



LAWS OF ALASKA

2004

Source

CSHB 342(FIN) am

Chapter No.

AN ACT

Relating to driving while under the influence, to the definition of "previously convicted," to alcohol-related offenses, to ignition interlock devices, and to the issuance of limited driver's licenses; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

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1 Relating to driving while under the influence, to the definition of "previously convicted," to
2 alcohol-related offenses, to ignition interlock devices, and to the issuance of limited driver's
3 licenses; and providing for an effective date.

4

5 * **Section 1.** AS 12.55.102 is amended to read:

6 **Sec. 12.55.102. Alcohol-related [ALCOHOL RELATED] offenses.** (a)

7 The court may order as a condition of probation **or generally as part of a sentence**
8 that a defendant convicted of an offense involving the use, consumption, or possession
9 of an alcoholic beverage may not operate a motor vehicle during the period of
10 probation unless the vehicle is equipped with a properly functioning, monitored, and
11 maintained ignition interlock device. A condition of probation **or sentence** imposed
12 under this subsection takes effect after any period of license revocation imposed under
13 AS 28.15.165(d) or 28.15.181(c).

14 (b) The court, in imposing probation **or a condition of a sentence** under (a) of

1 this section, may allow the defendant limited privileges to drive a motor vehicle
2 without an ignition interlock device if the court determines that the defendant is
3 required as a condition of employment to drive a motor vehicle owned or leased by the
4 defendant's employer and that the defendant's driving will not create substantial
5 danger. If the court imposes probation described by this subsection, the court shall
6 require the defendant to notify the defendant's employer of the probation, and shall
7 require that the defendant, while driving the employer's vehicle, carry a letter from the
8 employer authorizing the defendant to drive that vehicle.

9 (c) A court imposing a condition of probation under this section shall require
10 the surrender of the driver's license and shall issue to the defendant a certificate valid
11 for the duration of the probation or a copy of the defendant's judgment of conviction.
12 The defendant shall pay all costs associated with fulfilling the condition of probation,
13 including installation, repair, and monitoring of an ignition interlock device.

14 (d) The court may include the cost of the ignition interlock device as a part of
15 the fine required to be imposed against the defendant under AS 28.35.030(b) or (n) or
16 28.35.032(g) or (p).

17 (e) In this section,

18 **(1)** "ignition interlock device" means equipment designed to prevent a
19 motor vehicle from being operated by a person who has consumed an alcoholic
20 beverage, and that has been certified by the commissioner of corrections under
21 AS 33.05.020(c);

22 **(2)** "**motor vehicle" has the meaning given in AS 28.40.100, but**
23 **does not include snow machines and all-terrain vehicles not designed for and not**
24 **operated on highways or roads.**

25 * **Sec. 2.** AS 28.15.201(d) is amended to read:

26 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain
27 a license under AS 28.15.181(c), or the department when revoking a driver's license,
28 privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant
29 limited license privileges [FOR THE FINAL 60 DAYS DURING WHICH THE
30 LICENSE IS REVOKED] if

31 (1) the revocation was for a misdemeanor conviction under

1 AS 28.35.030(a) and not for a violation of AS 28.35.032;

2 (2) the person has

3 (A) not been previously convicted **and the limited license is**
4 **not granted during the first 30 days of the period of revocation;**

5 (B) **been previously convicted, the limited license is not**
6 **granted during the first 90 days of the period of revocation, and**

7 (i) **the person has successfully completed a court-**
8 **ordered treatment program under AS 28.35.030(p); or**

9 (ii) **the court or department requires the person to**
10 **use an ignition interlock device during the period of the limited**

11 **license** [; IN THIS PARAGRAPH, "PREVIOUSLY CONVICTED"
12 HAS THE MEANING GIVEN IN AS 28.35.030 AND ALSO
13 INCLUDES CONVICTIONS BASED ON LAWS PRESUMING
14 THAT THE PERSON WAS UNDER THE INFLUENCE OF
15 INTOXICATING LIQUOR IF THERE WAS 0.08 PERCENT OR
16 MORE BY WEIGHT OF ALCOHOL IN THE PERSON'S BLOOD];

17 (3) the court or the department determines that

18 (A) the person's ability to earn a livelihood would be severely
19 impaired without a limited license; **or**

20 (B) **the person has successfully completed a court-ordered**
21 **treatment program described under AS 28.35.030(p) and the person's**
22 **ability to earn a livelihood, attend school, or provide for family health**
23 **would be severely impaired without a limited license;**

24 (4) the court or the department determines that a limitation under (a) of
25 this section can be placed on the license that will enable the person to earn a livelihood
26 without excessive danger to the public; [AND]

27 (5) the court or the department determines that the person is enrolled in
28 and is in compliance with [,] or has successfully completed the alcoholism screening,
29 evaluation, referral, and program requirements of the Department of Health and Social
30 Services under AS 28.35.030(h); **and**

31 **(6) the person has not been previously convicted under**

1 AS 28.15.291(a)(2), AS 28.35.030, or 28.35.032 while driving or operating a
2 vehicle, aircraft, or watercraft under a limited license issued under this section.

3 * **Sec. 3.** AS 28.15.201 is amended by adding a new subsection to read:

4 (e) In (d)(2) of this section, "previously convicted" has the meaning given in
5 AS 28.35.030 and also includes convictions under laws presuming that the person was
6 under the influence of intoxicating liquor if there was 0.08 percent or more by weight
7 of alcohol in the person's blood.

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

9 (4) "previously convicted" means having been convicted in this or
10 another jurisdiction within the 15 years preceding the date of the present offense of
11 any of the following offenses; however, convictions for any of these offenses, if
12 arising out of a single transaction and a single arrest, are considered one previous
13 conviction:

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

19 (B) refusal to submit to a chemical test in violation of
20 AS 28.35.032 or in violation of another law or ordinance with similar
21 elements; or

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

27 * **Sec. 5.** AS 28.35.030 is amended by adding a new subsection to read:

28 (s) If a person is convicted under (a) of this section and it is determined by the
29 trier of fact that, as determined by a chemical test taken within four hours after the
30 offense was committed,

31 (1) there was at least 0.16 percent by weight of alcohol in the person's

1 blood but less than 0.24 percent by weight of alcohol in the person's blood or at least
2 160 milligrams of alcohol per 100 milliliters of blood, but less than 240 milligrams of
3 alcohol per 100 milliliters of blood, or when there was at least 0.16 grams of alcohol
4 per 210 liters of the person's breath, but less than 0.24 grams of alcohol per 210 liters
5 of the person's breath, the court shall require the person to use an ignition interlock
6 device as provided in AS 12.55.102 for a minimum of six months after the person
7 regains the privilege, including any limited privilege, to operate a motor vehicle;

8 (2) there was 0.24 percent or more by weight of alcohol in the person's
9 blood or 240 milligrams or more of alcohol per 100 milliliters of blood, or when there
10 was 0.24 grams or more of alcohol per 210 liters of the person's breath, the court shall
11 require the person to use an ignition interlock device as provided in AS 12.55.102 for
12 a minimum of one year after the person regains the privilege, including any limited
13 privilege, to operate a motor vehicle.

14 * **Sec. 6.** The uncodified law of the State of Alaska enacted in sec. 1, ch. 64, SLA 2001, is
15 amended by adding a new subsection to read:

16 (q) Notwithstanding AS 28.15.201, the court may grant limited license
17 privileges to a defendant if the court (1) determines that the defendant's ability to earn
18 a livelihood, attend school, or provide for family health would be severely impaired
19 without a limited license, (2) requires the defendant to use an ignition interlock device,
20 and (3) determines that there will not be excessive danger to the public. The court
21 may impose further conditions and restrictions to a limited license if the court
22 determines that the conditions and restrictions are necessary to ensure public safety
23 and to monitor the continuing sobriety of the defendant. The court shall immediately
24 revoke limited license privileges for any violation of any conditions or restrictions of
25 the limited license privileges.

26 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 **APPLICABILITY.** Sections 1 and 5 of this Act apply only to acts committed on or
29 after the effective date of secs. 1 and 5 of this Act. Sections 2 - 4 and 6 of this Act apply to
30 persons seeking limited licenses as a result of revocations for convictions occurring before,
31 on, or after the effective date of secs. 2 - 4 and 6 of this Act. References to previous

1 convictions in AS 28.15.201(d)(6), added by sec. 2 of this Act, and in AS 28.15.201(e), added
2 by sec. 3 of this Act, include those occurring before, on, or after the effective date of secs. 2
3 and 3 of this Act.

4 * **Sec. 8.** Sections 2 - 4 and 6 of this Act take effect immediately under AS 01.10.070(c).

5 * **Sec. 9.** Except as provided in sec. 8 of this Act, this Act takes effect January 1, 2005.