

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5733 HOUSE JUDICIARY

1 (E) not less than 240 days and a fine of not less than
2 \$3,000 if the person has been previously convicted four times;

3 (F) not less than 360 days and a fine of not less than
4 \$4,000 if the person has been previously convicted more than four
5 times;

6 (2) the court may not

7 (A) suspend execution of the sentence required by (1)
8 of this subsection;

9 (B) grant probation, except on condition that the
10 person serve the minimum imprisonment under (1) of this subsec-
11 tion; or

12 (C) suspend imposition of sentence;

13 (3) the court shall revoke the person's driver's license,
14 privilege to drive, or privilege to obtain a license under AS 28.15.-
15 181, and may order the motor vehicle, aircraft, or watercraft that was
16 used in commission of the offense be forfeited under AS 28.35.036; and

17 (4) the sentence imposed by the court under this subsection
18 shall run consecutively with any other sentence of imprisonment im-
19 posed on the person.

20 * Sec. 27. AS 28.35.032 is amended by adding new subsections to read:

21 (1) The court shall order a person convicted under this section
22 to satisfy the screening, evaluation, referral, program, and fee
23 requirements of an agency authorized by the court to make referrals
24 for rehabilitative treatment.

25 (m) A program of inpatient treatment may be required by the
26 referral agency under (1) of this section only if authorized in the
27 judgment, and may not exceed the maximum term of inpatient treatment
28 specified in the judgment. A person who has been referred for inpa-
29 tient treatment under this subsection may make a written request to

1 the sentencing court asking the court to review the referral. The
2 request for review shall be made within seven days of the agency's
3 referral, and shall specifically set out the grounds upon which the
4 request for review is based. The court may order a hearing on the
5 request for review.

6 (n) If a person fails to satisfy the requirements of an au-
7 thorized agency under (m) of this section, the court

8 (1) may impose any portion of a suspended sentence;

9 (2) may punish the failure as contempt of court under
10 AS 09.50.010 or as a violation of a condition of probation;

11 (3) shall order the revocation or suspension of the per-
12 son's driver's license, privilege to drive, and privilege to obtain a
13 license until the requirements are satisfied.

14 (o) In this section, "previously convicted" means having been
15 convicted in this or another jurisdiction, within 10 years preceding
16 the date of the present offense, of operating a motor vehicle, air-
17 craft, or watercraft while intoxicated under AS 28.35.030 or another
18 law or ordinance with substantially similar elements, or of refusal to
19 submit to a chemical test under this section or another law or ordi-
20 nance with substantially similar elements; convictions for both op-
21 erating a motor vehicle, aircraft, or watercraft while intoxicated and
22 for refusal to submit to a chemical test of breath, if arising out of
23 a single transaction and a single arrest, are considered one previous
24 conviction.

25 * Sec. 28. AS 28.35.035(a) is amended to read:

26 (a) If a person is under arrest for an offense arising out of
27 acts alleged to have been committed while the person was operating
28 [DRIVING] a motor vehicle, aircraft, or watercraft while intoxicated,
29 and that arrest results from an accident that causes death or physical

1 injury to another person, a chemical test may be administered without
2 the consent of the person arrested to determine the amount of alcohol
3 in that person's breath or blood.

4 * Sec. 29. AS 28.35.036(a) is amended to read:

5 (a) After conviction of an offense under AS 28.35.030 or 28.-
6 35.032 [INVOLVING A MOTOR VEHICLE OF A TYPE FOR WHICH A DRIVER'S
7 LICENSE IS REQUIRED], the state may move the court to order the for-
8 feiture of the motor vehicle, aircraft, or watercraft involved in the
9 commission of the offense if the convicted person has been previously
10 convicted in this or another jurisdiction of more than one of the
11 following offenses or has more than once been previously convicted of
12 one of the following offenses:

13 (1) driving while intoxicated under AS 28.35.030 or another
14 law or ordinance with substantially similar elements; or

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

17 * Sec. 30. AS 28.35.037 is amended to read:

18 Sec. 28.35.037. REMISSION OF FORFEITURES. (a) Upon receiving
19 notice from the court of the time and place set for a hearing under
20 AS 28.35.036, the state shall provide to every person who has an
21 ascertainable ownership or security interest in the motor vehicle,
22 aircraft, or watercraft written notice that includes

23 (1) a description of the motor vehicle, aircraft, or water-
24 craft;

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

26 (3) the legal authority under which the motor vehicle,
27 aircraft, or watercraft may be forfeited;

28 (4) notice of the right to intervene to protect the inter-
29 est in the motor vehicle, aircraft, or watercraft.

1 (b) At the hearing, a person who claims an ownership or security
2 interest in the motor vehicle, aircraft, or watercraft must establish
3 by a preponderance of the evidence that

4 (1) the petitioner has an interest in the motor vehicle,
5 aircraft, or watercraft acquired in good faith;

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

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

11 (c) If a person satisfies the requirements of (b) of this sec-
12 tion, the court shall order that an amount equal to the value of the
13 petitioner's interest in the motor vehicle, aircraft, or watercraft be
14 paid to the petitioner or the court shall order that the motor vehi-
15 cle, aircraft, or watercraft be released to the petitioner together
16 with title to the motor vehicle, aircraft, or watercraft.

17 (d) Forfeiture of a motor vehicle, aircraft, or watercraft under
18 AS 28.35.036 is without prejudice to the rights, and does not extin-
19 guish the claims of a creditor with an interest in the motor vehicle,
20 aircraft, or watercraft.

21 * Sec. 31. AS 28.35.038 is amended to read:

22 Sec. 28.35.038. MUNICIPAL IMPOUNDMENT AND FORFEITURE. Notwith-
23 standing other provisions in this title, a municipality may adopt an
24 ordinance providing for the impoundment or forfeiture of a motor
25 vehicle, aircraft, or watercraft involved in the commission of an
26 offense under AS 28.35.030, 28.35.032, or an ordinance with elements
27 substantially similar to AS 28.35.030 or 28.35.032. An ordinance
28 adopted under this section is not required to be consistent with this
29 title or regulations adopted under this title.

1 * Sec. 32. AS 28.40.100(a)(5) is repealed and reenacted to read:

2 (5) "driver's license" or "license," when used in relation
3 to driver licensing, means a license or permit to drive a motor vehi-
4 cle, or the privilege to drive or to obtain a license to drive a motor
5 vehicle, under the laws of this state, whether or not a person holds a
6 valid license issued in this or another jurisdiction;

7 * Sec. 33. AS 28.15.166(1), 28.15.181(e), AS 28.35.030(c), and 28.35.-
8 030(f) are repealed.

9 * Sec. 34. The provisions of sec. 9 of this Act have the effect of
10 changing Alaska Rules of Appellate Procedure 603 and 611(d) by prohibiting
11 an automatic stay of the administrative revocation of a driver's license
12 pending appeal or petition for review and by limiting the power of the
13 court to stay the administrative revocation of a driver's license.

14 * Sec. 35. APPLICABILITY. The provisions of this Act apply to judicial
15 proceedings and administrative proceedings by the Department of Public
16 Safety relating to offenses that are committed after December 31, 1990.

17 * Sec. 36. This Act takes effect January 1, 1991.
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STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 18, 1993

SUBJECT: Court rule change - CSHB 53(Jud)
TO: Representative Peter Goll
FROM: Michael F. Ford *M.F.*
Legislative Counsel

In addition to including a section amending Alaska Rule of Appellate Procedure 603, I have included language to amend Alaska Rule of Appellate Procedure 611(d). This will prevent a person from getting a stay of an administrative revocation of a driver's license under the rule allowing a petition for review to be filed with the court, and is consistent with the change made to Appellate Rule 603.

Please contact me if you have further questions.

MFF:lmb
L9/059

Enclosure

6-0219D
Ford
1/18/90

Original sponsor(s): REP. ULMER, Koponen, Collins

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 53 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the privilege to drive, driver
7 licensing, driving while intoxicated, and other
8 procedures and matters related to driving and operat-
9 ing aircraft and watercraft and the revocation of
10 driving privileges; amending Alaska Rules of Appel-
11 late Procedure 603 and 611(d); and providing for an
12 effective date."

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

14 * Section 1. AS 28.05.011 is amended to read:

15 Sec. 28.05.011. DUTY OF COMMISSIONER TO ADOPT REGULATIONS. The
16 commissioner shall, unless otherwise provided by statute, adopt regu-
17 lations in compliance with the Administrative Procedure Act (AS 44.62)
18 necessary to carry out the provisions of this title and other statutes
19 the administration of which is vested in the department. The regula-
20 tions must include, but are not limited to:

21 (1) rules of the road relating to the driving, stopping,
22 standing, parking, and other conduct of vehicles, to pedestrians, and
23 to official traffic control devices;

24 (2) minimum equipment for vehicles, including, but not
25 limited to, minimum standards of compliance to be met by manufacturers
26 and vehicle sales and repairs businesses;

27 (3) inspection of vehicles, and the removal of vehicles
28 from areas of public use when they are found to be in a defective or
29 unsafe condition;

1 (4) registration, titling, transfer, and abandonment of
2 vehicles;

3 (5) licensing of drivers of vehicles and procedures for
4 obtaining limited license privileges;

5 (6) financial responsibility relating to vehicles;

6 (7) management of records of the department required for
7 the administration of this title and regulations adopted under this
8 title, including provisions for ensuring the accuracy of information
9 contained in automated and manual information retrieval systems;

10 (8) [REPEALED;

11 (9)] definitions of words and phrases used in this title
12 and in regulations adopted under this title unless otherwise provided
13 by statute;

14 (9) [(10)] registration of motor vehicle, trailer, and
15 semi-trailer dealers; and

16 (10) [(11)] certification and regulation of junk yards.

17 * Sec. 2. AS 28.15.165(a) is amended to read:

18 (a) If a chemical test administered under AS 28.35.031(a) to a
19 person operating [DRIVING] a motor vehicle or aircraft [FOR WHICH A
20 DRIVER'S LICENSE IS REQUIRED] produces a result described in AS 28.-
21 35.030(a)(2) or if a person under arrest for operating [DRIVING] a
22 motor vehicle or aircraft [FOR WHICH A DRIVER'S LICENSE IS REQUIRED]
23 refuses to submit to a chemical test under AS 28.35.031(a), a law
24 enforcement officer shall read a notice and deliver a copy to the
25 person. The notice must advise that

26 (1) the department intends to revoke the person's driver's
27 license, [OR NONRESIDENT] privilege to drive, or privilege to obtain a
28 license, or refuse to issue an original license to the person;

29 (2) the person has the right to administrative review of

1 the revocation or determination not to issue an original license;

2 (3) if the person has a driver's license or a nonresident
3 privilege to drive, the notice itself is a temporary driver's license
4 that expires seven days after it is delivered to the person;

5 (4) revocation of the person's driver's license, [OR NON-
6 RESIDENT] privilege to drive, or privilege to obtain a license, or a
7 determination not to issue an original license takes [SHALL TAKE]
8 effect seven days after delivery of the notice to the person [UPON
9 EXPIRATION OF THE TEMPORARY DRIVER'S LICENSE] unless the person,
10 within seven days, requests an administrative review.

11 * Sec. 3. AS 28.15.165(c) is repealed and reenacted to read:

12 (c) The department shall revoke the person's license, privilege
13 to drive, or privilege to obtain a license, or refuse to issue an
14 original license, effective seven days after delivery to the person of
15 the notice required under (a) of this section, upon receipt of a sworn
16 report of a law enforcement officer

17 (1) that a chemical test under AS 28.35.031(a) produced a
18 result described in AS 28.35.030(a)(2) or that a person refused to
19 submit to a chemical test under AS 28.35.031(a);

20 (2) that notice under (a) of this section was provided to
21 the person, and

22 (3) describing the circumstances surrounding the arrest and
23 the grounds for the officer's belief that the person was intoxicated
24 while operating a motor vehicle or aircraft.

25 * Sec. 4. AS 28.15.165(d) is amended to read:

26 (d) The period of revocation of a driver's license, privilege to
27 drive, or privilege to obtain a license by the department under this
28 section shall be for the appropriate minimum period for court revoca-
29 tions under AS 28.15.181(c). A department hearing officer may grant

1 limited license privileges in accordance with the standards set out in
2 AS 28.15.201 to a person whose driver's license or nonresident privi-
3 lege to drive was revoked under this section.

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

5 (a) A person who has received a notice under AS 28.15.165(a) may
6 make a written request for administrative review of the department's
7 action under AS 28.15.165(c) or for limited license privileges under
8 AS 28.15.165(d). If the person's driver's license has not been previ-
9 ously surrendered to the department, it shall be surrendered to the
10 department at the time the request for review is made.

11 * Sec. 6. AS 28.15.166(b) is amended to read:

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

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

29 (g) The hearing for review of a revocation by the department

1 under AS 28.15.165 [UNDER THIS SECTION] shall be limited to the issues
2 of whether the arresting officer had reasonable grounds to believe
3 that the person was operating [DRIVING] a motor vehicle or aircraft
4 while intoxicated and whether

5 (1) the person refused to submit to a chemical test under
6 AS 28.35.031(a) after being advised that refusal would result in the
7 suspension, revocation, or denial of the person's license, [OR NON-
8 RESIDENT] privilege to drive, or privilege to obtain a license, and
9 that the refusal is a misdemeanor; or

10 (2) the chemical test authorized under AS 28.35.031(a) and
11 administered to the person produced a result described in AS 28.35.-
12 030(a)(2).

13 * Sec. 8. AS 28.15.166(j) is amended to read:

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

19 * Sec. 9. AS 28.15.166(n) is repealed and reenacted to read:

20 (n) The filing of an appeal under (m) of this section or a
21 petition for review does not automatically stay the department's order
22 or revocation. The court may grant a stay of the order or revocation
23 only upon a motion and hearing, and upon a finding that there is a
24 reasonable probability that the petitioner will prevail on the merits
25 and that the petitioner will suffer irreparable harm if the order is
26 not stayed.

27 * Sec. 11. AS 28.15.181(a) is amended to read:

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

1 privilege to obtain a license:

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

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

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

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

11 (5) operating [DRIVING] a motor vehicle or aircraft while
12 intoxicated;

13 (6) reckless driving;

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

16 (8) refusal to submit to a chemical test under AS 28.35.032
17 while under arrest for operating a motor vehicle or aircraft while
18 intoxicated;

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

21 * Sec. 11. AS 28.15.181(b) is amended to read:

22 (b) A court convicting a person of an offense described in
23 (a)(1) - (4), (6), or (7) of this section shall revoke that person's
24 driver's license, privilege to drive, or privilege to obtain a license
25 for not less than 30 days for the first conviction, unless the court
26 determines that the person's ability to earn a livelihood would be
27 severely impaired and a limitation under AS 28.15.201 can be placed on
28 the license that will enable the person to earn a livelihood without
29 excessive danger to the public. If a court limits a person's license

1 under this subsection, it shall do so for not less than 60 days. Upon
2 a subsequent conviction of a person for any offense described in
3 (a)(1) - (4), (6), or (7) of this section occurring within 10 years
4 after a prior conviction, the court shall revoke the person's license,
5 privilege to drive, or privilege to obtain a license and may not grant
6 the person limited license privileges for the following periods:

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

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

10 * Sec. 12. AS 28.15.181(c) is amended to read:

11 (c) A court convicting a person of an offense described in
12 (a)(5) or (8) of this section arising out of the operation of a motor
13 vehicle or aircraft [FOR WHICH A DRIVER'S LICENSE IS REQUIRED] shall
14 revoke that person's driver's license, privilege to drive, or privi-
15 lege to obtain a license. The revocation may be concurrent with or
16 consecutive to an administrative revocation under AS 28.15.165. The
17 court may not, except as provided in AS 28.15.201 [(e) OF THIS SEC-
18 TION], grant limited license privileges during the minimum period of
19 revocation. The minimum periods of revocation are [FOR THE FOLLOWING
20 PERIODS]:

21 (1) at least 90 days if the person has not been previously
22 convicted;

23 (2) at least one year if the person has been previously
24 convicted once;

25 (3) at least five years if the person has been previously
26 convicted twice;

27 (4) at least 10 years if the person has been previously
28 convicted more than twice [NOT LESS THAN 90 DAYS IF, WITHIN THE PRE-
29 CEDING 10 YEARS, THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF AN

1 OFFENSE

2 (A) DESCRIBED IN (a)(5) OR (8) OF THIS SECTION; OR

3 (B) UNDER A LAW OR ORDINANCE IN ANOTHER JURISDICTION
4 WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED IN
5 (a)(5) OR (8) OF THIS SECTION;

6 (2) NOT LESS THAN ONE YEAR IF, WITHIN THE PRECEDING 10
7 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF ONE OFFENSE

8 (A) DESCRIBED IN (a)(5) OR (8) OF THIS SECTION; OR

9 (B) UNDER A LAW OR ORDINANCE IN ANOTHER JURISDICTION
10 WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED IN
11 (a)(5) OR (8) OF THIS SECTION;

12 (3) NOT LESS THAN 10 YEARS IF, WITHIN THE PRECEDING 10
13 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF MORE THAN ONE OF
14 THE FOLLOWING OFFENSES OR HAS MORE THAN ONCE BEEN PREVIOUSLY CONVICTED
15 OF ONE OF THE FOLLOWING OFFENSES:

16 (A) AN OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS
17 SECTION; OR

18 (B) AN OFFENSE UNDER ANOTHER LAW OR ORDINANCE IN
19 ANOTHER JURISDICTION WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN
20 OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS SECTION].

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

22 (d) A court convicting a person of an offense described in
23 (a)(9) of this section shall revoke that person's driver's license,
24 privilege to drive, or privilege to obtain a license for not less than
25 the minimum period under AS 28.15.291(b)(4) [AS 28.15.291(c)].

26 * Sec. 14. AS 28.15.181(f) is amended to read:

27 (f) In [FOR PURPOSES OF] this section, "previously convicted"
28 means having been convicted in this or another jurisdiction, within 10
29 years preceding the date of the present offense, of operating a motor

1 vehicle or aircraft while intoxicated under AS 28.35.030 or another
2 law or ordinance with substantially similar elements, or of refusal to
3 submit to a chemical test under AS 28.35.032 or another law or ordi-
4 nance with substantially similar elements; convictions for both driv-
5 ing while intoxicated and for refusal to submit to a chemical test of
6 breath [UNDER AS 28.35.031(a)], if arising out of a single transaction
7 and a single arrest, are considered one previous conviction.

8 * Sec. 15. AS 28.15.201(a) is amended to read:

9 (a) A court of competent jurisdiction, or a hearing officer
10 under AS 28.15.165, may, for good cause, impose limitations upon the
11 driver's license of a person that will enable the person to earn a
12 livelihood without excessive risk or danger to the public. However,
13 no limitation may be placed upon a driver's license until after a
14 review has been made of the person's driving record and other relevant
15 information, nor may a limitation be imposed when a statute specifi-
16 cally prohibits the limitation of a license for a violation of its
17 provisions. In determining whether to grant limited license privi-
18 leges, a court or hearing officer may consider all the relevant facts,
19 including whether the person

20 (1) is enrolled in an alcoholism treatment program in which
21 the person regularly receives a substance intended to produce an
22 aversion to alcohol in the treatment of alcoholism;

23 (2) is ordered to operate a motor vehicle only with an
24 ignition interlock device or similar equipment designed to prevent a
25 motor vehicle from being operated by a person who has consumed an
26 alcoholic beverage;

27 (3) is participating in a program of random testing de-
28 signed to detect the presence of alcohol.

29 * Sec. 16. AS 28.15.201(b) is amended to read:

1 (b) A court or hearing officer imposing a limitation under this
2 section shall

3 (1) require the surrender of the driver's license; and

4 (2) issue to the licensee a certificate valid for the
5 duration of the limitation.

6 * Sec. 17. AS 28.15.201 is amended by adding new subsections to read:

7 (d) A court revoking a driver's license under AS 28.15.181(c),
8 or a hearing officer revoking a driver's license under AS 28.15.-
9 165(c), may grant limited license privileges (1) only if the court or
10 the hearing officer determines that the person's ability to earn a
11 livelihood would be severely impaired and a limitation under (a) of
12 this section can be placed on the license that will enable the person
13 to earn a livelihood without excessive danger to the public; (2) to
14 the person (A) for the final 60 days during which the license was
15 revoked if the person has not been previously convicted more than
16 once; (B) for the final two years during which the license was revoked
17 if the person has not been previously convicted more than twice; (C)
18 for the final five years during which the license was revoked if the
19 person has not been previously convicted more than five times, and the
20 court determines that the person has successfully completed an alco-
21 holism education and rehabilitation treatment program. The court may
22 not grant limited license privileges if the person has been previously
23 convicted more than six times.

24 (e) In this section, "previously convicted" means having been
25 convicted in this or another jurisdiction, within 10 years preceding
26 the date of the present offense, of operating a motor vehicle or
27 aircraft while intoxicated under AS 28.35.030 or another law or ordi-
28 nance with substantially similar elements, or of refusal to submit to
29 a chemical test under AS 28.35.032 while under arrest for operating a

1 motor vehicle or aircraft or another law or ordinance with substan-
2 tially similar elements.

3 * Sec. 18. AS 28.15.211(a) is amended to read:

4 (a) Except for a point system suspension or revocation under
5 AS 28.15.221 - 28.15.241 and unless provided otherwise by law, and
6 unless the suspension or revocation was for a cause that has been
7 removed, a person whose driver's license, [OR] privilege to drive, or
8 privilege to obtain a license [A MOTOR VEHICLE IN THIS STATE] has been
9 suspended or revoked may not apply for a new license, and [NOR MAY]
10 the person's driving privilege may not be restored, until the expira-
11 tion of

12 (1) one month from the date on which the license, privilege
13 to drive, or privilege to obtain a license was suspended or revoked
14 for a first conviction of the particular offense from which the sus-
15 pension or revocation resulted;

16 (2) three months from the date on which the license, privi-
17 lege to drive, or privilege to obtain a license was suspended or
18 revoked for a second conviction within 12 consecutive months of the
19 same offense from which the suspension or revocation resulted;

20 (3) one year from the date on which the license, privilege
21 to drive, or privilege to obtain a license was suspended or revoked
22 for a third or subsequent conviction within 12 consecutive months of
23 the same offense from which the suspension or revocation resulted.

24 * Sec. 19. AS 28.15.211(b) is amended to read:

25 (b) A limitation, suspension, or revocation of a driver's li-
26 cense, privilege to drive, or privilege to obtain a license imposed by
27 a court takes effect on the date of final judgment, except that if
28 another limitation, suspension, or revocation [OF LICENSE] is in
29 effect on the date of final judgment, the effective date of the last

1 imposed limitation, suspension, or revocation is at the end of the
2 last day of the previous limitation, suspension, or revocation unless
3 the court specifies otherwise.

4 * Sec. 20. AS 28.15.221 is amended to read:

5 Sec. 28.15.221. POINT SYSTEM. (a) For the purpose of identify-
6 ing habitually reckless or negligent drivers and habitual or frequent
7 violators of traffic laws, the commissioner shall adopt regulations
8 establishing a uniform system for the suspension, revocation, limita-
9 tion, or denial of a driver's license, privilege to drive, or privi-
10 lege to obtain a license [OR DRIVING PRIVILEGE] by assigning demerit
11 points for convictions for violations of traffic laws that are re-
12 quired to be reported to the department under AS 28.15.191 and AS 28.-
13 37.130.

14 (b) The regulations adopted under (a) of this section shall
15 include a designated level of point accumulation which identifies
16 drivers who are habitually reckless or negligent or who are habitual
17 or frequent violators of traffic laws, so as to show a disrespect for
18 traffic laws and a disregard for the safety of other persons. In
19 formulating the point system authorized by this section, the commis-
20 sioner shall, in the interest of interstate uniformity, provide for
21 suspension, revocation or denial of a driver's license, privilege to
22 drive, or privilege to obtain a license [OR PRIVILEGE] for an accumu-
23 lation of 12 or more points as a result of offenses committed during
24 any consecutive 12-month period or 18 or more points as a result of
25 offenses committed during any 24-month period.

26 * Sec. 21. AS 28.15.291 is repealed and reenacted to read:

27 Sec. 28.15.291. DRIVING WHILE LICENSE CANCELED, SUSPENDED,
28 REVOKED, OR IN VIOLATION OF A LIMITATION. (a) A person is guilty of
29 a class A misdemeanor if the person

1 (1) drives a motor vehicle on a highway or vehicular way or
2 area at a time when that person's driver's license, privilege to
3 drive, or privilege to obtain a license has been canceled, suspended,
4 or revoked in this or another jurisdiction; or

5 (2) drives in violation of a limitation placed upon that
6 person's license or privilege to drive in this or another jurisdic-
7 tion.

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

9 (1) shall impose a minimum sentence of imprisonment

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

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

16 (C) if the person's driver's license, privilege to
17 drive, or privilege to obtain a license was revoked under circum-
18 stances described in AS 28.15.181(c)(1), or if the person was
19 driving in violation of a limited license issued under AS 28.15.-
20 201(d) following that revocation, of not less than 20 days with
21 10 days suspended, and a fine of not less than \$500, including a
22 mandatory condition of probation that the defendant complete not
23 less than 80 hours of community work service;

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

1 (2) may impose additional conditions of probation;

2 (3) may not

3 (A) suspend execution of sentence;

4 (B) grant probation except on condition that the
5 person serve the minimum imprisonment provided in (1) of this
6 subsection;

7 (C) suspend imposition of sentence; and

8 (4) shall revoke the person's license, privilege to drive,
9 or privilege to obtain a license, and the person may not be issued a
10 new license nor may the privilege to drive or obtain a license be
11 restored for an additional period of not less than 90 days after the
12 date that the person would have been entitled to restoration of driv-
13 ing privileges.

14 (c) In this section, "previously convicted" means having been
15 convicted in this or another jurisdiction, within 10 years preceding
16 the date of the present offense, of a violation of this section or
17 another law or ordinance with substantially similar elements.

18 * Sec. 22. AS 28.35.030(b) is repealed and reenacted to read:

19 (b) Driving while intoxicated is a class A misdemeanor. Upon
20 conviction

21 (1) the court shall impose a minimum sentence of imprison-
22 ment of

23 (A) not less than 72 consecutive hours and a fine of
24 not less than \$250 if the person has not been previously convict-
25 ed;

26 (B) not less than 20 days and a fine of not less than
27 \$500 if the person has been previously convicted once;

28 (C) not less than 60 days and a fine of not less than
29 \$1,000 if the person has been previously convicted twice;

1 (D) not less than 120 days and a fine of not less than
2 \$2,000 if the person has been previously convicted three times;

3 (E) not less than 240 days and a fine of not less than
4 \$3,000 if the person has been previously convicted four times;

5 (F) not less than 360 days and a fine of not less than
6 \$4,000 if the person has been previously convicted more than four
7 times;

8 (2) the court may not

9 (A) suspend execution of sentence;

10 (B) grant probation except on condition that the
11 person serve the minimum imprisonment under (1) of this subsec-
12 tion;

13 (C) suspend imposition of sentence;

14 (3) the court shall revoke the person's driver's license,
15 privilege to drive, or privilege to obtain a license under AS 28.15.-
16 181, and may order the motor vehicle, aircraft, or watercraft that was
17 used in commission of the offense to be forfeited under AS 28.35.036.

18 * Sec. 23. AS 28.35.030(h) is amended to read:

19 (h) In this section,

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

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

28 (3) "previously convicted" means having been convicted in
29 this or another jurisdiction, within 10 years preceding the date of

1 the present offense, of operating a motor vehicle, or aircraft, while
2 intoxicated under this section or another law or ordinance with sub-
3 stantially similar elements, or of refusal to submit to a chemical
4 test under AS 28.35.032 or another law or ordinance with substantially
5 similar elements; "previously convicted" also means having been con-
6 victed in this or another jurisdiction, within 10 years preceding the
7 date of the present offense, of operating a watercraft while intoxi-
8 cated under this section or another law or ordinance with substantial-
9 ly similar elements if the present offense is also operating a water-
10 craft while intoxicated; convictions for both operating a motor vehi-
11 cle, aircraft, or watercraft while intoxicated and for refusal to
12 submit to a chemical test of breath, if arising out of a single trans-
13 action and a single arrest, are considered one previous conviction.

14 * Sec. 24. AS 28.35.030 is amended by adding new subsections to read:

15 (i) The court shall order a person convicted under this section
16 to satisfy the screening, evaluation, referral, program, and fee
17 requirements of an agency authorized by the court to make referrals
18 for rehabilitative treatment.

19 (j) A program of inpatient treatment may be required by the
20 referral agency under (i) of this section only if authorized in the
21 judgment, and may not exceed the maximum term of inpatient treatment
22 specified in the judgment. A person who has been referred for inpa-
23 tient treatment under this subsection may make a written request to
24 the sentencing court asking the court to review the referral. The
25 request for review shall be made within seven days of the agency's
26 referral, and shall specifically set out the grounds upon which the
27 request for review is based. The court may order a hearing on the
28 request for review.

29 (k) If a person fails to satisfy the requirements of an

1 authorized agency under (j) of this section, the court

2 (1) may impose any portion of a suspended sentence;

3 (2) may punish the failure as contempt of court under
4 AS 09.50.010 or as a violation of a condition of probation;

5 (3) shall order the revocation or suspension of the per-
6 son's driver's license, privilege to drive, and privilege to obtain a
7 license until the requirements are satisfied.

8 * Sec. 25. AS 28.35.032(a) is amended to read:

9 (a) If a person under arrest refuses the request of a law en-
10 forcement officer to submit to a chemical test under AS 28.35.031(a),
11 after being advised by the officer that the refusal will, if that
12 person was arrested while operating [OR DRIVING] a motor vehicle or
13 aircraft [FOR WHICH A DRIVER'S LICENSE IS REQUIRED], result in the
14 denial or revocation of the license or nonresident privilege to drive,
15 that the refusal may be used against the person in a civil or criminal
16 action or proceeding arising out of an act alleged to have been com-
17 mitted by the person while operating [OR DRIVING] a motor vehicle, [OR
18 OPERATING] an aircraft or a watercraft while intoxicated, and that the
19 refusal is a crime [MISDEMEANOR], a chemical test may not be given,
20 except as provided by AS 28.35.035.

21 * Sec. 26. AS 28.35.032(g) is repealed and reenacted to read:

22 (g) Upon conviction under this section

23 (1) the court shall impose a minimum sentence of imprison-
24 ment of

25 (A) not less than 72 consecutive hours and a fine of
26 not less than \$250 if the person has not been previously convict-
27 ed;

28 (B) not less than 20 days and a fine of not less than
29 \$500 if the person has been previously convicted once;

1 (C) not less than 60 days and a fine of not less than
2 \$1,000 if the person has been previously convicted twice;

3 (D) not less than 120 days and a fine of not less than
4 \$2,000 if the person has been previously convicted three times;

5 (E) not less than 240 days and a fine of not less than
6 \$3,000 if the person has been previously convicted four times;

7 (F) not less than 360 days and a fine of not less than
8 \$4,000 if the person has been previously convicted more than four
9 times;

10 (2) the court may not

11 (A) suspend execution of the sentence required by (1)
12 of this subsection;

13 (B) grant probation, except on condition that the
14 person serve the minimum imprisonment under (1) of this subsec-
15 tion; or

16 (C) suspend imposition of sentence;

17 (3) the court shall revoke the person's driver's license,
18 privilege to drive, or privilege to obtain a license under AS 28.15.-
19 181, and may order the motor vehicle, aircraft, or watercraft that was
20 used in commission of the offense be forfeited under AS 28.35.036; and

21 (4) the sentence imposed by the court under this subsection
22 shall run consecutively with any other sentence of imprisonment im-
23 posed on the person.

24 * Sec. 27. AS 28.35.032 is amended by adding new subsections to read:

25 (1) The court shall order a person convicted under this section
26 to satisfy the screening, evaluation, referral, program, and fee
27 requirements of an agency authorized by the court to make referrals
28 for rehabilitative treatment.

29 (m) A program of inpatient treatment may be required by the

1 referral agency under (l) of this section only if authorized in the
2 judgment, and may not exceed the maximum term of inpatient treatment
3 specified in the judgment. A person who has been referred for inpa-
4 tient treatment under this subsection may make a written request to
5 the sentencing court asking the court to review the referral. The
6 request for review shall be made within seven days of the agency's
7 referral, and shall specifically set out the grounds upon which the
8 request for review is based. The court may order a hearing on the
9 request for review.

10 (n) If a person fails to satisfy the requirements of an au-
11 thorized agency under (m) of this section, the court

12 (1) may impose any portion of a suspended sentence;

13 (2) may punish the failure as contempt of court under
14 AS 09.50.010 or as a violation of a condition of probation;

15 (3) shall order the revocation or suspension of the per-
16 son's driver's license, privilege to drive, and privilege to obtain a
17 license until the requirements are satisfied.

18 (o) In this section, "previously convicted" means having been
19 convicted in this or another jurisdiction, within 10 years preceding
20 the date of the present offense, of operating a motor vehicle or air-
21 craft while intoxicated under AS 28.35.030 or another law or ordinance
22 with substantially similar elements, or of refusal to submit to a
23 chemical test under this section or another law or ordinance with
24 substantially similar elements; "previously convicted" also means
25 having been convicted in this or another jurisdiction, within 10 years
26 preceding the date of the present offense, of operating a watercraft
27 while intoxicated under this section or another law or ordinance with
28 substantially similar elements if the present offense is also operat-
29 ing a watercraft while intoxicated; convictions for both operating a

1 motor vehicle, aircraft, or watercraft while intoxicated and for
2 refusal to submit to a chemical test of breath, if arising out of a
3 single transaction and a single arrest, are considered one previous
4 conviction.

5 * Sec. 28. AS 28.35.035(a) is amended to read:

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

13 * Sec. 29. AS 28.35.036(a) is amended to read:

14 (a) After conviction of an offense under AS 28.35.030 or 28.-
15 35.032 [INVOLVING A MOTOR VEHICLE OF A TYPE FOR WHICH A DRIVER'S
16 LICENSE IS REQUIRED], the state may move the court to order the for-
17 feiture of the motor vehicle, aircraft, or watercraft involved in the
18 commission of the offense if the convicted person has been previously
19 convicted in this or another jurisdiction of more than one of the
20 following offenses or has more than once been previously convicted of
21 one of the following offenses:

22 (1) driving while intoxicated under AS 28.35.030 or another
23 law or ordinance with substantially similar elements; or

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

26 * Sec. 30. AS 28.35.037 is amended to read:

27 Sec. 28.35.037. REMISSION OF FORFEITURES. (a) Upon receiving
28 notice from the court of the time and place set for a hearing under
29 AS 28.35.036, the state shall provide to every person who has an

1 ascertainable ownership or security interest in the motor vehicle ,
2 aircraft, or watercraft written notice that includes

3 (1) a description of the motor vehicle, aircraft, or water-
4 craft;

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

6 (3) the legal authority under which the motor vehicle,
7 aircraft, or watercraft may be forfeited;

8 (4) notice of the right to intervene to protect the inter-
9 est in the motor vehicle, aircraft, or watercraft.

10 (b) At the hearing, a person who claims an ownership or security
11 interest in the motor vehicle, aircraft, or watercraft must establish
12 by a preponderance of the evidence that

13 (1) the petitioner has an interest in the motor vehicle,
14 aircraft, or watercraft acquired in good faith;

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

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

20 (c) If a person satisfies the requirements of (b) of this sec-
21 tion, the court shall order that an amount equal to the value of the
22 petitioner's interest in the motor vehicle, aircraft, or watercraft be
23 paid to the petitioner or the court shall order that the motor vehi-
24 cle, aircraft, or watercraft be released to the petitioner together
25 with title to the motor vehicle, aircraft, or watercraft.

26 (d) Forfeiture of a motor vehicle, aircraft, or watercraft under
27 AS 28.35.036 is without prejudice to the rights, and does not extin-
28 guish the claims of a creditor with an interest in the motor vehicle,
29 aircraft, or watercraft.

1 * Sec. 31. AS 28.35.038 is amended to read:

2 Sec. 28.35.038. MUNICIPAL IMPOUNDMENT AND FORFEITURE. Notwith-
3 standing other provisions in this title, a municipality may adopt an
4 ordinance providing for the impoundment or forfeiture of a motor
5 vehicle, aircraft, or watercraft involved in the commission of an
6 offense under AS 28.35.030, 28.35.032, or an ordinance with elements
7 substantially similar to AS 28.35.030 or 28.35.032. An ordinance
8 adopted under this section is not required to be consistent with this
9 title or regulations adopted under this title.

10 * Sec. 32. AS 28.40.100(a)(5) is repealed and reenacted to read:

11 (5) "driver's license" or "license," when used in relation
12 to driver licensing, means a license or permit to drive a motor vehi-
13 cle, or the privilege to drive or to obtain a license to drive or
14 vehicle, under the laws of this state, whether or not a person holds a
15 valid license issued in this or another jurisdiction;

16 * Sec. 33. AS 28.15.166(1), 28.15.181(e), AS 28.35.030(c), and 28.35.-
17 030(f) are repealed.

18 * Sec. 34. The provisions of sec. 9 of this Act have the effect of
19 changing Alaska Rules of Appellate Procedure 603 and 611(d) by prohibiting
20 an automatic stay of the administrative revocation of a driver's license
21 pending appeal or petition for review and by limiting the power of the
22 court to stay the administrative revocation of a driver's license.

23 * Sec. 35. APPLICABILITY. The provisions of this Act apply to judicial
24 proceedings and administrative proceedings by the Department of Public
25 Safety relating to offenses that are committed after December 31, 1990.

26 * Sec. 36. This Act takes effect January 1, 1991.
27
28
29

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

January 10, 1990

TO: Members, House Judiciary Committee

FROM: Rep. Fran Ulmer

RE: CSHB 53, relating to drunk driving penalties

Rep. Peter Goll and I have worked out a revised committee substitute for HB 53 which addresses the concerns expressed by the committee during hearings last session. The changes to the bill are as follows:

- (1) The felony provision is eliminated; the penalty for the 6th DWI conviction is 360 days; the 5th conviction is 240 days. The committee expressed serious concerns about the effects of the felony provision on the judicial system in terms of cost, overcrowding in Alaska jails, and the difficulty of instituting a new criminal procedure for this offense.
- (2) Under the 3rd DWI conviction, the license is revoked for 5 years rather than 10 years, with the possibility of earning back the last 2 years. Both the original bill and current law require a 10 year revocation period. This reduction in penalty is consistent with the principle of graduated penalties for repeat offenses.
- (3) Authorizes the court to require a convicted defendant to participate in rehabilitative alcohol treatment programs. This provision is necessary because, as a result of recent decisions from the Court of Appeals, courts can no longer continue the prior practice of requiring convicted offenders to participate in treatment programs. This provision is consistent with HB 366, relating to offender treatment, which is pending in the House.

District 4B — Juneau

P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

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- (4) The refusal to participate in alcohol treatment programs can be punished by a contempt of court citation. This is the case now if the judge, at sentencing, explicitly states that failure to participate in treatment may be grounds for contempt. The inclusion of this provision in the statute will remove the requirement for the judge to make the statement at sentencing. This change was suggested by MADD.

The attached chart outlines the penalties of the committee substitute as compared to the original bill and to current statute.

COMPARISON OF PENALTIES
HOUSE BILL 53

CRIME	CURRENT LAW	HB 53	CSHB 53 (Jud)
1st DWI	3 days in jail; 90 day loss/license \$250 fine	3 days in jail; 90 day loss/license Earn back last 60 dy \$250 fine	3 days in jail; 90 day loss/license Earn back last 60 dy \$250 fine
2nd DWI	20 days in jail; 1 yr loss/license \$500 fine	20 days in jail; 1 yr loss/license Earn back last 60 dy \$500 fine	20 days in jail; 1 yr loss/license Earn back last 60 dy \$500 fine
3rd DWI	30 days in jail 10 yr loss/license \$1000 fine	60 days in jail; 10 yr loss/license Earn back last 5 yrs \$1000 fine	60 days in jail; 5 yr loss/license Earn back last 2 yrs \$1000 fine
4th DWI	30 days in jail 10 yr loss/license \$1000 fine	120 days in jail; 10 yr loss/license Earn back last 5 yrs \$2000 fine	120 days in jail; 10 yr loss/license Earn back last 5 yrs \$2000 fine
5th DWI	30 days in jail 10 yr loss/license \$1000 fine	240 days in jail; 10 yr loss/license Earn back last 5 yrs \$3000 fine	240 days in jail; 10 yr loss/license Earn back last 5 yrs \$3000 fine
6th DWI	30 days in jail 10 yr loss/license \$1000 fine	Class C Felony	360 days in jail; 10 yr loss/license Earn back last 5 yrs \$4000 fine
DWLR/DWLS 1/non-DWI	10 days in jail 1 yr loss/license	10 days/jail w/10 sus 90 day loss/license 80 hrs comm. service	10 days/jail w/10 sus 90 day loss/license 80 hrs comm. service
DWLR/DWLS 2/non-DWI	10 days in jail 1 yr loss/license	10 days in jail 90 day loss/license	10 days in jail 90 day loss/license
DWLR/DWLS Court ordered revoc for 1/DWI	30 days in jail 1 yr loss/license \$500 fine	20 days/jail w/10 sus 90 day loss/license \$500 fine 80 hrs comm. service	20 days/jail w/10 sus 90 day loss/license \$500 fine 80 hrs comm. service
DWLR/DWLS Court ordered revoc for 2 or more DWI	90 days in jail 1 yr loss/license \$1000 fine	30 days in jail 90 day loss/license \$1000 fine	30 days in jail 90 day loss/license \$1000 fine

6-02)9D
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Original sponsor(s): REP. ULMER, Koponen, Collins

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 53 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the privilege to drive, driver
7 licensing, driving while intoxicated, and other
8 procedures and matters related to driving and the
9 revocation of driving privileges; and providing for
10 an effective date."

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

12 * Section 1. AS 28.05.011 is amended to read:

13 Sec. 28.05.011. DUTY OF COMMISSIONER TO ADOPT REGULATIONS. The
14 commissioner shall, unless otherwise provided by statute, adopt regu-
15 lations in compliance with the Administrative Procedure Act (AS 44.62)
16 necessary to carry out the provisions of this title and other statutes
17 the administration of which is vested in the department. The regula-
18 tions must include, but are not limited to:

19 (1) rules of the road relating to the driving, stopping,
20 standing, parking, and other conduct of vehicles, to pedestrians, and
21 to official traffic control devices;

22 (2) minimum equipment for vehicles, including, but not
23 limited to, minimum standards of compliance to be met by manufacturers
24 and vehicle sales and repairs businesses;

25 (3) inspection of vehicles, and the removal of vehicles
26 from areas of public use when they are found to be in a defective or
27 unsafe condition;

28 (4) registration, titling, transfer, and abandonment of
29 vehicles;

1 (5) licensing of drivers of vehicles and procedures for
2 obtaining limited license privileges;

3 (6) financial responsibility relating to vehicles;

4 (7) management of records of the department required for
5 the administration of this title and regulations adopted under this
6 title, including provisions for ensuring the accuracy of information
7 contained in automated and manual information retrieval systems;

8 (8) [REPEALED;

9 (9)] definitions of words and phrases used in this title
10 and in regulations adopted under this title unless otherwise provided
11 by statute;

12 (9) [(10)] registration of motor vehicle, trailer, and
13 semi-trailer dealers; and

14 (10) [(11)] certification and regulation of junk yards.

15 * Sec. 2. AS 28.15.165(a) is amended to read:

16 (a) If a chemical test administered under AS 28.35.031(a) to a
17 person driving a motor vehicle for which a driver's license is re-
18 quired produces a result described in AS 28.35.030(a)(2) or if a
19 person under arrest for driving a motor vehicle for which a driver's
20 license is required refuses to submit to a chemical test under AS 28.-
21 35.031(a), a law enforcement officer shall read a notice and deliver a
22 copy to the person. The notice must advise that

23 (1) the department intends to revoke the person's driver's
24 license, [OR NONRESIDENT] privilege to drive, or privilege to obtain a
25 license, or refuse to issue an original license to the person;

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

28 (3) if the person has a driver's license or a nonresident
29 privilege to drive, the notice itself is a temporary driver's license

1 that expires seven days after it is delivered to the person;

2 (4) revocation of the person's driver's license, [OR NON-
3 RESIDENT] privilege to drive, or privilege to obtain a license, or a
4 determination not to issue an original license takes [SHALL TAKE]
5 effect seven days after delivery of the notice to the person [UPON
6 EXPIRATION OF THE TEMPORARY DRIVER'S LICENSE] unless the person,
7 within seven days, requests an administrative review.

8 * Sec. 3. AS 28.15.165(c) is repealed and reenacted to read:

9 (c) The department shall revoke the person's license, privilege
10 to drive, or privilege to obtain a license, or refuse to issue an
11 original license, effective seven days after delivery to the person of
12 the notice required under () of this section, upon receipt of a sworn
13 report of a law enforcement officer

14 (1) that a chemical test under AS 28.35.031(a) produced a
15 result described in AS 28.35.030(a)(2) or that a person refused to
16 submit to a chemical test under AS 28.35.031(a);

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

19 (3) describing the circumstances surrounding the arrest and
20 the grounds for the officer's belief that the person was intoxicated
21 while operating a motor vehicle for which a driver's license is
22 required.

23 * Sec. 4. AS 28.15.165(d) is amended to read:

24 (d) The period of revocation of a driver's license, privilege to
25 drive, or privilege to obtain a license by the department under this
26 section shall be for the appropriate minimum period for court revoca-
27 tions under AS 28.15.181(c). A department hearing officer may grant
28 limited license privileges in accordance with the standards set out in
29 AS 28.15.201 to a person whose driver's license or nonresident

1 privilege to drive was revoked under this section.

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

3 (a) A person who has received a notice under AS 28.15.165(a) may
4 make a written request for administrative review of the department's
5 action under AS 28.15.165(c) or for limited license privileges under
6 AS 28.15.165(d). If the person's driver's license has not been previ-
7 ously surrendered to the department, it shall be surrendered to the
8 department at the time the request for review is made.

9 * Sec. 6. AS 28.15.166(b) is amended to read:

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

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

27 (g) The hearing for review of a revocation by the department
28 under AS 28.15.165 (UNDER THIS SECTION) shall be limited to the issues
29 of whether the arresting officer had reasonable grounds to believe

1 that the person was operating [DRIVING] a motor vehicle while intox-
2 icated and whether

3 (1) the person refused to submit to a chemical test under
4 AS 28.35.031(a) after being advised that refusal would result in the
5 suspension, revocation, or denial of the person's license, [OR NON-
6 RESIDENT] privilege to drive, or privilege to obtain a license, and
7 that the refusal is a misdemeanor; or

8 (2) the chemical test authorized under AS 28.35.031(a) and
9 administered to the person produced a result described in AS 28.35.-
10 030(a)(2).

11 * Sec. 8. AS 28.15.166(j) is amended to read:

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

17 * Sec. 9. AS 28.15.166(n) is amended to read:

18 (n) The filing of an appeal under (m) of this section does not
19 automatically stay the department's [REVOCATION] order. The court may
20 grant a stay of the order only upon a motion and hearing, and upon a
21 finding that there is a reasonable probability that the petitioner
22 will prevail on the merits and that the petitioner will suffer irrepa-
23 rable harm if the order is not stayed.

24 * Sec. 10. AS 28.15.181(a) is amended to read:

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

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

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

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

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

8 (5) operating [DRIVING] a motor vehicle while intoxi-
9 cated;

10 (6) reckless driving;

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

13 (8) refusal to submit to a chemical test under AS 28.35.-
14 032;

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

17 * Sec. 11. AS 28.15.181(b) is amended to read:

18 (b) A court convicting a person of an offense described in
19 (a)(1) - (4), (6), or (7) of this section shall revoke that person's
20 driver's license, privilege to drive, or privilege to obtain a license
21 for not less than 30 days for the first conviction, unless the court
22 determines that the person's ability to earn a livelihood would be
23 severely impaired and a limitation under AS 28.15.201 can be placed on
24 the license that will enable the person to earn a livelihood without
25 excessive danger to the public. If a court limits a person's license
26 under this subsection, it shall do so for not less than 60 days. Upon
27 a subsequent conviction of a person for any offense described in
28 (a)(1) - (4), (6), or (7) of this section occurring within 10 years
29 after a prior conviction, the court shall revoke the person's license,

1 privilege to drive, or privilege to obtain a license and may not grant
2 the person limited license privileges for the following periods:

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

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

6 * Sec. 12. AS 28.15.181(c) is amended to read:

7 (c) A court convicting a person of an offense described in
8 (a)(5) or (8) of this section arising out of the operation of a motor
9 vehicle for which a driver's license is required shall revoke that
10 person's driver's license, privilege to drive, or privilege to obtain
11 a license. The revocation may be concurrent with or consecutive to an
12 administrative revocation under AS 28.15.165. The court may not,
13 except as provided in AS 28.15.201 [(e) OF THIS SECTION], grant limit-
14 ed license privileges during the minimum period of revocation. The
15 minimum periods of revocation are [FOR THE FOLLOWING PERIODS]:

16 (1) at least 90 days if the person has not been previously
17 convicted;

18 (2) at least one year if the person has been previously
19 convicted once;

20 (3) at least five years if the person has been previously
21 convicted twice;

22 (4) at least 10 years if the person has been previously
23 convicted more than twice [NOT LESS THAN 90 DAYS IF, WITHIN THE PRE-
24 CEDING 10 YEARS, THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF AN
25 OFFENSE

26 (A) DESCRIBED IN (a)(5) OR (8) OF THIS SECTION; OR

27 (B) UNDER A LAW OR ORDINANCE IN ANOTHER JURISDICTION
28 WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED IN
29 (a)(5) OR (8) OF THIS SECTION;

1 (2) NOT LESS THAN ONE YEAR IF, WITHIN THE PRECEDING 10
2 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF ONE OFFENSE

3 (A) DESCRIBED IN (a)(5) or (8) OF THIS SECTION; OR

4 (B) UNDER A LAW OR ORDINANCE IN ANOTHER JURISDICTION
5 WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED IN
6 (a)(5) OR (8) OF THIS SECTION;

7 (3) NOT LESS THAN 10 YEARS IF, WITHIN THE PRECEDING 10
8 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF MORE THAN ONE OF
9 THE FOLLOWING OFFENSES OR HAS MORE THAN ONCE BEEN PREVIOUSLY CONVICTED
10 OF ONE OF THE FOLLOWING OFFENSES:

11 (A) AN OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS
12 SECTION; OR

13 (B) AN OFFENSE UNDER ANOTHER LAW OR ORDINANCE IN
14 ANOTHER JURISDICTION WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN
15 OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS SECTION].

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

17 (d) A court convicting a person of an offense described in
18 (a)(9) of this section shall revoke that person's driver's license,
19 privilege to drive, or privilege to obtain a license for not less than
20 the minimum period under AS 28.15.291(b)(4) [AS 28.15.291(c)].

21 * Sec. 14. AS 28.15.181(f) is amended to read:

22 (f) In [FOR PURPOSES OF] this section, "previously convicted"
23 means having been convicted in this or another jurisdiction, within 10
24 years preceding the date of the present offense, of operating a motor
25 vehicle, aircraft, or watercraft while intoxicated under AS 28.35.030
26 or another law or ordinance with substantially similar elements, or of
27 refusal to submit to a chemical test under AS 28.35.032 or another law
28 or ordinance with substantially similar elements; convictions for both
29 driving while intoxicated and for refusal to submit to a chemical test

1 of breath [UNDER AS 28.35.031(a)], if arising out of a single trans-
2 action and a single arrest, are considered one previous conviction.

3 * Sec. 15. AS 28.15.201(a) is amended to read:

4 (a) A court of competent jurisdiction, or a hearing officer
5 under AS 28.15.165, may, for good cause, impose limitations upon the
6 driver's license of a person that will enable the person to earn a
7 livelihood without excessive risk or danger to the public. However,
8 no limitation may be placed upon a driver's license until after a
9 review has been made of the person's driving record and other relevant
10 information, nor may a limitation be imposed when a statute specifi-
11 cally prohibits the limitation of a license for a violation of its
12 provisions. In determining whether to grant limited license privi-
13 leges, a court or hearing officer may consider all the relevant facts,
14 including whether the person

15 (1) is enrolled in an alcoholism treatment program in which
16 the person receives antabuse or a similar chemical substance intended
17 to produce an aversion to alcohol in the treatment of alcoholism;

18 (2) operates a motor vehicle with an ignition interlock
19 device or similar equipment designed to prevent a motor vehicle from
20 being operated by a person who has consumed an alcoholic beverage;

21 (3) is participating in a program of random urine testing
22 designed to detect the presence of alcohol.

23 * Sec. 16. AS 28.15.201(b) is amended to read:

24 (b) A court or hearing officer imposing a limitation under this
25 section shall

26 (1) require the surrender of the driver's license; and

27 (2) issue to the licensee a certificate valid for the
28 duration of the limitation.

29 * Sec. 17. AS 28.15.201 is amended by adding new subsections to read:

1 (d) A court revoking a driver's license under AS 28.15.181(c),
2 or a hearing officer revoking a driver's license under AS 28.15.-
3 165(c), may grant limited license privileges (1) only if the court or
4 the hearing officer determines that the person's ability to earn a
5 livelihood would be severely impaired and a limitation under (a) of
6 this section can be placed on the license that will enable the person
7 to earn a livelihood without excessive danger to the public; (2) to
8 the person (A) for the final 60 days during which the license was
9 revoked if the person has not been previously convicted more than
10 once; (B) for the final two years during which the license was revoked
11 if the person has not been previously convicted more than twice; (C)
12 for the final five years during which the license was revoked if the
13 person has not been previously convicted more than five times, and the
14 court determines that the person has successfully completed an alco-
15 holism education and rehabilitation treatment program. The court may
16 not grant limited license privileges if the person has been previously
17 convicted more than six times.

18 (e) In this section, "previously convicted" means having been
19 convicted in this or another jurisdiction, within 10 years preceding
20 the date of the present offense, of driving while intoxicated under
21 AS 28.35.030 or another law or ordinance with substantially similar
22 elements, or of refusal to submit to a chemical test under AS 28.35.-
23 032 or another law or ordinance with substantially similar elements.

24 * Sec. 18. AS 28.15.211(a) is amended to read:

25 (a) Except for a point system suspension or revocation under
26 AS 28.15.221 - 28.15.241 and unless provided otherwise by law, and
27 unless the suspension or revocation was for a cause that has been
28 removed, a person whose driver's license, [OR] privilege to drive, or
29 privilege to obtain a license [A MOTOR VEHICLE IN THIS STATE] has been

1 suspended or revoked may not apply for a new license, and [NOR MAY]
2 the person's driving privilege may not be restored, until the expira-
3 tion of

4 (1) one month from the date on which the license, privilege
5 to drive, or privilege to obtain a license was suspended or revoked
6 for a first conviction of the particular offense from which the sus-
7 pension or revocation resulted;

8 (2) three months from the date on which the license, privi-
9 lege to drive, or privilege to obtain a license was suspended or
10 revoked for a second conviction within 12 consecutive months of the
11 same offense from which the suspension or revocation resulted;

12 (3) one year from the date on which the license, privilege
13 to drive, or privilege to obtain a license was suspended or revoked
14 for a third or subsequent conviction within 12 consecutive months of
15 the same offense from which the suspension or revocation resulted.

16 * Sec. 19. AS 28.15.211(b) is amended to read:

17 (b) A limitation, suspension, or revocation of a driver's li-
18 cense, privilege to drive, or privilege to obtain a license imposed by
19 a court takes effect on the date of final judgment, except that if
20 another limitation, suspension, or revocation [OF LICENSE] is in
21 effect on the date of final judgment, the effective date of the last
22 imposed limitation, suspension, or revocation is at the end of the
23 last day of the previous limitation, suspension, or revocation unless
24 the court specifies otherwise.

25 * Sec. 20. AS 28.15.221 is amended to read:

26 Sec. 28.15.221. POINT SYSTEM. (a) For the purpose of identify-
27 ing habitually reckless or negligent drivers and habitual or frequent
28 violators of traffic laws, the commissioner shall adopt regulations
29 establishing a uniform system for the suspension, revocation,

1 limitation, or denial of a driver's license, privilege to drive, or
2 privilege to obtain a license [OR DRIVING PRIVILEGE] by assigning
3 demerit points for convictions for violations of traffic laws that are
4 required to be reported to the department under AS 28.15.191 and
5 AS 28.37.130.

6 (b) The regulations adopted under (a) of this section shall
7 include a designated level of point accumulation which identifies
8 drivers who are habitually reckless or negligent or who are habitual
9 or frequent violators of traffic laws, so as to show a disrespect for
10 traffic laws and a disregard for the safety of other persons. In
11 formulating the point system authorized by this section, the commis-
12 sioner shall, in the interest of interstate uniformity, provide for
13 suspension, revocation or denial of a driver's license, privilege to
14 drive, or privilege to obtain a license [OR PRIVILEGE] for an accumu-
15 lation of 12 or more points as a result of offenses committed during
16 any consecutive 12-month period or 18 or more points as a result of
17 offenses committed during any 24-month period.

18 * Sec. 21. AS 28.15.291 is repealed and reenacted to read:

19 Sec. 28.15.291. DRIVING WHILE LICENSE CANCELED, SUSPENDED,
20 REVOKED, OR IN VIOLATION OF A LIMITATION. (a) A person is guilty of
21 a class A misdemeanor if the person

22 (1) drives a motor vehicle on a highway or vehicular way or
23 area at a time when that person's driver's license, privilege to
24 drive, or privilege to obtain a license has been canceled, suspended,
25 or revoked in this or another jurisdiction; or

26 (2) drives in violation of a limitation placed upon that
27 person's license or privilege to drive in this or another jurisdic-
28 tion.

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

1 (1) shall impose a minimum sentence of imprisonment

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

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

8 (C) if the person's driver's license, privilege to
9 drive, or privilege to obtain a license was revoked under circum-
10 stances described in AS 28.15.181(c)(1), or if the person was
11 driving in violation of a limited license issued under AS 28.15.-
12 201(d) following that revocation, of not less than 20 days with
13 10 days suspended, and a fine of not less than \$500, including a
14 mandatory condition of probation that the defendant complete not
15 less than 80 hours of community work service;

16 (D) if the person's driver's license, privilege to
17 drive, or privilege to obtain a license was revoked under circum-
18 stances described in AS 28.15.181(c)(2), (3), or (4) or if the
19 person was driving in violation of a limited license issued under
20 AS 28.15.201(d) following that revocation, of not less than 30
21 days and a fine of not less than \$1,000;

22 (2) may impose additional conditions of probation;

23 (3) may not

24 (A) suspend execution of sentence;

25 (B) grant probation except on condition that the
26 person serve the minimum imprisonment provided in (1) of this
27 subsection;

28 (C) suspend imposition of sentence; and

29 (4) shall revoke the person's license, privilege to drive,

1 or privilege to obtain a license, and the person may not be issued a
2 new license nor may the privilege to drive or obtain a license be
3 restored for an additional period of not less than 90 days after the
4 date that the person would have been entitled to restoration of driv-
5 ing privileges.

6 (c) In this section, "previously convicted" means having been
7 convicted in this or another jurisdiction, within 10 years preceding
8 the date of the present offense, of a violation of this section or
9 another law or ordinance with substantially similar elements.

10 * Sec. 22. AS 28.35.030(b) is repealed and reenacted to read:

11 (b) Driving while intoxicated is a class A misdemeanor. Upon
12 conviction

13 (1) the court shall impose a minimum sentence of imprison-
14 ment of

15 (A) not less than 72 consecutive hours and a fine of
16 not less than \$250 if the person has not been previously convict-
17 ed;

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

20 (C) not less than 60 days and a fine of not less than
21 \$1,000 if the person has been previously convicted twice;

22 (D) not less than 120 days and a fine of not less than
23 \$2,000 if the person has been previously convicted three times;

24 (E) not less than 240 days and a fine of not less than
25 \$3,000 if the person has been previously convicted four times;

26 (F) not less than 360 days and a fine of not less than
27 \$4,000 if the person has been previously convicted more than four
28 times;

29 (2) the court may not

1 (A) suspend execution of sentence;

2 (B) grant probation except on condition that the
3 person serve the minimum imprisonment under (1) of this subsec-
4 tion;

5 (C) suspend imposition of sentence;

6 (3) the court shall revoke the person's driver's license,
7 privilege to drive, or privilege to obtain a license under AS 28.15.-
8 181, and may order the motor vehicle that was used in commission of
9 the offense to be forfeited under AS 28.35.036.

10 * Sec. 23. AS 28.35.030(h) is amended to read:

11 (h) In this section,

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

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

20 (3) "previously convicted" means having been convicted in
21 this or another jurisdiction, within 10 years preceding the date of
22 the present offense, of operating a motor vehicle, aircraft, or water-
23 craft while intoxicated under this section or another law or ordinance
24 with substantially similar elements, or of refusal to submit to a
25 chemical test under AS 28.35.032 or another law or ordinance with
26 substantially similar elements; convictions for both operating a motor
27 vehicle, aircraft, or watercraft while intoxicated and for refusal to
28 submit to a chemical test of breath, if arising out of a single trans-
29 action and a single arrest, are considered one previous conviction.

1 * Sec. 24. AS 28.35.030 is amended by adding new subsections to read:

2 (i) The court shall order a person convicted under this section
3 to satisfy the screening, evaluation, referral, program, and fee
4 requirements of an agency authorized by the court to make referrals
5 for rehabilitative treatment.

6 (j) A program of inpatient treatment may be required by the
7 referral agency under (i) of this section only if authorized in the
8 judgment, and may not exceed the maximum term of inpatient treatment
9 specified in the judgment. A person who has been referred for inpa-
10 tient treatment under this subsection may make a written request to
11 the sentencing court asking the court to review the referral. The
12 request for review shall be made within seven days of the agency's
13 referral, and shall specifically set out the grounds upon which the
14 request for review is based. The court may order a hearing on the
15 request for review. If the person establishes by clear and convincing
16 evidence that the referral for inpatient treatment was arbitrary or
17 capricious, the court may rescind or modify the referral.

18 (k) If a person fails to satisfy the requirements of an au-
19 thorized agency under (j) of this section, the court

20 (1) may impose any portion of a suspended sentence;

21 (2) may punish the failure as contempt of court under
22 AS 09.50.010 or as a violation of a condition of probation;

23 (3) shall order the revocation or suspension of the per-
24 son's driver's license, privilege to drive, and privilege to obtain a
25 license until the requirements are satisfied.

26 * Sec. 25. AS 28.35.032(a) is amended to read:

27 (a) If a person under arrest refuses the request of a law en-
28 forcement officer to submit to a chemical test under AS 28.35.031(a),
29 after being advised by the officer that the refusal will, if that

1 person was arrested while operating or driving a motor vehicle for
2 which a driver's license is required, result in the denial or revoca-
3 tion of the license or nonresident privilege to drive, that the re-
4 fusal may be used against the person in a civil or criminal action or
5 proceeding arising out of an act alleged to have been committed by the
6 person while operating or driving a motor vehicle or operating an
7 aircraft or a watercraft while intoxicated, and that the refusal is a
8 crime [MISDEMEANOR], a chemical test may not be given, except as
9 provided by AS 28.35.035.

10 * Sec. 26. AS 28.35.032(g) is repealed and reenacted to read:

11 (g) Upon conviction under this section

12 (1) the court shall impose a minimum sentence of imprison-
13 ment of

14 (A) not less than 72 consecutive hours and a fine of
15 not less than \$250 if the person has not been previously convict-
16 ed;

17 (B) not less than 20 days and a fine of not less than
18 \$500 if the person has been previously convicted once;

19 (C) not less than 60 days and a fine of not less than
20 \$1,000 if the person has been previously convicted twice;

21 (D) not less than 120 days and a fine of not less than
22 \$2,000 if the person has been previously convicted three times;

23 (E) not less than 240 days and a fine of not less than
24 \$3,000 if the person has been previously convicted four times;

25 (F) not less than 360 days and a fine of not less than
26 \$4,000 if the person has been previously convicted more than four
27 times;

28 (2) the court may not

29 (A) suspend execution of the sentence required by (1)

1 of this subsection;

2 (B) grant probation, except on condition that the
3 person serve the minimum imprisonment under (1) of this subsec-
4 tion; or

5 (C) suspend imposition of sentence;

6 (3) the court shall revoke the person's driver's license,
7 privilege to drive, or privilege to obtain a license under AS 28.15.-
8 181, and may order the motor vehicle that was used in commission of
9 the offense be forfeited under AS 28.35.036; and

10 (4) the sentence imposed by the court under this subsection
11 shall run consecutively with any other sentence of imprisonment im-
12 posed on the person.

13 * Sec. 27. AS 28.35.032 is amended by adding new subsections to read:

14 (1) The court shall order a person convicted under this section
15 to satisfy the screening, evaluation, referral, program, and fee
16 requirements of an agency authorized by the court to make referrals
17 for rehabilitative treatment.

18 (m) A program of inpatient treatment may be required by the
19 referral agency under (1) of this section only if authorized in the
20 judgment, and may not exceed the maximum term of inpatient treatment
21 specified in the judgment. A person who has been referred for inpa-
22 tient treatment under this subsection may make a written request to
23 the sentencing court asking the court to review the referral. The
24 request for review shall be made within seven days of the agency's
25 referral, and shall specifically set out the grounds upon which the
26 request for review is based. The court may order a hearing on the
27 request for review. If the person establishes by clear and convincing
28 evidence that the referral for inpatient treatment was arbitrary or
29 capricious, the court may rescind or modify the referral.

1 (n) If a person fails to satisfy the requirements of an au-
2 thorized agency under (m) of this section, the court

3 (1) may impose any portion of a suspended sentence;

4 (2) may punish the failure as contempt of court under
5 AS 09.50.010 or as a violation of a condition of probation;

6 (3) shall order the revocation or suspension of the per-
7 son's driver's license, privilege to drive, and privilege to obtain a
8 license until the requirements are satisfied.

9 (o) In this section, "previously convicted" means having been
10 convicted in this or another jurisdiction, within 10 years preceding
11 the date of the present offense, of operating a motor vehicle, air-
12 craft, or watercraft while intoxicated under AS 28.35.030 or another
13 law or ordinance with substantially similar elements, or of refusal to
14 submit to a chemical test under this section or another law or ordi-
15 nance with substantially similar elements; convictions for both op-
16 erating a motor vehicle, aircraft, or watercraft while intoxicated and
17 for refusal to submit to a chemical test of breath, if arising out of
18 a single transaction and a single arrest, are considered one previous
19 conviction.

20 * Sec. 28. AS 28.35.035(a) is amended to read:

21 (a) If a person is under arrest for an offense arising out of
22 acts alleged to have been committed while the person was operating
23 [DRIVING] a motor vehicle while intoxicated, and that arrest results
24 from an accident that causes death or physical injury to another
25 person, a chemical test may be administered without the consent of the
26 person arrested to determine the amount of alcohol in that person's
27 breath or blood.

28 * Sec. 29. AS 28.35.036(a) is amended to read:

29 (a) After conviction of an offense under AS 28.35.030 or

1 28.35.032 [INVOLVING A MOTOR VEHICLE OF A TYPE FOR WHICH A DRIVER'S
2 LICENSE IS REQUIRED], the state may move the court to order the for-
3 feiture of the motor vehicle involved in the commission of the offense
4 if the convicted person has been previously convicted in this or
5 another jurisdiction of more than one of the following offenses or has
6 more than once been previously convicted of one of the following
7 offenses:

8 (1) driving while intoxicated under AS 28.35.030 or another
9 law or ordinance with substantially similar elements; or

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

12 * Sec. 30. AS 28.40.100(a)(5) is repealed and reenacted to read:

13 (5) "driver's license" or "license," when used in relation
14 to driver licensing, means a license or permit to drive a motor vehi-
15 cle, or the privilege to drive or to obtain a license to drive a motor
16 vehicle, under the laws of this state, whether or not a person holds a
17 valid license issued in this or another jurisdiction;

18 * Sec. 31. AS 28.15.166(1), 28.15.181(e), AS 28.35.030(c), and 28.35.-
19 030(f) are repealed.

20 * Sec. 32. APPLICABILITY. The provisions of this Act apply to judicial
21 proceedings and administrative proceedings by the Department of Public
22 Safety relating to offenses that are committed after December 31, 1990.

23 * Sec. 33. This Act takes effect January 1, 1991.
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Alaska State Legislature

HOUSE OF REPRESENTATIVES



RECEIVED
NOV 17 1989

REPRESENTATIVE FRAN ULMER

MEMORANDUM

November 16, 1989

TO: Rep. Peter Goll, Co-chair
Rep. Max Gruenberg, Co-chair
House Judiciary Committee

FROM: Rep. Fran Ulmer

RE: HB 53, relating to drunk driving penalties

Attached you will find a revised draft of HB 53, relating to drunk driving penalties, which I would like to submit for your consideration. This draft incorporates various changes which were discussed with the Judiciary Committee and reflects those compromises which seemed acceptable to the committee. The changes are:

- (1) The felony provision is eliminated; the penalty for the 6th DWI conviction is 360 days, 240 days for the 5th conviction. The committee expressed serious concerns about the effects of the felony provision on the judicial system in terms of cost, overcrowding in Alaska jails, and the difficulty of instituting a new criminal procedure for this offense.
- (2) Under the 2nd DWI conviction, the license is revoked for 5 years rather than 10 years, with the possibility of earning back the last 2 years. Both the original bill and current law establish a 10 year revocation period. This reduction in penalty is consistent with the principle of graduated penalties for repeat offenses.
- (3) The definition of motor vehicle has been expanded to include aircraft and watercraft.

District 4B - Juneau

PO Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

November 16, 1989

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- (4) The refusal to participate in alcohol treatment programs can be punished by a contempt of court citation. In practice, this is the case now if the judge, at sentencing, explicitly states that failure to participate in treatment may be grounds for contempt. The inclusion of this provision in the statute will remove the requirement for the judge to make the statement at sentencing. This change was suggested by MADD.

I have also attached a chart which shows the penalties set forth in this draft, as well as those of previous versions, compared to current law.

I have received considerable support for HB 53 during the interim from Native organizations in the state. The Tundra Times printed an editorial in support of the bill, as well as a long article I prepared for the paper. The Tanana Chiefs have been following the bill quite closely and called recently for a prognosis on its fate next session. My work during the interim has convinced me that there is substantial popular support for the bill because the need to address the problems resulting from alcohol abuse is so great. I hope this revision will answer those questions the committee had regarding the bill so that it can move out of Judiciary as soon as the session begins.

Thank you for your review of this proposal. I look forward to receiving your comments.

enclosure

COMPARISON OF PENALTIES
HOUSE BILL 53

COMPARISON OF PENALTIES
HOUSE BILL 53

CRIME	CURRENT LAW		HB 53	
1st DWI	3 days in jail; 90 day loss/license \$250 fine	3 days in jail; 90 day loss/license Earn back last 60 dy \$250 fine	3 days in jail; 90 day loss/license Earn back last 60 dy \$250 fine	3 days in jail; 90 day loss/license Earn back last 60 dy \$250 fine
2nd DWI	20 days in jail; 1 yr loss/license \$500 fine	20 days in jail; 1 yr loss/license Earn back last 60 dy \$500 fine	20 days in jail; 1 yr loss/license Earn back last 60 dy \$500 fine	20 days in jail; 1 yr loss/license Earn back last 60 dy \$500 fine
3rd DWI	30 days in jail 10 yr loss/license \$1000 fine	60 days in jail; 10 yr loss/license Earn back last 5 yrs \$1000 fine	60 days in jail 10 yr loss/license Earn back last 5 yrs \$1000 fine	60 days in jail; 5 yr loss/license Earn back last 2 yrs \$1000 fine
4th DWI	30 days in jail 10 yr loss/license \$1000 fine	120 days in jail; 10 yr loss/license Earn back last 5 yrs \$2000 fine	120 days in jail 10 yr loss/license Earn back last 5 yrs \$2000 fine	120 days in jail; 10 yr loss/license Earn back last 5 yrs \$2000 fine
5th DWI	30 days in jail 10 yr loss/license \$1000 fine	240 days in jail; 10 yr loss/license Earn back last 5 yrs \$3000 fine	Class C Felony	240 days in jail; 10 yr loss/license Earn back last 5 yrs \$3000 fine
6th DWI	30 days in jail 10 yr loss/license \$1000 fine	Class C Felony	Class C Felony	360 days in jail; 10 yr loss/license Earn back last 5 yrs \$4000 fine
DWLR/DWLS 1/non-DWI	10 days in jail 1 yr loss/license	10 days/jail w/10 sus 90 day loss/license 80 hrs comm. service	10 days/jail w/10 sus 90 day loss/license 80 hrs comm. service	10 days/jail w/10 sus 90 day loss/license 80 hrs comm. service
DWLR/DWLS 2/non-DWI	10 days in jail 1 yr loss/license	10 days in jail 90 day loss/license	10 days in jail 90 day loss/license	10 days in jail 90 day loss/license
DWLR/DWLS Court ordered revoc for 1/DWI	30 days in jail 1 yr loss/license \$500 fine	20 days/jail w/10 sus 90 day loss/license \$500 fine 80 hrs comm. service	20 days/jail w/10 sus 90 day loss/license \$500 fine 80 hrs comm. service	20 days/jail w/10 sus 90 day loss/license \$500 fine 80 hrs comm. service
DWLR/DWLS Court ordered revoc for 2 or more DWI	90 days in jail 1 yr loss/license \$1000 fine	30 days in jail 90 day loss/license \$1000 fine	30 days in jail 90 day loss/liconso \$1000 fine	30 days in jail 90 day loss/license \$1000 fine

Original sponsors: Ulmer, Koponen,
and Collins

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 53 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the privilege to drive, driver
7 licensing, driving while intoxicated, and other
8 procedures and matters related to driving and the
9 revocation of driving privileges; relating to operat-
10 ing an aircraft or watercraft; and providing for an
11 effective date."

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

13 * Section 1. AS 28.05.011 is amended to read:

14 Sec. 28.05.011. DUTY OF COMMISSIONER TO ADOPT REGULATIONS. The
15 commissioner shall, unless otherwise provided by statute, adopt regu-
16 lations in compliance with the Administrative Procedure Act (AS 44.62)
17 necessary to carry out the provisions of this title and other statutes
18 the administration of which is vested in the department. The regula-
19 tions must include, but are not limited to:

20 (1) rules of the road relating to the driving, stopping,
21 standing, parking, and other conduct of vehicles, to pedestrians, and
22 to official traffic control devices;

23 (2) minimum equipment for vehicles, including, but not
24 limited to, minimum standards of compliance to be met by manufacturers
25 and vehicle sales and repairs businesses;

26 (3) inspection of vehicles, and the removal of vehicles
27 from areas of public use when they are found to be in a defective or
28 unsafe condition;

29 (4) registration, titling, transfer, and abandonment of

1 vehicles;

2 (5) licensing of drivers of vehicles and procedures for
3 obtaining limited license privileges;

4 (6) financial responsibility relating to vehicles;

5 (7) management of records of the department required for
6 the administration of this title and regulations adopted under this
7 title, including provisions for ensuring the accuracy of information
8 contained in automated and manual information retrieval systems;

9 (8) [REPEALED;

10 (9)] definitions of words and phrases used in this title
11 and in regulations adopted under this title unless otherwise provided
12 by statute;

13 (9) [(10)] registration of motor vehicle, trailer, and
14 semi-trailer dealers; and

15 (10) [(11)] certification and regulation of junk yards.

16 * Sec. 2. AS 28.15.165(a) is amended to read:

17 (a) If a chemical test administered under AS 28.35.031(a) [TO A
18 PERSON DRIVING A MOTOR VEHICLE FOR WHICH A DRIVER'S LICENSE IS REQUIR-
19 ED] produces a result described in AS 28.35.030(a)(2) or if a person
20 [UNDER ARREST FOR DRIVING A MOTOR VEHICLE FOR WHICH A DRIVER'S LI-
21 CENSE IS REQUIRED] refuses to submit to a chemical test under AS 28.-
22 35.031(a), a law enforcement officer shall read a notice and deliver a
23 copy to the person. The notice must advise that

24 (1) the department intends to revoke the person's driver's
25 license, [OR NONRESIDENT] privilege to drive, or privilege to obtain a
26 license, or refuse to issue an original license to the person;

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

29 (3) if the person has a driver's license or a nonresident

1 privilege to drive, the notice itself is a temporary driver's license
2 that expires seven days after it is delivered to the person;

3 (4) revocation of the person's driver's license, [OR NON-
4 RESIDENT] privilege to drive, or privilege to obtain a license, or a
5 determination not to issue an original license takes [SHALL TAKE]
6 effect seven days after delivery of the notice to the person [UPON
7 EXPIRATION OF THE TEMPORARY DRIVER'S LICENSE] unless the person,
8 within seven days, requests an administrative review.

9 * Sec. 3. AS 28.15.165(c) is repealed and reenacted to read:

10 (c) The department shall revoke the person's license, privilege
11 to drive, or privilege to obtain a license, or refuse to issue an
12 original license, effective seven days after delivery to the person of
13 the notice required under (a) of this section, upon receipt of a sworn
14 report of a law enforcement officer

15 (1) that a chemical test under AS 28.35.031(a) produced a
16 result described in AS 28.35.030(a)(2) or that a person refused to
17 submit to a chemical test under AS 28.35.031(a);

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

20 (3) describing the circumstances surrounding the arrest and
21 the grounds for the officer's belief that the person was intoxicated
22 while operating a motor vehicle, aircraft, or watercraft.

23 * Sec. 4. AS 28.15.165(d) is amended to read:

24 (d) The period of revocation of a driver's license, privilege to
25 drive, or privilege to obtain a license by the department under this
26 section shall be for the appropriate minimum period for court revoca-
27 tions under AS 28.15.181(c). A department hearing officer may grant
28 limited license privileges in accordance with the standards set out in
29 AS 28.15.201 to a person whose driver's license or nonresident

1 privilege to drive was revoked under this section.

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

3 (a) A person who has received a notice under AS 28.15.165(a) may
4 make a written request for administrative review of the department's
5 action under AS 28.15.165(c) or for limited license privileges under
6 AS 28.15.165(d). If the person's driver's license has not been previ-
7 ously surrendered to the department, it shall be surrendered to the
8 department at the time the request for review is made.

9 * Sec. 6. AS 28.15.166(b) is amended to read:

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

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

27 (g) The hearing for review of a revocation by the department
28 under AS 28.15.165 [UNDER THIS SECTION] shall be limited to the issues
29 of whether the arresting officer had reasonable grounds to believe

1 that the person was operating [DRIVING] a motor vehicle, aircraft, or
2 watercraft while intoxicated and whether

3 (1) the person refused to submit to a chemical test under
4 AS 28.35.031(a) after being advised that refusal would result in the
5 suspension, revocation, or denial of the person's license, [OR NON-
6 RESIDENT] privilege to drive, or privilege to obtain a license, and
7 that the refusal is a misdemeanor; or

8 (2) the chemical test authorized under AS 28.35.031(a) and
9 administered to the person produced a result described in AS 28.35.-
10 030(a)(2).

11 * Sec. 8. AS 28.15.166(j) is amended to read:

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

17 * Sec. 9. AS 28.15.166(n) is amended to read:

18 (n) The filing of an appeal under (m) of this section does not
19 automatically stay the department's [REVOCATION] order. The court may
20 grant a stay of the order only upon a motion and hearing, and upon a
21 finding that there is a reasonable probability that the petitioner
22 will prevail on the merits and that the petitioner will suffer irrepa-
23 rable harm if the order is not stayed.

24 * Sec. 10. AS 28.15.181(a) is amended to read:

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

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

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

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

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

8 (5) operating [DRIVING] a motor vehicle, aircraft, or
9 watercraft while intoxicated;

10 (6) reckless driving;

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

13 (8) refusal to submit to a chemical test under AS 28.35.-
14 032;

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

17 * Sec. 11. AS 28.15.181(b) is amended to read:

18 (b) A court convicting a person of an offense described in
19 (a)(1) - (4), (6), or (7) of this section shall revoke that person's
20 driver's license, privilege to drive, or privilege to obtain a license
21 for not less than 30 days for the first conviction, unless the court
22 determines that the person's ability to earn a livelihood would be
23 severely impaired and a limitation under AS 28.15.201 can be placed on
24 the license that will enable the person to earn a livelihood without
25 excessive danger to the public. If a court limits a person's license
26 under this subsection, it shall do so for not less than 60 days. Upon
27 a subsequent conviction of a person for any offense described in
28 (a)(1) - (4), (6), or (7) of this section occurring within 10 years
29 after a prior conviction, the court shall revoke the person's license.

1 privilege to drive, or privilege to obtain a license and may not grant
2 the person limited license privileges for the following periods:

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

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

6 * Sec. 12. AS 28.15.181(c) is amended to read:

7 (c) A court convicting a person of an offense described in
8 (a)(5) or (8) of this section [ARISING OUT OF THE OPERATION OF A MOTOR
9 VEHICLE FOR WHICH A DRIVER'S LICENSE IS REQUIRED] shall revoke that
10 person's driver's license, privilege to drive, or privilege to obtain
11 a license. The revocation may be concurrent with or consecutive to an
12 administrative revocation under AS 28.15.165. The court may not,
13 except as provided in AS 28.15.201 [(e) OF THIS SECTION], grant limit-
14 ed license privileges during the minimum period of revocation. The
15 minimum periods of revocation are [FOR THE FOLLOWING PERIODS]:

16 (1) at least 90 days if the person has not been previously
17 convicted;

18 (2) at least one year if the person has been previously
19 convicted once;

20 (3) at least five years if the person has been previously
21 convicted twice;

22 (4) at least 10 years if the person has been previously
23 convicted more than twice [NOT LESS THAN 90 DAYS IF, WITHIN THE PRE-
24 CEDING 10 YEARS, THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF AN
25 OFFENSE

26 (A) DESCRIBED IN (a)(5) OR (8) OF THIS SECTION; OR

27 (B) UNDER A LAW OR ORDINANCE IN ANOTHER JURISDICTION
28 WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED IN
29 (a)(5) OR (8) OF THIS SECTION;

1 (2) NOT LESS THAN ONE YEAR IF, WITHIN THE PRECEDING 10
2 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF ONE OFFENSE

3 (A) DESCRIBED IN (a)(5) or (8) OF THIS SECTION; OR

4 (B) UNDER A LAW OR ORDINANCE IN ANOTHER JURISDICTION
5 WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED IN
6 (a)(5) OR (8) OF THIS SECTION;

7 (3) NOT LESS THAN 10 YEARS IF, WITHIN THE PRECEDING 10
8 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF MORE THAN ONE OF
9 THE FOLLOWING OFFENSES OR HAS MORE THAN ONCE BEEN PREVIOUSLY CONVICTED
10 OF ONE OF THE FOLLOWING OFFENSES:

11 (A) AN OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS
12 SECTION; OR

13 (B) AN OFFENSE UNDER ANOTHER LAW OR ORDINANCE IN
14 ANOTHER JURISDICTION WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN
15 OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS SECTION].

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

17 (d) A court convicting a person of an offense described in
18 (a)(9) of this section shall revoke that person's driver's license,
19 privilege to drive, or privilege to obtain a license for not less than
20 the minimum period under AS 28.15.291(b)(4) [AS 28.15.291(c)].

21 * Sec. 14. AS 28.15.181(f) is amended to read:

22 (f) In [FOR PURPOSES OF] this section, "previously convicted"
23 means having been convicted in this or another jurisdiction, within 10
24 years preceding the date of the present offense, of operating a motor
25 vehicle, aircraft, or watercraft while intoxicated under AS 28.35.030
26 or another law or ordinance with substantially similar elements, or of
27 refusal to submit to a chemical test under AS 28.35.032 or another law
28 or ordinance with substantially similar elements; convictions for both
29 driving while intoxicated and for refusal to submit to a chemical test

1 of breath [UNDER AS 28.35.031(a)], if arising out of a single trans-
2 action and a single arrest, are considered one previous conviction.

3 * Sec. 15. AS 28.15.201(a) is amended to read:

4 (a) A court of competent jurisdiction, or a hearing officer
5 under AS 28.15.165, may, for good cause, impose limitations upon the
6 driver's license of a person that will enable the person to earn a
7 livelihood without excessive risk or danger to the public. However,
8 no limitation may be placed upon a driver's license until after a
9 review has been made of the person's driving record and other relevant
10 information, nor may a limitation be imposed when a statute specifi-
11 cally prohibits the limitation of a license for a violation of its
12 provisions. In determining whether to grant limited license privi-
13 leges, a court or hearing officer may consider all the relevant facts,
14 including whether the person

15 (1) is enrolled in an alcoholism treatment program in which
16 the person receives antabuse or a similar chemical substance intended
17 to produce an aversion to alcohol in the treatment of alcoholism;

18 (2) operates a motor vehicle with an ignition interlock
19 device or similar equipment designed to prevent a motor vehicle from
20 being operated by a person who has consumed an alcoholic beverage;

21 (3) is participating in a program of random urine testing
22 designed to detect the presence of alcohol.

23 * Sec. 16. AS 28.15.201(b) is amended to read:

24 (b) A court or hearing officer imposing a limitation under this
25 section shall

26 (1) require the surrender of the driver's license; and

27 (2) issue to the licensee a certificate valid for the
28 duration of the limitation.

29 * Sec. 17. AS 28.15.201 is amended by adding new subsections to read:

1 (d) A court revoking a driver's license under AS 28.15.181(c),
2 or a hearing officer revoking a driver's license under AS 28.15.-
3 165(c), may grant limited license privileges (1) only if the court or
4 the hearing officer determines that the person's ability to earn a
5 livelihood would be severely impaired and a limitation under (a) of
6 this section can be placed on the license that will enable the person
7 to earn a livelihood without excessive danger to the public; (2) to
8 the person (A) for the final 60 days during which the license was
9 revoked if the person has not been previously convicted more than
10 once; (B) for the final two years during which the license was revoked
11 if the person has not been previously convicted more than twice; (C)
12 for the final five years during which the license was revoked if the
13 person has not been previously convicted more than five times, and the
14 court determines that the person has successfully completed an alco-
15 holism education and rehabilitation treatment program. The court may
16 not grant limited license privileges if the person has been previously
17 convicted more than six times.

18 (e) In this section, "previously convicted" means having been
19 convicted in this or another jurisdiction, within 10 years preceding
20 the date of the present offense, of driving while intoxicated under
21 AS 28.35.030 or another law or ordinance with substantially similar
22 elements, or of refusal to submit to a chemical test under AS 28.35.-
23 032 or another law or ordinance with substantially similar elements.

24 * Sec. 18. AS 28.15.211(a) is amended to read:

25 (a) Except for a point system suspension or revocation under
26 AS 28.15.221 - 28.15.241 and unless provided otherwise by law, and
27 unless the suspension or revocation was for a cause that has been
28 removed, a person whose driver's license, [OR] privilege to drive, or
29 privilege to obtain a license [A MOTOR VEHICLE IN THIS STATE] has been

1 suspended or revoked may not apply for a new license, and [NOR MAY]
2 the person's driving privilege may not be restored, until the expira-
3 tion of

4 (1) one month from the date on which the license, privilege
5 to drive, or privilege to obtain a license was suspended or revoked
6 for a first conviction of the particular offense from which the sus-
7 pension or revocation resulted;

8 (2) three months from the date on which the license, privi-
9 lege to drive, or privilege to obtain a license was suspended or
10 revoked for a second conviction within 12 consecutive months of the
11 same offense from which the suspension or revocation resulted;

12 (3) one year from the date on which the license, privilege
13 to drive, or privilege to obtain a license was suspended or revoked
14 for a third or subsequent conviction within 12 consecutive months of
15 the same offense from which the suspension or revocation resulted.

16 * Sec. 19. AS 28.15.211(b) is amended to read:

17 (b) A limitation, suspension, or revocation of a driver's li-
18 cense, privilege to drive, or privilege to obtain a license imposed by
19 a court takes effect on the date of final judgment, except that if
20 another limitation, suspension, or revocation [OF LICENSE] is in
21 effect on the date of final judgment, the effective date of the last
22 imposed limitation, suspension, or revocation is at the end of the
23 last day of the previous limitation, suspension, or revocation unless
24 the court specifies otherwise.

25 * Sec. 20. AS 28.15.221 is amended to read:

26 Sec. 28.15.221. POINT SYSTEM. (a) For the purpose of identify-
27 ing habitually reckless or negligent drivers and habitual or frequent
28 violators of traffic laws, the commissioner shall adopt regulations
29 establishing a uniform system for the suspension, revocation,

1 limitation, or denial of a driver's license, privilege to drive, or
2 privilege to obtain a license [OR DRIVING PRIVILEGE] by assigning
3 demerit points for convictions for violations of traffic laws that are
4 required to be reported to the department under AS 28.15.191 and
5 AS 28.37.130.

6 (b) The regulations adopted under (a) of this section shall
7 include a designated level of point accumulation which identifies
8 drivers who are habitually reckless or negligent or who are habitual
9 or frequent violators of traffic laws, so as to show a disrespect for
10 traffic laws and a disregard for the safety of other persons. In
11 formulating the point system authorized by this section, the commis-
12 sioner shall, in the interest of interstate uniformity, provide for
13 suspension, revocation or denial of a driver's license, privilege to
14 drive, or privilege to obtain a license [OR PRIVILEGE] for an accumu-
15 lation of 12 or more points as a result of offenses committed during
16 any consecutive 12-month period or 18 or more points as a result of
17 offenses committed during any 24-month period.

18 * Sec. 21. AS 28.15.291 is repealed and reenacted to read:

19 Sec. 28.15.291. DRIVING WHILE LICENSE CANCELED, SUSPENDED,
20 REVOKED, OR IN VIOLATION OF A LIMITATION. (a) A person is guilty of
21 a class A misdemeanor if the person

22 (1) drives a motor vehicle on a highway or vehicular way or
23 area at a time when that person's driver's license, privilege to
24 drive, or privilege to obtain a license has been canceled, suspended,
25 or revoked in this or another jurisdiction; or

26 (2) drives in violation of a limitation placed upon that
27 person's license or privilege to drive in this or another jurisdic-
28 tion.

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

1 (1) shall impose a minimum sentence of imprisonment

2 (A) if the person has not been previously convicted,
3 of not less than 10 days with 10 days suspended, inclu'ing a
4 mandatory condition of probation that the defendant complete not
5 less than 80 hours of community work service;

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

8 (C) if the person's driver's license, privilege to
9 drive, or privilege to obtain a license was revoked under circum-
10 stances described in AS 28.15.181(c)(1), or if the person was
11 driving in violation of a limited license issued under AS 28.15.-
12 201(d) following that revocation, of not less than 20 days with
13 10 days suspended, and a fine of not less than \$500, including a
14 mandatory condition of probation that the defendant complete not
15 less than 80 hours of community work service;

16 (D) if the person's driver's license, privilege to
17 drive, or privilege to obtain a license was revoked under circum-
18 stances described in AS 28.15.181(c)(2), (3), or (4) or if the
19 person was driving in violation of a limited license issued under
20 AS 28.15.201(d) following that revocation, of not less than 30
21 days and a fine of not less than \$1,000;

22 (2) may impose additional conditions of probation;

23 (3) may not

24 (A) suspend execution of sentence;

25 (B) grant probation except on condition that the
26 person serve the minimum imprisonment provided in (1) of this
27 subsection;

28 (C) suspend imposition of sentence; and

29 (4) shall revoke the person's license, privilege to drive,

1 or privilege to obtain a license, and the person may not be issued a
2 new license nor may the privilege to drive or obtain a license be
3 restored for an additional period of not less than 90 days after the
4 date that the person would have been entitled to restoration of driv-
5 ing privileges.

6 (c) In this section, "previously convicted" means having been
7 convicted in this or another jurisdiction, within 10 years preceding
8 the date of the present offense, of a violation of this section or
9 another law or ordinance with substantially similar elements.

10 * Sec. 22. AS 28.35.030(b) is repealed and reenacted to read:

11 (b) Driving while intoxicated is a class A misdemeanor. Upon
12 conviction

13 (1) the court shall impose a minimum sentence of imprison-
14 ment of

15 (A) not less than 72 consecutive hours and a fine of
16 not less than \$250 if the person has not been previously convict-
17 ed;

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

20 (C) not less than 60 days and a fine of not less than
21 \$1,000 if the person has been previously convicted twice;

22 (D) not less than 120 days and a fine of not less than
23 \$2,000 if the person has been previously convicted three times;

24 (E) not less than 240 days and a fine of not less than
25 \$3,000 if the person has been previously convicted four times;

26 (F) not less than 360 days and a fine of not less than
27 \$4,000 if the person has been previously convicted more than four
28 times;

29 (2) the court may not

1 (A) suspend execution of sentence;

2 (B) grant probation except on condition that the
3 person serve the minimum imprisonment under (1) of this subsec-
4 tion;

5 (C) suspend imposition of sentence;

6 (3) the court shall revoke the person's driver's license,
7 privilege to drive, or privilege to obtain a license under AS 28.15.-
8 181, and may order the motor vehicle that was used in commission of
9 the offense to be forfeited under AS 28.35.036;

10 (4) the court shall order, and the person convicted under
11 this section is required to undertake, for a term specified by the
12 court, a program of alcohol education or rehabilitation that the
13 court, after consideration of any information compiled under (d) of
14 this section, finds appropriate; failure to comply with a court order
15 under this paragraph may be punished as contempt under AS 09.50.010 or
16 as a violation of a condition of probation.

17 * Sec. 23. AS 28.35.030(h) is amended to read:

18 (h) In this section,

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

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

27 (3) "previously convicted" means having been convicted in
28 this or another jurisdiction, within 10 years preceding the date of
29 the present offense, of driving while intoxicated under this section

1 or another law or ordinance with substantially similar elements, or of
 2 refusal to submit to a chemical test under AS 28.35.032 or another law
 3 or ordinance with substantially similar elements; convictions for both
 4 driving while intoxicated and for refusal to submit to a chemical test
 5 of breath, if arising out of a single transaction and a single arrest,
 6 are considered one previous conviction.

7 * Sec. 24. AS 28.35.032(a) is amended to read:

8 (a) If a person under arrest refuses the request of a law en-
 9 forcement officer to submit to a chemical test under AS 28.35.031(a),
 10 after being advised by the officer that the refusal will [, IF THAT
 11 PERSON WAS ARRESTED WHILE OPERATING OR DRIVING A MOTOR VEHICLE FOR
 12 WHICH A DRIVER'S LICENSE IS REQUIRED,] result in the denial or revoca-
 13 tion of the license or nonresident privilege to drive, that the re-
 14 fusal may be used against the person in a civil or criminal action or
 15 proceeding arising out of an act alleged to have been committed by the
 16 person while operating or driving a motor vehicle or operating an
 17 aircraft or a watercraft while intoxicated, and that the refusal is a
 18 crime [MISDEMEANOR], a chemical test may not be given, except as
 19 provided by AS 28.35.035.

20 * Sec. 25. AS 28.35.032(g) is repealed and reenacted to read:

21 (g) Upon conviction under this section

22 (1) the court shall impose a minimum sentence of imprison-
 23 ment of

24 (A) not less than 72 consecutive hours and a fine of
 25 not less than \$250 if the person has not been previously convict-
 26 ed;

27 (B) not less than 20 days and a fine of not less than
 28 \$500 if the person has been previously convicted once;

29 (C) not less than 60 days and a fine of not less than

1 \$1,000 if the person has been previously convicted twice;

2 (D) not less than 120 days and a fine of not less than
3 \$2,000 if the person has been previously convicted three times;

4 (E) not less than 240 days and a fine of not less than
5 \$3,000 if the person has been previously convicted four times;

6 (F) not less than 360 days and a fine of not less than
7 \$4,000 if the person has been previously convicted more than four
8 times;

9 (2) the court may not

10 (A) suspend execution of the sentence required by (1)
11 of this subsection;

12 (B) grant probation, except on condition that the
13 person serve the minimum imprisonment under (1) of this subsec-
14 tion; or

15 (C) suspend imposition of sentence;

16 (3) the court shall revoke the person's driver's license,
17 privilege to drive, or privilege to obtain a license under AS 28.15.-
18 181, and may order the motor vehicle that was used in commission of
19 the offense be forfeited under AS 28.35.036;

20 (4) the court shall order, and the person convicted under
21 this section is required to undertake, for a term specified by the
22 court, that program of alcohol education or rehabilitation that the
23 court, after consideration of any information compiled under (h) of
24 this section, finds appropriate; failure to comply with a court order
25 under this paragraph may be punished as contempt under AS 09.50.010 or
26 as a violation of a condition of probation; and

27 (5) the sentence imposed by the court under this subsection
28 shall run consecutively with any other sentence of imprisonment im-
29 posed on the person.

1 * Sec. 26. AS 28.35.032 is amended by adding a new subsection to read:

2 (1) In this section, "previously convicted" means having been
3 convicted in this or another jurisdiction, within 10 years preceding
4 the date of the present offense, of driving while intoxicated under
5 AS 28.35.030 or another law or ordinance with substantially similar
6 elements, or of refusal to submit to a chemical test under this sec-
7 tion or another law or ordinance with substantially similar elements;
8 convictions for both driving while intoxicated and for refusal to
9 submit to a chemical test of breath, if arising out of a single trans-
10 action and a single arrest, are considered one previous conviction.

11 * Sec. 27. AS 28.35.035(a) is amended to read:

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

19 * Sec. 28. AS 28.35.036(a) is amended to read:

20 (a) After conviction of an offense under AS 28.35.030 or AS 28.-
21 35.032 [INVOLVING A MOTOR VEHICLE OF A TYPE FOR WHICH A DRIVER'S
22 LICENSE IS REQUIRED], the state may move the court to order the for-
23 feiture of the motor vehicle involved in the commission of the offense
24 if the convicted person has been previously convicted in this or
25 another jurisdiction of more than one of the following offenses or has
26 more than once been previously convicted of one of the following
27 offenses:

28 (1) driving while intoxicated under AS 28.35.030 or another
29 law or ordinance with substantially similar elements; or

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

3 * Sec. 29. AS 28.35 is amended by adding a new section to article 2 to
4 read:

5 Sec. 28.35.039. DEFINITION. In AS 28.35.030 - 28.35.039, "motor
6 vehicle" has the meaning given in AS 28.40.100 and includes an air-
7 craft or watercraft.

8 * Sec. 30. AS 28.40.100(a)(5) is repealed and reenacted to read:

9 (5) "driver's license" or "license," when used in relation
10 to driver licensing, means a license or permit to drive a motor vehi-
11 cle, or the privilege to drive or to obtain a license to drive a motor
12 vehicle, under the laws of this state, whether or not a person holds a
13 valid license issued in this or another jurisdiction;

14 * Sec. 31. AS 28.15.166(1), 28.15.181(e), AS 28.35.030(c), and 28.35.-
15 030(f) are repealed.

16 * Sec. 32. APPLICABILITY. The provisions of this Act apply to judicial
17 proceedings and administrative proceedings by the Department of Public
18 Safety relating to offenses that are committed after December 31, 1990.

19 * Sec. 33. This Act takes effect January 1, 1991.
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Sec. 28.15.011. Drivers must be licensed.

NOTES TO DECISIONS

Subsection (a) construed. — The provisions of subsection (a) constitute a broad statement of the legislature's intent, in enacting the motor vehicle code, to adopt a statutory scheme that deals with the licensing of Alaska drivers in a comprehensive and uniform manner; this subsection is not a legislative commitment to the philosophical concept of an innate privilege to drive. *Roberts v. State*, Ct. App. Op. No. 478 (File No. A-342), 700 P.2d 815 (1985).

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

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

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

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

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

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

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

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

(4) *[Repealed, § 4 ch 42 SLA 1988.]*

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

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

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

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

1988 Supplemental

Chapter 15. Drivers' Licenses.

Article

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

Article 1. Issuance, Expiration and Renewal of Licenses.

Section

31. Persons not to be licensed
41. Classification of drivers' licenses
45. Licensing of school bus drivers
51. Instruction permit, temporary driver's license and special driver's permit

Section

61. Application for driver's license or instruction permit; notice of anatomical gift procedure
71. Application of minors
101. Expiration and renewal of driver's license

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

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

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

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

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

NOTES TO DECISIONS

The regulations established by the commissioner do not provide for a driver's license for an airboat. State v. Stagno, Ct App Op. No. 726 (File No. A-1588), 1/24 (1987).

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

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

- (1) is at least 19 years of age;
- (2) has had a license to operate a motor vehicle at least one year before the date of application;
- (3) has successfully completed all required driving, written, and physical examinations;
- (4) has submitted information sufficient to complete a background check consisting of a fingerprint check of national criminal records and state criminal records of the state or states in which the applicant has resided for the past two years;
- (5) has completed a state approved school bus driver training course established under AS 14.07.020(a)(14) or has for the previous two years been licensed by the state to operate a school bus.

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

- (1) sexual abuse of a minor in any degree (AS 11.41.434 — 11.41.440);
- (2) sexual assault in any degree (AS 11.41.410 or 11.41.420);
- (3) incest (AS 11.41.450);
- (4) unlawful exploitation of a minor (AS 11.41.455);
- (5) contributing to the delinquency of a minor (AS 11.51.130);
- (6) a felony involving possession of a controlled or imitation controlled substance (AS 11.71 or AS 11.73);
- (7) a felony or misdemeanor involving distribution of a controlled or imitation controlled substance (AS 11.71 or AS 11.73);
- (8) promoting prostitution in the first or second degree (AS 11.66.110 or 11.66.120).

(d) The department may not issue a license to an applicant who has been convicted of driving while intoxicated (AS 28.35.930) within two

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

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

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

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

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

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

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

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

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

(e) Notwithstanding other provisions of this chapter, the department may issue a special driver's license to a person who is under the age of 18 years because of the circumstances of hardship. Special licenses to be issued because of hardship shall be determined on an individual basis by the commissioner. (§ 19 ch 178 SLA 1978; am § 50 ch 74 SLA 1986; am § 10 ch 60 SLA 1986)

Effect of amendments. — The 1986 amendment in subsection (d) substituted "that" for "which" preceding "by ordinance" and inserted "AS 29.35.300 — 29.35.330 or former" in the last sentence. The 1986 amendment in the first sentence of subsection (d) substituted a comma for "or" following "parents" and inserted ", or spouse who is 18 years of age or older."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 28.15.101. Expiration and renewal of driver's license.

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

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

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

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

(2) the applicant's license, within the previous five years, has been suspended, revoked, or denied by the department under AS 28.15.166 or 28.15.261;

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

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

or

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

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

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

NOTES TO DECISIONS

Cited in *Roecker v. State*, Ct. App. Op. No. 636 (File No. A-1248), P.2d (1986).

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

<p>Section 171. Suspending privileges of a person licensed in another jurisdiction; reporting convictions, suspensions, and revocations</p>	<p>Section 185. Court revocation of a minor's license to drive 191. Court reports to department</p>
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Sec. 28.15.165. Administrative revocations resulting from chemical sobriety tests and refusals to submit to tests.

NOTES TO DECISIONS

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

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

Admission of suppressed test results held improper. — Because no breath sample was preserved and no second test

was given to the defendant, the hearing officer's decision to admit breathalyzer test results which had been suppressed on due process grounds in a criminal prosecution was improper in a subsequent license revocation hearing. *Briggs v. State*, Dep't of Pub. Safety, Sup. Ct. Op. No. 3161 (File No. S-1243), P.2d (1987).

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

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

Sec. 28.15.166. Administrative review of revocation.

NOTES TO DECISIONS

Due process considerations. — Since civil driver's license revocation proceedings for driving while intoxicated as apply in

in criminal prosecutions for that offense, due process requires consideration of the margin of error inherent in the breath testing procedure used. *Barrott v. State*, Dep't of Pub. Safety, Sup. Ct. Op. No. 3212 (File No. S-1692), 741 P.2d 226 (1987).
Applied in *Champion v. Department of Pub. Safety*, Sup. Ct. Op. No. 3074 (File No. S-868), P.2d (1986); *Barrott v.*

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

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

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

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

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

NOTES TO DECISIONS

Magistrate erred in concluding subsection (c)(3) applied to a defendant who at the time of his two current offenses had not been convicted of more than one driving while intoxicated offense. *Thomas v. State*, Ct. App. Op. No. 436 (File No. A-657), 694 P.2d 789 (1985).

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

Consecutive periods of revocation. — The DWI provision does not expressly require consecutive periods of revocation; however, there is no indication that the legislature intended different treatment under this section than that which it clearly provided for under AS 28.15.291, and there is no reason to distinguish between revocations under these two statutes. *Fielding v. State*, Ct. App. Op. No. 697 (File No. A-1664), P.2d (1987).
Presumptive sentencing statutes as aid in interpreting subsection (c). — See *Tulowetske v. State, Dep't of Pub. Safety*, Sup. Ct. Op. No. 3234 (File No. S-1754), 743 P.2d 368 (1987).

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

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

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

Cited in *Caulkins v. State, Dep't of Pub. Safety, Sup. Ct. Op. No. 3233 (File No. S-1688), 743 P.2d 366 (1987); State v. Waalkes, Ct. App. Op. No. 782 (File No. A-2142), P.2d (1988); State, Dep't of Pub. Safety v. Conley, Sup. Ct. Op. No. 3297 (File No. B-1791), P.2d (1988).*

Sec. 28.15.185. Court revocation of a minor's license to drive.

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

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

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

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

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

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

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

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

Effective dates. — Section 6, ch. 130, SLA 1988, provides: "This Act takes effect September 1, 1988."

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

Article 3. Point System.

Section

221. Point system

231. Assessment of points, driver improvement interview

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

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

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

NOTES TO DECISIONS

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

Sec. 28.15.231. Assessment of points, driver improvement interview. (a) Notice of each assessment of points may be given, but notice shall be given when the point accumulation reaches 50 per cent of the number at which suspension, revocation or denial is required under AS 28.15.221(b), and a driver who has reached that level of point accumulation shall be identified as a problem driver. The department may require a problem driver to appear for a driver improvement interview. The purpose of that interview is to assist the person who is identified as a problem driver in overcoming substandard driving habits. An interview under this subsection is to be con-

ducted in an informal manner. A driver must comply with any reasonable recommendations designed to improve the driver's driving abilities which are made to the driver during the interview.

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

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

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

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

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

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

Article 4. Fees.

Section
271. Fees

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

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

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

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

Article 5. Driver License Violations.

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

NOTES TO DECISIONS

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

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

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

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

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

By prescribing a one-year period of revocation upon conviction of driving while his license was revoked (D.W.I.R.), and by expressly requiring that period to be added to the period already in existence at the time of the offense, this section makes clear the legislature's intent to treat the added period as an extension of original revocation. In effect, then, the additional period of revocation relates back to the original revocation, as long as the original revocation will be valid, even if, when it is ordered, the defendant technically no longer has a license to revoke. *Fielding v.*

State, Ct. App. Op. No. 682 (File No. A-1664), P.2d (1987).

Conviction affirmed though notice of suspension of license not received.

— Where the appellant had been furnished with written notice of the financial responsibility law as required by AS 28.20.060 and had expressly been told that his license would be suspended if he did not comply with the financial responsibility statute, his conviction under this section was affirmed even though he never received formal notice of suspension of his license, when the post office made three unsuccessful attempts at delivery to the appellant's address of record. *Alexander v. State*, Ct. App. Op. No. 573 (File No. A-696), 712 P.2d 416 (1986).

Conviction and sentence affirmed.

— See *Reesecker v. State*, Ct. App. Op. No. 636 (File No. A-1248), P.2d (1986).

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

Conviction reversed. — The fact that a defendant's license had been suspended for driving while intoxicated did not have probative value in evaluating the defendant's conduct at the time of arrest for violating this section, and the trial judge abused his discretion in admitting the evidence of two prior convictions for driving while intoxicated because the jury might have been prejudiced. It could not be said that the error was harmless, so the conviction was reversed. *Nelson v. State*, Ct. App. Op. No. 427 (File No. A-264), 691 P.2d 1026 (1984).

Conviction and sentence reversed since "vehicular way or area," an element of subsection (a), does not include a privately owned parking lot. *Conner v. State*, Ct. App. Op. No. 451 (File No. A-574), 696 P.2d 680 (1985).
Cited in *Witt v. State*, Ct. App. Op. No. 433 (File No. A-482), 692 P.2d 976 (1984); *Dunlop v. State*, Sup. Ct. Op. No. 3888 (File Nos. S-923, S-1163), 721 P.2d 604 (1986); *Yancy v. State*, Ct. App. Op. No. 667 (File Nos. A-1392, A-1411), P.2d (1987).

Chapter 15. Drivers' Licenses.

Article

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

Collateral references. — 7A Am Jur 60 C.J.S., Motor Vehicles, §§ 146 to 2d, Automobiles and Highway Traffic, 161.50.
§ 96 et seq

Article I. Issuance, Expiration and Renewal of Licenses.

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

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

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

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

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

NOTES TO DECISIONS

Maximum penalties for subsection (b) violations. — Although a violation of subsection (b) carries no mandatory minimum sentence equivalent to the 10-day jail sentence and one-year license revocation of AS 28.15.291(a), the available maximum penalties under AS

28.35.230(a) and (b) are the same. *Francis v. Municipality of Anchorage*, Ct. App. Op. No. 70 (File No. 6659), 641 P.2d 226 (1982).

Cited in *Lowry v. State*, Ct. App. Op. No. 181 (File Nos. 6328, 6434), 655 P.2d 780 (1982).

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

60 C.J.S., Motor Vehicles, §§ 147 to 149. Civil rights and liabilities as affected by failure to comply with regulations as to licensing of operator, 16 ALR 1108, 35 ALR 62, 38 ALR 1038, 43 ALR 1163, 54 ALR 374, 58 ALR 632, 61 ALR 1190, 78 ALR 1028, 87 ALR 1469, 111 ALR 1258, 163 ALR 1375.

Validity of statute relating to granting

or revocation of license or permit to operate automobile, 71 ALR 616, 108 ALR 1162, 138 ALR 1459.

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

Validity and construction of statute making it a criminal offense for the operator of a motor vehicle not to carry or display his operator's license, 6 ALR2d 606.

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

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

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

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

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

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

Collateral references. — 7A Am Jur. 2d, Automobiles and Highway Traffic, §§ 104 to 108.
60 C.J.S., Motor Vehicles, §§ 150 to 153.

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

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

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

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

60 C.J.S., Motor Vehicles, § 154, 165
Constitutionality of statute which makes proof of financial responsibility condition of granting, or of non-suspension

of, automobile registration license, or driver's license, 115 ALR 1376, 35 ALR2d 1011

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

Validity, construction, and application of age requirements for licensing of motor vehicle of Alaska, 88 ALR3d 476.

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

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

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

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

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