

**HOUSE BILL NO. 159**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES PORTER, Bunde, Green, Toohey

Introduced: 2/6/95

Referred: Judiciary, Finance

**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 with a revoked license, driving while intoxicated,  
4 or failure to submit to a chemical test of breath or blood; and providing for an  
5 effective date."

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

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

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

12 (1) AS 04.16.050;

13 (2) AS 11.41.270 or AS 11.56.740; or

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

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

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

15 \* **Sec. 3.** AS 28.15.291(a) is amended to read:

16                   (a) **Except as provided under (d) of this section, a** [A] person is guilty of  
17 a class A misdemeanor if the person

18                               (1) drives a motor vehicle on a highway or vehicular way or area at a  
19 time when that person's driver's license, privilege to drive, or privilege to obtain a  
20 license has been canceled, suspended, or revoked in this or another jurisdiction; or

21                               (2) drives in violation of a limitation placed upon that person's license  
22 or privilege to drive in this or another jurisdiction.

23 \* **Sec. 4.** AS 28.15.291 is amended by adding a new subsection to read:

24                   (d) A person is guilty of a class C felony if the person drives a motor vehicle  
25 on a highway or vehicular way or area at a time when that person's driver's license,  
26 privilege to drive, or privilege to obtain a license has been revoked and the revocation  
27 was imposed under AS 28.35.030(n) or 28.35.032(q). Upon a person's conviction  
28 under this section, in addition to penalties provided for under AS 12.55, the court shall  
29 revoke the person's license, privilege to drive, or privilege to obtain a license, and the  
30 person may not be issued a new license or a limited license nor may the privilege to  
31 drive or obtain a license be restored for an additional period of not less than 90 days

1 after the date that the person would have been entitled to restoration of driving  
2 privileges.

3 \* **Sec. 5.** AS 28.35.030(b) is amended to read:

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

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

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

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

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

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

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

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

23 (2) the court may not

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

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

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

2 (4) "previously convicted" means having been convicted in this or  
3 another jurisdiction, within 10 years preceding the date of the present offense, of any  
4 of the following offenses [, **OR OF ANOTHER LAW OR ORDINANCE WITH**  
5 **SUBSTANTIALLY SIMILAR ELEMENTS**]; however, convictions for any of these  
6 offenses, if arising out of a single transaction and a single arrest, are considered one  
7 previous conviction:

8 (A) operating a motor vehicle, aircraft, or watercraft while  
9 intoxicated, in violation of this section **or in violation of another law or**  
10 **ordinance with substantially similar elements, except that the other law or**  
11 **ordinance may require a lower level of alcohol in the person's blood or**  
12 **breath than imposed under (a)(2) of this section;**

13 (B) refusal to submit to a chemical test in violation of  
14 AS 28.35.032 **or in violation of another law or ordinance with substantially**  
15 **similar elements;** or

16 (C) operating a commercial motor vehicle while intoxicated in  
17 violation of AS 28.33.030 **or in violation of another law or ordinance with**  
18 **substantially similar elements, except that the other law or ordinance may**  
19 **require a lower level of alcohol in the person's blood or breath than**  
20 **imposed under AS 28.33.030(a)(2).**

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

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

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

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

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

31 or more times;

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- (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;**

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

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

7 (2) the court may not

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

11 (B) suspend imposition of sentence;

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

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

18 \* **Sec. 10.** AS 28.35.032 is amended by adding a new subsection to read:

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

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

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

27 (B) 240 days if the person has been previously convicted three  
28 or more times;

29 (2) the court may not

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

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

2                                   (B) suspend imposition of sentence;

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

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

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

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

14    \* **Sec. 11.** APPLICABILITY. This Act applies to offenses that are committed on or after  
15 the effective date of this Act, except that references to previous convictions include  
16 convictions occurring before, on, or after the effective date of this Act.

17    \* **Sec. 12.** This Act takes effect July 1, 1995.