



LAWS OF ALASKA

1996

Source

SCS CSHB 204(FIN)

Chapter No.

143

AN ACT

Relating to the administrative revocation of a minor's license to drive; creating criminal offenses of minor operating a vehicle after consuming alcohol, a minor's refusal to submit to chemical test, and driving during the 24 hours after being cited for minor operating a vehicle after consuming alcohol or refusal to submit to chemical test; establishing penalties for these offenses; relating to court ordered drug and alcohol screening, evaluation, referral, and programs; relating to implied consent to certain testing if operating a motor vehicle, aircraft, or watercraft; relating to an instrument's working tolerance in a chemical breath test; relating to the authority of a court to impose a suspended sentence after failure to complete a treatment program upon conviction of felony driving while intoxicated or felony refusal to submit to a chemical test; relating to the period of time a court may consider for determining prior convictions in sentencing a person convicted of felony driving while intoxicated or felony refusal to submit to a chemical test; amending Rules 6 and 32.1, Alaska Rules of Criminal Procedure, to allow the use of hearsay evidence before a grand jury in a prosecution for felony driving while intoxicated or felony refusal to submit to a chemical test and to not require a presentence report for a first felony driving while intoxicated or first felony refusal to submit to a chemical test; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: August 10, 1996

Actual Effective Date: Sections 14 - 16 are conditional; remainder of Act takes effect November 8, 1996

AN ACT

1 Relating to the administrative revocation of a minor's license to drive; creating criminal
2 offenses of minor operating a vehicle after consuming alcohol, a minor's refusal to submit to
3 chemical test, and driving during the 24 hours after being cited for minor operating a vehicle
4 after consuming alcohol or refusal to submit to chemical test; establishing penalties for these
5 offenses; relating to court ordered drug and alcohol screening, evaluation, referral, and
6 programs; relating to implied consent to certain testing if operating a motor vehicle, aircraft,
7 or watercraft; relating to an instrument's working tolerance in a chemical breath test; relating
8 to the authority of a court to impose a suspended sentence after failure to complete a treatment
9 program upon conviction of felony driving while intoxicated or felony refusal to submit to a

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1 chemical test; relating to the period of time a court may consider for determining prior
2 convictions in sentencing a person convicted of felony driving while intoxicated or felony
3 refusal to submit to a chemical test; amending Rules 6 and 32.1, Alaska Rules of Criminal
4 Procedure, to allow the use of hearsay evidence before a grand jury in a prosecution for felony
5 driving while intoxicated or felony refusal to submit to a chemical test and to not require a
6 presentence report for a first felony driving while intoxicated or first felony refusal to submit
7 to a chemical test; and providing for an effective date.

8

9 * Section 1. AS 28.15.183(a) is amended to read:

10 (a) If a peace officer has probable cause to believe that a person who is at least
11 14 years of age but not yet 21 years of age has possessed or used a controlled substance
12 in violation of AS 11.71, or a municipal ordinance with substantially similar elements,
13 or possessed or consumed alcohol in violation of AS 04.16.050 or a municipal ordinance
14 with substantially similar elements, operated a vehicle after consuming alcohol in
15 violation of AS 28.35.280, or refused to submit to a chemical test under
16 AS 28.35.285 and the peace officer has cited the person or arrested the person for a
17 violation of AS 11.71, AS 04.16.050, AS 28.35.280, or 28.35.285 or the municipal
18 ordinance with substantially similar elements, the peace officer shall read a notice and
19 deliver a copy to the person. The notice must advise that

20 (1) the department intends to revoke the person's driver's license or
21 permit, privilege to drive, or privilege to obtain a license or permit;

22 (2) the person has the right to administrative review of the revocation;

23 (3) if the person has a driver's license or permit, the notice itself is a
24 temporary driver's license or permit that expires seven days after it is delivered to the
25 person;

26 (4) revocation of the person's driver's license or permit, privilege to drive,
27 or privilege to obtain a license or permit, takes effect seven days after delivery of the
28 notice to the person unless the person, within seven days, requests an administrative
29 review;

1 (5) if the person has been cited under AS 28.35.280 or under
2 AS 28.35.285, that person, under AS 28.35.290, may not operate a motor vehicle,
3 aircraft, or watercraft during the 24 hours following issuance of the citation.

4 * Sec. 2. AS 28.15.183(c) is amended to read:

5 (c) Unless the person has requested an administrative review, the department
6 shall revoke the person's driver's license or permit, privilege to drive, or privilege to
7 obtain a license or permit, effective seven days after delivery to the person of the notice
8 required under (a) of this section, upon receipt of a sworn report of a peace officer

9 (1) that the officer had probable cause to believe that the person is at
10 least 14 years of age but not yet 21 years of age and has possessed or used a controlled
11 substance in violation of AS 11.71₂, or a municipal ordinance with substantially similar
12 elements, or possessed or consumed alcohol in violation of AS 04.16.050 or a municipal
13 ordinance with substantially similar elements, operated a vehicle after consuming
14 alcohol in violation of AS 28.35.280, or refused to submit to a chemical test of
15 breath under AS 28.35.285;

16 (2) that the peace officer has cited the person or arrested the person for

17 (A) a violation of AS 11.71₂ [OR] AS 04.16.050, AS 28.35.280,
18 or 28.35.285; or

19 (B) possession or use of a controlled substance or alcohol in
20 violation of a municipal ordinance with substantially similar elements;

21 (3) that notice under (a) of this section was provided to the person; and

22 (4) describing the circumstances surrounding the violation of the
23 controlled substances provisions of AS 11.71, the alcoholic beverages provisions of
24 AS 04.16.050, or the municipal ordinance with substantially similar elements, the minor
25 operating a vehicle after consuming alcohol under provisions of AS 28.35.280, or the
26 minor refusing to submit to a chemical test of breath under provisions of
27 AS 28.35.285.

28 * Sec. 3. AS 28.15.183(g) is amended to read:

29 (g) Except as provided under (h) of this section, the department may not issue
30 a new license or reissue a license to a person whose driver's license, permit, or privilege to
31 drive has been revoked under this section unless the person is enrolled in and is in

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1 compliance with, or has successfully completed

2 (1) an alcoholism education or rehabilitation treatment program, if the
3 revocation resulted from possession or consumption of alcohol in violation of
4 AS 04.16.050 or a municipal ordinance with substantially similar elements, from
5 operating a vehicle after consuming alcohol in violation of AS 28.35.280, or from
6 refusal to submit to a chemical test of breath in violation of AS 28.35.285; or

7 (2) a drug education or rehabilitation treatment program, if the revocation
8 resulted from possession or use of a controlled substance in violation of AS 11.71 or a
9 municipal ordinance with substantially similar elements.

10 * Sec. 4. AS 28.15.184(g) is amended to read:

11 (g) The hearing for review of a revocation by the department under
12 AS 28.15.183 shall be limited to the issues of whether the person was at least 14 years
13 of age but not yet 21 years of age and whether the person possessed or used a controlled
14 substance in violation of AS 11.71 or a municipal ordinance with substantially similar
15 elements, or possessed or consumed alcohol in violation of AS 04.16.050 or a municipal
16 ordinance with substantially similar elements, operated a vehicle after consuming
17 alcohol in violation of AS 28.35.280, or refused to submit to a chemical test of
18 breath in violation of AS 28.35.285.

19 * Sec. 5. AS 28.35.030(h) is amended to read:

20 (h) The court shall order a person convicted under this section to satisfy the
21 screening, evaluation, referral, and program requirements of an alcohol safety action
22 program if such a program is available in the community where the person resides,
23 or a private or public treatment facility approved by the division of alcoholism and
24 drug abuse, of the Department of Health and Social Services, under AS 47.37 [AN
25 AGENCY AUTHORIZED BY THE COURT] to make referrals for rehabilitative
26 treatment or to provide rehabilitative treatment. If a person is convicted under (n) of this
27 section, the court shall order the person to be evaluated as required by this subsection
28 before the court imposes sentence for the offense.

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

30 (j) If a person fails to satisfy the requirements of an authorized agency under (i)
31 of this section, the court

1 (1) may impose any portion of a suspended sentence; however, if the
2 person was convicted under (n) of this section, the court shall impose a part or all of
3 the remaining portion of any suspended sentence;

4 (2) may punish the failure as contempt of the authority of the court under
5 AS 09.50.010 or as a violation of a condition of probation; and

6 (3) shall order the revocation or suspension of the person's driver's
7 license, privilege to drive, and privilege to obtain a driver's license until the requirements
8 are satisfied.

9 * Sec. 7. AS 28.35.030(n) is amended to read:

10 (n) A person is guilty of a class C felony if the person is convicted of driving
11 while intoxicated and has been previously convicted two or more times within the five
12 years preceding the date of the present offense. For purposes of determining
13 minimum sentences based on previous convictions [IF A PERSON HAS BEEN
14 PREVIOUSLY CONVICTED], the provisions of (o)(4) of this section apply [, EXCEPT
15 THAT ONLY CONVICTIONS OCCURRING WITHIN FIVE YEARS PRECEDING
16 THE DATE OF THE PRESENT OFFENSE MAY BE INCLUDED]. Upon conviction,
17 the court

18 (1) shall impose a fine of not less than \$5,000 and a minimum sentence
19 of imprisonment of not less than

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

21 (B) 240 days if the person has been previously convicted three

22 times;

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

25 (2) may not

26 (A) suspend execution of sentence or grant probation except on
27 condition that the person serve the minimum imprisonment under (1) of this
28 subsection; or

29 (B) suspend imposition of sentence;

30 (3) shall revoke the person's driver's license, privilege to drive, or
31 privilege to obtain a license under AS 28.15.181(c);

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

5 (5) may also order forfeiture under AS 28.35.036 of the vehicle or
6 aircraft used in the commission of the offense, subject to remission under AS 28.35.037.

7 * Sec. 8. AS 28.35.031(a) is amended to read:

8 (a) A person who operates or drives a motor vehicle in this state or who operates
9 an aircraft as defined in AS 28.35.030(o) or who operates a watercraft as defined in
10 AS 28.35.030(o) shall be considered to have given consent to a chemical test or tests of
11 the person's breath for the purpose of determining the alcoholic content of the person's
12 blood or breath if lawfully arrested for an offense arising out of acts alleged to have been
13 committed while the person was operating or driving a motor vehicle or operating an
14 aircraft or a watercraft while intoxicated or if lawfully arrested under AS 28.35.280
15 for the offense of minor operating a vehicle after consuming alcohol. The test or
16 tests shall be administered at the direction of a law enforcement officer who has
17 reasonable grounds to believe that the person was operating or driving a motor vehicle
18 or operating an aircraft or a watercraft in this state while intoxicated or that the person
19 was a minor operating a vehicle after consuming alcohol.

20 * Sec. 9. AS 28.35.032(l) is amended to read:

21 (l) The court shall order a person convicted under this section to satisfy the
22 screening, evaluation, referral, and program requirements of an alcohol safety action
23 program if such a program is available in the community where the person resides,
24 or a private or public treatment facility approved by the division of alcoholism and
25 drug abuse, of the Department of Health and Social Services, under AS 47.37 [AN
26 AGENCY AUTHORIZED BY THE COURT] to make referrals for rehabilitative
27 treatment or to provide rehabilitative treatment. If a person is convicted under (p) of this
28 section, the court shall order the person to be evaluated as required by this subsection
29 before the court imposes sentence for the offense.

30 * Sec. 10. AS 28.35.032(n) is amended to read:

31 (n) If a person fails to satisfy the requirements of an authorized agency under

1 (m) of this section, the court

2 (1) may impose any portion of a suspended sentence; however, if the
3 person was convicted under (p) of this section, the court shall impose a part or all of
4 the remaining portion of any suspended sentence;

5 (2) may punish the failure as contempt of the authority of the court
6 under AS 09.50.010 or as a violation of a condition of probation; and

7 (3) shall order the revocation or suspension of the person's driver's
8 license, privilege to drive, and privilege to obtain a driver's license until the
9 requirements are satisfied.

10 * Sec. 11. AS 28.35.032(p) is amended to read:

11 (p) A person is guilty of a class C felony if the person is convicted under this
12 section and has been previously convicted two or more times within the five years
13 preceding the date of the present offense. For purposes of determining minimum
14 sentences based on previous convictions [IF A PERSON HAS BEEN PREVIOUSLY
15 CONVICTED], the provisions of AS 28.35.030(o)(4) apply [, EXCEPT THAT ONLY
16 CONVICTIONS OCCURRING WITHIN FIVE YEARS PRECEDING THE DATE OF
17 THE PRESENT OFFENSE MAY BE INCLUDED]. Upon conviction,

18 (1) the court shall impose a fine of not less than \$5,000 and a
19 minimum sentence of imprisonment of not less than

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

21 (B) 240 days if the person has been previously convicted three
22 times;

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

25 (2) the court may not

26 (A) suspend execution of the sentence required by (1) of this
27 subsection or grant probation, except on condition that the person serve the
28 minimum imprisonment under (1) of this subsection; or

29 (B) suspend imposition of sentence;

30 (3) the court shall revoke the person's driver's license, privilege to
31 drive, or privilege to obtain a license under AS 28.15.181(c);

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

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

7 (6) the court may also order forfeiture under AS 28.35.036, of the
8 vehicle or aircraft used in the commission of the offense, subject to remission under
9 AS 28.35.037.

10 * Sec. 12. AS 28.35.039 is amended to read:

11 Sec. 28.35.039. **DEFINITIONS** [DEFINITION] FOR AS 28.35.029 - 28.35.039.

12 In AS 28.35.029 - 28.35.039,

13 (1) "controlled substance" has the meaning given in AS 28.33.190;

14 (2) "**alcohol safety action program**" means a program designated by
15 **the commissioner of health and social services as an alcohol safety action program.**

16 * Sec. 13. AS 28.35 is amended by adding new sections to read:

17 ARTICLE 6. CERTAIN OFFENSES RELATING TO MINORS.

18 Sec. 28.35.280. MINOR OPERATING A VEHICLE AFTER CONSUMING
19 ALCOHOL. (a) A person who is at least 14 years of age but not yet 21 years of age
20 commits the offense of minor operating a vehicle after consuming alcohol if the person
21 operates or drives a motor vehicle or operates an aircraft or a watercraft after having
22 consumed any quantity of alcohol. A peace officer who has probable cause to believe
23 that a person has committed the offense of minor operating a vehicle after consuming
24 alcohol may

25 (1) place the person under arrest;

26 (2) request that the person submit to a chemical test or tests of the
27 person's breath for the purpose of determining the alcoholic content of the person's blood
28 or breath; and

29 (3) transport the person to a location at which a chemical or other test
30 authorized under (2) of this subsection may be administered.

31 (b) If a chemical test under this section reveals any alcohol concentration within

1 the person's blood or breath, the person shall be cited for violating this section and then
2 released unless there is a lawful reason for further detention. A person who is 18 years
3 of age or older shall be released on the person's own recognizance. A person who is
4 under the age of 18 shall be released to a parent, guardian, or legal custodian.

5 (c) A person who is cited for violating this section shall be advised by a peace
6 officer that it is unlawful under AS 28.35.290 for the person to operate a motor vehicle,
7 aircraft, or watercraft during the 24 hours following the issuance of the citation.

8 (d) The offense of a minor operating a vehicle after consuming alcohol is an
9 infraction. Upon conviction, the court shall impose a fine of not more than \$1,000,
10 community work service, or both. The court may offer the minor the option of
11 performing community work in place of a fine or a portion of the fine. The value of
12 community work in place of a fine is as specified in AS 12.55.055(c).

13 (e) In this section,

14 (1) "operate an aircraft" has the meaning given in AS 28.35.030(o);

15 (2) "operate a watercraft" has the meaning given in AS 28.35.030(o).

16 Sec. 28.35.285. MINOR'S REFUSAL TO SUBMIT TO CHEMICAL TEST. (a)
17 If a person under arrest for minor operating a vehicle after consuming alcohol refuses
18 the request of a peace officer to submit to a chemical test or tests of the person's breath
19 authorized under AS 28.35.031(a) and 28.35.280(a), after being advised by the officer
20 that the refusal will result in the denial or revocation of the driver's license, privilege to
21 drive, or privilege to obtain a license, that the refusal may be used against the person in
22 a civil or criminal action or proceeding arising out of an act alleged to have been
23 committed by the person while operating a vehicle after consuming alcohol, and that the
24 refusal is a violation, a chemical test may not be given.

25 (b) A person who is cited for violating this section shall be advised by a peace
26 officer that it is unlawful under AS 28.35.290 for the person to operate a motor vehicle,
27 aircraft, or watercraft during the 24 hours following the issuance of the citation.

28 (c) The refusal of a minor to submit to a chemical test authorized under
29 AS 28.35.031(a) and 28.35.280(a) is admissible evidence in a civil or criminal action or
30 proceeding arising out of an act alleged to have been committed by the person while
31 operating a vehicle after consuming alcohol.

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1 (d) Refusal to submit to a chemical test or tests of the person's breath requested
2 under AS 28.35.280 is an infraction. Upon conviction, the court shall impose a fine of
3 not more than \$1,000, or community work service, or both. The court may offer the
4 minor the option of performing community work in place of a fine or a portion of the
5 fine. The value of community work in place of a fine is as specified in AS 12.55.055(c).

6 Sec. 28.35.290. DRIVING DURING THE 24 HOURS AFTER BEING CITED
7 FOR ALCOHOL OR BREATH TEST OFFENSES. (a) A person who has been cited
8 for minor operating a vehicle after consuming alcohol under AS 28.35.280 or for refusal
9 to submit to a chemical test of breath under AS 28.35.285 may not operate a motor
10 vehicle, aircraft, or watercraft during the 24 hours following issuance of the citation.

11 (b) Operating a motor vehicle, aircraft, or watercraft during the 24 hours after
12 being cited for minor operating a vehicle after consuming alcohol or for minor's refusal
13 to submit to a chemical test is an infraction. Upon conviction, the court shall impose a
14 fine of not more than \$1,000, or community work service, or both. The court may offer
15 the minor the option of performing community work in place of the fine or a portion of
16 the fine. The value of community work in place of a fine is as specified in
17 AS 12.55.055(c).

18 (c) In this section,

19 (1) "operate an aircraft" has the meaning given in AS 28.35.030(o);

20 (2) "operate a watercraft" has the meaning given in AS 28.35.030(o).

21 * Sec. 14. AS 28.35.280(d) is repealed and reenacted to read:

22 (d) The offense of a minor operating a vehicle after consuming alcohol is an
23 infraction. Upon conviction, the court shall impose a fine of not more than \$1,000. The
24 court may offer the minor the option of performing community work in place of a fine
25 or a portion of a fine. The value of community work in place of a fine is as specified
26 in AS 12.55.055(c).

27 * Sec. 15. AS 28.35.285(d) is repealed and reenacted to read:

28 (d) Refusal to submit to a chemical test or tests of the person's breath requested
29 under AS 28.35.280 is an infraction. Upon conviction, the court shall impose a fine of
30 not more than \$1,000. The court may offer the minor the option of performing
31 community work in place of a fine or a portion of the fine. The value of community

1 work in place of a fine is as specified in AS 12.55.055(c).

2 * Sec. 16. AS 28.35.290(b) is repealed and reenacted to read:

3 (b) Operating a motor vehicle, aircraft, or watercraft during the 24 hours after
4 being cited for minor operating a vehicle after consuming alcohol is an infraction. Upon
5 conviction, the court shall impose a fine of not more than \$1,000. The court may offer
6 the minor the option of performing community work in place of the fine or a portion of
7 the fine. The value of community work in place of a fine is as specified in
8 AS 12.55.055(c).

9 * Sec. 17. AS 28.40 is amended by adding a new section to read:

10 Sec. 28.40.060. BREATH TEST RESULT VALIDITY. Except for an offense
11 under AS 28.35.280, if an offense described under this title requires that a chemical test
12 of a person's breath produce a particular result, and the chemical test is administered by
13 a properly calibrated instrument approved by the Department of Public Safety, the result
14 described by statute is not affected by the instrument's working tolerance.

15 * Sec. 18. Rule 6(r)(1), Alaska Rules of Criminal Procedure, is amended to read:

16 (1) Evidence which would be legally admissible at trial shall be
17 admissible before the grand jury. In appropriate cases, however, witnesses may be
18 presented to summarize admissible evidence if the admissible evidence will be
19 available at trial. Except as stated in subparagraphs (2), [AND] (3), **and (6)**, hearsay
20 evidence shall not be presented to the grand jury absent compelling justification for
21 its introduction. If hearsay evidence is presented to the grand jury, the reasons for its
22 use shall be stated on the record.

23 * Sec. 19. Rule 6(r), Alaska Rules of Criminal Procedure, is amended by adding a new
24 paragraph to read:

25 (6) In a prosecution for driving while intoxicated under
26 AS 28.35.030(n) or for refusal to submit to a chemical test under AS 28.35.032(p),
27 hearsay evidence received through the Alaska Public Safety Information Network or
28 from other governmental agencies of prior convictions of driving while intoxicated or
29 refusal to submit to a chemical test may be presented to the grand jury.

30 * Sec. 20. Rule 32.1(a), Alaska Rules of Criminal Procedure, is amended to read:

31 (a) Scheduling. At the time guilt in a felony case is established by verdict or

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1 plea, the judge shall establish the date for a sentencing hearing and a presentencing
2 hearing, if appropriate, and except as provided under subsection (f) of this rule,
3 shall order a presentence investigation by the Department of Corrections. If the judge
4 elects to schedule a single hearing, all of the procedures for the presentencing and
5 sentencing hearings shall be applicable at the single hearing.

6 * **Sec. 21.** Rule 32.1, Alaska Rules of Criminal Procedure, is amended by adding a new
7 subsection to read:

8 (f) When Presentence Investigation Not Required. Unless a person may be
9 sentenced to a presumptive term of imprisonment under AS 12.55.125(e)(1) or (2), a
10 presentence investigation by the Department of Corrections is not required for a
11 defendant convicted of driving while intoxicated under AS 28.35.030(n) or refusal to
12 submit to a chemical test under AS 28.35.032(p).

13 * **Sec. 22.** Sections 1 - 13 and 17 - 21 of this Act apply only to acts committed on or after
14 the effective date of secs. 1 - 13 and 17 - 21 of this Act, except that to the extent that the
15 amendments made by secs. 6, 7, 10, 11, and 18 - 21 of this Act involve prior convictions,
16 those prior convictions may have occurred before, on, or after the effective date of this Act.

17 * **Sec. 23.** Sections 14 - 16 of this Act take effect only upon a final decision by the Alaska
18 Court of Appeals and the Alaska Supreme Court that the possibility of imposing community
19 work service by the court for the offenses prohibited under AS 28.35.280, 28.35.285, and
20 28.35.290 gives rise to the right to court appointed counsel and trial by jury.