

**CS FOR HOUSE BILL NO. 342(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 3/8/04**

**Referred: Finance**

**Sponsor(s): REPRESENTATIVES GATTO, Gruenberg**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

6 **Sec. 12.55.102. Alcohol-related [ALCOHOL RELATED] offenses.** (a) The  
7 court may order as a condition of probation **or generally as part of a sentence** that a  
8 defendant convicted of an offense involving the use, consumption, or possession of an  
9 alcoholic beverage may not operate a motor vehicle during the period of probation  
10 unless the vehicle is equipped with a properly functioning, monitored, and maintained  
11 ignition interlock device. A condition of probation **or sentence** imposed under this  
12 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 repealed and reenacted to read:

26 (d) A court revoking, or that has revoked, a driver's license, privilege to drive,  
 27 or privilege to obtain a license under AS 28.15.181(c), or the department revoking, or  
 28 that has revoked, a driver's license, privilege to drive, or privilege to obtain a license  
 29 under AS 28.15.165(c), may grant limited license privileges to a person

30 (1) who has not been previously convicted

31 (A) for the final 60 days during which the license is revoked if

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

3 (ii) the court or the department determines that the  
4 person's ability to earn a livelihood would be severely impaired without  
5 a limited license or that there are other compelling health or safety  
6 reasons that would require the issuance of a limited license;

7 (iii) the court or the department determines that, without  
8 excessive danger to the public, a limitation under (a) of this section can  
9 be placed on the license that will enable the person to earn a livelihood  
10 or satisfy other compelling health or safety reasons for the issuance of a  
11 limited license; and

12 (iv) the court or the department determines that the  
13 person is enrolled in and is in compliance with, or has successfully  
14 completed the alcoholism screening, evaluation, referral, and program  
15 requirements of the Department of Health and Social Services under  
16 AS 28.35.030(h);

17 (B) before the final 60 days during which the license is revoked

18 if

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

21 (ii) the court or the department determines that the  
22 person's ability to earn a livelihood would be severely impaired without  
23 a limited license or that there are other compelling health or safety  
24 reasons that would require the issuance of a limited license;

25 (iii) the court or the department determines that, without  
26 excessive danger to the public, a limitation under (a) of this section can  
27 be placed on the license that will enable the person to earn a livelihood  
28 or satisfy other compelling health or safety reasons for the issuance of a  
29 limited license; in making the determination required under this sub-  
30 subparagraph, the court or the department shall consider requiring the  
31 use of an ignition interlock device as described in AS 12.55.102 during

1 the period of the limited license; and

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

7 (2) who has been previously convicted if

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

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

13 (C) the court or the department determines that, without  
14 excessive danger to the public, a limitation under (a) of this section can be  
15 placed on the license that will (i) enable the person to earn a livelihood, or (ii)  
16 satisfy other compelling health or safety reasons for the issuance of a limited  
17 license;

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

22 (E) the court or department requires the person to use an  
23 ignition interlock device as described in AS 12.55.102 during the period of the  
24 limited license.

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

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

30 \* **Sec. 4.** AS 28.35.030(b) is amended to read:

31 (b) Except as **otherwise** provided **in** [UNDER (n) OF] this section, driving

1 while under the influence of an alcoholic beverage, inhalant, or controlled substance is  
 2 a class A misdemeanor. **A person convicted under this subsection is guilty of a**  
 3 **class A misdemeanor even though the person is required under (s) of this section**  
 4 **to pay a fine that exceeds the maximum fine for a class A misdemeanor.** Except  
 5 as provided under (p) **and (s)** of this section, 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 \$1,500 if the person has not been previously convicted;

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

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

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

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

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

23 (2) the court may not

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

27 (B) suspend imposition of sentence;

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

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

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

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

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

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

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

16 (B) 240 days if the person has been previously convicted three  
 17 times;

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

20 (2) may not

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

24 (B) suspend imposition of sentence;

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

28 (4) may order that the person, while incarcerated or as a condition of  
 29 probation or parole, take a drug or combination of drugs, intended to prevent the  
 30 consumption of an alcoholic beverage; a condition of probation or parole imposed  
 31 under this paragraph is in addition to any other condition authorized under another

1 provision of law;

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

5 (6) shall order the department to revoke the registration for any vehicle  
6 registered by the department in the name of the person convicted under this  
7 subsection; if a person convicted under this subsection is a registered co-owner of a  
8 vehicle or is registered as a co-owner under a business name, the department shall  
9 reissue the vehicle registration and omit the name of the person convicted under this  
10 subsection.

11 \* **Sec. 6.** AS 28.35.030 is amended by adding a new subsection to read:

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

15 (1) there was at least 0.16 percent by weight of alcohol in the person's  
16 blood but less than 0.24 percent by weight of alcohol in the person's blood or at least  
17 160 milligrams of alcohol per 100 milliliters of blood, but less than 240 milligrams of  
18 alcohol per 100 milliliters of blood, or when there was at least 0.16 grams of alcohol  
19 per 210 liters of the person's breath, but less than 0.24 grams of alcohol per 210 liters  
20 of the person's breath, the court shall increase the fine imposed under (b)(1) or (n)(1)  
21 of this section by the lesser of one-third or \$500 and, if the offense was committed on  
22 a road system, require the person to use an ignition interlock device as provided in  
23 AS 12.55.102 for a minimum of six months after the person regains the privilege,  
24 including any limited privilege, to operate a motor vehicle;

25 (2) there was 0.24 percent or more by weight of alcohol in the person's  
26 blood or 240 milligrams or more of alcohol per 100 milliliters of blood, or when there  
27 was 0.24 grams or more of alcohol per 210 liters of the person's breath, the court shall  
28 increase the fine imposed under (b)(1) or (n)(1) of this section by the lesser of one-half  
29 or \$1,000 and, if the offense was committed on a road system, require the person to  
30 use an ignition interlock device as provided in AS 12.55.102 for a minimum of one  
31 year after the person regains the privilege, including any limited privilege, to operate a

1           motor vehicle.

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

4           **APPLICABILITY.** This Act applies only to acts committed on or after the effective  
5 date of this Act except that references to previous convictions include those occurring before  
6 the effective date of this Act.

7       \* **Sec. 8.** This Act takes effect January 1, 2005.