

**CS FOR SENATE BILL NO. 239(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered: 3/23/10**

**Referred: Finance**

**Sponsor(s): SENATORS MEYER, Wielechowski, Thomas, French, McGuire, Menard, Ellis, Egan**

**A BILL**

**FOR AN ACT ENTITLED**

1   **"An Act relating to ignition interlock devices, to refusal to submit to a chemical test, and**  
2   **to driving while under the influence."**

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

4    \* **Section 1.** AS 11.76.140(a) is amended to read:

5           (a) A person commits the crime of avoidance of ignition interlock device if the  
6           person knowingly

7                   (1) circumvents or tampers with an ignition interlock device in a  
8           manner intended to allow a person on probation under AS 12.55.102, with a condition  
9           of sentence under AS 12.55.102 or another section, or who has an ignition interlock  
10          limited license to avoid using the device;

11                   (2) rents a motor vehicle to a person and with criminal negligence  
12          disregards the fact that the person is on probation under AS 12.55.102, has a condition  
13          of sentence under AS 12.55.102 or another section, or has an ignition interlock  
14          limited license, unless the vehicle is equipped with an ignition interlock device

1 described in AS 12.55.102; or

2 (3) loans a motor vehicle to a person and knowingly disregards the fact  
3 that the person is on probation under AS 12.55.102, has a condition of sentence under  
4 AS 12.55.102 or another section, or has an ignition interlock limited license, unless  
5 the vehicle is equipped with an ignition interlock device described in AS 12.55.102.

6 \* **Sec. 2.** AS 28.35.030(b) is amended to read:

7 (b) Except as provided under (n) of this section, driving while under the  
8 influence of an alcoholic beverage, inhalant, or controlled substance is a class A  
9 misdemeanor. Upon conviction,

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

11 (A) not less than 72 consecutive hours, require the person to  
12 use an ignition interlock device after the person regains the privilege, including  
13 any limited privilege, to operate a motor vehicle for a minimum of six [12]  
14 months [DURING THE PERIOD OF PROBATION], and impose a fine of not  
15 less than \$1,500 if the person has not been previously convicted;

16 (B) not less than 20 days, require the person to use an ignition  
17 interlock device after the person regains the privilege, including any limited  
18 privilege, to operate a motor vehicle for a minimum of 12 [24] months  
19 [DURING THE PERIOD OF PROBATION], and impose a fine of not less  
20 than \$3,000 if the person has been previously convicted once;

21 (C) not less than 60 days, require the person to use an ignition  
22 interlock device after the person regains the privilege, including any limited  
23 privilege, to operate a motor vehicle for a minimum of 18 [36] months  
24 [DURING THE PERIOD OF PROBATION], and impose a fine of not less  
25 than \$4,000 if the person has been previously convicted twice and is not  
26 subject to punishment under (n) of this section;

27 (D) not less than 120 days, require the person to use an ignition  
28 interlock device after the person regains the privilege, including any limited  
29 privilege, to operate a motor vehicle for a minimum of 24 months  
30 [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not  
31 less than \$5,000 if the person has been previously convicted three times and is

1 not subject to punishment under (n) of this section;

2 (E) not less than 240 days, require the person to use an ignition  
3 interlock device after the person regains the privilege, including any limited  
4 privilege, to operate a motor vehicle for a minimum of 30 months  
5 [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not  
6 less than \$6,000 if the person has been previously convicted four times and is  
7 not subject to punishment under (n) of this section;

8 (F) not less than 360 days, require the person to use an ignition  
9 interlock device after the person regains the privilege, including any limited  
10 privilege, to operate a motor vehicle for a minimum of 36 months  
11 [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not  
12 less than \$7,000 if the person has been previously convicted more than four  
13 times and is not subject to punishment under (n) of this section;

14 (2) the court may not

15 (A) suspend execution of sentence or grant probation except on  
16 condition that the person

17 (i) serve the minimum imprisonment under (1) of this  
18 subsection; [AND]

19 (ii) pay the minimum fine required under (1) of this  
20 subsection;

21 (B) suspend imposition of sentence; or

22 (C) suspend the requirement for an ignition interlock  
23 device;

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

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

another provision of law.

\* **Sec. 3.** AS 28.35.030(g) is amended to read:

(g) Notwithstanding (b) of this section, [IF THE COURT IMPOSES PROBATION UNDER AS 12.55.102] the court may reduce the fine required to be imposed under (b) of this section by the cost of the ignition interlock device.

\* **Sec. 4.** AS 28.35.030(n) is amended to read:

(n) A person is guilty of a class C felony if the person is convicted under (a) of this section and either has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense, or punishment under this subsection or under AS 28.35.032(p) was previously imposed within the last 10 years. For purposes of determining minimum sentences based on previous convictions, the provisions of (u)(4) of this section apply. Upon conviction, the court

(1) shall impose a fine of not less than \$10,000, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of 60 months [THROUGHOUT THE PERIOD OF PROBATION], and impose a minimum sentence of imprisonment of not less than

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

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

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

(2) may not

(A) suspend execution of sentence or grant probation except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection; [OR]

(B) suspend imposition of sentence; or

(C) suspend the requirement for an ignition interlock

**device;**

(3) shall permanently revoke the person's driver's license, privilege to drive, or privilege to obtain a license subject to restoration of the license under (o) of this section;

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

(5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft, or aircraft used in the commission of the offense, subject to remission under AS 28.35.037; and

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

\* **Sec. 5.** AS 28.35.030(t) is amended to read:

(t) Notwithstanding (b) or [,] (n) [, OR (r)] of this section, the court shall waive the requirement of the use of an ignition interlock device when a person operates a motor vehicle in a community included on the list published by the department under AS 28.22.011(b).

\* **Sec. 6.** AS 28.35.032(g) is amended to read:

(g) Upon conviction under this section,

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

(A) not less than 72 consecutive hours, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of six [12] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than \$1,500 if the person has not been previously convicted;

1 (B) not less than 20 days, require the person to use an ignition  
 2 interlock device after the person regains the privilege to operate a motor  
 3 vehicle for a minimum of 12 [24] months [DURING THE PERIOD OF  
 4 PROBATION], and impose a fine of not less than \$3,000 if the person has  
 5 been previously convicted once;

6 (C) not less than 60 days, require the person to use an ignition  
 7 interlock device after the person regains the privilege to operate a motor  
 8 vehicle for a minimum of 18 [36] months [DURING THE PERIOD OF  
 9 PROBATION], and impose a fine of not less than \$4,000 if the person has  
 10 been previously convicted twice and is not subject to punishment under (p) of  
 11 this section;

12 (D) not less than 120 days, require the person to use an ignition  
 13 interlock device after the person regains the privilege to operate a motor  
 14 vehicle for a minimum of 24 months [THROUGHOUT THE PERIOD OF  
 15 PROBATION], and impose a fine of not less than \$5,000 if the person has  
 16 been previously convicted three times and is not subject to punishment under  
 17 (p) of this section;

18 (E) not less than 240 days, require the person to use an ignition  
 19 interlock device after the person regains the privilege to operate a motor  
 20 vehicle for a minimum of 30 months [THROUGHOUT THE PERIOD OF  
 21 PROBATION], and impose a fine of not less than \$6,000 if the person has  
 22 been previously convicted four times and is not subject to punishment under  
 23 (p) of this section;

24 (F) not less than 360 days, require the person to use an ignition  
 25 interlock device after the person regains the privilege to operate a motor  
 26 vehicle for a minimum of 36 months [THROUGHOUT THE PERIOD OF  
 27 PROBATION], and impose a fine of not less than \$7,000 if the person has  
 28 been previously convicted more than four times and is not subject to  
 29 punishment under (p) of this section;

30 (2) the court may not

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

subsection or grant probation, except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection; [OR]

(B) suspend imposition of sentence; or

(C) suspend the requirement for an ignition interlock device;

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

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

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

\* **Sec. 7.** AS 28.35.032(k) is amended to read:

(k) Notwithstanding (g) of this section, [IF THE COURT IMPOSES PROBATION UNDER AS 12.55.102] the court may reduce the fine required to be imposed under (g) of this section by the cost of the ignition interlock device.

\* **Sec. 8.** AS 28.35.032(p) is amended to read:

(p) A person is guilty of a class C felony if the person is convicted under this section and either has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense, or punishment under this subsection or under AS 28.35.030(n) was previously imposed within the last 10 years. For purposes of determining minimum sentences based on previous convictions, the provisions of AS 28.35.030(u)(4) apply. Upon conviction,

(1) the court shall impose a fine of not less than \$10,000, require the

person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of 60 months [THROUGHOUT THE PERIOD OF PROBATION], and impose a minimum sentence of imprisonment of not less than

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

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

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

(2) the court may not

(A) suspend execution of the sentence required by (1) of this subsection or grant probation, except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection; [OR]

(B) suspend imposition of sentence; or

(C) suspend the requirements for an ignition interlock device;

(3) the court shall permanently revoke the person's driver's license, privilege to drive, or privilege to obtain a license subject to restoration under (q) of this section;

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

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

(6) the court shall order forfeiture under AS 28.35.036, of the motor vehicle, aircraft, or watercraft used in the commission of the offense, subject to



1 remission under AS 28.35.037; and

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

7 \* **Sec. 9.** AS 12.55.102(e)(2) and AS 28.35.030(r) are repealed.