CS FOR HOUSE BILL NO. 175(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/18/04
Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVE ROKEBERG

A BILL

FOR AN ACT ENTITLED

"An Act relating to issuance of a limited driver's license; relating to driving while under the influence of an alcoholic beverage, inhalant, or controlled substance and refusal to take a chemical test for consumption of an alcoholic beverage, inhalant, or controlled substance; and providing for an effective date."

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

*** Section 1.** AS 28.15.201(d) is amended to read:

(d) A court revoking a driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181(c), or the department when revoking a driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant limited license privileges [FOR THE FINAL 60 DAYS] during which the license is revoked if

(1) the revocation was for a misdemeanor conviction under AS 28.35.030(a) and not for a violation of AS 28.35.032;

(2) the person has not been previously convicted**, or if the person has**

been previously convicted, the person has successfully completed a court-ordered treatment program under AS 28.35.030(p); in this paragraph, "previously convicted" has the meaning given in AS 28.35.030 and also includes convictions based on laws presuming that the person was under the influence of intoxicating liquor if there was 0.08 percent or more by weight of alcohol in the person's blood;

(3) the court or the department determines that the person's ability to earn a livelihood would be severely impaired without a limited license;

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

(5) the court or the department determines that the person is enrolled in and is in compliance with, or has successfully completed the alcoholism screening, evaluation, referral, and program requirements of the Department of Health and Social Services under AS 28.35.030(h).

*** Sec. 2.** 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. Except as provided under (p) of this section, upon conviction, **the court**

(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 $1,500 if the person has not been previously convicted;

(B) not less than 20 days and a fine of not less than $3,000 if the person has been previously convicted once;

(C) not less than 60 days and a fine of not less than $4,000 if the person has been previously convicted twice and is not subject to punishment under (n) of this section;

(D) not less than 120 days and a fine of not less than $5,000 if the person has been previously convicted three times and is not subject to punishment under (n) of this section;

(E) not less than 240 days and a fine of not less than $6,000 if the person has been previously convicted four times and is not subject to punishment under (n) of this section;

(F) not less than 360 days and 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 (n) of this section;

(2) [THE COURT] 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 under (1) of this subsection, except as provided in (g) and (p) of this section;

(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, 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. 3.** 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 has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense. For purposes of determining minimum sentences based on previous convictions, the provisions of (r)(4) of this section apply. Upon conviction, the court

(1) shall impose a fine of not less than $10,000 and 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 serve the minimum imprisonment under (1) of this subsection **and pay the minimum fine under (1) of this subsection**; or

(B) suspend imposition of sentence;

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

(4) "previously convicted" means having been convicted in this or another jurisdiction **within the 15 years preceding the date of the present offense** of any of the following offenses; however, convictions for any of these offenses, if

arising out of a single transaction and a single arrest, are considered one previous conviction:

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

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

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

*** Sec. 5.** The uncodified law of the State of Alaska enacted in sec. 1, ch. 64, SLA 2001, is amended by adding a new subsection to read:

(q) Notwithstanding AS 28.15.201, the court may grant limited license privileges to a defendant if the court determines that (1) the defendant's ability to earn a livelihood, attend school or provide for family health would be impaired without a limited license, and (2) there will not be excessive danger to the public. The court may impose further conditions and restrictions to a limited license if the court determines that the conditions and restrictions are necessary to ensure public safety and to monitor the continuing sobriety of the defendant. The court shall immediately revoke limited license privileges for any violation of any conditions or restrictions of the limited license privileges.

*** Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to offenses that occur on or after the effective date of this Act except that references to previous convictions include those occurring before the effective date of this Act.

1 *** Sec. 7.** This Act takes effect July 1, 2004.