

Introduced: 1/9/89
Referred: Transportation and
Judiciary

6-0324A

1 IN THE HOUSE

BY KOPONEN

2

HOUSE BILL NO. 26

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 motor vehicle forfeiture."

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

8 * Section 1. AS 28.35.030(c) is amended to read:

9 (c) Upon conviction under this section the court shall impose a
10 minimum sentence of imprisonment of not less than 72 consecutive hours
11 and a fine of not less than \$250 if the person has not been previously
12 convicted in this or another jurisdiction of driving while intoxicated
13 under this or another law or ordinance with substantially similar
14 elements or refusal to submit to a chemical test under AS 28.35.032 or
15 another law or ordinance with substantially similar elements. Upon
16 conviction under this section the court shall impose a minimum sen-
17 tence of imprisonment of not less than 20 consecutive days and a fine
18 of not less than \$500 if, within the preceding 10 years, the person
19 has been previously convicted once in this or another jurisdiction of
20 driving while intoxicated under this or another law or ordinance with
21 substantially similar elements or refusal to submit to a chemical test
22 under AS 28.35.032 or another law or ordinance with substantially
23 similar elements. Upon conviction under this section the court shall
24 impose a minimum sentence of imprisonment of not less than 30 consecu-
25 tive days and a fine of not less than \$1,000 and shall order for-
26 feiture of the vehicle used in commission of the offense, subject to
27 remission of forfeiture under AS 28.35.037, if [,] within the preced-
28 ing 10 years [,] the person has been previously convicted in this or
29 another jurisdiction of more than one of the following offenses or has

1 more than once been previously convicted of one of the following
2 offenses: (1) driving while intoxicated under this or another law or
3 ordinance with substantially similar elements; (2) refusal to submit
4 to a chemical test under AS 28.35.032 or another law or ordinance with
5 substantially similar elements. The execution of sentence may not be
6 suspended nor may probation be granted except on condition that the
7 minimum imprisonment provided in this section is served. Imposition of
8 sentence may not be suspended. In addition, if the offense involved
9 driving a motor vehicle for which a driver's license is required, the
10 person's driver's license shall be revoked in accordance with AS 28.-
11 15.181 [AND THE VEHICLE USED IN COMMISSION OF THE OFFENSE MAY BE
12 FORFEITED UNDER AS 28.35.036]. In addition, the court shall order,
13 and a person convicted under this section shall undertake, for a term
14 specified by the court, that program of alcohol education or rehabili-
15 tation that the court, after consideration of any information compiled
16 under (d) of this section, finds appropriate.

17 * Sec. 2. AS 28.35.032(g) is amended to read:

18 (g) Upon conviction of a person under this section, the court
19 shall impose a minimum sentence of imprisonment of not less than 72
20 consecutive hours and a fine of not less than \$250 if the person has
21 not been previously convicted in this or another jurisdiction of
22 driving while intoxicated under AS 28.35.030 or another law or ordi-
23 nance with substantially similar elements or refusal to submit to a
24 chemical test under this section or another law or ordinance with
25 substantially similar elements. Upon conviction under this section the
26 court shall impose a minimum sentence of imprisonment of not less than
27 20 consecutive days and a fine of not less than \$500 if, within the
28 preceding 10 years, the person has been previously convicted once in
29 this or another jurisdiction of driving while intoxicated under AS

1 28.35.030 or another law or ordinance with substantially similar
2 elements or refusal to submit to a chemical test under this section or
3 another law or ordinance with substantially similar elements. Upon
4 conviction under this section the court shall impose a minimum sen-
5 tence of imprisonment of not less than 30 consecutive days and a fine
6 of not less than \$1,000 and shall order forfeiture of the vehicle used
7 in the commission of the offense, subject to remission under AS 28.-
8 35.037, if [,] within the previous 10 years [,] the person has been
9 previously convicted in this or another jurisdiction of more than one
10 of the following offenses or has more than once been previously con-
11 victed of one of the following offenses: (1) driving while intoxicated
12 under AS 28.35.030 or another law or ordinance with substantially
13 similar elements; (2) refusal to submit to a chemical test under this
14 section or another law or ordinance with substantially similar ele-
15 ments. The execution of sentence may not be suspended nor may pro-
16 bation be granted except on condition that the minimum imprisonment
17 provided in this section is served. Imposition of sentence may not be
18 suspended. If the offense involved driving a motor vehicle for which
19 a driver's license is required, the person's driver's license shall be
20 revoked under AS 28.15.181. In addition, the court shall order, and a
21 person convicted under this section shall undertake, for a term speci-
22 fied by the court, that program of alcohol education or rehabilitation
23 that the court, after consideration of any information compiled under
24 (h) of this section, finds appropriate. The sentence imposed by the
25 court under this subsection shall run consecutively with any other
26 sentence of imprisonment imposed on the committed person.

27 * Sec. 3. AS 28.35.036 is repealed and reenacted to read:

28 Sec. 28.35.036. FORFEITURE OF MOTOR VEHICLE. (a) Upon forfei-
29 ture of a motor vehicle under AS 28.35.030(c) or 28.35.032(g) the

1 court shall require the surrender of the registration and certificate
2 of title of that motor vehicle. The registration and certificate of
3 title shall be delivered to the department.

4 (b) Forfeiture of a motor vehicle under AS 28.35.030(c) or
5 28.35.032(g) extinguishes the rights or claims of a person with an
6 ascertainable interest in the motor vehicle, unless the person seeks
7 remission of the forfeiture under AS 28.35.037 within 90 days after
8 the person receives notice of the right of remission under AS 28.35.-
9 037. Remission of forfeiture does not apply to a person convicted
10 under AS 28.35.030(c) or 28.35.032(g) whose vehicle is forfeited.

11 (c) If not released under AS 28.35.037, a motor vehicle for-
12 feited under AS 28.35.030(c) or 28.35.032(g) may be disposed of by the
13 department.

14 * Sec. 4. AS 28.35.037(a) is repealed and reenacted to read:

15 (a) Upon forfeiture of a motor vehicle under AS 28.35.030(c) or
16 28.35.032(g), the state shall provide written notice to each person
17 with an ascertainable ownership or security interest in the motor
18 vehicle, other than the person convicted of the offense resulting in
19 forfeiture, that

20 (1) the vehicle has been forfeited;

21 (2) the person has a right to intervene to protect an
22 interest in the motor vehicle under (b) of this section; and

23 (3) failure to seek remission of forfeiture within 90 days
24 will extinguish the rights of the person to the vehicle.

25 * Sec. 5. AS 28.35.037(b) is amended to read:

26 (b) At the request of a person with an ownership or security
27 interest in a vehicle forfeited under AS 28.35.030(c) or 28.35.032(g),
28 other than the person convicted of the offense resulting in forfei-
29 ture, the court shall schedule a hearing to determine if remission of

1 forfeiture shall be ordered as provided under this section. At the
2 hearing, a person who claims an ownership or security interest in the
3 motor vehicle must establish by a preponderance of the evidence that

4 (1) the petitioner has an interest in the motor vehicle
5 acquired in good faith;

6 (2) a person other than the petitioner was convicted of the
7 offense that resulted in the forfeiture; and

8 (3) before parting with the motor vehicle, the petitioner
9 did not know or have reasonable cause to believe that it would be used
10 in the commission of an offense.

11 * Sec. 6. AS 28.35.037(d) is repealed.