

1 IN THE HOUSE

BY ULMER

2

HOUSE BILL NO. 351

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 the penalty for driving while  
7 intoxicated and refusal to take a chemical breath  
8 test."

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

10 \* Section 1. AS 12.55.085(e) is amended to read:

11 (e) Upon the discharge by the court without imposition of sen-  
12 tence, the court may set aside the conviction and issue to the person  
13 a certificate to that effect. Upon discharge by the court without  
14 imposition of sentence for conviction under AS 28.35.030 or 28.35.032,  
15 the court shall set aside the conviction and issue to the person a  
16 certificate to that effect.

17 \* Sec. 2. AS 28.15.165(d) is amended to read:

18 (d) A [THE] period of [REVOCAION OF A] driver's license revoca-  
19 tion imposed [BY THE DEPARTMENT] under this section must [SHALL] be  
20 for the appropriate minimum period for court revocations imposed under  
21 AS 28.15.181(c), except that the department may not revoke the per-  
22 son's driver's license, or if the person's driver's license has been  
23 revoked, the department shall restore the person's license if imposi-  
24 tion of the person's sentence has been suspended under AS 28.35.030(h)  
25 or 28.35.032(k).

26 \* Sec. 3. AS 28.35.030(c) is amended to read:

27 (c) Upon conviction under this section the court shall impose a  
28 minimum sentence of imprisonment of not less than 72 consecutive hours  
29 and a fine of not less than \$250 if the person has not been previously

1 convicted in this or another jurisdiction of driving while intoxicated  
2 under this or another law or ordinance with substantially similar  
3 elements or refusal to submit to a chemical test under AS 28.35.032 or  
4 another law or ordinance with substantially similar elements. Upon  
5 conviction under this section the court shall impose a minimum sen-  
6 tence of imprisonment of not less than 20 consecutive days and a fine  
7 of not less than \$500 if, within the preceding 10 years, the person  
8 has been previously convicted once in this or another jurisdiction of  
9 driving while intoxicated under this or another law or ordinance with  
10 substantially similar elements or refusal to submit to a chemical test  
11 under AS 28.35.032 or another law or ordinance with substantially  
12 similar elements. Upon conviction under this section the court shall  
13 impose a minimum sentence of imprisonment of not less than 30 consecu-  
14 tive days and a fine of not less than \$1,000 if, within the preceding  
15 10 years, the person has been previously convicted in this or another  
16 jurisdiction of more than one of the following offenses or has more  
17 than once been previously convicted of one of the following offenses:  
18 (1) driving while intoxicated under this or another law or ordinance  
19 with substantially similar elements; (2) refusal to submit to a chemi-  
20 cal test under AS 28.35.032 or another law or ordinance with substan-  
21 tially similar elements. The execution of sentence may not be sus-  
22 pended nor may probation be granted except on condition that the  
23 minimum imprisonment provided in this section is served. Imposition of  
24 sentence may not be suspended, except as provided under (h) of this  
25 section. Unless imposition of sentence is suspended under (h) of this  
26 section [IN ADDITION], if the offense involved driving a motor vehicle  
27 for which a driver's license is required, the person's driver's li-  
28 cense shall be revoked in accordance with AS 28.15.181 and the vehicle  
29 used in commission of the offense may be forfeited under AS 28.35.036.

1 In addition, the court shall order, and a person convicted under this  
2 section shall undertake, for a term specified by the court, that  
3 program of alcohol education or rehabilitation that the court, after  
4 consideration of any information compiled under (d) of this section,  
5 finds appropriate.

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

7 (g) In this section,

8 (1) "controlled substances" has the meaning given in  
9 AS 11.71.900;

10 (2) "operate an aircraft" means to use, navigate, pilot, or  
11 taxi an aircraft in the airspace over this state, or upon the land or  
12 water inside this state;

13 (3) [(2)] "operate a watercraft" means to navigate or use a  
14 vessel used or capable of being used as a means of transportation on  
15 water for recreational or commercial purposes on all waters, fresh or  
16 salt, inland or coastal, inside the territorial limits or under the  
17 jurisdiction of the state.

18 \* Sec. 5. AS 28.35.030 is amended by adding new subsections to read:

19 (h) The court may suspend imposition of sentence if the person  
20 has not within the preceding five years received a suspended imposi-  
21 tion of sentence under this subsection, the person has been recom-  
22 mended for alcoholism or drug treatment under (i) of this section, and  
23 the person has agreed to comply with the recommended treatment plan.  
24 A court suspending imposition of sentence under this subsection shall  
25 impose the following conditions for a period of one year:

26 (1) complete abstinence from alcoholic beverages and all  
27 controlled substances, unless prescribed by a physician;

28 (2) participation in periodic unscheduled urinalysis test-  
29 ing designed to detect the presence of alcohol or controlled

1 substances;

2 (3) participation in an intensive inpatient or outpatient  
3 alcoholism or drug treatment program approved by the state; the pro-  
4 gram must include

5 (A) weekly participation in at least two meetings of  
6 an alcoholism or drug self-help recovery support group; and

7 (B) monthly outpatient contact, on a group or indi-  
8 vidual basis; and

9 (4) unless the person is indigent, payment of the full cost  
10 of the alcoholism or drug treatment program; in this paragraph, "indi-  
11 gent" means that at the time the court suspends imposition of sentence  
12 under this subsection, the person is eligible to receive general  
13 relief assistance under AS 47.25.120, adult public assistance under  
14 AS 47.25.430 - 47.25.615, or aid to families with dependent children  
15 under AS 47.25.310 - 47.25.420.

16 (i) Before suspending imposition of sentence, the court shall  
17 refer the person to a state approved alcoholism or drug treatment  
18 facility for examination and evaluation. The evaluation of the person  
19 shall include a determination of whether (1) the person suffers from  
20 alcoholism or drug addiction; (2) the alcoholism or drug addiction is  
21 likely to cause the person to become a repeat offender; (3) long-term  
22 treatment is necessary; (4) effective treatment is available; and (5)  
23 the person is amenable to treatment. An evaluation required under  
24 this subsection shall be submitted to the court in writing and include  
25 findings and recommendations. If alcoholism or drug treatment is  
26 recommended, the evaluation must include a treatment plan indicating  
27 the type, nature, length, time schedule, and estimated cost of the  
28 recommended treatment.

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

1           (g) Upon conviction of a person under this section, the court  
2 shall impose a minimum sentence of imprisonment of not less than 72  
3 consecutive hours and a fine of not less than \$250 if the person has  
4 not been previously convicted in this or another jurisdiction of  
5 driving while intoxicated under AS 28.35.030 or another law or ordi-  
6 nance with substantially similar elements or refusal to submit to a  
7 chemical test under this section or another law or ordinance with  
8 substantially similar elements. Upon conviction under this section  
9 the court shall impose a minimum sentence of imprisonment of not less  
10 than 20 consecutive days and a fine of not less than \$500 if, within  
11 the preceding 10 years, the person has been previously convicted once  
12 in this or another jurisdiction of driving while intoxicated under  
13 AS 28.35.030 or another law or ordinance with substantially similar  
14 elements or refusal to submit to a chemical test under this section 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 30 consecutive days and a fine  
18 of not less than \$1,000 if, within the previous 10 years, the person  
19 has been previously convicted in this or another jurisdiction of more  
20 than one of the following offenses or has more than once been previ-  
21 ously convicted of one of the following offenses: (1) driving while  
22 intoxicated under AS 28.35.030 or another law or ordinance with sub-  
23 stantially similar elements; (2) refusal to submit to a chemical test  
24 under this section or another law or ordinance with substantially  
25 similar elements. The execution of sentence may not be suspended nor  
26 may probation be granted except on condition that the minimum impris-  
27 onment provided in this section is served. Imposition of sentence may  
28 not be suspended, except as provided under (k) of this section.  
29 Unless imposition of sentence is suspended under (k) of this section,

1        if [IF] the offense involved driving a motor vehicle for which a  
2 driver's license is required, the person's driver's license shall be  
3 revoked under AS 28.15.181. In addition, the court shall order, and a  
4 person convicted under this section shall undertake, for a term spec-  
5 ified by the court, that program of alcohol education or rehabilita-  
6 tion that the court, after consideration of any information compiled  
7 under (h) of this section, finds appropriate. The sentence imposed by  
8 the court under this subsection shall run consecutively with any other  
9 sentence of imprisonment imposed on the committed person.

10 \* Sec. 7. AS 28.35.032 is amended by adding new subsections to read:

11            (k) The court may suspend imposition of sentence if the person  
12 has not within the preceding five years received a suspended imposi-  
13 tion of sentence under this subsection, the person has been recom-  
14 mended for alcoholism or drug treatment under (l) of this section, and  
15 the person has agreed to comply with the recommended treatment plan.  
16 A court suspending imposition of sentence under this subsection shall  
17 impose the following conditions for a period of one year:

18            (1) complete abstinence from alcoholic beverages and all  
19 controlled substances, unless prescribed by a physician;

20            (2) participation in periodic unscheduled urinalysis test-  
21 ing designed to detect the presence of alcohol or controlled sub-  
22 stances;

23            (3) participation in an intensive inpatient or outpatient  
24 alcoholism or drug treatment program approved by the state; the pro-  
25 gram must include

26            (A) weekly participation in at least two meetings of  
27 an alcoholism or drug self-help recovery support group; and

28            (B) monthly outpatient contact, on a group or indi-  
29 vidual basis; and

1                   (4) unless the person is indigent, payment of the full cost  
2 of the alcoholism or drug treatment program; in this paragraph "indi-  
3 gent" has the meaning given in AS 28.35.030(h)(4).

4                   (1) Before suspending imposition of sentence, the court shall  
5 refer the person to a state approved alcoholism or drug treatment  
6 facility for examination and evaluation. The evaluation of the person  
7 shall include a determination of whether (1) the person suffers from  
8 alcoholism or drug addiction; (2) the alcoholism or drug addiction is  
9 likely to cause the person to become a repeat offender; (3) long-term  
10 treatment is necessary; (4) effective treatment is available; and (5)  
11 the person is amenable to treatment. An evaluation required under  
12 this subsection shall be submitted to the court in writing and include  
13 findings and recommendations. If alcoholism or drug treatment is  
14 recommended, the evaluation must include a treatment plan indicating  
15 the type, nature, length, time schedule, and estimated cost of the  
16 recommended treatment.

17                   (m) In this section, "controlled substances" has the meaning  
18 given in AS 11.71.900.

19