

ALASKA LEGISLATURE

2189

HOUSE and SENATE FINANCE COMMITTEE FILES, 2001 - 2002

1 (4) may order [AS A CONDITION OF PROBATION OR PAROLE]
2 that the person, while incarcerated or as a condition of probation or parole, take a
3 drug or combination of drugs, intended to prevent the consumption of an alcoholic
4 beverage; a condition of probation or parole imposed under this paragraph is in
5 addition to any other condition authorized under another provision of law; [AND]

6 (5) shall [MAY ALSO] order forfeiture under AS 28.35.036 of the
7 vehicle, watercraft, or aircraft used in the commission of the offense, subject to
8 remission under AS 28.35.037; and

9 (6) shall order the department to revoke the registration for any
10 vehicle registered by the department in the name of the person convicted under
11 this subsection: if a person convicted under this subsection is a registered co-
12 owner of a vehicle or is registered as a co-owner under a business name, the
13 department shall reissue the vehicle registration and omit the name of the person
14 convicted under this subsection.

15 * Sec. 32. AS 28.35.030(o) is amended to read:

16 (o) In this section,

17 (1) "inhalant" has the meaning given to the phrase "hazardous
18 volatile material or substance" in AS 47.37.270; [REPEALED]

19 (2) "operate an aircraft" means to navigate, pilot, or taxi an aircraft in
20 the airspace over this state, or upon the land or water inside this state;

21 (3) "operate a watercraft" means to navigate a vessel used or capable
22 of being used as a means of transportation on water for recreational or commercial
23 purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or
24 under the jurisdiction of the state;

25 (4) "previously convicted" means having been convicted in this or
26 another jurisdiction of any of the following offenses; however, convictions for any of
27 these offenses, if arising out of a single transaction and a single arrest, are considered
28 one previous conviction:

29 (A) operating a motor vehicle, aircraft, or watercraft [WHILE
30 INTOXICATED,] in violation of this section or in violation of another law or
31 ordinance with similar elements, except that the other law or ordinance may

1 provide for a lower level of alcohol in the person's blood or breath than
2 imposed under (a)(2) of this section;

3 (B) refusal to submit to a chemical test in violation of
4 AS 28.35.032 or in violation of another law or ordinance with similar
5 elements; or

6 (C) operating a commercial motor vehicle [WHILE
7 INTOXICATED] in violation of AS 28.33.030 or in violation of another law
8 or ordinance with similar elements, except that the other law or ordinance may
9 provide for a lower level of alcohol in the person's blood or breath than
10 imposed under AS 28.33.030(a)(2).

11 * Sec. 33. AS 28.35.030 is amended by adding new subsections to read:

12 (p) Upon request, the department shall review a driver's license revocation
13 imposed under (n)(3) of this section and may restore the driver's license if

14 (1) the license has been revoked for a period of at least 10 years;

15 (2) the person has not been convicted of a criminal offense since the
16 license was revoked; and

17 (3) the person provides proof of financial responsibility;

18 (q) If the court determines that the person has successfully completed a court-
19 ordered treatment program, the court may suspend up to 75 percent of the mandatory
20 minimum sentence required under (b)(1) or (n)(1) of this section and up to 75 percent
21 of the minimum fines required under (b)(1) or (n)(1) of this section. This subsection
22 does not apply to a person who has already successfully completed a court-ordered
23 treatment program two or more times. In this subsection, "court-ordered treatment"
24 means a treatment program for a person who consumes alcohol or drugs and that

25 (1) requires participation for at least 18 consecutive months;

26 (2) includes planning and treatment for alcohol or drug addiction;

27 (3) includes emphasis on personal responsibility;

28 (4) provides in-court recognition of progress and sanctions for
29 relapses;

30 (5) requires payment of restitution to victims and completion of
31 community work service;

1 (6) includes physician approved treatment of physical addiction and
2 treatment of the psychological causes of addiction;

3 (7) includes a monitoring program and physical placement or housing;
4 and

5 (8) requires adherence to conditions of probation.

6 (r) For purposes of this section, the director of the division within the
7 department responsible for administration of this section or a person designated by the
8 director may request and receive criminal justice information available under
9 AS 12.62. In this subsection, "criminal justice information" has the meaning given in
10 AS 12.62.900.

11 * Sec. 34. AS 28.35.031(a) is amended to read:

12 (a) A person who operates or drives a motor vehicle in this state or who
13 operates an aircraft as defined in AS 28.35.030(o) [AS 28.35.030(o)(2)] or who
14 operates a watercraft as defined in AS 28.35.030(o) [AS 28.35.030(o)(3)] shall be
15 considered to have given consent to a chemical test or tests of the person's breath for
16 the purpose of determining the alcoholic content of the person's blood or breath if
17 lawfully arrested for an offense arising out of acts alleged to have been committed
18 while the person was operating or driving a motor vehicle or operating an aircraft or a
19 watercraft while under the influence of an alcoholic beverage, inhalant, or
20 controlled substance [INTOXICATED] or if lawfully arrested under AS 28.35.280
21 for the offense of minor operating a vehicle after consuming alcohol. The test or tests
22 shall be administered at the direction of a law enforcement officer who has probable
23 cause [REASONABLE GROUNDS] to believe that the person was operating or
24 driving a motor vehicle or operating an aircraft or a watercraft in this state while
25 under the influence of an alcoholic beverage, inhalant, or controlled substance
26 [INTOXICATED] or that the person was a minor operating a vehicle after consuming
27 alcohol.

28 * Sec. 35. AS 28.35.031(b) is amended to read:

29 (b) A person who operates or drives a motor vehicle in this state or who
30 operates an aircraft or watercraft shall be considered to have given consent to a
31 preliminary breath test for the purpose of determining the alcoholic content of the

1 person's blood or breath. A law enforcement officer may administer a preliminary
2 breath test at the scene of the incident if the officer has probable cause
3 [REASONABLE GROUNDS] to believe that a person's ability to operate a motor
4 vehicle, aircraft, or watercraft is impaired by the ingestion of alcoholic beverages and
5 that the person

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

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

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

15 * Sec. 36. AS 28.35.031(g) is amended to read:

16 (g) A person who operates or drives a motor vehicle in this state shall be
17 considered to have given consent to a chemical test or tests of the person's breath and
18 blood for the purpose of determining the alcoholic content of the person's breath and
19 blood and shall be considered to have given consent to a chemical test or tests of the
20 person's blood and urine for the purpose of determining the presence of controlled
21 substances in the person's blood and urine if the person is involved in a motor vehicle
22 accident that causes death or serious physical injury to another person. The test or
23 tests may be administered at the direction of a law enforcement officer who has
24 probable cause [REASONABLE GROUNDS] to believe that the person was
25 operating or driving a motor vehicle in this state that was involved in an accident
26 causing death or serious physical injury to another person.

27 * Sec. 37. AS 28.35.032(a) is amended to read:

28 (a) If a person under arrest for operating a motor vehicle or aircraft while
29 under the influence of an alcoholic beverage, inhalant, or controlled substance
30 [INTOXICATED] refuses the request of a law enforcement officer to submit to a
31 chemical test authorized under AS 28.33.031(a)(1) or AS 28.35.031(a), or if a person

1 involved in a motor vehicle accident that causes death or serious physical injury to
2 another person refuses the request of a law enforcement officer to submit to a
3 chemical test authorized under AS 28.33.031(a)(2) or AS 28.35.031(g), after being
4 advised by the officer that the refusal will result in the denial or revocation of the
5 driver's license, privilege to drive, or privilege to obtain a license, that the refusal may
6 be used against the person in a civil or criminal action or proceeding arising out of an
7 act alleged to have been committed by the person while operating a motor vehicle or
8 aircraft while under the influence of an alcoholic beverage, inhalant, or controlled
9 substance [INTOXICATED], and that the refusal is a crime, a chemical test may not
10 be given, except as provided by AS 28.35.035. If a person under arrest for operating a
11 watercraft while under the influence of an alcoholic beverage, inhalant, or
12 controlled substance [INTOXICATED] refuses the request of a law enforcement
13 officer to submit to a chemical test authorized under AS 28.35.031(a), after being
14 advised by the officer that the refusal may be used against the person in a civil or
15 criminal action or proceeding arising out of an act alleged to have been committed by
16 the person while operating a watercraft while under the influence of an alcoholic
17 beverage, inhalant, or controlled substance [INTOXICATED], and that the refusal
18 is a crime, a chemical test may not be given, except as provided by AS 28.35.035.

19 * Sec. 38. AS 28.35.032(e) is amended to read:

20 (e) The refusal of a person to submit to a chemical test authorized under
21 AS 28.33.031(a) or AS 28.35.031(a) or (g) is admissible evidence in a civil or criminal
22 action or proceeding arising out of an act alleged to have been committed by the
23 person while operating or driving a motor vehicle or operating an aircraft or watercraft
24 while under the influence of an alcoholic beverage, inhalant, or controlled
25 substance [INTOXICATED].

26 * Sec. 39. AS 28.35.032(g) is amended to read:

27 (g) Except as provided under (s) of this section, upon [UPON] conviction
28 under this section,

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

30 (A) not less than 72 consecutive hours and a fine of not less
31 than \$1,500 [\$250] if the person has not been previously convicted;

1 (B) not less than 20 days and a fine of not less than \$3,000
2 [\$500] if the person has been previously convicted once;

3 (C) not less than 60 days and a fine of not less than \$4,000
4 [\$1,000] if the person has been previously convicted twice and is not subject to
5 punishment under (p) of this section;

6 (D) not less than 120 days and a fine of not less than \$5,000
7 [\$2,000] if the person has been previously convicted three times and is not
8 subject to punishment under (p) of this section;

9 (E) not less than 240 days and a fine of not less than \$6,000
10 [\$3,000] if the person has been previously convicted four times and is not
11 subject to punishment under (p) of this section;

12 (F) not less than 360 days and a fine of not less than \$7,000
13 [\$4,000] if the person has been previously convicted more than four times and
14 is not subject to punishment under (p) of this section;

15 (2) the court may not

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

19 (B) suspend imposition of sentence;

20 (3) the court shall revoke the person's driver's license, privilege to
21 drive, or privilege to obtain a license under AS 28.15.181, and may order that the
22 motor vehicle, [OR] aircraft, or watercraft that was used in commission of the
23 offense be forfeited under AS 28.35.036; [AND]

24 (4) the court may order that the person, while incarcerated or as a
25 condition of probation or parole, take a drug or combination of drugs intended to
26 prevent the consumption of an alcoholic beverage; a condition of probation or
27 parole imposed under this paragraph is in addition to any other condition
28 authorized under another provision of law; and

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

31 * Sec. 40. AS 28.35.032(h) is amended to read:

1 (h) Except as prohibited by federal law or regulation, every provider of
2 treatment programs to which persons are ordered under [(l) OF] this section shall
3 supply the judge, prosecutor, defendant, and an agency involved in the
4 defendant's treatment with information and reports concerning the defendant's
5 past and present assessment, treatment, and progress [ALASKA COURT
6 SYSTEM WITH THE INFORMATION REGARDING THE CONDITION AND
7 TREATMENT OF THOSE PERSONS AS THE SUPREME COURT MAY
8 REQUIRE BY RULE]. Information compiled under this subsection is confidential
9 and may only be used in connection with court proceedings involving the
10 defendant's treatment, including use by a court in sentencing a person convicted
11 under this section, or by an officer of the court in preparing a pre-sentence report for
12 the use of the court in sentencing a person convicted under this section.

13 * Sec. 41. AS 28.35.032(j) is amended to read:

14 (j) For purposes of this section, convictions [FOR OPERATING OR
15 DRIVING WHILE INTOXICATED] under AS 28.33.030 or AS 28.35.030 and for
16 refusal to submit to a chemical test under this section, if arising out of a single
17 transaction and a single arrest, are considered one previous conviction.

18 * Sec. 42. AS 28.35.032(o) is amended to read:

19 (o) Imprisonment required under (g)(1)(A) [OR (B)] of this section shall be
20 served at a community residential center, or if a community residential center is not
21 available, at another appropriate place determined by the commissioner of corrections.
22 Imprisonment required under (g)(1)(B) - (F) of this section may be served at a
23 community residential center or at a private residence if approved by the
24 commissioner of corrections. Imprisonment served at a private residence must
25 include electronic monitoring. The cost of imprisonment resulting from the sentence
26 imposed under (g)(1) of this section shall be paid to the state by the person being
27 sentenced provided, however, that the cost of imprisonment required to be paid under
28 this subsection may not exceed \$2,000 [\$1,000]. Upon the person's conviction, the
29 court shall include the costs of imprisonment as a part of the judgment of conviction.
30 Except for reimbursement from a permanent fund dividend as provided in this
31 subsection, payment of the cost of imprisonment is not required if the court determines

1 the person is indigent. For costs of imprisonment that are not paid by the person as
 2 required by this subsection, the state shall seek reimbursement from the person's
 3 permanent fund dividend as provided under AS 43.23.065. While at the community
 4 residential center or other appropriate place, a person sentenced under (g)(1)(A) of this
 5 section shall perform at least 24 hours of community service work. A [AND A]
 6 person sentenced under (g)(1)(B) of this section shall perform at least 160 hours of
 7 community service work, as required by the director of the community residential
 8 center or other appropriate place, or as required by the commissioner of corrections
 9 if the sentence is being served at a private residence. In this subsection,
 10 "appropriate place" means a facility with 24-hour on-site staff supervision that is
 11 specifically adapted to provide a residence, and includes a correctional center,
 12 residential treatment facility, hospital, halfway house, group home, work farm, work
 13 camp, or other place that provides varying levels of restriction.

14 * Sec. 43. AS 28.35.032(p) is amended to read:

15 (p) A person is guilty of a class C felony if the person is convicted under this
 16 section and has been previously convicted two or more times since January 1, 1996,
 17 and within the 10 years preceding the date of the present offense. For purposes of
 18 determining minimum sentences based on previous convictions, the provisions of
 19 AS 28.35.030(o)(4) apply. Except as provided under (s) of this section, upon
 20 [UPON] conviction,

21 (1) the court shall impose a fine of not less than \$10,000 [~~\$5,000~~] and
 22 a minimum sentence of imprisonment of not less than

23 (A) 120 days if the person has been previously convicted twice;

24 (B) 240 days if the person has been previously convicted three
 25 times;

26 (C) 360 days if the person has been previously convicted four
 27 or more times;

28 (2) the court may not

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

1 (B) suspend imposition of sentence;

2 (3) the court shall permanently revoke the person's driver's license.
3 privilege to drive, or privilege to obtain a license subject to restoration under (r) of
4 this section [UNDER AS 28.15.181(c)];

5 (4) the court may order [AS A CONDITION OF PROBATION OR
6 PAROLE] that the person, while incarcerated or as a condition of probation or
7 parole, take a drug, or combination of drugs, intended to prevent consumption of an
8 alcoholic beverage; a condition of probation or parole imposed under this paragraph
9 is in addition to any other condition authorized under another provision of law;

10 (5) the sentence imposed by the court under this subsection shall run
11 consecutively with any other sentence of imprisonment imposed on the person; [AND]

12 (6) the court shall [MAY ALSO] order forfeiture under AS 28.35.036.
13 of the motor vehicle, [OR] aircraft, or watercraft used in the commission of the
14 offense, subject to remission under AS 28.35.037; and

15 (7) the court shall order the department to revoke the registration
16 for any vehicle registered by the department in the name of the person convicted
17 under this subsection: if a person convicted under this subsection is a registered
18 co-owner of a vehicle, the department shall reissue the vehicle registration and
19 omit the name of the person convicted under this subsection.

20 * Sec. 44. AS 28.35.032 is amended by adding new subsections to read:

21 (r) Upon request, the department shall review a driver's license revocation
22 imposed under (p)(3) of this section and may restore the driver's license if

23 (1) the license has been revoked for a period of at least 10 years;

24 (2) the person has not been convicted of a criminal offense since the
25 license was revoked; and

26 (3) the person provides proof of financial responsibility.

27 (s) If the court determines that the person has successfully completed a court-
28 ordered treatment program, the court may suspend up to 75 percent of the mandatory
29 minimum sentence required under (g)(1) or (p)(1) of this section and up to 75 percent
30 of the minimum fine required under (g)(1) and (p)(1) of this section. This subsection
31 does not apply to a person who has already successfully completed a court-ordered

1 treatment program two or more times. In this subsection, "court-ordered treatment"
2 has the meaning given in AS 28.35.030(q).

3 * Sec. 45. AS 28.35.033(a) is amended to read:

4 (a) Upon the trial of a civil or criminal action or proceeding arising out of acts
5 alleged to have been committed by a person while operating or driving a motor vehicle
6 or operating an aircraft or a watercraft while under the influence of an alcoholic
7 beverage, inhalant, or controlled substance [INTOXICATED], the amount of
8 alcohol in the person's blood or breath at the time alleged shall give rise to the
9 following presumptions:

10 (1) If there was 0.04 percent or less by weight of alcohol in the
11 person's blood, or 40 milligrams or less of alcohol per 100 milliliters of the person's
12 blood, or 0.04 grams or less of alcohol per 210 liters of the person's breath, it shall be
13 presumed that the person was not under the influence of an alcoholic beverage
14 [INTOXICATING LIQUOR].

15 (2) If there was in excess of 0.04 percent but less than 0.08 percent by
16 weight of alcohol in the person's blood, or in excess of 40 but less than 80 milligrams
17 of alcohol per 100 milliliters of the person's blood, or in excess of 0.04 grams but less
18 than 0.08 grams of alcohol per 210 liters of the person's breath, that fact does not give
19 rise to any presumption that the person was or was not under the influence of an
20 alcoholic beverage [INTOXICATING LIQUOR], but that fact may be considered
21 with other competent evidence in determining whether the person was under the
22 influence of an alcoholic beverage [INTOXICATING LIQUOR].

23 (3) If there was 0.08 percent or more by weight of alcohol in the
24 person's blood, or 80 milligrams or more of alcohol per 100 milliliters of the person's
25 blood, or 0.08 grams or more of alcohol per 210 liters of the person's breath, it shall be
26 presumed that the person was under the influence of an alcoholic beverage
27 [INTOXICATING LIQUOR].

28 * Sec. 46. AS 28.35.033(e) is amended to read:

29 (e) The person tested may have a physician, or a qualified technician, chemist,
30 registered nurse, or other qualified person of the person's own choosing administer a
31 chemical test in addition to the test administered at the direction of a law enforcement

1 officer. The failure or inability to obtain an additional test by a person does not
2 preclude the admission of evidence relating to the test taken at the direction of a law
3 enforcement officer; the fact that the person under arrest sought to obtain such an
4 additional test, and failed or was unable so to do, is likewise admissible in evidence.
5 The person who administers the chemical test shall clearly and expressly inform
6 the person tested of that person's right to an independent test described under
7 this subsection, and, if the person being tested requests an independent test, the
8 department shall make reasonable and good-faith efforts to assist the person
9 being tested in contacting a person qualified to perform an independent chemical
10 test of the person's breath or blood.

11 * Sec. 47. AS 28.35.035(a) is amended to read:

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

20 * Sec. 48. AS 28.35.036 is repealed and reenacted to read:

21 Sec. 28.35.036. Forfeiture of vehicle, aircraft, or watercraft. (a) After
22 conviction of an offense under AS 28.15.291(b), AS 28.35.030, or 28.35.032, a motor
23 vehicle, aircraft, or watercraft involved in the commission of the offense is subject to
24 forfeiture as provided under AS 28.15.291(b), AS 28.35.030, and 28.35.032.

25 (b) Before forfeiture of a motor vehicle, aircraft, or watercraft, the court shall
26 schedule a hearing on the matter and shall notify the state and the convicted person of
27 the time and place set for the hearing. Except for a motor vehicle, aircraft, or
28 watercraft that is required to be forfeited under AS 28.15.291(b), AS 28.35.030, or
29 28.35.032, the court may order the forfeiture of the motor vehicle if the court, sitting
30 without a jury, determines, by a preponderance of the evidence, that the forfeiture of
31 the motor vehicle, aircraft, or watercraft will serve one or more of the following

1 purposes:

2 (1) deterrence of the convicted person from the commission of future
3 offenses under AS 28.15.291(b) or AS 28.35.030;

4 (2) protection of the safety and welfare of the public;

5 (3) deterrence of other persons who are potential offenders under
6 AS 28.15.291(b) or AS 28.35.030; or

7 (4) expression of public condemnation of the serious or aggravated
8 nature of the convicted person's conduct.

9 (c) Upon forfeiture of a motor vehicle, aircraft, or watercraft, the court shall
10 require the

11 (1) surrender of the registration and certificate of title of that motor
12 vehicle; the registration and certificate of title shall be delivered to the department;

13 (2) convicted person to pay all administrative costs incurred by the
14 state in forfeiting the motor vehicle, aircraft, or watercraft, including costs incurred by
15 the department, law enforcement personnel, or the court system.

16 (d) If not released under AS 28.35.037, a motor vehicle, aircraft, or watercraft
17 forfeited under this section may be disposed of at the discretion of the Department of
18 Public Safety.

19 (e) Disposal under this subsection includes, by way of example and not of
20 limitation,

21 (1) sale, as a unit or in parts, including sale at an auction, and the
22 proceeds deposited into the general fund;

23 (2) transfer to a state or municipal law enforcement agency;

24 (3) being declared surplus and transferred to the Department of
25 Administration; or

26 (4) being destroyed.

27 * Sec. 49. AS 28.35.037 is amended to read:

28 Sec. 28.35.037. Remission of forfeitures. (a) Upon receiving notice from
29 the court of the time and place set for a hearing under AS 28.35.036, the state shall
30 provide to every person who has an ascertainable ownership or security interest in the
31 motor vehicle, [OR] aircraft, or watercraft written notice that includes

- 1 (1) a description of the motor vehicle, [OR] aircraft, or watercraft;
2 (2) the time and place of the forfeiture hearing;
3 (3) the legal authority under which the motor vehicle, [OR] aircraft, or
4 watercraft, may be forfeited;
5 (4) notice of the right to intervene to protect the interest in the motor
6 vehicle, [OR] aircraft, or watercraft.

7 (b) At the hearing, a person who claims an ownership or security interest in
8 the motor vehicle, [OR] aircraft, or watercraft, must establish by a preponderance of
9 the evidence that

10 (1) the petitioner has an interest in the motor vehicle, [OR] aircraft, or
11 watercraft, acquired in good faith;

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

14 (3) before parting with the motor vehicle, [OR] aircraft, or watercraft,
15 the petitioner did not know or have reasonable cause to believe that it would be used
16 in the commission of an offense.

17 (c) If a person satisfies the requirements of (b) of this section, the court shall
18 order that an amount equal to the value of the petitioner's interest in the motor vehicle,
19 [OR] aircraft, or watercraft be paid to the petitioner, or the court shall order that the
20 motor vehicle, [OR] aircraft, or watercraft be released to the petitioner together with
21 title to the motor vehicle, [OR] aircraft or watercraft.

22 (d) Forfeiture of a motor vehicle, [OR] aircraft, or watercraft under
23 AS 28.35.036 is without prejudice to the rights [,] and does not extinguish the claims
24 of a creditor with an interest in the motor vehicle, [CR] aircraft, or watercraft.

25 * Sec. 50. AS 28.35.039(2) is amended to read:

26 (2) "alcohol safety action program" means a program for alcohol and
27 substance abuse screening, referral, and monitoring developed and implemented
28 or approved by the Department of Health and Social Services under AS 47.37
29 [DESIGNATED BY THE COMMISSIONER OF HEALTH AND SOCIAL
30 SERVICES AS AN ALCOHOL SAFETY ACTION PROGRAM].

31 * Sec. 51. AS 47.37.040(14) is amended to read:

1 (14) cooperate with the Department of Public Safety and the
2 Department of Transportation and Public Facilities in establishing and conducting
3 programs designed to deal with the problem of persons operating motor vehicles while
4 under the influence of an alcoholic beverage, inhalant, or controlled substance
5 [INTOXICATED OR UNDER THE INFLUENCE OF DRUGS]. and develop and
6 approve alcohol information courses required to be taken by drivers under AS 28.15 or
7 made available to drivers to reduce points assessed for violation of traffic laws;

8 * Sec. 52. AS 47.37.040 is amended by adding a new paragraph to read:

9 (21) develop and implement, or designate, in cooperation with other
10 state or local agencies, an alcohol safety action program that provides alcohol and
11 substance abuse screening, referral, and monitoring services to persons who have been
12 referred by a court in connection with a charge or conviction of a misdemeanor
13 involving the use of a motor vehicle, aircraft, or watercraft and alcohol or a controlled
14 substance, or referred by an agency of the state with the responsibility for
15 administering motor vehicle laws in connection with a driver's license action involving
16 the use of alcohol or a controlled substance.

17 * Sec. 53. AS 47.37.130(b) is amended to read:

18 (b) The program of the division must include

19 (1) emergency treatment provided by a facility affiliated with or part of
20 the medical service of a general hospital;

21 (2) inpatient treatment;

22 (3) intermediate treatment; [AND]

23 (4) outpatient and follow-up treatment; and

24 (5) standards for alcohol safety action programs: the standards
25 may vary in their requirements and stringency according to the population, price
26 level, remoteness, access to transportation, and availability of ancillary services of
27 the area to be served: a program must meet the applicable standards before it is
28 approved by the division as an alcohol safety action program: the standards
29 required under this paragraph shall be established in a manner that provides
30 protection of the health, safety, and well-being of clients of the affected programs
31 and protection for the affected programs from exposure to malpractice and

1 liability actions.

2 * Sec. 54. AS 47.37.130 is amended by adding new subsections to read:

3 (h) The division shall

4 (1) inspect, on a regular basis, approved public and private alcohol
5 safety action programs at reasonable times and in a reasonable manner; and

6 (2) maintain a list of approved public and private alcohol safety action
7 programs.

8 (i) An approved public and private alcohol safety action program shall file
9 with the division on request data, statistics, schedules, and information that the
10 division reasonably requires. An approved program that fails without good cause to
11 furnish any data, statistics, schedules, or information as requested, or files fraudulent
12 returns of them, shall be removed from the list of approved programs.

13 (j) The director, after holding a hearing under the provisions of AS 44.62
14 (Administrative Procedure Act), may suspend, revoke, limit, restrict, or refuse to grant
15 an approval for an alcohol safety action program for failure to meet standards
16 established under (b) of this section.

17 * Sec. 55. AS 28.35.038 is repealed.

18 * Sec. 56. The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 PILOT DRUNK DRIVER PROGRAM IN THE DEPARTMENT OF
21 CORRECTIONS; REPORT. (a) In addition to a rehabilitation program established under
22 AS 33.30.011(3), the commissioner of corrections may, beginning July 1, 2002, and ending
23 June 30, 2007, provide a drug or combination of drugs intended to prevent the consumption
24 of an alcoholic beverage to a prisoner committed to the commissioner's custody if the prisoner
25 has been convicted of violating AS 28.35.030 or 28.35.032, and voluntarily agrees to take the
26 drug or combination of drugs.

27 (b) The commissioner of corrections shall report back to the legislature by January 1,
28 2005, with a summary of the program described under (a) of this section, including the
29 number of prisoners in the program and statistics on how many prisoners in the program
30 reoffended after being released.

31 * Sec. 57. The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 APPLICABILITY. (a) Section 7 of this Act applies to registration of a motor vehicle
3 that occurs on or after the effective date of this Act.

4 (b) This Act applies to offenses committed on or after the effective date of this Act.
5 except that references to previous convictions include convictions occurring before, on, or
6 after the effective date of this Act.

7 * Sec. 58. This Act takes effect July 1, 2002.

22-LS0046M
Ford
4/8/02

SENATE CS FOR CS FOR HOUSE BILL NO. 4()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ROKEBERG, Croft

A BILL

FOR AN ACT ENTITLED

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

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

4 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 FINDINGS AND INTENT. (a) The legislature finds that

- 7 (1) driving on state highways is a privilege granted to citizens;
- 8 (2) in order to keep the privilege of driving on state highways, a citizen must
- 9 follow state laws regarding safe driving;
- 10 (3) in 1998, there were 71 vehicle-related deaths in the state, and 31 were
- 11 alcohol-related;
- 12 (4) in 1999, there were 76 vehicle-related deaths in the state, and 40 were
- 13 alcohol-related;
- 14 (5) from 1998 to 1999, the number of traffic fatalities in Alaska rose by nine

1 percent;

2 (6) Alaska ranks in the top 15 states in terms of alcohol-related traffic
3 fatalities;

4 (7) habitual offenders do most of the harm;

5 (8) district courts in Anchorage and Juneau have been applying therapeutic
6 court models to municipal offenders charged with driving while intoxicated and other alcohol-
7 related offenses;

8 (9) judges throughout Alaska have expressed interest in using therapeutic
9 court models to reduce recidivism amount alcoholic offenders.

10 (b) It is the intent of this Act to

11 (1) reduce the number of alcohol-related traffic accidents and fatalities;

12 (2) encourage the effort described under (1) of this subsection by creating a
13 therapeutic process to be used by the court system; courts that have adopted a therapeutic
14 model for alcohol- and drug-addicted offenders shall, to the extent feasible, consider or
15 require the following standards:

16 (A) early intervention to plan and begin treatment for recovery from
17 alcohol or drug addiction;

18 (B) emphasis on personal responsibility;

19 (C) in-court recognition of progress and quick sanctions for relapses;

20 (D) frequent appearances before the same judge to provide in-court
21 recognition of progress and quick sanctions for relapses;

22 (E) if the offender is living in a municipality or an area of the state
23 without a judge, frequent appearances before a person or persons designated by the
24 judge who will report progress and relapses to the judge;

25 (F) prompt payment of restitution to victims;

26 (G) completion of community work service as appropriate for
27 restoration of the community;

28 (H) pharmaceutical treatment of the physical addiction to alcohol or
29 drugs, as approved and prescribed by a physician;

30 (I) treatment addressing the psychosocial bases of the addiction;

31 (J) a strong monitoring program to enforce long-term abstinence;

- 1 (K) appropriate physical placement or housing;
- 2 (L) assistance in obtaining a constructive alcohol-free and drug-free
3 occupation and lifestyle;
- 4 (M) assistance from supportive friends and relatives;
- 5 (N) payment for all or a portion of treatment costs;
- 6 (O) adherence to all probation conditions;
- 7 (P) collection of data about and evaluation of the effectiveness of the
8 program;
- 9 (Q) the defendant shall execute releases to provide information and
10 reports to the court, the prosecutor, and all agencies involved in the defendant's
11 therapeutic court plan;
- 12 (R) case coordination in planning for and assisting offenders in
13 accomplishing the conditions set out in (A) - (Q) of this paragraph;
- 14 (3) assist the development and operation of therapeutic courts approved by the
15 presiding judge in the judicial district by using the existing Alaska nonprofit corporation that
16 currently funds and coordinates the noncourt, community-related functions for the existing
17 Anchorage Wellness Court or other similar Alaska nonprofit corporation for offenders
18 charged with driving while intoxicated and other alcohol-related offenses; these functions
19 include case coordination, sobriety monitoring, and community liaison to provide medical
20 treatment and other services;
- 21 (4) modify the existing laws on impoundment and forfeiture of a motor
22 vehicle by following the municipal impoundment and forfeiture process established in
23 Anchorage and Fairbanks.

24 * Sec. 2. AS 09.60.070(c)(14) is amended to read:

25 (14) driving while under the influence of an alcoholic beverage,
26 inhalant, or controlled substance [INTOXICATED] or another crime resulting from
27 the operation of a motor vehicle, boat, or airplane when the offender is under the
28 influence of an alcoholic beverage, inhalant, or controlled substance
29 [INTOXICATED];

30 * Sec. 3. AS 12.25.033 is amended to read:

31 Sec. 12.25.033. Arrest without warrant for operating vehicle while under

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the influence of an alcoholic beverage, inhalant, or controlled substance
[INTOXICATED]. A peace officer may arrest a person without a warrant, whether
or not the offense is committed in the presence of the officer, when the officer has
probable cause to believe that the person to be arrested has committed the crime of
operating a motor vehicle, an aircraft, or a watercraft in violation of AS 28.35.030 or a
similar city or borough ordinance, if the violation is alleged to have occurred less than
eight hours before the time of arrest.

* Sec. 4. AS 12.55.125(c) is amended to read:

(c) A defendant convicted of a class A felony may be sentenced to a definite
term of imprisonment of not more than 20 years, and shall be sentenced to the
following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
12.55.175:

(1) if the offense is a first felony conviction and does not involve
circumstances described in (2) of this subsection, five years;

(2) if the offense is a first felony conviction

(A) other than for manslaughter and the defendant possessed a
firearm, used a dangerous instrument, or caused serious physical injury during
the commission of the offense, or knowingly directed the conduct constituting
the offense at a uniformed or otherwise clearly identified peace officer, fire
fighter, correctional employee, emergency medical technician, paramedic,
ambulance attendant, or other emergency responder who was engaged in the
performance of official duties at the time of the offense, seven years;

(B) for manslaughter and the conduct resulting in the
conviction was knowingly directed towards a child under the age of 16, seven
years;

(C) for manslaughter and the conduct resulting in the
conviction involved driving while under the influence of an alcoholic
beverage, inhalant, or controlled substance, seven years;

(3) if the offense is a second felony conviction, 10 years;

(4) if the offense is a third felony conviction and the defendant is not
subject to sentencing under (1) of this section, 15 years.

1 * Sec. 5. AS 18.67.101 is amended to read:

2 **Sec. 18.67.101. Incidents and offenses to which this chapter applies.** The
3 board may order the payment of compensation in accordance with the provisions of
4 this chapter for personal injury or death that resulted from

5 (1) an attempt on the part of the applicant to prevent the commission of
6 crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police
7 officer to do so, or aiding a victim of crime; or

8 (2) the commission or attempt on the part of one other than the
9 applicant to commit any of the following offenses:

10 (A) murder in any degree;

11 (B) manslaughter;

12 (C) criminally negligent homicide;

13 (D) assault in any degree;

14 (E) kidnapping;

15 (F) sexual assault in any degree;

16 (G) sexual abuse of a minor;

17 (H) robbery in any degree;

18 (I) threats to do bodily harm; or

19 (J) driving while under the influence of an alcoholic
20 beverage, inhalant, or controlled substance [INTOXICATED] or another
21 crime resulting from the operation of a motor vehicle, boat, or airplane when
22 the offender is under the influence of an alcoholic beverage, inhalant, or
23 controlled substance [INTOXICATED].

24 * Sec. 6. AS 28.01 is amended by adding a new section to read:

25 **Sec. 28.01.015. Municipal impoundment and forfeiture.** (a)

26 Notwithstanding other provisions in this title, a municipality may adopt an ordinance
27 providing for the impoundment or forfeiture of a

28 (1) motor vehicle, watercraft, or aircraft involved in the commission of
29 an offense under AS 28.35.030, 28.35.032, or an ordinance with elements substantially
30 similar to AS 28.35.030 or 28.35.032;

31 (2) motor vehicle involved in the commission of an offense under

1 AS 28.15.291 or an ordinance with elements similar to AS 28.15.291; or

2 (3) motor vehicle used by a person whose license is suspended under
3 AS 28.22.041.

4 (b) An ordinance adopted under (a) of this section may

5 (1) include a fee for the administrative costs incurred by the
6 municipality; and

7 (2) be more stringent than or the same as but may not be less stringent
8 than applicable provisions under this title or regulations adopted under this title.

9 * Sec. 7. AS 28.10.041 is amended by adding a new subsection to read:

10 (d) The department shall refuse to register a vehicle if the applicant fails to
11 register the vehicle using the applicant's first, middle, and last name or a business
12 name. An applicant may not use initials when registering a vehicle.

13 * Sec. 8. AS 28.15.046(d) is amended to read:

14 (d) The department may not issue a license to an applicant who has been
15 convicted of driving while under the influence of an alcoholic beverage, inhalant,
16 or controlled substance [INTOXICATED] under AS 28.35.030 within two years of
17 the time of application or to an applicant who has two or more convictions for driving
18 while under the influence of an alcoholic beverage, inhalant, or controlled
19 substance [INTOXICATED] within 10 years of the time of application.

20 * Sec. 9. AS 28.15.081(a) is amended to read:

21 (a) The department shall examine every applicant for a driver's license. The
22 examination must include a test of the applicant's (1) eyesight, (2) ability to read and
23 understand official traffic control devices, (3) knowledge of safe driving practices, (4)
24 knowledge of the effects of alcohol and drugs on drivers and the dangers of driving
25 under the influence of alcohol or drugs, (5) knowledge of the laws on driving while
26 under the influence of an alcoholic beverage, inhalant, or controlled substance
27 [INTOXICATED], (6) knowledge of the laws on financial responsibility and
28 mandatory motor vehicle liability insurance, and (7) knowledge of the traffic laws and
29 regulations of the state. The examination may include a demonstration of ability to
30 exercise ordinary and reasonable control in the driving of a motor vehicle of the type
31 and general class of vehicles for which the applicant seeks a license. However, an

1 applicant who has not been previously issued a driver's license by this or another
2 jurisdiction shall demonstrate ability and shall present medical information that the
3 department reasonably requires to determine fitness to safely drive a motor vehicle of
4 the type and general class of vehicles for which the applicant seeks a license.

5 * Sec. 10. AS 28.15.165(c) is amended to read:

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

18 (1) that a chemical test administered under AS 28.33.031(a) or
19 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2), that a
20 chemical test administered under AS 28.33.031(a) produced a result described in
21 AS 28.33.030(a)(2), or that a person refused to submit to a chemical test authorized
22 under AS 28.33.031(a) or AS 28.35.031(a) or (g);

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

24 (3) describing the

25 (A) circumstances surrounding the arrest and the grounds for
26 the officer's belief that the person operated a motor vehicle, commercial motor
27 vehicle, or aircraft while under the influence of an alcoholic beverage,
28 inhalant, or controlled substance [INTOXICATED] in violation of
29 AS 28.33.030 or AS 28.35.030; or

30 (B) grounds for the officer's belief that the person operated a
31 motor vehicle or commercial motor vehicle that was involved in an accident

1 causing death or serious physical injury to another person.

2 * Sec. 11. AS 28.15.166(g) is amended to read:

3 (g) The hearing for review of action by the department under AS 28.15.165
4 shall be limited to the issues of whether the law enforcement officer had probable
5 cause [REASONABLE GROUNDS] to believe that the person was operating a motor
6 vehicle or commercial motor vehicle that was involved in an accident causing death or
7 serious physical injury to another, or that the person was operating a motor vehicle,
8 commercial motor vehicle, or aircraft while under the influence of an alcoholic
9 beverage, inhalant, or controlled substance [INTOXICATED] in violation of
10 AS 28.33.030 or AS 28.35.030 and whether

11 (1) the person refused to submit to a chemical test authorized under
12 AS 28.33.031(a) or AS 28.35.031(a) or (g) after being advised that refusal would
13 result in disqualification or the suspension, revocation, or denial of the person's
14 license, privilege to drive, or privilege to obtain a license, and that the refusal is a
15 misdemeanor;

16 (2) the chemical test administered under AS 28.33.031(a) or
17 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2); or

18 (3) the chemical test administered under AS 28.33.031(a) produced a
19 result described in AS 28.33.030(a)(2).

20 * Sec. 12. AS 28.15.181(a) is amended to read:

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

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

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

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

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

30 (5) operating a motor vehicle or aircraft while under the influence of
31 an alcoholic beverage, inhalant, or controlled substance [INTOXICATED];

- 1 (6) reckless driving;
- 2 (7) using a motor vehicle in unlawful flight to avoid arrest by a peace
- 3 officer;
- 4 (8) refusal to submit to a chemical test authorized under
- 5 AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle,
- 6 commercial motor vehicle, or aircraft while under the influence of an alcoholic
- 7 beverage, inhalant, or controlled substance [INTOXICATED], or authorized under
- 8 AS 28.35.031(g);
- 9 (9) driving while license, privilege to drive, or privilege to obtain a
- 10 license, canceled, suspended, or revoked, or in violation of a limitation;
- 11 (10) vehicle theft in the first degree in violation of AS 11.46.360 or
- 12 vehicle theft in the second degree in violation of AS 11.46.365.

13 * Sec. 13. AS 28.15.181(c) is amended to read:

14 (c) A court convicting a person of an offense described in (a)(5) or (8) of this
15 section arising out of the operation of a motor vehicle, commercial motor vehicle, or
16 aircraft shall revoke that person's driver's license, privilege to drive, or privilege to
17 obtain a license. The revocation may be concurrent with or consecutive to an
18 administrative revocation under AS 28.15.165. The court may not, except as provided
19 in AS 28.15.201, grant limited license privileges during the minimum period of
20 revocation. Except as provided under AS 28.35.030(n)(3) and (q), and
21 28.35.032(p)(3) and (s), the [THE] minimum periods of revocation are [:]

- 22 (1) not less than 90 days if the person has not been previously
- 23 convicted;
- 24 (2) not less than one year if the person has been previously convicted
- 25 once;
- 26 (3) not less than 3 years if the person has been previously convicted
- 27 twice;
- 28 (4) not less than 5 years if the person has been previously convicted
- 29 more than twice.

30 * Sec. 14. AS 28.15.181(d) is amended to read:

31 (d) Except as provided under AS 28.35.030(q) and 28.35.032(s), a [A] court

1 convicting a person of an offense described in (a)(9) of this section shall revoke that
2 person's driver's license, privilege to drive, or privilege to obtain a license for not less
3 than the minimum period under AS 28.15.291(b)(4).

4 * Sec. 15. AS 28.15.191(a) is amended to read:

5 (a) A court that convicts a person of an offense under this title or a regulation
6 adopted under this title, or another law or regulation of this state, or a municipal
7 ordinance that regulates the driving of vehicles, shall forward a record of the
8 conviction to the department within five working days. A conviction of a standing or
9 parking offense need not be reported.

10 * Sec. 16. AS 28.15.201(a) is amended to read:

11 (a) A court of competent jurisdiction revoking a person's driver's license,
12 privilege to drive, or privilege to obtain a license under AS 28.15.181(b), (c), or (d)
13 may, for good cause, impose limitations upon the driver's license of a person that will
14 enable the person to earn a livelihood without excessive risk or danger to the public.
15 A limitation may not be placed upon a driver's license until after a review has been
16 made of the person's driving record and other relevant information, and a limitation
17 may not be imposed when a statute specifically prohibits the limitation of a license for
18 a violation of its provisions.

19 * Sec. 17. AS 28.15.201(b) is amended to read:

20 (b) A court imposing a limitation under (a) of this section shall
21 (1) require certification of employment;
22 (2) require proof of enrollment in and compliance with or completion
23 of an alcoholism treatment program when appropriate;
24 (3) require the surrender of the driver's license; [AND]
25 (4) issue to the licensee a certificate valid for the duration of the
26 limitation; and
27 (5) if the revocation is imposed under AS 28.15.181(c) or (d),
28 require that the person successfully complete a therapeutic court program.

29 * Sec. 18. AS 28.15.201(d) is amended to read:

30 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain
31 a license under AS 28.15.181(c), or the department when revoking a driver's license,

1 privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant
2 limited license privileges for

3 (1) the final 60 days during which the license is revoked if

4 (A) [(1)] the revocation was for a **misdemeanor conviction**
5 **under AS 28.35.030(a) [VIOLATION OF AS 28.15.181(a)(5)] and not for a**
6 **violation of AS 28.35.032 [AS 28.15.181(a)(8)];**

7 (B) [(2)] the person has not been previously convicted; in this
8 paragraph, "previously convicted" has the meaning given in AS 28.35.030 and
9 also includes convictions based on laws presuming that the person was under
10 the influence of intoxicating liquor if there was 0.08 percent or more by weight
11 of alcohol in the person's blood;

12 (C) [(3)] the court or the department determines that the
13 person's ability to earn a livelihood would be severely impaired without a
14 limited license;

15 (D) [(4)] the court or the department determines that a
16 limitation under (a) of this section can be placed on the license that will enable
17 the person to earn a livelihood without excessive danger to the public; and

18 (E) [(5)] the court or the department determines that the person
19 is enrolled in and is in compliance with, or has successfully completed **the [,**
20 **AN] alcoholism screening, evaluation, referral, and [EDUCATION AND**
21 **REHABILITATION TREATMENT] program requirements of the**
22 **Department of Health and Social Services under AS 28.35.030(h); or**

23 (2) up to a one year period if the person

24 (A) **was convicted of a misdemeanor violation under**
25 **AS 28.15.291, AS 28.35.030(a), or 28.35.032(a);**

26 (B) **meets the requirements of (1)(C) - (E) of this**
27 **subsection;**

28 (C) **does not commit a criminal offense during the limited**
29 **license period;**

30 (D) **does not consume alcohol or controlled substances**
31 **during the limited license period; and**

1 (E) successfully completes a therapeutic court program.

2 * Sec. 19. AS 28.15.201 is amended by adding a new subsection to read:

3 (e) Limited license privileges granted under (d)(2) of this section may be
4 renewed annually, by application to the court, at least 30 but not more than 90 days
5 before expiration of the limited license. The court may renew the limited license if the
6 person is in compliance with (d)(2) of this section.

7 * Sec. 20. AS 28.15.211(d) is amended to read:

8 (d) At the end of a period of revocation or limitation following a revocation, a
9 person whose driver's license has been revoked may apply to the department for the
10 issuance of a new license, but shall submit to reexamination, pay all required fees
11 including a reinstatement fee, and, if the license was revoked under
12 AS 28.15.181(a)(5) or (8), submit proof to the court or the department that the
13 person has met the alcoholism screening, evaluation, referral, and program
14 requirements of the Department of Health and Social Services under
15 AS 28.35.030(h) [OF

16 (1) ENROLLMENT IN AND COMPLIANCE WITH OR
17 COMPLETION OF AN ALCOHOLISM EDUCATION AND REHABILITATION
18 TREATMENT PROGRAM APPROVED UNDER AS 47.37 IF THE PERSON WAS
19 SENTENCED UNDER AS 28.15.181(c)(1); OR

20 (2) COMPLETION OF AND PAYMENT FOR AN ALCOHOLISM
21 EDUCATION AND REHABILITATION TREATMENT PROGRAM APPROVED
22 UNDER AS 47.37 IF THE PERSON WAS CONVICTED UNDER
23 AS 28.15.181(c)(2) - (4)].

24 * Sec. 21. AS 28.15.271(b) is amended to read:

25 (b) In addition to the fees under (a) of this section,

26 (1) a person who renews a driver's license by mail shall pay a fee of
27 \$1;

28 (2) a person who applies for a limited driver's license under
29 AS 28.15.201 shall pay a fee of \$100; and

30 (3) a person who applies for reinstatement of a driver's license under
31 AS 28.15.211 shall pay a fee of

1 (A) \$100 if the person's driver's license has, within the 10 years
2 preceding the application, been suspended, revoked, or limited under the
3 provisions of this chapter, except as provided by (C) of this paragraph, only
4 once; [OR]

5 (B) \$250 if the person's driver's license has, within the 10 years
6 preceding the application, been suspended, revoked, or limited under the
7 provisions of this chapter, except as provided by (D) of this paragraph, two
8 or more times;

9 (C) \$200 if the person's driver's license has, within the 10
10 years preceding the application, been revoked under AS 28.35.030 or
11 28.35.032 only once; or

12 (D) \$500 if the person's driver's license has, within the 10
13 years preceding the application, been revoked under AS 28.35.030 or
14 28.35.032 two or more times.

15 * Sec. 22. AS 28.15.291(b) is amended to read:

16 (b) Upon conviction under (a) of this section, the court

17 (1) shall impose a minimum sentence of imprisonment

18 (A) if the person has not been previously convicted, of not less
19 than 10 days with 10 days suspended, including a mandatory condition of
20 probation that the defendant complete not less than 80 hours of community
21 work service;

22 (B) if the person has been previously convicted, of not less than
23 10 days;

24 (C) if the person's driver's license, privilege to drive, or
25 privilege to obtain a license was revoked under circumstances described in
26 AS 28.15.181(c)(1), or if the person was driving in violation of a limited
27 license issued under AS 28.15.201(d) following that revocation, of not less
28 than 20 days with 10 days suspended, and a fine of not less than \$500,
29 including a mandatory condition of probation that the defendant complete not
30 less than 80 hours of community work service;

31 (D) if the person's driver's license, privilege to drive, or

1 privilege to obtain a license was revoked under circumstances described in
2 AS 28.15.181(c)(2), (3), or (4) or if the person was driving in violation of a
3 limited license issued under AS 28.15.201(d) following that revocation, of not
4 less than 30 days and a fine of not less than \$1,000;

5 (2) may impose additional conditions of probation;

6 (3) may not

7 (A) suspend execution of sentence or grant probation except on
8 condition that the person serve a minimum term of imprisonment and perform
9 required community work service as provided in (1) of this subsection;

10 (B) suspend imposition of sentence; [AND]

11 (4) shall revoke the person's license, privilege to drive, or privilege to
12 obtain a license, and the person may not be issued a new license or a limited license
13 nor may the privilege to drive or obtain a license be restored for an additional period
14 of not less than 90 days after the date that the person would have been entitled to
15 restoration of driving privileges; and

16 (5) may order that the motor vehicle that was used in commission
17 of the offense be forfeited under AS 28.35.036.

18 * Sec. 23. AS 28.33.030 is amended to read:

19 Sec. 28.33.030. Operating a commercial motor vehicle while under the
20 influence of an alcoholic beverage, inhalant, or controlled substance
21 [INTOXICATED]. (a) A person commits the crime of operating a commercial
22 motor vehicle while under the influence of an alcoholic beverage, inhalant, or
23 controlled substance [INTOXICATED] if the person operates a commercial motor
24 vehicle

25 (1) while under the influence of an alcoholic beverage, inhalant,
26 [INTOXICATING LIQUOR] or any controlled substance;

27 (2) when, as determined by a chemical test taken within four hours
28 after the alleged offense was committed, there is 0.04 percent or more by weight of
29 alcohol in the person's blood or 40 milligrams or more of alcohol per 100 milliliters of
30 blood, or when there is 0.04 grams or more of alcohol per 210 liters of the person's
31 breath; or

1 (3) while under the combined influence of an alcoholic beverage,
2 inhalant, [INTOXICATING LIQUOR] and a controlled substance.

3 (b) Operating a commercial motor vehicle while under the influence of an
4 alcoholic beverage, inhalant, or controlled substance [INTOXICATED] is a class
5 A misdemeanor.

6 (c) The sentencing of a person convicted under this section shall be in
7 accordance with the minimum periods of imprisonment, fines, rehabilitative treatment,
8 and other provisions of AS 28.35.030, as if the person had been convicted of a
9 violation of AS 28.35.030. For purposes of sentencing, convictions for operating a
10 commercial motor vehicle while under the influence of an alcoholic beverage,
11 inhalant, or controlled substance [INTOXICATED] under this section, and for
12 refusal to submit to a chemical test under AS 28.33.032, if arising out of a single
13 transaction, are considered one previous conviction.

14 * Sec. 24. AS 28.33.031(a) is amended to read:

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

17 (1) of the person's breath if lawfully arrested for an offense arising out
18 of acts alleged to have been committed when the person was operating the commercial
19 motor vehicle while under the influence of an alcoholic beverage, inhalant, or
20 controlled substance [INTOXICATED]; the test or tests may be administered at the
21 direction of a law enforcement officer who has probable cause [REASONABLE
22 GROUNDS] to believe that the person was operating a commercial motor vehicle
23 while under the influence of an alcoholic beverage, inhalant, or controlled
24 substance [INTOXICATED] in violation of AS 28.33.030 or AS 28.35.030;

25 (2) of the person's breath and blood for the purpose of determining the
26 alcoholic content of the person's breath and blood and is considered to have given
27 consent to a chemical test or tests of the person's blood and urine for the purpose of
28 determining the presence of controlled substances in the person's blood and urine if
29 the person is involved in a motor vehicle accident that causes death or serious physical
30 injury to another person; the test or tests may be administered at the direction of a law
31 enforcement officer who has probable cause [REASONABLE GROUNDS] to

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

3 * Sec. 25. AS 28.33.031(c) is amended to read:

4 (c) A person who operates a commercial motor vehicle is considered to have
5 given consent to a preliminary breath test, at the direction of a law enforcement
6 officer, for the purpose of determining the alcoholic content of the person's blood or
7 breath. A law enforcement officer may administer a preliminary breath test if the
8 officer has probable cause [REASONABLE GROUNDS] to believe that the person's
9 ability to operate a commercial motor vehicle is impaired by the ingestion of alcoholic
10 beverages and that

- 11 (1) the commercial motor vehicle caused injury to person or property;
- 12 (2) the person violated the provisions of AS 28.33.130(a) or violated
13 the terms of an out-of-service order issued under AS 28.33.130; or
- 14 (3) the person unlawfully operated a commercial motor vehicle; in this
15 paragraph, "unlawfully" means in violation of any federal, state, or municipal statute,
16 regulation, or ordinance.

17 * Sec. 26. AS 28.33.033(a) is amended to read:

18 (a) Upon the trial of a civil or criminal action or proceedings arising out of
19 acts alleged to have been committed by a person operating a commercial motor
20 vehicle while under the influence of an alcoholic beverage [INTOXICATED] in
21 violation of AS 28.33.030, the following rules apply with regard to the amount of
22 alcohol in the person's blood or breath at the time alleged:

- 23 (1) if there was less than 0.04 percent by weight of alcohol in the
24 person's blood, or less than 40 milligrams of alcohol per 100 milliliters of the person's
25 blood, or less than 0.04 grams of alcohol per 210 liters of the person's breath, that fact
26 does not give rise to a presumption that the person was or was not under the influence
27 of an alcoholic beverage [INTOXICATING LIQUOR], but that fact may be
28 considered with other competent evidence in determining whether the person was
29 under the influence of an alcoholic beverage [INTOXICATING LIQUOR];
- 30 (2) if there was 0.04 percent or more by weight of alcohol in the
31 person's blood, or 40 milligrams or more of alcohol per 100 milliliters of the person's

1 blood, or 0.04 grams or more of alcohol per 210 liters of the person's breath, it is
2 presumed that the person was under the influence of an alcoholic beverage
3 [INTOXICATING LIQUOR].

4 * Sec. 27. AS 28.33.033(c) is amended to read:

5 (c) The provisions of (a) of this section may not be construed to limit the
6 introduction of any other competent evidence bearing upon the question of whether
7 the person was or was not under the influence of an alcoholic beverage
8 [INTOXICATING LIQUOR].

9 * Sec. 28. AS 28.33.140(a) is amended to read:

10 (a) In addition to the court action provided in AS 28.15.181, conviction of any
11 of the following offenses is grounds for immediate disqualification from driving a
12 commercial motor vehicle for the periods set out in this section:

13 (1) operating a commercial motor vehicle while under the influence
14 of an alcoholic beverage, inhalant, or controlled substance [INTOXICATED] in
15 violation of AS 28.33.030;

16 (2) refusal to submit to a chemical test in violation of AS 28.35.032;

17 (3) operating a motor vehicle while under the influence of an
18 alcoholic beverage, inhalant, or controlled substance [INTOXICATED] in
19 violation of AS 28.35.030;

20 (4) leaving the scene of an accident in violation of AS 28.35.060, or
21 failing to file, or providing false information in, an accident report in violation of
22 AS 28.35.110;

23 (5) a felony under state or federal law, which was facilitated because
24 the person used a commercial motor vehicle;

25 (6) a serious traffic violation; or

26 (7) driving after being placed out of service in violation of regulations
27 adopted under AS 28.05.011.

28 * Sec. 29. AS 28.35.030(a) is amended to read:

29 (a) A person commits the crime of driving while under the influence of an
30 alcoholic beverage, inhalant, or controlled substance [INTOXICATED] if the
31 person operates or drives a motor vehicle or operates an aircraft or a watercraft

1 (1) while under the influence of an alcoholic beverage, intoxicating
2 liquor, inhalant, or any controlled substance;

3 (2) when, as determined by a chemical test taken within four hours
4 after the alleged offense was committed, there is 0.08 percent or more by weight of
5 alcohol in the person's blood or 80 milligrams or more of alcohol per 100 milliliters of
6 blood, or when there is 0.08 grams or more of alcohol per 210 liters of the person's
7 breath; or

8 (3) while the person is under the combined influence of an alcoholic
9 beverage, an intoxicating liquor, an inhalant, and a controlled substance.

10 * Sec. 30. AS 28.35.030(b) is amended to read:

11 (b) Except as provided under (n) of this section, driving while under the
12 influence of an alcoholic beverage, inhalant, or controlled substance
13 [INTOXICATED] is a class A misdemeanor. Except as provided under (q) of this
14 section, upon [UPON] conviction,

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

16 (A) not less than 72 consecutive hours and a fine of not less
17 than \$1,500 [~~\$250~~] if the person has not been previously convicted;

18 (B) not less than 20 days and a fine of not less than \$3,000
19 [~~\$500~~] if the person has been previously convicted once;

20 (C) not less than 60 days and a fine of not less than \$4,000
21 [~~\$1,000~~] if the person has been previously convicted twice and is not subject to
22 punishment under (n) of this section;

23 (D) not less than 120 days and a fine of not less than \$5,000
24 [~~\$2,000~~] if the person has been previously convicted three times and is not
25 subject to punishment under (n) of this section;

26 (E) not less than 240 days and a fine of not less than \$6,000
27 [~~\$3,000~~] if the person has been previously convicted four times and is not
28 subject to punishment under (n) of this section;

29 (F) not less than 360 days and a fine of not less than \$7,000
30 [~~\$4,000~~] if the person has been previously convicted more than four times and
31 is not subject to punishment under (n) of this section;

- 1 (2) the court may not
2 (A) suspend execution of sentence or grant probation except on
3 condition that the person serve the minimum imprisonment under (1) of this
4 subsection;
5 (B) suspend imposition of sentence;
6 (3) the court shall revoke the person's driver's license, privilege to
7 drive, or privilege to obtain a license under AS 28.15.181, and may order that the
8 motor vehicle, [OR] aircraft, or watercraft that was used in commission of the
9 offense [TO] be forfeited under AS 28.35.036; and
10 (4) the court may order that the person, while incarcerated or as a
11 condition of probation or parole, take a drug or combination of drugs intended to
12 prevent the consumption of an alcoholic beverage; a condition of probation or
13 parole imposed under this paragraph is in addition to any other condition
14 authorized under another provision of law.

15 * Sec. 31. AS 28.35.030(d) is amended to read:

16 (d) Except as prohibited by federal law or regulation, every provider of
17 treatment programs to which persons are ordered under [(h) OF] this section shall
18 supply the judge, prosecutor, defendant, and an agency involved in the
19 defendant's treatment with information and reports concerning the defendant's
20 past and present assessment, treatment, and progress [ALASKA COURT
21 SYSTEM WITH THE INFORMATION REGARDING THE CONDITION AND
22 TREATMENT OF THOSE PERSONS AS THE SUPREME COURT MAY
23 REQUIRE BY RULE]. Information compiled under this subsection is confidential
24 and may only be used in connection with court proceedings involving the
25 defendant's treatment, including use by a court in sentencing a person convicted
26 under this section, or by an officer of the court in preparing a presentence report for
27 the use of the court in sentencing a person convicted under this section.

28 * Sec. 32. AS 28.35.030(k) is amended to read:

29 (k) Imprisonment required under (b)(1)(A) [OR (B)] of this section shall be
30 served at a community residential center or, if a community residential center is not
31 available, at another appropriate place determined by the commissioner of corrections.

1 Imprisonment required under (b)(1)(B) - (F) of this section may be served at a
2 community residential center or at a private residence if approved by the
3 commissioner of corrections. Imprisonment served at a private residence must
4 include electronic monitoring. The cost of imprisonment resulting from the sentence
5 imposed under (b)(1) of this section shall be paid to the state by the person being
6 sentenced provided, however, that the cost of imprisonment required to be paid under
7 this subsection may not exceed \$2,000 [\$1,000]. Upon the person's conviction, the
8 court shall include the costs of imprisonment as a part of the judgment of conviction.
9 Except for reimbursement from a permanent fund dividend as provided in this
10 subsection, payment of the cost of imprisonment is not required if the court determines
11 the person is indigent. For costs of imprisonment that are not paid by the person as
12 required by this subsection, the state shall seek reimbursement from the person's
13 permanent fund dividend as provided under AS 43.23.065. While at the community
14 residential center or other appropriate place, a person sentenced under (b)(1)(A) of this
15 section shall perform at least 24 hours of community service work, A [AND A]
16 person sentenced under (b)(1)(B) of this section shall perform at least 160 hours of
17 community service work, as required by the director of the community residential
18 center or other appropriate place, or as required by the commissioner of corrections
19 if the sentence is being served at a private residence. In this subsection,
20 "appropriate place" means a facility with 24-hour on-site staff supervision that is
21 specifically adapted to provide a residence, and includes a correctional center,
22 residential treatment facility, hospital, halfway house, group home, work farm, work
23 camp, or other place that provides varying levels of restriction.

24 * Sec. 33. AS 28.35.030(n) is amended to read:

25 (n) A person is guilty of a class C felony if the person is convicted under (a) of
26 this section and has been previously convicted two or more times since January 1,
27 1996, and within the 10 years preceding the date of the present offense. For purposes
28 of determining minimum sentences based on previous convictions, the provisions of
29 (o)(4) of this section apply. Except as provided under (q) of this section, upon
30 [UPON] conviction, the court

31 (1) shall impose a fine of not less than \$10,000 [\$5,000] and a

1 minimum sentence of imprisonment of not less than

2 (A) 120 days if the person has been previously convicted twice;

3 (B) 240 days if the person has been previously convicted three

4 times;

5 (C) 360 days if the person has been previously convicted four
6 or more times;

7 (2) may not

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

11 (B) suspend imposition of sentence;

12 (3) shall permanently revoke the person's driver's license, privilege to
13 drive, or privilege to obtain a license subject to restoration of the license under (p)
14 of this section [UNDER AS 28.15.181(c)];

15 (4) may order [AS A CONDITION OF PROBATION OR PAROLE]
16 that the person, while incarcerated or as a condition of probation or parole, take a
17 drug or combination of drugs, intended to prevent the consumption of an alcoholic
18 beverage; a condition of probation or parole imposed under this paragraph is in
19 addition to any other condition authorized under another provision of law; [AND]

20 (5) shall [MAY ALSO] order forfeiture under AS 28.35.036 of the
21 vehicle, watercraft, or aircraft used in the commission of the offense, subject to
22 remission under AS 28.35.037; and

23 (6) shall order the department to revoke the registration for any
24 vehicle registered by the department in the name of the person convicted under
25 this subsection; if a person convicted under this subsection is a registered co-
26 owner of a vehicle or is registered as a co-owner under a business name, the
27 department shall reissue the vehicle registration and omit the name of the person
28 convicted under this subsection.

29 * Sec. 34. AS 28.35.030(o) is amended to read:

30 (o) In this section,

31 (1) "inhalant" has the meaning given to the phrase "hazardous

1 volatile material or substance" in AS 47.37.270; [REPEALED]

2 (2) "operate an aircraft" means to navigate, pilot, or taxi an aircraft in
3 the airspace over this state, or upon the land or water inside this state;

4 (3) "operate a watercraft" means to navigate a vessel used or capable
5 of being used as a means of transportation on water for recreational or commercial
6 purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or
7 under the jurisdiction of the state;

8 (4) "previously convicted" means having been convicted in this or
9 another jurisdiction of any of the following offenses; however, convictions for any of
10 these offenses, if arising out of a single transaction and a single arrest, are considered
11 one previous conviction:

12 (A) operating a motor vehicle, aircraft, or watercraft [WHILE
13 INTOXICATED,] in violation of this section or in violation of another law or
14 ordinance with similar elements, except that the other law or ordinance may
15 provide for a lower level of alcohol in the person's blood or breath than
16 imposed under (a)(2) of this section;

17 (B) refusal to submit to a chemical test in violation of
18 AS 28.35.032 or in violation of another law or ordinance with similar
19 elements; or

20 (C) operating a commercial motor vehicle [WHILE
21 INTOXICATED] in violation of AS 28.33.030 or in violation of another law
22 or ordinance with similar elements, except that the other law or ordinance may
23 provide for a lower level of alcohol in the person's blood or breath than
24 imposed under AS 28.33.030(a)(2).

25 * Sec. 35. AS 28.35.030 is amended by adding new subsections to read:

26 (p) Upon request, the department shall review a driver's license revocation
27 imposed under (n)(3) of this section and may restore the driver's license if

28 (1) the license has been revoked for a period of at least 10 years;

29 (2) the person has not been convicted of a criminal offense since the
30 license was revoked; and

31 (3) the person provides proof of financial responsibility.

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(q) If the court determines that the person has successfully completed a therapeutic court or other court-ordered treatment program, the court may suspend

(1) a portion of the mandatory minimum sentence required under (b)(1) or (n)(1) of this section;

(2) up to 75 percent of the minimum fines required under (b)(1) or (n)(1) of this section; and

(3) a portion of the mandatory driver's license revocation imposed under (b)(3) of this section as provided under AS 28.15.201.

(r) For purposes of this section, the director of the division within the department responsible for administration of this section or a person designated by the director may request and receive criminal justice information available under AS 12.62. In this subsection, "criminal justice information" has the meaning given in AS 12.62.900.

* Sec. 36. AS 28.35.031(a) is amended to read:

(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(o) [AS 28.35.030(o)(2)] or who operates a watercraft as defined in AS 28.35.030(o) [AS 28.35.030(o)(3)] 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 under the influence of an alcoholic beverage, inhalant, or controlled substance [INTOXICATED] or if lawfully arrested under AS 28.35.280 for the offense of minor operating a vehicle after consuming alcohol. The test or tests shall be administered at the direction of a law enforcement officer who has probable cause [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 under the influence of an alcoholic beverage, inhalant, or controlled substance [INTOXICATED] or that the person was a minor operating a vehicle after consuming alcohol.

* Sec. 37. AS 28.35.031(b) is amended to read:

1 (b) A person who operates or drives a motor vehicle in this state or who
2 operates an aircraft or watercraft shall be considered to have given consent to a
3 preliminary breath test for the purpose of determining the alcoholic content of the
4 person's blood or breath. A law enforcement officer may administer a preliminary
5 breath test at the scene of the incident if the officer has probable cause
6 [REASONABLE GROUNDS] to believe that a person's ability to operate a motor
7 vehicle, aircraft, or watercraft is impaired by the ingestion of alcoholic beverages and
8 that the person

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

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

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

18 * Sec. 38. AS 28.35.031(g) is amended to read:

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

30 * Sec. 39. AS 28.35.032(a) is amended to read:

31 (a) If a person under arrest for operating a motor vehicle or aircraft while

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

22 * Sec. 40. AS 28.35.032(e) is amended to read:

23 (e) The refusal of a person to submit to a chemical test authorized under
24 AS 28.33.031(a) or AS 28.35.031(a) or (g) is admissible evidence in a civil or criminal
25 action or proceeding arising out of an act alleged to have been committed by the
26 person while operating or driving a motor vehicle or operating an aircraft or watercraft
27 while under the influence of an alcoholic beverage, inhalant, or controlled
28 substance [INTOXICATED].

29 * Sec. 41. AS 28.35.032(g) is amended to read:

30 (g) Except as provided under (s) of this section, upon [UPON] conviction
31 under this section,

- 1 (1) the court shall impose a minimum sentence of imprisonment of
2 (A) not less than 72 consecutive hours and a fine of not less
3 than \$1,500 [\$250] if the person has not been previously convicted;
4 (B) not less than 20 days and a fine of not less than \$3,000
5 [\$500] if the person has been previously convicted once;
6 (C) not less than 60 days and a fine of not less than \$4,000
7 [\$1,000] if the person has been previously convicted twice and is not subject to
8 punishment under (p) of this section;
9 (D) not less than 120 days and a fine of not less than \$5,000
10 [\$2,000] if the person has been previously convicted three times and is not
11 subject to punishment under (p) of this section;
12 (E) not less than 240 days and a fine of not less than \$6,000
13 [\$3,000] if the person has been previously convicted four times and is not
14 subject to punishment under (p) of this section;
15 (F) not less than 360 days and a fine of not less than \$7,000
16 [\$4,000] if the person has been previously convicted more than four times and
17 is not subject to punishment under (p) of this section;
- 18 (2) the court may not
19 (A) suspend execution of the sentence required by (1) of this
20 subsection or grant probation, except on condition that the person serve the
21 minimum imprisonment under (1) of this subsection; or
22 (B) suspend imposition of sentence;
- 23 (3) the court shall revoke the person's driver's license, privilege to
24 drive, or privilege to obtain a license under AS 28.15.181, and may order that the
25 motor vehicle, [OR] aircraft, or watercraft that was used in commission of the
26 offense be forfeited under AS 28.35.036; [AND]
- 27 (4) the court may order the motor vehicle, aircraft, or watercraft
28 used in the commission of the offense forfeited under AS 28.35.036;
- 29 (5) the court may order that the person, while incarcerated or as a
30 condition of probation or parole, take a drug or combination of drugs intended to
31 prevent the consumption of an alcoholic beverage; a condition of probation or

1 parole imposed under this paragraph is in addition to any other condition
2 authorized under another provision of law; and

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

5 * Sec. 42. AS 28.35.032(h) is amended to read:

6 (h) Except as prohibited by federal law or regulation, every provider of
7 treatment programs to which persons are ordered under [(l) OF] this section shall
8 supply the judge, prosecutor, defendant, and an agency involved in the
9 defendant's treatment with information and reports concerning the defendant's
10 past and present assessment, treatment, and progress [ALASKA COURT
11 SYSTEM WITH THE INFORMATION REGARDING THE CONDITION AND
12 TREATMENT OF THOSE PERSONS AS THE SUPREME COURT MAY
13 REQUIRE BY RULE]. Information compiled under this subsection is confidential
14 and may only be used in connection with court proceedings involving the
15 defendant's treatment, including use by a court in sentencing a person convicted
16 under this section, or by an officer of the court in preparing a pre-sentence report for
17 the use of the court in sentencing a person convicted under this section.

18 * Sec. 43. AS 28.35.032(j) is amended to read:

19 (j) For purposes of this section, convictions [FOR OPERATING OR
20 DRIVING WHILE INTOXICATED] under AS 28.33.030 or AS 28.35.030 and for
21 refusal to submit to a chemical test under this section, if arising out of a single
22 transaction and a single arrest, are considered one previous conviction.

23 * Sec. 44. AS 28.35.032(o) is amended to read:

24 (o) Imprisonment required under (g)(1)(A) [OR (B)] of this section shall be
25 served at a community residential center, or if a community residential center is not
26 available, at another appropriate place determined by the commissioner of corrections.
27 Imprisonment required under (g)(1)(B) - (F) of this section may be served at a
28 community residential center or at a private residence if approved by the
29 commissioner of corrections. Imprisonment served at a private residence must
30 include electronic monitoring. The cost of imprisonment resulting from the sentence
31 imposed under (g)(1) of this section shall be paid to the state by the person being

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sentenced provided, however, that the cost of imprisonment required to be paid under this subsection may not exceed \$2,000 [\$1,000]. Upon the person's conviction, the court shall include the costs of imprisonment as a part of the judgment of conviction. Except for reimbursement from a permanent fund dividend as provided in this subsection, payment of the cost of imprisonment is not required if the court determines the person is indigent. For costs of imprisonment that are not paid by the person as required by this subsection, the state shall seek reimbursement from the person's permanent fund dividend as provided under AS 43.23.065. While at the community residential center or other appropriate place, a person sentenced under (g)(1)(A) of this section shall perform at least 24 hours of community service work. A [AND A] person sentenced under (g)(1)(B) of this section shall perform at least 160 hours of community service work, as required by the director of the community residential center or other appropriate place, or as required by the commissioner of corrections if the sentence is being served at a private residence. In this subsection, "appropriate place" means a facility with 24-hour on-site staff supervision that is specifically adapted to provide a residence, and includes a correctional center, residential treatment facility, hospital, halfway house, group home, work farm, work camp, or other place that provides varying levels of restriction.

* Sec. 45. AS 28.35.032(p) is amended to read:

(p) A person is guilty of a class C felony if the person is convicted under this section and has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense. For purposes of determining minimum sentences based on previous convictions, the provisions of AS 28.35.030(o)(4) apply. Except as provided under (s) of this section, upon [UPON] conviction,

(1) the court shall impose a fine of not less than \$10,000 [\$5,000] and a minimum sentence of imprisonment of not less than

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three

times;

(C) 360 days if the person has been previously convicted four

1 or more times;

2 (2) the court may not

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

6 (B) suspend imposition of sentence;

7 (3) the court shall permanently revoke the person's driver's license,
8 privilege to drive, or privilege to obtain a license subject to restoration under (r) of
9 this section [UNDER AS 28.15.181(c)];

10 (4) the court may order [AS A CONDITION OF PROBATION OR
11 PAROLE] that the person, while incarcerated or as a condition of probation or
12 parole, take a drug, or combination of drugs, intended to prevent consumption of an
13 alcoholic beverage; a condition of probation or parole imposed under this paragraph
14 is in addition to any other condition authorized under another provision of law;

15 (5) the sentence imposed by the court under this subsection shall run
16 consecutively with any other sentence of imprisonment imposed on the person; [AND]

17 (6) the court shall [MAY ALSO] order forfeiture under AS 28.35.036,
18 of the motor vehicle, [OR] aircraft, or watercraft used in the commission of the
19 offense, subject to remission under AS 28.35.037; and

20 (7) the court shall order the department to revoke the registration
21 for any vehicle registered by the department in the name of the person convicted
22 under this subsection; if a person convicted under this subsection is a registered
23 co-owner of a vehicle, the department shall reissue the vehicle registration and
24 omit the name of the person convicted under this subsection.

25 * Sec. 46. AS 28.35.032 is amended by adding new subsections to read:

26 (r) Upon request, the department shall review a driver's license revocation
27 imposed under (p)(3) of this section and may restore the driver's license if

28 (1) the license has been revoked for a period of at least 10 years;

29 (2) the person has not been convicted of a criminal offense since the
30 license was revoked; and

31 (3) the person provides proof of financial responsibility.

1 (s) If the court determines that the person has successfully completed a
2 therapeutic court or other court-ordered treatment program, the court may suspend

3 (1) a portion of the mandatory minimum sentence required under
4 (g)(1) or (p)(1) of this section;

5 (2) up to 75 percent of the minimum fine required under (g)(1) and
6 (p)(1) of this section; and

7 (3) a portion of the mandatory driver's license revocation imposed
8 under (g)(3) of this section as provided under AS 28.15.201.

9 * Sec. 47. AS 28.35.033(a) is amended to read:

10 (a) Upon the trial of a civil or criminal action or proceeding arising out of acts
11 alleged to have been committed by a person while operating or driving a motor vehicle
12 or operating an aircraft or a watercraft while under the influence of an alcoholic
13 beverage, inhalant, or controlled substance [INTOXICATED], the amount of
14 alcohol in the person's blood or breath at the time alleged shall give rise to the
15 following presumptions:

16 (1) If there was 0.04 percent or less by weight of alcohol in the
17 person's blood, or 40 milligrams or less of alcohol per 100 milliliters of the person's
18 blood, or 0.04 grams or less of alcohol per 210 liters of the person's breath, it shall be
19 presumed that the person was not under the influence of an alcoholic beverage
20 [INTOXICATING LIQUOR].

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

29 (3) If there was 0.08 percent or more by weight of alcohol in the
30 person's blood, or 80 milligrams or more of alcohol per 100 milliliters of the person's
31 blood, or 0.08 grams or more of alcohol per 210 liters of the person's breath, it shall be

1 presumed that the person was under the influence of an alcoholic beverage
2 [INTOXICATING LIQUOR].

3 * Sec. 48. AS 28.35.033(e) is amended to read:

4 (e) The person tested may have a physician, or a qualified technician, chemist,
5 registered nurse, or other qualified person of the person's own choosing administer a
6 chemical test in addition to the test administered at the direction of a law enforcement
7 officer. The failure or inability to obtain an additional test by a person does not
8 preclude the admission of evidence relating to the test taken at the direction of a law
9 enforcement officer; the fact that the person under arrest sought to obtain such an
10 additional test, and failed or was unable so to do, is likewise admissible in evidence.
11 The person who administers the chemical test shall clearly and expressly inform
12 the person tested of that person's right to an independent test described under
13 this subsection, and, if the person being tested requests an independent test, the
14 department shall make reasonable and good-faith efforts to assist the person
15 being tested in contacting a person qualified to perform an independent chemical
16 test of the person's breath or blood.

17 * Sec. 49. AS 28.35.035(a) is amended to read:

18 (a) If a person is under arrest for an offense arising out of acts alleged to have
19 been committed while the person was operating a motor vehicle, aircraft, or watercraft
20 while under the influence of an alcoholic beverage, inhalant, or controlled
21 substance [INTOXICATED], and that arrest results from an accident that causes
22 death or physical injury to another person, a chemical test may be administered
23 without the consent of the person arrested to determine the amount of alcohol in that
24 person's breath or blood or to determine the presence of controlled substances in that
25 person's blood and urine.

26 * Sec. 50. AS 28.35.036 is repealed and reenacted to read:

27 **Sec. 28.35.036. Forfeiture of vehicle, aircraft, or watercraft.** (a) After
28 conviction of an offense under AS 28.15.291(b), AS 28.35.030, or 28.35.032, a motor
29 vehicle, aircraft, or watercraft involved in the commission of the offense is subject to
30 forfeiture as provided under AS 28.15.291(b), AS 28.35.030, and 28.35.032.

31 (b) Before forfeiture of a motor vehicle, aircraft, or watercraft, the court shall

1 schedule a hearing on the matter and shall notify the state and the convicted person of
2 the time and place set for the hearing. Except for a motor vehicle, aircraft, or
3 watercraft that is required to be forfeited under AS 28.15.291(b), AS 28.35.030, or
4 28.35.032, the court may order the forfeiture of the motor vehicle if the court, sitting
5 without a jury, determines, by a preponderance of the evidence, that the forfeiture of
6 the motor vehicle, aircraft, or watercraft will serve one or more of the following
7 purposes:

8 (1) deterrence of the convicted person from the commission of future
9 offenses under AS 28.15.291(b) or AS 28.35.030;

10 (2) protection of the safety and welfare of the public;

11 (3) deterrence of other persons who are potential offenders under
12 AS 28.15.291(b) or AS 28.35.030; or

13 (4) expression of public condemnation of the serious or aggravated
14 nature of the convicted person's conduct.

15 (c) Upon forfeiture of a motor vehicle, aircraft, or watercraft, the court shall
16 require the

17 (1) surrender of the registration and certificate of title of that motor
18 vehicle; the registration and certificate of title shall be delivered to the department;

19 (2) convicted person to pay all administrative costs incurred by the
20 state in forfeiting the motor vehicle, aircraft, or watercraft, including costs incurred by
21 the department, law enforcement personnel, or the court system.

22 (d) If not released under AS 28.35.037, a motor vehicle, aircraft, or watercraft
23 forfeited under this section may be disposed of at the discretion of the Department of
24 Public Safety.

25 (e) Disposal under this subsection includes, by way of example and not of
26 limitation,

27 (1) sale, as a unit or in parts, including sale at an auction, and the
28 proceeds deposited into the general fund;

29 (2) transfer to a state or municipal law enforcement agency;

30 (3) being declared surplus and transferred to the Department of
31 Administration; or

1 (4) being destroyed.

2 * Sec. 51. AS 28.35.037 is amended to read:

3 Sec. 28.35.037. Remission of forfeitures. (a) Upon receiving notice from
4 the court of the time and place set for a hearing under AS 28.35.036, the state shall
5 provide to every person who has an ascertainable ownership or security interest in the
6 motor vehicle, [OR] aircraft, or watercraft written notice that includes

7 (1) a description of the motor vehicle, [OR] aircraft, or watercraft;

8 (2) the time and place of the forfeiture hearing;

9 (3) the legal authority under which the motor vehicle, [OR] aircraft, or
10 watercraft, may be forfeited;

11 (4) notice of the right to intervene to protect the interest in the motor
12 vehicle, [OR] aircraft, or watercraft.

13 (b) At the hearing, a person who claims an ownership or security interest in
14 the motor vehicle, [OR] aircraft, or watercraft, must establish by a preponderance of
15 the evidence that

16 (1) the petitioner has an interest in the motor vehicle, [OR] aircraft, or
17 watercraft, acquired in good faith;

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

20 (3) before parting with the motor vehicle, [OR] aircraft, or watercraft,
21 the petitioner did not know or have reasonable cause to believe that it would be used
22 in the commission of an offense.

23 (c) If a person satisfies the requirements of (b) of this section, the court shall
24 order that an amount equal to the value of the petitioner's interest in the motor vehicle,
25 [OR] aircraft, or watercraft be paid to the petitioner, or the court shall order that the
26 motor vehicle, [OR] aircraft, or watercraft be released to the petitioner together with
27 title to the motor vehicle, [OR] aircraft or watercraft.

28 (d) Forfeiture of a motor vehicle, [OR] aircraft, or watercraft under
29 AS 28.35.036 is without prejudice to the rights [,] and does not extinguish the claims
30 of a creditor with an interest in the motor vehicle, [OR] aircraft, or watercraft.

31 * Sec. 52. AS 28.35.039(2) is amended to read:

1 (2) "alcohol safety action program" means a program for alcohol and
2 substance abuse screening, referral, and monitoring developed and implemented
3 or approved by the Department of Health and Social Services under AS 47.37
4 [DESIGNATED BY THE COMMISSIONER OF HEALTH AND SOCIAL
5 SERVICES AS AN ALCOHOL SAFETY ACTION PROGRAM].

6 * Sec. 53. AS 47.37.040(14) is amended to read:

7 (14) cooperate with the Department of Public Safety and the
8 Department of Transportation and Public Facilities in establishing and conducting
9 programs designed to deal with the problem of persons operating motor vehicles while
10 under the influence of an alcoholic beverage, inhalant, or controlled substance
11 [INTOXICATED OR UNDER THE INFLUENCE OF DRUGS], and develop and
12 approve alcohol information courses required to be taken by drivers under AS 28.15 or
13 made available to drivers to reduce points assessed for violation of traffic laws;

14 * Sec. 54. AS 47.37.040 is amended by adding a new paragraph to read:

15 (21) develop and implement, or designate, in cooperation with other
16 state or local agencies, an alcohol safety action program that provides alcohol and
17 substance abuse screening, referral, and monitoring services to persons who have been
18 referred by a court in connection with a charge or conviction of a misdemeanor
19 involving the use of a motor vehicle, aircraft, or watercraft and alcohol or a controlled
20 substance, or referred by an agency of the state with the responsibility for
21 administering motor vehicle laws in connection with a driver's license action involving
22 the use of alcohol or a controlled substance.

23 * Sec. 55. AS 47.37.130(b) is amended to read:

24 (b) The program of the division must include

25 (1) emergency treatment provided by a facility affiliated with or part of
26 the medical service of a general hospital;

27 (2) inpatient treatment;

28 (3) intermediate treatment; [AND]

29 (4) outpatient and follow-up treatment; and

30 (5) standards for alcohol safety action programs; the standards
31 may vary in their requirements and stringency according to the population, price

1 level, remoteness, access to transportation, and availability of ancillary services of
2 the area to be served; a program must meet the applicable standards before it is
3 approved by the division as an alcohol safety action program; the standards
4 required under this paragraph shall be established in a manner that provides
5 protection of the health, safety, and well-being of clients of the affected programs
6 and protection for the affected programs from exposure to malpractice and
7 liability actions.

8 * Sec. 56. AS 47.37.130 is amended by adding new subsections to read:

9 (h) The division shall

10 (1) inspect, on a regular basis, approved public and private alcohol
11 safety action programs at reasonable times and in a reasonable manner; and

12 (2) maintain a list of approved public and private alcohol safety action
13 programs.

14 (i) An approved public and private alcohol safety action program shall file
15 with the division on request data, statistics, schedules, and information that the
16 division reasonably requires. An approved program that fails without good cause to
17 furnish any data, statistics, schedules, or information as requested, or files fraudulent
18 returns of them, shall be removed from the list of approved programs.

19 (j) The director, after holding a hearing under the provisions of AS 44.62
20 (Administrative Procedure Act), may suspend, revoke, limit, restrict, or refuse to grant
21 an approval for an alcohol safety action program for failure to meet standards
22 established under (b) of this section.

23 * Sec. 57. AS 28.35.038 is repealed.

24 * Sec. 58. The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 APPLICABILITY. (a) Section 7 of this Act applies to registration of a motor vehicle
27 that occurs on or after the effective date of this Act.

28 (b) This Act applies to offenses committed on or after the effective date of this Act,
29 except that references to previous convictions include convictions occurring before, on, or
30 after the effective date of this Act.

31 * Sec. 59. This Act takes effect July 1, 2002.

22-LS0046H
Ford
3/15/02

**SENATE CS FOR CS FOR HOUSE BILL NO. 4(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION**

BY THE SENATE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES ROKEBERG, Croft

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to motor vehicles and to operating a motor vehicle, aircraft, or**
2 **watercraft; and providing for an effective date."**

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

4 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 **FINDINGS AND INTENT.** (a) The legislature finds that

7 (1) driving on state highways is a privilege granted to citizens;

8 (2) in order to keep the privilege of driving on state highways, a citizen must
9 follow state laws regarding safe driving;

10 (3) in 1998, there were 71 vehicle-related deaths in the state, and 31 were
11 alcohol-related;

12 (4) in 1999, there were 76 vehicle-related deaths in the state, and 40 were
13 alcohol-related;

14 (5) from 1998 to 1999, the number of traffic fatalities in Alaska rose by nine

1 percent;

2 (6) Alaska ranks in the top 15 states in terms of alcohol-related traffic
3 fatalities;

4 (7) habitual offenders do most of the harm;

5 (8) district courts in Anchorage and Juneau have been applying therapeutic
6 court models to municipal offenders charged with driving while intoxicated and other alcohol-
7 related offenses;

8 (9) judges throughout Alaska have expressed interest in using therapeutic
9 court models to reduce recidivism amount alcoholic offenders.

10 (b) It is the intent of this Act to

11 (1) reduce the number of alcohol-related traffic accidents and fatalities;

12 (2) encourage the effort described under (1) of this subsection by creating a
13 therapeutic process to be used by the court system; courts that have adopted a therapeutic
14 model for alcohol- and drug-addicted offenders shall, to the extent feasible, consider or
15 require the following standards:

16 (A) early intervention to plan and begin treatment for recovery from
17 alcohol or drug addiction;

18 (B) emphasis on personal responsibility;

19 (C) in-court recognition of progress and quick sanctions for relapses;

20 (D) frequent appearances before the same judge to provide in-court
21 recognition of progress and quick sanctions for relapses;

22 (E) if the offender is living in a municipality or an area of the state
23 without a judge, frequent appearances before a person or persons designated by the
24 judge who will report progress and relapses to the judge;

25 (F) prompt payment of restitution to victims;

26 (G) completion of community work service as appropriate for
27 restoration of the community;

28 (H) pharmaceutical treatment of the physical addiction to alcohol or
29 drugs, as approved and prescribed by a physician;

30 (I) treatment addressing the psychosocial bases of the addiction;

31 (J) a strong monitoring program to enforce long-term abstinence;

- 1 (K) appropriate physical placement or housing;
- 2 (L) assistance in obtaining a constructive alcohol-free and drug-free
- 3 occupation and lifestyle;
- 4 (M) assistance from supportive friends and relatives;
- 5 (N) payment for all or a portion of treatment costs;
- 6 (O) adherence to all probation conditions;
- 7 (P) collection of data about and evaluation of the effectiveness of the
- 8 program;
- 9 (Q) the defendant shall execute releases to provide information and
- 10 reports to the court, the prosecutor, and all agencies involved in the defendant's
- 11 therapeutic court plan;
- 12 (R) case coordination in planning for and assisting offenders in
- 13 accomplishing the conditions set out in (A) - (Q) of this paragraph;

14 (3) assist the development and operation of therapeutic courts approved by the

15 presiding judge in the judicial district by using the existing Alaska nonprofit corporation that

16 currently funds and coordinates the noncourt, community-related functions for the existing

17 Anchorage Wellness Court for offenders charged with driving while intoxicated and other

18 alcohol-related offenses; these functions include case coordination, sobriety monitoring, and

19 community liaison to provide medical treatment and other services;

20 (4) modify the existing laws on impoundment and forfeiture of a motor

21 vehicle by following the municipal impoundment and forfeiture process established in

22 Anchorage and Fairbanks

23 * Sec. 2. AS 09.60.070(c)(14) is amended to read:

24 (14) driving while under the influence of an alcoholic beverage,

25 inhalant, or controlled substance [INTOXICATED] or another crime resulting from

26 the operation of a motor vehicle, boat, or airplane when the offender is under the

27 influence of an alcoholic beverage, inhalant, or controlled substance

28 [INTOXICATED];

29 * Sec. 3. AS 12.25.033 is amended to read:

30 Sec. 12.25.033. Arrest without warrant for operating vehicle while under

31 the influence of an alcoholic beverage, inhalant, or controlled substance

1 [INTOXICATED]. A peace officer may arrest a person without a warrant, whether
2 or not the offense is committed in the presence of the officer, when the officer has
3 probable cause to believe that the person to be arrested has committed the crime of
4 operating a motor vehicle, an aircraft, or a watercraft in violation of AS 28.35.030 or a
5 similar city or borough ordinance, if the violation is alleged to have occurred less than
6 eight hours before the time of arrest.

7 * Sec. 4. AS 12.55.125(c) is amended to read:

8 (c) A defendant convicted of a class A felony may be sentenced to a definite
9 term of imprisonment of not more than 20 years, and shall be sentenced to the
10 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
11 12.55.175:

12 (1) if the offense is a first felony conviction and does not involve
13 circumstances described in (2) of this subsection, five years;

14 (2) if the offense is a first felony conviction

15 (A) other than for manslaughter and the defendant possessed a
16 firearm, used a dangerous instrument, or caused serious physical injury during
17 the commission of the offense, or knowingly directed the conduct constituting
18 the offense at a uniformed or otherwise clearly identified peace officer, fire
19 fighter, correctional employee, emergency medical technician, paramedic,
20 ambulance attendant, or other emergency responder who was engaged in the
21 performance of official duties at the time of the offense, seven years;

22 (B) for manslaughter and the conduct resulting in the
23 conviction was knowingly directed towards a child under the age of 16, seven
24 years;

25 (C) for manslaughter and the conduct resulting in the
26 conviction involved driving while under the influence of an alcoholic
27 beverage, inhalant, or controlled substance, seven years;

28 (3) if the offense is a second felony conviction, 10 years;

29 (4) if the offense is a third felony conviction and the defendant is not
30 subject to sentencing under (1) of this section, 15 years.

31 * Sec. 5. AS 18.67.101 is amended to read:

1 **Sec. 18.67.101. Incidents and offenses to which this chapter applies.** The
2 board may order the payment of compensation in accordance with the provisions of
3 this chapter for personal injury or death that resulted from

4 (1) an attempt on the part of the applicant to prevent the commission of
5 crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police
6 officer to do so, or aiding a victim of crime; or

7 (2) the commission or attempt on the part of one other than the
8 applicant to commit any of the following offenses:

9 (A) murder in any degree;

10 (B) manslaughter;

11 (C) criminally negligent homicide;

12 (D) assault in any degree;

13 (E) kidnapping;

14 (F) sexual assault in any degree;

15 (G) sexual abuse of a minor;

16 (H) robbery in any degree;

17 (I) threats to do bodily harm; or

18 (J) driving while under the influence of an alcoholic
19 beverage, inhalant, or controlled substance [INTOXICATED] or another
20 crime resulting from the operation of a motor vehicle, boat, or airplane when
21 the offender is under the influence of an alcoholic beverage, inhalant, or
22 controlled substance [INTOXICATED].

23 * **Sec. 6.** AS 28.01 is amended by adding a new section to read:

24 **Sec. 28.01.015. Municipal impoundment and forfeiture.** (a)

25 Notwithstanding other provisions in this title, a municipality may adopt an ordinance
26 providing for the impoundment or forfeiture of a

27 (1) motor vehicle, watercraft, or aircraft involved in the commission of
28 an offense under AS 28.35.030, 28.35.032, or an ordinance with elements substantially
29 similar to AS 28.35.030 or 28.35.032;

30 (2) motor vehicle involved in the commission of an offense under
31 AS 28.15.291 or an ordinance with elements similar to AS 28.15.291; or

1 (3) motor vehicle used by a person whose license is suspended under
2 AS 28.22.041.

3 (b) An ordinance adopted under (a) of this section may

4 (1) include a fee for the administrative costs incurred by the
5 municipality; and

6 (2) be more stringent than or the same as but may not be less stringent
7 than applicable provisions under this title or regulations adopted under this title.

8 * Sec. 7. AS 28.10.041 is amended by adding a new subsection to read:

9 (d) The department shall refuse to register a vehicle if the applicant fails to
10 register the vehicle using the applicant's first, middle, and last name or a business
11 name.

12 * Sec. 8. AS 28.10 is amended by adding a new section to read:

13 **Sec. 28.10.453. Seizure of registration plates resulting from chemical**
14 **sobriety tests and refusals to submit to tests.** (a) If a law enforcement officer seizes
15 a driver's license under AS 28.15.165, the officer shall also seize the registration plates
16 for the motor vehicle the person was operating and shall deliver the registration plates
17 to the department if the person is a registered owner or co-owner of the vehicle.

18 (b) The law enforcement officer who seizes registration plates under this
19 section shall

20 (1) issue a temporary permit under which the vehicle may be operated
21 that expires seven days after it is delivered to the person; and

22 (2) give the person written notice that, unless the person, within seven
23 days, requests an administrative review under AS 28.15.166, the department shall
24 suspend the registration for the motor vehicle and retain possession of the motor
25 vehicle registration plates as provided under (d) of this section.

26 (c) Unless the person has obtained a stay of a departmental action under
27 AS 28.15.166, if the chemical test administered under AS 28.33.031(a) or
28 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2) or the
29 person refused to submit to a chemical test authorized under AS 28.33.031(a) or
30 AS 28.35.031(a) or (g), the department shall revoke the registration for the motor
31 vehicle. The department's action takes effect seven days after delivery to the person of

1 the notice required under (b) of this section, and after receipt of a sworn report of a
2 law enforcement officer as described under AS 28.15.165(c).

3 (d) The period of revocation of a motor vehicle registration under this section
4 shall be for the appropriate minimum period for driver's license revocations under
5 AS 28.15.181(c) or court disqualifications under AS 28.33.140. A department hearing
6 officer may grant limited motor vehicle registration privileges to a person whose
7 motor vehicle registration was revoked under this section in accordance with the
8 standards set out in AS 28.15.201 for granting limited driver's license privileges.

9 (e) The department shall allow a person who is an owner or co-owner of a
10 motor vehicle and who is not the person who was operating the motor vehicle when
11 the registration plates were seized under (a) of this section to register the motor
12 vehicle without the name of the person who was operating the vehicle when the
13 registration plates were seized under (a) of this section. If a person registers a motor
14 vehicle under this subsection, the department shall reissue the registration plates
15 seized under (a) of this section.

16 * Sec. 9. AS 28.15.046(d) is amended to read:

17 (d) The department may not issue a license to an applicant who has been
18 convicted of driving while under the influence of an alcoholic beverage, inhalant,
19 or controlled substance [INTOXICATED] under AS 28.35.030 within two years of
20 the time of application or to an applicant who has two or more convictions for driving
21 while under the influence of an alcoholic beverage, inhalant, or controlled
22 substance [INTOXICATED] within 10 years of the time of application.

23 * Sec. 10. AS 28.15.081(a) is amended to read:

24 (a) The department shall examine every applicant for a driver's license. The
25 examination must include a test of the applicant's (1) eyesight, (2) ability to read and
26 understand official traffic control devices, (3) knowledge of safe driving practices, (4)
27 knowledge of the effects of alcohol and drugs on drivers and the dangers of driving
28 under the influence of alcohol or drugs, (5) knowledge of the laws on driving while
29 under the influence of an alcoholic beverage, inhalant, or controlled substance
30 [INTOXICATED], (6) knowledge of the laws on financial responsibility and
31 mandatory motor vehicle liability insurance, and (7) knowledge of the traffic laws and

1 regulations of the state. The examination may include a demonstration of ability to
2 exercise ordinary and reasonable control in the driving of a motor vehicle of the type
3 and general class of vehicles for which the applicant seeks a license. However, an
4 applicant who has not been previously issued a driver's license by this or another
5 jurisdiction shall demonstrate ability and shall present medical information that the
6 department reasonably requires to determine fitness to safely drive a motor vehicle of
7 the type and general class of vehicles for which the applicant seeks a license.

8 * Sec. 11. AS 28.15.165(c) is amended to read:

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

21 (1) that a chemical test administered under AS 28.33.031(a) or
22 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2), that a
23 chemical test administered under AS 28.33.031(a) produced a result described in
24 AS 28.33.030(a)(2), or that a person refused to submit to a chemical test authorized
25 under AS 28.33.031(a) or AS 28.35.031(a) or (g);

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

27 (3) describing the

28 (A) circumstances surrounding the arrest and the grounds for
29 the officer's belief that the person operated a motor vehicle, commercial motor
30 vehicle, or aircraft while under the influence of an alcoholic beverage,
31 inhalant, or controlled substance [INTOXICATED] in violation of

1 AS 28.33.030 or AS 28.35.030; or

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

5 * Sec. 12. AS 28.15.166(a) is amended to read:

6 (a) A person who has received a notice under AS 28.10.453(b) or
7 AS 28.15.165(a) may make a written request (1) for administrative review of the
8 department's action under AS 28.10.453(c) or AS 28.15.165(c); or for (2) limited
9 motor vehicle registration privileges under AS 28.10.453(d) or for limited license
10 privileges under AS 28.15.165(d). If the person's driver's license has not been
11 previously surrendered to the department, it shall be surrendered to the department at
12 the time the request for review is made.

13 * Sec. 13. AS 28.15.166(b) is amended to read:

14 (b) A request for review of the department's action under AS 28.10.453 or
15 AS 28.15.165 shall be made within seven days after receipt of the notice under
16 AS 28.10.453 or AS 28.15.165, or the right to review is waived and the action of the
17 department under AS 28.10.453(c) or AS 28.15.165(c) is final. If a written request for
18 a review is made after expiration of the seven-day period, and if it is accompanied by
19 the applicant's verified statement explaining the failure to make a timely request for a
20 review, the department shall receive and consider the request. If the department finds
21 that the person was unable to make a timely request because of lack of actual notice of
22 the department's action or because of factors of physical incapacity such as
23 hospitalization or incarceration, the department shall waive the period of limitation,
24 reopen the matter, and grant the review request. An initial request for limited license
25 privileges may be made at any time. Subsequent requests for limited license
26 privileges may not be made unless the applicant demonstrates a significant change in
27 circumstances.

28 * Sec. 14. AS 28.15.166(c) is amended to read:

29 (c) Upon receipt of a request for review, if it appears that the person holds a
30 valid driver's license or motor vehicle registration plates and that the driver's license
31 or motor vehicle registration plates have [HAS] been surrendered, the department

1 shall issue a temporary driver's permit or motor vehicle registration that is valid until
2 the scheduled date for the review. A person who has requested a review under this
3 section may request, and the department may grant for good cause, a delay in the date
4 of the hearing. If necessary, the department may issue additional temporary permits to
5 stay the effective date of its action under AS 28.15.165(c) until the final order after the
6 review is issued.

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

8 (g) The hearing for review of action by the department under AS 28.15.165
9 shall be limited to the issues of whether the law enforcement officer had probable
10 cause [REASONABLE GROUNDS] to believe that the person was operating a motor
11 vehicle or commercial motor vehicle that was involved in an accident causing death or
12 serious physical injury to another, or that the person was operating a motor vehicle,
13 commercial motor vehicle, or aircraft while under the influence of an alcoholic
14 beverage, inhalant, or controlled substance [INTOXICATED] in violation of
15 AS 28.33.030 or AS 28.35.030 and whether

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

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

23 (3) the chemical test administered under AS 28.33.031(a) produced a
24 result described in AS 28.33.030(a)(2).

25 * **Sec. 16.** AS 28.15.181(a) is amended to read:

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

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

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

31 (3) failure to stop and give aid as required by law when a motor

1 vehicle accident results in the death or personal injury of another;

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

4 (5) operating a motor vehicle or aircraft while under the influence of
5 an alcoholic beverage, inhalant, or controlled substance [INTOXICATED];

6 (6) reckless driving;

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

9 (8) refusal to submit to a chemical test authorized under
10 AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle,
11 commercial motor vehicle, or aircraft while under the influence of an alcoholic
12 beverage, inhalant, or controlled substance [INTOXICATED], or authorized under
13 AS 28.35.031(g);

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

16 (10) vehicle theft in the first degree in violation of AS 11.46.360 or
17 vehicle theft in the second degree in violation of AS 11.46.365.

18 * Sec. 17. AS 28.15.181(c) is amended to read:

19 (c) A court convicting a person of an offense described in (a)(5) or (8) of this
20 section arising out of the operation of a motor vehicle, commercial motor vehicle, or
21 aircraft shall revoke that person's driver's license, privilege to drive, or privilege to
22 obtain a license. The revocation may be concurrent with or consecutive to an
23 administrative revocation under AS 28.15.165. The court may not, except as provided
24 in AS 28.15.201, grant limited license privileges during the minimum period of
25 revocation. Except as provided under AS 28.35.030(n)(3) and 28.35.032(p)(3), the
26 [THE] minimum periods of revocation are [:]

27 (1) not less than 90 days if the person has not been previously
28 convicted;

29 (2) not less than one year if the person has been previously convicted
30 once;

31 (3) not less than 3 years if the person has been previously convicted

1 twice;

2 (4) not less than 5 years if the person has been previously convicted
3 more than twice.

4 * Sec. 18. AS 28.15.191(a) is amended to read:

5 (a) A court that convicts a person of an offense under this title or a regulation
6 adopted under this title, or another law or regulation of this state, or a municipal
7 ordinance that regulates the driving of vehicles, shall forward a record of the
8 conviction to the department within five working days. A conviction of a standing or
9 parking offense need not be reported.

10 * Sec. 19. AS 28.15.201(d) is amended to read:

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

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

17 (2) the person has not been previously convicted; in this paragraph,
18 "previously convicted" has the meaning given in AS 28.35.030 and also includes
19 convictions based on laws presuming that the person was under the influence of
20 intoxicating liquor if there was 0.08 percent or more by weight of alcohol in the
21 person's blood;

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

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

27 (5) the court or the department determines that the person has met [IS
28 ENROLLED IN AND IS IN COMPLIANCE WITH, OR HAS SUCCESSFULLY
29 COMPLETED, AN] alcoholism screening, evaluation, referral, and [EDUCATION
30 AND REHABILITATION TREATMENT] program requirements of the
31 Department of Health and Social Services under AS 28.35.030(h).

1 * Sec. 20. AS 28.15.211(d) is amended to read:

2 (d) At the end of a period of revocation or limitation following a revocation, a
3 person whose driver's license has been revoked may apply to the department for the
4 issuance of a new license, but shall submit to reexamination, pay all required fees
5 including a reinstatement fee, and, if the license was revoked under
6 AS 28.15.181(a)(5) or (8), submit proof to the court or the department that the
7 person has met the alcoholism screening, evaluation, referral, and program
8 requirements of the Department of Health and Social Services under
9 AS 28.35.030(h) [OF

10 (1) ENROLLMENT IN AND COMPLIANCE WITH OR
11 COMPLETION OF AN ALCOHOLISM EDUCATION AND REHABILITATION
12 TREATMENT PROGRAM APPROVED UNDER AS 47.37 IF THE PERSON WAS
13 SENTENCED UNDER AS 28.15.181(c)(1); OR

14 (2) COMPLETION OF AND PAYMENT FOR AN ALCOHOLISM
15 EDUCATION AND REHABILITATION TREATMENT PROGRAM APPROVED
16 UNDER AS 47.37 IF THE PERSON WAS CONVICTED UNDER
17 AS 28.15.181(c)(2) - (4)].

18 * Sec. 21. AS 28.15.271(b) is amended to read:

19 (b) In addition to the fees under (a) of this section,

20 (1) a person who renews a driver's license by mail shall pay a fee of
21 \$1;

22 (2) a person who applies for a limited driver's license under
23 AS 28.15.201 shall pay a fee of \$100; and

24 (3) a person who applies for reinstatement of a driver's license under
25 AS 28.15.211 shall pay a fee of

26 (A) \$100 if the person's driver's license has, within the 10 years
27 preceding the application, been suspended, revoked, or limited under the
28 provisions of this chapter, except as provided by (C) of this paragraph, only
29 once; [OR]

30 (B) \$250 if the person's driver's license has, within the 10 years
31 preceding the application, been suspended, revoked, or limited under the

1 provisions of this chapter, except as provided by (D) of this paragraph, two
2 or more times;

3 (C) \$200 if the person's driver's license has, within the 10
4 years preceding the application, been revoked under AS 28.35.030 or
5 28.35.032 only once; or

6 (D) \$500 if the person's driver's license has, within the 10
7 years preceding the application, been revoked under AS 28.35.030 or
8 28.35.032 two or more times.

9 * Sec. 22. AS 28.15.291(b) is amended to read:

10 (u) Upon conviction under (a) of this section, the court

11 (1) shall impose a minimum sentence of imprisonment

12 (A) if the person has not been previously convicted, of not less
13 than 10 days with 10 days suspended, including a mandatory condition of
14 probation that the defendant complete not less than 80 hours of community
15 work service;

16 (B) if the person has been previously convicted, of not less than
17 10 days;

18 (C) if the person's driver's license, privilege to drive, or
19 privilege to obtain a license was revoked under circumstances described in
20 AS 28.15.181(c)(1), or if the person was driving in violation of a limited
21 license issued under AS 28.15.201(d) following that revocation, of not less
22 than 20 days with 10 days suspended, and a fine of not less than \$500,
23 including a mandatory condition of probation that the defendant complete not
24 less than 80 hours of community work service;

25 (D) if the person's driver's license, privilege to drive, or
26 privilege to obtain a license was revoked under circumstances described in
27 AS 28.15.181(c)(2), (3), or (4) or if the person was driving in violation of a
28 limited license issued under AS 28.15.201(d) following that revocation, of not
29 less than 30 days and a fine of not less than \$1,000;

30 (2) may impose additional conditions of probation;

31 (3) may not

1 (A) suspend execution of sentence or grant probation except on
2 condition that the person serve a minimum term of imprisonment and perform
3 required community work service as provided in (1) of this subsection:

4 (B) suspend imposition of sentence; [AND]

5 (4) shall revoke the person's license, privilege to drive, or privilege to
6 obtain a license, and the person may not be issued a new license or a limited license
7 nor may the privilege to drive or obtain a license be restored for an additional period
8 of not less than 90 days after the date that the person would have been entitled to
9 restoration of driving privileges;

10 (5) may order that the motor vehicle that was used in commission
11 of the offense be forfeited under AS 28.35.036; and

12 (6) shall, if the person has been previously convicted under this
13 section

14 (A) once, order the motor vehicle used in the commission of
15 the offense forfeited under AS 28.35.036 or may order the motor vehicle
16 taken to the owner's residence or property and immobilized for the period
17 of time that the person's driver's license is revoked; the court shall also
18 require the person to pay any administrative costs of keeping the motor
19 vehicle immobilized; or

20 (B) two or more times, order the motor vehicle used in the
21 commission of the offense forfeited under AS 28.35.036.

22 * Sec. 23. AS 28.33.030 is amended to read:

23 Sec. 28.33.030. Operating a commercial motor vehicle while under the
24 influence of an alcoholic beverage, inhalant, or controlled substance
25 [INTOXICATED]. (a) A person commits the crime of operating a commercial
26 motor vehicle while under the influence of an alcoholic beverage, inhalant, or
27 controlled substance [INTOXICATED] if the person operates a commercial motor
28 vehicle

29 (1) while under the influence of an alcoholic beverage, inhalant,
30 [INTOXICATING LIQUOR] or any controlled substance;

31 (2) when, as determined by a chemical test taken within four hours

1 after the alleged offense was committed, there is 0.04 percent or more by weight of
2 alcohol in the person's blood or 40 milligrams or more of alcohol per 100 milliliters of
3 blood, or when there is 0.04 grams or more of alcohol per 210 liters of the person's
4 breath; or

5 (3) while under the combined influence of an alcoholic beverage,
6 inhalant, [INTOXICATING LIQUOR] and a controlled substance.

7 (b) Operating a commercial motor vehicle while under the influence of an
8 alcoholic beverage, inhalant, or controlled substance [INTOXICATED] is a class
9 A misdemeanor.

10 (c) The sentencing of a person convicted under this section shall be in
11 accordance with the minimum periods of imprisonment, fines, rehabilitative treatment,
12 and other provisions of AS 28.35.030, as if the person had been convicted of a
13 violation of AS 28.35.030. For purposes of sentencing, convictions for operating a
14 commercial motor vehicle while under the influence of an alcoholic beverage,
15 inhalant, or controlled substance [INTOXICATED] under this section, and for
16 refusal to submit to a chemical test under AS 28.33.032, if arising out of a single
17 transaction, are considered one previous conviction.

18 * Sec. 24. AS 28.33.031(a) is amended to read:

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

21 (1) of the person's breath if lawfully arrested for an offense arising out
22 of acts alleged to have been committed when the person was operating the commercial
23 motor vehicle while under the influence of an alcoholic beverage, inhalant, or
24 controlled substance [INTOXICATED]; the test or tests may be administered at the
25 direction of a law enforcement officer who has probable cause [REASONABLE
26 GROUNDS] to believe that the person was operating a commercial motor vehicle
27 while under the influence of an alcoholic beverage, inhalant, or controlled
28 substance [INTOXICATED] in violation of AS 28.33.030 or AS 28.35.030;

29 (2) of the person's breath and blood for the purpose of determining the
30 alcoholic content of the person's breath and blood and is considered to have given
31 consent to a chemical test or tests of the person's blood and urine for the purpose of

1 determining the presence of controlled substances in the person's blood and urine if
2 the person is involved in a motor vehicle accident that causes death or serious physical
3 injury to another person; the test or tests may be administered at the direction of a law
4 enforcement officer who has probable cause [REASONABLE GROUNDS] to
5 believe that the person was operating a commercial motor vehicle that was involved in
6 an accident causing death or serious physical injury to another person.

7 * Sec. 25. AS 28.33.031(c) is amended to read:

8 (c) A person who operates a commercial motor vehicle is considered to have
9 given consent to a preliminary breath test, at the direction of a law enforcement
10 officer, for the purpose of determining the alcoholic content of the person's blood or
11 breath. A law enforcement officer may administer a preliminary breath test if the
12 officer has probable cause [REASONABLE GROUNDS] to believe that the person's
13 ability to operate a commercial motor vehicle is impaired by the ingestion of alcoholic
14 beverages and that

15 (1) the commercial motor vehicle caused injury to person or property;

16 (2) the person violated the provisions of AS 28.33.130(a) or violated
17 the terms of an out-of-service order issued under AS 28.33.130; or

18 (3) the person unlawfully operated a commercial motor vehicle; in this
19 paragraph, "unlawfully" means in violation of any federal, state, or municipal statute,
20 regulation, or ordinance.

21 * Sec. 26. AS 28.33.033(a) is amended to read:

22 (a) Upon the trial of a civil or criminal action or proceedings arising out of
23 acts alleged to have been committed by a person operating a commercial motor
24 vehicle while under the influence of an alcoholic beverage [INTOXICATED] in
25 violation of AS 28.33.030, the following rules apply with regard to the amount of
26 alcohol in the person's blood or breath at the time alleged:

27 (1) if there was less than 0.04 percent by weight of alcohol in the
28 person's blood, or less than 40 milligrams of alcohol per 100 milliliters of the person's
29 blood, or less than 0.04 grams of alcohol per 210 liters of the person's breath, that fact
30 does not give rise to a presumption that the person was or was not under the influence
31 of an alcoholic beverage [INTOXICATING LIQUOR], but that fact may be

1 considered with other competent evidence in determining whether the person was
2 under the influence of an alcoholic beverage [INTOXICATING LIQUOR];

3 (2) if there was 0.04 percent or more by weight of alcohol in the
4 person's blood, or 40 milligrams or more of alcohol per 100 milliliters of the person's
5 blood, or 0.04 grams or more of alcohol per 210 liters of the person's breath, it is
6 presumed that the person was under the influence of an alcoholic beverage
7 [INTOXICATING LIQUOR].

8 * Sec. 27. AS 28.33.033(c) is amended to read:

9 (c) The provisions of (a) of this section may not be construed to limit the
10 introduction of any other competent evidence bearing upon the question of whether
11 the person was or was not under the influence of an alcoholic beverage
12 [INTOXICATING LIQUOR].

13 * Sec. 28. AS 28.33.140(a) is amended to read:

14 (a) In addition to the court action provided in AS 28.15.181, conviction of any
15 of the following offenses is grounds for immediate disqualification from driving a
16 commercial motor vehicle for the periods set out in this section:

17 (1) operating a commercial motor vehicle while under the influence
18 of an alcoholic beverage, inhalant, or controlled substance [INTOXICATED] in
19 violation of AS 28.33.030,

20 (2) refusal to submit to a chemical test in violation of AS 28.35.032;

21 (3) operating a motor vehicle while under the influence of an
22 alcoholic beverage, inhalant, or controlled substance [INTOXICATED] in
23 violation of AS 28.35.030;

24 (4) leaving the scene of an accident in violation of AS 28.35.060, or
25 failing to file, or providing false information in, an accident report in violation of
26 AS 28.35.110;

27 (5) a felony under state or federal law, which was facilitated because
28 the person used a commercial motor vehicle;

29 (6) a serious traffic violation; or

30 (7) driving after being placed out of service in violation of regulations
31 adopted under AS 28.05.011.

CORRECTION

THE FOLLOWING DOCUMENT(S)
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Central Microfilm Services
Department of Education & Early Development
State of Alaska

1 considered with other competent evidence in determining whether the person was
2 under the influence of an alcoholic beverage [INTOXICATING LIQUOR];

3 (2) if there was 0.04 percent or more by weight of alcohol in the
4 person's blood, or 40 milligrams or more of alcohol per 100 milliliters of the person's
5 blood, or 0.04 grams or more of alcohol per 210 liters of the person's breath, it is
6 presumed that the person was under the influence of an alcoholic beverage
7 [INTOXICATING LIQUOR].

8 * Sec. 27. AS 28.33.033(c) is amended to read:

9 (c) The provisions of (a) of this section may not be construed to limit the
10 introduction of any other competent evidence bearing upon the question of whether
11 the person was or was not under the influence of an alcoholic beverage
12 [INTOXICATING LIQUOR].

13 * Sec. 28. AS 28.33.140(a) is amended to read:

14 (a) In addition to the court action provided in AS 28.15.181, conviction of any
15 of the following offenses is grounds for immediate disqualification from driving a
16 commercial motor vehicle for the periods set out in this section:

17 (1) operating a commercial motor vehicle while under the influence
18 of an alcoholic beverage, inhalant, or controlled substance [INTOXICATED] in
19 violation of AS 28.33.030;

20 (2) refusal to submit to a chemical test in violation of AS 28.35.032;

21 (3) operating a motor vehicle while under the influence of an
22 alcoholic beverage, inhalant, or controlled substance [INTOXICATED] in
23 violation of AS 28.35.030;

24 (4) leaving the scene of an accident in violation of AS 28.35.060, or
25 failing to file, or providing false information in, an accident report in violation of
26 AS 28.35.110;

27 (5) a felony under state or federal law, which was facilitated because
28 the person used a commercial motor vehicle;

29 (6) a serious traffic violation; or

30 (7) driving after being placed out of service in violation of regulations
31 adopted under AS 28.05.011.

1 * Sec. 29. AS 28.35.030(a) is amended to read:

2 (a) A person commits the crime of driving while under the influence of an
3 alcoholic beverage, inhalant, or controlled substance [INTOXICATED] if the
4 person operates or drives a motor vehicle or operates an aircraft or a watercraft

5 (1) while under the influence of an alcoholic beverage, intoxicating
6 liquor, inhalant, or any controlled substance;

7 (2) when, as determined by a chemical test taken within four hours
8 after the alleged offense was committed, there is 0.08 percent or more by weight of
9 alcohol in the person's blood or 80 milligrams or more of alcohol per 100 milliliters of
10 blood, or when there is 0.08 grams or more of alcohol per 210 liters of the person's
11 breath; or

12 (3) while the person is under the combined influence of an alcoholic
13 beverage, an intoxicating liquor, an inhalant, and a controlled substance.

14 * Sec. 30. AS 28.35.030(b) is amended to read:

15 (b) Except as provided under (n) of this section, driving while under the
16 influence of an alcoholic beverage, inhalant, or controlled substance
17 [INTOXICATED] is a class A misdemeanor. Except as provided under (r) of this
18 section, upon [UPON] conviction,

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

20 (A) not less than 72 consecutive hours and a fine of not less
21 than \$1,500 [\$250] if the person has not been previously convicted;

22 (B) not less than 30 days, or not less than 20 days if the court
23 orders the person to perform 10 days of community service as authorized
24 under AS 12.55.055, and a fine of not less than \$3,000 [\$500] if the person
25 has been previously convicted once;

26 (C) not less than 60 days and a fine of not less than \$4,000
27 [\$1,000] if the person has been previously convicted twice and is not subject to
28 punishment under (n) of this section;

29 (D) not less than 120 days and a fine of not less than \$5,000
30 [\$2,000] if the person has been previously convicted three times and is not
31 subject to punishment under (n) of this section;

1 (E) not less than 240 days and a fine of not less than \$6,000
2 [\$3,000] if the person has been previously convicted four times and is not
3 subject to punishment under (n) of this section;

4 (F) not less than 360 days and a fine of not less than \$7,000
5 [\$4,000] if the person has been previously convicted more than four times and
6 is not subject to punishment under (n) of this section;

7 (2) the court may not

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

11 (B) suspend imposition of sentence;

12 (3) the court shall revoke the person's driver's license, privilege to
13 drive, or privilege to obtain a license under AS 28.15.181, and may order that the
14 motor vehicle, [OR] aircraft, or watercraft that was used in commission of the
15 offense to be forfeited under AS 28.35.036;

16 (4) the court shall, if the person has been previously convicted

17 (A) order the motor vehicle, aircraft, or watercraft used in
18 the commission of the offense forfeited under AS 28.35.036 or may order
19 the motor vehicle, aircraft, or watercraft taken to the owner's residence or
20 property and immobilized for the period of time that the person's driver's
21 license is revoked; the court shall also require the person to pay any
22 administrative costs of keeping the motor vehicle, aircraft, or watercraft
23 immobilized; or

24 (B) two or more times, order the motor vehicle, aircraft, or
25 watercraft used in the commission of the offense forfeited under
26 AS 28.35.036; and

27 (5) the court may order that the person, while incarcerated or as a
28 condition of probation or parole, take a drug or combination of drugs intended to
29 prevent the consumption of an alcoholic beverage; a condition of probation or
30 parole imposed under this paragraph is in addition to any other condition
31 authorized under another provision of law.

1 * Sec. 31. AS 28.35.030(d) is amended to read:

2 (d) Except as prohibited by federal law or regulation, every provider of
3 treatment programs to which persons are ordered under [(h) OF] this section shall
4 supply the judge, prosecutor, defendant, and an agency involved in the
5 defendant's treatment with information and reports concerning the defendant's
6 past and present assessment, treatment, and progress [ALASKA COURT
7 SYSTEM WITH THE INFORMATION REGARDING THE CONDITION AND
8 TREATMENT OF THOSE PERSONS AS THE SUPREME COURT MAY
9 REQUIRE BY RULE]. Information compiled under this subsection is confidential
10 and may only be used in connection with court proceedings involving the
11 defendant's treatment, including use by a court in sentencing a person convicted
12 under this section, or by an officer of the court in preparing a presentence report for
13 the use of the court in sentencing a person convicted under this section.

14 * Sec. 32. AS 28.35.030(h) is amended to read:

15 (h) The court shall order a person convicted under this section to satisfy the
16 screening, evaluation, referral, and program requirements of an alcohol safety action
17 program if such a program is available in the community where the person resides, or
18 a private or public treatment facility approved by the division of alcoholism and drug
19 abuse, of the Department of Health and Social Services, under AS 47.37 to make
20 referrals for rehabilitative treatment or to provide rehabilitative treatment. If a person
21 is convicted under (n) of this section, the court shall order the person to be evaluated
22 as required by this subsection before the court imposes sentence for the offense.
23 Treatment required under this subsection shall occur, as much as possible, when
24 the person is incarcerated. The cost of treatment required under this subsection
25 shall be paid to the state by the person being treated. The cost of treatment
26 required to be paid to the state under this subsection may not exceed \$10,000;
27 however, the cost of treatment must include at least \$150 for the cost of an
28 alcohol safety action program if the program is available. Upon the person's
29 conviction, the court shall include reimbursement of the cost of treatment as a
30 part of the sentence. Except for reimbursement from a permanent fund dividend
31 as provided in this subsection, payment of the cost of treatment is not required if

1 the court determines the person is indigent. For costs of treatment that are not
2 paid by the person as required by this subsection, the state shall seek
3 reimbursement from the person's permanent fund dividend as provided in
4 AS 43.23.065. This subsection does not apply to costs of treatment incurred by a
5 person if the cost is incurred as a result of treatment not required under this
6 subsection.

7 * Sec. 33. AS 28.35.030(k) is amended to read:

8 (k) Imprisonment required under (b)(1)(A) [OR (B)] of this section shall be
9 served at a community residential center or, if a community residential center is not
10 available, at another appropriate place determined by the commissioner of corrections.
11 Imprisonment required under (b)(1)(B) - (F) of this section may be served at a
12 community residential center or at a private residence if approved by the
13 commissioner of corrections. Imprisonment served at a private residence must
14 include electronic monitoring. The cost of imprisonment resulting from the sentence
15 imposed under (b)(1) of this section shall be paid to the state by the person being
16 sentenced provided, however, that the cost of imprisonment required to be paid under
17 this subsection may not exceed \$2,000 [\$1,000]. Upon the person's conviction, the
18 court shall include the costs of imprisonment as a part of the judgment of conviction.
19 Except for reimbursement from a permanent fund dividend as provided in this
20 subsection, payment of the cost of imprisonment is not required if the court determines
21 the person is indigent. For costs of imprisonment that are not paid by the person as
22 required by this subsection, the state shall seek reimbursement from the person's
23 permanent fund dividend as provided under AS 43.23.065. While at the community
24 residential center or other appropriate place, a person sentenced under (b)(1)(A) of this
25 section shall perform at least 24 hours of community service work, A [AND A]
26 person sentenced under (b)(1)(B) of this section shall perform at least 160 hours of
27 community service work, as required by the director of the community residential
28 center or other appropriate place, or as required by the commissioner of corrections
29 if the sentence is being served at a private residence. In this subsection,
30 "appropriate place" means a facility with 24-hour on-site staff supervision that is
31 specifically adapted to provide a residence, and includes a correctional center,

1 residential treatment facility, hospital, halfway house, group home, work farm, work
2 camp, or other place that provides varying levels of restriction.

3 * Sec. 34. AS 28.35.030(n) is amended to read:

4 (n) A person is guilty of a class C felony if the person is convicted under (a) of
5 this section and has been previously convicted two or more times since January 1,
6 1996, and within the 10 years preceding the date of the present offense. For purposes
7 of determining minimum sentences based on previous convictions, the provisions of
8 (o)(4) of this section apply. Except as provided under (r) of this section, upon
9 [UPON] conviction, the court

10 (1) shall impose a fine of not less than \$10,000 [\$5,000] and a
11 minimum sentence of imprisonment of not less than

12 (A) 180 [120] days if the person has been previously convicted
13 twice;

14 (B) 360 [240] days if the person has been previously convicted
15 three times;

16 (C) 440 [360] days if the person has been previously convicted
17 four or more times;

18 (2) may not

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

22 (B) suspend imposition of sentence;

23 (3) shall permanently revoke the person's driver's license, privilege to
24 drive, or privilege to obtain a license subject to restoration of the license under (p)
25 of this section [UNDER AS 28.15.181(c)];

26 (4) may order [AS A CONDITION OF PROBATION OR PAROLE]
27 that the person, while incarcerated or as a condition of probation or parole, take a
28 drug or combination of drugs, intended to prevent the consumption of an alcoholic
29 beverage; a condition of probation or parole imposed under this paragraph is in
30 addition to any other condition authorized under another provision of law; [AND]

31 (5) shall [MAY] also order forfeiture under AS 28.35.036 of the

1 vehicle, watercraft, or aircraft used in the commission of the offense, subject to
2 remission under AS 28.35.037; and

3 (6) shall order the department to revoke the registration for any
4 vehicle registered by the department in the name of the person convicted under
5 this subsection; if a person convicted under this subsection is a registered co-
6 owner of a vehicle or is registered as a co-owner under a business name, the
7 department shall reissue the vehicle registration and omit the name of the person
8 convicted under this subsection.

9 * Sec. 35. AS 28.35.030(o) is amended to read:

10 (o) In this section,

11 (1) "inhalant" has the meaning given to the phrase "hazardous
12 volatile material or substance" in AS 47.37.270; [REPEALED]

13 (2) "operate an aircraft" means to navigate, pilot, or taxi an aircraft in
14 the airspace over this state, or upon the land or water inside this state;

15 (3) "operate a watercraft" means to navigate a vessel used or capable
16 of being used as a means of transportation on water for recreational or commercial
17 purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or
18 under the jurisdiction of the state;

19 (4) "previously convicted" means having been convicted in this or
20 another jurisdiction of any of the following offenses; however, convictions for any of
21 these offenses, if arising out of a single transaction and a single arrest, are considered
22 one previous conviction:

23 (A) operating a motor vehicle, aircraft, or watercraft while
24 under the influence of an alcoholic beverage, inhalant, or controlled
25 substance [INTOXICATED,] in violation of this section or in violation of
26 another law or ordinance with similar elements, except that the other law or
27 ordinance may provide for a lower level of alcohol in the person's blood or
28 breath than imposed under (a)(2) of this section;

29 (B) refusal to submit to a chemical test in violation of
30 AS 28.35.032 or in violation of another law or ordinance with similar
31 elements; or

1 (C) operating a commercial motor vehicle while under the
2 influence of an alcoholic beverage, inhalant, or controlled substance
3 [INTOXICATED] in violation of AS 28.33.030 or in violation of another law
4 or ordinance with similar elements, except that the other law or ordinance may
5 provide for a lower level of alcohol in the person's blood or breath than
6 imposed under AS 28.33.030(a)(2).

7 * Sec. 36. AS 28.35.030 is amended by adding new subsections to read:

8 (p) Upon request, the department shall review a driver's license revocation
9 imposed under (n)(3) of this section and may restore the driver's license if

10 (1) the license has been revoked for a period of at least 10 years;

11 (2) the person has not been convicted of a criminal offense since the
12 license was revoked; and

13 (3) the person provides proof of financial responsibility.

14 (q) If a person is convicted under this section and has been previously
15 convicted, the court shall order the person to surrender the registration plates for any
16 vehicle registered or co-registered in the person's name. The person shall surrender
17 the registration plates to the department by the close of the next business day. A
18 person other than the person convicted under this section who applies to register a
19 motor vehicle that has registration plates that were required to be surrendered under
20 this section but that were not surrendered as required by this subsection may not
21 register the vehicle unless the person registering the vehicle provides proof
22 satisfactory to the department that the person did not know that the registration plates
23 were required to be surrendered under this subsection or the person pays twice the
24 applicable registration fee required under AS 28.10.421.

25 (r) If the court determines that the person has successfully completed a
26 therapeutic court program, the court may suspend

27 (1) a portion of the mandatory minimum sentence required under
28 (b)(1) or (n)(1) of this section; and

29 (2) up to 50 percent of the minimum fines required under (b)(1) or
30 (n)(1) of this section.

31 (s) For purposes of this section, the director of the division within the

1 department responsible for administration of this section or a person designated by the
2 director may request and receive criminal justice information available under
3 AS 12.62. In this subsection, "criminal justice information" has the meaning given in
4 AS 12.62.900.

5 * Sec. 37. AS 28.35.031(a) is amended to read:

6 (a) A person who operates or drives a motor vehicle in this state or who
7 operates an aircraft as defined in AS 28.35.030(o) [AS 28.35.030(o)(2)] or who
8 operates a watercraft as defined in AS 28.35.030(o) [AS 28.35.030(o)(3)] shall be
9 considered to have given consent to a chemical test or tests of the person's breath for
10 the purpose of determining the alcoholic content of the person's blood or breath if
11 lawfully arrested for an offense arising out of acts alleged to have been committed
12 while the person was operating or driving a motor vehicle or operating an aircraft or a
13 watercraft while under the influence of an alcoholic beverage, inhalant, or
14 controlled substance [INTOXICATED] or if lawfully arrested under AS 28.35.280
15 for the offense of minor operating a vehicle after consuming alcohol. The test or tests
16 shall be administered at the direction of a law enforcement officer who has probable
17 cause [REASONABLE GROUNDS] to believe that the person was operating or
18 driving a motor vehicle or operating an aircraft or a watercraft in this state while
19 under the influence of an alcoholic beverage, inhalant, or controlled substance
20 [INTOXICATED] or that the person was a minor operating a vehicle after consuming
21 alcohol.

22 * Sec. 38. AS 28.35.031(b) is amended to read:

23 (b) A person who operates or drives a motor vehicle in this state or who
24 operates an aircraft or watercraft shall be considered to have given consent to a
25 preliminary breath test for the purpose of determining the alcoholic content of the
26 person's blood or breath. A law enforcement officer may administer a preliminary
27 breath test at the scene of the incident if the officer has probable cause
28 [REASONABLE GROUNDS] to believe that a person's ability to operate a motor
29 vehicle, aircraft, or watercraft is impaired by the ingestion of alcoholic beverages and
30 that the person

31 (1) was operating or driving a motor vehicle, aircraft, or watercraft that

1 is involved in an accident;

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

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

9 * Sec. 39. AS 28.35.031(g) is amended to read:

10 (g) A person who operates or drives a motor vehicle in this state shall be
11 considered to have given consent to a chemical test or tests of the person's breath and
12 blood for the purpose of determining the alcoholic content of the person's breath and
13 blood and shall be considered to have given consent to a chemical test or tests of the
14 person's blood and urine for the purpose of determining the presence of controlled
15 substances in the person's blood and urine if the person is involved in a motor vehicle
16 accident that causes death or serious physical injury to another person. The test or
17 tests may be administered at the direction of a law enforcement officer who has
18 **probable cause** [REASONABLE GROUNDS] to believe that the person was
19 operating or driving a motor vehicle in this state that was involved in an accident
20 causing death or serious physical injury to another person.

21 * Sec. 40. AS 28.35.032(a) is amended to read:

22 (a) If a person under arrest for operating a motor vehicle or aircraft while
23 **under the influence of an alcoholic beverage, inhalant, or controlled substance**
24 [INTOXICATED] refuses the request of a law enforcement officer to submit to a
25 chemical test authorized under AS 28.33.031(a)(1) or AS 28.35.031(a), or if a person
26 involved in a motor vehicle accident that causes death or serious physical injury to
27 another person refuses the request of a law enforcement officer to submit to a
28 chemical test authorized under AS 28.33.031(a)(2) or AS 28.35.031(g), after being
29 advised by the officer that the refusal will result in the denial or revocation of the
30 driver's license, privilege to drive, or privilege to obtain a license, that the refusal may
31 be used against the person in a civil or criminal action or proceeding arising out of an