

HOUSE BILL NO. 271

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE HAWKER

Introduced: 1/19/10

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the offenses of driving while under the influence of an alcoholic**
2 **beverage, inhalant, or controlled substance and refusal to submit to a chemical test."**

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

4 * **Section 1.** AS 12.30 is amended by adding a new section to read:

5 **Sec. 12.30.022. Release before trial in cases involving driving while under**
6 **the influence and refusal to submit to a chemical test.** In determining the conditions
7 of release under AS 12.30.020 in cases involving a violation of AS 28.35.030 or
8 28.35.032, the court shall consider the conditions specified in AS 12.30.020 and shall
9 impose the following conditions:

10 (1) prohibit the person from operating a motor vehicle unless that
11 vehicle has an ignition interlock device installed;

12 (2) notwithstanding another provision of law, if the motor vehicle the
13 person was operating was impounded at the time the person was arrested and is owned
14 by or registered to the person, prohibit the impounding agency from releasing the

1 motor vehicle unless the vehicle has an ignition interlock device installed.

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
5 SINCE JANUARY 1, 1996, AND] within the 10 years preceding the date of the
6 present offense, or punishment under this subsection or under AS 28.35.032(p) was
7 previously imposed within the last 10 years. For purposes of determining minimum
8 sentences based on previous convictions, the provisions of (u)(4) of this section apply.
9 Upon conviction, the court

10 (1) shall impose a fine of not less than \$10,000, require the person to
11 use an ignition interlock device after the person regains the privilege to operate a
12 motor vehicle throughout the period of probation, and impose a minimum sentence of
13 imprisonment of not less than

14 (A) 120 days if the person has been previously convicted **once**
15 [TWICE];

16 (B) 240 days if the person has been previously convicted **twice**
17 [THREE TIMES];

18 (C) 360 days if the person has been previously convicted **three**
19 [FOUR] or more times;

20 (2) may not

21 (A) suspend execution of sentence or grant probation except on
22 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) shall permanently revoke the person's driver's license, privilege to
29 drive, or privilege to obtain a license subject to restoration of the license under (o) of
30 this section;

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

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

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

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

14 * **Sec. 3.** AS 28.35.032(p) is amended to read:

15 (p) A person is guilty of a class C felony if the person is convicted under this
 16 section and either has been previously convicted [TWO OR MORE TIMES SINCE
 17 JANUARY 1, 1996, AND] within the 10 years preceding the date of the present
 18 offense, or punishment under this subsection or under AS 28.35.030(n) was previously
 19 imposed within the last 10 years. For purposes of determining minimum sentences
 20 based on previous convictions, the provisions of AS 28.35.030(u)(4) apply. Upon
 21 conviction,

22 (1) the court shall impose a fine of not less than \$10,000, require the
 23 person to use an ignition interlock device after the person regains the privilege to
 24 operate a motor vehicle throughout the period of probation, and impose a minimum
 25 sentence of imprisonment of not less than

26 (A) 120 days if the person has been previously convicted once
 27 [TWICE];

28 (B) 240 days if the person has been previously convicted twice
 29 [THREE TIMES];

30 (C) 360 days if the person has been previously convicted three
 31 [FOUR] or more times;

- 1 (2) the court may not
- 2 (A) suspend execution of the sentence required by (1) of this
- 3 subsection or grant probation, except on condition that the person
- 4 (i) serve the minimum imprisonment under (1) of this
- 5 subsection; and
- 6 (ii) pay the minimum fine required under (1) of this
- 7 subsection; or
- 8 (B) suspend imposition of sentence;
- 9 (3) the court shall permanently revoke the person's driver's license,
- 10 privilege to drive, or privilege to obtain a license subject to restoration under (q) of
- 11 this section;
- 12 (4) the court may order that the person, while incarcerated or as a
- 13 condition of probation or parole, take a drug, or combination of drugs, intended to
- 14 prevent consumption of an alcoholic beverage; a condition of probation or parole
- 15 imposed under this paragraph is in addition to any other condition authorized under
- 16 another provision of law;
- 17 (5) the sentence imposed by the court under this subsection shall run
- 18 consecutively with any other sentence of imprisonment imposed on the person;
- 19 (6) the court shall order forfeiture under AS 28.35.036, of the motor
- 20 vehicle, aircraft, or watercraft used in the commission of the offense, subject to
- 21 remission under AS 28.35.037; and
- 22 (7) the court shall order the department to revoke the registration for
- 23 any vehicle registered by the department in the name of the person convicted under
- 24 this subsection; if a person convicted under this subsection is a registered co-owner of
- 25 a vehicle, the department shall reissue the vehicle registration and omit the name of
- 26 the person convicted under this subsection.