



LAWS OF ALASKA

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Source

SCS CSHB 6(Fin)

Chapter No.

77

AN ACT

Relating to driving a motor vehicle.

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

THE ACT FOLLOWS ON PAGE 1, LINE 8.

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: July 19, 1983
Actual Effective Date: October 17, 1983

AN ACT

Relating to driving a motor vehicle.

* Section 1. AS 28.05.051(b) is amended to read:

(b) The commissioner, officers and employees of the department designated by the commissioner, judges and employees of a court, and all peace officers, may take possession of a certificate of title, [OR] registration or license issued by this jurisdiction that [WHICH] has been revoked, canceled, limited or suspended, or [WHICH] is fictitious, stolen or altered.

* Sec. 2. AS 28.15.081(a) is amended to read:

(a) The department shall examine every applicant for a driver's license. The examination shall include a test of the applicant's (1) eyesight, (2) [HIS] ability to read and understand official traffic control devices, (3) [HIS] knowledge of safe driving practices, (4) knowledge of the effects of alcohol and drugs on drivers and the dangers of driving under the influence of alcohol or drugs, and (5) knowledge of the laws relating to driving while intoxicated and the traffic laws and regulations of this state. The examination [, AND] may include a demonstration of ability to exercise ordinary and reasonable control in the driving of a motor vehicle of the type and general class of vehicles for which the applicant seeks a license. However, an applicant who has not been previously issued a driver's license by this or another jurisdiction must demonstrate [HIS] ability, and must present medical information that [WHICH] the department

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1 reasonably requires to determine [HIS] fitness to safely drive a motor
2 vehicle of the type and general class of vehicles for which the appli-
3 cant [HE] seeks a license.

4 * Sec. 3. AS 28.15 is amended by adding new sections to read:

5 Sec. 28.15.165. ADMINISTRATIVE REVOCATIONS RESULTING FROM CHEMI-
6 CAL SOBRIETY TESTS AND REFUSALS TO SUBMIT TO TESTS. (a) If a chemi-
7 cal test administered under AS 28.35.031(a) to a person driving a
8 motor vehicle for which a driver's license is required produces a
9 result described in AS 28.35.030(a)(2) or if a person under arrest for
10 driving a motor vehicle for which a driver's license is required
11 refuses to submit to a chemical test under AS 28.35.031(a), a law
12 enforcement officer shall read a notice and deliver a copy to the
13 person. The notice shall advise that

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

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

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

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

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

1 (c) Upon receipt of a sworn report of a law enforcement officer
2 that a chemical test under AS 28.35.031(a) produced a result described
3 in AS 28.35.030(a)(2) or that a person refused to submit to a chemical
4 test under AS 28.35.031(a), that notice under (a) of this section was
5 provided to the person, and that contains a statement of the circum-
6 stances surrounding the arrest and the grounds upon which the offi-
7 cer's belief that the person was driving while intoxicated a motor
8 vehicle for which a driver's license is required was based, the de-
9 partment shall revoke the person's license or nonresident privilege to
10 drive a motor vehicle in the state, or refuse to issue an original
11 license effective upon expiration of the temporary driver's license
12 issued under (a) of this section.

13 (d) The period of revocation of a driver's license by the de-
14 partment under this section shall be for the appropriate minimum
15 period for court revocations under AS 28.15.181(c).

16 Sec. 28.15.166. ADMINISTRATIVE REVIEW OF REVOCATION. (a) A
17 person who has received a notice under AS 28.15.165(a) may make a
18 written request for administrative review of the department's action
19 under AS 28.15.165(c). If the person's driver's license has not been
20 previously surrendered to the department, it shall be surrendered to
21 the department at the time the request for review is made.

22 (b) A request for review shall be made within seven days after
23 receipt of the notice under AS 28.15.165 or the right to review is
24 waived and the action of the department under AS 28.15.165(c) is
25 final. If a written request for a review is made after expiration of
26 the seven-day period, and if it is accompanied by the applicant's
27 verified statement explaining the failure to make a timely request for
28 a review, the department shall receive and consider the request. If
29 the department finds that the person was unable to make a timely

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1 request because of lack of actual notice of the revocation or because
2 of factors of physical incapacity such as hospitalization or incarcer-
3 ation, the department shall waive the period of limitation, reopen the
4 matter, and grant the review request.

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

14 (d) A person who has requested a hearing under this section and
15 who fails to appear at the hearing, for reasons other than lack of
16 actual notice of the hearing or physical incapacity such as hospitali-
17 zation or incarceration, waives the right to a hearing. The deter-
18 mination of the department that is based upon the enforcement offi-
19 cer's report becomes final.

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

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

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

27 (f) A review under this section shall be held before a hearing
28 officer designated by the commissioner. Upon the consent of the
29 administrative director of the state court system, the commissioner

1 may designate a district court judge or a magistrate to serve as the
2 hearing officer. The hearing officer shall have authority to

- 3 (1) administer oaths and affirmations;
- 4 (2) examine witnesses and take testimony;
- 5 (3) receive relevant evidence;
- 6 (4) issue subpoenas, take depositions, or cause depositions
7 or interrogatories to be taken;
- 8 (5) regulate the course and conduct of the hearing;
- 9 (6) make a final ruling on the issue.

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

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

18 (2) the chemical test authorized under AS 28.35.031(a) and
19 administered to the person produced a result described in AS 28.35.-
20 030(a)(2).

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

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1 (i) Testimony given by the person at the hearing is not admissi-
2 ble against the person in a criminal trial unless the person's testi-
3 mony at the trial is inconsistent with that given at the hearing.

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

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

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

1 chemical test.

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

11 (n) The filing of an appeal under (m) of this section does not
12 automatically stay the department's revocation order. The court may
13 grant a stay of the order only upon a motion and hearing, and upon a
14 finding that there is a reasonable probability that the petitioner
15 will prevail on the merits and that the petitioner will suffer irrepa-
16 rable harm if the order is not stayed.

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

18 (a) Conviction of any of the [THE] following offenses is [ARE]
19 grounds for the immediate [SUSPENSION OR] revocation of a driver's
20 license:

21 (1) manslaughter or negligent homicide resulting from [THE]
22 driving [OF] a motor vehicle;

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

25 (3) failure to stop and give aid as required by law [UNDER
26 THE LAWS OF THIS STATE] when a motor vehicle accident results in the
27 death or personal injury of another;

28 (4) perjury or [THE] making [OF] a false affidavit or
29 statement under oath to the department under a law relating to motor

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1 vehicles;

2 (5) [OPERATING OR] driving a motor vehicle while intoxi-
3 cated;

4 (6) reckless driving; [OR]

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

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

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

11 * Sec. 5. AS 28.15.181(b) is amended to read:

12 (b) A court convicting a person of an offense described in
13 [UNDER] (a)(1) - (4), (6), or (7) of this section shall revoke that
14 person's driver's license for [A PERIOD OF] not less than 30 days for
15 the first conviction, unless the court determines that the person's
16 ability to earn a livelihood would be severely impaired and a limita-
17 tion under AS 28.15.201 can be placed on the license that [WHICH] will
18 enable the person to earn a livelihood without excessive [RISK OR]
19 danger to the public. If a court limits a person's license under this
20 subsection, it shall do so for [A PERIOD OF] not less than 60 [30]
21 days. Upon a subsequent conviction of a person for any offense de-
22 scribed in [UNDER] (a)(1) - (4), (6), or (7) of this section occurring
23 within 10 years after a prior conviction, the court shall revoke the
24 person's license and may not grant the person [ANY] limited license
25 privileges for the following periods:

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

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

29 * Sec. 6. AS 28.15.181(c) is repealed and reenacted to read:

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

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

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

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

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

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

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

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

24 (A) an offense described in (a)(5) or (8) of this sec-
25 tion; or

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

29 * Sec. 7. AS 28.15.181 is amended by adding new subsections to read:

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

4 (e) A court revoking a driver's license under (c) of this sec-
5 tion, or sustaining the action of the department under AS 28.15.-
6 165(c), may grant limited license privileges for the final 60 days
7 during which the license is revoked if the

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

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

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

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

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

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

22 (f) For purposes of this section, convictions for both driving
23 while intoxicated and for refusal to submit to a chemical test of
24 breath under AS 28.35.031(a), if arising out of a single transaction
25 and a single arrest, are considered one previous conviction.

26 * Sec. 8. AS 28.15.201(b)(1) is amended to read:

27 (1) require the surrender of the driver's license [AND, IF
28 THE PERSON IS CONVICTED OF AN OFFENSE UNDER AS 28.15.181(a)(5), REVOKE
29 THAT PERSON'S LICENSE FOR A PERIOD OF NOT LESS THAN 60 DAYS]; and

1 * Sec. 9. AS 28.15.201(c) is amended to read:

2 (c) After the termination of a limitation as shown on the certi-
3 ficate issued under (b) of this section, the license of a person on
4 whom a limitation was imposed is revoked until the person receives a
5 new [NO LONGER BOUND BY THE LIMITATION AND MAY APPLY FOR A DUPLICATE]
6 license in accordance with AS 28.20.240 [UNDER AS 28.15.141 OR, IF
7 OTHERWISE ELIGIBLE, FOR A NEW LICENSE IF THE LICENSE WAS REVOKED FOR
8 CONVICTION OF AN OFFENSE UNDER AS 28.15.181(a)(5) AND LIMITED LICENSE
9 PRIVILEGES WERE GRANTED UNDER AS 28.15.181(c)].

10 * Sec. 10. AS 28.15.291 is amended to read:

11 Sec. 28.15.291. DRIVING WHILE LICENSE CANCELED, SUSPENDED,
12 REVOKED OR IN VIOLATION OF LIMITATION. (a) A [NO] person may not
13 drive a motor vehicle on a highway or vehicular way or area [IN THIS
14 STATE] at a time when that person's [HIS] driver's license, or privi-
15 lege to drive [IN THIS STATE IF HE IS LICENSED IN ANOTHER JURISDIC-
16 TION,] has been canceled, suspended or revoked in this or another
17 jurisdiction, or when [HE IS] driving in violation of a limitation
18 placed upon that person's [HIS] license or privilege to drive in this
19 or [, EVEN WHEN HE IS DRIVING UNDER A LICENSE ISSUED IN] another
20 jurisdiction. Except as provided in (c) of this section, upon [UPON]
21 conviction of a violation of this section, the court shall impose a
22 [MINIMUM] sentence of imprisonment of not less than 10 days. The exe-
23 cution of sentence may not be suspended nor may probation or parole be
24 granted until the minimum imprisonment provided in this section has
25 been served; nor may imposition of sentence be suspended [, EXCEPT
26 UPON THE CONDITION THAT THE DEFENDANT BE IMPRISONED FOR NO LESS THAN
27 THE MINIMUM PERIOD PROVIDED FOR IN THIS SECTION]. In addition, the
28 person's [HIS] license or privilege to drive shall be revoked, and the
29 person [HE] may not be issued a new license nor may the [HIS]

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1 privilege to drive be restored for an additional period of not less
2 than one year after the date that the person [HE] would have been
3 entitled to restoration of [HIS] driving privileges.

4 (b) When a person's license is canceled, limited, suspended or
5 revoked, that person [HE] shall be informed by the department or the
6 court that [WHICH] takes the action at the time of the action that,
7 upon a conviction of driving on a highway or vehicular way or area in
8 this state at a time when that person's [HIS] driver's license or
9 privilege to drive in this state has been canceled, suspended or
10 revoked, or upon a conviction of driving in violation of a limitation
11 of the [HIS] license, that person [HE] will be subject to the manda-
12 tory minimum sentence of [10-DAY] imprisonment under [(a) OF] this
13 section.

14 * Sec. 11. AS 28.15.291 is amended by adding new subsections to read:

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

1 (d) A person convicted of a violation of this section is guilty
2 of a class A misdemeanor.

3 * Sec. 12. AS 28.20.240 is amended to read:

4 Sec. 28.20.240. PROOF REQUIRED WHEN DRIVING PRIVILEGE [USE OF
5 LICENSE] IS RESTRICTED. Whenever under a law of this state the li-
6 cense of a person is suspended, revoked, limited under AS 28.15.201,
7 or canceled for any reason, the department may not issue to that
8 person a new or renewal of license [IN HIS NAME] until permitted to do
9 so under the motor vehicle laws of this state. A period of suspen-
10 sion, revocation, [LIMITATION,] or cancellation [UNDER THIS SECTION]
11 continues until proof of financial responsibility for the future is
12 provided. Upon expiration of a period of limitation, the license
13 remains revoked until proof of financial responsibility for the future
14 is provided.

15 * Sec. 13. AS 28.35.030(a)(2) is amended to read:

16 (2) when, as determined by a chemical test taken within
17 four hours after the alleged offense was committed, there is 0.10
18 percent or more by weight of alcohol in the person's blood or 100
19 milligrams or more of alcohol per 100 milliliters of blood, or when
20 there is 0.10 grams or more of alcohol per 210 liters of the person's
21 breath; or

22 * Sec. 14. AS 28.35.030(c) is amended to read:

23 (c) Upon conviction under this section the court shall impose a
24 minimum sentence of imprisonment of not less than 72 consecutive hours
25 and a fine of not less than \$250 if the person has not been previously
26 convicted in this or another jurisdiction of driving while intoxicated
27 under this or another law or ordinance with substantially similar
28 elements or refusal to submit to a chemical test under AS 28.35.032
29 or another law or ordinance with substantially similar elements. Upon

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1 [A SUBSEQUENT] conviction under this section the court shall impose a
2 minimum sentence of imprisonment of not less than 20 consecutive days
3 and a fine of not less than \$500 if, within the preceding 10 years,
4 the person has been previously convicted once in this or another
5 jurisdiction [WITHIN FIVE YEARS AFTER A CONVICTION] of driving while
6 intoxicated under this or another law or ordinance with substantially
7 similar elements or [IN THIS OR ANY OTHER STATE OR CONVICTION OF]
8 refusal to submit to a chemical test under AS 28.35.032 or another law
9 or ordinance with substantially similar elements. Upon conviction
10 under this section [OF BREATH UNDER AS 28.35.032,] the court shall
11 impose a minimum sentence of imprisonment of not less than 30 [10]
12 consecutive days and a fine of not less than \$1,000 if, within the
13 preceding 10 years, the person has been previously convicted in this
14 or another jurisdiction of more than one of the following offenses or
15 has more than once been previously convicted of one of the following
16 offenses: (1) driving while intoxicated under this or another law or
17 ordinance with substantially similar elements; (2) refusal to submit
18 to a chemical test under AS 28.35.032 or another law or ordinance with
19 substantially similar elements [UNLESS THE SUBSEQUENT CONVICTION IS
20 WITHIN ONE YEAR OF THE PREVIOUS CONVICTION, IN WHICH CASE THE COURT
21 SHALL IMPOSE A MINIMUM SENTENCE OF IMPRISONMENT OF NOT LESS THAN 20
22 CONSECUTIVE DAYS]. The execution of sentence may not be suspended nor
23 may probation be granted except on condition that [UNTIL] the minimum
24 imprisonment provided in this section is [HAS BEEN] served. Imposi-
25 sition of sentence may not be suspended [, EXCEPT UPON THE CONDITION
26 THAT THE DEFENDANT BE IMPRISONED FOR NO LESS THAN THE MINIMUM PERIOD
27 PROVIDED IN THIS SECTION]. In addition, if the offense involved
28 driving a motor vehicle for which a driver's license is required, the
29 person's driver's [HIS OPERATOR'S] license shall be revoked in

1 accordance with AS 28.15.181 and the vehicle used in commission of the
2 offense may be forfeited under AS 28.35.036. In addition, the court
3 shall order, and a person convicted under this section [STATUTE] shall
4 undertake, for a term specified by the court, that program of alcohol
5 education or rehabilitation that [WHICH] the court, after considera-
6 tion of any information compiled under (d) of this section, finds
7 appropriate.

8 * Sec. 15. AS 28.35.030 is amended by adding a new subsection to read:

9 (g) For purposes of this section, convictions for both driving
10 while intoxicated and for refusal to submit to a chemical test of
11 breath under AS 28.35.031(a), if arising out of a single transaction
12 and a single arrest, are considered one previous conviction.

13 * Sec. 16. AS 28.35.031 is amended by adding new subsections to read:

14 (b) A person who operates or drives a motor vehicle in this
15 state shall be considered to have given consent to a preliminary
16 breath test for the purpose of determining the alcoholic content of
17 the person's blood or breath. A law enforcement officer may adminis-
18 ter a preliminary breath test at the scene of the incident if the
19 officer has reasonable grounds to believe that a person's ability to
20 operate a motor vehicle is impaired by the ingestion of alcoholic
21 beverages and that the person

22 (1) was driving a motor vehicle that is involved in an
23 accident; or

24 (2) committed a moving traffic violation.

25 (c) Before administering a preliminary breath test under (b) of
26 this section, the officer shall advise the person that refusal may be
27 used against the person in a civil or criminal action arising out of
28 the incident and that refusal is an infraction. If the person refuses
29 to submit to the test, the test shall not be administered.

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

4 (e) Refusal to submit to a preliminary breath test at the re-
5 quest of a law enforcement officer is an infraction.

6 (f) If a driver is arrested, the provisions of AS 28.35.031(a)
7 apply. The preliminary breath test authorized in this section is in
8 addition to any tests authorized under AS 28.35.031(a).

9 * Sec. 17. AS 28.35.032(a) is amended to read:

10 (a) If a person under arrest refuses the request of a law en-
11 forcement officer to submit to a chemical test under AS 28.35.031(a)
12 [OF BREATH AS PROVIDED IN AS 28.35.031], after being advised by the
13 officer that the refusal will, if that person was arrested while
14 operating or driving a motor vehicle for which a driver's license is
15 required, result in the [SUSPENSION,] denial or revocation of the
16 license or nonresident privilege to drive, that the refusal may be
17 used against the person in a civil or criminal action or proceeding
18 arising out of an act alleged to have been committed by the person
19 while operating or driving a motor vehicle or operating an aircraft or
20 a watercraft while intoxicated, and that the refusal is a misdemeanor,
21 a chemical test shall not be given, except as provided by AS 28.35.-
22 035.

23 * Sec. 18. AS 28.35.032(f) is amended to read:

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

26 * Sec. 19. AS 28.35.032(g) is amended to read:

27 (g) Upon conviction of a person under this section, the court
28 shall impose a minimum sentence of imprisonment of not less than 72
29 consecutive hours and a fine of not less than \$250 if the person has

1 not been previously convicted in this or another jurisdiction of
2 driving while intoxicated under AS 28.35.030 or another law or ordi-
3 nance with substantially similar elements or refusal to submit to a
4 chemical test under this section or another law or ordinance with
5 substantially similar elements. Upon [A SUBSEQUENT] conviction under
6 this section the court shall impose a minimum sentence of imprisonment
7 of not less than 20 consecutive days and a fine of not less than \$500
8 if, within the preceding 10 years, the person has been previously con-
9 vinced once in this or another jurisdiction [WITHIN FIVE YEARS AFTER A
10 CONVICTION UNDER THIS SECTION OR] of driving while intoxicated under
11 AS 28.35.030 or another law or ordinance with substantially similar
12 elements or refusal to submit to a chemical test under this section or
13 another law or ordinance with substantially similar elements. Upon
14 conviction under this section the court shall impose a minimum sen-
15 tence of imprisonment of not less than 30 consecutive days and a fine
16 of not less than \$1,000 if, within the previous 10 years, the person
17 has been previously convicted in this or another jurisdiction of more
18 than one of the following offenses or has more than once been pre-
19 viously convicted of one of the following offenses: (1) driving while
20 intoxicated under AS 28.35.030 or another law or ordinance with sub-
21 stantially similar elements; (2) refusal to submit to a chemical test
22 under this section or another law or ordinance with substantially
23 similar elements [IN THIS OR ANY OTHER STATE, THE COURT SHALL IMPOSE A
24 MINIMUM SENTENCE OF IMPRISONMENT OF NOT LESS THAN 10 CONSECUTIVE DAYS
25 UNLESS THE SUBSEQUENT CONVICTION IS WITHIN ONE YEAR OF THE PREVIOUS
26 CONVICTION, IN WHICH CASE THE COURT SHALL IMPOSE A MINIMUM SENTENCE OF
27 IMPRISONMENT OF NOT LESS THAN 20 CONSECUTIVE DAYS]. The execution of
28 sentence may not be suspended nor may probation be granted except on
29 condition that [UNTIL] the minimum imprisonment provided in this

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1 section is [HAS BEEN] served. Imposition of sentence may not be
2 suspended. If the offense involved driving a motor vehicle for which
3 a driver's license is required, the person's driver's license shall be
4 revoked under AS 28.15.181 [, EXCEPT UPON THE CONDITION THAT THE
5 DEFENDANT BE IMPRISONED FOR NO LESS THAN THE MINIMUM PERIOD PROVIDED
6 IN THIS SECTION]. In addition, the court shall order, and a person
7 convicted under this section shall undertake, for a term specified by
8 the court, that program of alcohol education or rehabilitation that
9 the court, after consideration of any information compiled under (h)
10 of this section, finds appropriate. The sentence imposed by the court
11 under this subsection shall run consecutively with any other sentence
12 of imprisonment imposed on the committed person.

13 * Sec. 20. AS 28.35.032 is amended by adding a new subsection to read:

14 (j) For purposes of this section, convictions for both driving
15 while intoxicated and for refusal to submit to a chemical test of
16 breath under AS 28.35.031(a), if arising out of a single transaction
17 and a single arrest, are considered one previous conviction.

18 * Sec. 21. AS 28.35.034 is amended to read:

19 Sec. 28.35.034. SURRENDER OF LICENSE OR PERMIT [PERIOD OF REVO-
20 CATION]. A person whose license or permit to operate or drive a motor
21 vehicle has been [SUSPENDED OR] revoked under AS 28.15.165 or AS 28.-
22 15.181 [THE PROVISIONS OF AS 28.35.032] shall surrender the [HIS]
23 license or permit to the department on receipt of notice of the revo-
24 cation. [SUCH A PERSON IS INELIGIBLE FOR AN OPERATOR'S LICENSE OR
25 PERMIT FOR THREE MONTHS FOLLOWING THE DATE ON WHICH THE LICENSE OR
26 PERMIT WAS RECEIVED BY THE DEPARTMENT, UNLESS THE DISTRICT COURT FINDS
27 THAT EXTENUATING CIRCUMSTANCES EXIST WHICH WOULD CAUSE EXTREME HARD-
28 SHIP, IN WHICH CASE THE SUSPENSION OR REVOCATION MAY BE MODIFIED OR
29 NULLIFIED.] After the [THREE MONTHS'] period of revocation has

1 expired, the person may make application for a new license as provided
2 by law.

3 * Sec. 22. AS 28.35.035 is amended to read:

4 Sec. 28.35.035. ADMINISTRATION OF CHEMICAL TESTS WITHOUT CON-
5 SENT. (a) If a person is under arrest for an offense arising out of
6 acts alleged to have been committed while the person was driving a
7 motor vehicle [THE CRIME OF DRIVING] while intoxicated, and that
8 arrest results from an accident that causes death or physical injury
9 to another person, a chemical test may be administered without the
10 consent of the person arrested to determine the amount of alcohol in
11 that person's breath or blood.

12 (b) A person who is unconscious or otherwise in a condition
13 rendering that person incapable of refusal is considered not to have
14 withdrawn the consent provided under AS 28.35.031(a) [AS 28.35.031]
15 and a chemical test may be administered to determine the amount of
16 alcohol in that person's breath or blood. A person who is unconscious
17 or otherwise incapable of refusal need not be placed under arrest
18 before a chemical test may be administered.

19 (c) If a chemical test is administered to a person under (a) or
20 (b) of this section, that person is not subject to the penalties for
21 refusal to submit to a chemical test provided by AS 28.35.032 and
22 28.35.034.

23 * Sec. 23. AS 28.35 is amended by adding new sections to read:

24 Sec. 28.35.036. FORFEITURE OF MOTOR VEHICLE. (a) After convic-
25 tion of an offense under AS 28.35.030 or AS 28.35.032 involving a
26 motor vehicle of a type for which a driver's license is required, the
27 state may move the court to order the forfeiture of the motor vehicle
28 involved in the commission of the offense if the convicted person has
29 been previously convicted in this or another jurisdiction of more than

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1 one of the following offenses or has more than once been previously
2 convicted of one of the following offenses:

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

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

7 (b) For purposes of this section, convictions for both driving
8 while intoxicated and for refusal to submit to a chemical test of
9 breath under AS 28.35.031(a), if arising out of a single transaction
10 and a single arrest, are considered one previous conviction.

11 (c) Upon receipt of a motion for forfeiture, the court shall
12 schedule a hearing on the matter and shall notify the state and the
13 convicted person of the time and place set for the hearing. At the
14 hearing, the court may order the forfeiture of the motor vehicle if
15 the court, sitting without a jury, determines by a preponderance of
16 the evidence that the forfeiture of the motor vehicle will serve one
17 or more of the following purposes:

18 (1) deterrence of the convicted person from the commission
19 of future offenses under AS 28.35.030;

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

21 (3) deterrence of other persons who are potential offenders
22 under AS 28.35.030; or

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

25 (d) Upon forfeiture of a motor vehicle the court shall require
26 the surrender of the registration and certificate of title of that
27 motor vehicle. The registration and certificate of title shall be
28 delivered to the department.

29 (e) If not released under AS 28.35.037, a motor vehicle

1 forfeited under this section may be disposed of at the discretion of
2 the department.

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

- 8 (1) a description of the motor vehicle;
9 (2) the time and place of the forfeiture hearing;
10 (3) the legal authority under which the motor vehicle may
11 be forfeited;
12 (4) notice of the right to intervene to protect the inter-
13 est in the motor vehicle.

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

- 17 (1) the petitioner has an interest in the motor vehicle
18 acquired in good faith;
19 (2) a person other than the petitioner was convicted of the
20 offense that resulted in the forfeiture; and
21 (3) before parting with the motor vehicle, the petitioner
22 did not know or have reasonable cause to believe that it would be used
23 in the commission of an offense.

24 (c) If a person satisfies the requirements of (b) of this sec-
25 tion, the court shall order that an amount equal to the value of the
26 petitioner's interest in the motor vehicle be paid to the petitioner
27 or the court shall order that the motor vehicle be released to the
28 petitioner together with title to the motor vehicle.

29 (d) Forfeiture of a motor vehicle under AS 28.35.036 is without

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1 prejudice to the rights, and does not extinguish the claims, of a
2 creditor with an interest in the motor vehicle.

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

11 * Sec. 24. AS 22.15.100 is amended by adding a new paragraph to read:

12 (10) to review an administrative revocation of a person's
13 driver's license or nonresident privilege to drive, and an administra-
14 tive refusal to issue an original license, when designated as a hear-
15 ing officer by the commissioner of public safety and with the consent
16 of the administrative director of the state court system.

17 * Sec. 25. AS 28.15.211(a)(4) and AS 28.35.032(b),(c), and (d) are re-
18 pealed.