



LAWS OF ALASKA

2005

Source
HB 136

Chapter No.

AN ACT

Restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required for driving while under the influence and for refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Restricting the authority of a court to suspend execution of a sentence or grant probation in
2 prosecutions for driving while under the influence and prosecutions for refusal to submit to a
3 chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required
4 for driving while under the influence and for refusal to submit to a chemical test if the
5 defendant successfully completes a court-ordered treatment program.

6
7 * **Section 1.** AS 28.35.030(b) is amended to read:

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

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

12 (A) not less than 72 consecutive hours and a fine of not less

1 than \$1,500 if the person has not been previously convicted;

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

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

7 (D) not less than 120 days and a fine of not less than \$5,000 if
8 the person has been previously convicted three times and is not subject to
9 punishment under (n) of this section;

10 (E) not less than 240 days and a fine of not less than \$6,000 if
11 the person has been previously convicted four times and is not subject to
12 punishment under (n) of this section;

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

16 (2) the court may not

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

19 (i) serve the minimum imprisonment under (1) of this
20 subsection; **and**

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

23 (B) suspend imposition of sentence;

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

1 another provision of law.

2 * **Sec. 2.** AS 28.35.030(n) is amended to read:

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

10 (1) shall impose a fine of not less than \$10,000 and a minimum
11 sentence of imprisonment of not less than

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

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

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

17 (2) 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; and

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

24 (B) suspend imposition of sentence;

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

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

1 provision of law;

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

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

11 * **Sec. 3.** AS 28.35.030(p) is amended to read:

12 (p) If the court determines that the person has successfully completed a court-
13 ordered treatment program, the court may suspend up to 75 percent of the mandatory
14 minimum sentence required under (b)(1) **or (n)(1)** of this section and up to **75** [50]
15 percent of the minimum fines required under (b)(1) **or (n)(1)** of this section. This
16 subsection does not apply to a person who has already participated in a court-ordered
17 treatment program two or more times. In this subsection, "court-ordered treatment"
18 means a treatment program for a person who consumes alcohol or drugs and that

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

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

21 (3) includes emphasis on personal responsibility;

22 (4) provides in-court recognition of progress and sanctions for
23 relapses;

24 (5) requires payment of restitution to victims and completion of
25 community work service;

26 (6) includes physician approved treatment of physical addiction and
27 treatment of the psychological causes of addiction;

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

29 and

30 (8) requires adherence to conditions of probation.

31 * **Sec. 4.** AS 28.35.032(g) is amended to read:

1 (g) Except as provided under (r) of this section, upon conviction under this
2 section,

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

4 (A) not less than 72 consecutive hours and a fine of not less
5 than \$1,500 if the person has not been previously convicted;

6 (B) not less than 20 days and a fine of not less than \$3,000 if
7 the person has been previously convicted once;

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

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

14 (E) not less than 240 days and a fine of not less than \$6,000 if
15 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 and a fine of not less than \$7,000 if
18 the person has been previously convicted more than four times and is not
19 subject to punishment under (p) of this section;

20 (2) the court may not

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

23 (i) serve the minimum imprisonment under (1) of this
24 subsection; and

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

27 (B) suspend imposition of sentence;

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

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

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

8 * **Sec. 5.** AS 28.35.032(p) is amended to read:

9 (p) A person is guilty of a class C felony if the person is convicted under this
10 section and either has been previously convicted two or more times since January 1,
11 1996, and within the 10 years preceding the date of the present offense, or punishment
12 under this subsection or under AS 28.35.030(n) was previously imposed within the
13 last 10 years. For purposes of determining minimum sentences based on previous
14 convictions, the provisions of AS 28.35.030(t)(4) apply. Upon conviction,

15 (1) the court shall impose a fine of not less than \$10,000 and a
16 minimum sentence of imprisonment of not less than

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

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

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

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; and

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

29 (B) suspend imposition of sentence;

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

1 this section;

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

9 (6) the court shall order forfeiture under AS 28.35.036, of the motor
10 vehicle, aircraft, or watercraft used in the commission of the offense, subject to
11 remission under AS 28.35.037; and

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

17 * **Sec. 6.** AS 28.35.032(r) is amended to read:

18 (r) If the court determines that the person has successfully completed a court-
19 ordered treatment program, the court may suspend up to 75 percent of the mandatory
20 minimum sentence required under (g)(1) **or (p)(1)** of this section and up to **75** [50]
21 percent of the minimum fine required under (g)(1) **or (p)(1)** of this section. This
22 subsection does not apply to a person who has already participated in a court-ordered
23 treatment program two or more times. In this subsection, "court-ordered treatment"
24 has the meaning given in AS 28.35.030(p).