



LAWS OF ALASKA

2002

Source
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Chapter No.
60

AN ACT

Relating to motor vehicles and to operating a motor vehicle, aircraft, or watercraft; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 19, 2002
Actual Effective Date: July 1, 2002

AN ACT

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

3

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

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

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

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

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

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

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

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1 percent;

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

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

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

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

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

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

12 (2) encourage the effort described under (1) of this subsection by creating a
13 treatment process to be used by the court system;

14 (3) assist the development and operation of therapeutic courts approved by the
15 presiding judge in the judicial district by using the existing Alaska nonprofit corporation that
16 currently funds and coordinates the noncourt, community-related functions for the existing
17 Anchorage Wellness Court or other similar Alaska nonprofit corporation for offenders
18 charged with driving while intoxicated and other alcohol-related offenses; these functions
19 include case coordination, sobriety monitoring, and community liaison to provide medical
20 treatment and other services;

21 (4) modify the existing laws on impoundment and forfeiture of a motor
22 vehicle by following the municipal impoundment and forfeiture process established in
23 Anchorage and Fairbanks.

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

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

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

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

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

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

9 (c) A defendant convicted of a class A felony may be sentenced to a definite
10 term of imprisonment of not more than 20 years, and shall be sentenced to the
11 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
12 12.55.175:

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

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

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

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

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

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

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

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

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

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

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

10 (A) murder in any degree;

11 (B) manslaughter;

12 (C) criminally negligent homicide;

13 (D) assault in any degree;

14 (E) kidnapping;

15 (F) sexual assault in any degree;

16 (G) sexual abuse of a minor;

17 (H) robbery in any degree;

18 (I) threats to do bodily harm; or

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

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

25 **Sec. 28.01.015. Municipal impoundment and forfeiture.** (a)
26 Notwithstanding other provisions in this title, a municipality may adopt an ordinance
27 providing for the impoundment or forfeiture of a

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

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

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

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

4 (4) motor vehicle used by a person who fails to carry proof of
5 insurance as required under AS 28.22.019.

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

7 (1) include a fee for the administrative costs incurred by the
8 municipality; and

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

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

12 (d) The department shall refuse to register a vehicle if the applicant fails to
13 register the vehicle using the applicant's full first, middle, and last name or a business
14 name.

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

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

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

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

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

7 * Sec. 10. AS 28.15.165(e) is amended to read:

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

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

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

26 (3) describing the

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

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

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

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

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

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

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

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

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

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

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

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

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

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- 1 (5) operating a motor vehicle or aircraft while **under the influence of**
- 2 **an alcoholic beverage, inhalant, or controlled substance** [INTOXICATED];
- 3 (6) reckless driving;
- 4 (7) using a motor vehicle in unlawful flight to avoid arrest by a peace
- 5 officer;
- 6 (8) refusal to submit to a chemical test authorized under
- 7 AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle,
- 8 commercial motor vehicle, or aircraft while **under the influence of an alcoholic**
- 9 **beverage, inhalant, or controlled substance** [INTOXICATED], or authorized under
- 10 AS 28.35.031(g);
- 11 (9) driving while license, privilege to drive, or privilege to obtain a
- 12 license, canceled, suspended, or revoked, or in violation of a limitation;
- 13 (10) vehicle theft in the first degree in violation of AS 11.46.360 or
- 14 vehicle theft in the second degree in violation of AS 11.46.365.
- 15 * **Sec. 13.** AS 28.15.181(c) is amended to read:
- 16 (c) A court convicting a person of an offense described in (a)(5) or (8) of this
- 17 section arising out of the operation of a motor vehicle, commercial motor vehicle, or
- 18 aircraft shall revoke that person's driver's license, privilege to drive, or privilege to
- 19 obtain a license. The revocation may be concurrent with or consecutive to an
- 20 administrative revocation under AS 28.15.165. The court may not, except as provided
- 21 in AS 28.15.201, grant limited license privileges during the minimum period of
- 22 revocation. **Except as provided under AS 28.35.030(n)(3) and 28.35.032(p)(3), the**
- 23 **[THE]** minimum periods of revocation are [:]
- 24 (1) not less than 90 days if the person has not been previously
- 25 convicted;
- 26 (2) not less than one year if the person has been previously convicted
- 27 once;
- 28 (3) not less than 3 years if the person has been previously convicted
- 29 twice;
- 30 (4) not less than 5 years if the person has been previously convicted
- 31 more than twice.

1 * Sec. 14. AS 28.15.191(a) is amended to read:

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

7 * Sec. 15. AS 28.15.201(d) is amended to read:

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

12 (1) the revocation was for a misdemeanor conviction under
13 AS 28.35.030(a) [VIOLATION OF AS 28.15.181(a)(5)] and not for a violation of
14 AS 28.35.032 [AS 28.15.181(a)(8)];

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

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

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

25 (5) the court or the department determines that the person is enrolled in
26 and is in compliance with, or has successfully completed the [, AN] alcoholism
27 screening, evaluation, referral, and [EDUCATION AND REHABILITATION
28 TREATMENT] program requirements of the Department of Health and Social
29 Services under AS 28.35.030(h).

30 * Sec. 16. AS 28.15.211(d) is amended to read:

31 (d) At the end of a period of revocation or limitation following a revocation, a

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

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

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

16 * Sec. 17. AS 28.15.271(b) is amended to read:

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

18 (1) a person who renews a driver's license by mail shall pay a fee of
19 \$1;

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

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

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

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

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

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

7 * Sec. 18. AS 28.15.291(b) is amended to read:

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, of not less
11 than 10 days with 10 days suspended, including a mandatory condition of
12 probation that the defendant complete not less than 80 hours of community
13 work service;

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

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

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

28 (2) may impose additional conditions of probation;

29 (3) may not

30 (A) suspend execution of sentence or grant probation except on
31 condition that the person serve a minimum term of imprisonment and perform

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1 required community work service as provided in (1) of this subsection;

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

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

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

10 * **Sec. 19.** AS 28.20.230 is amended by adding a new subsection to read:

11 (c) Notwithstanding any other provisions of this chapter, a person convicted of
12 driving under the influence of an alcoholic beverage, inhalant, or controlled substance
13 in violation of AS 28.35.030, or convicted of refusal to submit to a chemical test of
14 breath under AS 28.35.032, shall maintain proof of financial responsibility for the
15 future for (1) five years if the person has not been previously convicted; (2) 10 years if
16 the person has been previously convicted once; (3) 20 years if the person has been
17 previously convicted twice; (4) for as long as the person is licensed to drive under
18 AS 28.15 if the person has been previously convicted three or more times. In this
19 subsection, "previously convicted" has the meaning given in AS 28.35.030.

20 * **Sec. 20.** AS 28.22 is amended by adding a new section to read:

21 **Sec. 28.22.019. Proof of insurance to be carried and exhibited on demand.**

22 (a) A person shall have proof of motor vehicle liability insurance in the person's
23 immediate possession at all times when driving a motor vehicle, and shall present the
24 proof for inspection upon the demand of a peace officer or other authorized
25 representative of the Department of Public Safety. However, a person charged with
26 violating this section may not be convicted if the person produces in court or in the
27 office of the arresting or citing officer proof of motor vehicle liability insurance
28 previously issued to the person that was valid at the time of the person's arrest or
29 citation.

30 (b) A municipality may adopt an ordinance

31 (1) requiring a person to display a decal on the person's motor vehicle

1 indicating compliance with (a) of this section; or

2 (2) that is substantially similar to (a) of this section and may impose a
3 penalty for violating the ordinance as provided under AS 29.25.070.

4 (c) In this section, "proof" means a copy of the insurance policy or certificate
5 of self-insurance that is in effect or a printed card or electronic certification from an
6 insurance company, insurance agent, insurance broker, or surplus lines broker that a
7 policy that complies with AS 28.22.011 is in effect.

8 * Sec. 21. AS 28.33.030 is amended to read:

9 **Sec. 28.33.030. Operating a commercial motor vehicle while under the**
10 **influence of an alcoholic beverage, inhalant, or controlled substance**
11 **[INTOXICATED].** (a) A person commits the crime of operating a commercial
12 motor vehicle while **under the influence of an alcoholic beverage, inhalant, or**
13 **controlled substance** [INTOXICATED] if the person operates a commercial motor
14 vehicle

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

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

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

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

27 (c) The sentencing of a person convicted under this section shall be in
28 accordance with the minimum periods of imprisonment, fines, rehabilitative treatment,
29 and other provisions of AS 28.35.030, as if the person had been convicted of a
30 violation of AS 28.35.030. For purposes of sentencing, convictions for operating a
31 commercial motor vehicle while **under the influence of an alcoholic beverage,**

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1 inhalant, or controlled substance [INTOXICATED] under this section, and for
2 refusal to submit to a chemical test under AS 28.33.032, if arising out of a single
3 transaction, are considered one previous conviction.

4 * **Sec. 22.** AS 28.33.031(a) is amended to read:

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

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

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

24 * **Sec. 23.** AS 28.33.031(c) is amended to read:

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

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

7 * Sec. 24. AS 28.33.033(a) is amended to read:

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

13 (1) if there was less than 0.04 percent by weight of alcohol in the
14 person's blood, or less than 40 milligrams of alcohol per 100 milliliters of the person's
15 blood, or less than 0.04 grams of alcohol per 210 liters of the person's breath, that fact
16 does not give rise to a presumption that the person was or was not under the influence
17 of an alcoholic beverage [INTOXICATING LIQUOR], but that fact may be
18 considered with other competent evidence in determining whether the person was
19 under the influence of an alcoholic beverage [INTOXICATING LIQUOR];

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

25 * Sec. 25. AS 28.33.033(c) is amended to read:

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

30 * Sec. 26. AS 28.33.140(a) is amended to read:

31 (a) In addition to the court action provided in AS 28.15.181, conviction of any

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- 1 of the following offenses is grounds for immediate disqualification from driving a
2 commercial motor vehicle for the periods set out in this section:
- 3 (1) operating a commercial motor vehicle while under the influence
4 of an alcoholic beverage, inhalant, or controlled substance [INTOXICATED] in
5 violation of AS 28.33.030;
- 6 (2) refusal to submit to a chemical test in violation of AS 28.35.032;
- 7 (3) operating a motor vehicle while under the influence of an
8 alcoholic beverage, inhalant, or controlled substance [INTOXICATED] in
9 violation of AS 28.35.030;
- 10 (4) leaving the scene of an accident in violation of AS 28.35.060, or
11 failing to file, or providing false information in, an accident report in violation of
12 AS 28.35.110;
- 13 (5) a felony under state or federal law, which was facilitated because
14 the person used a commercial motor vehicle;
- 15 (6) a serious traffic violation; or
- 16 (7) driving after being placed out of service in violation of regulations
17 adopted under AS 28.05.011.

18 * Sec. 27. AS 28.35.030(a) is amended to read:

- 19 (a) A person commits the crime of driving while under the influence of an
20 alcoholic beverage, inhalant, or controlled substance [INTOXICATED] if the
21 person operates or drives a motor vehicle or operates an aircraft or a watercraft
- 22 (1) while under the influence of an alcoholic beverage, intoxicating
23 liquor, inhalant, or any controlled substance;
- 24 (2) when, as determined by a chemical test taken within four hours
25 after the alleged offense was committed, there is 0.08 percent or more by weight of
26 alcohol in the person's blood or 80 milligrams or more of alcohol per 100 milliliters of
27 blood, or when there is 0.08 grams or more of alcohol per 210 liters of the person's
28 breath; or
- 29 (3) while the person is under the combined influence of an alcoholic
30 beverage, an intoxicating liquor, an inhalant, and a controlled substance.

31 * Sec. 28. AS 28.35.030(b) is amended to read:

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

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

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

8 (B) not less than 20 days and a fine of not less than \$3,000
9 [\$500] if the person has been previously convicted once;

10 (C) not less than 60 days and a fine of not less than \$4,000
11 [\$1,000] if the person has been previously convicted twice and is not subject to
12 punishment under (n) of this section;

13 (D) not less than 120 days and a fine of not less than \$5,000
14 [\$2,000] if the person has been previously convicted three times and is not
15 subject to punishment under (n) of this section;

16 (E) not less than 240 days and a fine of not less than \$6,000
17 [\$3,000] if the person has been previously convicted four times and is not
18 subject to punishment under (n) of this section;

19 (F) not less than 360 days and a fine of not less than \$7,000
20 [\$4,000] if the person has been previously convicted more than four times and
21 is not subject to punishment under (n) of this section;

22 (2) the court may not

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

26 (B) suspend imposition of sentence;

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

31 (4) the court may order that the person, while incarcerated or as a

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1 condition of probation or parole, take a drug or combination of drugs intended to
2 prevent the consumption of an alcoholic beverage; a condition of probation or
3 parole imposed under this paragraph is in addition to any other condition
4 authorized under another provision of law.

5 * **Sec. 29.** AS 28.35.030(d) is amended to read:

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

18 * **Sec. 30.** AS 28.35.030(k) is amended to read:

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

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

14 * Sec. 31. AS 28.35.030(n) is amended to read:

15 (n) A person is guilty of a class C felony if the person is convicted under (a) of
16 this section and has been previously convicted two or more times since January 1,
17 1996, and within the 10 years preceding the date of the present offense. For purposes
18 of determining minimum sentences based on previous convictions, the provisions of
19 (o)(4) of this section apply. Upon conviction, the court

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

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

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

24 times;

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

27 (2) may not

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

31 (B) suspend imposition of sentence;

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

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

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

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

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

19 (o) In this section,

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

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

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

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

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

6 (B) refusal to submit to a chemical test in violation of
7 AS 28.35.032 or in violation of another law or ordinance with similar
8 elements; or

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

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

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

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

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

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

21 (q) If the court determines that the person has successfully completed a court-
22 ordered treatment program, the court may suspend up to 75 percent of the mandatory
23 minimum sentence required under (b)(1) of this section and up to 50 percent of the
24 minimum fines required under (b)(1) of this section. This subsection does not apply to
25 a person who has already participated in a court-ordered treatment program two or
26 more times. In this subsection, "court-ordered treatment" means a treatment program
27 for a person who consumes alcohol or drugs and that

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

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

30 (3) includes emphasis on personal responsibility;

31 (4) provides in-court recognition of progress and sanctions for

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1 relapses;

2 (5) requires payment of restitution to victims and completion of
3 community work service;

4 (6) includes physician approved treatment of physical addiction and
5 treatment of the psychological causes of addiction;

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

8 (8) requires adherence to conditions of probation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (B) not less than 20 days and a fine of not less than \$3,000
5 [\$500] if the person has been previously convicted once;

6 (C) not less than 60 days and a fine of not less than \$4,000
7 [\$1,000] if the person has been previously convicted twice and is not subject to
8 punishment under (p) of this section;

9 (D) not less than 120 days and a fine of not less than \$5,000
10 [\$2,000] if the person has been previously convicted three times and is not
11 subject to punishment under (p) of this section;

12 (E) not less than 240 days and a fine of not less than \$6,000
13 [\$3,000] if the person has been previously convicted four times and is not
14 subject to punishment under (p) of this section;

15 (F) not less than 360 days and a fine of not less than \$7,000
16 [\$4,000] if the person has been previously convicted more than four times and
17 is not subject to punishment under (p) of this section;

18 (2) the court may not

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

22 (B) suspend imposition of sentence;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 times;

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

30 (2) the court may not

31 (A) suspend execution of the sentence required by (1) of this

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1 subsection or grant probation, except on condition that the person serve the
2 minimum imprisonment under (1) of this subsection; or

3 (B) suspend imposition of sentence;

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

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

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

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

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

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

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

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

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

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

29 (s) If the court determines that the person has successfully completed a court-
30 ordered treatment program, the court may suspend up to 75 percent of the mandatory
31 minimum sentence required under (g)(1) of this section and up to 50 percent of the

1 minimum fine required under (g)(1) of this section. This subsection does not apply to
2 a person who has already participated in a court-ordered treatment program two or
3 more times. In this subsection, "court-ordered treatment" has the meaning given in
4 AS 28.35.030(q).

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

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

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

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

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

30 (3) If there was 0.08 percent or more by weight of alcohol in the
31 person's blood, or 80 milligrams or more of alcohol per 100 milliliters of the person's

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1 blood, or 0.08 grams or more of alcohol per 210 liters of the person's breath, it shall be
2 presumed that the person was under the influence of **an alcoholic beverage**
3 **[INTOXICATING LIQUOR]**.

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

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

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

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

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

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

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

8 (1) deterrence of the convicted person from the commission of future
9 offenses under AS 28.15.291(b), AS 28.35.030, or 28.35.032;

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

11 (3) deterrence of other persons who are potential offenders under
12 AS 28.15.291(b), AS 28.35.030, or 28.35.032; or

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

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

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

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

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

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

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

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

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

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1 (4) being destroyed; or

2 (5) transfer to a charitable organization; in this paragraph, "charitable
3 organization" means a charity that is exempt from taxation under 26 U.S.C. 501(c)(3)
4 (Internal Revenue Code).

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

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

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

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

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

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

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

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

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

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

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

31 (d) Forfeiture of a motor vehicle, [OR] aircraft, or watercraft under

1 AS 28.35.036 is without prejudice to the rights [,] and does not extinguish the claims
2 of a creditor with an interest in the motor vehicle, [OR] aircraft, or watercraft.

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

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

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

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

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

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

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

27 (b) The program of the division must include

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

30 (2) inpatient treatment;

31 (3) intermediate treatment; [AND]

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

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

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

12 (h) The division shall

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

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

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

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

26 * Sec. 55. AS 28.35.038 is repealed.

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

29 PILOT DRUNK DRIVER PROGRAM IN THE DEPARTMENT OF
30 CORRECTIONS; REPORT. (a) In addition to a rehabilitation program established under
31 AS 33.30.011(3), the commissioner of corrections may, beginning July 1, 2002, and ending

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1 June 30, 2007, provide a drug or combination of drugs intended to prevent the consumption
2 of an alcoholic beverage to a prisoner committed to the commissioner's custody if the prisoner
3 has been convicted of violating AS 28.35.030 or 28.35.032, and voluntarily agrees to take the
4 drug or combination of drugs.

5 (b) The commissioner of corrections shall report back to the legislature by January 1,
6 2005, with a summary of the program described under (a) of this section, including the
7 number of prisoners in the program and statistics on how many prisoners in the program
8 reoffended after being released.

9 * **Sec. 57.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

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

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

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