

HOUSE CS FOR CS FOR SENATE BILL NO. 170(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/6/04
Referred: Rules

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the justification of defense of self or others, immunity from
2 prosecution, sentencing, probation, discretionary parole, and the right to representation
3 in certain criminal proceedings; relating to violation of a custodian's duty; relating to
4 sexual abuse of a minor; relating to release of information concerning certain cases
5 involving a minor; relating to local options regarding alcoholic beverages, the offense of
6 furnishing or delivery of alcoholic beverages to a person under 21 years of age, and
7 forfeiture of property used in, and money or other items of value used in financial
8 transactions derived from, violation of certain laws relating to alcoholic beverages;
9 relating to assault by means of a dangerous instrument; relating to operating or driving
10 a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic
11 beverage, inhalant, or controlled substance, to the refusal to submit to a chemical test,
12 and to the presumptions concerning the chemical analysis of breath or blood; and

1 providing for an effective date."

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

3 * **Section 1.** AS 04.11.010(c) is amended to read:

4 (c) Unless a municipality or established village has adopted a more
 5 restrictive local option under AS 04.11.491(g), in [IN] a criminal prosecution for
 6 possession of alcoholic beverages for sale in violation of (a) of this section, the fact
 7 that a person

8 (1) possessed more than 12 liters of distilled spirits, 24 liters or more
 9 of wine, or 12 gallons or more of malt beverages in an area where the sale of alcoholic
 10 beverages is restricted or prohibited under AS 04.11.491 creates a presumption that
 11 the person possessed the alcoholic beverages for sale;

12 (2) sends, transports, or brings more than 12 liters of distilled
 13 spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages to an
 14 area where the sale of alcoholic beverages is restricted or prohibited under
 15 AS 04.11.491 creates a presumption that the person sent, transported, or brought
 16 the alcoholic beverages for sale in the area.

17 * **Sec. 2.** AS 04.11.010 is amended by adding a new subsection to read:

18 (d) In this section,

19 (1) "bring" has the meaning given in AS 04.11.499;

20 (2) "send" has the meaning given in AS 04.11.499;

21 (3) "transport" has the meaning given in AS 04.11.499.

22 * **Sec. 3.** AS 04.11.150(g) is amended to read:

23 (g) If a shipment is to an area that has restricted the sale of alcoholic
 24 beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2), a package store
 25 licensee, agent, or employee may not ship to a purchaser more than 10 and one-half
 26 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt
 27 beverages in a calendar month, or a lower amount of distilled spirits, wine, or malt
 28 beverages if the municipality or established village has adopted the lower amount
 29 by local option under AS 04.11.491(g).

30 * **Sec. 4.** AS 04.11.491 is amended by adding a new subsection to read:

1 (g) If a municipality or established village has adopted a local option under
 2 (a)(1), (2), (3), or (4), or (b)(1), (2), or (3) of this section, the municipality or
 3 established village, as part of the local option question or questions placed before the
 4 voters, may

5 (1) adopt an amount of alcoholic beverages that may be imported that
 6 is less than the amounts set out in AS 04.11.150(g);

7 (2) adopt an amount of alcoholic beverages that would give rise to a
 8 presumption that the person possessed the alcoholic beverages for sale; the amounts
 9 adopted under this paragraph may be lower than those set out in AS 04.11.010(c);

10 (3) opt to not apply a class C felony to violations of AS 04.16.051 that
 11 apply solely by reason of the municipality or established village adopting a local
 12 option under this section.

13 * **Sec. 5.** AS 04.11.508(b) is amended to read:

14 (b) If the perimeter of an established village determined under (a) of this
 15 section includes any area that is

16 **(1) within a municipality**

17 **(A) that has adopted a local option, the local option adopted**
 18 **by the municipality applies in the overlapping area;**

19 **(B) the local option adopted by the established village does**
 20 **not apply in the overlapping area;**

21 **(2) within the perimeter of another established village and, if the**
 22 **other established village has**

23 **(A) also adopted a local option under AS 04.11.491, the**
 24 **local option of the established village that is less restrictive applies in the**
 25 **overlapping area;**

26 **(B) not adopted a local option under AS 04.11.491, the local**
 27 **option does not apply in the overlapping area** [OR WITHIN THE
 28 PERIMETER OF ANOTHER ESTABLISHED VILLAGE, THE
 29 PERIMETER DESCRIBED UNDER (a) OF THIS SECTION IS LIMITED
 30 TO AN AREA THAT INCLUDES ONLY THE ESTABLISHED VILLAGE].

31 * **Sec. 6.** AS 04.11.508(c) is amended to read:

1 (c) If the board determines that the perimeter of an established village as
 2 provided under (a) and (b) of this section does not accurately reflect the perimeter of
 3 the established village, the board may establish the perimeter of the established village
 4 **and the areas of overlapping perimeter described under (b) of this section** for
 5 purposes of applying a local option selected under this chapter.

6 * **Sec. 7.** AS 04.16.051(d) is amended to read:

7 (d) A person acting with criminal negligence who violates this section is guilty
 8 of a class C felony if

9 (1) within the five years preceding the violation, the person has been
 10 previously convicted under

11 (A) this section; or

12 (B) a law or ordinance of this or another jurisdiction with
 13 elements substantially similar to this section; [OR]

14 (2) the person who receives the alcoholic beverage negligently causes
 15 serious physical injury to or the death of another person while under the influence of
 16 the alcoholic beverage received in violation of this section; in this paragraph,

17 (A) "negligently" means acting with civil negligence; and

18 (B) "serious physical injury" has the meaning given in

19 AS 11.81.900; **or**

20 **(3) the violation occurs within the boundaries of a municipality or**
 21 **the perimeter of an established village that has adopted a local option under**
 22 **AS 04.11.491 and has not opted out of applying a class C felony to violations of**
 23 **this section under AS 04.11.491(g).**

24 * **Sec. 8.** AS 04.16.220(a) is amended to read:

25 (a) The following are subject to forfeiture:

26 (1) alcoholic beverages manufactured, sold, offered for sale or
 27 possessed for sale, bartered or exchanged for goods and services in this state in
 28 violation of AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or
 29 otherwise stored in violation of AS 04.21.060; alcoholic beverages sold, or offered for
 30 sale in violation of a local option adopted under AS 04.11.491; alcoholic beverages
 31 transported into the state and sold to persons not licensed under this chapter in

1 violation of AS 04.16.170(b);

2 (2) materials and equipment used in the manufacture, sale, offering for
3 sale, possession for sale, barter or exchange of alcoholic beverages for goods and
4 services in this state in violation of AS 04.11.010; materials and equipment used in the
5 stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060;
6 materials and equipment used in the sale or offering for sale of an alcoholic beverage
7 in an area in violation of a local option adopted under AS 04.11.491;

8 (3) aircraft, vehicles, or vessels used to transport, or facilitate the
9 transportation of

10 (A) alcoholic beverages manufactured, sold, offered for sale or
11 possessed for sale, bartered or exchanged for goods and services in this state in
12 violation of AS 04.11.010;

13 (B) property stocked, warehoused, or otherwise stored in
14 violation of AS 04.21.060;

15 (C) alcoholic beverages imported into a municipality or
16 established village in violation of AS 04.11.499;

17 (4) alcoholic beverages found on licensed premises that do not bear
18 federal excise stamps if excise stamps are required under federal law;

19 (5) alcoholic beverages, materials or equipment used in violation of
20 AS 04.16.175;

21 **(6) money, securities, negotiable instruments, or other things of**
22 **value used in financial transactions derived from activity prohibited under**
23 **AS 04.11.010 or in violation of a local option adopted under AS 04.11.491.**

24 * **Sec. 9.** AS 04.16.220(e) is amended to read:

25 (e) The owner of property subject to forfeiture under (a) **or (i)** of this section
26 is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in
27 an action under (d) of this section, the owner shows that the owner

28 **(1) was not a party to the violation;**

29 **(2) [AND] had no actual knowledge or reasonable cause to believe**
30 **that the property was used or was to be used in violation of the law; and**

31 **(3) had no actual knowledge or reasonable cause to believe that the**

1 **person committing the violation had**

2 **(A) a criminal record for violating this title; or**

3 **(B) committed other violations of this title.**

4 * **Sec. 10.** AS 04.16.220(f) is amended to read:

5 (f) A person other than the owner holding, or the assignee of, a lien, mortgage,
6 conditional sales contract on, or the right to possession to property subject to forfeiture
7 under (a) **or (i)** of this section is entitled to relief from the forfeiture in the nature of
8 remission of the forfeiture if, in an action under (d) of this section, the person shows
9 that the person

10 **(1)** was not a party to the violation subjecting the property to
11 forfeiture;

12 **(2)** [AND] had no actual knowledge **or reasonable cause to believe**
13 that the property was [USED OR WAS] to be used in violation of the law; **and**

14 **(3) had no actual knowledge or reasonable cause to believe that the**
15 **person committing the violation had**

16 **(A) a criminal record for violating this title; or**

17 **(B) committed other violations of this title.**

18 * **Sec. 11.** AS 04.16.220 is amended by adding new subsections to read:

19 (i) Upon conviction for a violation of AS 04.11.010 or 04.11.499, if an
20 aircraft, vehicle, or watercraft is subject to forfeiture under (a) of this section, the court
21 shall, subject to remission to innocent parties under this section,

22 (1) order the forfeiture of an aircraft to the state;

23 (2) order the forfeiture of a vehicle or watercraft if

24 (A) the defendant has a prior felony conviction for a violation
25 of AS 11.41 or a similar law in another jurisdiction;

26 (B) the defendant is on felony probation or parole;

27 (C) the defendant has a prior conviction for violating
28 AS 04.11.010 or 04.11.499; or

29 (D) the quantity of alcohol transported in violation of this title
30 was twice the presumptive amounts in AS 04.11.010(c).

31 (j) Notwithstanding (i) of this section, a court is not required to order the

1 forfeiture of a vehicle or watercraft if the court determines that

2 (1) the vehicle or watercraft is the sole means of transportation for a
3 family residing in a village;

4 (2) the court may impose conditions that will prevent the defendant's
5 use of the vehicle or watercraft; and

6 (3) either

7 (A) a member of the family would be entitled to remission
8 under this section if the family member were an owner of or held a security
9 interest in the vehicle or watercraft; or

10 (B) if a member of the family would not be entitled to
11 remission, the family member was unable as a practical matter to stop the
12 violation making the vehicle or watercraft subject to forfeiture.

13 (k) When forfeiting property under (a), (d), or (i) of this section, a court may
14 award to a municipal law enforcement agency that participated in the arrest or
15 conviction of the defendant, the seizure of property, or the identification of property
16 for seizure, (1) the property if the property is worth \$5,000 or less and is not money or
17 some other thing that is divisible, or (2) up to 75 percent of the property or the value of
18 the property if the property is worth more than \$5,000 or is money or some other thing
19 that is divisible. In determining the percentage a municipal law enforcement agency
20 may receive under this subsection, the court shall consider the municipal law
21 enforcement agency's total involvement in the case relative to the involvement of the
22 state.

23 (l) In this section, "village" means a community of fewer than 1,000 persons
24 located off the interconnected state road system.

25 * **Sec. 12.** AS 09.50.020(a) is amended to read:

26 (a) A person who is guilty of contempt is punishable by a fine of not more
27 than \$300 or by imprisonment for not more than six months. However, when the
28 contempt is one mentioned in AS 09.50.010(3) - (12), or in an action before a
29 magistrate, the person is punishable by a fine of not more than \$100 unless it appears
30 that a right or remedy of a party to an action or proceeding was defeated or prejudiced
31 by the contempt, in which case the penalty shall be as prescribed for contempts

1 described in AS 09.50.010(1) **and** [,] (2) [, AND (13)].

2 * **Sec. 13.** AS 11.41.220(a) is amended to read:

3 (a) A person commits the crime of assault in the third degree if that person

4 (1) recklessly

5 (A) places another person in fear of imminent serious physical
6 injury by means of a dangerous instrument;

7 (B) causes physical injury to another person by means of a
8 dangerous instrument; or

9 (C) while being 18 years of age or older

10 (i) causes physical injury to a child under 10 years of
11 age and the injury reasonably requires medical treatment;

12 (ii) causes physical injury to a child under 10 years of
13 age on more than one occasion;

14 (2) with intent to place another person in fear of death or serious
15 physical injury to the person or the person's family member makes repeated threats to
16 cause death or serious physical injury to another person; [OR]

17 (3) while being 18 years of age or older, knowingly causes physical
18 injury to a child under 16 years of age but at least 10 years of age and the injury
19 reasonably requires medical treatment; **or**

20 **(4) with criminal negligence causes serious physical injury under**
21 **AS 11.81.900(b)(55)(B) to another person by means of a dangerous instrument.**

22 * **Sec. 14.** AS 11.41.438(a) is amended to read:

23 (a) An offender commits the crime of sexual abuse of a minor in the third
24 degree if

25 (1) **being under 16 years of age, the offender engages in sexual**
26 **penetration with a person who is under 13 years of age and at least three years**
27 **younger than the offender;**

28 (2) being 16 years of age or older, the offender engages in sexual
29 contact with a person who is 13, 14, or 15 years of age and at least three years younger
30 than the offender; or

31 (3) [(2)] being 18 years of age or older, the offender engages in sexual

1 penetration with a person who is 16 or 17 years of age and at least three years younger
 2 than the offender, and the offender occupies a position of authority in relation to the
 3 victim.

4 * **Sec. 15.** AS 11.41.440(a) is amended to read:

5 (a) An offender commits the crime of sexual abuse of a minor in the fourth
 6 degree if

7 (1) being under 16 years of age, the offender engages in [SEXUAL
 8 PENETRATION OR] sexual contact with a person who is under 13 years of age and
 9 at least three years younger than the offender; or

10 (2) being 18 years of age or older, the offender engages in sexual
 11 contact with a person who is 16 or 17 years of age and at least three years younger
 12 than the offender, and the offender occupies a position of authority in relation to the
 13 victim.

14 * **Sec. 16.** AS 11.56 is amended by adding a new section to read:

15 **Sec. 11.56.758. Violation of custodian's duty.** (a) A person commits the
 16 crime of violation of custodian's duty if the person knowingly fails, when acting as a
 17 custodian appointed by the court for a released person under AS 12.30, to report
 18 immediately as directed by the court that the person released has violated a condition
 19 of release.

20 (b) Violation of custodian's duty is

21 (1) a class A misdemeanor if the released person is charged with a
 22 felony;

23 (2) a class B misdemeanor if the released person is charged with a
 24 misdemeanor.

25 * **Sec. 17.** AS 11.81.330(a) is amended to read:

26 (a) A person may use nondeadly force upon another when and to the extent the
 27 person reasonably believes it is necessary for self defense against what the person
 28 reasonably believes to be the use of unlawful force by the other, unless

29 (1) the force involved was the product of mutual combat not
 30 authorized by law;

31 (2) the person claiming the defense of justification provoked the

1 other's conduct with intent to cause physical injury to the other; [OR]

2 (3) the person claiming the defense of justification was the initial
3 aggressor; or

4 **(4) the force applied was the result of using a deadly weapon the**
5 **person claiming the defense of justification possessed while**

6 **(A) acting alone or with others to further a felony criminal**
7 **objective of the person or one or more other persons; or**

8 **(B) a participant in a felony transaction or purported**
9 **transaction or in immediate flight from a felony transaction or purported**
10 **transaction in violation of AS 11.71.**

11 * **Sec. 18.** AS 12.30.020(b)(1) is amended to read:

12 (1) place the person in the custody of a designated person or
13 organization agreeing as a custodian to supervise the person; the court shall,
14 personally and in writing, inform the custodian about the duties required of a
15 custodian, and that failure to report immediately in accordance with the terms of the
16 order that the person released has violated a condition of release may result in the
17 custodian's being held **criminally liable** [IN CONTEMPT] under **AS 11.56.758**
18 [AS 09.50.010];

19 * **Sec. 19.** AS 12.30.020 is amended by adding a new subsection to read:

20 (i) The court shall issue written or oral findings to demonstrate why conditions
21 provided under (b)(1) of this section needed to be imposed.

22 * **Sec. 20.** AS 12.50.101(a) is amended to read:

23 (a) If a witness refuses, on the basis of the privilege against self-incrimination,
24 to testify or provide other information in a criminal proceeding before or ancillary to a
25 court or grand jury of this state, and a judge issues an order under (b) of this section,
26 the witness may not refuse to comply with the order on the basis of the privilege
27 against self-incrimination. If the witness fully complies with the order, **the witness**
28 **may not be prosecuted for an offense about which the witness is compelled to**
29 **testify** [NO TESTIMONY OR OTHER INFORMATION COMPELLED UNDER
30 THE ORDER, OR INFORMATION DIRECTLY OR INDIRECTLY DERIVED
31 FROM THAT TESTIMONY OR OTHER INFORMATION, MAY BE USED

1 AGAINST THE WITNESS IN A CRIMINAL CASE], except in a prosecution based
 2 on perjury, giving a false statement [,] or otherwise knowingly providing false
 3 information, or hindering prosecution.

4 * **Sec. 21.** AS 12.50.101(e) is amended to read:

5 (e) **In** [AS USED IN] this section,

6 **(1) "higher-level felony" means an unclassified or class A felony;**

7 **(2) "lower-level felony" means a class B or class C felony;**

8 **(3) "other information" means books, papers, documents, records,**
 9 **recordings, or other similar material;**

10 **(4) "proffer" means a written or oral statement by the attorney for**
 11 **the witness, stating the attorney's good faith belief of the substance of the**
 12 **witness's testimony or other information.**

13 * **Sec. 22.** AS 12.50.101 is amended by adding new subsections to read:

14 (f) If a witness refuses, or there is reason to believe the witness will refuse, to
 15 testify or provide other information based on the privilege against self-incrimination,
 16 and if the attorney general or the attorney general's designee has not applied for an
 17 order under (b) of this section, the court shall inform the witness of the right to be
 18 represented by an attorney, and that an attorney will be appointed for the witness if the
 19 witness qualifies for counsel under AS 18.85. The court shall recess the proceeding to
 20 allow the witness to consult with the attorney for the witness.

21 (g) If the attorney general or the attorney general's designee declines to seek
 22 an order under (b) of this section after the witness has had an opportunity to consult
 23 with an attorney, and the witness continues to refuse to testify or provide other
 24 information, the court shall hold a hearing to determine the validity of the claim of
 25 privilege by the witness. The hearing shall be in camera.

26 (h) At the hearing under (g) of this section, the attorney for the witness, in the
 27 form of a proffer, shall describe the testimony or other information that the witness
 28 claims is privileged. The proffer must include a description of how the testimony or
 29 other information could connect the witness with a crime. The proffer is privileged
 30 and inadmissible for any other purpose. If the proffer establishes a factual basis that
 31 there is a real or substantial danger that the testimony or other information to be

1 compelled would support a conviction or would furnish a link in the chain of evidence
2 leading to conviction for a crime, the court may find that the witness has a valid claim
3 of privilege.

4 (i) If the court finds that the witness has a valid claim of privilege, it shall
5 advise an attorney designated by the attorney general of that finding and inform the
6 attorney of the category or categories of offense to which the privilege applies: a
7 higher-level felony, a lower-level felony, or a misdemeanor. If the designated attorney
8 decides that granting immunity to the witness is appropriate, the designated attorney
9 shall inform the prosecution of that decision, and shall deliver or cause to be delivered
10 a letter to the witness, or an attorney for the witness, granting immunity to the witness.
11 The designated attorney may not disclose the category of offense to anyone.

12 * **Sec. 23.** AS 12.55.025(c) is amended to read:

13 (c) Except as provided in (d) [AND (e)] of this section, when a defendant is
14 sentenced to imprisonment, the term of confinement commences on the date of
15 imposition of sentence unless the court specifically provides that the defendant must
16 report to serve the sentence on another date. If the court provides another date to
17 begin the term of confinement, the court shall provide the defendant with written
18 notice of the date, time, and location of the correctional facility to which the defendant
19 must report. A defendant shall receive credit for time spent in custody pending trial,
20 sentencing, or appeal, if the detention was in connection with the offense for which
21 sentence was imposed. A defendant may not receive credit for more than the actual
22 time spent in custody pending trial, sentencing, or appeal. The time during which a
23 defendant is voluntarily absent from official detention after the defendant has been
24 sentenced may not be credited toward service of the sentence.

25 * **Sec. 24.** AS 12.55 is amended by adding a new section to read:

26 **Sec. 12.55.127. Consecutive and concurrent terms of imprisonment.** (a) If
27 a defendant is required to serve a term of imprisonment under a separate judgment, a
28 term of imprisonment imposed in a later judgment, amended judgment, or probation
29 revocation shall be consecutive.

30 (b) Except as provided in (c) of this section, if a defendant is being sentenced
31 for two or more crimes in a single judgment, terms of imprisonment may be

1 concurrent or partially concurrent.

2 (c) If the defendant is being sentenced for

3 (1) escape, the term of imprisonment shall be consecutive to the term
4 for the underlying crime;

5 (2) two or more crimes under AS 11.41, a consecutive term of
6 imprisonment shall be imposed for at least

7 (A) the mandatory minimum term under AS 12.55.125(a) for
8 each additional crime that is murder in the first degree;

9 (B) the mandatory minimum term for each additional crime
10 that is an unclassified felony governed by AS 12.55.125(b);

11 (C) the presumptive term specified in AS 12.55.125(c) or the
12 active term of imprisonment, whichever is less, for each additional crime that
13 is

14 (i) manslaughter; or

15 (ii) kidnapping that is a class A felony;

16 (D) two years or the active term of imprisonment, whichever is
17 less, for each additional crime that is criminally negligent homicide;

18 (E) one-fourth of the presumptive term under AS 12.55.125(c)
19 or (i) for each additional crime that is sexual assault in the first degree under
20 AS 11.41.410 or sexual abuse of a minor in the first degree under
21 AS 11.41.434, or an attempt, solicitation or conspiracy to commit those
22 offenses; and

23 (F) some additional term of imprisonment for each additional
24 crime, or each additional attempt or solicitation to commit the offense, under
25 AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, or
26 11.41.500 - 11.41.520.

27 (d) In this section,

28 (1) "active term of imprisonment" means the total term of
29 imprisonment imposed for a crime, minus suspended imprisonment;

30 (2) "additional crime" means a crime that is not the primary crime;

31 (3) "primary crime" means the crime

1 (A) for which the sentencing court imposes the longest active
2 term of imprisonment; or

3 (B) that is designated by the sentencing court as the primary
4 crime when no single crime has the longest active term of imprisonment.

5 * **Sec. 25.** AS 18.85.100 is amended by adding a new subsection to read:

6 (f) Notwithstanding (a) of this section, an indigent person is entitled to the
7 representation and necessary services and facilities of representation as provided in (a)
8 of this section when the person is a witness who refuses or there is reason to believe
9 will refuse to testify or provide other information based on the privilege against self-
10 incrimination.

11 * **Sec. 26.** AS 28.35.030(a) is amended to read:

12 (a) A person commits the crime of driving while under the influence of an
13 alcoholic beverage, inhalant, or controlled substance if the person operates or drives a
14 motor vehicle or operates an aircraft or a watercraft

15 (1) while under the influence of an alcoholic beverage, intoxicating
16 liquor, inhalant, or any controlled substance, singly or in combination; **or**

17 (2) **and if** [WHEN], as determined by a chemical test taken within four
18 hours after the alleged operating or driving [OFFENSE WAS COMMITTED], there
19 is 0.08 percent or more by weight of alcohol in the person's blood or 80 milligrams or
20 more of alcohol per 100 milliliters of blood, or **if** [WHEN] there is 0.08 grams or more
21 of alcohol per 210 liters of the person's breath [; OR

22 (3) WHILE THE PERSON IS UNDER THE COMBINED
23 INFLUENCE OF AN ALCOHOLIC BEVERAGE, AN INTOXICATING LIQUOR,
24 AN INHALANT, AND A CONTROLLED SUBSTANCE].

25 * **Sec. 27.** AS 28.35.030(n) is amended to read:

26 (n) A person is guilty of a class C felony if the person is convicted under (a) of
27 this section and **either** has been previously convicted two or more times since
28 January 1, 1996, and within the 10 years preceding the date of the present offense, **or**
29 **punishment under this subsection or under AS 28.35.032(p) was previously**
30 **imposed within the last 20 years.** For purposes of determining minimum sentences
31 based on previous convictions, the provisions of (r)(4) of this section apply. Upon

1 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. 28.** AS 28.35.030 is amended by adding a new subsection to read:

1 (s) In a prosecution under (a) of this section, a person may introduce evidence
 2 on the amount of alcohol consumed before or after operating or driving the motor
 3 vehicle, aircraft, or watercraft to rebut or explain the results of a chemical test, but the
 4 consumption of alcohol before operating or driving may not be used as a defense that
 5 the chemical test did not measure the blood alcohol at the time of the operating or
 6 driving. Consumption of alcohol after operating or driving the motor vehicle, aircraft,
 7 or watercraft may be used to raise such a defense.

8 * **Sec. 29.** AS 28.35.032(p) is amended to read:

9 (p) A person is guilty of a class C felony if the person is convicted under this
 10 section and **either** has been previously convicted two or more times since January 1,
 11 1996, and within the 10 years preceding the date of the present offense, **or**
 12 **punishment under this subsection or under AS 28.35.030(n) was previously**
 13 **imposed within the last 20 years.** For purposes of determining minimum sentences
 14 based on previous convictions, the provisions of AS 28.35.030(r)(4) apply. Upon
 15 conviction,

16 (1) the court shall impose a fine of not less than \$10,000 and a
 17 minimum sentence of imprisonment of not less than

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

19 (B) 240 days if the person has been previously convicted three
 20 times;

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

23 (2) the court may not

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

27 (B) suspend imposition of sentence;

28 (3) the court shall permanently revoke the person's driver's license,
 29 privilege to drive, or privilege to obtain a license subject to restoration under (q) of
 30 this section;

31 (4) the court may order that the person, while incarcerated or as a

1 condition of probation or parole, take a drug, or combination of drugs, intended to
 2 prevent consumption of an alcoholic beverage; a condition of probation or parole
 3 imposed under this paragraph is in addition to any other condition authorized under
 4 another provision of law;

5 (5) the sentence imposed by the court under this subsection shall run
 6 consecutively with any other sentence of imprisonment imposed on the person;

7 (6) the court shall order forfeiture under AS 28.35.036, of the motor
 8 vehicle, aircraft, or watercraft used in the commission of the offense, subject to
 9 remission under AS 28.35.037; and

10 (7) the court shall order the department to revoke the registration for
 11 any vehicle registered by the department in the name of the person convicted under
 12 this subsection; if a person convicted under this subsection is a registered co-owner of
 13 a vehicle, the department shall reissue the vehicle registration and omit the name of
 14 the person convicted under this subsection.

15 * **Sec. 30.** AS 28.35.033(c) is amended to read:

16 (c) **Except as provided in AS 28.35.030(s), the** [THE] provisions of (a) of
 17 this section may not be construed to limit the introduction of any other competent
 18 evidence bearing upon the question of whether the person was or was not under the
 19 influence of intoxicating liquor.

20 * **Sec. 31.** AS 33.16.090(b) is amended to read:

21 (b) Except as provided in (e) of this section, a prisoner is not eligible for
 22 discretionary parole during the term of a presumptive sentence; however, a prisoner is
 23 eligible for discretionary parole during a term of sentence enhancement imposed under
 24 AS 12.55.155(a) or during the term of a consecutive or partially consecutive
 25 presumptive sentence imposed under **AS 12.55.127** [AS 12.55.025(e) OR (g)]. A
 26 prisoner sentenced to a mandatory 99-year term under AS 12.55.125(a) or a definite
 27 term under AS 12.55.125(l) is not eligible for discretionary parole during the entire
 28 term.

29 * **Sec. 32.** AS 33.16.090(c) is amended to read:

30 (c) Except as provided in (e) of this section, a prisoner eligible for
 31 discretionary parole during a period of sentence enhancement imposed under

1 AS 12.55.155(a) or during a consecutive or partially consecutive presumptive sentence
 2 imposed under AS 12.55.127 [AS 12.55.025(e) OR (g)] shall serve the unenhanced
 3 portion of the sentence or the initial presumptive sentence before being otherwise
 4 eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of this
 5 subsection, the sentence for the most serious offense in the case of consecutive or
 6 partially consecutive presumptive sentences shall be considered the initial presumptive
 7 sentence. The unenhanced sentence or the initial presumptive sentence is considered
 8 served for purposes of discretionary parole on the date the unenhanced or initial
 9 presumptive sentence is due to expire less good time earned under AS 33.20.010.

10 * **Sec. 33.** AS 47.12.310 is amended by adding a new subsection to read:

11 (k) A state or municipal agency, other than a state or municipal law
 12 enforcement agency, or authorized employee may disclose to the public information
 13 regarding a case as may be necessary to protect the safety of the public provided the
 14 disclosure is authorized by regulations adopted by the department.

15 * **Sec. 34.** (a) AS 09.50.010(13) is repealed.

16 (b) AS 12.55.025(e), 12.55.025(g), and 12.55.025(h) are repealed.

17 * **Sec. 35.** The uncodified law of the State of Alaska is amended by adding a new section to
 18 read:

19 APPLICABILITY. (a) The changes made in secs. 7 - 11, 13 - 15, 17, 23, 24, 26, 31,
 20 32, and 34(b) of this Act apply to offenses committed on or after the respective effective date
 21 of those sections.

22 (b) Sections 27 and 29 of this Act apply to offenses occurring on or after the effective
 23 date of those sections, except that previous punishment, referred to in AS 28.35.030(n), as
 24 amended by sec. 27 of this Act, and in AS 28.35.032(p), as amended by sec. 29 of this Act,
 25 includes punishment imposed before, on, or after the effective date of secs. 27 and 29 of this
 26 Act.

27 (c) Sections 16, 18, and 19 of this Act applies to custodians who fail to report on or
 28 after the effective date of secs. 16, 18, and 19 of this Act, for persons released for offenses
 29 committed before, on, or after the effective date of secs. 16, 18, and 19 of this Act.

30 (d) The changes made in secs. 20, 22, 25, 28, and 30 of this Act apply to criminal
 31 proceedings for offenses committed before, on, or after the effective date of those sections.

1 (e) Section 33 of this Act applies to an offense occurring before, on, or after the
2 effective date of this Act.

3 * **Sec. 36.** This Act takes effect July 1, 2004.