

HOUSE BILL NO. 39

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

BY REPRESENTATIVE KOTT

Introduced: 1/10/01

Referred: Transportation, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to registration of motor vehicles, to operating a motor vehicle, aircraft,**
2 **or watercraft while intoxicated, and to driving with a cancelled, suspended, or revoked**
3 **driver's license; relating to duties of the division of alcoholism and drug abuse regarding**
4 **driving-while-intoxicated offenses; and providing for an effective date."**

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

6 *** Section 1.** AS 28.10.041 is amended by adding a new subsection to read:

7 (d) The department shall refuse to register a vehicle if the applicant
8 (1) does not have a valid driver's license and the applicant's license or
9 privilege to obtain a license has been suspended or revoked; or
10 (2) fails to provide evidence satisfactory to the department that the
11 applicant has motor vehicle insurance as required by AS 28.22.

12 *** Sec. 2.** AS 28.15.291 is amended by adding a new subsection to read:

13 (d) In addition to the penalty provided under (b) of this section, upon
14 conviction under (a)(1) of this section, the court shall order the motor vehicle or

1 aircraft used in the commission of the offense to be forfeited in the same manner and
 2 with the same effect as a forfeiture under AS 28.35.030(p).

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

4 (b) Except as provided under (n) of this section, driving while intoxicated is a
 5 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
 12 LESS THAN \$1,000 IF THE PERSON HAS BEEN PREVIOUSLY
 13 CONVICTED TWICE AND IS NOT SUBJECT TO PUNISHMENT UNDER
 14 (n) OF THIS SECTION;

15 (D) NOT LESS THAN 120 DAYS AND A FINE OF NOT
 16 LESS THAN \$2,000 IF THE PERSON HAS BEEN PREVIOUSLY
 17 CONVICTED THREE TIMES AND IS NOT SUBJECT TO PUNISHMENT
 18 UNDER (n) OF THIS SECTION;

19 (E) NOT LESS THAN 240 DAYS AND A FINE OF NOT
 20 LESS THAN \$3,000 IF THE PERSON HAS BEEN PREVIOUSLY
 21 CONVICTED FOUR TIMES AND IS NOT SUBJECT TO PUNISHMENT
 22 UNDER (n) OF THIS SECTION;

23 (F) NOT LESS THAN 360 DAYS AND A FINE OF NOT
 24 LESS THAN \$4,000 IF THE PERSON HAS BEEN PREVIOUSLY
 25 CONVICTED MORE THAN FOUR TIMES AND IS NOT SUBJECT TO
 26 PUNISHMENT UNDER (n) OF THIS SECTION;]

27 (2) the court may not

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

31 (B) suspend imposition of sentence;

1 (3) the court shall revoke the person's driver's license, privilege to
 2 drive, or privilege to obtain a license under AS 28.15.181, and **shall** [MAY] order the
 3 motor vehicle or aircraft that was used in commission of the offense to be forfeited **as**
 4 **described** under **(p) of this section** [AS 28.35.036].

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

6 (h) The court shall order a person convicted under this section to satisfy the
 7 screening, evaluation, referral, and program requirements of an alcohol safety action
 8 program if such a program is available in the community where the person resides, or
 9 a private or public treatment facility approved by the division of alcoholism and drug
 10 abuse, of the Department of Health and Social Services, under AS 47.37 to make
 11 referrals for rehabilitative treatment or to provide rehabilitative treatment. If a person
 12 is convicted under (n) of this section, the court shall order the person to be evaluated
 13 as required by this subsection before the court imposes sentence for the offense.
 14 **Treatment required under this subsection shall occur, as much as possible, while**
 15 **the person is incarcerated.**

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

17 (n) A person is guilty of a class C felony if the person is convicted of driving
 18 while intoxicated and has been previously convicted two or more times [WITHIN
 19 THE FIVE YEARS PRECEDING THE DATE OF THE PRESENT OFFENSE]. For
 20 purposes of determining minimum sentences based on previous convictions, the
 21 provisions of (o)(4) of this section apply. Upon conviction, the court

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

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

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

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

29 (2) may not

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

1 subsection; or

2 (B) suspend imposition of sentence;

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

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

9 (5) **shall** [MAY] also order forfeiture under **(p) of this section**
10 [AS 28.35.036] of the vehicle or aircraft used in the commission of the offense,
11 subject to remission under AS 28.35.037.

12 * **Sec. 6.** AS 28.35.030(o)(4) is amended to read:

13 (4) "previously convicted" means having been convicted in this or
14 another jurisdiction, [WITHIN 10 YEARS PRECEDING THE DATE OF THE
15 PRESENT OFFENSE,] of any of the following offenses; however, convictions for any
16 of these offenses, if arising out of a single transaction and a single arrest, are
17 considered one previous conviction:

18 (A) operating a motor vehicle, aircraft, or watercraft while
19 intoxicated, in violation of this section or in violation of another law or
20 ordinance with similar elements, except that the other law or ordinance may
21 provide for a lower level of alcohol in the person's blood or breath than
22 imposed under (a)(2) of this section;

23 (B) refusal to submit to a chemical test in violation of
24 AS 28.35.032 or in violation of another law or ordinance with similar
25 elements; or

26 (C) operating a commercial motor vehicle while intoxicated in
27 violation of AS 28.33.030 or in violation of another law or ordinance with
28 similar elements, except that the other law or ordinance may provide for a
29 lower level of alcohol in the person's blood or breath than imposed under
30 AS 28.33.030(a)(2).

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

1 (p) If forfeiture of a motor vehicle is required under this section, the state shall
 2 move the court to order the forfeiture. The court shall schedule a hearing on the
 3 matter and provide notice of the hearing to the state and the convicted person. The
 4 court shall hear the matter sitting without a jury. The provisions of AS 28.35.036(d)
 5 and (e), and the remission provisions of AS 28.35.037 apply to a forfeiture required
 6 under this section.

7 * **Sec. 8.** AS 28.35.036(a) is amended to read:

8 (a) After conviction of an offense under AS 28.35.032 [AS 28.35.030 OR
 9 28.35.032], the state may move the court to order the forfeiture of the motor vehicle [,]
 10 or aircraft involved in the commission of the offense if the convicted person has been
 11 previously convicted in this or another jurisdiction of more than one of the following
 12 offenses or has more than once been previously convicted of one of the following
 13 offenses:

14 (1) driving while intoxicated under AS 28.35.030 or another law or
 15 ordinance with substantially similar elements; or

16 (2) refusal to submit to a chemical test under AS 28.35.032 or another
 17 law or ordinance with substantially similar elements.

18 * **Sec. 9.** AS 28.35.037(a) is amended to read:

19 (a) Upon receiving notice from the court of the time and place set for a
 20 hearing under AS 28.35.030(p) or 28.35.036 [AS 28.35.036], the state shall provide to
 21 every person who has an ascertainable ownership or security interest in the motor
 22 vehicle, or aircraft, written notice that includes

23 (1) a description of the motor vehicle, or aircraft;

24 (2) the time and place of the forfeiture hearing;

25 (3) the legal authority under which the motor vehicle, or aircraft, may
 26 be forfeited;

27 (4) notice of the right to intervene to protect the interest in the motor
 28 vehicle, or aircraft.

29 * **Sec. 10.** AS 28.35.037(d) is amended to read:

30 (d) Forfeiture of a motor vehicle, or aircraft, under AS 28.35.030(p) or
 31 28.35.036 [AS 28.35.036] is without prejudice to the rights, and does not extinguish

1 the claims of a creditor with an interest in the motor vehicle, or aircraft.

2 * **Sec. 11.** AS 47.37.040(14) is amended to read:

3 (14) cooperate with **the public**, the Department of Public Safety, and
4 the Department of Transportation and Public Facilities in establishing and conducting
5 programs designed to deal with the problem of persons operating motor vehicles while
6 intoxicated or under the influence of drugs; **facilitate, coordinate, and monitor data**
7 **between public groups interested in deterring driving-while-intoxicated offenses;**
8 [,] and develop and approve alcohol information courses required to be taken by
9 drivers under AS 28.15 or made available to drivers to reduce points assessed for
10 violation of traffic laws;

11 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 APPLICABILITY. This Act applies to offenses committed on or after the effective
14 date of this Act, except that references to previous convictions include convictions occurring
15 before, on, or after the effective date of this Act.

16 * **Sec. 13.** This Act takes effect July 1, 2001.