

HOUSE BILL NO. 317

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES WILSON, Kreiss-Tomkins

Introduced: 2/17/16

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to forfeiture to the state; relating to criminal law; amending Rules 3, 4, 11, 12, 16, 32, 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules 501, 801, and 803, Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules of Appellate Procedure; and providing for an effective date."

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

* **Section 1.** AS 04.16.220(b) is amended to read:

(b) Property subject to forfeiture under this section may be **forfeited to the state under AS 12.36.300 - 12.36.700** [ACTUALLY OR CONSTRUCTIVELY SEIZED UNDER AN ORDER ISSUED BY THE SUPERIOR COURT UPON A SHOWING OF PROBABLE CAUSE THAT THE PROPERTY IS SUBJECT TO FORFEITURE UNDER THIS SECTION. CONSTRUCTIVE SEIZURE IS EFFECTED UPON POSTING A SIGNED NOTICE OF SEIZURE ON THE ITEM TO BE FORFEITED, STATING THE VIOLATION AND THE DATE AND PLACE OF SEIZURE. SEIZURE WITHOUT A COURT ORDER MAY BE MADE IF

1 (1) THE SEIZURE IS INCIDENT TO A VALID ARREST OR
2 SEARCH;

3 (2) THE PROPERTY SUBJECT TO SEIZURE IS THE SUBJECT OF
4 A PRIOR JUDGMENT IN FAVOR OF THE STATE; OR

5 (3) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE
6 PROPERTY IS SUBJECT TO FORFEITURE UNDER (a) OF THIS SECTION;
7 EXCEPT FOR ALCOHOLIC BEVERAGES POSSESSED ON VIOLATION OF
8 AS 04.11.501 OR AN ORDINANCE ADOPTED UNDER AS 04.11.501,
9 PROPERTY SEIZED UNDER THIS PARAGRAPH MAY NOT BE HELD OVER
10 48 HOURS OR UNTIL AN ORDER OF FORFEITURE IS ISSUED BY THE
11 COURT, WHICHEVER IS EARLIER].

12 * **Sec. 2.** AS 08.54.720(f) is amended to read:

13 (f) In addition to the penalties set out in (b) - (e) of this section and a
14 disciplinary sanction imposed under AS 08.54.710,

15 (1) the court may order the board to suspend the guide license or
16 transporter license of a person who commits a misdemeanor offense set out in (a)(1),
17 (3) - (5), (7), (8), (17), (18), or (19) of this section for a specified period of not more
18 than three years;

19 (2) the court shall order the board to suspend the guide license or
20 transporter license of a person who commits a misdemeanor offense set out in (a)(2) or
21 (9) - (14) of this section for a specified period of not less than one year and not more
22 than five years;

23 (3) the court shall order the board to suspend the guide license or
24 transporter license for a specified period of not less than three years, or to permanently
25 revoke the guide license or transporter license, of a person who commits an offense set
26 out in (a)(15) or (16) of this section; and

27 (4) all guns, fishing tackle, boats, aircraft, automobiles, or other
28 vehicles, camping gear, and other equipment and paraphernalia used in, or in aid of, a
29 violation of (a) of this section may be seized by persons authorized to enforce this
30 chapter and may be forfeited to the state as provided under **AS 12.36.300 - 12.36.700**
31 [AS 16.05.195].

1 * **Sec. 3.** AS 09.55 is amended by adding a new section to read:

2 **Article 10. Civil in rem Forfeiture.**

3 **Sec. 09.55.700. In rem civil forfeiture actions abolished.** Common law civil
4 in rem forfeiture actions are abolished. Forfeiture actions and proceedings must be
5 conducted in the manner provided under AS 12.36.300 - 12.36.700.

6 * **Sec. 4.** AS 11.41.468(a) is amended to read:

7 (a) Property used to aid a violation of AS 11.41.410 - 11.41.458 or to aid the
8 solicitation of, attempt to commit, or conspiracy to commit a violation of
9 AS 11.41.410 - 11.41.458 may be forfeited to the state under AS 12.36.300 -
10 12.36.700 upon the conviction of the offender.

11 * **Sec. 5.** AS 11.46.487 is amended to read:

12 **Sec. 11.46.487. Forfeiture of property upon conviction.** Firearms and other
13 personal property, except a motor vehicle, used in aid of a violation of AS 11.46.460,
14 11.46.462, or 11.46.484(a)(5) may be forfeited to the state under AS 12.36.300 -
15 12.36.700 upon conviction of the offender for the crime.

16 * **Sec. 6.** AS 11.61.129(a) is amended to read:

17 (a) Property used to aid a violation of AS 11.61.123 - 11.61.128 or to aid the
18 solicitation of, attempt to commit, or conspiracy to commit a violation of
19 AS 11.61.123 - 11.61.128 may be forfeited to the state under AS 12.36.300 -
20 12.36.700 upon the conviction of the offender.

21 * **Sec. 7.** AS 11.66.145 is amended to read:

22 **Sec. 11.66.145. Forfeiture.** Property used to institute, aid, or facilitate, or
23 received or derived from, a violation of AS 11.66.100(c) or 11.66.110 - 11.66.135 may
24 be forfeited to the state under AS 12.36.300 - 12.36.700 [AT SENTENCING].

25 * **Sec. 8.** AS 11.66.270 is amended to read:

26 **Sec. 11.66.270. Forfeiture.** If used in violation of AS 11.66.200 - 11.66.280,
27 the following property shall be forfeited to the state under AS 12.36.300 - 12.36.700:

- 28 (1) a gambling device or gambling record;
29 (2) money, not found on the person, used as a bet or stake;
30 (3) money used as a bet or stake which is found on the person of one
31 who conducts, finances, manages, supervises, directs, or owns all or part of an

1 unlawful gambling enterprise.

2 * **Sec. 9.** AS 11.73.060 is amended to read:

3 **Sec. 11.73.060. Forfeitures.** (a) Property used during or in aid of a violation
4 of this chapter may be forfeited to the state under AS 12.36.300 - 12.36.700 [TO THE
5 EXTENT PERMITTED UNDER AND IN ACCORDANCE WITH THE
6 PROVISIONS OF AS 17.30.110 - 17.30.126].

7 (b) In [FOR PURPOSES OF] this section, [THE TERMS] "controlled
8 substance" and "this chapter,"[,] as used in AS 17.30.110 [AS 17.30.110 - 17.30.126],
9 shall be construed as "imitation controlled substance" and "AS 11.73," respectively.

10 * **Sec. 10.** AS 12.36.020(a) is amended to read:

11 (a) A law enforcement agency may

12 (1) not return property in its custody to the owner or the agent of the
13 owner, except as provided in AS 12.36.200 or 12.36.300 - 12.36.700, if

14 (A) the property is in custody in connection with a children's
15 court proceeding, a criminal proceeding, or an official investigation of a crime;
16 or

17 (B) the property in custody is subject to forfeiture under the
18 laws of the

19 (i) state; or

20 (ii) United States, and the United States has commenced
21 forfeiture proceedings against the property or has requested the transfer
22 of the property for the commencement of forfeiture proceedings; and

23 (2) with the approval of the court, transfer the property to another state
24 or federal law enforcement agency for forfeiture proceedings by that agency; the court
25 having jurisdiction shall grant the approval under this paragraph if the property

26 (A) will be retained within the jurisdiction of the court by the
27 agency to which the property is being transferred; or

28 (B) is

29 (i) not needed as evidence; or

30 (ii) needed as evidence, and the property is fungible or
31 the property's evidentiary value can otherwise be preserved without

retaining the property within the jurisdiction of the court.

* **Sec. 11.** AS 12.36.060(a) is amended to read:

(a) A deadly weapon, other than a firearm or ammunition, forfeited to the state under **AS 12.36.300 - 12.36.700** [AS 12.55.015(a)(9), UNLESS REMITTED UNDER AS 12.36.050,] shall be disposed of by the commissioner of public safety under this section. Under this subsection, the commissioner of public safety

(1) may declare a weapon surplus and transfer it to the commissioner of administration;

(2) may, if the weapon is suitable for law enforcement purposes, training, or identification, retain the weapon for use by the Department of Public Safety or transfer the weapon to the municipal law enforcement agency making the arrest that led to the forfeiture;

(3) shall destroy a weapon that is unsafe or unlawful.

* **Sec. 12.** AS 12.36.060(c) is amended to read:

(c) A firearm or ammunition forfeited to the state under **AS 12.36.300 - 12.36.700** [AS 12.55.015(a)(9), UNLESS REMITTED UNDER AS 12.36.050,] shall be disposed of as provided in AS 18.65.340.

* **Sec. 13.** AS 12.36 is amended by adding new sections to read:

Article 03. Forfeiture.

Sec. 12.36.300. Property subject to forfeiture. (a) A person's property is subject to forfeiture to the state if the

(1) person is arrested for an offense listed in AS 12.36.320;

(2) person is convicted of the offense; and

(3) state establishes by clear and convincing evidence that the property is subject to forfeiture under (b) of this section.

(b) Following conviction for an offense listed in AS 12.36.320, a court may order a person to forfeit

(1) property the person acquired through commission of the offense;

(2) property directly traceable to property acquired through the commission of the offense;

(3) any instrumentality the person used in the commission of the

1 offense;

2 (4) any item set out in AS 04.16.220, AS 17.30.110, AS 43.50.620, or
3 43.50.625.

4 (c) Nothing in this section prevents property from being forfeited by the terms
5 of a plea agreement that is approved by a court or by other agreement of the parties to
6 a criminal proceeding.

7 (d) Except as provided in (e) of this section, at any time, at the request of the
8 state, a court may issue a preliminary order to seize property that is subject to
9 forfeiture and for which forfeiture is sought and to provide for the custody of the
10 property. Before granting an order to seize property under this subsection, the court
11 shall give any putative interest holder in the property the right to be heard with regard
12 to the seizure. The execution on the order to seize the property and the return of the
13 property, if applicable, are subject to this chapter and other state laws. Before issuing
14 an order under this subsection, the court shall make a finding that

15 (1) there is a substantial probability that the

16 (A) property is subject to forfeiture;

17 (B) state will prevail on the issue of forfeiture; and

18 (C) failure to enter the order will result in the property being
19 destroyed, removed from the state, or otherwise made unavailable for
20 forfeiture; and

21 (2) the need to preserve the availability of the property through the
22 entry of the requested order outweighs the hardship to the owner and other parties
23 known to be claiming interests in the property.

24 (e) Property subject to forfeiture under this section may be seized at any time,
25 without a prior court order, if the

26 (1) seizure is incident to a lawful arrest for an offense or to a search
27 lawfully conducted under a search warrant and the law enforcement officer making the
28 arrest or executing the search has probable cause to believe the property is subject to
29 forfeiture and that the subject of the arrest or search warrant is an owner of the
30 property;

31 (2) property subject to forfeiture is the subject of a previous judgment

1 in favor of the state; or

2 (3) law enforcement officer making the seizure has probable cause to
3 believe the property is subject to forfeiture and that the delay occasioned by the need
4 to obtain a court order would result in the removal or destruction of the property or
5 otherwise frustrate the seizure.

6 **Sec. 12.36.320. Offenses subject to forfeiture.** (a) Forfeiture to the state is
7 permitted following the conviction of a criminal offense under

8 (1) AS 04.11.010, 04.11.499, 04.11.501, or an ordinance adopted
9 under AS 04.11.501;

10 (2) AS 04.16.205;

11 (3) AS 04.21.060;

12 (4) AS 08.54;

13 (5) AS 11.41, AS 11.46, AS 11.56, or AS 11.61, if a deadly weapon
14 was in the actual possession of or used by the defendant during the commission of the
15 offense;

16 (6) AS 11.41.410 - 11.41.458, as set out in AS 11.41.468;

17 (7) AS 11.46.460, 11.46.462, or 11.46.484(a)(5), if personal property,
18 other than a motor vehicle, is used in aid of the offense;

19 (8) AS 11.61.123 - 11.61.128, as set out in AS 11.61.129;

20 (9) AS 11.61.140;

21 (10) AS 11.66.100(c) or 11.66.110 - 11.66.135, as set out in
22 AS 11.66.145;

23 (11) AS 11.66.200 - 11.66.280, as set out in AS 11.66.270;

24 (12) AS 11.71;

25 (13) AS 11.73;

26 (14) AS 16.05;

27 (15) AS 16.43.140(a), as set out in AS 16.43.970(g);

28 (16) an ordinance adopted under AS 28.01.015;

29 (17) AS 28.15.291;

30 (18) AS 28.35.030 or 28.35.032;

31 (19) AS 43.50.640;

(20) any applicable law if a motor vehicle, weapon, electronic communication device, or money or other valuable was used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang; or

(21) any applicable law if a deadly weapon was in the actual possession of or used by the defendant during the commission of a crime involving domestic violence.

(b) In this section,

(1) "criminal street gang" has the meaning given in AS 11.81.900;

(2) "deadly weapon" has the meaning given in AS 11.81.900.

Sec. 12.36.350. Seizure of property; motion for return of property. (a)

When a law enforcement officer seizes property that is subject to forfeiture to the state, the officer shall provide an itemized receipt to the person possessing the property or, in the absence of a person to whom the receipt could be given, shall leave the receipt in the place where the property was found, if possible.

(b) Following the seizure of property, the defendant in the related criminal matter or another person who claims an interest in seized property may, not later than 60 days before a related criminal trial, claim an interest in seized property or request return of seized property by a motion to the court. A motion filed under this subsection must include facts to support the person's alleged interest in the property.

(c) If a person makes a timely motion under this section, the court shall hold a hearing on the motion within 30 days of the date on which the motion is filed, or before the resolution of any related criminal matter or forfeiture proceeding, whichever is earlier.

(d) At least 10 days before a hearing on a motion filed under this section, the state shall file an answer or responsive motion that shows probable cause for the seizure.

(e) A court shall grant a claimant's motion if the court finds that

(1) it is likely that the final judgment will require the state to return the property to the claimant;

(2) the property is not reasonably required to be held for investigatory

1 reasons; or

2 (3) the property is the only reasonable means for a defendant to pay for
3 legal representation in a related criminal or forfeiture proceeding.

4 (f) In its discretion, the court may order the return of funds or property
5 sufficient to obtain legal counsel but less than the total amount seized, and the court
6 may require an accounting.

7 (g) In lieu of ordering the return of funds or property, a court may order

8 (1) the state to give security or written assurance for satisfaction of any
9 judgment, including damages, that may be rendered in a related forfeiture action; or

10 (2) any other relief the court considers to be just.

11 (h) When a claimant is not represented by an attorney, any inculpatory
12 statements made or inculpatory evidence presented to support the claim in a motion or
13 during a hearing under this section may not be admitted as evidence against the
14 claimant in a subsequent criminal proceeding.

15 **Sec. 12.36.400. Ancillary forfeiture.** (a) Within 30 days after making a
16 seizure of property or simultaneously upon filing a related criminal indictment, the
17 state shall file a complaint of ancillary forfeiture proceedings or return the property to
18 the person from whom it was seized. A complaint of ancillary forfeiture proceedings
19 shall include the following:

20 (1) a description of the property seized;

21 (2) the date and place of seizure of the property;

22 (3) the name and address of the law enforcement agency making the
23 seizure;

24 (4) the specific statutory and factual grounds for the seizure;

25 (5) whether the property was seized under an order of seizure or
26 forfeiture, and, if the property was seized without an order of seizure or forfeiture, an
27 affidavit from a law enforcement officer stating the legal and factual grounds for why
28 an order of seizure or forfeiture was not required; and

29 (6) in the complaint caption and in the complaint, the names of persons
30 known to the state who may claim an interest in the property and the basis for each
31 person's alleged interest.

(b) The complaint shall be served on the person from whom the property was seized, the person's attorney of record, and all persons known or reasonably believed by the state to claim an interest in the property. If some or all of those persons cannot be served, a copy of the complaint must also be published at least three times in a newspaper of general circulation in the district of the court having jurisdiction until the forfeiture proceeding is resolved.

Sec. 12.36.450. Forfeiture proceedings. (a) A person who claims an interest in seized property shall file an answer to the complaint of forfeiture within 30 days after the date of service of the complaint. The answer shall include facts to support the claimant's alleged interest in the property.

(b) Jurisdiction and venue for a forfeiture proceeding are in the same court in which jurisdiction and venue lie for the criminal matter related to the seized property.

(c) A forfeiture proceeding shall begin after the conclusion of the trial for the related criminal matter in an ancillary proceeding that relates to a defendant's property before the same judge and jury, if applicable, and the court, and the jury, if applicable, may consider the forfeiture of property seized from other persons at the same time or in a later proceeding. If the criminal defendant in the related criminal matter is represented by a public defender, conflict counsel, or other appointed counsel for indigent defendants, the chief public defender, the district public defender, or the court shall authorize representation of the defendant in the forfeiture proceeding.

(d) Discovery conducted in an ancillary forfeiture proceeding is subject to the Alaska Rules of Criminal Procedure.

(e) An ancillary forfeiture proceeding that relates to the forfeiture of property valued at less than \$20,000 shall be held before a court sitting without a jury.

(f) If the state fails to prove, by clear and convincing evidence, that a person from whom property is seized is an owner of the property,

(1) the forfeiture proceeding shall be dismissed and the property shall be delivered to the owner, unless the owner is unknown or the owner's possession of the property is illegal; and

(2) the owner is not subject to any charges by the state for storage of the property or expenses incurred in the preservation of the property.

(g) The court shall enter a judgment of forfeiture, and the seized property shall be forfeited to the state, if the state proves by clear and convincing evidence that the

(1) property is subject to forfeiture;

(2) criminal prosecution of the owner of the seized property resulted in a conviction; and

(3) value of the property to be forfeited does not unreasonably exceed the

(A) pecuniary gain derived or sought to be derived by the offense;

(B) pecuniary loss caused or sought to be caused by the offense; or

(C) value of the convicted owner's interest in the property.

(h) In determining the value of property subject to forfeiture, the court may consider relevant factors, including the

(1) fair market value of the property;

(2) value of the property to the defendant, including hardship that the defendant will suffer if the forfeiture is realized; and

(3) hardship from the loss of a primary residence, motor vehicle, or other property to the defendant's family members or others if the property is forfeited.

Sec. 12.36.460. Plea agreements and forfeiture. A court may not accept a plea agreement or other arrangement by which a defendant contributes or donates property to a person, charity, or other organization in full or partial fulfillment of responsibility established in the court's proceeding. This provision does not, however, apply to restitution or other compensation under other state law for victims of crimes.

Sec. 12.36.475. Forfeiture of substitute property. Following a person's conviction, the state may make a motion for forfeiture of substitute property owned by the person that is equal to but does not exceed the value of property that is subject to forfeiture but that the state is unable to seize. The court shall order the forfeiture of substitute property only if the state proves by clear and convincing evidence that the person intentionally transferred, sold, or deposited property with a third party to avoid the court's jurisdiction and the forfeiture of the property, and the substitute property is

1 owned in full by the convicted person.

2 **Sec. 12.36.490. Joint and several liability prohibited.** A person is not jointly
3 and severally liable for orders for forfeiture of another person's property. When
4 ownership of property is unclear, a court may order each person to forfeit the person's
5 property on a pro rata basis or by another means the court considers to be equitable.

6 **Sec. 12.36.500. Petition for unconstitutionally excessive forfeiture.** (a) At
7 any time following the conclusion of a forfeiture proceeding, the person whose
8 property was forfeited may petition the court to determine whether the forfeiture was
9 unconstitutionally excessive under the state or federal constitution.

10 (b) At a hearing on the petition, the petitioner has the burden of establishing
11 by a preponderance of the evidence that the forfeiture was disproportionate to the
12 seriousness of the criminal offense for which the person was convicted. The hearing
13 shall be held before a court sitting without a jury.

14 (c) In determining whether the forfeiture is unconstitutionally excessive under
15 (a) of this section or disproportionate under (b) of this section, the court may consider
16 all relevant factors, including

17 (1) the seriousness of the criminal offense and of its effect on the
18 community, the duration of the criminal activity, and the harm caused by the
19 defendant;

20 (2) the extent to which the defendant participated in the offense;

21 (3) the extent to which the property was used in committing the
22 offense;

23 (4) the sentence imposed for the commission of the offense that relates
24 to the property that is subject to forfeiture; and

25 (5) whether the criminal offense was completed or attempted.

26 (d) The court may not consider the value of the property to the state when it
27 determines whether the forfeiture of property is unconstitutionally excessive under (a)
28 of this section or disproportionate under (b) of this section.

29 **Sec. 12.36.520. Appeal.** A party to a forfeiture proceeding under this chapter
30 may appeal an order regarding the seizure, forfeiture, or distribution of property under
31 AS 22.07.020 or AS 22.15.240.

1 **Sec. 12.36.550. Forfeited property.** (a) The state acquires provisional title to
2 seized property at the time the property was used or acquired in connection with an
3 offense that subjects the property to forfeiture. Provisional title authorizes the state to
4 hold and protect the property. Title to the property vests with the state when a trier of
5 fact renders a final forfeiture verdict, and the title relates back to the time when the
6 state acquired provisional title, if the title is subject to claims by third parties that are
7 adjudicated under this chapter.

8 (b) Unless possession of the property is illegal, or a different disposition is
9 specifically provided for by law, except as provided in this section, forfeited property
10 that is not currency shall be delivered along with any abandoned property to the state
11 treasurer for disposition at a public auction. All forfeited currency and all sale
12 proceeds of the sale of forfeited or abandoned property shall be deposited in the
13 general fund.

14 (c) Proceeds from the sale of forfeited property received by the state from
15 another jurisdiction shall be deposited in the general fund. If federal law prohibits
16 compliance with this section, law enforcement agencies may not seek forfeited
17 property or proceeds from the sale of forfeited property shared or transferred under
18 federal law.

19 (d) A property interest forfeited to the state under AS 12.36.300 - 12.36.700 is
20 subject to the interest of a secured party, unless, in the forfeiture proceeding, the state
21 proves by clear and convincing evidence that the secured party consented to the use of
22 the property with knowledge that it would be used in connection with the offense that
23 relates to the seizure of the property.

24 **Sec. 12.36.580. Innocent owner.** (a) The property of an innocent owner may
25 not be forfeited to the state.

26 (b) A person is an innocent owner if the person

27 (1) holds a legal right, title, or interest in the property seized and held
28 the ownership interest in the seized property at the time the illegal conduct that gave
29 rise to the seizure of the property occurred; or

30 (2) was a bona fide purchaser for fair value.

31 (c) A person claiming to be an innocent owner has the burden to prove the

1 facts set out in (b) of this section.

2 (d) The state shall return property immediately to an established innocent
3 owner who has an interest in homesteaded property, a motor vehicle valued at less
4 than \$10,000, or a conveyance that is encumbered by a security interest that was
5 perfected under state law or that is subject to a lease or rental agreement, unless the
6 secured party or lessor consented to the use of the property with knowledge that it
7 would be used for a purpose for which forfeiture is permitted.

8 (e) If a person establishes that the person is an innocent owner under this
9 section, and the state pursues a forfeiture proceeding against the person's property, the
10 state shall prove by clear and convincing evidence that the innocent owner consented
11 to the use of the property with knowledge that it would be used for a purpose for
12 which forfeiture is permitted.

13 (f) A person who acquired an ownership interest in property subject to
14 forfeiture after the commission of an offense that gave rise to the forfeiture, and who
15 claims to be an innocent owner, has the burden of production to show that the person
16 is an innocent owner under (b) of this section.

17 (g) If a person establishes that the person is an innocent owner under (f) of this
18 section, and the state pursues a forfeiture proceeding against the person's property, the
19 state shall prove by clear and convincing evidence that, at the time the person acquired
20 the property, the person had

- 21 (1) actual knowledge that the property was subject to forfeiture; or
- 22 (2) notice of a defect in title.

23 (h) If the state fails to meet its burdens as provided in (e) and (g) of this
24 section, the court shall find that the person is an innocent owner and shall order the
25 state to relinquish all claims of title to the innocent owner's property.

26 **Sec. 12.36.600. Seized property.** (a) Seized currency alleged to be subject to
27 forfeiture shall be deposited with the clerk of the court in an interest-bearing account.

28 (b) Seized property, other than currency or real property, that is not required
29 by federal or state law to be destroyed shall be

- 30 (1) placed under seal and removed to a place designated by the court;
- 31 or

1 (2) held in the custody of a law enforcement agency.

2 (c) Seized property shall be kept by the custodian in a manner to protect it
3 from theft or damage and, if ordered by the district court, insured against those risks.

4 (d) A law enforcement agency may not retain forfeited or abandoned property.

5 **Sec. 12.36.610. Annual report.** (a) Every law enforcement agency that
6 engaged in seizures or forfeitures in the previous year shall prepare an annual report of
7 the agency's seizures and forfeitures conducted under AS 12.36.300 - 12.36.700 and
8 under federal forfeiture law, and the report must include the following:

9 (1) the total number of seizures of currency and the total amount of
10 currency seized in each seizure;

11 (2) the total number of seizures of property and the number and types
12 of items seized in each seizure;

13 (3) the market value of each item of seized property;

14 (4) aggregate demographic information about the persons whose
15 property has been seized or forfeited, including race, ethnicity, and sex; and

16 (5) the total number of occurrences of each class of offenses that
17 resulted in the agency's seizure of property.

18 (b) A law enforcement agency shall submit its annual report to the Department
19 of Public Safety and to the district attorney's office in the law enforcement agency's
20 district. A law enforcement agency that did not engage in seizure or forfeiture under
21 AS 12.36.300 - 12.36.700 or federal forfeiture law, or both, shall report that fact in its
22 annual report.

23 (c) The Department of Public Safety shall compile the reports submitted by
24 each law enforcement agency and issue an aggregate report of all forfeitures in the
25 state.

26 (d) By April 1 of each year, the Department of Public Safety shall publish on
27 its Internet website the department's aggregate report and individual law enforcement
28 agency reports submitted for the previous year.

29 **Sec. 12.36.625. Holding seized property.** (a) A law enforcement agency that
30 holds seized property shall return the seized property to the owner of the property
31 within a reasonable time that does not exceed five days after

1 (1) a court finds that a person had a bona fide security interest in the
2 property;

3 (2) a court finds that the owner is an innocent owner;

4 (3) the acquittal of or dismissal of related criminal charges against the
5 owner of the property; or

6 (4) dismissal of the criminal charge that was the basis of the forfeiture
7 proceedings by abandonment of the prosecution.

8 (b) A law enforcement agency that holds seized property is responsible for any
9 damage, storage fees, and related costs applicable to property that is returned to an
10 owner under this section.

11 **Sec. 12.36.635. Property transfer; joint investigations.** (a) A law
12 enforcement agency may not refer or otherwise transfer property seized under state
13 law to a federal agency seeking the adoption of the seized property by the federal
14 agency. Nothing in this section shall be construed to prohibit the federal government,
15 or any of its agencies, from seeking federal forfeiture.

16 (b) A law enforcement agency participating in a joint investigation or task
17 force with a federal agency may not transfer property to the federal government unless
18 the court enters an order, upon petition of the prosecuting attorney, authorizing the
19 property to be transferred. The court may enter an order authorizing a transfer to the
20 federal government if the transfer is actually necessary for an active criminal case or
21 criminal investigation brought by the federal government. The court may enter an
22 order declining the transfer if the transfer would circumvent the protections provided
23 under AS 12.36.300 - 12.36.700 or that would otherwise be available to a putative
24 interest holder in the property.

25 (c) In the event of an intended transfer of seized property to the federal
26 government, the state or local agency intending to facilitate the transfer shall provide
27 all property owners with notice of the intended transfer at least 60 days before the
28 transfer is to take place.

29 (d) A property owner who believes that the intended transfer of property under
30 this section is in violation of (a) of this section may file a request for a hearing with
31 the court having jurisdiction over the underlying property under AS 12.36.450(b) at

1 least five days before the date of the intended transfer as stated in the notice required
2 under (c) of this section.

3 (e) Property may not be transferred under this section until the state court
4 having jurisdiction over the underlying property under AS 12.36.450(b) determines
5 that the transfer will not circumvent the protections provided under AS 12.36.300 -
6 12.36.700 or that would otherwise be available to a putative interest holder in the
7 property and that the transfer is actually necessary for an active criminal case or
8 criminal investigation brought by the federal government.

9 (f) A transfer to the Alaska Wing, Civil Air Patrol, of a forfeited aircraft is
10 subject to the conditions specified in AS 18.60.148(a).

11 **Sec. 12.36.700. Definitions.** In AS 12.36.300 - 12.36.700,

12 (1) "abandoned property" means personal property the rights to which
13 and the control of which an owner has intentionally relinquished;

14 (2) "actual knowledge" means a direct and clear awareness of
15 information, a fact or a condition;

16 (3) "conveyance" means a motor vehicle, trailer, snowmobile, airplane,
17 vessel, or any other equipment or device used for transportation, but does not include
18 property that is stolen or taken in violation of a law;

19 (4) "conviction" or "convicted" means that a person has been found
20 guilty of an offense in a trial court, whether by a plea of guilty or nolo contendere or
21 otherwise, and whether the sentence is deferred or suspended;

22 (5) "instrumentality" means land, a building, a container, a
23 conveyance, equipment, materials, a product, a computer, computer software, a
24 telecommunications device, a firearm, ammunition, a tool, money, a security, a
25 negotiable instrument, other devices used for exchange of property, or other property
26 lawful to possess that is used in the furtherance or commission of an offense to which
27 forfeiture applies;

28 (6) "law enforcement agency" has the meaning given in AS 12.36.090;

29 (7) "law enforcement officer"

30 (A) means a state or municipal peace officer or another person
31 granted the powers of a peace officer under state law to enforce criminal

1 statutes;

2 (B) does not mean a correctional officer;

3 (8) "owner" means a person who has a legal or equitable ownership
4 interest in property;

5 (9) "property" means tangible or intangible personal property or real
6 property;

7 (10) "property subject to forfeiture" means property or an
8 instrumentality described and declared to be subject to forfeiture under AS 12.36.300 -
9 12.36.700 or other state law; and

10 (11) "secured party" means a person with a security or other protected
11 interest in property, whether the interest arose by mortgage, security agreement, lien,
12 lease, or otherwise, the purpose of which security or interest is to secure the payment
13 of a debt or protect a potential debt owed to the secured party.

14 * **Sec. 14.** AS 16.05.190 is amended to read:

15 **Sec. 16.05.190. Seizure and disposition of equipment.** Guns, traps, nets,
16 fishing tackle, boats, aircraft, automobiles or other vehicles, sleds, and other
17 paraphernalia used in or in aid of a violation of this chapter or a regulation of the
18 department may be seized under a valid search, and all fish and game, or parts of fish
19 and game, or nests or eggs of birds, taken, transported, or possessed contrary to the
20 provisions of this chapter or a regulation of the department shall be seized under
21 AS 12.36.300 - 12.36.700 by any peace officer designated in AS 16.05.150. Upon
22 conviction of the offender or upon judgment of the court having jurisdiction that the
23 item was taken, transported, or possessed in violation of this chapter or a regulation of
24 the department, all fish and game, or parts of them are forfeited to the state under
25 AS 12.36.300 - 12.36.700 and shall be disposed of as directed by the court. [IF SOLD,
26 THE PROCEEDS OF THE SALE SHALL BE TRANSMITTED TO THE PROPER
27 STATE OFFICER FOR DEPOSIT IN THE GENERAL FUND.] Guns, traps, nets,
28 fishing tackle, boats, aircraft, or other vehicles, sleds, and other paraphernalia seized
29 under the provisions of this chapter or a regulation of the department, unless forfeited
30 by order of the court, shall be returned as provided under AS 12.36.300 - 12.36.700,
31 after completion of the case and payment of the fine, if any.

1 * **Sec. 15.** AS 16.05.722(b) is amended to read:

2 (b) In addition, the court shall order forfeiture to the state under
 3 AS 12.36.300 - 12.36.700 of any fish, or its fair market value, taken or retained as a
 4 result of the commission of the violation. For purposes of this subsection, it is a
 5 rebuttable presumption that all fish found on board a fishing vessel used in or in aid of
 6 a violation, or found at the fishing site, were taken or retained in violation of
 7 AS 16.05.440 - 16.05.690 or a commercial fisheries regulation of the Board of
 8 Fisheries or the department. It is the defendant's burden to show by a preponderance of
 9 the evidence that fish on board or at the site were lawfully taken and retained.

10 * **Sec. 16.** AS 16.05.723(a) is amended to read:

11 (a) A person who negligently violates AS 16.05.440 - 16.05.690, or a
 12 regulation of the Board of Fisheries or the department governing commercial fishing,
 13 is guilty of a misdemeanor and in addition to punishment under other provisions in
 14 this title, including AS 16.05.710 [AS 16.05.195 AND 16.05.710], is punishable upon
 15 conviction by a fine of not more than \$15,000 or by imprisonment for not more than
 16 one year, or by both. In addition, the court shall order forfeiture to the state under
 17 AS 12.36.300 - 12.36.700 of any fish, or its fair market value, taken or retained as a
 18 result of the commission of the violation, and the court may order forfeiture to the
 19 state of [FORFEIT] any vessel and any fishing gear under AS 12.36.300 - 12.36.700,
 20 including any net, pot, tackle, or other device designed or employed to take fish
 21 commercially, that was used in or in aid of the violation. [ANY FISH, OR ITS FAIR
 22 MARKET VALUE, FORFEITED UNDER THIS SUBSECTION MAY NOT ALSO
 23 BE FORFEITED UNDER AS 16.05.195.] For purposes of this subsection, it is a
 24 rebuttable presumption that all fish found on board a fishing vessel used in or in aid of
 25 a violation, or found at the fishing site, were taken or retained in violation of
 26 AS 16.05.440 - 16.05.690 or a commercial fisheries regulation of the Board of
 27 Fisheries or the department, and it is the defendant's burden to show by a
 28 preponderance of the evidence that fish on board or at the site were lawfully taken and
 29 retained.

30 * **Sec. 17.** AS 16.05.782(b) is amended to read:

31 (b) In addition to the penalty imposed by law under (a) of this section, the

1 court shall order forfeiture **to the state under AS 12.36.300 - 12.36.700** of the hide
 2 and skull of the bear, but if the hide and skull are not salvaged and delivered to the
 3 department then the court shall impose an additional fine of up to \$10,000.

4 * **Sec. 18.** AS 16.05.783(c) is amended to read:

5 (c) A person who violates this section is guilty of a misdemeanor, and upon
 6 conviction is punishable by a fine of not more than \$5,000, or by imprisonment for not
 7 more than one year, or by both. In addition, the court may order the aircraft and
 8 equipment used in or in aid of a violation of this section to be forfeited to the state
 9 **under AS 12.36.300 - 12.36.700**.

10 * **Sec. 19.** AS 16.05.905(b) is amended to read:

11 (b) An alien person who violates (a) of this section is guilty of a misdemeanor,
 12 and upon conviction is punishable by a confiscation and forfeiture **to the state under**
 13 **AS 12.36.300 - 12.36.700** of the fishing vessel used in the violation, or by
 14 imprisonment for not more than one year, or by fine of not more than \$10,000, or by
 15 all or any two of the foregoing punishments.

16 * **Sec. 20.** AS 16.43.970(g) is amended to read:

17 (g) A person who violates the provisions of AS 16.43.140(a) is

18 (1) upon a first conviction, guilty of a class B misdemeanor and may
 19 be sentenced to a definite term of imprisonment of not more than 90 days, or forfeiture
 20 **to the state under AS 12.36.300 - 12.36.700** of the person's fishing vessel, or both,
 21 and shall be sentenced to a fine of not less than \$5,000 nor more than \$10,000 and loss
 22 of commercial fishing privileges under (i) of this section;

23 (2) upon a second conviction, guilty of a class A misdemeanor and
 24 may be sentenced to a definite term of imprisonment of not more than one year, and
 25 shall be sentenced to a fine of not less than \$10,000 nor more than \$20,000, forfeiture
 26 **to the state under AS 12.36.300 - 12.36.700** of the person's fishing vessel, and loss of
 27 commercial fishing privileges under (i) of this section;

28 (3) upon a third or subsequent conviction, guilty of a class A
 29 misdemeanor and may be sentenced to a definite term of imprisonment of not more
 30 than one year, and shall be sentenced to a fine of not less than \$20,000 nor more than
 31 \$50,000, forfeiture **to the state under AS 12.36.300 - 12.36.700** of the person's

1 fishing vessel, and loss of commercial fishing privileges under (i) of this section.

2 * **Sec. 21.** AS 17.30.110 is amended to read:

3 **Sec. 17.30.110. Items subject to forfeiture.** The following may be forfeited to
4 the state **under AS 12.36.300 - 12.36.700:**

5 (1) a controlled substance that has been manufactured, distributed,
6 dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

7 (2) raw materials, products, and equipment that are used or intended
8 for use in manufacturing, distributing, compounding, processing, delivering,
9 importing, or exporting a controlled substance that is a felony under this chapter or
10 AS 11.71;

11 (3) property that is used or intended for use as a container for property
12 described in (1) or (2) of this section;

13 (4) a conveyance, including but not limited to aircraft, vehicles, or
14 vessels, that has been used or is intended for use in transporting or in any manner in
15 facilitating the transportation, sale, receipt, possession, or concealment of property
16 described in (1) or (2) of this section in violation of a felony offense under this chapter
17 or AS 11.71; however,

18 (A) a conveyance may not be forfeited under this paragraph if
19 the owner of the conveyance establishes, by a preponderance of the evidence,
20 at a hearing before the court as the trier of fact, that use of the conveyance in
21 violation of this chapter or AS 11.71 was committed by another person and
22 that the owner was neither a consenting party nor privy to the violation;

23 (B) a forfeiture of a conveyance encumbered by a valid security
24 interest at the time of seizure is subject to the interest of the secured party if the
25 secured party establishes, by a preponderance of the evidence, at a hearing
26 before the court as the trier of fact, that use of the conveyance in violation of
27 this chapter or AS 11.71 was committed by another person and that the secured
28 party was neither a consenting party nor privy to the violation;

29 (5) books, records, and research products and materials, including
30 formulas, microfilm, tapes, and data, that are used in violation of this chapter or
31 AS 11.71;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter or AS 11.71; and

(7) a firearm that is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71.

* **Sec. 22.** AS 18.60.148(a) is amended to read:

(a) A transfer to the Alaska Wing, Civil Air Patrol, of a forfeited aircraft under **AS 12.36.300 - 12.36.700** [AS 16.05.195(f), AS 17.30.122,] or another state law or regulation is subject to the following conditions:

(1) the transfer shall be made without cost to the Civil Air Patrol;

(2) the aircraft becomes a corporate Civil Air Patrol aircraft;

(3) the aircraft may only be used for Civil Air Patrol search and rescue, civil defense, and training purposes;

(4) the aircraft may not be transferred to another wing of the Civil Air Patrol unless

(A) the aircraft has been corporate aircraft of the Alaska Wing, Civil Air Patrol for at least 36 months after the date of transfer to the Alaska Wing; or

(B) the aircraft is being exchanged for another Civil Air Patrol corporate aircraft of equivalent or greater value;

(5) if the Civil Air Patrol determines that the aircraft should be disposed of as surplus property, the disposition shall first be approved by the Department of Administration.

* **Sec. 23.** AS 22.07.020(a) is amended to read:

(a) The court of appeals has appellate jurisdiction in actions and proceedings commenced in the superior court involving

(1) criminal prosecution;

(2) post-conviction relief;

(3) matters under AS 47.12, including waiver of jurisdiction over a minor under AS 47.12.100;

(4) extradition;

1 (5) habeas corpus;

2 (6) probation and parole; [AND]

3 (7) bail;

4 **(8) forfeiture proceedings under AS 12.36.300 - 12.36.700.**

5 * **Sec. 24.** AS 22.15.240 is amended by adding a new subsection to read:

6 (e) Any party may appeal to the superior court a judgment of the district court
7 in a forfeiture proceeding under AS 12.36.300 - 12.36.700.

8 * **Sec. 25.** AS 28.15.291(b) is amended to read:

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

10 (1) shall impose a minimum sentence of imprisonment

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

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

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

25 (D) if the person's driver's license, privilege to drive, or
26 privilege to obtain a license was revoked under circumstances described in
27 AS 28.15.181(c)(2), (3), or (4), if the person was driving in violation of a
28 limited license issued under AS 28.15.201(d) following that revocation, or if
29 the person was driving in violation of an ignition interlock device requirement
30 following that revocation, of not less than 30 days and a fine of not less than
31 \$1,000;

(2) may impose additional conditions of probation;

(3) may not

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

(B) suspend imposition of sentence;

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

(5) may order that the motor vehicle that was used in commission of the offense be forfeited under AS 12.36.300 - 12.36.700 [AS 28.35.036].

* **Sec. 26.** AS 28.35.030(b) is amended to read:

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

(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, including any limited privilege, to operate a motor vehicle for a minimum of six months, and impose a fine of not less than \$1,500 if the person has not been previously convicted;

(B) not less than 20 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 12 months, and impose a fine of not less than \$3,000 if the person has been previously convicted once;

(C) not less than 60 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 18 months, and impose a fine of not less than \$4,000 if the person has been previously convicted twice

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

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

7 (E) not less than 240 days, require the person to use an ignition
8 interlock device after the person regains the privilege, including any limited
9 privilege, to operate a motor vehicle for a minimum of 30 months, and impose
10 a fine of not less than \$6,000 if the person has been previously convicted four
11 times and is not subject to punishment under (n) of this section;

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

17 (2) the court may not

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

20 (i) serve the minimum imprisonment under (1) of this
21 subsection;

22 (ii) pay the minimum fine required under (1) of this
23 subsection;

24 (B) suspend imposition of sentence; or

25 (C) suspend the requirement for an ignition interlock device for
26 a violation of (a)(1) of this section involving an alcoholic beverage or
27 intoxicating liquor, singly or in combination, or a violation of (a)(2) of this
28 section;

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

1 forfeited under **AS 12.36.300 - 12.36.700** [AS 28.35.036]; and

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

7 * **Sec. 27.** AS 28.35.030(n) is amended to read:

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

15 (1) shall impose a fine of not less than \$10,000, require the person to
16 use an ignition interlock device after the person regains the privilege to operate a
17 motor vehicle for a minimum of 60 months, and impose a minimum sentence of
18 imprisonment of not less than

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

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

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

24 (2) may not

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

27 (i) serve the minimum imprisonment under (1) of this
28 subsection;

29 (ii) pay the minimum fine required under (1) of this
30 subsection;

31 (B) suspend imposition of sentence; or

(C) suspend the requirement for an ignition interlock device for a violation of (a)(1) of this section involving an alcoholic beverage or intoxicating liquor, singly or in combination, or a violation of (a)(2) of this section;

(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 12.36.300 - 12.36.700 [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. 28.** 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 months, and impose a fine of not less than \$1,500 if the person has not been previously convicted;

(B) not less than 20 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of 12 months, and impose a fine of not less than \$3,000

1 if the person has been previously convicted once;

2 (C) not less than 60 days, require the person to use an ignition
3 interlock device after the person regains the privilege to operate a motor
4 vehicle for a minimum of 18 months, and impose a fine of not less than \$4,000
5 if the person has been previously convicted twice and is not subject to
6 punishment under (p) of this section;

7 (D) not less than 120 days, require the person to use an ignition
8 interlock device after the person regains the privilege to operate a motor
9 vehicle for a minimum of 24 months, and impose a fine of not less than \$5,000
10 if the person has been previously convicted three times and is not subject to
11 punishment under (p) of this section;

12 (E) not less than 240 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 30 months, and impose a fine of not less than \$6,000
15 if the person has been previously convicted four times and is not subject to
16 punishment under (p) of this section;

17 (F) not less than 360 days, require the person to use an ignition
18 interlock device after the person regains the privilege to operate a motor
19 vehicle for a minimum of 36 months, and impose a fine of not less than \$7,000
20 if the person has been previously convicted more than four times and is not
21 subject to punishment under (p) of this section;

22 (2) the court may not

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

25 (i) serve the minimum imprisonment under (1) of this
26 subsection;

27 (ii) pay the minimum fine required under (1) of this
28 subsection;

29 (B) suspend imposition of sentence; or

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

31 (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 12.36.300 - 12.36.700 [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. 29.** 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, 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;

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

(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 to the state under AS 12.36.300 - 12.36.700 [UNDER AS 28.35.036,] of the motor vehicle, aircraft, or watercraft used in the commission of the offense [, SUBJECT TO REMISSION UNDER AS 28.35.037]; and

(7) the court 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, the department shall reissue the vehicle registration and omit the name of the person convicted under this subsection.

* **Sec. 30.** AS 43.50.620 is amended to read:

Sec. 43.50.620. Forfeiture and destruction of seized cigarettes. Cigarettes seized under AS 43.50.500 - 43.50.700 are forfeited to the state under AS 12.36.300 - 12.36.700. After notice and an opportunity for a hearing, the commissioner shall destroy the cigarettes forfeited under this section.

* **Sec. 31.** AS 43.50.625(a) is amended to read:

(a) Upon a showing of probable cause that a person has committed the crime of misconduct involving unstamped cigarettes or stamps in the first degree under

AS 43.50.640, the following are subject to forfeiture **to the state under AS 12.36.300 - 12.36.700:**

(1) material and equipment used in the manufacture, sale, offering for sale, or possession for sale of cigarettes in this state in violation of AS 43.50.500 - 43.50.640 or 43.50.660 - 43.50.700;

(2) aircraft, vehicles, or vessels used to transport or facilitate the transportation of cigarettes manufactured, sold, offered for sale, or possessed for sale in this state in violation of AS 43.50.500 - 43.50.640 or 43.50.660 - 43.50.700;

(3) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited under AS 43.50.500 - 43.50.640 or 43.50.660 - 43.50.700.

* **Sec. 32.** AS 43.50.625(d) is amended to read:

(d) Property subject to forfeiture under (a) of this section may be forfeited **to the state under AS 12.36.300 - 12.36.700**

[(1) UPON CONVICTION OF A PERSON FOR A VIOLATION OF AS 43.50.640; OR

(2) UPON JUDGMENT BY THE SUPERIOR COURT IN A PROCEEDING IN REM THAT THE PROPERTY WAS USED IN A MANNER SUBJECTING IT TO FORFEITURE UNDER (a) OF THIS SECTION].

* **Sec. 33.** AS 04.16.220(c), 04.16.220(d), 04.16.220(e), 04.16.220(f), 04.16.220(g), 04.16.220(h), 04.16.220(i), 04.16.220(j), 04.16.220(k); AS 12.36.050; AS 12.55.015(a)(9), 12.55.015(a)(11), 12.55.015(f); AS 16.05.195; AS 17.30.112, 17.30.114, 17.30.116, 17.30.118, 17.30.120, 17.30.122, 17.30.124, 17.30.126; AS 28.35.036, 28.35.037; AS 43.50.625(b), 43.50.625(c), 43.50.625(e), 43.50.625(f), 43.50.625(g), 43.50.625(h), 43.50.625(i), and 43.50.625(j) are repealed.

* **Sec. 34.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENTS. The provisions of AS 12.36.300 - 12.36.700, added by sec. 13 of this Act, have the effect of changing Rules 3, 4, 11, 12, 16, 32, 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules 501, 801, and 803, Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules of Appellate

1 Procedure, by establishing requirements for forfeiture proceedings and appeals and relating to
2 admissible evidence in those proceedings and appeals.

3 * **Sec. 35.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 APPLICABILITY. This Act applies to offenses, seizures, or forfeitures occurring on
6 or after the effective date of this Act.

7 * **Sec. 36.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 CONDITIONAL EFFECT. This Act takes effect only if sec. 34 of this Act receives
10 the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the
11 State of Alaska.

12 * **Sec. 37.** This Act takes effect July 1, 2016.