

**HB**

**203**

HOUSE BILL NO. 203

IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Introduced:  
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the meaning of the phrase "previously convicted" as that phrase  
2 applies to the operation of a motor vehicle, commercial motor vehicle, aircraft, or  
3 watercraft while intoxicated."

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

5 \* Section 1. AS 28.15.201(d) is amended to read:

6 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain a license  
7 under AS 28.15.181(c), or the department when revoking a driver's license, privilege to drive,  
8 or privilege to obtain a license under AS 28.15.165(c), may grant limited license privileges for  
9 the final 60 days during which the license is revoked if

10 (1) the revocation was for a violation of AS 28.15.181(a)(5) and not for a  
11 violation of AS 28.15.181(a)(8);

12 (2) the person has not been previously convicted; in this paragraph, "previously  
13 convicted" has the meaning given in AS 28.35.030 [AND ALSO INCLUDES CONVICTIONS  
14 BASED ON LAWS PRESUMING THAT THE PERSON WAS UNDER THE INFLUENCE

1 OF INTOXICATING LIQUOR IF THERE WAS 0.08 PERCENT OR MORE BY WEIGHT OF  
2 ALCOHOL IN THE PERSON'S BLOOD];

3 (3) the court or the department determines that the person's ability to earn a  
4 livelihood would be severely impaired without a limited license;

5 (4) the court or the department determines that a limitation under (a) of this  
6 section can be placed on the license that will enable the person to earn a livelihood without  
7 excessive danger to the public; and

8 (5) the court or the department determines that the person is enrolled in and is in  
9 compliance with, or has successfully completed, an alcoholism education and rehabilitation  
10 treatment program.

11 \* Sec. 2. AS 28.33.140(e) is amended to read:

12 (e) A court convicting a person of an offense described in (a)(1) - (5) of this section shall  
13 disqualify that person from driving a commercial motor vehicle for life if the person has been  
14 previously convicted. As used in this subsection, "previously convicted" means having been  
15 convicted in this or another jurisdiction of an offense described in (a)(1) - (5) of this section, or  
16 of another law or ordinance with substantially similar elements, including a law or ordinance  
17 of another jurisdiction that presumed that the person was under the influence of  
18 intoxicating liquor at a lower percentage by weight of alcohol in the person's blood than  
19 that required in this state.

20 \* Sec. 3. AS 28.35.036(a) is amended to read:

21 (a) After conviction of an offense under AS 28.35.030 or 28.35.032, the state may move  
22 the court to order the forfeiture of the motor vehicle, or aircraft involved in the commission of  
23 the offense if the convicted person has been previously convicted in this or another jurisdiction  
24 of more than one of the following offenses or has more than once been previously convicted of  
25 one of the following offenses:

26 (1) driving while intoxicated under AS 28.35.030 or another law or ordinance  
27 with substantially similar elements, including a law or ordinance of another jurisdiction that  
28 presumed that the person was under the influence of intoxicating liquor at a lower  
29 percentage by weight of alcohol in the person's blood than that required in this state; or

30 (2) refusal to submit to a chemical test under AS 28.35.032 or another law or  
31 ordinance with substantially similar elements.

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

CRIMINAL DIVISION CENTRAL  
OFFICE  
P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE (907) 465-3428  
FAX (907) 465-4043

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
310 K STREET, SUITE 308  
ANCHORAGE, ALASKA 99501-2064  
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DEPARTMENT OF LAW

CRIMINAL DIVISION

January 12, 1996

The Hon. Robin Taylor  
Chair, Senate Judiciary Committee  
Alaska State Legislature  
Juneau, AK 99801

RECEIVED

JAN 17 1996

Ans'd.....

Re: HB 203 (Prior DWI Convictions)

Dear Senator Taylor:

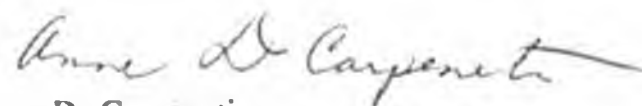
As you may recall, when the legislature adjourned last year, HB 203, the Governor's crime bill relating to prior DWI convictions, was awaiting hearing in the Senate Judiciary Committee. The passage of HB 159, creating the crime of felony drunk driving, has mooted part of HB 203, but not all of it. In particular, HB 159 did not address prior convictions for purposes of commercial motor vehicle DWI offenses.

Enclosed is a proposed committee substitute that amends the bill to reflect the passage of HB 159. It does this by deleting section 3 of the bill. This is to ask you to schedule HB 203 for hearing this coming year and to consider adopting the enclosed version of the bill. If you have any questions about the bill or require any further information, please do not hesitate to contact us. Your courtesy and cooperation are much appreciated.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:

  
Anne D. Carpeneti  
Assistant Attorney General

ADC:jf  
Enclosure

DEPARTMENT OF LAW

CRIMINAL DIVISION

June 12, 1995

The Hon. Robin Taylor  
Alaska State Legislature  
Juneau, AK 99801

Re: Double Jeopardy Arguments in DWI Cases

Dear Senator Taylor:

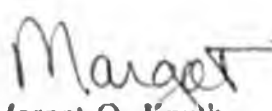
Joe Ambrose called me this week and indicated that you have taken a special interest in the double jeopardy arguments that are being raised by DWI defendants who are prosecuted after their licenses have been revoked by the DMV for driving with a BAC of over .10%. We have received mixed rulings from the trial courts around the state. There is one lead case on appeal to the court of appeals, *State v. Zerkel*. I am enclosing a copy of our opening brief in that case.

Although trial courts around the United States have been divided on this issue, it is my understanding that all appellate courts that have addressed the issue have ruled in the government's favor. We are optimistic at this point that we will receive a similar favorable ruling in this state.

If there is more information or if there are more materials that you would like, please feel free to contact me. In the meantime, take care not to hug too many trees this summer.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:   
Margot O. Knuth  
Assistant Attorney General

MOK:rew

Enclosure

TONY KNOWLES, GOVERNOR

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