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Luckhaupt

4/7/10

HOUSE CS FOR CS FOR SENATE BILL NO. 239()**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-SIXTH LEGISLATURE - SECOND SESSION****BY****Offered:****Referred:****Sponsor(s): SENATORS MEYER, Wielechowski, Thomas, French, McGuire, Menard, Ellis, Egan****A BILL****FOR AN ACT ENTITLED**

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

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

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

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

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

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

described in AS 12.55.102; or

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

* Sec. 2. AS 28.15.291(b) is amended to read:

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

(1) shall impose a minimum sentence of imprisonment

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

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

(C) if the person's driver's license, privilege to drive, or privilege to obtain a license was revoked under circumstances described in AS 28.15.181(c)(1), [OR] if the person was driving in violation of a limited license issued under AS 28.15.201(d) following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

(D) if the person's driver's license, privilege to drive, or privilege to obtain a license was revoked under circumstances described in AS 28.15.181(c)(2), (3), or (4), [OR] if the person was driving in violation of a limited license issued under AS 28.15.201(d) following that revocation, or if the person was driving in violation of an ignition interlock device requirement following that revocation, of not less than 30 days and a fine of not less than \$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 28.35.036.

* Sec. 3. 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 [12] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than \$1,500 if the person has not been previously convicted;

(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 [24] months [DURING THE PERIOD OF PROBATION], 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 [36] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than \$4,000 if the person has been previously convicted twice and is not

1 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
5 [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not
6 less than \$5,000 if the person has been previously convicted three times and is
7 not subject to punishment under (n) of this section;

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

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

20 (2) the court 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;

27 (B) suspend imposition of sentence; or

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

30 (3) the court shall revoke the person's driver's license, privilege to
31 drive, or privilege to obtain a license under AS 28.15.181, and may order that the

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

(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.

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

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

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

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

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

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

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

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

(2) may not

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

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

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

(B) suspend imposition of sentence; or

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

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

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

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

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

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

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

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

(g) Upon conviction under this section,

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

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

7 (B) not less than 20 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 12 [24] months [DURING THE PERIOD OF
10 PROBATION], and impose a fine of not less than \$3,000 if the person has
11 been previously convicted once;

12 (C) not less than 60 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 18 [36] months [DURING THE PERIOD OF
15 PROBATION], and impose a fine of not less than \$4,000 if the person has
16 been previously convicted twice and is not subject to punishment under (p) of
17 this section;

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

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

30 (F) not less than 360 days, require the person to use an ignition
31 interlock device after the person regains the privilege to operate a motor

vehicle for a minimum of 36 months [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than \$7,000 if the person has been previously convicted more than four times and is not subject to punishment under (p) 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

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

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

(B) suspend imposition of sentence; or

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

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

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

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

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

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

* Sec. 9. AS 28.35.032(p) is amended to read:

(p) A person is guilty of a class C felony if the person is convicted under this

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

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

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

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

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

(2) the court may not

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

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

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

(B) suspend imposition of sentence; or

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

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

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

imposed under this paragraph is in addition to any other condition authorized under another provision of law;

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

(6) the court shall order forfeiture under AS 28.35.036, of the motor vehicle, aircraft, or watercraft used in the commission of the offense, subject to 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. 10. AS 33.05.020(c) is amended to read:

(c) The commissioner shall by regulation

(1) establish standards for calibration, certification, maintenance, and monitoring of ignition interlock devices required as a condition of probation or as part of a sentence under AS 12.55.102 or another statute; and

(2) establish a fee to be paid by the manufacturer for the cost of certifying an ignition interlock device.

* Sec. 11. AS 33.05.020(e) is amended to read:

(e) The commissioner shall notify the manufacturer of the ignition interlock device when the device is certified. The commissioner may not certify an ignition interlock device unless the device prominently displays a label warning that a person circumventing or tampering with the device violates [IN VIOLATION OF] AS 11.76.140 and may be imprisoned [UP TO 30 DAYS] and fined [UP TO \$500].

* Sec. 12. AS 12.55.102(e)(2) and AS 28.35.030(r) are repealed.