

HOUSE BILL NO. 462 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES PORTER, Toohey, B.Davis

Amended: 3/25/96

Introduced: 2/2/96

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the offenses of driving while intoxicated and refusal to
2 submit to a chemical test of breath or blood; amending Rules 6 and 32.1,
3 Alaska Rules of Criminal Procedure; and providing for an effective date."

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

5 * **Section 1.** AS 28.35.030(j) is amended to read:

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

8 (1) may impose any portion of a suspended sentence; however, if the
9 person was convicted under (n) of this section, the court shall impose **a part or all of**
10 the remaining portion of any suspended sentence;

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

13 (3) shall order the revocation or suspension of the person's driver's
14 license, privilege to drive, and privilege to obtain a driver's license until the

1 requirements are satisfied.

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 of driving
4 while intoxicated and has been previously convicted two or more times **within the five**
5 **years preceding the date of the present offense.** For purposes of determining
6 **minimum sentences based on previous convictions the provisions of (o)(4) of this**
7 **section apply** [IF A PERSON HAS BEEN PREVIOUSLY CONVICTED, THE
8 PROVISIONS OF (O)(4) OF THIS SECTION APPLY, EXCEPT THAT ONLY
9 CONVICTIONS OCCURRING WITHIN FIVE YEARS PRECEDING THE DATE OF
10 THE PRESENT OFFENSE MAY BE INCLUDED]. Upon conviction the court

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

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

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

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

18 (2) may not

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

22 (B) suspend imposition of sentence;

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

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

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

1 * **Sec. 3.** AS 28.35.032(n) is amended to read:

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

4 (1) may impose any portion of a suspended sentence; however, if the
5 person was convicted under (p) of this section, the court shall impose **a part or all of**
6 the remaining portion of any suspended sentence;

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

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

12 * **Sec. 4.** AS 28.35.032(p) is amended to read:

13 (p) A person is guilty of a class C felony if the person is convicted under this
14 section and has been previously convicted two or more times **within the five years**
15 **preceding the date of the present offense.** For purposes of determining **minimum**
16 **sentences based on previous convictions the provisions of AS 28.35.030(o)(4) apply**
17 [IF A PERSON HAS BEEN PREVIOUSLY CONVICTED, THE PROVISIONS OF
18 AS 28.35.030(O)(4) APPLY, EXCEPT THAT ONLY CONVICTIONS OCCURRING
19 WITHIN FIVE YEARS PRECEDING THE DATE OF THE PRESENT OFFENSE
20 MAY BE INCLUDED]. Upon conviction,

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

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

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

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

28 (2) the court may not

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

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

* **Sec. 5.** Rule 6(r)(1), Alaska Rules of Criminal Procedure, is amended to read:

(1) Evidence which would be legally admissible at trial shall be admissible before the grand jury. In appropriate cases, however, witnesses may be presented to summarize admissible evidence if the admissible evidence will be available at trial. Except as stated in subparagraphs (2), [AND] (3), and (6), hearsay evidence shall not be presented to the grand jury absent compelling justification for its introduction. If hearsay evidence is presented to the grand jury, the reasons for its use shall be stated on the record.

* **Sec. 6.** Rule 6(r), Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to read:

(6) In a prosecution for driving while intoxicated under AS 28.35.030(n) or for refusal to submit to a chemical test under AS 28.35.032(p), hearsay evidence received through the Alaska Public Safety Information Network or from other governmental agencies of prior convictions of driving while intoxicated or refusal to submit to a chemical test may be presented to the grand jury.

* **Sec. 7.** Rule 32.1(a), Alaska Rules of Criminal Procedure, is amended to read:

(a) Scheduling. At the time guilt in a felony case is established by verdict or plea, the judge shall establish the date for a sentencing hearing and a presentencing hearing, if appropriate, and except as provided under subsection (f) of this rule,

1 shall order a presentence investigation by the Department of Corrections. If the judge
2 elects to schedule a single hearing, all of the procedures for the presentencing and
3 sentencing hearings shall be applicable at the single hearing.

4 * **Sec. 8.** Rule 32.1, Alaska Rules of Criminal Procedure, is amended by adding a new
5 subsection to read:

6 (f) When Presentence Investigation Not Required. Unless a person may be
7 sentenced to a presumptive term of imprisonment under AS 12.55.125(e)(1) or (2), a
8 presentence investigation by the Department of Corrections is not required for a
9 defendant convicted of driving while intoxicated under AS 28.35.030(n) or refusal to
10 submit to a chemical test under AS 28.35.032(p).

11 * **Sec. 9.** APPLICABILITY. This Act applies to offenses committed on or after the
12 effective date of this Act except that, to the extent the amendments made by this Act involve
13 prior convictions, those prior convictions may have occurred before, on, or after the effective
14 date of this Act.

15 * **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).