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1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 2 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to ignition interlock devices."

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

8 \* Section 1. AS 09.50.250 is amended to read:

9 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person  
10 or corporation having a contract, quasi-contract, or tort claim  
11 against the state may bring an action against the state in the superi-  
12 or court. A person who may present the claim under AS 44.77 may not  
13 bring an action under this section except as set out in AS 44.77.-  
14 040(c). A person who may bring an action under AS 36.30.560 - 36.-  
15 30.695 may not bring an action under this section except as set out in  
16 AS 36.30.685. However, an [NO] action may not be brought under this  
17 section if the claim

18 (1) is an action for tort, and is based upon an act or  
19 omission of an employee of the state, exercising due care, in the  
20 execution of a statute or regulation, whether or not the statute or  
21 regulation is valid; or is an action for tort, and based upon the  
22 exercise or performance or the failure to exercise or perform a dis-  
23 cretionary function or duty on the part of a state agency or an em-  
24 ployee of the state, whether or not the discretion involved is abused;

25 (2) is for damages caused by the imposition or establish-  
26 ment of a quarantine by the state;

27 (3) arises out of assault, battery, false imprisonment,  
28 false arrest, malicious prosecution, abuse of process, libel, slander,  
29 misrepresentation, deceit, or interference with contract rights; or

1                   (4) arises out of the use of an ignition interlock device  
2                   certified under AS 33.05.020(c).

3 \* Sec. 2. AS 11.76 is amended by adding a new section to read:

4                   Sec. 11.76.140. AVOIDANCE OF IGNITION INTERLOCK DEVICE. (a) A  
5                   person may not knowingly

6                   (1) circumvent or tamper with an ignition interlock device  
7                   in a manner intended to allow a person on probation under AS 12.55.102  
8                   to avoid using the device; or

9                   (2) rent, loan, or lease a motor vehicle to a person on  
10                   probation under AS 12.55.102, unless the vehicle is equipped with an  
11                   ignition interlock device described in AS 12.55.102.

12                   (b) Notwithstanding AS 11.81.250, a person convicted of violat-  
13                   ing this section is guilty of a misdemeanor. The maximum term of  
14                   imprisonment that may be imposed is 30 days and the maximum fine that  
15                   may be imposed is \$500.

16 \* Sec. 3. AS 12.55 is amended by adding a new section to read:

17                   Sec. 12.55.102. ALCOHOL RELATED OFFENSES. (a) The court may  
18                   order as a condition of probation that a defendant convicted of an  
19                   offense involving the use, consumption, or possession of an alcoholic  
20                   beverage may not operate a motor vehicle during the period of pro-  
21                   bation unless the vehicle is equipped with a properly functioning,  
22                   monitored, and maintained ignition interlock device. A condition of  
23                   probation imposed under this subsection takes effect after any period  
24                   of license revocation imposed under AS 28.15.165(d) or 28.15.181(c).

25                   (b) The court, in imposing probation under (a) of this section,  
26                   may allow the defendant limited privileges to drive a motor vehicle  
27                   without an ignition interlock device if the court determines that the  
28                   defendant is required as a condition of employment to drive a motor  
29                   vehicle owned or leased by the defendant's employer and that the

1 defendant's driving will not create substantial danger. If the court  
2 imposes probation described by this subsection, the court shall re-  
3 quire the defendant to notify the defendant's employer of the proba-  
4 tion, and shall require that the defendant, while driving the em-  
5 ployer's vehicle, carry a letter from the employer authorizing the  
6 defendant to drive that vehicle.

7 (c) A court imposing a condition of probation under this section  
8 shall require the surrender of the driver's license and shall issue to  
9 the defendant a certificate valid for the duration of the probation or  
10 a copy of the defendant's judgment of conviction. The defendant shall  
11 pay all costs associated with fulfilling the condition of probation,  
12 including installation, repair, and monitoring of an ignition inter-  
13 lock device.

14 (d) The court may include the cost of the ignition interlock  
15 device as a part of the fine required to be imposed against the defen-  
16 dant under AS 28.35.030(c) or 28.35.032(g).

17 (e) In this section, "ignition interlock device" means equipment  
18 designed to prevent a motor vehicle from being operated by a person  
19 who has consumed an alcoholic beverage, and that has been certified by  
20 the commissioner of corrections under AS 33.05.020(c).

21 \* Sec. 4. AS 28.35.030(c) is amended to read:

22 (c) Upon conviction under this section the court shall impose a  
23 minimum sentence of imprisonment of not less than 72 consecutive hours  
24 and a fine of not less than \$250 if the person has not been previously  
25 convicted in this or another jurisdiction of driving while intoxicated  
26 under this or another law or ordinance with substantially similar  
27 elements or refusal to submit to a chemical test under AS 28.35.032 or  
28 another law or ordinance with substantially similar elements. Upon  
29 conviction under this section the court shall impose a minimum

1 sentence of imprisonment of not less than 20 consecutive days and a  
2 fine of not less than \$500 if, within the preceding 10 years, the  
3 person has been previously convicted once in this or another jurisdic-  
4 tion of driving while intoxicated under this or another law or ordi-  
5 nance with substantially similar elements or refusal to submit to a  
6 chemical test under AS 28.35.032 or another law or ordinance with  
7 substantially similar elements. Upon conviction under this section  
8 the court shall impose a minimum sentence of imprisonment of not less  
9 than 30 consecutive days and a fine of not less than \$1,000 if, within  
10 the preceding 10 years, the person has been previously convicted in  
11 this or another jurisdiction of more than one of the following offen-  
12 ses or has more than once been previously convicted of one of the  
13 following offenses: (1) driving while intoxicated under this or anoth-  
14 er law or ordinance with substantially similar elements; (2) refusal  
15 to submit to a chemical test under AS 28.35.032 or another law or  
16 ordinance with substantially similar elements. The execution of  
17 sentence may not be suspended nor may probation be granted except on  
18 condition that the minimum imprisonment provided in this section is  
19 served. Probation may be conditioned as provided in AS 12.55.102.  
20 Imposition of sentence may not be suspended. In addition, if the  
21 offense involved driving a motor vehicle for which a driver's license  
22 is required, the person's driver's license shall be revoked in accor-  
23 dance with AS 28.15.181 and the vehicle used in commission of the  
24 offense may be forfeited under AS 28.35.036. In addition, the court  
25 shall order, and a person convicted under this section shall under-  
26 take, for a term specified by the court, that program of alcohol  
27 education or rehabilitation that the court, after consideration of any  
28 information compiled under (d) of this section, finds appropriate.

29 \* Sec. 5. AS 28.35.030 is amended by adding a new subsection to read:

1           (h) Notwithstanding (c) of this section, if the court imposes  
2 probation under AS 12.55.102 the court may reduce the fine required to  
3 be imposed under (c) of this section by the cost of the ignition  
4 interlock device.

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

6           (g) Upon conviction of a person under this section, the court  
7 shall impose a minimum sentence of imprisonment of not less than 72  
8 consecutive hours and a fine of not less than \$250 if the person has  
9 not been previously convicted in this or another jurisdiction of  
10 driving while intoxicated under AS 28.35.030 or another law or ordi-  
11 nance with substantially similar elements or refusal to submit to a  
12 chemical test under this section or another law or ordinance with  
13 substantially similar elements. Upon conviction under this section the  
14 court shall impose a minimum sentence of imprisonment of not less than  
15 20 consecutive days and a fine of not less than \$500 if, within the  
16 preceding 10 years, the person has been previously convicted once in  
17 this or another jurisdiction of driving while intoxicated under  
18 AS 28.35.030 or another law or ordinance with substantially similar  
19 elements or refusal to submit to a chemical test under this section or  
20 another law or ordinance with substantially similar elements. Upon  
21 conviction under this section the court shall impose a minimum sen-  
22 tence of imprisonment of not less than 30 consecutive days and a fine  
23 of not less than \$1,000, if, within the previous 10 years, the person  
24 has been previously convicted in this or another jurisdiction of more  
25 than one of the following offenses or has more than once been previ-  
26 ously convicted of one of the following offenses: (1) driving while  
27 intoxicated under AS 28.35.030 or another law or ordinance with sub-  
28 stantially similar elements; (2) refusal to submit to a chemical test  
29 under this section or another law or ordinance with substantially

1 similar elements. The execution of sentence may not be suspended nor  
2 may probation be granted except on condition that the minimum impris-  
3 onment provided in this section is served. Probation may be condi-  
4 tioned as provided in AS 12.55.102. Imposition of sentence may not be  
5 suspended. If the offense involved driving a motor vehicle for which  
6 a driver's license is required, the person's driver's license shall be  
7 revoked under AS 28.15.181. In addition, the court shall order, and a  
8 person convicted under this section shall undertake, for a term speci-  
9 fied by the court, that program of alcohol education or rehabilitation  
10 that the court, after consideration of any information compiled under  
11 (h) of this section, finds appropriate. The sentence imposed by the  
12 court under this subsection shall run consecutively with any other  
13 sentence of imprisonment imposed on the committed person.

14 \* Sec. 7. AS 28.35.032 is amended by adding a new subsection to read:

15 (k) Notwithstanding (g) of this section, if the court imposes  
16 probation under AS 12.55.102 the court may reduce the fine required to  
17 be imposed under (g) of this section by the cost of the ignition  
18 interlock device.

19 \* Sec. 8. AS 33.05.020 is amended by adding new subsections to read:

20 (c) The commissioner shall by regulation

21 (1) establish standards for calibration, certification,  
22 maintenance, and monitoring of ignition interlock devices required as  
23 a condition of probation under AS 12.55.102; and

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

26 (d) The commissioner shall notify the manufacturer of the igni-  
27 tion interlock device when the device is certified. The commissioner  
28 may not certify an ignition interlock device unless the device promi-  
29 nently displays a label warning that a person circumventing or

1 tampering with the device in violation of AS 11.76.140 may be im-  
2 prisoned up to 30 days and fined up to \$500.