

(LIMITED RUN SHOWING ALL ADDITIONAL SPONSORSHIPS)

HOUSE CS FOR CS FOR SENATE BILL NO. 239(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/12/10

Referred: Rules

Sponsor(s): SENATORS MEYER, Wielechowski, Thomas, French, McGuire, Menard, Ellis, Egan

REPRESENTATIVES Tuck, Gardner, Johnson, Gara, Millett

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to ignition interlock devices, to refusal to submit to a chemical test, and**
2 **to driving while under the influence."**

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

4 *** Section 1.** AS 11.76.140(a) is amended to read:

5 (a) A person commits the crime of avoidance of ignition interlock device if the
6 person knowingly

7 (1) circumvents or tampers with an ignition interlock device in a
8 manner intended to allow a person on probation under AS 12.55.102, with a condition
9 of sentence under AS 12.55.102 **or another section**, or who has an ignition interlock
10 limited license to avoid using the device;

11 (2) rents a motor vehicle to a person and with criminal negligence
12 disregards the fact that the person is on probation under AS 12.55.102, has a condition
13 of sentence under AS 12.55.102 **or another section**, or has an ignition interlock
14 limited license, unless the vehicle is equipped with an ignition interlock device

1 described in AS 12.55.102; or

2 (3) loans a motor vehicle to a person and knowingly disregards the fact
3 that the person is on probation under AS 12.55.102, has a condition of sentence under
4 AS 12.55.102 **or another section**, or has an ignition interlock limited license, unless
5 the vehicle is equipped with an ignition interlock device described in AS 12.55.102.

6 * **Sec. 2.** AS 28.15.291(b) is amended to read:

7 (b) Upon conviction under (a) of this section, the court

8 (1) shall impose a minimum sentence of imprisonment

9 (A) if the person has not been previously convicted, of not less
10 than 10 days with 10 days suspended, including a mandatory condition of
11 probation that the defendant complete not less than 80 hours of community
12 work service;

13 (B) if the person has been previously convicted, of not less than
14 10 days;

15 (C) if the person's driver's license, privilege to drive, or
16 privilege to obtain a license was revoked under circumstances described in
17 AS 28.15.181(c)(1), [OR] if the person was driving in violation of a limited
18 license issued under AS 28.15.201(d) following that revocation, **or if the**
19 **person was driving in violation of an ignition interlock device requirement**
20 **following that revocation**, of not less than 20 days with 10 days suspended,
21 and a fine of not less than \$500, including a mandatory condition of probation
22 that the defendant complete not less than 80 hours of community work service;

23 (D) if the person's driver's license, privilege to drive, or
24 privilege to obtain a license was revoked under circumstances described in
25 AS 28.15.181(c)(2), (3), or (4), [OR] if the person was driving in violation of a
26 limited license issued under AS 28.15.201(d) following that revocation, **or if**
27 **the person was driving in violation of an ignition interlock device**
28 **requirement following that revocation**, of not less than 30 days and a fine of
29 not less than \$1,000;

30 (2) may impose additional conditions of probation;

31 (3) may not

1 (A) suspend execution of sentence or grant probation except on
 2 condition that the person serve a minimum term of imprisonment and perform
 3 required community work service as provided in (1) of this subsection;

4 (B) suspend imposition of sentence;

5 (4) shall revoke the person's license, privilege to drive, or privilege to
 6 obtain a license, and the person may not be issued a new license or a limited license
 7 nor may the privilege to drive or obtain a license be restored for an additional period
 8 of not less than 90 days after the date that the person would have been entitled to
 9 restoration of driving privileges; and

10 (5) may order that the motor vehicle that was used in commission of
 11 the offense be forfeited under AS 28.35.036.

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

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

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

17 (A) not less than 72 consecutive hours, require the person to
 18 use an ignition interlock device after the person regains the privilege, including
 19 any limited privilege, to operate a motor vehicle for a minimum of six [12]
 20 months [DURING THE PERIOD OF PROBATION], and impose a fine of not
 21 less than \$1,500 if the person has not been previously convicted;

22 (B) not less than 20 days, require the person to use an ignition
 23 interlock device after the person regains the privilege, including any limited
 24 privilege, to operate a motor vehicle for a minimum of 12 [24] months
 25 [DURING THE PERIOD OF PROBATION], and impose a fine of not less
 26 than \$3,000 if the person has been previously convicted once;

27 (C) not less than 60 days, require the person to use an ignition
 28 interlock device after the person regains the privilege, including any limited
 29 privilege, to operate a motor vehicle for a minimum of 18 [36] months
 30 [DURING THE PERIOD OF PROBATION], and impose a fine of not less
 31 than \$4,000 if the person has been previously convicted twice and is not

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

2 (D) not less than 120 days, require the person to use an ignition
3 interlock device after the person regains the privilege, including any limited
4 privilege, to operate a motor vehicle **for a minimum of 24 months**
5 [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not
6 less than \$5,000 if the person has been previously convicted three times and is
7 not subject to punishment under (n) of this section;

8 (E) not less than 240 days, require the person to use an ignition
9 interlock device after the person regains the privilege, including any limited
10 privilege, to operate a motor vehicle **for a minimum of 30 months**
11 [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not
12 less than \$6,000 if the person has been previously convicted four times and is
13 not subject to punishment under (n) of this section;

14 (F) not less than 360 days, require the person to use an ignition
15 interlock device after the person regains the privilege, including any limited
16 privilege, to operate a motor vehicle **for a minimum of 36 months**
17 [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not
18 less than \$7,000 if the person has been previously convicted more than four
19 times and is not subject to punishment under (n) of this section;

20 (2) the court may not

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

23 (i) serve the minimum imprisonment under (1) of this
24 subsection; [AND]

25 (ii) pay the minimum fine required under (1) of this
26 subsection;

27 (B) suspend imposition of sentence; **or**

28 **(C) suspend the requirement for an ignition interlock**
29 **device for a violation of (a)(1) of this section involving an alcoholic**
30 **beverage or intoxicating liquor, singly or in combination, or a violation of**
31 **(a)(2) of this section;**

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

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

10 * **Sec. 4.** AS 28.35.030(g) is amended to read:

11 (g) Notwithstanding (b) of this section, [IF THE COURT IMPOSES
 12 PROBATION UNDER AS 12.55.102] the court may reduce the fine required to be
 13 imposed under (b) of this section by the cost of the ignition interlock device.

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

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

22 (1) shall impose a fine of not less than \$10,000, require the person to
 23 use an ignition interlock device after the person regains the privilege to operate a
 24 motor vehicle **for a minimum of 60 months** [THROUGHOUT THE PERIOD OF
 25 PROBATION], and impose a minimum sentence of imprisonment of not less than

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

27 (B) 240 days if the person has been previously convicted three
 28 times;

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

31 (2) may not

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

3 (i) serve the minimum imprisonment under (1) of this
4 subsection; [AND]

5 (ii) pay the minimum fine required under (1) of this
6 subsection; [OR]

7 (B) suspend imposition of sentence; **or**

8 **(C) suspend the requirement for an ignition interlock**
9 **device for a violation of (a)(1) of this section involving an alcoholic**
10 **beverage or intoxicating liquor, singly or in combination, or a violation of**
11 **(a)(2) of this section;**

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

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

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

23 (6) shall order the department to revoke the registration for any vehicle
24 registered by the department in the name of the person convicted under this
25 subsection; if a person convicted under this subsection is a registered co-owner of a
26 vehicle or is registered as a co-owner under a business name, the department shall
27 reissue the vehicle registration and omit the name of the person convicted under this
28 subsection.

29 * **Sec. 6.** AS 28.35.030(t) is amended to read:

30 (t) Notwithstanding (b) **or** [,] (n) [, OR (r)] of this section, the court shall
31 waive the requirement of the use of an ignition interlock device when a person

1 operates a motor vehicle in a community included on the list published by the
2 department under AS 28.22.011(b).

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

4 (g) Upon conviction under this section,

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

6 (A) not less than 72 consecutive hours, require the person to
7 use an ignition interlock device after the person regains the privilege to operate
8 a motor vehicle for a minimum of six [12] months [DURING THE PERIOD
9 OF PROBATION], and impose a fine of not less than \$1,500 if the person has
10 not been previously convicted;

11 (B) not less than 20 days, require the person to use an ignition
12 interlock device after the person regains the privilege to operate a motor
13 vehicle for a minimum of 12 [24] months [DURING THE PERIOD OF
14 PROBATION], and impose a fine of not less than \$3,000 if the person has
15 been previously convicted once;

16 (C) not less than 60 days, require the person to use an ignition
17 interlock device after the person regains the privilege to operate a motor
18 vehicle for a minimum of 18 [36] months [DURING THE PERIOD OF
19 PROBATION], and impose a fine of not less than \$4,000 if the person has
20 been previously convicted twice and is not subject to punishment under (p) of
21 this section;

22 (D) not less than 120 days, require the person to use an ignition
23 interlock device after the person regains the privilege to operate a motor
24 vehicle for a minimum of 24 months [THROUGHOUT THE PERIOD OF
25 PROBATION], and impose a fine of not less than \$5,000 if the person has
26 been previously convicted three times and is not subject to punishment under
27 (p) of this section;

28 (E) not less than 240 days, require the person to use an ignition
29 interlock device after the person regains the privilege to operate a motor
30 vehicle for a minimum of 30 months [THROUGHOUT THE PERIOD OF
31 PROBATION], and impose a fine of not less than \$6,000 if the person has

1 been previously convicted four times and is not subject to punishment under
2 (p) of this section;

3 (F) not less than 360 days, require the person to use an ignition
4 interlock device after the person regains the privilege to operate a motor
5 vehicle **for a minimum of 36 months** [THROUGHOUT THE PERIOD OF
6 PROBATION], and impose a fine of not less than \$7,000 if the person has
7 been previously convicted more than four times and is not subject to
8 punishment under (p) of this section;

9 (2) the court may not

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

12 (i) serve the minimum imprisonment under (1) of this
13 subsection; [AND]

14 (ii) pay the minimum fine required under (1) of this
15 subsection; [OR]

16 (B) suspend imposition of sentence; **or**

17 **(C) suspend the requirement for an ignition interlock**
18 **device;**

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

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

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

30 * **Sec. 8.** AS 28.35.032(k) is amended to read:

31 (k) Notwithstanding (g) of this section, [IF THE COURT IMPOSES

1 PROBATION UNDER AS 12.55.102] the court may reduce the fine required to be
 2 imposed under (g) of this section by the cost of the ignition interlock device.

3 * **Sec. 9.** AS 28.35.032(p) is amended to read:

4 (p) A person is guilty of a class C felony if the person is convicted under this
 5 section and either has been previously convicted two or more times since January 1,
 6 1996, and within the 10 years preceding the date of the present offense, or punishment
 7 under this subsection or under AS 28.35.030(n) was previously imposed within the
 8 last 10 years. For purposes of determining minimum sentences based on previous
 9 convictions, the provisions of AS 28.35.030(u)(4) apply. Upon conviction,

10 (1) the court shall impose a fine of not less than \$10,000, require the
 11 person to use an ignition interlock device after the person regains the privilege to
 12 operate a motor vehicle **for a minimum of 60 months** [THROUGHOUT THE
 13 PERIOD OF PROBATION], and impose a minimum sentence of imprisonment of not
 14 less than

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

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

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

20 (2) the court may not

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

23 (i) serve the minimum imprisonment under (1) of this
 24 subsection; [AND]

25 (ii) pay the minimum fine required under (1) of this
 26 subsection; [OR]

27 (B) suspend imposition of sentence; **or**

28 **(C) suspend the requirements for an ignition interlock**
 29 **device;**

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

1 this section;

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

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

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

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

17 * **Sec. 10.** AS 33.05.020(c) is amended to read:

18 (c) The commissioner shall by regulation

19 (1) establish standards for calibration, certification, maintenance, and
20 monitoring of ignition interlock devices required as a condition of probation **or as**
21 **part of a sentence** under AS 12.55.102 **or another statute**; and

22 (2) establish a fee to be paid by the manufacturer for the cost of
23 certifying an ignition interlock device.

24 * **Sec. 11.** AS 33.05.020(e) is amended to read:

25 (e) The commissioner shall notify the manufacturer of the ignition interlock
26 device when the device is certified. The commissioner may not certify an ignition
27 interlock device unless the device prominently displays a label warning that a person
28 circumventing or tampering with the device **violates** [IN VIOLATION OF]
29 AS 11.76.140 **and** may be imprisoned [UP TO 30 DAYS] and fined [UP TO \$500].

30 * **Sec. 12.** AS 12.55.102(e)(2) and AS 28.35.030(r) are repealed.