

**HOUSE BILL NO. 342**

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

BY REPRESENTATIVES GATTO, Gruenberg

Introduced: 1/12/04  
Referred: Judiciary

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to driving while intoxicated; and providing for an effective date."**

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

3 \* **Section 1.** AS 28.35.030(b) is amended to read:

4 (b) Except as **otherwise** provided **in** [UNDER (n) OF] this section, driving  
5 while under the influence of an alcoholic beverage, inhalant, or controlled substance is  
6 a class A misdemeanor. **A person convicted under this subsection is guilty of a**  
7 **class A misdemeanor even though the person is required under (s) of this section**  
8 **to pay a fine that exceeds the maximum fine for a class A misdemeanor.** Except  
9 as provided under (p) **and (s)** of this section, upon conviction,

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

11 (A) not less than 72 consecutive hours and a fine of not less  
12 than \$1,500 if the person has not been previously convicted;

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

15 (C) not less than 60 days and a fine of not less than \$4,000 if

1 the person has been previously convicted twice and is not subject to  
2 punishment under (n) of this section;

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

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

9 (F) not less than 360 days and a fine of not less than \$7,000 if  
10 the person has been previously convicted more than four times and is not  
11 subject to punishment under (n) of this section;

12 (2) the court may not

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

16 (B) suspend imposition of sentence;

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

21 (4) the court may order that the person, while incarcerated or as a  
22 condition of probation or parole, take a drug or combination of drugs intended to  
23 prevent the consumption of an alcoholic beverage; a condition of probation or parole  
24 imposed under this paragraph is in addition to any other condition authorized under  
25 another provision of law.

26 \* **Sec. 2.** AS 28.35.030(n) is amended to read:

27 (n) **Except as otherwise provided in this section, a** [A] person is guilty of a  
28 class C felony if the person is convicted under (a) of this section and has been  
29 previously convicted two or more times since January 1, 1996, and within the 10 years  
30 preceding the date of the present offense. For purposes of determining minimum  
31 sentences based on previous convictions, the provisions of (r)(4) of this section apply.

1 **Subject to (s) of this section, upon** [UPON] conviction, the court

2 (1) shall impose a fine of not less than \$10,000 and a minimum  
3 sentence of imprisonment of not less than

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

5 (B) 240 days if the person has been previously convicted three  
6 times;

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

9 (2) may not

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

13 (B) suspend imposition of sentence;

14 (3) shall permanently revoke the person's driver's license, privilege to  
15 drive, or privilege to obtain a license subject to restoration of the license under (o) of  
16 this section;

17 (4) may order that the person, while incarcerated or as a condition of  
18 probation or parole, take a drug or combination of drugs, intended to prevent the  
19 consumption of an alcoholic beverage; a condition of probation or parole imposed  
20 under this paragraph is in addition to any other condition authorized under another  
21 provision of law;

22 (5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft,  
23 or aircraft used in the commission of the offense, subject to remission under  
24 AS 28.35.037; and

25 (6) shall order the department to revoke the registration for any vehicle  
26 registered by the department in the name of the person convicted under this  
27 subsection; if a person convicted under this subsection is a registered co-owner of a  
28 vehicle or is registered as a co-owner under a business name, the department shall  
29 reissue the vehicle registration and omit the name of the person convicted under this  
30 subsection.

31 \* **Sec. 3.** AS 28.35.030 is amended by adding a new subsection to read:

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

4 (1) there was at least 0.16 percent by weight of alcohol in the person's  
5 blood but less than 0.24 percent by weight of alcohol in the person's blood or at least  
6 160 milligrams of alcohol per 100 milliliters of blood, but less than 240 milligrams of  
7 alcohol per 100 milliliters of blood, or when there was at least 0.16 grams of alcohol per  
8 210 liters of the person's breath, but less than 0.24 grams of alcohol per 210 liters of  
9 the person's breath, the court shall double the fine imposed under (b)(1) or (n)(1) of  
10 this section;

11 (2) there was 0.24 percent or more by weight of alcohol in the person's  
12 blood or 240 milligrams or more of alcohol per 100 milliliters of blood, or when there  
13 was 0.24 grams or more of alcohol per 210 liters of the person's breath, the court shall  
14 quadruple the fine imposed under (b)(1) or (n)(1) of this section.

15 \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
16 read:

17 **APPLICABILITY.** This Act applies only to acts committed on or after the effective  
18 date of this Act.

19 \* **Sec. 5.** This Act takes effect July 1, 2004.