer examination, it does not otherwise grant or recognize a right on the part of the arrested person to refuse that examination. Palmer v. State, Sup. Ct. Op. No. 2002 (File No. 3651), 604 P.2d 1106 (1979).

Right to refuse test is only to protect against forcible submission to test. — The right of refusal contained in subsection (a) is to only protect an individual from being physically forced to submit to the test. State v. Nease, Superior Court, 1st Jud. Dist., Cr. No. 72-23 (1972).

There is no right involved requiring assistance of counsel. — The right to refuse to take the breathalyzer test under subsection (a) is only to protect a person from being physically forced to submit to the test, and since there is implied consent to the test under AS 28.35.031, there is no right that can be knowingly waived which would require the assistance of counsel. State v. Nease, Superior Court, 1st Jud. Dist., Cr. No. 72-23 (1972).

The results of the breathalyzer test are nontestimonial in nature, therefore the provisions of Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 10 A.L.R.3d 974 (1966) do not apply. State v. Nease, Superior Court, 1st Jud. Dist., Cr. No. 72-23 (1972).

Where a driver operated a motor vehicle in the State of Alaska and was lawfully arrested for operating a motor vehicle while under the influence of intoxicating liquor, such driver had no right to refuse taking the breathalyzer test, and such a test does not violate an individual's right against self-incrimination. Therefore, the absence of counsel is immaterial since the driver had no rights which counsel might have assisted him in asserting. State v. Nease, Superior Court, 1st Jud. Dist., Cr. No. 72-23 (1972).

Right to counsel before breathalyzer test. — When a person is arrested for operating a motor vehicle in violation of state or local drunken driving ordinances,

and requests to contact an attorney, the arrestee must be afforded a reasonable opportunity to do so before being required to decide whether or not to submit to a breathalyzer test; and where arrestee is denied that opportunity, subsequently obtained evidence, whether in form of test results or of refusal to take test, must be suppressed. Copelin v. State, Sup. Ct. Op. No. 2617 (File Nos. 5453, 5708), 259 P.2d 1206 (1983).

The statutory right to contact and consult with counsel prior to being required to decide whether or not to submit to a breathalyzer test is not an absolute one, which might involve a delay long enough to impair testing results, but rather a limited one of reasonable time and opportunity that can be reconciled with the implied consent statutes. Copelin v. State, Sup. Ct. Op. No. 2617 (File Nos. 5453, 5708), 259 P.2d 1206 (1983).

A person suspected of driving while intoxicated had a statutory right to contact an attorney before deciding whether or not to submit to a breathalyzer test if (1) he requested an opportunity to contact an attorney, and (2. granting the request would not involve a delay long enough to impair test results. Svedlund v. Municipality of Anchorage, Ct. App. Op. No. 301 (File No. 7581), 671 P.2d 378 (1983).

A breathalyzer exam is not a "critical stage" at which the constitution requires counsel's presence. Svedlund v. Municipality of Anchorage, Ct. App. Op. No. 301 (File No. 7581), 671 P.2d 378 (1983).

While a defendant has a statutory right to contact counsel, where he never requested an opportunity to contact counsel and there was nothing in the record to show that the police affirmatively interfered with any attempt by defendant to obtain counsel, he was not denied right to counsel. Svedlund v. Municipality of Anchorage, Ct. App. Op. No. 301 (File No. 7581), 671 P.2d 378 (1983).

Analysis of AS 28.35.031 and this section demonstrates the legislature's intention that drivers be considered to have consented to a chemical test for determining the alcohol content of their blood and that refusal on the driver's part to submit to such a test will trigger certain specified consequences. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

As the supreme court analyzes the legislature's intent in enacting AS 28.35.031 and this section, the sections provide that the operator of a motor vehicle in Alaska has consented to chemical tests of his blood's alcohol content and that after the arrested operator refuses to take the chemical test, he must be advised of the consequences flowing from his contemplated refusal. The arrestee must be permitted to reconsider his refusal in light of that information. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

Statutes do not explicitly grant right to refuse test. — Neither AS 28.35.031 nor subsection (a) of this section explicitly grants or recognizes a right on the part of an arrestee to refuse to take a breathalyzer test. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

Nor do they impose a duty upon the arresting officer to advise the driver that he has the right to refuse to take the test. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

Neither AS 28.35.031 nor this section requires that the arrested operator be advised he has the right to refuse to take a chemical test for the purpose of determining the alcohol content of his blood. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

Although several states have chosen to provide that the arrestee has a right to refuse to take a breathalyzer test and, further, that the arresting officer must inform him of such right, Alaska's legislature has not adopted such provisos. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

And the supreme court would not imply a requirement that an arrestee be advised that he has the right to refuse to take a breathalyzer test. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

Given the absence of a specific requirement that arrestees be advised of a right to refuse to undergo the chemical test, it would be inappropriate for this court to engraft such a requirement onto AS 28.35.031. Wirz v. State, Sup. Ct. Op. No. 1593 (File No. 3516), 577 P.2d 227 (1978).

This section seems to require that there at least be a reasonable attempt to communicate to a defendant the consequence of a failure to take the breathalyzer examination. Williford v. State, Ct. App. Op. No. 148 (File No. 5986), 653 P.2d 339 (1982). Also, see now AS 28.35.031(c) requiring an officer to advise on consequences of refusal.

This section clearly contemplates a warning of the specified consequences attendant upon a refusal. — While evidence of the warnings given regarding the consequences of refusal to take a breathalyzer test may have been relevant to the issue of mens rea, the absence of more detailed warnings regarding penalties for refusal did not deprive defendant of due process or warrant a directed verdict of acquittal in his favor. Svedlund v. Municipality of Anchorage, Ct. App. Op. No. 301 (File No. 7581), 671 P.2d 378 (1983), construing municipal ordinance.

No privilege against self-incrimination. — A refusal to take a blood-alcohol test, after a police officer has lawfully requested it, is not an act coerced by the officer, and thus is not protected by the state or federal privilege against self-incrimination. Svedlund v. Municipality of Anchorage, Ct. App. Op. No. 301 (File No. 7581), 671 P.2d 378 (1983), construing municipal provision.

Purpose of subsection (e). — The purpose of the provision in subsection (e) of this section, that evidence of refusal to submit to a breathalyzer test is admissible at trial if the defendant was lawfully under arrest for driving while intoxicated at the time of his refusal, is to assure that individuals arrested for driving while intoxicated do not benefit from failure to comply with the requirements of Alaska's implied consent statute, AS 28.35.031. Coleman v. State, Ct. App. Op. No. 229 (File No. 7215), 658 P.2d 1364 (1983).

Admissibility of evidence of refusal. — Even though this section makes the refusal to take the breathalyzer examination admissible, it does not make the refusal admissible without regard to the other evidence rules, and to be admissible, evidence of refusal is required to be relevant, and the probative value of the evidence should not be outweighed by its prejudicial impact. Williford v. State, Ct. App. Op. No. 148 (File No. 5986), 653 P.2d 339 (1982).

Whether evidence of a refusal to take a breathalyzer examination is admissible is committed to the discretion of the trial court. Williford v. State, Ct. App. Op. No. 148 (File No. 5986), 653 P.2d 339 (1982).

Defendant's refusal to take the breathalyzer test did not give rise to a constitutional claim of privilege since even assuming the breathalyzer refusal could have been deemed to have amounted to a testimonial statement, this statement could not properly have been considered privileged since defendant had no legal right to make it. Coleman v. State, Ct. App. Op. No. 229 (File No. 7215), 658 P.2d 1364 (1983).

By its holding that admission of evidence of defendant's refusal to take a breathalyzer test did not violate defendant's constitutional right against self-incrimination, the court did not mean to indicate that evidence of breathalyzer refusals is per se admissible in all cases; as with other types of circumstantial evidence, admissibility of breathalyzer refusals should be determined pursuant to Evidence Rules 401-403, on a case-by-case basis, by weighing probative value against potential for unfair prejudice. Coleman v. State, Ct. App. Op. No. 229 (File No. 7215), 658 P.2d 1364 (1983).

Officer must advise arrestee confused about rights. — Where an arrested person refuses to submit to a breathalyzer test, the administering officer must inquire into the nature of the refusal and, if it appears that the refusal is based on a confusion about the person's rights, the officer must clearly advise that person that the rights contained in the Miranda warning do not apply to the breathalyzer examination. Graham v. State, Sup. Ct. Op. No. 2403 (File No. 4092), 633 P.2d 211 (1981).

But burden on arrestee to show confusion in fact. — Where defendant motorist refused to submit to a breathalyzer test based on a confusion about her rights, the burden was on the defendant to show that she was in fact confused. Graham v. State, Sup. Ct. Op. No. 2403 (File No. 4092), 633 P.2d 211 (1981).

Evidence of refusal to take the breathalyzer was not error where the evidence did have possible probative value. Williford v. State, Ct. App. Op. No. 148 (File No. 5986), 653 P.2d 339 (1982).

Admissibility of chemical test taken for diagnostic purposes. — Where a blood test was administered for medical diagnostic purposes independent of the police, the blood test is admissible as evidence even though the defendant has previously refused to submit to a breathalyzer examination. Nelson v. State, Ct. App. Op. No. 129 (File No. 6222), 650 P.2d 426 (1982).

Use of search warrant. -- The implied consent statute does not constitute an affirmative prohibition against the independent means of using a search warrant to obtain a sample of blood from a person who has refused to submit to a breathalyzer test after being arrested for an offense arising from an act committed by him while driving under the influence of intoxicating liquor. Penn v. State, Ct. App. Op. No. 245 (File No. 6174), 664 P.2d 169 (1983).

Duty to public. — This section does not create a duty by the Department of Public Safety toward the public which, if breached, can form the basis of a civil action for negligence against the department. Lundquist v. Department of Pub. Safety, Sup. Ct. Op. No. 2763 (File No. 7075), 674 P.2d 780 (1983).

Limitation for purposes other than DWI prosecutions. — AS 28.35.032(a) cannot be restricted to apply solely to driving while intoxicated prosecutions, and to the extent that the statute, by providing that "a chemical test shall not be given" following a breathalyzer refusal, affirmatively limits the manner in which evidence of intoxication may be obtained, its limitation must apply with equal force in all prosecutions "arising out of acts alleged to have been committed while the defendant was operating or driving a motor vehicle while intoxicated." Pena v. State, Ct. App. Op. No. 245 (File No. 6174), 664 P.2d 169 (1983).

Former subsection (b) construed. — See Graham v. State, Sup. Ct. Op. No. 2403 (File No. 4092), 633 P.2d 211 (1981).

Cited in Wilson v. State, Ct. App. Op. No. 356 (File Nos. 7523, 7526, 7833), P.2d (1984).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 122 to 132, 141.

60 C.J.S., Motor Vehicles, § 164.16; 61A C.J.S., Motor Vehicles, § 593(1).

Requiring submission to physical examination or test as violation of constitutional rights, 25 ALR2d 1407.

Admissibility in criminal case of evidence that accused refused to submit to scientific test to determine amount of alcohol in system, 87 ALR2d 370, 26 ALR4th 1112.

Suspension or revocation of driver's license for refusal to take sobriety test, 88 ALR2d 1064.

Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test, 97 ALR3d 852.

Request for prior administration of additional test as constituting refusal to submit to chemical sobriety test under implied consent law, 98 ALR3d 572.

Sec. 28.35.033. Chemical analysis of blood. (a) Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, the amount of alcohol in the person's blood or breath at the time alleged shall give rise to the following presumptions:

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

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

(3) *[Repealed, § 13 ch 129 SLA 1980.]*

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

(b) For purposes of this chapter, percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 100 milliliters of blood.

(c) The provisions of (a) of this section may not be construed to limit the introduction of any other competent evidence bearing upon the question of whether the person was or was not under the influence of intoxicating liquor.

(d) To be considered valid under the provisions of this section the chemical analysis of the person's breath or blood shall have been performed according to methods approved by the Department of Health and Social Services. The Department of Health and Social Services is authorized to approve satisfactory techniques, methods, and standards of training necessary to ascertain the qualifications of individuals to conduct the analysis. If it is established at trial that a chemical analysis of breath or blood was performed according to approved methods by a person trained according to techniques, methods and standards of training approved by the Department of Health and Social Services, there is a presumption that the test results are valid and further foundation for introduction of the evidence is unnecessary.

(e) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of the person's own choosing administer a chemical test in addition to the test administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person does not preclude the admission of evidence relating to the test taken at the direction of a law enforcement officer; the fact that the person under arrest sought to obtain such an additional test, and failed or was unable so to do, is likewise admissible in evidence.

(f) Upon the request of the person who submits to a chemical test at the request of a law enforcement officer, full information concerning the test, including the results of it, shall be made available to the person or the person's attorney. (§ 1 ch 83 SLA 1969; am § 6 ch 104 SLA 1971; am § 13 ch 129 SLA 1980; am §§ 18 — 20 ch 117 SLA 1982)

Effect of amendments. — The 1980 amendment, in subsection (a), inserted "or driving" and "or breath" in the introductory paragraph, deleted "as shown by chemical analysis of the person's breath" following "time alleged" in the introductory paragraph, inserted the language beginning "or 50 milligrams" and ending "210 liters of his breath" in paragraph (1), inserted the language beginning "or in excess of 50" and ending "210 liters of his breath" in paragraph (2), and repealed paragraph (3), which read: "If there was 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor."

The 1982 amendment, in subsection (a), substituted "or operating an aircraft or a watercraft while intoxicated" for "under the influence of intoxicating liquor" in the introductory language and added paragraph (4); in subsection (b), substituted "this chapter" for "this section" and "100 milliliters" for "100 cubic centimeters"; and in subsection (d), inserted "or blood" in the first and third sentences.

NOTES TO DECISIONS

Editor's notes. — Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 3827, 4016, 4037, 4046), 592 P.2d 1187 (1979), cited in the notes below, was decided prior to the enactment of AS 28.35.035, which authorizes the administration of a chemical test without consent in certain circumstances to determine the amount of alcohol in breath or blood.

The Implied Consent Statute was intended to provide an exclusive method for obtaining direct evidence of a suspect's blood alcohol content, absent his or her express consent to the use of some other form of testing. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 3827, 4016, 4037, 4046), 592 P.2d 1187 (1979).

No other chemical test allowed after breath test refused. — The express language of AS 28.35.032(a), coupled with the legislative history of the Implied Consent Statute, leads to the conclusion that in enacting the Implied Consent Statute the legislature intended that once a breath test had been refused no other chemical test would be allowed. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 3827, 4016, 4037, 4046), 592 P.2d 1187 (1979).

In prosecuting a charge of operating a motor vehicle while under the influence of intoxicating liquor, law enforcement officials cannot utilize the results of a blood alcohol test, when the blood used in performing the test was extracted from the accused against his or her will, after refusal to submit to a breathalyzer examination. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 3827, 4016, 4037, 4046), 592 P.2d 1187 (1979).

"Chemical test" means any chemical test. — The language of AS 28.35.032(a) stating that after refusal to submit to a test of the breath, "a chemical test shall not be given," means any chemical test, be it of the breath, blood, urine or otherwise, and not just a chemical test of the breath. Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 3827, 4016, 4037, 4046), 592 P.2d 1187 (1979).

Alaska legislature has specified the foundational facts necessary for the admissibility of a chemical analysis of breath in subsection (d). Wester v. State, Sup. Ct. Op. No. 1106 (File No. 2159), 528 P.2d 1179 (1974), cert. denied, 423 U.S. 836, 96 S. Ct. 60, 46 L. Ed. 2d 54 (1975).

This section does not specify the method of proof of the foundational facts, which is controlled by the applicable rules of evidence. Wester v. State, Sup. Ct. Op. No. 1106 (File No. 2159), 528 P.2d 1179 (1974), cert. denied, 423 U.S. 836, 96 S. Ct. 60, 46 L. Ed. 2d 54 (1975).

Rigid proof of such facts not required. — With the increasing acceptance and reliability of the breathalyzer has come a relaxation of any notion of rigid proof of foundational facts. Wester v. State, Sup. Ct. Op. No. 1106 (File No. 2159), 528 P.2d 1179 (1974), cert. denied, 423 U.S. 836, 96 S. Ct. 60, 46 L. Ed. 2d 54 (1975).

Effect of last sentence of subsection (d). — The last sentence of subsection (d) merely defines the elements that must be proved before breathalyzer test results may be admitted into evidence; it does not make those results unassailable. Indeed, the statute creates only a presumption of the test's validity. Keel v. State, Sup. Ct. Op. No. 2063 (File No. 4408), 609 P.2d 555 (1980).

Compliance with "Breathalyzer Operational Checklist" required. — The approved methods of administering the breathalyzer, established by the Department of Health and Social Services in accord with subsection (d) of this section, are set forth in 7 Alaska Administrative Code, § 30.020. Completion of the "Breathalyzer Operational Checklist" is the first of 13 procedures established for proper test administration. Completion of the checklist is required under subsection (d) of this section; however, absolute compliance in completing the checklist is not required in order to render the test results valid and admissible in evidence. Oveson v. Municipality of Anchorage, Sup. Ct. Op. No. 1554 (File No. 3434), 574 P.2d 801 (1978).

Effect of compliance with "Breathalyzer Operational Checklist". — The "Breathalyzer Operational Checklist" is a simplified method of establishing the admissibility of the evidence. It furnished the court with a clear record that all the substantive test procedures were accomplished, thereby minimizing the possibilities of human error and failed memory. This then warrants the presumption under subsection (d) of this section that the results are valid without any additional showing of foundational facts. If the checklist is not complete, the presumption of validity is inapplicable. But it does not necessarily follow that the test results are, therefore, automatically inadmissible. Oveson v. Municipality of Anchorage, Sup. Ct. Op. No. 1554 (File No. 3434), 574 P.2d 801 (1978).

Where there has been substantial compliance with the "Breathalyzer Operational Checklist" provision of 7 AAC § 30.020(1), and where the record demonstrates that the test was properly performed, the test results are admissible under subsection (d) of this section. Oveson v. Municipality of Anchorage, Sup. Ct. Op. No. 1554 (File No. 3434), 574 P.2d 801 (1978).

Where the checklist for administering the breathalyzer test was complete but for one checkmark, all other pertinent data were filled in, and there was uncontroverted testimony that the step in question was performed despite the failure to check off the box representing that step, once the trier of fact believed the evidence that the step in question was performed, a proper foundation was laid to find the results valid under subsection (d) of this section. Oveson v. Municipality of Anchorage, Sup. Ct. Op. No. 1554 (File No. 3434), 574 P.2d 801 (1978).

Compliance with the 15-minute observation period of 7 AAC § 30.020(2) prior to the administration of the breathalyzer test is a requirement for the admissibility of the test results. Wester v. State, Sup. Ct. Op. No. 1106 (File No. 2159), 528 P.2d 1179 (1974), cert. denied, 423 U.S. 836, 96 S. Ct. 60, 46 L. Ed. 2d 54 (1975).

Where substantial compliance with the 15-minute provision is established on the record, a prima facie showing of the foundational fact of the observation period necessary to establish admissibility is satisfied. Wester v. State, Sup. Ct. Op. No. 1106 (File No. 2159), 528 P.2d 1179 (1974), cert. denied, 423 U.S. 836, 96 S. Ct. 60, 46 L. Ed. 2d 54 (1975); Oveson v. Municipality of Anchorage, Sup. Ct. Op. No. 1554 (File No. 3434), 574 P.2d 801 (1978).

A clerical error by the breathalyzer test operator ought not to render the results inadmissible without a showing that the validity of the results is tainted. Oveson v. Municipality of Anchorage, Sup. Ct. Op. No. 1554 (File No. 3434), 574 P.2d 801 (1978).

Mere assertion that ingestion was hypothetically possible ought not to vitiate the observation period foundational fact so as to render the breathalyzer test results inadmissible. Wester v. State, Sup. Ct. Op. No. 1106 (File No. 2159), 528 P.2d 1179 (1974), cert. denied, 423 U.S. 836, 96 S. Ct. 60, 46 L. Ed. 2d 54 (1975).

Personal testimony not necessary as to breathalyzer calibration or ampoule certification. — While it is required that a qualified witness explain the functional effect of the chemical testing, personal testimony is not required as to the calibration of the instrument or the accuracy of the ampoules. Wester v. State, Sup. Ct. Op. No. 1106 (File No. 2159), 528 P.2d 1179 (1974), cert. denied, 423 U.S. 836, 96 S. Ct. 60, 46 L. Ed. 2d 54 (1975).

A defendant can guarantee the reliability of the results of a breathalyzer test by retesting the ampoules. The ampoules are preserved and the amount of fluid and the chemical composition of the control ampoule are not significantly altered by performance of the test. Oveson v. Municipality of Anchorage, Sup. Ct. Op. No. 1554 (File No. 3434), 574 P.2d 801 (1978).

Defendant should be permitted to check the specific ampoules used in his breathalyzer test. Lauderdale v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Since they could be evidence of propriety of test. — The test and reference ampoules could be probative evidence of the propriety or impropriety of the breathalyzer test. Lauderdale v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Denial of right to analyze components is reversible error. — Where defendant was charged with operating a motor vehicle while intoxicated, denial of the right to make an analysis of some of the components of the breathalyzer machine, that is to say, to "cross-examine" the results of the test, would be reversible error without any need for a showing of prejudice. It would be a denial of a right to a fair trial, and a fair trial is essential to affording an accused due process of law. Lauderdale v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Discretion of district court properly exercised in requiring production of ampoules used in breathalyzer test. — See Lauderdale v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

District court was correct in suppressing results of breathalyzer test where state unable to produce ampoules used in test. — See Lauderdale v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Rule announced generally to have prospective effect but also to have partial retroactive effect. — See Lauderdale v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

This section contains no requirement that advice of the right to obtain an independent blood alcohol test be given, and it is not required by any provision of the state or federal constitution. Palmer v. State, Sup. Ct. Op. No. 2002 (File No. 3651), 604 P.2d 1106 (1979).

Cross-examination improperly restricted. — In a prosecution for operation of a motor vehicle while intoxicated, the court improperly restricted defendant's cross-examination of the person who administered the breathalyzer test when it sustained the state's objection to defendant's line of inquiry, where defendant was seeking through his attempted questioning to raise doubts in the jury's mind regarding the relinbility of the test. Keel v. State, Sup. Ct. Op. No. 2063 (File No. 4408), 609 P.2d 555 (1980).

Presumption in breathalyzer result. — Under the wording of this section, the breathalyzer result is clearly viewed as the presumptive equivalent of the amount of alcohol in the person's blood "at the time alleged"; in other words, at the time that the offense was committed, not just when the breathalyzer examination was administered. Doyle v. State, Ct. App. Op. No. 43 (File No. 5115), 633 P.2d 306 (1981).

Substantial compliance with regulations. — Under subsection (d), even if the state does not strictly comply with the regulations, it can still show that it has substantially complied with the regulations in order to establish a sufficient foundation to admit the breathalyzer examination. Ahsogaek v. State, Ct. App. Op. No. 147 (File No. 6601), 652 P.2d 505 (1982).

Results of the breathalyzer test were admissible even though the records for the breathalyzer instrument showed that it had been calibrated at an interval of 61 days instead of within 60 days as required by 7 AAC § 30.050. Ahsogaek v. State, Ct. App. Op. No. 147 (File No. 6601), 652 P.2d 505 (1982).

Breathalyzer packet admissible as evidence. — The admission of the breathalyzer packet as a foundation for the introduction of breathalyzer evidence in a drunk driving case is the introduction of a public record of factual findings recorded in the regular course of official business, made independently and well in advance of any particular prosecution, and does not violate the defendant's right to confrontation under the 6th amendment. State v. Huggins, Ct. App. Op. No. 127 (File Nos. 6535, 6595), 659 P.2d 613 (1982).

Documents referred to as a breathalyzer packet were admissible under the public records exception to the hearsay rule. State v. Huggins, Ct. App. Op. No. 127 (File Nos. 6535, 6595), 659 P.2d 613 (1982).

Effect of alcohol consumption after accident is jury question. — The issue of whether and to what extent defendant's consumption of alcohol after the accident but before a breathalyzer examination affected his breathalyzer result was a question which was properly left for the jury. Doyle v. State, Ct. App. Op. No. 43 (File No. 5115), 633 P.2d 306 (1981).

Applied in Catlett v. State, Sup. Ct. Op. No. 1752 (File No. 3213), 585 P.2d 553 (1978); Erickson v. Municipality of Anchorage, Ct. App. Op. No. 238 (File No. 7058), 662 P.2d 963 (1983).

Quoted in Godwin v. State, Sup. Ct. Op. No. 1276 (File No. 2793), 554 P.2d 453 (1976); Simpson v. Municipality of Anchorage, Ct. App. Op. No. 57 (File Nos. 4945, 4946, 5288), 635 P.2d 1197 (1981); Cooley v. Municipality of Anchorage, Ct. App. Op. No. 114 (File Nos. 5859, 6112, 6151), 649 P.2d 251 (1982).

Stated in Wren v. State, Sup. Ct. Op. No. 1598 (File No. 3156), 577 P.2d 235 (1978); Lyle v. State, Sup. Ct. Op. No. 1944 (File No. 3162), 600 P.2d 1357 (1979); O'Leary v. State, Sup. Ct. Op. No 2003 (File No. 3466), 604 P.2d 1099 (1979); Municipality of Anchorage v. Serrano, Ct. App. Op. No. 115 (File Nos. 6447, 6724, 6725), 649 P.2d 256 (1982).

Cited in Sullivan v. Municipality of Anchorage, Sup. Ct. Op. No. 1617 (File No. 3357), 577 P.2d 1070 (1978); Reeves v. State, Sup. Ct. Op. No. 1924 (File No. 3161), 599 P.2d 727 (1979); Nygren v. State, Sup. Ct. Op. No. 2164 (File No. 4219), 616 P.2d 20 (1980); Graham v. State, Sup. Ct. Op. No. 2403 (File No. 4092), 633 P.2d 211 (1981); Morris v. Farley Enters., Inc., Sup. Ct. Op. No. 2636 (File Nos. 6013, 6042), 661 P.2d 167 (1983); Pena v. State, Ct. App. Op. No. 245 (File No. 6174), 664 P.2d 169 (1983).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 361, 377 to 380.

61A C.J.S., Motor Vehicles, § 633(2).

Admissibility and weight of evidence based on scientific test for intoxication or presence of alcohol in system, 127 ALR 1513, 159 ALR 209.

Degree or nature of intoxication for purposes of statute making it a criminal offense to operate an automobile while in that condition, 142 ALR 555.

Validity, construction, and application of legislation creating presumption of intoxication or the like from presence of specified percentage of alcohol in blood, 46 ALR2d 1176, 16 ALR3d 748.

Qualification as expert to testify as to findings or results of scientific test to determine alcoholic content of blood, 77 ALR2d 971.

Constitutional right of one charged with intoxication to summon a physician at accused's own expense to make test for alcohol in system, 78 ALR2d 905.

Admissibility in criminal case of blood alcohol test where blood was taken from unconscious driver, 72 ALR3d 326.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods, 96 ALR3d 745.

Admissibility in criminal case of blood alcohol test where blood was taken despite defendant's objection or refusal to submit to test, 14 ALR4th 690.

Destruction of ampoule used in alcohol breath test as warranting suppression of result of test, 19 ALR4th 609.

Sec. 28.35.034. Surrender of license or permit. A person whose license or permit to operate or drive a motor vehicle has been revoked under AS 28.15.165 or AS 28.15.181 shall surrender the license or permit to the department on receipt of notice of the revocation. After the period of revocation has expired, the person may make application for a new license as provided by law. (§ 1 ch 83 SLA 1969; am § 14 ch 129 SLA 1980; am § 21 ch 77 SLA 1983)

Effect of amendments. — The 1980 amendment inserted "operate or" in the first sentence.

The 1983 amendment in the first sentence deleted "suspended or" preceding "revoked," revised the internal reference, and made a minor word change; deleted the former second sentence, regarding a three-month suspension of an operator's license; and in the last sentence substituted "period of revocation" for "three months' period."

NOTES TO DECISIONS

Quoted in Graham v. State, Sup. Ct. Op. No. 2403 (File No. 4092), 633 P.2d 211 (1981).

Cited in Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 4016, 4037, 3827, 4046), 592 P.2d 1187 (1979); Pena v. State, Ct. App. Op. No. 245 (File No. 6174), 664 P.2d 169 (1983).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 141.

60 C.J.S., Motor Vehicles, § 164.24.

Sec. 28.35.035. Administration of chemical tests without consent. (a) If a person is under arrest for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while intoxicated, and that arrest results from an accident that causes death or physical injury to another person, a chemical test may be administered without the consent of the person arrested to determine the amount of alcohol in that person's breath or blood.

(b) A person who is unconscious or otherwise in a condition rendering that person incapable of refusal is considered not to have withdrawn the consent provided under AS 28.35.031(a) and a chemical test may be administered to determine the amount of alcohol in that person's breath or blood. A person who is unconscious or otherwise incapable of refusal need not be placed under arrest before a chemical test may be administered.

(c) If a chemical test is administered to a person under (a) or (b) of this section, that person is not subject to the penalties for refusal to submit to a chemical test provided by AS 28.35.032 and 28.35.034. (§ 21 ch 117 SLA 1982; am § 22 ch 77 SLA 1983)

Effect of amendments. — The 1983 amendment in subsection (a) substituted "an offense . . . driving a motor vehicle" for "the crime of driving" and in subsection (b) revised the internal reference in the present first sentence and added the present second sentence.

NOTES TO DECISIONS

Stated in Copelin v. State, Sup. Ct. Op. No. 2617 (File Nos. 5453, 5708), 259 P.2d 1206 (1983); Pena v. State, Ct. App. Op. No. 245 (File No. 6174), 664 P.2d 169 (1983).

Sec. 28.35.036. Forfeiture of motor vehicle. (a) After conviction of an offense under AS 28.35.030 or AS 28.35.032 involving a motor vehicle of a type for which a driver's license is required, the state may move the court to order the forfeiture of the motor vehicle involved in the commission of the offense if the convicted person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses:

(1) driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements; or

(2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements.

(b) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

(c) Upon receipt of a motion for forfeiture, the court shall schedule a hearing on the matter and shall notify the state and the convicted

person of the time and place set for the hearing. At the hearing, the court may order the forfeiture of the motor vehicle if the court, sitting without a jury, determines by a preponderance of the evidence that the forfeiture of the motor vehicle will serve one or more of the following purposes:

(1) deterrence of the convicted person from the commission of future offenses under AS 28.35.030;

(2) protection of the safety and welfare of the public;

(3) deterrence of other persons who are potential offenders under AS 28.35.030; or

(4) expression of public condemnation of the serious or aggravated nature of the convicted person's conduct.

(d) Upon forfeiture of a motor vehicle the court shall require the surrender of the registration and certificate of title of that motor vehicle. The registration and certificate of title shall be delivered to the department.

(e) If not released under AS 28.35.037, a motor vehicle forfeited under this section may be disposed of at the discretion of the department. (§ 23 ch 77 SLA 1983)

Sec. 28.35.037. Remission of forfeitures. (a) Upon receiving notice from the court of the time and place set for a hearing under AS 28.35.036, the state shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle written notice that includes

(1) a description of the motor vehicle;

(2) the time and place of the forfeiture hearing;

(3) the legal authority under which the motor vehicle may be forfeited;

(4) notice of the right to intervene to protect the interest in the motor vehicle.

(b) At the hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that

(1) the petitioner has an interest in the motor vehicle acquired in good faith;

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

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

(c) If a person satisfies the requirements of (b) of this section, the court shall order that an amount equal to the value of the petitioner's interest in the motor vehicle be paid to the petitioner or the court shall order that the motor vehicle be released to the petitioner together with title to the motor vehicle.

(d) Forfeiture of a motor vehicle under AS 28.35.036 is without prejudice to the rights, and does not extinguish the claims of a creditor with an interest in the motor vehicle. (§ 23 ch 77 SLA 1983)

Sec. 28.35.038. Municipal impoundment and forfeiture. Notwithstanding other provisions in this title, a municipality may adopt an ordinance providing for the impoundment or forfeiture of a motor vehicle involved in the commission of an offense under AS 28.35.030, 28.35.032, or an ordinance with elements substantially similar to AS 28.35.030 or AS 28.35.032. An ordinance adopted under this section is not required to be consistent with this title or regulations adopted under this title. (§ 23 ch 77 SLA 1983)

Article 3. Reckless and Negligent Driving.

Section

40. Reckless driving
45. Negligent driving

Sec. 28.35.040. Reckless driving. (a) A person who drives a motor vehicle in the state in a manner which creates a substantial and unjustifiable risk of harm to a person or to property is guilty of reckless driving. A substantial and unjustifiable risk is a risk of such a nature and degree that the conscious disregard of it or a failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

(b) A person convicted of reckless driving is guilty of a misdemeanor and is punishable by a fine of not more than $1,000 or by imprisonment for not more than one year or by both.

(c) Lawfully conducted automobile, snowmobile, motorcycle or other motor vehicle racing or exhibition events are not subject to the provisions of this section. (§ 50-5-4 ACLA 1949; am § 1 ch 182 SLA 1955; am § 1 ch 70 SLA 1961; am § 2 ch 121 SLA 1967; am § 1 ch 13 SLA 1971; am § 46 ch 32 SLA 1971; am § 6 ch 74 SLA 1974)

NOTES TO DECISIONS

Codification of common-law standard of care. — This section and AS 28.35.045, defining reckless and negligent driving, do not set forth precise standards of care, but merely codify the usual common-law standard of care. Bailey v. Lenord, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981).

Specific conduct not proscribed. — This section and AS 28.35.045, defining reckless and negligent driving, do not proscribe specific conduct, but rather state that a person shall not drive a motor vehicle in a manner which creates an unjustifiable risk. Bailey v. Lenord, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981).

Risks to safety of general public. — Reckless driving involves risks to the safety of the public at large. Calder v. State, Sup. Ct. Op. No. 2224 (File No. 4293), 619 P.2d 1026 (1980).

A defendant was not placed in double jeopardy by his conviction of the lesser included offense of reckless driving on a felony charge of assault with a dangerous weapon even though a misdemeanor charge of reckless driving had already been adjudicated against him because, although the charges arose out of the same general incidents, they were based on different conduct during that incident. Calder v. State, Sup. Ct. Op. No. 2224 (File No. 4293), 619 P.2d 1026 (1980).

Trooper arriving at accident scene cannot arrest for reckless driving without warrant. — The Alaska legislature has classified both reckless driving and operating or driving an automobile under the influence of intoxicating liquor as misdemeanors. Thus, a state trooper who arrived at an accident scene could not arrest a driver without a warrant for either reckless driving or drunk driving since neither of these offenses was committed or attempted in his presence. Layland v. State, Sup. Ct. Op. No. 1150 (File No. 2264), 535 P.2d 1043 (1975), aff'd, Sup. Ct. Op. No. 2739, 549 P.2d 1182 (1976), overruled on other grounds, City of Anchorage v. Geber, Sup. Ct. Op. No. 1824 (File Nos. 3827, 4016, 4037, 4046), 592 P.2d 1192 (1979).

Sentencing considerations. — Where it was undisputed at trial that there were three people in the rear of defendant's pickup who were extremely vulnerable in case of any accident, the judge could properly consider this fact at sentencing in evaluating the extent of defendant's recklessness, even though he could not properly consider the fact that they had died from defendant's recklessness. Huckaby v. State, Ct. App. Op. No. 39 (File No. 5197), 632 P.2d 975 (1981).

Considering uncounseled moving violations in sentencing held harmless error. — Any error which might have occurred by reason of the trial court's consideration of two uncounseled moving violations in determining the sentence for negligent driving was harmless where the court also considered three counseled moving violations and where it did not restrict or suspend defendant's license but imposed a fine of $100, which was only $25 above that suggested by defendant's counsel. McKenzie v. State, Sup. Ct. Op. No. 1029 (File No. 2012), 520 P.2d 791 (1974).

Sentence upheld. — Severity of defendant's offense within the crime of reckless driving and the need to deter him, to deter others, and to reaffirm societal norms justified a one-year sentence. Huckaby v. State, Ct. App. Op. No. 39 (File No. 5197), 632 P.2d 975 (1981).

Cited in Hood v. Smedley, Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972); Williford v. State, Sup. Ct. Op. No. 2751 (File No. 5986), 674 P.2d 1329 (1983); Wilson v. State, Ct. App. Op. No. 356 (File Nos. 7523, 7526, 7833), P.2d (1984).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 312 to 320.

61A C.J.S., Motor Vehicles, §§ 609 to 624.

What amounts to gross or wanton negligence in driving an automobile precluding the defense of contributory negligence, 38 ALR 1424, 72 ALR 1357, 92 ALR 1367, 119 ALR 654.

What amounts to reckless driving within statute making reckless driving of automobile a criminal offense, 86 ALR 1273, 52 ALR2d 1337.

Definiteness and certainty of statutes prohibiting, 12 ALR2d 580.

Reckless driving as lesser included offense of driving while intoxicated or similar charge, 10 ALR4th 1252.

Sec. 28.35.045. Negligent driving. (a) A person who drives a motor vehicle in the state in a manner which creates an unjustifiable risk of harm to a person or to property and who, as a result of the creation of the risk, actually endangers a person or property is guilty of negligent driving. An unjustifiable risk is a risk of such a nature and degree that a failure to avoid it constitutes a deviation from the standard of care that a reasonable person would observe in the situation. Proof that a defendant actually endangered a person or property is established by showing that, as a result of the defendant's driving,

(1) an accident occurred;

(2) a person, including the defendant, took evasive action to avoid an accident;

(3) a person, including the defendant, stopped or slowed down suddenly to avoid an accident; or

(4) a person or property, including the defendant or the defendant's property; was otherwise endangered.

(b) The offense of negligent driving is a lesser offense than, and included in, the offense of reckless driving, and a person charged with reckless driving may be convicted of the lesser offense of negligent driving.

(c) A person convicted of negligent driving is guilty of an infraction as provided under AS 28.40.050, and in addition, the court may limit or suspend the person's driver's license under AS 28.15.220(b).

(d) Lawfully conducted automobile, snowmobile, motorcycle or other motor vehicle racing or exhibition events are not subject to the provisions of this section. (§ 7 ch 74 SLA 1974; am § 6 ch 241 SLA 1976; am § 19 ch 144 SLA 1977)

Revisor's notes. — AS 28.15.220, referred to in (c) of this section, was repealed in 1978. The present provisions for discretionary court limitation of licenses are found in AS 28.15.201. The present provisions for mandatory suspension of licenses for certain violations (AS 28.15.181) do not include a violation of this section in the grounds for suspension.

NOTES TO DECISIONS

Codification of common-law standard of care. — This section and AS 28.35.040, defining reckless and negligent driving, do not set forth precise standards of care, but merely codify the usual common-law standard of care. Bailey v. Lenord, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981).

Specific conduct not proscribed. — This section and AS 28.35.040, defining reckless and negligent driving, do not proscribe specific conduct, but rather state that a person shall not drive a motor vehicle in a manner which creates an unjustifiable risk. Bailey v. Lenord, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981).

Negligent driving is an infraction, not an offense for double jeopardy purposes, and pleading no contest to negligent driving does not preclude a subsequent prosecution for the offense of second-degree assault. Carlson v. State, Ct. App. Op. No. 339 (File No. 7338), 676 P.2d 603 (1984).

Cited in Williford v. State, Sup. Ct. Op. No. 2751 (File No. 5986), 674 P.2d 1329 (1983).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 321, 322.

61A C.J.S., Motor Vehicles, § 612.

Article 4. Duties Following Accidents.

Section
50 Action of operator immediately after accident
60 Duty of operator to give information and render assistance
70 Examination or impounding before repair
80 Immediate notice of accident
90 Rendering of report by others
100 Form of reports
110 Penalty for giving false information in report or failing to report
120 Use of accident reports in evidence
130 False report or destruction of evidence

Sec. 28.35.050. Action of operator immediately after accident. (a) An operator of a vehicle involved in an accident resulting in injury to or death of a person shall immediately stop the vehicle at the scene of the accident or as close to it as possible and return to, and remain at, the scene until the operator has fulfilled the requirements of AS 28.35.060.

(b) The operator of a vehicle involved in an accident resulting only in damage to a vehicle driven or attended by a person shall immediately stop the vehicle at the scene of the accident or as close to it as possible and return to, and remain at, the scene of the accident until the operator has fulfilled the requirements of AS 28.35.060.

(c) The operator of a vehicle involved in an accident resulting only in damage to a vehicle which is unattended shall immediately stop at the scene of the accident and undertake reasonable means and efforts to locate and notify the operator or owner of the damaged unattended vehicle of the name and address of the operator and owner of the vehicle striking the unattended vehicle. If the operator or owner of the unattended vehicle cannot be located then the operator shall leave in a conspicuous place in or upon the unattended vehicle, a writing stating the name and address of the operator and of the owner of the vehicle which struck the unattended vehicle and setting forth a statement of the circumstances of the accident. (§ 50-5-5 a, b ACLA 1949; am § 1 ch 69 SLA 1960)

NOTES TO DECISIONS

Both this section and AS 28.35.060 define the duties of drivers of motor vehicles "involved in an accident." Drahosh v. State, Sup. Ct. Op. No. 485 (File No. 849), 442 P.2d 44 (1968).

And constitute an interlocking statutory scheme. — It is apparent from a reading of AS 28.35.050(a) and AS 28.35.060(a) that together they constitute an interlocking statutory scheme proscribing conduct commonly known as "hit and run" driving. Drahosh v. State, Sup. Ct. Op. No. 485 (File No. 849), 442 P.2d 44 (1968).

Separate offenses. — Leaving the scene of an accident is a separate and distinct offense from the crime of failure to render assistance. Drahosh v. State, Sup. Ct. Op. No. 485 (File No. 849), 442 P.2d 44 (1968).

Violations of subsection (a) are punishable under AS 28.35.230. Drahosh v. State, Sup. Ct. Op. No. 485 (File No. 849), 442 P.2d 44 (1968).

Quoted in Miller v. State, Ct. App. Op. No. 135 (File No. 5429), 652 P.2d 494 (1982).

Cited in Atchak v. State, Ct. App. Op. No. 036 (File No. 4435), 640 P.2d 135 (1981).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 289 to 295.

61A C.J.S., Motor Vehicles, §§ 674 to 683.

Constitutionality, construction, and effect of statute in relation to conduct of driver of automobile after happening of an accident, 16 ALR 1425, 66 ALR 1228, 101 ALR 911.

Failure to stop or other conduct after automobile accident as supporting claim for exemplary damages, 156 ALR 1115.

Applicability of criminal "hit-and-run" statute to accidents occurring on private property, 77 ALR2d 1171.

Necessity and sufficiency of showing in a criminal prosecution under a "hit-and-run" statute accused's knowledge of accident, injury, or damage, 23 ALR3d 497.

Sec. 28.35.060. Duty of operator to give information and render assistance. (a) The operator of a vehicle involved in an accident resulting in injury to or death of a person or damage to a vehicle which is driven or attended by a person shall give the operator's name, address, and vehicle license number to the person struck or injured, or the operator or occupant, or the person attending, and the vehicle collided with and shall render to any person injured reasonable assistance, including making of arrangements for attendance upon the person by a physician and transportation, in a manner which will not cause further injury, to a hospital for medical treatment if it is apparent that treatment is desirable. Under no circumstances is the giving of assistance or other compliance with the provisions of this paragraph evidence of the liability of an operator for the accident.

(b) Except as provided in (c) of this section, a person who fails to comply with any of the requirements of this section is, upon conviction, punishable by imprisonment for not more than one year, or by a fine of not more than $500, or by both. This provision does not apply to a person incapacitated by the accident to the extent that the person is physically incapable of complying with the requirement.

(c) A person who fails to comply with a requirement of this section regarding assisting an injured person is, upon conviction, punishable by imprisonment for not more than 10 years, or by a fine of not more than $10,000, or by both. This provision does not apply to a person incapacitated by the accident to the extent that the person is physically incapable of complying with the requirement. (§ 50-5-5 c, d ACLA 1949; am §§ 1, 2 ch 85 SLA 1968)

NOTES TO DECISIONS

This section does not codify a common-law crime but rather creates a new statutory offense. Kimoktoak v. State, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

On its face, this section appears constitutionally defective for its failure to require criminal intent, or more particularly, for its failure to require that a person knowingly fails to render assistance. Kimoktoak v. State, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

On its face this section does not require that a person have knowledge of the accident or of the fact that injuries have resulted to be guilty of a serious crime. Thus the statute appears to hold a person strictly liable for failure to render assistance even if he is unaware of any wrongdoing, i.e., unaware of the circumstances giving rise to the duty and thus unaware that he is in fact failing to do the required act. Kimoktoak v. State, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

But the requisite intent may be read into the statute by implication. Kimoktoak v. State, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

The legislature intended that criminal liability under this section attach only where the operator of a motor vehicle knowingly fails to stop and render assistance. The statute requires an affirmative course of action to be taken by the driver and it necessarily follows that one must be aware of the facts giving rise to this affirmative duty in order to perform such a duty. Kimoktoak v. State, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

When criminal liability under subsection (c) attaches. — Criminal liability under subsection (c) of this section attaches to a driver who leaves the scene of an accident where the state can prove by direct or circumstantial evidence that the driver actually knew of the injury or that he knew that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person. Kimoktoak v. State, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

Intoxication. — Where one is charged with failure to render assistance under this section, and where there is evidence of intoxication, the jury may consider the fact that the accused was intoxicated in determining whether he had the requisite knowledge. Kimoktoak v. State, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

No error in manner in which state permitted to argue element of knowledge to jury. — See Atchak v. State, Ct. App. Op. No. 036 (File No. 4435), 640 P.2d 135 (1981).

Instruction that the jury could find knowledge of injury "where the circumstances were such that they would lead a reasonably prudent person to assume that an accident resulting in injury" must have occurred was erroneous, since it is not the reasonable person who is on trial but the defendant and it is the defendant's knowledge which must be proved and not that of a hypothetical reasonable person. Kimoktoak v. State, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

Where the trial court's first instruction on the elements of the offense of failure to render aid adequately apprised the jury of all necessary elements with the exception of the element of knowledge, but two additional instructions specifically addressing the element of knowledge conformed precisely to the requirements of Kimoktoak v. State, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978), no error was committed by the court in instructing the jury. Atchak v. State, Ct. App. Op. No. 036 (File No. 4435), 640 P.2d 135 (1981).

The crime of leaving the scene of an accident is not amenable to civil compromise. Hensel v. State, Sup. Ct. Op. No. 1755 (File No. 3719), 585 P.2d 878 (1978).

The act constituting the crime of leaving the scene of an accident is the failure to stop and make the necessary exchanges of information or assistance after the accident has occurred. This omission is not one which causes injury to the private citizen within the meaning of the civil compromise statutes. Settlement of the claim for injuries resulting from the accident cannot settle the state's claim for a violation of its laws. Hensel v. State, Sup. Ct. Op. No. 1755 (File No. 3719), 585 P.2d 878 (1978).

Ten-year sentence for failure to render assistance affirmed. — See Rosendahl v. State, Sup. Ct. Op. No. 1807 (File No. 4087), 591 P.2d 538 (1979).

Applied in Lupro v. State, Sup. Ct. Op. No. 1960 (File No. 2987), 603 P.2d 468 (1979).

Quoted in Thibedeau v. State, Sup. Ct. Op. No. 2182 (File No. 4325), 617 P.2d 759 (1980); Miller v. State, Ct. App. Op. No. 135 (File No. 5429), 652 P.2d 494 (1982).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 289 to 295.

61A C.J.S., Motor Vehicles, §§ 674 to 683.

Violation of statute requiring one

involved in an accident to stop and render aid as affecting civil liability, 89 ALR2d 299.

Sufficiency of compliance with requirement of criminal "hit and run" statute that motorist identify himself, 48 ALR3d 685.

Sec. 28.35.070. Examination or impounding before repair. A person may not make or have made repairs to damage or injury to a motor vehicle which could have been caused by collision with a person or property without first notifying the Department of Public Safety, chief of police, or in the absence of these, the nearest policeman or other peace officer, who shall immediately examine the vehicle and make a full report subscribed by the person in whose custody the vehicle then is. A copy of the report shall be mailed or delivered to the Department of Public Safety. If no official is within 10 miles of the place where the vehicle is brought for repair, then no notice or examination is required. If there is ground for suspecting that the vehicle was involved in a collision with a person, the vehicle shall be impounded at the expense of the owner, for which the custodian shall have a lien, and shall be accessible only to officers detailed to the investigation of the case until released. If, however, there is no reason to suspect that the damage to the motor vehicle was caused by collision with a person or property, the repair of the vehicle may be authorized by the officer in charge of the investigation at any time after the expiration of 24 hours thereafter. (§ 50-5-5 f ACLA 1949; am § 2 ch 123 SLA 1959)

NOTES TO DECISIONS

Applied in Lupro v. State, Sup. Ct. Op. No. 1960 (File No. 2987), 603 P.2d 468 (1979).

Collateral references. — 38 Am. Jur. 2d, Garages, and Parking and Filling Stations, §§ 140, 144 to 151.

61A C.J.S., Motor Vehicles, §§ 725, 748(d), (e).

Lien for storage of automobile, 31 ALR 834, 48 ALR2d 894.

Lien for towing or storage, ordered by public officer, of motor vehicle, 85 ALR3d 199.

Sec. 28.35.080. Immediate notice of accident. (a) The driver of a vehicle involved in an accident resulting in bodily injury to or death of a person or total property damage to an apparent extent of $500 or more shall immediately by the quickest means of communication give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the Department of Public Safety.

(b) The driver of a vehicle involved in an accident resulting in bodily injury to or death of a person or total property damage to an apparent extent of $500 or more shall, within 10 days after the accident, forward

a written report of the accident to the Department of Public Safety and to the local police department if the accident occurs within a municipality. A report is not required under this subsection if the accident is investigated by a peace officer.

(c) The form of accident report required under (b) of this section can be obtained from any local police department or the Department of Public Safety.

(d) The Department of Public Safety may require the driver of a vehicle involved in an accident of which a report must be made to file supplemental reports whenever the original report is insufficient in the opinion of the department.

(e) Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident for which a report must be made, either at the time of and at the scene of the accident or thereafter by interviewing the participants or witnesses, shall, within 24 hours after completing the investigation, forward a written report of the accident to the Department of Public Safety.

(f) An accident report is not required under this section from a person who is physically incapable of making the report during the period of incapacity. (§§ 50-5-5 f, g ACLA 1949; added by § 3 ch 123 SLA 1959; am §§ 2, 3 ch 69 SLA 1960; §§ 50-5-5 h, i, j ACLA 1949; added by § 3 ch 123 SLA 1959; am § 20 ch 144 SLA 1977)

NOTES TO DECISIONS

Self-incrimination. — Appellant's admission that he was driving vehicle in question at time of accident was not inadmissible under the fifth amendment to the United States Constitution and Alaska Const., art. I, § 9 as being compelled by this section, since this section does not require any incriminating information, but merely requires a person who is involved in an accident covered by the statute to give notice of the accident to the appropriate police department. Creary v. State, Ct. App. Op. No. 252 (File Nos. 6777, 6778), 663 P.2d 226 (1983).

Investigating officer's written report of an accident is not admissible in evidence under this section. Menard v. Acevedo, Sup. Ct. Op. No. 368 (File No. 636), 418 P.2d 766 (1966).

Admissibility of investigating officer's observations. — Although under AS 28.35.120 a written report itself is generally inadmissible, the police officer who investigates the accident may testify to the observations which he made in preparing the report, and his observations would include any statements which were made to him in the course of the investigation that were otherwise admissible, including the statement of a defendant that he was the driver of the vehicle in question. Creary v. State, Ct. App. Op. No. 252 (File Nos. 6777, 6778), 663 P.2d 226 (1983).

Applied in Adkins v. Lester, Sup. Ct. Op. No. [illegible] (File No. 2078), 530 P.2d 11 (1974); Kaps Transp., Inc. v. Henry, Sup. Ct. Op. No. 1527 (File No. 2926), 572 P.2d 72 (1977); Rutherford v. State, Sup. Ct. Op. No. 2001 (File No. 3453), 605 P.2d 16 (1979).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 160.

61A C.J.S., Motor Vehicles, § 674.

Admissibility of report of operator filed pursuant to law, respecting automobile accident, 69 ALR 905.

Failure to comply with statute requiring one involved in automobile accident to stop or report, as affecting question as to suspension or tolling of statute of limitation, 10 ALR2d 564.

Sec. 28.35.090. Rendering of report by others. (a) Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident as required in AS 28.35.080 and there was another occupant in the vehicle at the time of the accident capable of doing so, the occupant shall make or give the notice not given by the driver.

(b) Whenever the driver is physically incapable of making a written report of an accident as required in AS 28.35.080 and the driver is not the owner of the vehicle, then the owner of the vehicle involved in the accident shall within five days after learning of the accident make the report not made by the driver. (§ 50-5-5 j ACLA 1949; am § 3 ch 123 SLA 1959)

Sec. 28.35.100. Form of reports. (a) The Department of Public Safety shall prepare and upon request supply to police departments, coroners, local peace officers, garages and other suitable agencies or individuals, forms for accident reports. The written reports by persons involved in accidents and by investigating officers shall require sufficiently detailed information to disclose the cause of the accident, conditions existing at the time of the accident, and the persons and vehicles involved.

(b) Every accident report required to be made in writing shall be made on the appropriate form approved by the department and shall contain all of the information required unless not available. (§ 50-5-5 k ACLA 1949; added by § 3 ch 123 SLA 1959)

NOTES TO DECISIONS

Quoted in Creary v. State, Ct. App. Op. No. 252 (File Nos. 6777, 6778), 663 P.2d 226 (1983).

Sec. 28.35.110. Penalty for giving false information in report or failing to report. (a) A person who gives information in reports as required in AS 28.35.080 knowing or having reason to believe that the information is false is punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both.

(b) The department shall suspend the license or permit to drive and the nonresident operating privileges of a person failing to report an accident as provided in AS 28.35.080 until the report is filed. The department may extend the suspension by not more than 30 days. A person failing to make a report as required in AS 28.35.080 is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $200, or by imprisonment for not more than 90 days, or by both. (§ 50-5-5 l, m ACLA 1949; added by § 3 ch 123 SLA 1959)

NOTES TO DECISIONS

Cited in Creary v. State, Ct. App. Op. No. 252 (File Nos. 6777, 6778), 663 P.2d 226 (1983).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 160.
61A C.J.S., Motor Vehicles, § 674.

Sec. 28.35.120. Use of accident reports in evidence. A report made in accordance with this chapter may not be used in evidence in a criminal or civil action arising out of the accident that is the subject of the report. (§ 4 ch 123 SLA 1959)

NOTES TO DECISIONS

Investigating officer's written report of an accident is not admissible in evidence under this section. Menard v. Acevedo, Sup. Ct. Op. No. 364 (File No. 636), 418 P.2d 766 (1966).

This section bars admission into evidence of an investigating police officer's report made in connection with a traffic accident. Adkins v. Lester, Sup. Ct. Op. No. 1107 (File No. 2078), 530 P.2d 11 (1974).

Policies underlying statutes barring the use of accident reports as evidence. — See Adkins v. Lester, Sup. Ct. Op. No. 1107 (File No. 2078), 530 P.2d 11 (1974).

This section by its specific terms bars only the report's use in evidence. Adkins v. Lester, Sup. Ct. Op. No. 1107 (File No. 2078), 530 P.2d 11 (1974).

This section does not prohibit the oral testimony or expert opinions of an investigator which are also contained in an automobile accident report. Adkins v. Lester, Sup. Ct. Op. No. 1107 (File No. 2078), 530 P.2d 11 (1974).

In view of Alaska's established rule favoring admission of expert opinion testimony, it would seem wise not to exclude such expert testimony simply because the witness prepared the written report which is barred by the statute. Adkins v. Lester, Sup. Ct. Op. No. 1107 (File No. 2078), 530 P.2d 11 (1974).

Although under this section a written report itself is generally inadmissible, the police officer who investigates the accident may testify to the observations which he made in preparing the report, and his observations would include any statements which were made to him in the course of the investigation that were otherwise admissible, including the statement of a defendant that he was the driver of the vehicle in question. Creary v. State, Ct. App. Op. No. 252 (File Nos. 6777, 6778), 663 P.2d 226 (1983).

Although a state trooper had little independent recollection of the accident, he could rely upon his report as a proper basis for his testimony in a negligence action. It was still his testimony and not the report itself which was placed in evidence. Kaps Transp., Inc. v. Henry, Sup. Ct. Op. No. 1527 (File No. 2926), 572 P.2d 72 (1977).

Where a state trooper was permitted to refer to his accident report in order to recreate for the jury a diagram of the scene of the accident which he had prepared as part of his investigation and he was also permitted to read from his report the statement he took from one of the two witnesses to the accident, this testimony was properly admitted. Kaps Transp., Inc. v. Henry, Sup. Ct. Op. No. 1527 (File No. 2926), 572 P.2d 72 (1977).

Testimony of witnesses named in report. — The holding that this section does not bar oral testimony or expert opinions of an investigator which are also contained in an automobile accident report clearly overrules any implication in Mace v. Jung, Sup. Ct. Op. No. 170 (File No.

306), 386 P.2d 579 (1963) that witnesses named in the report would not be able to testify before the court. The doctrine of "fruit of the poisonous tree" is simply not applicable to this type of a situation. Adkins v. Lester, Sup. Ct. Op. No. 1107 (File No. 2078), 530 P.2d 11 (1974).

Memoranda prepared by state trooper investigating another trooper's involvement in an accident were not inadmissible police investigatory reports in terms of this section's language and purpose. Rutherford v. State, Sup. Ct. Op. No. 2001 (File No. 3453), 605 P.2d 16 (1979).

Quoted in Wester v. State, Sup. Ct. Op. No. 1106 (File No. 2159), 528 P.2d 1179 (1974).

Collateral references. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 1046.

61A C.J.S., Motor Vehicles, § 516(19).

Admissibility of report of operator filed pursuant to law, respecting automobile accident, 69 ALR 905.

Sec. 28.35.130. False report or destruction of evidence. An officer or person who knowingly makes or subscribes a false report concerning an investigation of a vehicle or damage or injury caused by a vehicle, as provided in this chapter, is guilty of perjury. A person who destroys, obliterates, conceals or removes, or who aids, abets, or assists in the destruction, obliteration, concealment, or removal from a vehicle, of evidence showing or tending to show that the vehicle collided with a person or property, is punishable by a fine of not more than $500, or by imprisonment for not more than six months, or by both. (§ 50-5-6 ACLA 1949)

Article 5. Miscellaneous Offenses.

Section
135. Unlawful to knowingly make false statement, application, or certification
140. Unlawful obstruction or blocking of traffic
155. Operation of vehicle with certain tires prohibited
180. Disobedience to signals of officer regulating traffic unlawful
182. Stopping at direction of peace officer
225. Enforcement
245. Motorcycle helmet

Sec. 28.35.135. Unlawful to knowingly make false statement, application, or certification. (a) A person may not knowingly make a false affidavit, statement, or representation, or affirm falsely with respect to a matter or fact required to be set out under this title, nor may the person use a name other than the person's true name. A person convicted of violating this section is guilty of unsworn falsification and is punishable as prescribed by law.

(b) A person who has a certification, registration, title, license, or other form issued under this title, or who has applied for a certification, registration, license, or other form, and who changes the person's name or moves from the address shown on the department's records or forms, shall notify the department in writing of the change in name or address within 30 days. (§ 7 ch 241 SLA 1976; am § 43 ch 102 SLA 1980)

Cross references. — For crime of unsworn falsification, see AS 11.56.110; for penalties, see AS 12.55.035(b)(3) and 12.55.135(a).

Effect of amendments. — The 1980 amendment substituted "unsworn falsification" for "perjury" following "is guilty of" near the middle of the second sentence in subsection (a).

Sec. 28.35.140. Unlawful obstruction or blocking of traffic. A person may not purposely obstruct or block traffic on any roadway by any means. However, a service vehicle such as a bus, garbage truck, tow truck or ambulance may make brief stops on a roadway, which stops on the roadway are necessary in the performance of its services. (§ 50-5-7 ACLA 1949; am § 1 ch 174 SLA 1970)

NOTES TO DECISIONS

This law pertains to roads of sufficient width and condition to permit vehicles to pass, without injury to their tires or other parts, and without danger of collision. Vogler v. Greimann, 12 Alaska 19, 78 F. Supp. 575 (D. Alaska 1948).

On a two lane highway, even a one foot obstruction could easily cause a following car to swerve into the opposite lane to clear a parked vehicle. This would interfere with the normal flow of traffic and amount to a violation under this section. Beaumaster v. Crandall, Sup. Ct. Op. No. 1589 (File No. 2845), 576 P.2d 988 (1978).

This section is not an exclusive list of service vehicles. Beaumaster v. Crandall, Sup. Ct. Op. No. 1589 (File No. 2845), 576 P.2d 988 (1978).

A driver, while not operating a professional service vehicle, may be engaged in the same activity as a service vehicle would have been. Beaumaster v. Crandall, Sup. Ct. Op. No. 1589 (File No. 2845), 576 P.2d 988 (1978).

Such as pulling over to aid occupants of overturned car. — This section describes service vehicles as buses, garbage trucks, tow trucks or ambulances, but a reasonable construction of the statute would hold that one who pulled his car over to the side of the road in an emergency situation in order to aid the occupants of an overturned car, was acting in a service capacity. Beaumaster v. Crandall, Sup. Ct. Op. No. 1589 (File No. 2845), 576 P.2d 988 (1978).

A person who pulled over to the side of the road in an emergency situation in order to aid the occupants of an overturned car, apparently parking as far over on the right as he could given the snow conditions and the presence of a ditch on the side of the road, and who also turned his emergency flasher lights on, was entitled to make a brief stop on the roadway as necessary in the performance of samaritan efforts. Beaumaster v. Crandall, Sup. Ct. Op. No. 1589 (File No. 2845), 576 P.2d 988 (1978).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 277.

61A C.J.S., Motor Vehicles, § 684.

Stopping vehicle on traveled portion of highway as affecting responsibility for collision between vehicles, 131 ALR 562.

Sec. 28.35.150. Unlawful to interfere with or destroy official traffic control device or highway construction; action by state for damages. [Repealed, § 25 ch 144 SLA 1977.]

Sec. 28.35.155. Operation of vehicle with certain tires prohibited. (a) It is unlawful to operate a motor vehicle with studded

tires or tires with chains attached on a paved highway or road from May 1 through September 15, inclusive, north of 60° North Latitude and from April 15 through September 30, inclusive, south of 60° North Latitude. The commissioner of public safety shall by emergency order provide for additional lawful operating periods based on unusual seasonal or weather conditions. An emergency order adopted under this section is not subject to the Administrative Procedure Act (AS 44.62). Upon application a special individual traction permit may be issued allowing the operation of a motor vehicle with studded tires or chains at any time at the discretion of the vehicle owner. The fee for the special individual permit is one-third of the annual registration fee applicable to that class of vehicle under AS 28.10.421. The department may provide an appropriate sticker or other device identifying the vehicle to which the permit applies.

(b) In this section "studded tire" means a tire with metal studs or spikes imbedded in the periphery of the tire surface, and protruding not more than one-fourth inch from the tire surface. (§ 9 ch 241 SLA 1976; am § 29 ch 94 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "registration fee" for "license tax" near the middle of the next to last sentence of subsection (a), and substituted "AS 28.10.421" for "AS 28.10.200" at the end of the next to last sentence of subsection (a).

Sec. 28.35.160. Unlawful injury to or destruction of traffic regulations or guidance device. [Repealed, § 25 ch 144 SLA 1977.]

Sec. 28.35.170. Operation with more than three persons in driver's seat. [Repealed, § 20 ch 241 SLA 1976.]

Sec. 28.35.180. Disobedience to signals of officer regulating traffic unlawful. A driver of a vehicle may not refuse to obey a lawful order or direction of a peace officer, fireman, or authorized flagman regulating and directing traffic. A peace officer or fireman regulating or directing traffic shall, upon request of a driver, produce evidence of authorization unless the officer or fireman is wearing in view the badge or uniform of office. (§ 50-5-11 ACLA 1949; am § 10 ch 241 SLA 1976)

Sec. 28.35.182. Stopping at direction of peace officer. (a) A person driving or operating a vehicle or motor vehicle, or operating an aircraft or watercraft, shall stop as soon as practical and in a reasonably safe manner under the circumstances, if requested or signalled to do so for a lawful purpose by a peace officer.

(b) If the peace officer is driving or operating a vehicle or motor vehicle or is operating an aircraft or watercraft when making the request or giving the signal to stop, the peace officer's vehicle, motor vehicle, aircraft or watercraft must be marked appropriately so that a reasonable person would recognize it as one related to law enforcement,

or it must meet lighting and audible signalling requirements of law for law enforcement vehicles. If the peace officer is not driving or operating a vehicle or motor vehicle, or operating an aircraft or watercraft, the officer shall wear the uniform of office or display a badge or other symbol of authority so as to be reasonably identifiable as a peace officer.

(c) A person who knowingly fails to stop in violation of (a) of this section is guilty of a class B misdemeanor.

(d) In this section

(1) "lawful purpose" includes making an arrest or issuing a citation, preventing personal injury or property damage in an emergency, and investigating a situation when the peace officer has a reasonable suspicion that imminent public danger exists or that serious harm has recently occurred;

(2) "signal" means a hand motion, audible mechanical or electronic noise device, visual light device, or combination of them, used in a manner that a reasonable person would understand to mean that the peace officer intends that the person stop. (§ 1 ch 66 SLA 1984)

Sec. 28.35.190. Penalty for violation of certain sections. [Repealed, § 47 ch 32 SLA 1971.]

Sec. 28.35.200. Unlawful operation of vehicles. [Repealed, § 20 ch 241 SLA 1976.]

Sec. 28.35.210. Seizure of unsafe or defectively equipped vehicles. [Repealed by implication by AS 28.05.091, enacted by § 6 ch 178 SLA 1978.]

Sec. 28.35.220. Action by state for damages. [Repealed, § 20 ch 241 SLA 1976.]

Sec. 28.35.225. Enforcement. All law enforcement officers in this state and employees of the department designated by the commissioner shall enforce this title and regulations adopted under this title. The state troopers shall advise and instruct all other law enforcement officers in the state concerning the requirements of this title and regulations adopted under this title. (§ 11 ch 241 SLA 1976; am § 7 ch 54 SLA 1979)

Sec. 28.35.230. [Renumbered as AS 28.40.050.]

Sec. 28.35.240. Duty to obey school patrol. [Repealed, § 3 ch 68 SLA 1964.]

Sec. 28.35.245. Motorcycle helmet. (a) After January 1, 1978, motorcycle helmets may not be manufactured or sold in Alaska that do not conform to standards established by regulation by the commissioner of public safety. The regulations shall provide for helmets that allow normal peripheral vision and hearing and minimize neck injuries

to the wearer potentially caused by the helmet. The adoption of these regulations shall be under the provisions of the Administrative Procedure Act (AS 44.62).

(b) A person who has reached the age of majority as defined by AS 25.20.010 may not be required to wear a helmet while operating a motorcycle if the person is the holder of a license which, under regulations adopted under AS 28.15.041, is classified singly as a license to operate a motorcycle. (§ 1 ch 230 SLA 1976)

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 210.

Sec. 28.35.250. Application of law. [Repealed, § 20 ch 241 SLA 1976.]

Sec. 28.35.260. [Renumbered as AS 28.40.100.]

Sec. 28.35.270. [Renumbered as AS 28.40.110.]

COMPARISON OF PENALTIES
HB 53 and CURRENT LAW

CRIME	CURRENT LAW	HB 53
1st DWI	3 days in jail 90 day loss/license 250.	3 days in jail 90 day loss/license Earn back last 60 days $250 fine
2nd DWI	20 days in jail 1 year loss/license 500.	20 days in jail 1 year loss/license Earn back last 60 days $500 fine
3rd DWI	30 days in jail 10 yr loss/license 1000	60 days in jail 10 yr loss/license Earn back last 5 yrs $1000 fine
4th DWI	30 days in jail 10 yr loss/license	120 days in jail 10 yr loss/license Earn back last 5 yrs $2000 fine
5th DWI	30 days in jail 10 yr loss/license	240 days in jail 10 yr loss/license Earn back last 5 yrs $3000 fine
6th DWI	30 days in jail 10 yr loss/license	Class C Felony
DWLR/DWLS 1/non-DWI	10 days in jail 1 yr loss/license	10 days/jail w/10 sus 90 day loss/license 80 hrs comm. service
DWLR/DWLS 2/non-DWI	10 days in jail 1 yr loss/license	10 days in jail 90 day loss/license
DWLR/DWLS Court ordered revoc for 1/DWI	30 days in jail 1 yr loss/license $500 fine	20 days/jail w/10 sus 90 day loss/license $500 fine 80 hrs comm. service
DWLR/DWLS Court ordered revoc for 2/DWI or more	90 days in jail 1 yr loss/license $1000 fine	30 days in jail 90 dayloss/license $1000 fine

WHY A SIXTH DWI CONVICTION

SHOULD BE A FELONY

Under alaska law, a person convicted of driving while intoxicated is guilty of a misdemeanor regardless of how many times he/she is convicted. A sixth time offender faces of minimum sentence of only 30 days in jail, and no judge may impose a sentence of more than a year.

This treatment of repeat DWI offenders is far too lenient. Alaska law is inconsistent with the trend in other states, inconsistent with our own more severe treatment of less serious crimes and less dangerous offenders, and inconsistent with reality.

Several states have made repeat DWI convictions felonies. Texas and Oklahoma make the SECOND DWI conviction a felony, while Nevada, South Dakota, West Virginia, anbd South Carolina make the third conviction a felony. (South Carolina has a three year minimum sentence for the third offense and a five-year minimum for the fifth offense.)

ALASKA LAW ALREADY MAKES FELONIES OUT OF CONDICT WHICH IS LESS DANGEROUS THAN A SIXTH-TIME DWI. Some examples of first-time conduct which is a felony include:

--UNLICENSED GUIDING, which carries a one-year minimum jail sentence, is a felony (AS 08.54.210).

--JOYRIDING, in which the car is damaged to $500 or more, is a felony (AS 11.46.482).

--POSSESSION OF BRASS KNUCKLES, A SWITCHBLADE, OR A GRAVITY KNIFE in plain sight, is a felony (AS 11.61.200).

--RUNNING A BIG-TIME GAMBLING OPERATION is a felony (AS 11.66.210).

--SOLICITING A PATRON FOR A PROSTITUTE is a felony (AS 11.66.120).

A sixth-time drunk driver is a hard-core alcoholic who cannot stop driving and cannot be deterred by another misdemeanor conviction. Someone who has been convicted a sixth time for DWI has not been deterred by misdemeanor jail sentences or reformed by outpatient alcohol treatment. That person has, instead, continued to endanger the public over and over again. Such a dangerous repeat offender needs the stiffer jail sentences, long-term inpatient treatment, and more intense probation available for felons.

The Drunken Driving Crackdown Is It Working?

BY RAY McALLISTER

It was 10:55 p.m. Saturday, May 14. The old school bus, headed south on Interstate 71, now was outside Carrolton, Ky. The 63 teen-agers and four adults on board, all members of the First Assembly of God Church in Radcliff, Ky., were returning home from Kings Island amusement park north of Cincinnati.

Coming the other way in a Toyota pickup truck was Larry Mahoney, 34, a chemical worker from Worthville, Ky. He was headed north, but in the southbound lanes, apparently too drunk to realize he was driving the wrong way.

"If it were possible to turn back the clock, we would," Gov. Wallace Wilkinson would say four days later in declaring a day of mourning. "Whatever consolation we can give will never make up for the loss of friends and loved ones."

Mahoney and the bus driver, John Pearman, each tried to brake.

It was too late.

"I just heard a crash, felt the impact of the [truck] and looked up and saw flames," said Wayne Cox, a 14-year-old who survived. "They spread pretty fast. ... I was pinned. Everything was pretty wild."

Ray McAllister is a reporter for the Richmond Times Dispatch.

The fuel tank of the bus ruptured and exploded in an orange fireball that shot from the front to the back of the bus. Flames engulfed the bus—"Not one part of it was untouched," Carroll County Coroner James Dunn told reporters, "inside, outside."

Twenty-four teen-agers and three adults died when they could not reach the rear exit. Their bodies were burned beyond recognition. Dental records were used because, as Kentucky State Medical Examiner Dr. George Nichols told family members, he did not want the families to view the charred remains.

"The picture ... of their children in that room," he explained to reporters later, "is not what they have in their memories or wallets."

Mahoney was charged with 27 counts of murder, and Carroll County Commonwealth's Attorney John Ackman said he would seek the death penalty.

Mahoney had driven drunk before. He pleaded guilty in 1984 to drunken driving, was fined $300 plus court costs, and ordered to pay $140 for traffic school. Under the toughened standards of the 1980s, his license also was suspended for six months.

Mahoney's blood-alcohol content level at that time was .16, more than one-and-a-half times the intoxication level. Four years later, his drunkenness was worse.

On May 14, the day he killed 27 people on I-71, his blood-alcohol level was .24. Eleven one-ounce drinks consumed in one hour would yield a level of .24 for a 150-pound person.

The Kentucky crash has prompted renewed looks at the nation's drunken driving problem. Has the legislative and judicial crackdown of the 1980s been a panacea? Has it worked at all?

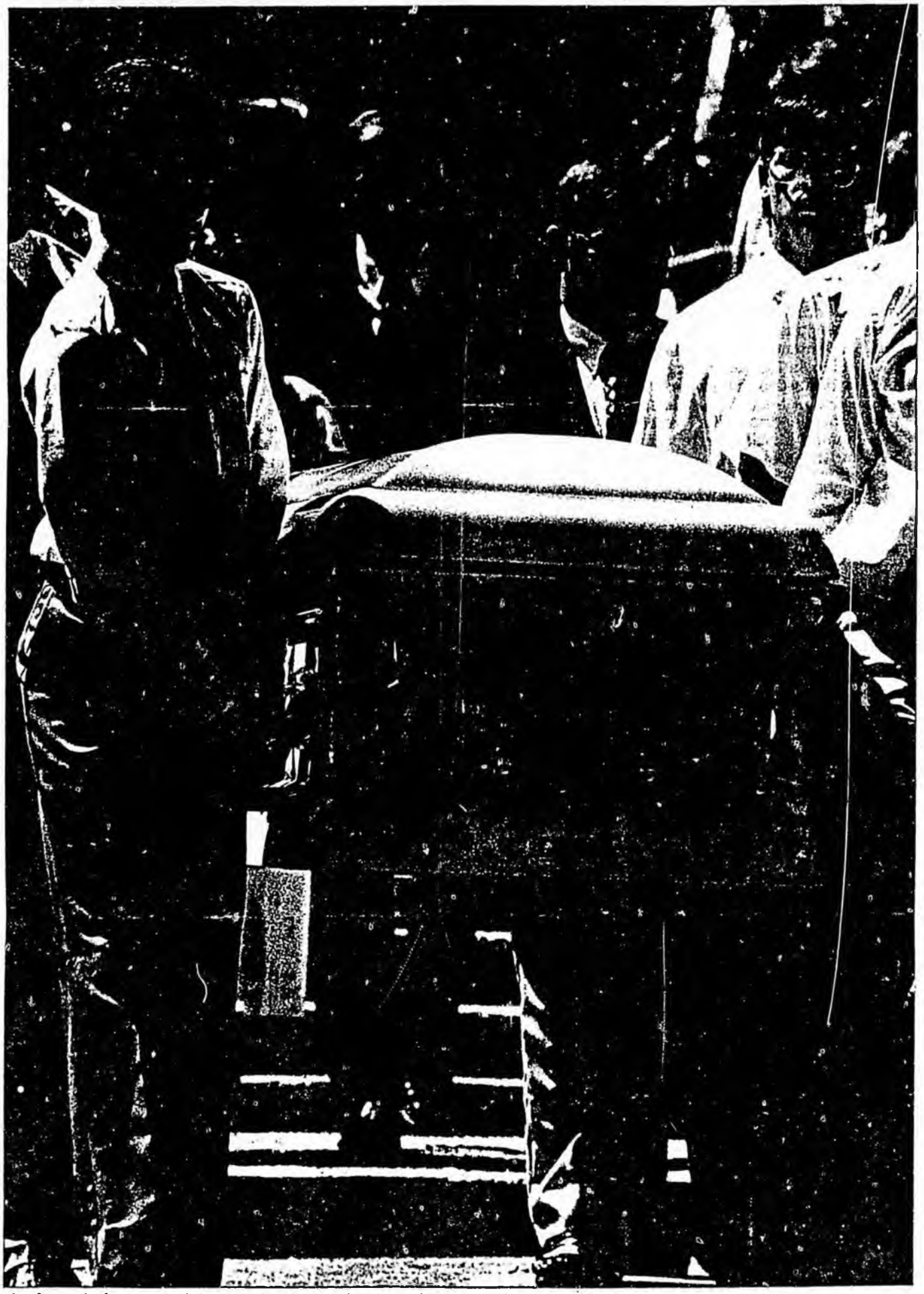
Following several widely publicized crashes, public attention and debate focused on the issue in the early 1980s.

Everyone could agree that drunken drivers were the enemy. Citizen lobbies—notably Mothers Against Drunk Driving, Students Against Drunk Driving, Remove Intoxicated Drivers—were organized.

Politicians joined in. Law enforcement efforts were increased. State and federal legislators stiffened penalties for drunken driving, made some penalties mandatory, and tied federal funds to others.

As a result, arrests for drunken driving rose by 223 percent from 1970 to 1986, the Bureau of Justice Statistics says. Young drivers, the biggest offenders, were hit hardest. In 1983, the peak year, one of every 39 licensed drivers aged 21 was arrested.

BEN VAN HOOK



The funeral of several of the 27 who died in the Kentucky bus crash.

Moreover, through federal inducement, all 50 states raised their drinking ages to 21 (Wyoming, a holdout, became the 50th this past July 1). Most adopted .10 (or even lower) as the per se level of intoxication. Most increased sentences. Many adopted mandatory license loss, at least for repeated driving-under-the-influence offenders.

And judges handed down tougher sentences, in part because they had to. In 1983, according to the Bureau of Justice Statistics survey, the median sentence given to first-time drunken drivers had reached five months in jail. For repeat offenders, the sentences were about twice as long.

So what happened when everyone got tough?

From 1982 to 1985, the U.S. Department of Transportation says, alcohol-related traffic deaths declined by fully 11 percent. It is a bottom line that even skeptics have to consider impressive.

But who gets the credit? The obvious answer isn't necessarily the right one. It's not clear that tougher penalties have been wholly or even largely responsible for the drop.

For instance, a survey of judges in six states—California, Colorado, Georgia, Maryland, Pennsylvania and Wisconsin—raises a question about the effectiveness of mandatory sentencing, a key element in the get-tough legislation across the country.

Critics have long contended that some judges maintain a there-but-for-the-grace-of-God-go-I attitude toward such cases, refusing to implement tough sentences because they drive drunk themselves. An article presenting the survey results was published in the *Judges' Journal* in 1985. It suggests that "the judges' opinions indicated they believe mandatory sentencing makes it less likely that offenders will be sentenced.

"Like the old English juries that would not find thieves guilty if this meant hanging them, our modern American judges know that their colleagues and juries may prefer to give no punishment rather than to give one that is excessively harsh."

Dr. Ralph Hingson, chief of social and behavioral sciences at the Boston University School of Public Health, says, "Within the courts, judges vary in their response to laws like per se laws and mandatory penalties that take some of their discretion from them. I would suspect there is a debate within the judicial branch on the utility of these laws."

ABAJ/WIDE WORLD

Dr. Ralph Hingson

But Hingson advances the theory that publicity and public debate, and not necessarily the legislative and judicial response, may be more responsible for change, anyway.

"It's a real chicken-and-egg sort of thing," he says. "But there's social process going on in which society is trying to change its norms about what's acceptable in terms of drinking and driving.

"Once laws are in effect, they may serve as anchors to hold in place the new standards."

Hingson and colleagues, for instance, found in a detailed study in Maine that fatal crashes began to decline well before the passage of tougher laws. Increased attention seemed to be the reason.

That could signal bad news.

A Catholic University study of 1979-1986 showed that 1983 was the peak year for publicity on drunken driving, which has been plummeting since. There were 50 stories on the subject in 370 popular magazines that year, but in 1986 there were only nine. And there were 169 stories in four major newspapers (*The New York Times*, *The Washington Post*, the *Los Angeles Times* and the *Wall Street Journal*) in 1983, but in 1986 there were only 45.

At the same time, the fatalities began to rise again. Alcohol-related traffic deaths, which had declined by 11 percent from 1982 to 1985, were back up by 7 percent (to 23,990) in 1986, the latest year for which figures are available.

Hingson likens the U.S. situation to that of Great Britain. A national get-tough law there drew immediate results but had less effect as interest waned. Comparisons are difficult because the British had one law and the United States has had more than 700 state and national laws, but "the first warning signs are beginning to appear that that may be happening here," says Hingson.

What he finds particularly disturbing is what's happening to young drivers.

During the '80s, nearly 30 states raised their drinking age to 21. They have consistently showed a 10-to-15 percent decrease in nighttime crashes among the age groups that had lost their drinking privileges, he notes.

But Hingson says that, in 15 states performing comprehensive alcohol testing of fatalities throughout the 1980s, teen-age deaths are up 9 percent. Other statistics about young drivers are equally discouraging.

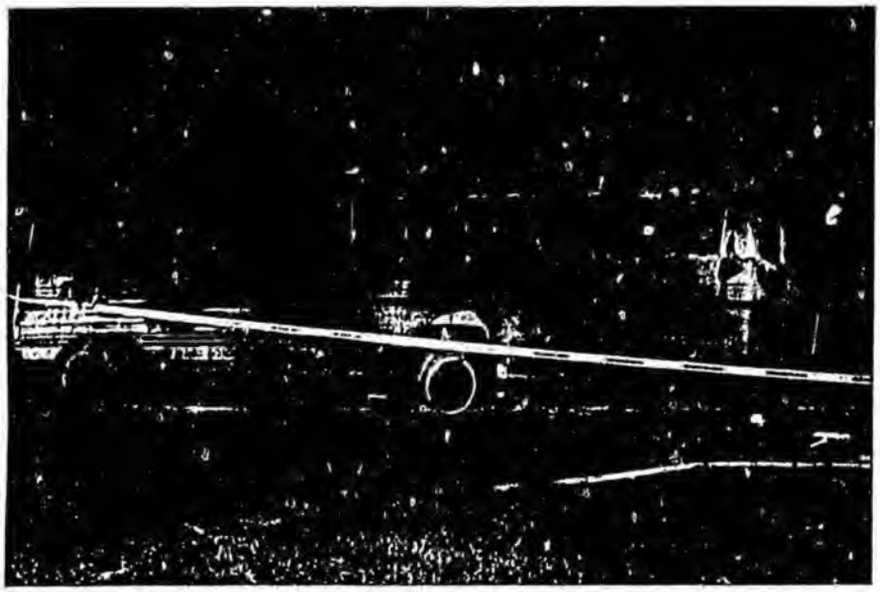
Hingson returns to his awareness-and-publicity theory.

"The highest-risk driving group [those just getting their licenses] is

ABAJ/WIDE WORLD

Doris Aiken

AP



When Larry Mahoney hit the bus, its gas tank ruptured, engulfing the bus in flames.

constantly being replenished," he says. "It may be these people were not paying very much attention four or five years ago when the issues were being raised.

"You have to constantly be reinforcing the message, especially with new drivers coming along."

Anne Russell, Mothers Against Drunk Driving's legislative expert, agrees, but only to a point.

In 1983, she said, "There really was a peak in publicity and probably a peak in law enforcement." The legislative peak came just two years later, in 1985, when a total of 223 laws were passed in 45 states. Those laws run the gamut from "comprehensive DWI packages to specific fine-tuning," she says.

The drop in national publicity was followed in 1986 by a bottoming out of the number of new laws, she says. It dropped to a total of 178 in 40 states.

Now, though, "we are seeing an upswing of interest again," as evidenced by renewed publicity and in new laws that increased to a total of 216 in 45 states in 1987.

Doris C. Aiken, president and founder of the New York-based Remove Intoxicated Drivers, which has chapters in 34 states, sees less of a break in attention paid drunken driving. Even with the recent increase in deaths, "we're not up to where we were before" the law changes. California is an exception, she says.

While she is heartened, Aiken adds that "I think we've done 50 percent of what we have to do." Two major items remain on the agenda: Taking a drunken driver's license immediately upon arrest for a period of 45 (or 90) days. And setting up drunken driving checkpoints. Many states have adopted one, the other, or both.

RID is not alone in wanting to take a drunken driver's license immediately. That administrative act, which is carried out by the arresting police officer before any court conviction, is in use in 23 states and likely will be adopted by more.

"Now that there is 50-state compliance with age 21 as the legal drinking age, probably the No. 1 priority right now is administrative license revocation," says MADD's Russell.

The reason: It is simply the single most effective change a state can make.

The Insurance Institute for Highway Safety, in a study released last March, examined the 700-plus laws adopted across the country during the first half of the 1980s.

"Well, everybody tried to address the problem, and many were attempting to address it by passing what was considered to be stronger legislation, not all of which has had the right effect," explains John R. Cook, senior vice president for the Insurance Institute.

The Institute divided the laws by type, then judged them against the fatality rates. Cook says three types had a definite effect:

▸Administrative license revocation, "which permits the seizing of the driver's license if a suspected drunken driver either fails to take a breathalyzer exam or fails one." The practice cut nighttime fatalities, the ones most likely to involve alcohol, by fully 9 percent.

▸Mandatory jail sentence or community service for first offenders. The practice, used by 24 states, cut nighttime fatalities by 6 percent.

▸Per se laws, which allow no argument about guilt when a specified blood-alcohol level (often .10 percent) is reached. Ironically, these laws had little statistical effect on nighttime fatalities but did affect daytime fatalities, cutting them by 6 percent.

And that's it. That's the extent of the statistically effective approaches. Even such oft-implemented efforts as suspending licenses after convictions and mandatory sentences for repeat offenders fail under this sternest of tests. While no one seriously debates their worth, statistically their impact is minimal.

The one real loser in the war on drunken driving, ironically, seems to be alcohol treatment programs.

"In the late 1970s, early 1980s, the trend was toward diverting drunken drivers into a treatment program for the alcohol problem," MADD's Russell says, referring to studies by the National Highway Traffic Safety Administration.

Judges still believe treatment to be an important part of dealing with people convicted of DUI (driving under the influence) or—the terms vary by state—DWI (driving while intoxicated). The 1985 survey of six states shows that while most judges say they want tougher laws, they "believe present laws overstress the legal objective of retribution and underemphasize the objectives for rehabilitation and deterrence."

The trouble with rehabilitation, Russell counters, is that "there's no proof that has anything to do with the drinking and driving accidents."

Boston University's Hingson agrees that, while it's "useful to continue treatment programs for DWI people, the data about the effective-

ness of these programs is that they are not all that effective."

"Whether that means treatment programs cannot be effective is certainly, in my judgment, premature," he adds.

Hingson says that successful treatment programs, such as those run by Alcoholics Anonymous, require a commitment by the drinker. "There's obviously less motivation when the commitment is by the court," he says. "Maybe there's a way of restructuring around that, I don't know."

Whatever the reason, statistics do indicate that convicted drunken drivers often continue to drive drunk.

The Bureau of Justice Statistics this year released a survey of DWI offenders held in 407 local jails in 1983—nearly half had been sentenced for previous DWI convictions. Moreover, three-quarters of those repeaters had been in treatment.

The survey also showed a frightening level of drinking. The average drunken driver had drunk 6 ounces of alcohol, the equivalent of 12 beers or eight mixed drinks. More than a quarter of the drunken drivers had consumed at least 10 ounces of alcohol, the equivalent of 20 beers or 13 mixed drinks.

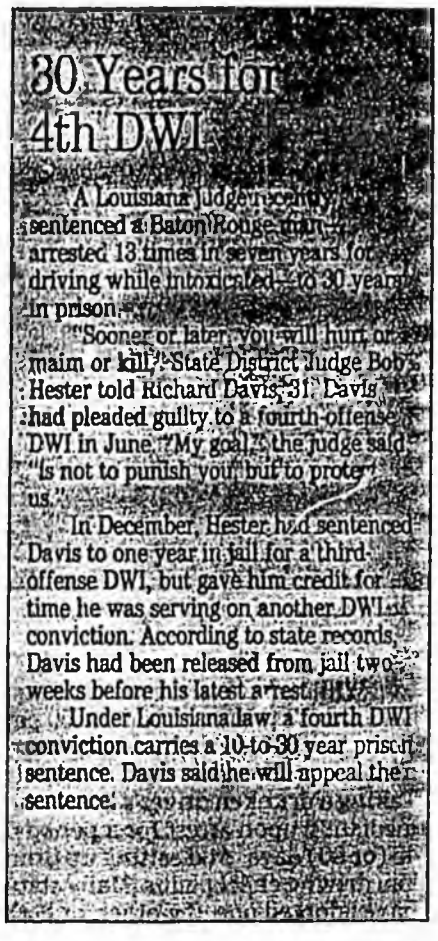
RID's Aiken blames the "alcoholization" of society for much of the problem.

"By the time a kid is 15, he's seen 70,000 messages to drink beer on every single occasion. We're selling a lie, a big lie, to very young children."

Her organization has tried unsuccessfully to pressure television networks into running an anti-drinking spot to counter each alcohol commercial. The networks now run some public service announcements but, she points out caustically, teen-age fatalities rose 14 percent in 1986.

"So that's how much good PSAs do," she says. "Nothing."

In the meantime, there are a number of quick fixes that can help, she says. They include administrative license suspensions, mandatory seat belt laws, open container laws that outlaw drinking and driving, dram-shop statutes that hold bars and restaurants responsible for over-serving alcohol, .10 per se laws, allowing preliminary breath tests to help police decide whether to make an arrest, and prohibiting plea bargaining on DUI cases. Most states have already adopted at least some of these measures.



30 Years for 4th DWI

A Louisiana judge recently sentenced a Baton Rouge man arrested 13 times in seven years for driving while intoxicated to 30 years in prison.

"Sooner or later, you will hurt or maim or kill," State District Judge Bob Hester told Richard Davis, 31. Davis had pleaded guilty to a fourth-offense DWI in June. "My goal," the judge said, "is not to punish you but to protect us."

In December, Hester had sentenced Davis to one year in jail for a third offense DWI, but gave him credit for time he was serving on another DWI conviction. According to state records, Davis had been released from jail two weeks before his latest arrest.

Under Louisiana law, a fourth DWI conviction carries a 10-to-30 year prison sentence. Davis said he will appeal the sentence.

But administrative license suspensions, as indicated by the Insurance Institute figures, may be the single most effective remedy.

MADD likes it, Russell says, because "it serves to connect the consequences of the act with the act itself." Waiting for a court decision can take as long as four months, she says, "and in the meantime, that person will probably be driving drunk again."

But the idea of immediately yanking a license is not always easy to sell.

"It used to not pass because lawyers sitting on code committees thought it would be against the Constitution and that, because it was administrative, [lawyers] would be frozen out," Aiken contends.

The experience in some of the first states, notably Minnesota, showed there can be a quick hearing to contest the administrative license pull, well before trial on the actual DUI charge, she says.

Hingson emphasizes that enforcement of laws already on the books needs to be increased.

"There is reason to believe police enforcement increased during the 1980s but that the increase may be short-lived," he says. That would be particularly harmful because the risk of being arrested while driving drunk is already statistically small, he says.

"That's why drunken drivers drive drunk—chances are they're not going to be in a crash or arrested on any single trip," Hingson says. The danger is real but cumulative, he explains. Over several years, the odds are that a drunken driver will be in an accident or arrested, but not during any given trip.

Russell agrees that "a drunken driver has to believe there's a chance he'll get caught." Studies show that on weekend nights, only one of every 2,000 drivers who are legally drunk are arrested, she says.

The upshot, Hingson adds: "When the enforcement goes up, the nighttime fatalities go down."

Hingson says there are new problems, notably the raising of some interstate speed limits to 65 miles an hour. "Intoxicated drivers, because of their poorer fine motor skills and coordination are particularly a problem as speed goes up."

But there is also a new attitude, he says. His studies "show people are applying informal pressure to keep friends from driving drunk," something that didn't happen much before the push of the '80s.

A of which leads back to the Kentucky bus crash that killed 27. Could anything have been done?

Despite the seeming randomness of that disaster, Russell says it could have been prevented had more in the way of societal change been in place. Larry Mahoney had been drinking heavily at several places, she says, and one person almost stopped him from getting into his pickup truck.

But he didn't.

"I know that he had friends who could have stopped him from getting in his vehicle, had they just done it," she says. "And the establishments where he got his drinks could have cut him off.

"The laws are important," Russell emphasizes. "But they can't do it alone." ■

CHANGES PROPOSED IN C/S HB 53 (TRANSPORTATION)

Sec. 17. AS. 28.15.201 (d)
A court revoking a driver's license under AS 28.15.181(c) or substaining the action of the department under AS 28.15.165(c), may grant limited license privileges.

Page 10. Line 8 has been amended to read:

(B) " for the final five years during which the license was revoked if the person has not been previously convicted more than twice, and the court determines that the person has successfully completed an alcoholism education and rehabilitation treatment program. The court may not grant limited license privileges if the person has been previously convicted more than three times.

Summary of changes

The above changes would allow the court to grant limited license privileges to a person who has been convicted of driving while intoxicated three times. The last sentence of this section makes it very clear that a person who has been previously convicted MORE THAN three times may NOT be granted limited license privileges.

Proposed changes in C/S HB 53

Sec. 23 AS. 28.35.030 (c) has been amended to read:

"A person is guilty of a class C felony if the person is convicted of driving while intoxicated and has been previously convicted "four" or more times

Page 14, Line 11

The following paragraph was deleted:
[(E) not less than 240 days and a fine of not less than $3,000]

Summary of changes

The above changes would now make the fifth time DWI offender guilty of a class C felony.

Page 14, Line 11 (E) has been deleted to make the above changes consistent in this section.

Sec. 28. AS 28.35.032 (K)

Page 17, Line 20 has been amended to read:

"A person is guilty of a class C felony if the person is convicted under this section and has been previously convicted "four" or more times. The sentence imposed under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person."

Page 16, Line 23

The following paragraph has been deleted:

[(D)] not less than 240 days and a fine of not less than $3,000 if the person has been previously convicted more than four times.]

Summary of changes

The above changes make the penalties for refusing to submit to a chemical test the same as those for driving while intoxicated.

Drunk Driving: The Highway Killer is Back

After steadily declining since 1982, deaths caused by drunk drivers are on the rise again.

By Barbara Bellomo

A dramatic increase in alcohol-related traffic fatalities in 1986 could force states to consider once again passage of even stricter laws to get drunks off the road.

In the early '80s, the states rushed to pass more than 900 laws aimed at reducing what had become an alarming and continuous increase in alcohol-related deaths on the country's streets and highways.

The result of this increased public awareness of the national menace of drunks behind the wheel—spawned in large part by such groups as Mothers Against Drunk Driving (MADD)—was a decline in alcohol-related traffic deaths from 1982 to 1985.

But in 1986, fatalities related to drinking and driving rose by 7 percent, causing concern among traffic safety experts and anti-drunk-driving groups, some of which urge wider enactment of laws that have proven effective and others who call for stricter law enforcement and tougher sentencing.

"We've made inroads in reducing drunk driving, but now we're slipping back," says Barry Sweedler of the National Transportation Safety Board (NTSB). "The issue has lost the glamour it had in the early '80s."

Dr. Ralph Hingson of Boston University's School of Public Health believes that public pressure is essential in keeping the issue alive in legislatures in light of the sharp increase in drunk-driving-related deaths.

"There's no doubt that there was tremendous progress in the early '80s. It was unprecedented," he said. "The drunk driving laws and all the public discussion surrounding them were great, but it's almost like we found the key and now we're throwing it out. We have to stay on top of it."

How effective have those tough drunk driving laws been?

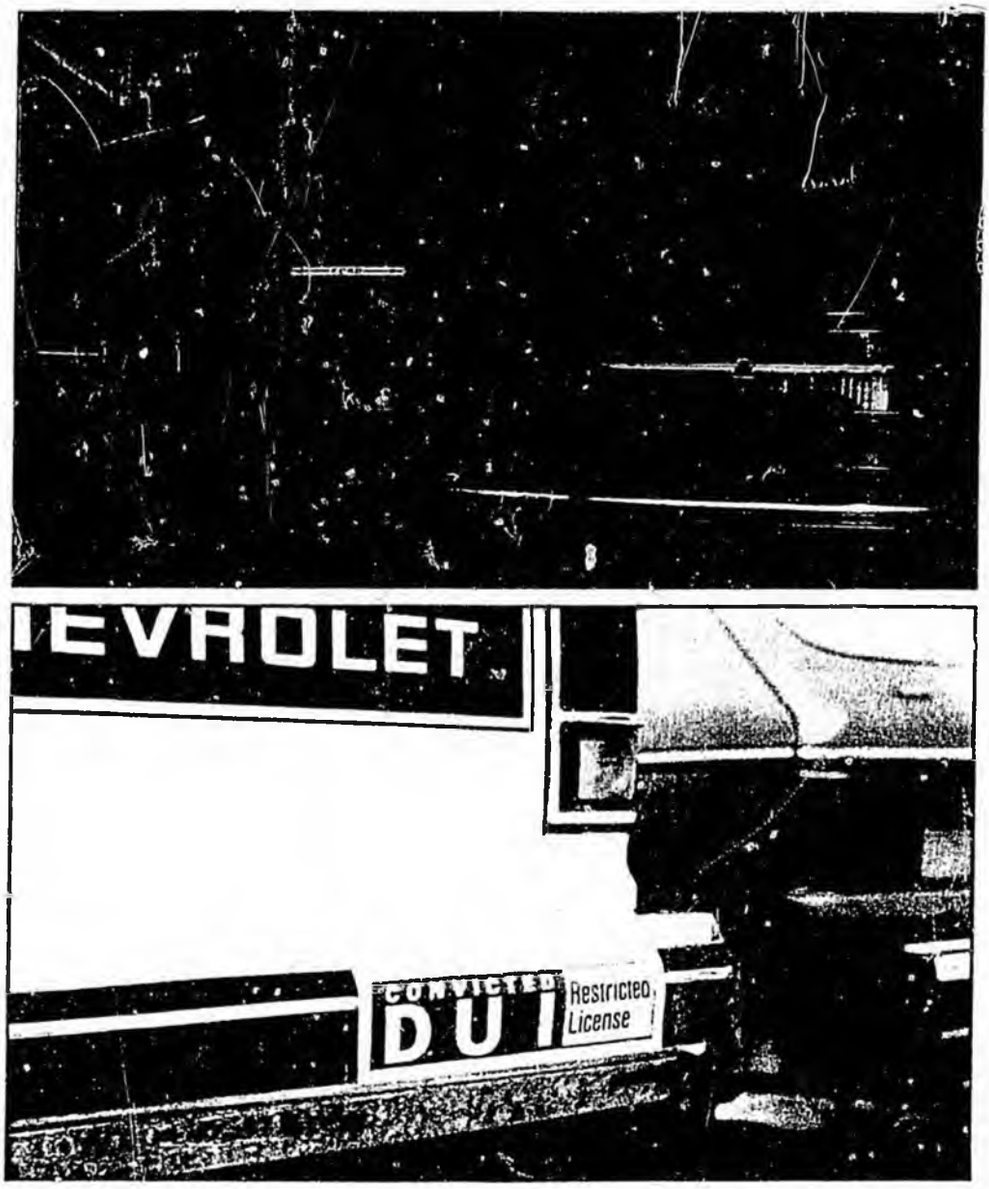
The American Bar Association and the National Transportation Safety Board recently evaluated state laws to determine what works most effectively to keep drunk drivers off the road. Successful initiatives include:

- Allowing police officers to confiscate drunk drivers' licenses at the time of arrest;
- Requiring judges to impose mandatory sentences for first and multiple offenders;
- Restricting or eliminating plea bargaining;
- Sobriety checkpoints;
- Raising the minimum drinking age to 21; and
- Enacting dram shop laws.

The most effective deterrent, according to the studies, is "roadside administrative revocation," which allows law enforcement officers to take away a drunk driver's license on the spot. Nearly half the states have such laws.

The NTSB acknowledges that while some people will continue to drive even without their license, most will

Barbara Bellomo is a staff writer for State Legislatures.



Some judges are using public humiliation as a tactic for reducing drunk driving. In Tuscarawas County, Ohio, Judge Edward O'Farrell issues special-colored license plates to first-time DUI offenders. And in Sarasota County, Fla., Judge Becky Titus requires offenders to place bright red and gray bumper stickers on their cars, so that other drivers know that they have been convicted of driving drunk.

drive less, or at least sober, until their court date. Many DUI offenders, before they even get to court, are arrested a second time for the same offense. Yet in states that don't have automatic revocation laws the second arrest will often show up as the driver's first offense.

License revocation in all 50 states continues to be one of MADD's national goals. Norma Phillips, national president, says, "Most citizens value their drivers' licenses. [Revocation] also has a psychological effect on people. It hits home that what they've done is unacceptable behavior."

John Grant, executive director of the National Commission on Drunk Driving, believes that tougher drunk-driving legislation—including automatic revocation—has had the greatest impact on social drinkers, who understand the consequences of drinking and driving. And Senator Rod Monroe of Oregon says that while repeat offenders in his state sometimes continue to drive under suspension, the new laws have had an effect on social drinkers. "It has produced an awareness. Even at political functions you see lots of non-alcoholic drinks being served now."

Most criminal justice specialists agree that automatic revocation is a tool in fighting drunk driving, but they argue that it does little to deter hard-core repeat offenders who often are alcoholics. They believe that the emphasis of the anti-drunk-driving campaign should focus on problem drinkers instead of the social and moderate imbibers who may get in a scrape only once, if ever.

Sweedler believes that repeat offenders pose the biggest challenge to law enforcement. Revocation legislation is important because "it still reduces their driving if not their drink-

ing problem." But he adds that the Safety Board urges states to require an evaluation of an offender's drinking problem before sentencing.

"If he's an alcoholic, sending him to an alcohol education program isn't going to work, and committing someone who went out one night and had a little too much fun to a six-month program is inappropriate as well. We must match treatment with the problem," he says.

While evaluation is key to handing down an appropriate sentence, both the bar association and the National Transportation Safety Board agree that mandatory sentencing of repeat offenders is critical in getting drunk drivers off the roads.

MADD members regularly monitor courtroom proceedings in drunk driving cases, because, according to Phillips, "When we are present in court to offer the victim support, you see judges handing down stricter sentences."

Ohio Judge Edward O'Farrell, who recently appeared on ABC's Nightline with Ted Koppel, is one judge who consistently is hard on drunk drivers.

O'Farrell achieved notoriety for his practice of ordering first-time offenders to sport canary yellow plates on their cars that help to alert police that they are DUI offenders. In addition, he imposes a mandatory 15-day sentence, six-month license suspension and a $750 fine. If the offense involves an accident or injury the penalty goes up considerably. O'Farrell says his intent in the beginning was "to shock the hell out of people."

"The number of people dying in my county has plummeted because of my intractable position that no matter who you are, you're going to jail if you drink and drive," he says. Last year, there was one alcohol-related traffic fatality among the 85,000 residents of Tuscarawas County, O'Farrell's jurisdiction.

Phillips believes "the laws on the books aren't worth the ink they're written in if they are not enforced. Judges still have discretion (with mandatory sentences). But they must hand down more swift and sure penalties because only the threat of jail will deter drunk driving."

Senator Monroe says his primary focus is to see that the drunk driving legislation he has sponsored in the past "is properly enforced." He attributes the leniency of many judges to their view that "DUI cases are minor offenses" that clog already overburdened courts.

"Drinking is part of the macho West—a test of manhood in some people's eyes. When judges grew up, everyone drank and drove," he said. "Some are very strict, but others don't feel it is that serious. They have a tendency to wink at it and impose minimal fines."

Monroe charges that judges in his district routinely refer teen-agers arrested for drunken driving to a two-hour alcohol education program, even though a law he authored gives them the latitude to confiscate the licenses of drunken drivers under 18.

Mandatory sentencing can get drunks off the road and into treatment or behind bars, but only when states restrict or eliminate plea bargaining in drunk-driving cases, the NTSB and bar association studies state. When plea bargaining is allowed, the association argues, there is often no record of a driver's first DUI offense, allowing repeat offenders to continually receive lighter sentences.

In addition, the ABA's report found that, "It (plea bargaining) eliminates many options for appropriate action by the justice system to reduce future risk. By failing to charge an offender with drunk driving, the system is prevented from accurately identifying the risk that individual presents if he commits a subsequent offense."

While some critics believe the criminal justice system is slacking off on drunk drivers, in many states there simply is not enough room in jails to hold them.

"Judges are frustrated because there are very few meaningful sanctions for second offenders—jail space is very precious in this state," says Oregon Representative Dick Springer

A number of criminal experts believe that incarceration can be an effective deterrent, but alcohol treatment must be provided to effectively reduce drunk driving. Jailing drunk drivers with criminals is inappropriate, they argue.

Arizona and Massachusetts are among a few states where lawmakers have appropriated funds to their corrections departments to build minimum security facilities strictly for DUI offenders. Other states are looking at alternative punishments to relieve overcrowded prisons and jails and to respond to the concern that jail is a place for criminals, not alcoholics.

One of the tougher alternative punishments for repeat offenders is automobile forfeiture, already on the books in Alaska and New York. Alaska Representative Niilo Koponen has sponsored legislation that would make forfeiture mandatory. Although New York also has a forfeiture law, judges there rarely invoke it. But the state has generated $22 million through a statewide program that collects county fines from DUI offenders. The revenue is used to provide funding for the state's anti-drunk-driving campaign.

Five states have enacted legislation allowing judges to require repeat offenders to install a breathalyzer device in their cars that locks the ignition if the driver's alcohol level is over a specified limit. Oregon is the most recent. Its one-year experiment, the Ignition Interlock Pilot Program, requires judges in 11 counties to order the device for repeat offenders who need to drive. To obtain an occupational or hardship license, the driver must have previously received alcohol treatment, carry insurance and have the breath tester.

"It's an electronic probation officer," Representative Springer, the law's sponsor, says of the device.

Another effective deterrent, according to the NTSB and the ABA, are sobriety checkpoints. Twenty-five states have established them, and a number have landed in court as a result. Civil liberties groups, arguing that checkpoints are unconstitutional, have successfully brought suit against them in California, Oregon and Pennsylvania. The California Supreme Court later reversed its ruling, stipulating that law enforcement agencies must give the public advance notice of the checkpoint's location and must use systematic selection criteria.

The Pennsylvania Supreme Court recently outlawed random sobriety roadblocks, saying they were set up at "such unlikely times and places" that citizens were being stopped unjustifiably by police. But like California, the court upheld their legality, imposing similar restrictions on law enforcement departments. Last September, Oregon banned the use of checkpoints.

Despite constitutional challenges, the NTSB maintains that roadblocks are cost effective and a strong deterrent to drinking and driving.

Alcohol-related fatalities among teen-agers 15 to 19 are a real concern. Deaths in this age group were significantly higher in 1986 than in 1985, according to John Grant of the National Commission on Drunk Driving. He attributes the increase to the fact that automobiles are more accessible, fuel is cheaper and "kids drive with more abandon and less responsibility."

However, Boston University's Hingson theorizes that the anti-drinking movement had little impact on this group because "it was before their time. The number of new laws geared toward drunk driving reached its zenith in 1985 and evidence shows it may be tapering off. That's a bad sign for a high risk group such as teen-agers who are just entering the driving pool."

Preventing alcohol-related fatalities among teen-agers has spurred many states to enact legislation targeted specifically to those under 21. With the exception of Wyoming, every state has

raised the drinking age to 21 (some with a nudge from Congress, which threatened a loss of federal highway funds without it). State troopers across the country say the laws have already saved many lives.

Maine recently lowered its maximum permissible blood alcohol content to .02 percent for drivers under 21. The new law deals a double blow—a fine is imposed for drinking under age and driving privileges are suspended for one year. Rhode Island has introduced legislation that would lower its legal blood alcohol limit to .04 percent for teen-agers.

As part of its national lobbying effort, MADD is urging all states to lower their maximum blood alcohol limit to .10 percent. But the American Medical Society says that even at .05 percent a person is too impaired to drive. Forty-two states have .10 percent maximum levels and Oregon and Utah have lowered their limits to .08 percent. Colorado recently introduced a bill that would lower the legal limit from .15 percent to .10 percent.

To date, half the states have enacted strong liability legislation—which the studies consider to be effective—aimed at bars and restaurants that serve drinks to intoxicated patrons, and Maine, Oklahoma and Texas are among several states that require or encourage training programs for bartenders to learn how to identify customers who have had too much to drink.

Grant says that drunk-driving legislation in and of itself is not a panacea. He theorizes that the key to getting drunk drivers off the streets and highways lies in a coordinated approach by states.

"Enforcement and implementation of the laws has been the biggest challenge. We don't need any new laws. We need to implement the ones we have.

"Everyone must do their part from judges to more active police enforcement to better court interpretation of what the law says. Education and prevention in the work place and the schools are a big part of it, too. And it's vital that the media keep the issue alive," he says.

6-0219H
Ford
1/19/89

Original sponsors: Ulmer, Koponen, and Collins

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE BILL NO. 53 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the privilege to drive, driver licensing, driving while intoxicated, and other procedures and matters related to driving and the revocation of driving privileges; relating to operating an aircraft or watercraft; and providing for an effective date."

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

* Section 1. AS 28.05.011 is amended to read:

Sec. 28.05.011. DUTY OF COMMISSIONER TO ADOPT REGULATIONS. The commissioner shall, unless otherwise provided by statute, adopt regulations in compliance with the Administrative Procedure Act (AS 44.62) necessary to carry out the provisions of this title and other statutes the administration of which is vested in the department. The regulations shall include, but not be limited to:

(1) rules of the road relating to the driving, stopping, standing, parking, and other conduct of vehicles, to pedestrians, and to official traffic control devices;

(2) minimum equipment for vehicles, including, but not limited to, minimum standards of compliance to be met by manufacturers and vehicle sales and repairs businesses;

(3) inspection of vehicles, and the removal of vehicles from areas of public use when they are found to be in a defective or unsafe condition;

(4) registration, titling, transfer, and abandonment of

vehicles;

(5) licensing of drivers of vehicles and procedures for obtaining limited license privileges;

(6) financial responsibility relating to vehicles;

(7) management of records of the department required for the administration of this title and regulations adopted under this title, including provisions for insuring the accuracy of information contained in automated and manual information retrieval systems;

(8) [REPEALED;

(9)] definitions of words and phrases used in this title and in regulations adopted under this title unless otherwise provided by statute;

(9) [(10)] registration of motor vehicle, trailer, and semi-trailer dealers; and

(10) [(11)] certification and regulation of junk yards.

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

(a) If a chemical test administered under AS 28.35.031(a) to a person driving a motor vehicle for which a driver's license is required produces a result described in AS 28.35.030(a)(2) or if a person under arrest for driving a motor vehicle for which a driver's license is required refuses to submit to a chemical test under AS 28.35.-031(a), a law enforcement officer shall read a notice and deliver a copy to the person. The notice shall advise that

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

(2) the person has the right to administrative review of the revocation 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;

(4) revocation of the person's driver's license, [OR NON-RESIDENT] privilege to drive, or privilege to obtain a license, or a determination not to issue an original license takes [SHALL TAKE] effect seven days after delivery of the notice to the person [UPON EXPIRATION OF THE TEMPORARY DRIVER'S LICENSE] unless the person, within seven days, requests an administrative review.

* Sec. 3. AS 28.15.165(c) is repealed and reenacted to read:

(c) The department shall revoke the person's license, privilege to drive, or privilege to obtain a license, or refuse to issue an original license, effective seven days after delivery to the person of the notice required under (a) of this section, upon receipt of a sworn report of a law enforcement officer

(1) that a chemical test under AS 28.35.031(a) produced a result described in AS 28.35.030(a)(2) or that a person refused to submit to a chemical test under AS 28.35.031(a);

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

(3) describing the circumstances surrounding the arrest and the grounds for the officer's belief that the person was intoxicated while operating or driving a motor vehicle for which a driver's license is required.

* Sec. 4. AS 28.15.165(d) is amended to read:

(d) The period of revocation of a driver's license, privilege to drive, or privilege to obtain a license by the department under this section shall be for the appropriate minimum period for court revocations under AS 28.15.181(c). A department hearing officer may grant limited license privileges in accordance with the standards set out in

AS 28.15.201 to a person whose driver's license or nonresident privilege to drive was revoked under this section.

* Sec. 5. AS 28.15.166(a) is amended to read:

(a) A person who has received a notice under AS 28.15.165(a) may make a written request for administrative review of the department's action under AS 28.15.165(c) or for limited license privileges under AS 28.15.165(d). If the person's driver's license has not been previously surrendered to the department, it shall be surrendered to the department at the time the request for review is made.

* Sec. 6. AS 28.15.166(b) is amended to read:

(b) A request for review of the department's revocation under AS 28.15.165 shall be made within seven days after receipt of the notice under AS 28.15.165 or the right to review is waived and the action of the department under AS 28.15.165(c) is final. If a written request for a review is made after expiration of the seven-day period, and if it is accompanied by the applicant's verified statement explaining the failure to make a timely request for a review, the department shall receive and consider the request. If the department finds that the person was unable to make a timely request because of lack of actual notice of the revocation or because of factors of physical incapacity such as hospitalization or incarceration, the department shall waive the period of limitation, reopen the matter, and grant the review request. An initial request for limited license privileges may be made at any time. Subsequent requests for limited license privileges may not be made unless the applicant demonstrates a significant change in circumstances.

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

(g) The hearing for review of a revocation by the department under AS 28.15.165 [UNDER THIS SECTION] shall be limited to the issues

of whether the arresting officer had reasonable grounds to believe that the person was driving a motor vehicle while intoxicated and whether

(1) the person refused to submit to a chemical test under AS 28.35.031(a) after being advised that refusal would result in the suspension, revocation, or denial of the person's license, [OR NON-RESIDENT] privilege to drive, or privilege to obtain a license, and that the refusal is a misdemeanor; or

(2) the chemical test authorized under AS 28.35.031(a) and administered to the person produced a result described in AS 28.35.-030(a)(2).

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

(j) If the issues set out in (g) of this section are determined in the affirmative by a preponderance of the evidence, the hearing officer shall sustain the action of the department. If one or more of the issues is determined in the negative, the department's revocation action shall be rescinded.

* Sec. 9. AS 28.15.166(n) is amended to read:

(n) The filing of an appeal under (m) of this section does not automatically stay the department's [REVOCATION] order. The court may grant a stay of the order only upon a motion and hearing, and upon a finding that there is a reasonable probability that the petitioner will prevail on the merits and that the petitioner will suffer irreparable harm if the order is not stayed.

* Sec. 10. 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;

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

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

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

(5) driving a motor vehicle while intoxicated;

(6) reckless driving;

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

(8) refusal to submit to a chemical test under AS 28.35.-032;

(9) driving while license canceled, suspended, revoked or in violation of a limitation.

* Sec. 11. AS 28.15.181(b) is amended to read:

(b) A court convicting a person of an offense described in (a)(1) - (4), (6), or (7) of this section shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license for not less than 30 days for the first conviction, unless the court determines that the person's ability to earn a livelihood would be severely impaired and a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public. If a court limits a person's license under this subsection, it shall do so for not less than 60 days. Upon a subsequent conviction of a person for any offense described in (a)(1) - (4), (6), or (7) of this section occurring within 10 years after a prior conviction, the court shall revoke the person's license,

privilege to drive, or privilege to obtain a license and may not grant the person limited license privileges for the following periods:

(1) not less than one year for the second conviction; and

(2) not less than three years for a third or subsequent conviction.

* Sec. 12. AS 28.15.181(c) is amended to read:

(c) A court convicting a person of an offense described in (a)(5) or (8) of this section arising out of the operation of a motor vehicle for which a driver's license is required shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license. The revocation may be concurrent with or consecutive to an administrative revocation under AS 28.15.165. The court may not, except as provided in AS 28.15.201 [(e) OF THIS SECTION], grant limited license privileges for the following periods:

(1) at least 90 days if the person has not previously been convicted;

(2) at least one year if the person has been previously convicted once;

(3) at least 10 years if the person has been previously convicted more than once [NOT LESS THAN 90 DAYS IF, WITHIN THE PRECEDING 10 YEARS, THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF AN OFFENSE

(A) DESCRIBED IN (a)(5) OR (8) OF THIS SECTION; OR

(B) UNDER A LAW OR ORDINANCE IN ANOTHER JURISDICTION WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS SECTION;

(2) NOT LESS THAN ONE YEAR IF, WITHIN THE PRECEDING 10 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF ONE OFFENSE

(A) DESCRIBED IN (a)(5) or (8) OF THIS SECTION; OR

(B) UNDER A LAW OR ORDINANCE IN ANOTHER JURISDICTIC WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED I (a)(5) OR (8) OF THIS SECTION;

(3) NOT LESS THAN 10 YEARS IF, WITHIN THE PRECEDING 1 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF MORE THAN ONE O THE FOLLOWING OFFENSES OR HAS MORE THAN ONCE BEEN PREVIOUSLY CONVICTE OF ONE OF THE FOLLOWING OFFENSES:

(A) AN OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS SECTION; OR

(B) AN OFFENSE UNDER ANOTHER LAW OR ORDINANCE IN ANOTHER JURISDICTION WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS SECTION].

* Sec. 13. AS 28.15.181(d) is amended to read:

(d) A court convicting a person of an offense described in (a)(9) of this section shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license for not less than the minimum period under AS 28.15.291(b)(4) [AS 28.15.291(c)].

* Sec. 14. AS 28.15.181(f) is amended to read:

(f) In [FOR PURPOSES OF] this section, "previously convicted" means having been convicted in this or another jurisdiction, within 10 years preceding the date of the present offense, of driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements; convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath [UNDER AS 28.35.-031(a)], if arising out of a single transaction and a single arrest, are considered one previous conviction.

* Sec. 15. AS 28.15.201(a) is amended to read:

(a) A court of competent jurisdiction, or a hearing officer under AS 28.15.165, may, for good cause, impose limitations upon the driver's license of a person which will enable the person to earn a livelihood without excessive risk or danger to the public. However, no limitation may be placed upon a driver's license until after a review has been made of the person's driving record and other relevant information, nor may a limitation be imposed when a statute specifically prohibits the limitation of a license for a violation of its provisions. In determining whether to grant limited license privileges, a court or hearing officer may consider whether the person

(1) is enrolled in an alcoholism treatment program in which the person receives antabuse or a similar chemical substance intended to produce an aversion to alcohol in the treatment of alcoholism;

(2) operates a motor vehicle with an ignition interlock device or similar equipment designed to prevent a motor vehicle from being operated by a person who has consumed an alcoholic beverage;

(3) is participating in a program of random urine testing designed to detect the presence of alcohol.

* Sec. 16. AS 28.15.201(b) is amended to read:

(b) A court or hearing officer imposing a limitation under this section shall

(1) require the surrender of the driver's license; and

(2) issue to the licensee a certificate valid for the duration of the limitation.

* Sec. 17. AS 28.15.201 is amended by adding new subsections to read:

(d) A court revoking a driver's license under AS 28.15.181(c), or sustaining the action of the department under AS 28.15.165(c), may grant limited license privileges (1) only if the court determines that the person's ability to earn a livelihood would be severely impaired

and a limitation under (a) of this section can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public; (2) to the person (A) for the final 60 days during which the license was revoked if the person has not been previously convicted more than once; (B) for the final five years during which the license was revoked if the person has not been previously convicted more than twice, and the court determines that the person has successfully completed an alcoholism education and rehabilitation treatment program. The court may not grant limited license privileges if the person has been previously convicted more than three times.

(e) In this section, "previously convicted" means having been convicted in this or another jurisdiction, within 10 years preceding the date of the present offense, of driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under AS 28.35.-032 or another law or ordinance with substantially similar elements.

* Sec. 18. AS 28.15.211(a) is amended to read:

(a) Except for a point system suspension or revocation under AS 28.15.221 - 28.15.241 and unless provided otherwise by law, and unless the suspension or revocation was for a cause that has been removed, a person whose driver's license, [OR] privilege to drive, or privilege to obtain a license [A MOTOR VEHICLE IN THIS STATE] has been suspended or revoked may not apply for a new license, and [NOR MAY] the person's driving privilege may not be restored, until the expiration of

(1) one month from the date on which the license, privilege to drive, or privilege to obtain a license was suspended or revoked for a first conviction of the particular offense from which the

suspension or revocation resulted;

(2) three months from the date on which the license, privilege to drive, or privilege to obtain a license was suspended or revoked for a second conviction within 12 consecutive months of the same offense from which the suspension or revocation resulted;

(3) one year from the date on which the license, privilege to drive, or privilege to obtain a license was suspended or revoked for a third or subsequent conviction within 12 consecutive months of the same offense from which the suspension or revocation resulted.

* Sec. 19. AS 28.15.211(b) is amended to read:

(b) A limitation, suspension, or revocation of a driver's license, privilege to drive, or privilege to obtain a license imposed by a court takes effect on the date of final judgment, except that if another limitation, suspension, or revocation [OF LICENSE] is in effect on the date of final judgment, the effective date of the last imposed limitation, suspension, or revocation is at the end of the last day of the previous limitation, suspension, or revocation unless the court specifies otherwise.

* Sec. 20. AS 28.15.221 is amended to read:

Sec. 28.15.221. POINT SYSTEM. (a) For the purpose of identifying habitually reckless or negligent drivers and habitual or frequent violators of traffic laws, the commissioner shall adopt regulations establishing a uniform system for the suspension, revocation, limitation or denial of a driver's license, privilege to drive, or privilege to obtain a license [OR DRIVING PRIVILEGE] by assigning demerit points for convictions for violations of traffic laws which are required to be reported to the department under AS 28.15.191 and AS 28.37.130.

(b) The regulations adopted under (a) of this section shall include a designated level of point accumulation which identifies

drivers who are habitually reckless or negligent or who are habitua or frequent violators of traffic laws, so as to show a disrespect fo: traffic laws and a disregard for the safety of other persons. In formulating the point system authorized by this section, the commissioner shall, in the interest of interstate uniformity, provide for suspension, revocation or denial of a driver's license, privilege to drive, or privilege to obtain a license [OR PRIVILEGE] for an accumulation of 12 or more points as a result of offenses committed during any consecutive 12-month period or 18 or more points as a result of offenses committed during any 24-month period.

* Sec. 21. AS 28.15.291 is repealed and reenacted to read:

Sec. 28.15.291. DRIVING IN VIOLATION OF LICENSE OR PRIVILEGE TO DRIVE. (a) A person is guilty of a class A misdemeanor if the person

(1) drives a motor vehicle on a highway or vehicular way or area at a time when that person's driver's license, privilege to drive, or privilege to obtain a license has been canceled, suspended, or revoked in this or another jurisdiction; or

(2) drives in violation of a limitation placed upon that person's license or privilege to drive in this or another jurisdiction.

(b) Upon conviction under (a) of this section, the court

(1) shall impose a minimum sentence of imprisonment

(A) if the person has not been previously convicted, of not less than 10 days with 10 days suspended, including a mandatory condition of probation that the defendant complete not less than 80 hours of community work service;

(B) if the person has been previously convicted, of not less than 10 days;

(C) if the person's driver's license, privilege to

drive, or privilege to obtain a license was revoked under circum stances described in AS 28.15.181(c)(1), of not less than 20 days with 10 days suspended, and a fine of not less than $500, including a mandatory condition of probation that the defendant complete not less than 80 hours of community work service;

(D) if the person's driver's license, privilege to drive, or privilege to obtain a license was revoked under circumstances described in AS 28.15.181(c)(2) or (3), of not less than 30 days and a fine of not less than $1,000;

(2) may impose additional conditions of probation;

(3) may not

(A) suspend execution of sentence;

(B) grant probation except on condition that the person serve the minimum imprisonment provided in (1) of this subsection;

(C) suspend imposition of sentence; and

(4) shall revoke the person's license, privilege to drive, or privilege to obtain a license, and the person may not be issued a new license nor may the privilege to drive or obtain a license be restored for an additional period of not less than 90 days after the date that the person would have been entitled to restoration of driving privileges.

(c) In this section, "previously convicted" means having been convicted in this or another jurisdiction, within 10 years preceding the date of the present offense, of a violation of this section or another law or ordinance with substantially similar elements.

* Sec. 22. AS 28.35.030(b) is repealed and reenacted to read:

(b) Except as provided in (c) of this section, driving while intoxicated is a class A misdemeanor. Upon conviction

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

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

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

(C) not less than 60 days and a fine of not less than $1,000 if the person has been previously convicted twice;

(D) not less than 120 days and a fine of not less than $2,000 if the person has been previously convicted three times;

Took out (E)

(2) the court may not

(A) suspend execution of sentence;

(B) grant probation except on condition that the person serve the minimum imprisonment under (1) of this subsection;

(C) suspend imposition of sentence;

(3) if the offense involved driving a motor vehicle for which a driver's license is required, the court

(A) shall direct that the person's driver's license, privilege to drive, or privilege to obtain a license be revoked in accordance with AS 28.15.181; and

(B) may order the vehicle that was used in commission of the offense to be forfeited under AS 28.35.036;

(4) the court shall order, and the person convicted under this section is required to undertake, for a term specified by the court, a program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (d) of this section, finds appropriate.

* Sec. 23. AS 28.35.030(c) is repealed and reenacted to read:

(c) A person is guilty of a class C felony if the person is convicted of driving while intoxicated and has been previously convicted four or more times.

* Sec. 24. AS 28.35.030(g) is amended to read:

(g) In this section,

(1) "operate an aircraft" means to use, navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(2) "operate a watercraft" means to navigate or use a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state;

(3) "previously convicted" means having been convicted in this or another jurisdiction, within 10 years preceding the date of the present offense, of driving while intoxicated under this section or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements; convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath, if arising out of a single transaction and a single arrest, are considered one previous conviction.

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

(a) If a person under arrest refuses the request of a law enforcement officer to submit to a chemical test under AS 28.35.-031(a), after being advised by the officer that the refusal will, if that person was arrested while operating or driving a motor vehicle for which a driver's license is required, result in the denial or

revocation of the license or nonresident privilege to drive, that t refusal may be used against the person in a civil or criminal acti or proceeding arising out of an act alleged to have been committed b the person while operating or driving a motor vehicle or operating a aircraft or a watercraft while intoxicated, and that the refusal is crime [MISDEMEANOR], a chemical test may not be given, except a provided by AS 28.35.035.

* Sec. 26. AS 28.35.032(f) is amended to read:

(f) Except as provided in (k) of this section, refusal [REFUSAL] to submit to the chemical test of breath authorized by AS 28.-35.031(a) is a class A misdemeanor.

* Sec. 27. AS 28.35.032(g) is repealed and reenacted to read:

(g) Upon conviction under this section

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

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

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

(C) not less than 60 days and a fine of not less than $1,000 if the person has been previously convicted twice;

(D) not less than 120 days and a fine of not less than $2,000 if the person has been previously convicted three times;

took out E

(2) the court may not

(A) suspend execution of the sentence required by (1) of this subsection;

(B) grant probation, except on condition that the person serve the minimum imprisonment under (1) of this

subsection; or

(C) suspend imposition of sentence;

(3) if the offense involved driving a motor vehicle for which a driver's license is required, the court

(A) shall direct that the person's driver's license, privilege to drive, or privilege to obtain a license be revoked in accordance with AS 28.15.181; and

(B) may order the vehicle that was used in commission of the offense be forfeited under AS 28.35.036;

(4) the court shall order, and the person convicted under this section is required to undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (h) of this section, finds appropriate; and

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

* Sec. 28. AS 28.35.032 is amended by adding new subsections to read:

(k) A person is guilty of a class C felony if the person is convicted under this section and has been previously convicted four or more times. The sentence imposed under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person.

(l) In this section, "previously convicted" means having been convicted in this or another jurisdiction, within 10 years preceding the date of the present offense, of driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements;

convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath, if arising out of a single transaction and a single arrest, are considered one previous conviction.

* Sec. 29. AS 28.40.100(a)(5) is repealed and reenacted to read:

(5) "driver's license" or "license," when used in relation to driver licensing, means a license or permit to drive a motor vehicle, or the privilege to drive or to obtain a license to drive a motor vehicle, under the laws of this state, whether or not a person holds a valid li. nse issued in this or another jurisdiction;

* Sec. 30. AS 28.15.166(l), 28.15.181(e), and AS 28.35.030(f) are repealed.

* Sec. 31. APPLICABILITY. The provisions of this Act apply to judicial proceedings and administrative proceedings by the Department of Public Safety relating to offenses that are committed after December 31, 1989.

* Sec. 32. This Act takes effect January 1, 1990.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 53
PUBLISH DATE: 1-9-89

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to the privilege to drive, etc..."
Sponsor: Rep. Ulmer & Koponen
Requestor:

Agency Affected: Department of Corrections
BRU: Statewide Operations
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	100.2	100.2	100.2	100.2	100.2	100.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	100.2	100.2	100.2	100.2	100.2	100.2
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	100.2	100.2	100.2	100.2	100.2	100.2
FEDERAL FUNDS						
OTHER						
TOTAL	100.2	100.2	100.2	100.2	100.2	100.2

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
Phone: 465-3376
Division: Administrative Services
Date: 1-23-89

Approved by Commissioner: Joan Barnett
Date: 1-23-89
Agency: Department of Corrections

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

ANALYSIS

This fiscal note reflects the increased cost of housing persons convicted on 3rd and subsequent DWI offenses. The note reflects 1st through 4th time offenders in community residential centers and 5th and subsequent offenders in institutions.

It also reflects decreased costs for the incarceration of persons serving time for Driving With License Suspended and Driving With License Revoked.

The attached chart reflects the effect of the proposed changes upon the number of days to be served and subsequent costs to the State.

Current Law

	Estimated # persons	Current Proposal	Less GT	Days Served	Total Man Days
1st DWI	280*6= 1680	3 days	0	3 days	5040
2nd DWI	124*6= 744	20 days	-7	13 days	9672
3rd DWI	24*6= 144	45 days	-15	30 days	4320
4th DWI	5*6= 30	149 days	-49	100 days	3000
5th DWI	2*6= 12	120 days	-40	80 days	960
6th & ...	1*6= 6	180 days	-60	120 days	720
					23712
DWLS A	354	10 days	-3	7 days	2478
DWLS B	78	30 days	-10	20 days	1560
DWLS C	168	90 days	-30	60 days	10080
					14118
					37830

HB 53

	Estimated # persons	DOC Proposal	Less GT	Days Served	Total Man Days
1st DWI	1680	3 days	0	3 days	5040
2nd DWI	744	20 days	-7	13 days	9672
3rd DWI	144	60 days	-20	40 days	5760
4th DWI	30	120 days	-40	80 days	2400
5th DWI	12	365 days	-120	245 days	2940
6th & ...	6	365 days	-120	245 days	1470
					27282
DWLS A	354	3 days	0	3 days	1062
DWLS B	78	20 days	-7	13 days	1014
DWLS C	168	30 days	-10	20 days	3360
					5436
					32718

Summary

Man Days to Serve

Offense	Current	HB 53
1st DWI	5040	5040
2nd DWI	9672	9672
3rd DWI	4320	5760
4th DWI	3000	2400
5th DWI	960	2940
6th & ..	720	1470
	23712	27282
DWLS A	2478	1062
DWLS B	1560	1014
DWLS C	10080	3360
	14118	5436
Total	37830	32718

Costs to Incarcerate

Offense	Current	HB 53	Difference
1st DWI	$ 151,200	$ 151,200	
2nd DWI	$ 290,160	$ 290,160	
3rd DWI	$ 129,600	$ 172,800	+$ 43,200
4th DWI	$ 90,000	$ 72,000	-$ 18,000
5th DWI	$ 28,800	$ 257,250	+$ 228,450
6th & ..	$ 21,600	$ 128,625	+$ 107,025
	$ 711,360	$ 1,072,035	+$ 360,675
DWLS A	$ 74,340	$ 31,860	-$ 42,480
DWLS B	$ 46,800	$ 30,420	-$ 16,380
DWLS C	$ 302,400	$ 100,800	-$ 201,600
	$ 423,540	$ 163,080	-$ 260,460
Total	$ 1,134,900	$ 1,235,115	+$ 100,215

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 53 (Transp) Draft
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 1/23/89
Title: An Act relating to the privilege to drive . . . .
Sponsor: Rep. Ulmer
Requestor: House Trans.

Agency Affected: Public Safety
BRU: Motor Vehicles
Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

It is anticipated there will be a slight increase in the number of requests for limited licenses. This will be handled by the Driver Improvement office with current staff.

Prepared by: Bill Brown
Division: Motor Vehicles
Phone: 465-4335
Date: 01/23/89

Approved by Commissioner: Arthur English
Agency: Department of Public Safety
Date: _____

Official Business

COMMITTEE:

House Transportation Committee

DATE: 1/17/89

SIGN-IN

Subject of meeting: HB 53

NAME Please include title	ADDRESS Please use full address. Please include zip.	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Laurie Otto	Dept of Law P.O. KC Juneau, AK 99811	3428	Law	no
Fran Palmer	Box V Juneau, AK 99811	4947		Yes

Alaska State Legislature
House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

January 16, 1989

TO: Representative Bette Cato, Chair
House Transportation Committee

FROM: Representative Fran Ulmer

RE: HB 53, "An Act relating to the privilege to drive drive licensing, driving while intoxicated, and other procedures and matters related to driving and the revocation of driving privileges; relating to operating an aircraft or watercraft; and providing for an effective date."

HB 53 corrects several problems with Alaska's present driving laws. This bill is substantially similar to CSHB 354 (Jud) which passed the House last session. The major thrust of this legislation is to target the worst drunk drivers. It increases penalties for repeat DWI offenses to reflect the seriousness of the crime (see attached comparison of penalties). Specifically, the bill:

--Makes the sixth and subsequent DWI's a felony, and increases jail sentences for repeat drunk drivers.

--Brings the penalties for the major driving crimes into balance by treating driving while intoxicated as a more serious offense than driving while license suspended. Current law makes it more than three times as serious to drive after having your license suspended for lack of insurance, for example, than it does to drive while intoxicated.

--Makes the penalities for someone who never gets a driver's license and then commits crimes the same as the penalties for someone who has a driver's license and commits crimes. This eliminates the incentive in current law to never get a driver's license.

--Allows those convicted of DWI to earn back a limited license through their good conduct after their release from prison. A person convicted of a second

DWI could apply to the judge for a limited license for the last 60 days of a one-year revocation.

--Raises the penalties for a third or subsequent refusal to take a breathalizer to track DWI penalties. This follows the practice of current law and is necessary to eliminate any incentive for someone arrested for DWI to refuse the required breath test.

This bill seeks to ensure that Alaska's driving laws impose the most serious penalties on the most dangerous drivers. We need to get the less serious DWLS offenders out of jail and get the most dangerous drunk drivers off the road and into treatment in jail.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM January 14, 1989

SUBJECT: Driving while intoxicated - HB 53

TO: Representative Fran Ulmer

FROM: Michael F. Ford
Legislative Counsel

The following is a sectional analysis of HB 53.

Section 1 - Requires the commissioner of the Department of Public Safety to adopt regulations concerning procedures for obtaining a limited driver's license.

Section 2 - Amends the notice required to be given a person prior to administrative revocation of a driver's license for D.W.I. or refusal to submit to a chemical breath test.

Section 3 - Requires the department to revoke a driver's license seven days after the person receives notice under AS 28.15.165(a), if the department receives a sworn report from a law enforcement officer that contains the information described in this section.

Section 4 - Specifies that administrative revocation applies to persons not yet licensed. Provides that a department hearing officer may grant limited license privileges under AS 28.15.201.

Section 5 - Provides that a person whose license is revoked may make a written request for limited license privileges under AS 28.15.165(d).

Section 6 - Specifies that an initial request for limited license privileges may be made at any time and that subsequent requests may not be made unless the applicant demonstrates a significant change in circumstances.

Section 7 - Specifies the issues reviewed in the administrative revocation hearing.

Section 8 - Requires that the department's license revocation action be rescinded if after hearing an issue is not proven by the department.

Section 9 - Provides that a person filing an appeal of the department's order does not automatically get a stay of the order.

Section 10 - Establishes that both privilege to drive and to obtain a license are revoked for conviction of the listed offenses.

Section 11 - Establishes that both privilege to drive and to obtain a license shall be revoked for committing the described offenses.

Section 12 - Establishes that both privilege to drive and to obtain a license shall be revoked for committing the described offenses. Except as provided under AS 28.15.201, the court may not grant limited license privileges for certain periods depending on prior convictions.

Section 13 - Provides that both privilege to drive and to obtain a license as well as a driver's license shall be revoked for driving with a suspended or revoked license.

Section 14 - Defines the term "previously convicted" as used in AS 28.15.181.

Section 15 - Gives authority to a hearing officer to grant limited license privileges. Provides statutory factors that the court or hearing officer may consider. Limits the ability of the court to grant limited license privileges after revocation for D.W.I. or refusal of a chemical test of breath.

Section 16 - Requires the court or hearing officer to take possession of the driver's license and issue a temporary license when granting limited driving privileges.

Section 17 - Limits the restoration of the privilege to drive or to obtain a license for specified periods following a suspension or revocation.

Section 18 - Provides that a court imposed revocation, suspension or limitation includes the privilege to drive or

to obtain a license. Establishes minimum periods of license revocation.

Section 19 - Establishes that a court imposed revocation takes effect on the date of final judgment unless another period of revocation is already in effect or unless otherwise specified by the court.

Section 20 - Provides that point system penalties apply to the privilege to drive or to obtain a license.

Section 21 - Provides that driving with a canceled, suspended or revoked license is an A misdemeanor. Establishes penalties for initial and subsequent convictions and adds a definition of "previously convicted" as used in this section.

Section 22 - Establishes that D.W.I. is a class A misdemeanor, except that it is a C felony if the person has been convicted five or more times, and provides for minimum jail sentences and fines for initial and subsequent convictions.

Section 23 - Provides that a person convicted of D.W.I. five or more times is guilty of a class C felony.

Section 24 - Adds a definition of "previously convicted" for purposes of AS 28.35.030.

Section 25 - Amends the notice required to be given when a person under arrest refuses to take a chemical breath test.

Section 26 - Provides that refusal to take a chemical breath test is a class A misdemeanor, except that it is a C felony under AS 28.35.032(k).

Section 27 - Provides for minimum jail sentences, fines and license penalties for persons convicted of refusal to take a chemical breath test.

Section 28 - Provides that a person convicted of refusal to take a chemical breath test five or more times is guilty of a class C felony. Adds a new definition of "previously convicted" for purposes of AS 28.35.032.

Section 29 - Changes the definition of "driver's license" to include the privilege to drive or to obtain a license.

Section 30 - Repealer.

Section 31 - Applicability section.

Section 32 - Effective date.

MFF:lmb
L6/145

1/17/89

House Bill # 53

tape # 1
Side A 000

8:35 Am

Meter #	Info
020	Rep. From Ulmer Sponsor/test
135	Rep. Cato/questions
140	Rep Lanier Agrees
145	Rep Ulmer - testifies
177	Rep Hudson
212	Rep Ulmer testifies
272	Rep Foster
289	Rep Grossendorf
375	Rep Cato asked for Amendments
377	Rep Grossendorf - declines Action
390	Rep Hudson - question
418	Rep Ulmer testifies
515	Rep Grossendorf - questions
521	Rep. Foster - questions

Tape #1
side B

032	Rep Cato holds bill for next meeting
083	Laurie OTTO - Dept of Law Testifies
155	Rep Hudson - disagrees
163	Rep Grossendorf - comments
240	Laurie OTTO - testifies
254	Rep Foster - stated Statistics concerning Rural Areas
265	Rep Grossendorf - comments
322	Laurie otto - disagrees
362	Rep. Cato Adjourns meeting 9:50 am

HOUSE RECORDS OFFICE
GOLDSTEIN BUILDING
ROOM 203

PLEASE FILL OUT AND SEND THIS FORM WITH YOUR DISKETTE TO THE HOUSE RECORDS OFFICE WHEN YOU SEND YOUR COMMITTEE MINUTES.

HOUSE TRANSPORTATION
COMMITTEE NAME

JANUARY 19, 1989 8:30 a.m.
DATE OF MEETING

please put the time of mtg.

HB. 11 - HB 53
COMMITTEE CALENDAR

JAN 1989
DOCUMENT NAME

Marty Smith (PHONE: 4858)
CONTACT PERSON IN CASE OF QUESTIONS REGARDING THESE MINUTES

1/17/89

House Bill # 53

tape # 1
side A 000

8:35 Am	Meter #	Info
	020	Rep. Fran Ulmer Sponsor/test.
	135	Rep. Cato / questions
	140	Rep Lamar Agrees
	145	Rep Ulmer - testifies
	177	Rep Hudson
	212	Rep Ulmer testifies
	272	Rep Foster
	289	Rep. Grussendorf
	375	Rep Cato asked for [illegible]
	377	Rep Grussendorf - [illegible]
	390	Rep [illegible]
	418	Rep Ulmer [illegible]
	515	Rep Grussendorf - [illegible]
	521	Rep. Foster - questions

Tape #1
side B

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Cato
Hudson Lemon
Grussendorf Foster

After roll call take minutes because official meeting is over.

meeting called to order 8:35 All present
25 till 9
First mtg of yr.
Rep Cato gave opening
~~Any witness~~

~~Rep Ulmer called up~~ 001
~~addressed committee explained HB 53~~
Rep ~~Ulmer highlighted her concerns why~~ and how ~~this bill was conceptualized. Explained present~~ problems in todays law, Reasons ~~why~~ (052) ~~pointed that other States 3 class's felony, exercised that 6th DWI for AK is felony, that is what she's introducing.~~ Comparison of present law, ~~compared to Bill~~ to be introduced. ~~The~~ (089) pointed out the introduction of new fines. DWLR - DWLS - explained. explained the laws presently concern. ~~~~ explained Reasons ~~why~~ thought current law was to harsh. 145 Rep Cato. What is Rational for 6th DWI (155) Ulmer - ~~Not~~ ~~~~ ~~bill~~ Her basis ~~~~ Financial consideration with O-Note. 179 Cato - 6th (182) Lemon 6th DWI to many DWI's, more supportive of lesser DWI's. Ulmer - Supportive of Keeping people off the streets, protect the community from drivers. ~~214/214~~ Agreed, ~~Hudson~~
Ulmer, ~~~~ pointed Lemon the Stars
(224) Hudson - "Journ thoughts on if these people are criminals, ~~~~ gave personal thoughts

On Alcohol. favorable of long term
Alcohol treatment. Longer jail Sentence
as proposed on bill, not sure, if this
will be effective, no cost to incarcerate
them. Watching TV. Ulmer 261 - possible forefeture
of Automobile might be more of Answer.
but they can always get a car.
Bill only 280 i) off strait longer 2) letting people
know this is Serious offense. Parole but
other instances that are felony. Brandenburg
DUI should be felony. 307 Hudson - why 6
more supportive of 3 DUIs. Only
jailing people. more supportive of 3 DUI's
instead of 6. wants to see people
helped. 319 Foster - disease like in Nave,
gave thoughts like in Village, but when
Not sure this is Answer
~~Yes~~ ~~Yes, more~~ 333 Grossardi - thoughts
Are more that usually most people are
not Abusive of DUI, but 6th offense
is far to many DUIs [redacted] 360
Ulmer 362 Grossardi - Not supportive
of 6th DUI, most supportive of 5 DUI's
but not in favor of letting people
have so many chances with DUI Points
none Strict. 380 - ? On Driving what license is more
Serious than what Ins. is his thoughts
Cato 402 Ask for Amendment on Carnahan
Charges Grossardi - 408 Cate ~~do~~ Not supportive
411 Hudson DUI crackdown. Back up. 6 DUI
concern that treatment for DUI pointed most
Judges want to give laws. [redacted]. View
~~Foster~~ Ulmer 434 Feed into concern Rep Hudson's
Views 460 Grossardi 4-5-6 DUI How many people
fit into that Category. Ulmer 467 Not sure
of the #, Strictly an estimate less

pointed the estimated # for each offense 1-6 amount of people. <u>480</u> Grenwald

<u>Loreen 482</u> question on How many could be incarcerated. <u>Ulmer 487</u> Quote on estimate. united to turn to Dept Law

<u>493</u> Grenwald

<u>497</u> <u>Ulmer</u> If people realize they are to go to jail If Straight out. this Bill is directed to the hard drinke. not Social

<u>500 - Cato</u> - likes the 4th DUI not the sixth, not concerned with the more people in the 4th DUI more people involved.

<u>511 Ulmer</u> - Bill is Compromise with Adm.

<u>515 Grenwald</u> - Supported <u>HB 35</u> 4th-5th DUI, with no incentive to get license back.

<u>521 Foster</u> - point States that can took Care.

<u>Ulmer 545</u> - May Family Judge take care Issues Family. fathers fault not the family no value, on Bonded amend doesn't happen to much.

556 Cato - Amendment. 6th to 4th DUI
~~Ineffective assistance~~

563 Gaussoin - existing law.

571 Ashford ?

Gaussoin 1st 2nd Acc → 3rd Conviction with fractions of Vehicle.

Side I tape

607 ~~Cato~~
Hedin - Question on Past bill Interlock

634 Cato

646 Gaussoin

Unc 649 Referred to 23.15.201 pg 9.

672 Cato - Bill is Comm. Here and held work/Sess. On Amendment

681 Gaussoin - Maybe Serious Amendment, but I need to look at more.

688 - Hold Bill till Thursday. Study and come with Amendments

Eck - Yes good idea, what about Aircraft.

Unc all the Same

707 Hudson All (3) Bill put side by side to compare. for Heather of Ohio's bill.

719 ~~Cato will hold~~

721 Ohio Dept. of law Carri

725 Laurie Dept. of Law.
talked about the different programs for Alcoholics.

Focus at point to make Felony
Adm. Supports. Gov. would have introduced
Felony, 12 person jury. Fiscal impact. less
Standards for Felony means more Fiscal.
Reasons why the 6th offense is more
supportive than looney in to 4th
in. Other portion of Fiscal Impact.

804 Hudson - Is Adm just interested in Cost or
injuries.

~~811 Laurie~~

816 Hud - How many people killed by 2-3
DUI. that's important.

821 - Not sure unless go through Courts

822 Grouse

844 - Cato Agrees

. Referral to the Categories And the expens

851 Lanie - difference of opinion
people will DWI, giving them an option to get license back

894 Hall - Compare to life in Villages, return drinking is problem. what do you want to happen

903 Laurie - background on how law examines and possibility DWI's. Client was Native no difference

919 Foster - Snowmachine in Villages can they Arrest with DWI.

Lane - Sees no differ from Rural - Urban

933 Grussendorf Sitka only stretch of Road more exposure, easier to be Apprehended.

946 Hall - Bethel observation How much pay on, putting in Jail?

Lane - Yes, depending upon circumstances possibility of Rural getting Caught is greater than Urban

966 Foster - Aware of Judge taking Vehicle?

975 Lane Have been instances area that is Contested And fought in Court

Law - FOR Fine would increase Cost.

6th DUI Something ought to give.

Then prosecute

008 Cuto - Halt meeting discussion.

9:50 Amendments bring all back

Official Business

COMMITTEE: House Transportation Committee

DATE: 1/17/89

Subject of meeting: HB 53

SIGN-IN

NAME Please include title	ADDRESS Please use full address. Please include zip.	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Laurie Otto	Dept of Law P.O. KC Juneau AK 99811	3428	Law	no
Fran Ulmer	Box V Juneau, AK 99811	4947		Yes

HB 11
HB 53

1/19/84
8:35
Foster Absent

Rep Cattal ready to order
Addressed the issues

Rep Martin gave brief discussion of b.11.
Rep M. explained the fact of Rep. generating b.11, not Treaty. Army, Navy Air, Marine, plates.
Doing something for State. that people want # 5-7 plates Cost. people want object to paying.
Rep M. doesn't Agree to more people Show pride.

094 Rep Helsen - Co-Sponsored - disagrees with Fiscal Note of $6m — one yr. Contract. Support of idea Veterans display pride, too much cost — Fiscal Note.

125 Rep G - Simple clear. identifying plates for Cop. Francais)
Supports 1) clear - cope 2) Fiscal note

147 Rep M. - Agrees wholly, Compliance with military regulations
Correction, Prison job. not Cost to State

170 Rep Lem - Agreed - but wants 0 Fiscal Note, identify Cost

186 Rep Helsen - Duncan has legislation - look at this b.11, 5th Le charge 30 plate maybe balance to Veterans Affairs.

200* Rep M - Agreed with Rep Helsen idea.

207 Rep Cato

R

229 Rep G.

235 Jeremiah Harrington - Retired Master Chief U.S. Navy Anchorage
White Heartily Support for 20 vets in AK.
St of Miss and Louis. have plate law.

Rep Lemm 270 - Cost of plate in other State

—— #12 J.H

277 Rep Cato - Commander Veteran Post express View
Opposed to leg. Veterans have benefits
License plate Are not benefit - Shows who
and what they are. - Supports Handicap
but Any and everybody Rotton.

296 Rep M - Concert. of Users fee. people buy plates,
why not Veteran plate.

309 Rep C. pointed the issue of Funds.

320 Rep M - want it to pay for self.

331 Rep C. - Fiscal Note - only

333 Rep Bill Brown - Contract with Vendor, issuing Add.
plates. Cost Varies by # of plates
Stamped out. Depends on Volume
One Addlt. position Anch. Field
off 1 yr. only.

Bill Brown
D.v. Motor Vehicle
Dept Public Safety
Anchorage, AK

Helo present by line

Rep C. 355 ? Fiscal Note.
IS this Inventory,
Speade Naming - Support

365 Brown One Design for Veterans plate. $30
Special Name on it, etc and Above.

370 Rep H. - where are plate produced

B-B - Oregon. plates reduced Vanity plate

Rep Hud. ordered Shipped to Anch

-BB- 10m at $5

380 Rep Cato. ~~10m~~ 100m If cost were higher.
(Valdez) Main work load in Anch.
outside can order

400 Rep Lewis - long lines to order DMV.

Rep C. any question B - Rep M.

Rep-H. - back to Sponsor to Rickoff.
does support. but address Revenue
neutrality.

- Rep. C. - take possession Sponsor Substitute, Revenue
Consideration

429 Rep M. Nan Fiscal not Com Dept.
Comm make Substitute

Rep Gru. 443 -

452 Rep Cato -

---

* 456 Next Item

HB 53
Rep C. Addressed Issue. Rep Ulmer
Comparison of HB 57 - 26 - 2

472 Rep U. HB 2-26 Addresses same problem.
good legislation., prefer not to join bills

Rep C. 485 provide with Arson, the Comparison.

* 498 Susan Knitter Dir Admin Servs. Dept of Correction
~~Secretary~~ Has not seen HB 2-26 but knows
57

503 Cato - or Comparison of Bills
commuted

* 513 Susan - 590m Fiscal Note Felony on 3
prison 4th 35m increased cost per yr.
less
Rep G 523 Agent understood fee 0 Fiscal at 6
to ½ mil. at (4 Felony). cost to
process criminals

548 Rep Lemm - questioning Statistic from previous testimonies.

Rep C. - Stats do not Make Sense.

562 Hall. Current law Statistic, increase ~~#~~ in jail increase Cost.

576 Rep U. -

~~582~~ Study - (Oct - Nov) gather all DUI names. 2 month Based Statistics on those 2 months

594 Rep H. ~~Lemm Creek - Visit.~~ likes Earn back Concept, Can't increase. need Alternatives (~~Re~~ crowded jails)

610 Study - Lessen Susp. - less time. DUI pays longer in jail.

614 Lemm - ? DUI jails too nice when held.

620 Study - Current ways people are placed 1/2 way house days in jail.

624 Rep G. Fiscal Note Relates to county Case load. his thought

643 Study - takes treatment to clear problem

B 001

Rep Heben - Referred to Crime Addicts. Are sick people. maybe talk Vehicle. Can't force people to get treated

.048
Reps. H

(few people in the Sixth Flay offens)

053 Re G. legislation to help 99% that this leg. effects.

081 Ulman - 2 pts. Stein Step penalty (none today) ~~[illegible]~~ get the Serious Alcoholic off Streets longer. Compromised for 6th. Pointed out the Saving, are release the lesser offenders early from Jail

133 Re C. enacting law that affect so few people (problem with that)

U. 145 - Personal experience with family DUI
Cato 1st he beg. Foley to 4th rather than 6th

Cat 171 ~~[illegible]~~ Bill - What class Committee want to do

175 Lemon Supports bill.

#184 G. 2 Amendments - handouts
1) ~~[illegible] After - 3 DUI~~
has instead of not
pg. 10 line 10 once - twice

2) 3rd DUI cannot earn back license

Reps - move Amendment #1 230

Rep Cato called for. Cont

~~235~~

234 Lewis had question Comm Amendment.

Rep G. explained Amendment.
No comeback after 3 DUI's
walked through Statistics presented.

~~Rep H.~~

278 Cate - after 4th DUI ten yr. loss license

Rep. H - Supports Amendments. You get
3 opportunity. but after Society
rejects

301 Lewis - ~~Request for~~ below we allow
loop hole, in Amendment.

Rep G.
320 pointed the fact it on conditional
Bases.

339 Chm - pointed drafting, Restorative
(if person has been convicted 2)

* 350 Mike Today Director for legislation
Draft. gave input on how
~~34 Rep H.~~ to draft the wording to specify
the wording to Accomplish Amendment
Clarity Arguing so there is no loop hole

385 Lewis Agreed as long as loophole.
First 2 offenses to combine only
5 years cannot be convicted more than 2

401

Cato 412 Amd # passes

419 Rep G. Amt 2 moves Amd #2

Section E Delete the word 5 insert the word 4 Pg 15 line 7

Section C

434 Cato double check with the

437 - would be consistant

~~441 Rep H. Explained Atom~~

Rep G. 448

460 Cat. Object to Amd # 2.

None # 2 passed.

467 Legal Counsel - pardel fact of breath test

477 - Draft bill so no inconsistency bring back as Committee Sub.

Any objections

483 - Adjourn 9:52

Official Business

COMMITTEE:
HOUSE LABOR & COMMERCE

DATE: 1/19/87

SIGN-IN

Subject of meeting:

HB-11

HB-53

PLEASE PRINT **NAME** & TITLE	**REPRESENTING**	**ADDRESS** & ZIP	**PHONE**	DO YOU WANT TO TESTIFY?	SUBJECT: BILL #	
Terry Martin	Self-Sponsor of Bill	P.O. Box V 801 Juneau, AK.	H W	L	HB11	HB 11
Mike Ford	Legal Services	Legislative Counsel Div. Box Y Juneau, AK 99811	H W	if Q's		HB 53
Bill Parker	Corrections	PO Box T, Juneau 99811	H W	if Q's		HB 53
Susan Knighton	Dept of Correction	P.O Box T Juneau 99811	H W	Yes		HB 53
Laurie Otto	Law	PO Box KC Juneau	H W 3428	if Q's		HB 53
GAYLE HORETSKI	D.P.S.	PO BOX K, JUN.	H W 4322	IF Q'S		HB 53
Bill Brown	DMV	" " N "	H W 4335	if Q's		HB 11
			H W			
			H W			
			H W			

Rep Martin

This concept started last summer and above vets out to meeting in Louisiana. They heard about this concept — it is being done in other states

They wanted the opportunity to buy vets plates. They did not

Dr this state have between 60,000 — 70,000 vets. This could be revenue generating servic

Cost would be between $6-7 / plate

Martin does not agree that dept would need to bring new people on board to process these plates.

Martin feels vets should be able to receive recognition for their military services of they wished

Rep Hudson

Hudson co-sponsored. He does not agree with dept fiscal note.

Hudson charges the dept. to come back with a zero fiscal note.

Costs should be offset by charges on plates.

Supports

Grossendorf — Plates be clear enough and not interfere with law enforcement

Fiscal note has to more than pay for itself. ~~Not~~ Increase cost of plates to cover costs

Morton — Agrees with Grossendorf.
Veterans Assoc have been notified
Military have been notified

Could be another project for corrections. He feels could be a positive project that is not costly to state

Lasner — Would like to see 0 — note.
Need to identify ~~cost~~ want costs would actually be

Rep Devlin has bill that would allow you to buy vanity lic plates to support your university. Cost would be
$30 / plate
$15 to make plate
$15 to university
Would like to see cost of plate and and additional amount to go to Vet. Affairs

Martin — He feels $30 00 would be too expensive for vets.
As there are more vets the cost to make would be less expensive

Ber — Words We could

Jeramuh Herrington — Retired U.S. Navy.
Vet WW II + Korea War
25 year Alaskan resident
Fleet reserve President
Supports this bill
70,000 vets in state
Bill would show that Alaska ~~vadet~~ supports their vets.

Feels vets would pay their own way.

The state of Mississippi + Louisiana already have in law.

Leonard — what do other states charge for plates

Herrington — Louisiana plates are $12.00
Not sure what other state charges

Cato — Veterans
Opposes legislation.
Cannot see where license plate is a benefit to vets
Objects to opening flood gates to anybody who wants to be recognized

Feels only handicapped plate is the worthwhile plate

Martin

Currently 12 vanity plates in statute
Flood gates already are open.
Feels it would be a positive step showing that state is doing something for them

Costo

Feels that cost is an issue.
Program receipts do not go to that program. They go to general fund.
Therefore, we cannot guarantee ~~that~~ the receipts would go to the program

Costo closed

Brown

Major part of Fiscal note is cost to manufacture.
$5.00 / plate (est) cost for vendor to make
Costs vary depending on number made.

Also - , additional position at the Anchorage field office for 1 year.
The vets would have to come out in + show proof they are vet — fill out paperwork etc
Time consuming, therefore to stop

long lines in Anchorage DMV has requested additional position in Anchorage for 1st year

Gerendasky — what about men who wanted vet plate with name like "Duffy" or "Sarg" on it

Bill →

Hudson — Are All plates mass produced outside

Bill — Yes in Oregon I think

Pratt — 10,000 plates manufactured first year at $5/plate therefore cost $50,000

Cato — If we charged $10/plate what would the revenue be

Leman — $100,000

Cato — That would cover costs.

Hudson — Send back to sponsor to work on redraft addressing the revenue concern. Make it a revenue neutral bill

Cato — ~~Cato~~ Asked if any objection to sending back to Martin for redrafting to be revenue neutral

Martin — Feels we could put in statute the costs.
He feels he cannot redraft bill as it is in the possession of committee

Rep Goodlatte — Committee currently has bill.
Staff should work with sponsor to draft c/s with zero fiscal note

Finished

Rep Ulmer

Susan Knighter — Director of Administrative Services

Has not studied HB 2 or HB 26
Will study bills
Willing to answer questions

Cade — ~~Has~~ HB 2 + 26 were looked at to provide committee with comparison

Knighter — Dept. did fiscal notes of HB 53 last year.
If increase ~~fiscally~~ moved down to 4th + above $35,000
↑ to $635,000 increased cost/year

Ben — Does not agree with note why would it cost $600,000 for 12 felonys and only 35,000 more for 30.

600,000 12 offend
635,000 30 offend

Susan — the difference is the number of people we are talking about + the length of time they would be staying.

Lenore — ~~Rita~~ last Tuesday, didn't we hear ~~that~~ there would be 6 offenders in one year at the 6th level. Then why is it a zero fiscal note

Susan — Cato suggested Ms Knighton study it a little closer.

Bill — Would like to see a conversion chart that shows how many persons the department estimates would fit into each category. for example - how many people would commit their 3rd DWI etc

Susan — To much work, to overwhelming to keep all this data. Every year go thru every Drug offense, DWI + calculate how many 1st, 2nd + 3rd time offenders there were

Bill — He just visited Lemon Creek + feels they have a good handle on what's happening

Leeann — Where are DWI offenders being held

Susan — Generally of 1st or 2nd time offenders ~~the~~ with no history of violence ~~they~~ go to halfway house. It is a lot less expensive

Ben — Feels if we stiffen penalties the number of offenders in the 3rd + 4th time offenders will drop because of a real conscious effort not to commit a felony

Susan — Many of the 4th + 5th + 6th time offenders are hard core alcoholics. Susan does not feel it would make much difference

Ben — then what is the answer what are our options

Susan — I feel the interlock device system offers a lot of alternatives

Susan — An institution is not the real world. They do not have the frustrations or temptation (liquor etc) that are in the real world.

There is very little we can do for the 1% that are 6th time offenders. We need to work at getting the 1st + 2nd time offenders to think carefully about getting another D.W.I

Ulmer — Trying to have a stiffer penalty approach.
We are targetting to the social drinker - to get him thinking about his behaviour.
Get the alcoholic - the 1% - get them off the street.

This bill is a compromise with the administration.

We are increasing the jail time + fines on the 3rd, 4th - 5th + 6th offenses.

The savings are in reducing down the time the DWIS spend in jail.
By reducing this jail time for DWIS offenders the balance allows for a zero fiscal note.

Cato — Have been making this law that only really impacts 6 people

Ulmer — The bill also stiffens the fines + jail time for the 4th - 5th + 6th time offenders.

Cato — Would like to see the felony brought up to 4th offense.

Cato asked for committee suggestions

Leeman — Supports bill.
Would like to see felony on 4th offense but feels bill is a step in right direction

Gresback — Proposed amendments.
Page "not"
Page 10 - line 10 - insert work twice
After third DWI they cannot earn back conditional license

Bar — Moved amendment
Cato — any objections

Keenan — Objection.
Rep Keenan does not feel it is clear on the earn back provision

Grussendorf — First + second DWI stay the same but the third DWI is the last time you could earn back.

There would be ~~not~~ no earn back on the 4th, 5th or 6th offences

Keenan — Needs clarification

Barr — at the 4th DWI there would be no comback.
~~Have~~ 3 times and your out

Hudson — Supports amendment.
Feel it fits in well with HB 2 + HB 26.
Feels three shots to modify behaviour but after that society cannot afford to keep taking chances.

Keenan — Feels ~~by~~ amendment is not clear

Cato — Defined clearly the amendment

Keenan — Understands intention of amendment
But feels it is legally incorrect

Ulmer — Change word once to twice + delete the words more than

Cato — Asked Mike Ford to clarify

Ford — You could do it either way
~~If you wish~~

If intent is limited courts ability to grant limited license after a certain number of DWI's Rep. Grossendorf's amendment would do it

If you said "previously convicted twice" you could get limited driving privileges any time after 2nd.

Heeman — Stated he only wants to see the comback for the first two offences. Then has concern ~~of~~ over wording to limit it to the third time

Hudson — Could we just state that we do not want the earn back provision to apply after 3 DWI offenses

Mike Ford — that's what language does

Cato — Moved amendment #1

No objections.

Barr — Moved amendment #2

Objections — None

Barr — On page 15 delete word 5
+ insert word 4
this moves felony from 6th DWI
to 5th DWI

Cato — Asked Mike Ford if amendment
is consistent with legislation

Ford — Yes, it is consistent

Hudson — what is Class C Felony

Ford → 5 years maximum penalty
$50,000 fine

Barr — Possible problem.
Judge could give the penalty
for a class C felony that
is lighter than the penalty
for the 4th offence.

Cato — Any objections to amendment #2

None —

Amendment #2 moved

Direct staff to draft a c/s + bring back before committee.