

**CS FOR HOUSE BILL NO. 204(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 2/28/96

Referred: Rules

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the administrative revocation of a minor's license to drive;  
2 creating criminal offenses of minor operating a vehicle after consuming alcohol,  
3 a minor's refusal to submit to chemical test, and driving during the 24 hours  
4 after being cited for minor operating a vehicle after consuming alcohol;  
5 establishing penalties for these offenses; relating to implied consent to certain  
6 testing if operating a motor vehicle, aircraft, or watercraft; and providing for  
7 an effective date."

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

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

1 with substantially similar elements, **operated a vehicle after consuming alcohol in**  
2 **violation of AS 28.35.280, or refused to submit to a chemical test under**  
3 **AS 28.35.285** and the peace officer has cited the person or arrested the person for a  
4 violation of AS 11.71, AS 04.16.050, **AS 28.35.280, or 28.35.285** or the municipal  
5 ordinance with substantially similar elements, the peace officer shall read a notice and  
6 deliver a copy to the person. The notice must advise that

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

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

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

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

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

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

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

25 (1) that the officer had probable cause to believe that the person is at  
26 least 14 years of age but not yet 21 years of age and has possessed or used a controlled  
27 substance in violation of AS 11.71, or a municipal ordinance with substantially similar  
28 elements, or possessed or consumed alcohol in violation of AS 04.16.050 or a municipal  
29 ordinance with substantially similar elements, **operated a vehicle after consuming**  
30 **alcohol in violation of AS 28.35.280, or refused to submit to a chemical test of**  
31 **breath under AS 28.35.285;**

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

1 (A) a violation of AS 11.71, [OR] AS 04.16.050, AS 28.35.280,  
2 or 28.35.285; or

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

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

6 (4) describing the circumstances surrounding the violation of the  
7 controlled substances provisions of AS 11.71, the alcoholic beverages provisions of  
8 AS 04.16.050, or the municipal ordinance with substantially similar elements, the minor  
9 operating a vehicle after consuming alcohol provisions of AS 28.35.280, or the minor  
10 refusing to submit to a chemical test of breath under provisions of AS 28.35.285.

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

12 (g) Except as provided under (h) of this section, the department may not issue  
13 a new license or reissue a license to a person whose driver's license, permit, or privilege  
14 to drive has been revoked under this section unless the person is enrolled in and is in  
15 compliance with, or has successfully completed

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

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

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

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

1 \* **Sec. 5.** AS 28.35.031(a) is amended to read:

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

14 \* **Sec. 6.** AS 28.35 is amended by adding new sections to read:

15 ARTICLE 6. CERTAIN OFFENSES RELATING TO MINORS.

16 Sec. 28.35.280. MINOR OPERATING A VEHICLE AFTER CONSUMING  
17 ALCOHOL. (a) A person who is at least 13 years of age but not yet 21 years of age  
18 commits the offense of minor operating a vehicle after consuming alcohol if the person  
19 operates or drives a motor vehicle or operates an aircraft or a watercraft after having  
20 consumed any quantity of alcohol. A peace officer who has probable cause to believe  
21 that a person has committed the offense of minor operating a vehicle after consuming  
22 alcohol may

23 (1) place the person under arrest;

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

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

29 (b) If a chemical test under (a) of this section reveals any alcohol concentration  
30 within the person's blood or breath, the person shall be cited for violating (a) of this  
31 section and then released unless there is a lawful reason for further detention. A person  
32 who is 18 years of age or older shall be released on the person's own recognizance. A

1 person who is under the age of 18 shall be released to a parent, guardian, or legal  
2 custodian.

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

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

11 (e) In this section,

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

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

14 Sec. 28.35.285. MINOR'S REFUSAL TO SUBMIT TO CHEMICAL TEST.

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

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

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

30 (d) Refusal to submit to a chemical test or tests of the person's breath requested  
31 under AS 28.35.280 is an infraction. Upon conviction, the court shall impose a fine of  
32 not more than \$1,000, or community work service, or both. The court may offer the

1 minor the option of performing community work in place of a fine or a portion of the  
2 fine. The value of community work in place of a fine is as specified in AS 12.55.055(c).

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

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

15 (c) In this section,

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

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

18 \* **Sec. 7.** AS 28.35.280(d) is repealed and reenacted to read:

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

24 \* **Sec. 8.** AS 28.35.285(d) is repealed and reenacted to read:

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

30 \* **Sec. 9.** AS 28.35.290(b) is repealed and reenacted to read:

31 (b) Operating a motor vehicle, aircraft, or watercraft during the 24 hours after  
32 being cited for minor operating a vehicle after consuming alcohol is an infraction. Upon

1 conviction, the court shall impose a fine of not more than \$1,000. The court may offer  
2 the minor the option of performing community work in place of the fine or a portion of  
3 the fine. The value of community work in place of a fine is as specified in  
4 AS 12.55.055(c).

5 \* **Sec. 10.** Sections 1 - 6 of this Act apply only to acts committed on or after the effective  
6 date of secs. 1 - 6 of this Act.

7 \* **Sec. 11.** Sections 7 - 9 of this Act take effect only upon a final decision by the Alaska  
8 Court of Appeals and the Alaska Supreme Court that the possibility of imposing community  
9 work service by the court for the offenses prohibited under AS 28.35.280, 28.35.285, and  
10 28.35.290 gives rise to the right to court appointed counsel and trial by jury.