

CS FOR HOUSE BILL NO. 42(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/31/17

Referred: Finance

Sponsor(s): REPRESENTATIVES WILSON, LeDoux, Kreiss-Tomkins, Millett, Grenn, Kopp, Eastman

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to seizure of property; relating to forfeiture to the state; relating to**
2 **criminal law; and providing for an effective date."**

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

4 * **Section 1.** AS 04.16.220(b) is amended to read:

5 (b) Property subject to forfeiture under this section may be forfeited to the
6 state under this section and the procedure required under AS 12.35.200 -
7 12.35.220 and AS 12.36.300 - 12.36.350 [ACTUALLY OR CONSTRUCTIVELY
8 SEIZED UNDER AN ORDER ISSUED BY THE SUPERIOR COURT UPON A
9 SHOWING OF PROBABLE CAUSE THAT THE PROPERTY IS SUBJECT TO
10 FORFEITURE UNDER THIS SECTION. CONSTRUCTIVE SEIZURE IS
11 EFFECTED UPON POSTING A SIGNED NOTICE OF SEIZURE ON THE ITEM
12 TO BE FORFEITED, STATING THE VIOLATION AND THE DATE AND PLACE
13 OF SEIZURE. SEIZURE WITHOUT A COURT ORDER MAY BE MADE IF

14 (1) THE SEIZURE IS INCIDENT TO A VALID ARREST OR

1 SEARCH;

2 (2) THE PROPERTY SUBJECT TO SEIZURE IS THE SUBJECT OF
3 A PRIOR JUDGMENT IN FAVOR OF THE STATE; OR

4 (3) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE
5 PROPERTY IS SUBJECT TO FORFEITURE UNDER (a) OF THIS SECTION;
6 EXCEPT FOR ALCOHOLIC BEVERAGES POSSESSED ON VIOLATION OF
7 AS 04.11.501 OR AN ORDINANCE ADOPTED UNDER AS 04.11.501,
8 PROPERTY SEIZED UNDER THIS PARAGRAPH MAY NOT BE HELD OVER
9 48 HOURS OR UNTIL AN ORDER OF FORFEITURE IS ISSUED BY THE
10 COURT, WHICHEVER IS EARLIER].

11 * **Sec. 2.** AS 08.54.720(f) is amended to read:

12 (f) In addition to the penalties set out in (b) - (e) of this section and a
13 disciplinary sanction imposed under AS 08.54.710,

14 (1) the court may order the board to suspend the guide license or
15 transporter license of a person who commits a misdemeanor offense set out in (a)(1),
16 (3) - (5), (7), (8), (17), (18), or (19) of this section for a specified period of not more
17 than three years;

18 (2) the court shall order the board to suspend the guide license or
19 transporter license of a person who commits a misdemeanor offense set out in (a)(2) or
20 (9) - (14) of this section for a specified period of not less than one year and not more
21 than five years;

22 (3) the court shall order the board to suspend the guide license or
23 transporter license for a specified period of not less than three years, or to permanently
24 revoke the guide license or transporter license, of a person who commits an offense set
25 out in (a)(15) or (16) of this section; and

26 (4) all guns, fishing tackle, boats, aircraft, automobiles, or other
27 vehicles, camping gear, and other equipment and paraphernalia used in, or in aid of, a
28 violation of (a) of this section may be seized by persons authorized to enforce this
29 chapter and may be forfeited to the state as provided under AS 16.05.195 and the
30 procedure required under AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350.

31 * **Sec. 3.** AS 11.41.468(a) is amended to read:

(a) Property used to aid a violation of AS 11.41.410 - 11.41.458 or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of AS 11.41.410 - 11.41.458 may be forfeited to the state **under AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350** upon the conviction of the offender.

* Sec. 4. AS 11.46.487 is amended to read:

Sec. 11.46.487. Forfeiture of property upon conviction. Firearms and other personal property, except a motor vehicle, used in aid of a violation of AS 11.46.460, 11.46.462, or 11.46.484(a)(5) may be forfeited to the state under AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350 upon conviction of the offender for the crime.

* **Sec. 5.** AS 11.61.129(a) is amended to read:

(a) Property used to aid a violation of AS 11.61.123 - 11.61.128 or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of AS 11.61.123 - 11.61.128 may be forfeited to the state **under AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350** upon the conviction of the offender.

* Sec. 6. AS 11.66.145 is amended to read:

Sec. 11.66.145. Forfeiture. Property used to institute, aid, or facilitate, or received or derived from, a violation of AS 11.66.100(e) or 11.66.110 - 11.66.135 may be forfeited **to the state under AS 12.36.300 - 12.36.350** at sentencing.

* Sec. 7. AS 11.73.060(a) is amended to read:

(a) Property used during or in aid of a violation of this chapter may be forfeited to the state **AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350** [TO THE EXTENT PERMITTED UNDER AND IN ACCORDANCE WITH THE PROVISIONS OF AS 17.30.110 - 17.30.126].

* **Sec. 8.** AS 12.35 is amended by adding new sections to read:

Article 2. Seizure of Property.

Sec. 12.35.200. Issuance of an order to seize property subject to forfeiture.

(a) Except as provided in AS 12.35.020, a court may issue an order to seize property that is subject to forfeiture if the court finds that

- (1) the property is subject to forfeiture; and
- (2) there is probable cause to believe that

(A) the state will prevail on the issue of forfeiture;

(B) failure to enter the order will result in the property being destroyed, removed from the state, or otherwise made unavailable for forfeiture; or

(C) the item to be seized is otherwise illegal to possess.

(b) Real property subject to forfeiture under this section may be seized after notice to the property owner and a hearing to determine the sufficiency of probable cause for the seizure. Nothing in this subsection prohibits the court from issuing an ex parte order to prohibit the sale or destruction of the real property. In this subsection, "real property" has the meaning given in AS 29.71.800.

(c) Property subject to forfeiture under this section may be seized at any time, without a prior court order, if the

(1) seizure is incident to a lawful arrest for an offense or to a search lawfully conducted under a search warrant and the law enforcement officer making the arrest or executing the search has probable cause to believe the property is subject to forfeiture;

(2) property subject to forfeiture is the subject of a previous judgment in favor of the state; or

(3) law enforcement officer making the seizure has probable cause to believe the property is subject to forfeiture and that the delay occasioned by the need to obtain a court order would result in the removal or destruction of the property or otherwise frustrate the seizure.

Sec. 12.35.210. Seized property. Seized property shall be kept by the custodian in a manner to protect it from theft or damage and, if ordered by the court, insured against those risks.

Sec. 12.35.220. Post-seizure hearing. (a) Following the seizure of property, the defendant in the related criminal matter or another person who claims an interest in seized property may request return of seized property. The request must be made to the court, identify the court case or search warrant number, and include facts to support the person's interest in the property. Except upon a showing of good cause, the post-seizure hearing shall occur within 45 days after the moving party's request.

(b) The moving party has the burden of proving by a preponderance of the evidence that the moving party is the lawful owner of the property, the property is not subject to forfeiture under AS 12.36.300, and the property is not otherwise illegal to possess. If the moving party meets the burden, the court shall order the property returned to the moving party, unless the party opposing return of the property proves by a preponderance of the evidence that the property must be retained for evidentiary purposes related to a criminal offense.

(c) Before ordering the return of seized property subject to forfeiture, the court

(1) must find that

(A) the item has no evidentiary value; or

(B) the parties have reached an agreement or stipulation that preserves the evidentiary value of the property or maintains the evidentiary integrity of the property; and

(2) may require the property owner to post cash or a secured monetary amount up to the fair market value of the property.

* Sec. 9. AS 12.36.020(a) is amended to read:

(a) A law enforcement agency may

(1) not return property in its custody to the owner or the agent of the
as provided in **AS 12.35.220**, AS 12.36.200, **or 12.36.320**, if

(A) the property is in custody in connection with a children's court proceeding, a criminal proceeding, or an official investigation of a crime; or

(B) the property in custody is subject to forfeiture under the laws of the

(i) state; or

(ii) United States, and the United States has commenced forfeiture proceedings against the property or has requested the transfer of the property for the commencement of forfeiture proceedings; and

(2) with the approval of the court, transfer the property to another state enforcement agency for forfeiture proceedings by that agency; the court shall grant the approval under this paragraph if the property

- (A) will be retained within the jurisdiction of the court by the agency to which the property is being transferred; or
- (B) is
 - (i) not needed as evidence; or
 - (ii) needed as evidence, and the property is fungible or the property's evidentiary value can otherwise be preserved without retaining the property within the jurisdiction of the court.

* **Sec. 10.** AS 12.36.060(a) is amended to read:

(a) A deadly weapon, other than a firearm or ammunition, forfeited to the state under AS 12.55.015(a)(9), unless remitted under **AS 12.36.320** [AS 12.36.050], shall be disposed of by the commissioner of public safety under this section. Under this subsection, the commissioner of public safety

(1) may declare a weapon surplus and transfer it to the commissioner of administration;

(2) may, if the weapon is suitable for law enforcement purposes, training, or identification, retain the weapon for use by the Department of Public Safety or transfer the weapon to the municipal law enforcement agency making the arrest that led to the forfeiture;

(3) shall destroy a weapon that is unsafe or unlawful.

* **Sec. 11.** AS 12.36.060(c) is amended to read:

(c) A firearm or ammunition forfeited to the state under AS 12.55.015(a)(9), unless remitted under **AS 12.36.320** [AS 12.36.050], shall be disposed of as provided in AS 18.65.340.

* **Sec. 12.** AS 12.36 is amended by adding new sections to read:

Article 3. Forfeiture.

Sec. 12.36.300. Property subject to forfeiture. (a) A person's property is subject to forfeiture if the

(1) person is convicted of an offense that provides for forfeiture by law, regulation, or ordinance; and

(2) state establishes by clear and convincing evidence that the property is subject to forfeiture under (b) of this section.

(b) Following conviction for an offense that provides for forfeiture by law, regulation, or ordinance, a court may order a person to forfeit

(1) property the person acquired through commission of the offense;

(2) property directly traceable to property acquired through the commission of the offense; or

(3) any instrumentality the person used in the commission of the offense.

(c) Any property that is otherwise illegal to possess is subject to forfeiture to the state.

(d) Nothing in this section prevents property from being forfeited by the terms of a plea agreement that is approved by a court or by other agreement of the parties to a criminal proceeding.

(e) In accordance with AS 09.55.700, nothing in this section limits or prevents civil forfeiture under other state law or authority outside of criminal proceedings.

Sec. 12.36.320. Remission of forfeited property. (a) A person seeking remission of the person's interest in property forfeited under AS 12.36.300 - 12.36.340 shall prove to the court by a preponderance of the evidence that the person

(1) holds a legal right, title, or interest in the property seized, acquired in good faith;

(2) did not knowingly participate in the commission of the crime in which the property was used;

(3) did not know or have reasonable cause to believe that the property was used or would be used to commit a crime; and

(4) obtained the property

(A) as a bona fide purchaser for fair market value;

(B) by inheritance before the date of the offense resulting in

(C) as a gift from a person other than the defendant; or

(D) lawfully in a manner the court considers just.

(b) Upon a showing that the person is entitled to relief under (a) of this section, the court may order that an amount equal to the value of the person's interest

1 be paid to the person or that the property be released to the person.

2 (c) A claim may not be filed under this section more than 120 days after the
 3 entry of the final judgment in the case in which the property was ordered forfeited.
 4 The court may extend the 120-day period upon a showing of good cause.

5 **Sec. 12.36.330. Forfeiture of substitute property.** Following a person's
 6 conviction, the state may make a motion for forfeiture of substitute property owned by
 7 the person that is equal to but does not exceed the value of property that is subject to
 8 forfeiture but that the state is unable to seize. The court shall order the forfeiture of
 9 substitute property only if the state proves by clear and convincing evidence that the
 10 person intentionally transferred, sold, or deposited property with a third party to avoid
 11 the court's jurisdiction and the forfeiture of the property, and the substitute property is
 12 owned in full by the convicted person.

13 **Sec. 12.36.340. Disposition of seized property.** (a) Within 30 days after
 14 receipt of a court order directing the return of property or of notification of the
 15 declination, acquittal, or dismissal of criminal charges, a law enforcement agency that
 16 holds seized property shall return the seized property to the owner of the property. The
 17 court may extend the 30-day period upon a showing of good cause.

18 (b) The Department of Law or the law enforcement agency that holds the
 19 seized property may petition the court to return or dispose of seized property at any
 20 time.

21 **Sec. 12.36.350. Annual report.** (a) By February 1 of each year, each law
 22 enforcement agency that initiates a case resulting in items being forfeited under
 23 AS 12.36.300 - 12.36.340 shall prepare a report, in the form required by the
 24 Department of Public Safety, itemizing property that has been forfeited to that law
 25 enforcement agency and transmit the report to the Department of Public Safety. The
 26 report must include all items forfeited as they are listed in the judgment.

27 (b) By April 1 of each year, the Department of Public Safety shall compile the
 28 reports submitted by each law enforcement agency under (a) of this section and
 29 publish an aggregate report on the department's Internet website.

30 * **Sec. 13.** AS 16.05.190 is amended to read:

31 **Sec. 16.05.190. Seizure and disposition of equipment.** Guns, traps, nets,

1 fishing tackle, boats, aircraft, automobiles or other vehicles, sleds, and other
2 paraphernalia used in or in aid of a violation of this chapter or a regulation of the
3 department may be seized under a valid search, and all fish and game, or parts of fish
4 and game, or nests or eggs of birds, taken, transported, or possessed contrary to the
5 provisions of this chapter or a regulation of the department shall be seized under
6 AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350 by any peace officer
7 designated in AS 16.05.150. Upon conviction of the offender or upon judgment of the
8 court having jurisdiction that the item was taken, transported, or possessed in violation
9 of this chapter or a regulation of the department, all fish and game, or parts of them are
10 forfeited to the state under AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350
11 and shall be disposed of as directed by the court. [IF SOLD, THE PROCEEDS OF
12 THE SALE SHALL BE TRANSMITTED TO THE PROPER STATE OFFICER FOR
13 DEPOSIT IN THE GENERAL FUND.] Guns, traps, nets, fishing tackle, boats,
14 aircraft, or other vehicles, sleds, and other paraphernalia seized under the provisions of
15 this chapter or a regulation of the department, unless forfeited by order of the court,
16 shall be returned as provided under AS 12.35.200 - 12.35.220 and AS 12.36.300 -
17 12.36.350, after completion of the case and payment of the fine, if any.

18 * **Sec. 14.** AS 16.05.722(b) is amended to read:

19 (b) In addition, the court shall order forfeiture to the state under
20 AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350 of any fish, or its fair market
21 value, taken or retained as a result of the commission of the violation. For purposes of
22 this subsection, it is a rebuttable presumption that all fish found on board a fishing
23 vessel used in or in aid of a violation, or found at the fishing site, were taken or
24 retained in violation of AS 16.05.440 - 16.05.690 or a commercial fisheries regulation
25 of the Board of Fisheries or the department. It is the defendant's burden to show by a
26 preponderance of the evidence that fish on board or at the site were lawfully taken and
27 retained.

28 * **Sec. 15.** AS 16.05.723(a) is amended to read:

29 (a) A person who negligently violates AS 16.05.440 - 16.05.690, or a
30 regulation of the Board of Fisheries or the department governing commercial fishing,
31 is guilty of a misdemeanor and in addition to punishment under other provisions in

1 this title, including AS 16.05.195, [AND] 16.05.710, and the procedure required
 2 under AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350 is punishable upon
 3 conviction by a fine of not more than \$15,000 or by imprisonment for not more than
 4 one year, or by both. In addition, the court shall order forfeiture to the state under
 5 AS 16.05.195 and the procedure required under AS 12.35.200 - 12.35.220 and
 6 AS 12.36.300 - 12.36.350 of any fish, or its fair market value, taken or retained as a
 7 result of the commission of the violation, and the court may order forfeiture to the
 8 state of [FORFEIT] any vessel and any fishing gear under AS 16.05.195 and the
 9 procedure required under AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350,
 10 including any net, pot, tackle, or other device designed or employed to take fish
 11 commercially, that was used in or in aid of the violation. Any fish, or its fair market
 12 value, forfeited under this subsection may not also be forfeited under AS 16.05.195.
 13 For purposes of this subsection, it is a rebuttable presumption that all fish found on
 14 board a fishing vessel used in or in aid of a violation, or found at the fishing site, were
 15 taken or retained in violation of AS 16.05.440 - 16.05.690 or a commercial fisheries
 16 regulation of the Board of Fisheries or the department, and it is the defendant's burden
 17 to show by a preponderance of the evidence that fish on board or at the site were
 18 lawfully taken and retained.

19 * **Sec. 16.** AS 16.05.782(b) is amended to read:

20 (b) In addition to the penalty imposed by law under (a) of this section, the
 21 court shall order forfeiture to the state under AS 16.05.195 and the procedure
 22 required under AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350 of the hide
 23 and skull of the bear, but if the hide and skull are not salvaged and delivered to the
 24 department then the court shall impose an additional fine of up to \$10,000.

25 * **Sec. 17.** AS 16.05.783(c) is amended to read:

26 (c) A person who violates this section is guilty of a misdemeanor, and upon
 27 conviction is punishable by a fine of not more than \$5,000, or by imprisonment for not
 28 more than one year, or by both. In addition, the court may order the aircraft and
 29 equipment used in or in aid of a violation of this section to be forfeited to the state
 30 under AS 16.05.195 and the procedure required under AS 12.35.200 - 12.35.220
 31 and AS 12.36.300 - 12.36.350.

1 * **Sec. 18.** AS 16.05.905(b) is amended to read:

2 (b) An alien person who violates (a) of this section is guilty of a misdemeanor,
 3 and upon conviction is punishable by a confiscation and forfeiture to the state under
 4 AS 16.05.195 and the procedure required under AS 12.35.200 - 12.35.220 and
 5 AS 12.36.300 - 12.36.350 of the fishing vessel used in the violation, or by
 6 imprisonment for not more than one year, or by fine of not more than \$10,000, or by
 7 all or any two of the foregoing punishments.

8 * **Sec. 19.** AS 16.43.970(g) is amended to read:

9 (g) A person who violates the provisions of AS 16.43.140(a) is

10 (1) upon a first conviction, guilty of a class B misdemeanor and may
 11 be sentenced to a definite term of imprisonment of not more than 90 days, or forfeiture
 12 to the state under AS 16.05.195 and the procedure required under AS 12.35.200 -
 13 12.35.220 and AS 12.36.300 - 12.36.350 of the person's fishing vessel, or both, and
 14 shall be sentenced to a fine of not less than \$5,000 nor more than \$10,000 and loss of
 15 commercial fishing privileges under (i) of this section;

16 (2) upon a second conviction, guilty of a class A misdemeanor and
 17 may be sentenced to a definite term of imprisonment of not more than one year, and
 18 shall be sentenced to a fine of not less than \$10,000 nor more than \$20,000, forfeiture
 19 to the state under AS 16.05.195 and the procedure required under AS 12.35.200 -
 20 12.35.220 and AS 12.36.300 - 12.36.350 of the person's fishing vessel, and loss of
 21 commercial fishing privileges under (i) of this section;

22 (3) upon a third or subsequent conviction, guilty of a class A
 23 misdemeanor and may be sentenced to a definite term of imprisonment of not more
 24 than one year, and shall be sentenced to a fine of not less than \$20,000 nor more than
 25 \$50,000, forfeiture to the state under AS 16.05.195 and the procedure required
 26 under AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350 of the person's fishing
 27 vessel, and loss of commercial fishing privileges under (i) of this section.

28 * **Sec. 20.** AS 17.30.110 is amended to read:

29 **Sec. 17.30.110. Items subject to forfeiture.** The following may be forfeited to
 30 the state under AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350:

31 (1) a controlled substance that has been manufactured, distributed,

1 dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

2 (2) raw materials, products, and equipment that are used or intended
3 for use in manufacturing, distributing, compounding, processing, delivering,
4 importing, or exporting a controlled substance that is a felony under this chapter or
5 AS 11.71;

6 (3) property that is used or intended for use as a container for property
7 described in (1) or (2) of this section;

8 (4) a conveyance, including but not limited to aircraft, vehicles, or
9 vessels, that has been used or is intended for use in transporting or in any manner in
10 facilitating the transportation, sale, receipt, possession, or concealment of property
11 described in (1) or (2) of this section in violation of a felony offense under this chapter
12 or AS 11.71; however,

13 (A) a conveyance may not be forfeited under this paragraph if
14 the owner of the conveyance establishes, by a preponderance of the evidence,
15 at a hearing before the court as the trier of fact, that use of the conveyance in
16 violation of this chapter or AS 11.71 was committed by another person and
17 that the owner was neither a consenting party nor privy to the violation;

18 (B) a forfeiture of a conveyance encumbered by a valid security
19 interest at the time of seizure is subject to the interest of the secured party if the
20 secured party establishes, by a preponderance of the evidence, at a hearing
21 before the court as the trier of fact, that use of the conveyance in violation of
22 this chapter or AS 11.71 was committed by another person and that the secured
23 party was neither a consenting party nor privy to the violation;

24 (5) books, records, and research products and materials, including
25 formulas, microfilm, tapes, and data, that are used in violation of this chapter or
26 AS 11.71;

27 (6) money, securities, negotiable instruments, or other things of value
28 used in financial transactions derived from activity prohibited by this chapter or
29 AS 11.71; and

30 (7) a firearm that is visible, carried during, or used in furtherance of a
31 violation of this chapter or AS 11.71.

1 * **Sec. 21.** AS 18.60.148(a) is amended to read:

2 (a) A transfer to the Alaska Wing, Civil Air Patrol, of a forfeited aircraft under
 3 AS 16.05.195(f), AS 17.30.122, **the procedure required under AS 12.35.200 -**
 4 **12.35.220 and AS 12.36.300 - 12.36.350**, or another state law or regulation is subject
 5 to the following conditions:

6 (1) the transfer shall be made without cost to the Civil Air Patrol;
 7 (2) the aircraft becomes a corporate Civil Air Patrol aircraft;
 8 (3) the aircraft may only be used for Civil Air Patrol search and rescue,
 9 civil defense, and training purposes;
 10 (4) the aircraft may not be transferred to another wing of the Civil Air
 11 Patrol unless

12 (A) the aircraft has been corporate aircraft of the Alaska Wing,
 13 Civil Air Patrol for at least 36 months after the date of transfer to the Alaska
 14 Wing; or

15 (B) the aircraft is being exchanged for another Civil Air Patrol
 16 corporate aircraft of equivalent or greater value;

17 (5) if the Civil Air Patrol determines that the aircraft should be
 18 disposed of as surplus property, the disposition shall first be approved by the
 19 Department of Administration.

20 * **Sec. 22.** AS 22.07.020(a) is amended to read:

21 (a) The court of appeals has appellate jurisdiction in actions and proceedings
 22 commenced in the superior court involving

23 (1) criminal prosecution;
 24 (2) post-conviction relief;
 25 (3) matters under AS 47.12, including waiver of jurisdiction over a
 26 minor under AS 47.12.100;

27 (4) extradition;
 28 (5) habeas corpus;
 29 (6) probation and parole; [AND]
 30 (7) bail;

31 **(8) forfeiture proceedings under AS 12.35.200 - 12.35.220 and**

1 **AS 12.36.300 - 12.36.350.**

2 * **Sec. 23.** AS 22.15.240 is amended by adding a new subsection to read:

3 (e) Any party may appeal to the superior court a judgment of the district court
4 in a forfeiture proceeding under AS 12.35.200 - 12.35.220 and AS 12.36.300 -
5 12.36.350.

6 * **Sec. 24.** AS 28.35.030(b) is amended to read:

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

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

11 (A) not less than 72 consecutive hours, require the person to
12 use an ignition interlock device after the person regains the privilege, including
13 any limited privilege, to operate a motor vehicle for a minimum of six months,
14 and impose a fine of not less than \$1,500 if the person has not been previously
15 convicted;

16 (B) not less than 20 days, require the person to use an ignition
17 interlock device after the person regains the privilege, including any limited
18 privilege, to operate a motor vehicle for a minimum of 12 months, and impose
19 a fine of not less than \$3,000 if the person has been previously convicted once;

20 (C) not less than 60 days, require the person to use an ignition
21 interlock device after the person regains the privilege, including any limited
22 privilege, to operate a motor vehicle for a minimum of 18 months, and impose
23 a fine of not less than \$4,000 if the person has been previously convicted twice
24 and is not subject to punishment under (n) of this section;

25 (D) not less than 120 days, require the person to use an ignition
26 interlock device after the person regains the privilege, including any limited
27 privilege, to operate a motor vehicle for a minimum of 24 months, and impose
28 a fine of not less than \$5,000 if the person has been previously convicted three
29 times and is not subject to punishment under (n) of this section;

30 (E) not less than 240 days, require the person to use an ignition
31 interlock device after the person regains the privilege, including any limited

privilege, to operate a motor vehicle for a minimum of 30 months, and impose a fine of not less than \$6,000 if the person has been previously convicted four times and is not subject to punishment under (n) of this section;

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

(2) the court may not

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

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

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

(B) suspend imposition of sentence; or

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

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036 **and the procedure required under AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350**; and

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

31 * Sec. 25. AS 28.35.030(n) is amended to read:

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

(1) shall impose a fine of not less than \$10,000, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of 60 months, and impose a minimum sentence of imprisonment of not less than

- (A) 120 days if the person has been previously convicted twice;
- (B) 240 days if the person has been previously convicted three

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

(2) may not

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

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

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

(B) suspend imposition of sentence; or

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

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

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

(5) shall order forfeiture under AS 28.35.036 and the procedure required under AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350 of the vehicle, watercraft, or aircraft used in the commission of the offense, subject to remission under AS 28.35.037; and

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

* **Sec. 26.** AS 28.35.032(g) is amended to read:

(g) Upon conviction under this section,

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

(A) not less than 72 consecutive hours, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of six months, and impose a fine of not less than \$1,500 if the person has not been previously convicted;

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

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

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

(E) not less than 240 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of 30 months, and impose a fine of not less than \$6,000 if the person has been previously convicted four times and is not subject to punishment under (p) of this section;

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

(2) the court may not

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

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

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

(B) suspend imposition of sentence; or

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

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036 **and the procedure required under AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350;**

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to

1 prevent the consumption of an alcoholic beverage; a condition of probation or parole
2 imposed under this paragraph is in addition to any other condition authorized under
3 another provision of law; and

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

6 * **Sec. 27.** AS 28.35.032(p) is amended to read:

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

13 (1) the court shall impose a fine of not less than \$10,000, require the
14 person to use an ignition interlock device after the person regains the privilege to
15 operate a motor vehicle for a minimum of 60 months, and impose a minimum sentence
16 of imprisonment of not less than

17 (A) 120 days if the person has been previously convicted twice;
18 (B) 240 days if the person has been previously convicted three
19 times;

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

22 (2) the court may not

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

25 (i) serve the minimum imprisonment under (1) of this
26 subsection;

27 (ii) pay the minimum fine required under (1) of this
28 subsection;

29 (B) suspend imposition of sentence; or

30 (C) suspend the requirements for an ignition interlock device;

31 (3) the court shall permanently revoke the person's driver's license,

1 privilege to drive, or privilege to obtain a license subject to restoration under (q) of
 2 this section;

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

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

10 (6) the court shall order forfeiture under AS 28.35.036 and the
 11 procedure required under AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350
 12 [,] of the motor vehicle, aircraft, or watercraft used in the commission of the offense,
 13 subject to remission under AS 28.35.037; and

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

19 * **Sec. 28.** AS 43.50.620 is amended to read:

20 **Sec. 43.50.620. Forfeiture and destruction of seized cigarettes.** Cigarettes
 21 seized under AS 43.50.500 - 43.50.700 are forfeited to the state under this chapter
 22 and the procedure required under AS 12.35.200 - 12.35.220 and AS 12.36.300 -
 23 12.36.350. After notice and an opportunity for a hearing, the commissioner shall
 24 destroy the cigarettes forfeited under this section.

25 * **Sec. 29.** AS 43.50.625(a) is amended to read:

26 (a) Upon a showing of probable cause that a person has committed the crime
 27 of misconduct involving unstamped cigarettes or stamps in the first degree under
 28 AS 43.50.640, the following are subject to forfeiture to the state under this chapter
 29 and the procedure required under AS 12.35.200 - 12.35.220 and AS 12.36.300 -
 30 12.36.350:

31 (1) material and equipment used in the manufacture, sale, offering for

1 sale, or possession for sale of cigarettes in this state in violation of AS 43.50.500 -
2 43.50.640 or 43.50.660 - 43.50.700;

3 (2) aircraft, vehicles, or vessels used to transport or facilitate the
4 transportation of cigarettes manufactured, sold, offered for sale, or possessed for sale
5 in this state in violation of AS 43.50.500 - 43.50.640 or 43.50.660 - 43.50.700;

6 (3) money, securities, negotiable instruments, or other things of value
7 used in financial transactions derived from activity prohibited under AS 43.50.500 -
8 43.50.640 or 43.50.660 - 43.50.700.

9 * **Sec. 30.** AS 43.50.625(d) is amended to read:

10 (d) Property subject to forfeiture under (a) of this section may be forfeited **to**
11 **the state under this chapter and the procedure required under AS 12.35.200 -**
12 **12.35.220 and AS 12.36.300 - 12.36.350**

13 (1) upon conviction of a person for a violation of AS 43.50.640; or

14 (2) upon judgment by the superior court in a proceeding in rem that the
15 property was used in a manner subjecting it to forfeiture under (a) of this section.

16 * **Sec. 31.** AS 12.36.050 is repealed.

17 * **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 APPLICABILITY. This Act applies to forfeitures occurring on or after the effective
20 date of this Act.

21 * **Sec. 33.** This Act takes effect July 1, 2017.