

CS FOR SENATE BILL NO. 284(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/3/06

Referred: Finance

Sponsor(s): SENATOR THERRIAULT

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to sentencing for the commission of a felony while under the influence**
2 **of alcohol."**

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

4 *** Section 1.** AS 11.56 is amended by adding a new section to read:

5 **Sec. 11.56.768. Consumption of alcohol in violation of sentence.** (a) A
6 person commits the crime of consumption of alcohol in violation of sentence if the
7 person knowingly consumes alcohol in violation of an order imposed under
8 AS 12.55.015(a)(13), AS 28.35.030, or 28.35.032.

9 (b) In a prosecution under this section, it is an affirmative defense that the
10 alcohol was provided by, and consumed under the direction of, a health care
11 professional as part of medical treatment of the defendant.

12 (c) Except as provided in (e) of this section, consumption of alcohol in
13 violation of sentence is a class A misdemeanor.

14 (d) In this section, "consumption of alcohol" means to ingest, orally or

1 otherwise, alcohol or any substance containing alcohol, except the use of non-
2 prescription medications in doses and for purposes recommended by the manufacturer
3 or approved by the FDA.

4 (e) Consumption of alcohol is a class C felony if the defendant has been
5 previously convicted of violating this section.

6 * **Sec. 2.** AS 12.55.015(a) is amended to read:

7 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
8 sentence on a defendant convicted of an offense, may singly or in combination

9 (1) impose a

10 (A) fine when authorized by law and as provided in
11 AS 12.55.035; or

12 (B) day fine when authorized by law and as provided in
13 AS 12.55.036 if the court does not impose a term of periodic or continuous
14 imprisonment or place the defendant on probation;

15 (2) order the defendant to be placed on probation under conditions
16 specified by the court that may include provision for active supervision;

17 (3) impose a definite term of periodic imprisonment;

18 (4) impose a definite term of continuous imprisonment;

19 (5) order the defendant to make restitution under AS 12.55.045;

20 (6) order the defendant to carry out a continuous or periodic program
21 of community work under AS 12.55.055;

22 (7) suspend execution of all or a portion of the sentence imposed under
23 AS 12.55.080;

24 (8) suspend imposition of sentence under AS 12.55.085;

25 (9) order the forfeiture to the commissioner of public safety or a
26 municipal law enforcement agency of a deadly weapon that was in the actual
27 possession of or used by the defendant during the commission of an offense described
28 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

29 (10) order the defendant, while incarcerated, to participate in or
30 comply with the treatment plan of a rehabilitation program that is related to the
31 defendant's offense or to the defendant's rehabilitation if the program is made available

1 to the defendant by the Department of Corrections;

2 (11) order the forfeiture to the state of a motor vehicle, weapon,
3 electronic communication device, or money or other valuables, used in or obtained
4 through an offense that was committed for the benefit of, at the direction of, or in
5 association with a criminal street gang;

6 (12) order the defendant to have no contact, either directly or
7 indirectly, with a victim or witness of the offense until the defendant is
8 unconditionally discharged;

9 **(13) if the court finds by clear and convincing evidence that the**
10 **defendant's conduct constituting the offense was substantially influenced by the**
11 **consumption of alcohol, order the defendant convicted of a felony under AS 11.41**
12 **to refrain from consuming alcohol, subject to AS 11.56.768, up to the lifetime of**
13 **the defendant, including during the term of any sentence, and as a condition of**
14 **probation, suspended sentence, and suspended imposition of sentence.**

15 * **Sec. 3.** AS 28.35.030(b) is amended to read:

16 (b) Except as provided under (n) of this section, driving while under the
17 influence of an alcoholic beverage, inhalant, or controlled substance is a class A
18 misdemeanor. Except as provided under (p) of this section, upon conviction,

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

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

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

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

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

30 (E) not less than 240 days and a fine of not less than \$6,000 if
31 the person has been previously convicted four times and is not subject to

1 punishment under (n) of this section;

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

5 (2) the court may not

6 (A) suspend execution of sentence or grant probation except on
7 condition that the person

8 (i) serve the minimum imprisonment under (1) of this
9 subsection; and

10 (ii) pay the minimum fine required under (1) of this
11 subsection;

12 (B) suspend imposition of sentence;

13 (3) the court shall revoke the person's driver's license, privilege to
14 drive, or privilege to obtain a license under AS 28.15.181, and may order that the
15 motor vehicle, aircraft, or watercraft that was used in commission of the offense be
16 forfeited under AS 28.35.036; [AND]

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

22 **(5) if the court finds by clear and convincing evidence that the**
23 **defendant's conduct constituting the offense was substantially influenced by the**
24 **consumption of alcohol, the court may order the defendant previously convicted**
25 **two or more times or whose offense resulted in death or serious physical injury to**
26 **another person to refrain from consuming alcohol, subject to AS 11.56.768, for a**
27 **period of time up to the lifetime of the defendant, including during the term of**
28 **any sentence, and as a condition of probation and suspended sentence.**

29 * **Sec. 4.** AS 28.35.030(n) is amended to read:

30 (n) A person is guilty of a class C felony if the person is convicted under (a) of
31 this section and either has been previously convicted two or more times since

1 January 1, 1996, and within the 10 years preceding the date of the present offense, or
2 punishment under this subsection or under AS 28.35.032(p) was previously imposed
3 within the last 10 years. For purposes of determining minimum sentences based on
4 previous convictions, the provisions of (t)(4) of this section apply. Upon conviction,
5 the court

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

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

9 (B) 240 days if the person has been previously convicted three
10 times;

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

13 (2) may not

14 (A) suspend execution of sentence or grant probation except on
15 condition that the person

16 (i) serve the minimum imprisonment under (1) of this
17 subsection; and

18 (ii) pay the minimum fine required under (1) of this
19 subsection; or

20 (B) suspend imposition of sentence;

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

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

29 (5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft,
30 or aircraft used in the commission of the offense, subject to remission under
31 AS 28.35.037; [AND]

1 (6) shall order the department to revoke the registration for any vehicle
 2 registered by the department in the name of the person convicted under this
 3 subsection; if a person convicted under this subsection is a registered co-owner of a
 4 vehicle or is registered as a co-owner under a business name, the department shall
 5 reissue the vehicle registration and omit the name of the person convicted under this
 6 subsection; **and**

7 **(7) if the court finds by clear and convincing evidence that the**
 8 **defendant's conduct constituting the offense was substantially influenced by the**
 9 **consumption of alcohol, may order the defendant to refrain from consuming**
 10 **alcohol, subject to AS 11.56.768, for a period of time up to the lifetime of the**
 11 **defendant, including during the term of any sentence, and as a condition of**
 12 **probation and suspended sentence.**

13 * **Sec. 5.** AS 28.35.032(g) is amended to read:

14 (g) Except as provided under (r) of this section, upon conviction under this
 15 section,

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

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

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

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

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

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

30 (F) not less than 360 days and a fine of not less than \$7,000 if
 31 the person has been previously convicted more than four times and is not

1 subject to punishment under (p) of this section;

2 (2) the court may not

3 (A) suspend execution of the sentence required by (1) of this
4 subsection or grant probation, except on condition that the person

5 (i) serve the minimum imprisonment under (1) of this
6 subsection; and

7 (ii) pay the minimum fine required under (1) of this
8 subsection; or

9 (B) suspend imposition of sentence;

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

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

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

21 **(6) if the court finds by clear and convincing evidence that the**
22 **defendant's conduct constituting the offense was substantially influenced by the**
23 **consumption of alcohol, the court may order the defendant previously convicted**
24 **two or more times or whose offense resulted in death or serious physical injury to**
25 **another person to refrain from consuming alcohol, subject to AS 11.56.768, for a**
26 **period of time up to the lifetime of the defendant, including during the term of**
27 **any sentence, and as a condition of probation and suspended sentence.**

28 * **Sec. 6.** AS 28.35.032(p) is amended to read:

29 (p) A person is guilty of a class C felony if the person is convicted under this
30 section and either has been previously convicted two or more times since January 1,
31 1996, and within the 10 years preceding the date of the present offense, or punishment

1 under this subsection or under AS 28.35.030(n) was previously imposed within the
2 last 10 years. For purposes of determining minimum sentences based on previous
3 convictions, the provisions of AS 28.35.030(t)(4) apply. Upon conviction,

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

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

7 (B) 240 days if the person has been previously convicted three
8 times;

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

11 (2) the court may not

12 (A) suspend execution of the sentence required by (1) of this
13 subsection or grant probation, except on condition that the person

14 (i) serve the minimum imprisonment under (1) of this
15 subsection; and

16 (ii) pay the minimum fine required under (1) of this
17 subsection; or

18 (B) suspend imposition of sentence;

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

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

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

29 (6) the court shall order forfeiture under AS 28.35.036, of the motor
30 vehicle, aircraft, or watercraft used in the commission of the offense, subject to
31 remission under AS 28.35.037; [AND]

1 (7) the court shall order the department to revoke the registration for
2 any vehicle registered by the department in the name of the person convicted under
3 this subsection; if a person convicted under this subsection is a registered co-owner of
4 a vehicle, the department shall reissue the vehicle registration and omit the name of
5 the person convicted under this subsection; **and**

6 **(8) if the court finds by clear and convincing evidence that the**
7 **defendant's conduct constituting the offense was substantially influenced by the**
8 **consumption of alcohol, the court may order the defendant to refrain from**
9 **consuming alcohol, subject to AS 11.56.768, for a period of time up to the lifetime**
10 **of the defendant, including during the term of any sentence, and as a condition of**
11 **probation and suspended sentence.**

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

14 **APPLICABILITY.** This Act applies to offenses committed on or after the effective
15 date of this Act. References to previous convictions apply to convictions occurring before, on,
16 or after the effective date of this Act.