

SENATE BILL NO. 92

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY SENATORS FRENCH, McGuire

Introduced: 2/21/07

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to ignition interlock requirements; relating to limited driver's license**
2 **privileges for persons convicted of driving while under the influence of an alcoholic**
3 **beverage, inhalant, or controlled substance and requiring certain persons to utilize**
4 **ignition interlock devices to qualify for a limited driver's license; relating to probation**
5 **for driving while under the influence of an alcoholic beverage, inhalant, or controlled**
6 **substance, and refusal to submit to a chemical test; and providing for an effective date."**

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

8 * **Section 1.** AS 28.01.010 is amended by adding a new subsection to read:

9 (j) A court may not enforce a municipal ordinance prescribing a penalty for
10 driving while under the influence of an alcoholic beverage, inhalant, or controlled
11 substance or refusal to submit to a chemical test unless that ordinance imposes ignition
12 interlock device requirements under this title.

13 * **Sec. 2.** AS 28.15.201(d) is amended to read:

1 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain
 2 a license under AS 28.15.181(c), or the department when revoking a driver's license,
 3 privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant
 4 limited license privileges if

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

7 (2) the person has

8 (A) not been previously convicted, [AND] the limited license is
 9 not granted during the first 30 days of the period of revocation, **and the person**
 10 **is not required to use an ignition interlock device under AS 28.35.030(r);**

11 (B) been previously convicted, the limited license is not
 12 granted during the first 90 days of the period of revocation, and

13 (i) **the court or department requires the person to**
 14 **use an ignition interlock device during the period of the limited**
 15 **license; or**

16 (ii) **if the person resides in a community where the**
 17 **department has determined that ignition interlock devices are**
 18 **unavailable,** the person has successfully completed a court-ordered
 19 treatment program under AS 28.35.028 or former AS 28.35.030(p) [
 20 OR

21 (ii) THE COURT OR DEPARTMENT REQUIRES
 22 THE PERSON TO USE AN IGNITION INTERLOCK DEVICE
 23 DURING THE PERIOD OF THE LIMITED LICENSE];

24 (3) the court or the department determines that

25 (A) the person's ability to earn a livelihood would be severely
 26 impaired without a limited license; or

27 (B) the person has successfully completed a court-ordered
 28 treatment program described under AS 28.35.028 or former AS 28.35.030(p)
 29 and the person's ability to earn a livelihood, attend school, or provide for
 30 family health would be severely impaired without a limited license;

31 (4) the court or the department determines that a limitation under (a) of

1 this section can be placed on the license that will enable the person to earn a livelihood
2 without excessive danger to the public;

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

7 (6) the person has not been previously convicted under
8 AS 28.15.291(a)(2), AS 28.35.030, or 28.35.032 while driving or operating a vehicle,
9 aircraft, or watercraft under a limited license issued under this section.

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

11 (b) Except as provided under (n) of this section, driving while under the
12 influence of an alcoholic beverage, inhalant, or controlled substance is a class A
13 misdemeanor. Upon conviction,

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

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

17 (B) not less than 20 days, **require the person to use an**
18 **ignition interlock device after the person regains the privilege, including**
19 **any limited privilege, to operate a motor vehicle throughout the period of**
20 **probation,** and **impose** a fine of not less than \$3,000 if the person has been
21 previously convicted once;

22 (C) not less than 60 days, **require the person to use an**
23 **ignition interlock device after the person regains the privilege, including**
24 **any limited privilege, to operate a motor vehicle throughout the period of**
25 **probation,** and **impose** a fine of not less than \$4,000 if the person has been
26 previously convicted twice and is not subject to punishment under (n) of this
27 section;

28 (D) not less than 120 days, **require the person to use an**
29 **ignition interlock device after the person regains the privilege, including**
30 **any limited privilege, to operate a motor vehicle throughout the period of**
31 **probation,** and **impose** a fine of not less than \$5,000 if the person has been

1 previously convicted three times and is not subject to punishment under (n) of
2 this section;

3 (E) not less than 240 days, **require the person to use an**
4 **ignition interlock device after the person regains the privilege, including**
5 **any limited privilege, to operate a motor vehicle throughout the period of**
6 **probation,** and **impose** a fine of not less than \$6,000 if the person has been
7 previously convicted four times and is not subject to punishment under (n) of
8 this section;

9 (F) not less than 360 days, **require the person to use an**
10 **ignition interlock device after the person regains the privilege, including**
11 **any limited privilege, to operate a motor vehicle throughout the period of**
12 **probation,** and **impose** a fine of not less than \$7,000 if the person has been
13 previously convicted more than four times and is not subject to punishment
14 under (n) of this section;

15 (2) the court may not

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

18 (i) serve the minimum imprisonment under (1) of this
19 subsection; and

20 (ii) pay the minimum fine required under (1) of this
21 subsection;

22 (B) suspend imposition of sentence;

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

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

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

2 (n) A person is guilty of a class C felony if the person is convicted under (a) of
 3 this section and either has been previously convicted two or more times since
 4 January 1, 1996, and within the 10 years preceding the date of the present offense, or
 5 punishment under this subsection or under AS 28.35.032(p) was previously imposed
 6 within the last 10 years. For purposes of determining minimum sentences based on
 7 previous convictions, the provisions of (t)(4) of this section apply. Upon conviction,
 8 the court

9 (1) shall impose a fine of not less than \$10,000, **require the person to**
 10 **use an ignition interlock device after the person regains the privilege to operate a**
 11 **motor vehicle throughout the period of probation,** and **impose** a minimum sentence
 12 of imprisonment of not less than

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

14 (B) 240 days if the person has been previously convicted three
 15 times;

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

18 (2) may not

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

21 (i) serve the minimum imprisonment under (1) of this
 22 subsection; and

23 (ii) pay the minimum fine required under (1) of this
 24 subsection; or

25 (B) suspend imposition of sentence;

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

29 (4) may order that the person, while incarcerated or as a condition of
 30 probation or parole, take a drug or combination of drugs, intended to prevent the
 31 consumption of an alcoholic beverage; a condition of probation or parole imposed

1 under this paragraph is in addition to any other condition authorized under another
2 provision of law;

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

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

12 * **Sec. 5.** AS 28.35.030(r) is amended to read:

13 (r) If a person is convicted under (a) of this section, **the person has not been**
14 **previously convicted**, and it is determined by the trier of fact that, as determined by a
15 chemical test taken within four hours after the offense was committed,

16 (1) there was at least 0.16 percent by weight of alcohol in the person's
17 blood but less than 0.24 percent by weight of alcohol in the person's blood or at least
18 160 milligrams of alcohol per 100 milliliters of blood, but less than 240 milligrams of
19 alcohol per 100 milliliters of blood, or when there was at least 0.16 grams of alcohol
20 per 210 liters of the person's breath, but less than 0.24 grams of alcohol per 210 liters
21 of the person's breath, the court shall require the person to use an ignition interlock
22 device as provided in AS 12.55.102 for a minimum of six months after the person
23 regains the privilege, including any limited privilege, to operate a motor vehicle;

24 (2) there was 0.24 percent or more by weight of alcohol in the person's
25 blood or 240 milligrams or more of alcohol per 100 milliliters of blood, or when there
26 was 0.24 grams or more of alcohol per 210 liters of the person's breath, the court shall
27 require the person to use an ignition interlock device as provided in AS 12.55.102 for
28 a minimum of one year after the person regains the privilege, including any limited
29 privilege, to operate a motor vehicle.

30 * **Sec. 6.** AS 28.35.030 is amended by adding new subsections to read:

31 (u) In addition to penalties provided in (a) or (n) of this section, the court may

1 place a person convicted under those subsections on probation for a period of not more
 2 than 10 years following a term of imprisonment, including any suspended term of
 3 imprisonment. The court may place a limitation on the person's driver's license during
 4 the term of the probation as provided in AS 28.15.201(d).

5 (v) Notwithstanding (b), (n), or (r) of this section, the court may waive the
 6 requirement of the use of an ignition interlock device for a person who resides in a
 7 community where the department of administration has determined that ignition
 8 interlock devices are unavailable.

9 * **Sec. 7.** AS 28.35.032(g) is amended to read:

10 (g) Upon conviction under this section,

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

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

14 (B) not less than 20 days, **require the person to use an**
 15 **ignition interlock device after the person regains the privilege to operate a**
 16 **motor vehicle throughout the period of probation,** and **impose** a fine of not
 17 less than \$3,000 if the person has been previously convicted once;

18 (C) not less than 60 days, **require the person to use an**
 19 **ignition interlock device after the person regains the privilege to operate a**
 20 **motor vehicle throughout the period of probation,** and **impose** a fine of not
 21 less than \$4,000 if the person has been previously convicted twice and is not
 22 subject to punishment under (p) of this section;

23 (D) not less than 120 days, **require the person to use an**
 24 **ignition interlock device after the person regains the privilege to operate a**
 25 **motor vehicle throughout the period of probation,** and **impose** a fine of not
 26 less than \$5,000 if the person has been previously convicted three times and is
 27 not subject to punishment under (p) of this section;

28 (E) not less than 240 days, **require the person to use an**
 29 **ignition interlock device after the person regains the privilege to operate a**
 30 **motor vehicle throughout the period of probation,** and **impose** a fine of not
 31 less than \$6,000 if the person has been previously convicted four times and is

1 not subject to punishment under (p) of this section;

2 (F) not less than 360 days, require the person to use an
 3 ignition interlock device after the person regains the privilege to operate a
 4 motor vehicle throughout the period of probation, and impose a fine of not
 5 less than \$7,000 if the person has been previously convicted more than four
 6 times and is not subject to punishment under (p) of this section;

7 (2) the court may not

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

10 (i) serve the minimum imprisonment under (1) of this
 11 subsection; and

12 (ii) pay the minimum fine required under (1) of this
 13 subsection; or

14 (B) suspend imposition of sentence;

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

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

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

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

27 (p) A person is guilty of a class C felony if the person is convicted under this
 28 section and either has been previously convicted two or more times since January 1,
 29 1996, and within the 10 years preceding the date of the present offense, or punishment
 30 under this subsection or under AS 28.35.030(n) was previously imposed within the
 31 last 10 years. For purposes of determining minimum sentences based on previous

1 convictions, the provisions of AS 28.35.030(t)(4) apply. Upon conviction,

2 (1) the court shall impose a fine of not less than \$10,000, **require the**
 3 **person to use an ignition interlock device after the person regains the privilege to**
 4 **operate a motor vehicle throughout the period of probation,** and **impose** 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.

6 * **Sec. 9.** AS 28.35.032 is amended by adding new subsections to read:

7 (u) In addition to penalties provided in (a) or (p) of this section, the court may
8 place a person convicted under those subsections on probation for a period of not more
9 than 10 years following a term of imprisonment, including any suspended term of
10 imprisonment. The court may place a limitation on the person's driver's license during
11 the term of the probation as provided in AS 28.15.201(d).

12 (v) Notwithstanding (g) or (p) of this section, the court may waive the
13 requirement of the use of an ignition interlock device for a person who resides in a
14 community where the Department of Administration has determined that ignition
15 interlock devices are unavailable.

16 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 TRANSITIONAL PROVISION. A person convicted of a misdemeanor violation of
19 AS 28.35.030 before the effective date of this Act who has a limited license issued under or is
20 eligible to receive a limited license under AS 28.15.201(d) may continue to use that limited
21 license or may receive a limited license as provided in AS 28.15.201 and is subject to
22 penalties for violating the limitations on that license as provided in AS 28.15.291.

23 * **Sec. 11.** This Act takes effect January 1, 2008.