

CS FOR SENATE BILL NO. 92(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 3/23/07

Referred: Judiciary, Finance

Sponsor(s): SENATORS FRENCH, McGuire

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 PERSON HAS SUCCESSFULLY
 14 COMPLETED A COURT-ORDERED TREATMENT PROGRAM
 15 UNDER AS 28.35.028 OR FORMER AS 28.35.030(p); OR

16 (ii)] the court or department requires the person to use
 17 an ignition interlock device during the period of the limited license
 18 **whenever the person operates a motor vehicle in a community not**
 19 **included in the list published by the department under**
 20 **AS 28.22.011(b);**

21 (3) the court or the department determines that

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

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

28 (4) the court or the department determines that a limitation under (a) of
 29 this section can be placed on the license that will enable the person to earn a livelihood
 30 without excessive danger to the public;

31 (5) the court or the department determines that the person is enrolled in

1 and is in compliance with or has successfully completed the alcoholism screening,
 2 evaluation, referral, and program requirements of the Department of Health and Social
 3 Services under AS 28.35.030(h); and

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

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

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

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, including**
 16 **any limited privilege, to operate a motor vehicle throughout the period of**
 17 **probation,** and **impose** a fine of not less than \$3,000 if the person has been
 18 previously convicted once;

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

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

31 (E) not less than 240 days, **require the person to use an**

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

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

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

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

19 (B) suspend imposition of sentence;

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

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

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, **require the person to**
 7 **use an ignition interlock device after the person regains the privilege to operate a**
 8 **motor vehicle throughout the period of probation,** and **impose** a minimum sentence
 9 of imprisonment of not less than

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

11 (B) 240 days if the person has been previously convicted three
 12 times;

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

15 (2) 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; or

22 (B) suspend imposition of sentence;

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

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

31 (5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft,

1 or aircraft used in the commission of the offense, subject to remission under
2 AS 28.35.037; and

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

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

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

13 (1) there was at least 0.16 percent by weight of alcohol in the person's
14 blood but less than 0.24 percent by weight of alcohol in the person's blood or at least
15 160 milligrams of alcohol per 100 milliliters of blood, but less than 240 milligrams of
16 alcohol per 100 milliliters of blood, or when there was at least 0.16 grams of alcohol
17 per 210 liters of the person's breath, but less than 0.24 grams of alcohol per 210 liters
18 of the person's breath, the court shall require the person to use an ignition interlock
19 device as provided in AS 12.55.102 for a minimum of six months after the person
20 regains the privilege, including any limited privilege, to operate a motor vehicle;

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

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

28 (u) In addition to penalties provided in (a) or (n) of this section, the court may
29 place a person convicted under those subsections on probation for a period of not more
30 than 10 years following a term of imprisonment, including any suspended term of
31 imprisonment. The court may place a limitation on the person's driver's license during

1 the term of the probation as provided in AS 28.15.201(d).

2 (v) Notwithstanding (b), (n), or (r) of this section, the court shall waive the
3 requirement of the use of an ignition interlock device when a person operates a motor
4 vehicle in a community included on the list published by the department under
5 AS 28.22.011(b).

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

7 (g) Upon conviction under this section,

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

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

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

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

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

25 (E) not less than 240 days, **require the person to use an**
26 **ignition interlock device after the person regains the privilege to operate a**
27 **motor vehicle throughout the period of probation,** and **impose** a fine of not
28 less than \$6,000 if the person has been previously convicted four times and is
29 not subject to punishment under (p) of this section;

30 (F) not less than 360 days, **require the person to use an**
31 **ignition interlock device after the person regains the privilege to operate a**

1 **motor vehicle throughout the period of probation,** and **impose** a fine of not
 2 less than \$7,000 if the person has been previously convicted more than four
 3 times and is not subject to punishment under (p) of this section;

4 (2) the court may not

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

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

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

11 (B) suspend imposition of sentence;

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

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

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

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

24 (p) A person is guilty of a class C felony if the person is convicted under this
 25 section and either has been previously convicted two or more times since January 1,
 26 1996, and within the 10 years preceding the date of the present offense, or punishment
 27 under this subsection or under AS 28.35.030(n) was previously imposed within the
 28 last 10 years. For purposes of determining minimum sentences based on previous
 29 convictions, the provisions of AS 28.35.030(t)(4) apply. Upon conviction,

30 (1) the court shall impose a fine of not less than \$10,000, **require the**
 31 **person to use an ignition interlock device after the person regains the privilege to**

1 **operate a motor vehicle throughout the period of probation,** and **impose** a
 2 minimum sentence of imprisonment of not less than

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

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

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

8 (2) the court may not

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

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

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

15 (B) suspend imposition of sentence;

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

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 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;

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

29 (7) the court shall order the department to revoke the registration for
 30 any vehicle registered by the department in the name of the person convicted under
 31 this subsection; if a person convicted under this subsection is a registered co-owner of

1 a vehicle, the department shall reissue the vehicle registration and omit the name of
2 the person convicted under this subsection.

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

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

9 (v) Notwithstanding (g) or (p) of this section, the court shall waive the
10 requirement of the use of an ignition interlock device when a person operates a motor
11 vehicle in a community included on the list published by the department under
12 AS 28.22.011(b).

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

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

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