

SENATE CS FOR CS FOR HOUSE BILL NO. 159(FIN)(efd fld S)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/8/95

Referred: Rules

Sponsor(s): REPRESENTATIVES PORTER, Bunde, Green, Toohey, Rokeberg, Ogan

SENATORS Halford, Kelly, Leman, Green, Torgerson, Pearce, Taylor, Sharp

A BILL**FOR AN ACT ENTITLED**

1 "An Act allowing a person under age 21 to be arrested by a peace officer
2 without a warrant for illegal possession, consumption, or control of alcohol;
3 relating to the offenses of driving while intoxicated and failure to submit to a
4 chemical test of breath or blood."

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

6 * **Section 1.** AS 12.25.030(b) is amended to read:

7 (b) In addition to the authority granted under (a) of this section, a peace officer
8 without a warrant may arrest a person when the peace officer has **probable**
9 [REASONABLE] cause for believing that the person has committed a crime under, or
10 violated conditions imposed as a part of the person's release before trial on
11 misdemeanor charges brought under,

12 (1) **AS 04.16.050 or an ordinance with similar elements;**
13 (2) AS 11.41.270 or AS 11.56.740; or
14 (3) [(2)] AS 11.41, AS 11.46.330, or AS 11.61.120, or has violated an

1 ordinance with elements substantially similar to the elements of a crime under
2 AS 11.41, AS 11.46.330, or AS 11.61.120, when the victim is a spouse or former
3 spouse of the person who committed the crime; a parent, grandparent, child, or
4 grandchild of the person who committed the crime; a member of the social unit
5 comprised of those living together in the same dwelling as the person who committed
6 the crime; or another person who is not a spouse or former spouse of the person who
7 committed the crime but who previously lived in a spousal relationship with the person
8 who committed the crime or is in or has been in a dating, courtship, or engagement
9 relationship with the person who committed the crime.

10 * **Sec. 2.** AS 12.55.102(d) is amended to read:

11 (d) The court may include the cost of the ignition interlock device as a part
12 of the fine required to be imposed against the defendant under AS 28.35.030(b) **or (n)**
13 or 28.35.032(g) **or (q)**.

14 * **Sec. 3.** AS 28.35.030(b) is amended to read:

15 (b) **Except as provided under (n) of this section, driving** [DRIVING] while
16 intoxicated is a class A misdemeanor. Upon conviction

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

18 (A) not less than 72 consecutive hours and a fine of not less
19 than \$250 if the person has not been previously convicted;

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

22 (C) not less than 60 days and a fine of not less than \$1,000 if
23 the person has been previously convicted twice **and is not subject to**
24 **punishment under (n) of this section**;

25 (D) not less than 120 days and a fine of not less than \$2,000
26 if the person has been previously convicted three times **and is not subject to**
27 **punishment under (n) of this section**;

28 (E) not less than 240 days and a fine of not less than \$3,000 if
29 the person has been previously convicted four times **and is not subject to**
30 **punishment under (n) of this section**;

31 (F) not less than 360 days and a fine of not less than \$4,000 if

the person has been previously convicted more than four times **and is not subject to punishment under (n) of this section;**

(2) the court may not

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

(B) suspend imposition of sentence;

(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 the motor vehicle or aircraft that was used in commission of the offense to be forfeited under AS 28.35.036.

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

(h) The court shall order a person convicted under this section to satisfy the screening, evaluation, referral, and program requirements of an agency authorized by the court to make referrals for rehabilitative treatment or to provide rehabilitative treatment. **If a person is convicted under (n) of this section, the court shall order the person to be evaluated as required by this subsection before the court imposes sentence for the offense.**

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

- (j) If a person fails to satisfy the requirements of an authorized agency under (i) of this section, the court

(1) may impose any portion of a suspended sentence; however, if the person was convicted under (n) of this section, the court shall impose the remaining portion of any suspended sentence;

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

(3) shall order the revocation or suspension of the person's driver's license, privilege to drive, and privilege to obtain a driver's license until the requirements are satisfied.

* **Sec. 6.** AS 28.35.030(m)(4) is amended to read:

(4) "previously convicted" means having been convicted in this or

1 another jurisdiction, within 10 years preceding the date of the present offense, of any
2 of the following offenses [, OR OF ANOTHER LAW OR ORDINANCE WITH
3 SUBSTANTIALLY SIMILAR ELEMENTS]; however, convictions for any of these
4 offenses, if arising out of a single transaction and a single arrest, are considered one
5 previous conviction:

6 (A) operating a motor vehicle, aircraft, or watercraft while
7 intoxicated, in violation of this section or in violation of another law or
ordinance with similar elements, except that the other law or ordinance
may provide for a lower level of alcohol in the person's blood or breath
10 than imposed under (a)(2) of this section;

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

14 (C) operating a commercial motor vehicle while intoxicated in
15 violation of AS 28.33.030 or in violation of another law or ordinance with
similar elements, except that the other law or ordinance may provide for
a lower level of alcohol in the person's blood or breath than imposed
18 under AS 28.33.030(a)(2).

19 * **Sec. 7.** AS 28.35.030 is amended by adding a new subsection to read:

20 (n) A person is guilty of a class C felony if the person is convicted of driving
21 while intoxicated and has been previously convicted two or more times. For purposes
22 of determining if a person has been previously convicted, the provisions of (m)(4) of
23 this section apply, except that only convictions occurring within five years preceding
24 the date of the present offense may be included. Upon conviction the court

25 (1) shall impose a fine of not less than \$5,000 and a minimum sentence
26 of imprisonment of not less than

27 (A) 120 days if the person has been previously convicted twice;
28 (B) 240 days if the person has been previously convicted three
29 times;

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

(2) may not

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

(B) suspend imposition of sentence;

(3) shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181(c);

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

(5) may also order forfeiture under AS 28.35.036 of the vehicle or aircraft used in the commission of the offense, subject to remission under AS 28.35.037.

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

(f) Except as provided under (q) of this section, refusal [REFUSAL] to submit to a chemical test authorized by AS 28.33.031(a) or AS 28.35.031(a) or (g) is a class A misdemeanor.

* **Sec. 9.** 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 and a fine of not less than \$250 if the person has not been previously convicted;

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

(C) not less than 60 days and a fine of not less than \$1,000 if the person has been previously convicted twice **and is not subject to punishment under (q) of this section;**

(D) not less than 120 days and a fine of not less than \$2,000 if the person has been previously convicted three times and is not subject to punishment under (q) of this section:

(E) not less than 240 days and a fine of not less than \$3,000 if the person has been previously convicted four times **and is not subject to punishment under (q) of this section;**

(F) not less than 360 days and a fine of not less than \$4,000 if the person has been previously convicted more than four times **and is not subject to punishment under (q) of this section:**

(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 serve the minimum imprisonment under (1) of this subsection; or

(B) suspend imposition of sentence;

(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 the motor vehicle or aircraft that was used in commission of the offense be forfeited under AS 28.35.036; and

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

* **Sec. 10.** AS 28.35.032(l) is amended to read:

(l) The court shall order a person convicted under this section to satisfy the screening, evaluation, referral, and program requirements of an agency authorized by the court to make referrals for rehabilitative treatment or to provide rehabilitative treatment. **If a person is convicted under (q) of this section, the court shall order the person to be evaluated as required by this subsection before the court imposes sentence for the offense.**

* **Sec. 11.** AS 28.35.032(n) is amended to read:

(n) If a person fails to satisfy the requirements of an authorized agency under (m) of this section, the court

(1) may impose any portion of a suspended sentence; however, if the person was convicted under (q) of this section, the court shall impose the remaining portion of any suspended sentence;

(2) may punish the failure as contempt of the authority of the court

under AS 09.50.010 or as a violation of a condition of probation; and

(3) shall order the revocation or suspension of the person's driver's license, privilege to drive, and privilege to obtain a driver's license until the requirements are satisfied.

* **Sec. 12.** AS 28.35.032 is amended by adding a new subsection to read:

(q) A person is guilty of a class C felony if the person is convicted under this section and has been previously convicted two or more times. For purposes of determining if a person has been previously convicted, the provisions of AS 28.35.030(m)(4) apply, except that only convictions occurring within five years preceding the date of the present offense may be included. Upon conviction,

(1) the court shall impose a fine of not less than \$5,000 and 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

(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 serve the minimum imprisonment under (1) of this subsection; or

(B) suspend imposition of sentence;

(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(c);

(4) the court may order as a condition of probation or parole that the person take a drug or combination of drugs intended to prevent consumption of an alcoholic beverage; a condition of probation 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; and

(6) the court may also order forfeiture under AS 28.35.036, of the

1 vehicle or aircraft used in the commission of the offense, subject to remission under
2 AS 28.35.037.

3 * **Sec. 13. APPLICABILITY.** This Act applies to offenses that are committed on or after
4 the effective date of this Act, except that references to previous convictions include
5 convictions occurring before, on, or after the effective date of this Act.