

SENATE CS FOR CS FOR HOUSE BILL NO. 204(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/1/96
Referred: Finance

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 or refusal
5 to submit to chemical test; establishing penalties for these offenses; relating to
6 court ordered drug and alcohol screening, evaluation, referral, and programs;
7 relating to implied consent to certain testing if operating a motor vehicle, aircraft,
8 or watercraft; relating to an instrument's working tolerance in a chemical breath
9 test; relating to the authority of a court to impose a suspended sentence after
10 failure to complete a treatment program upon conviction of felony driving while
11 intoxicated or felony refusal to submit to a chemical test; relating to the period
12 of time a court may consider for determining prior convictions in sentencing a

1 person convicted of felony driving while intoxicated or felony refusal to submit
2 to a chemical test; amending Rules 6 and 32.1, Alaska Rules of Criminal
3 Procedure, to allow the use of hearsay evidence before a grand jury in a
4 prosecution for felony driving while intoxicated or felony refusal to submit to a
5 chemical test and to not require a presentence report for a first felony driving
6 while intoxicated or first felony refusal to submit to a chemical test; and
7 providing for 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
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
27 drive, or privilege to obtain a license or permit, takes effect seven days after delivery of
28 the 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 11.71, 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 11.71, [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 provisions of AS 28.35.280, or the minor
26 refusing to submit to a chemical test of breath under provisions of AS 28.35.285.

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

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30 to drive has been revoked under this section unless the person is enrolled in and is in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

32 (1) an alcoholism education or rehabilitation treatment program, if the

1 revocation resulted from possession or consumption of alcohol in violation of
2 AS 04.16.050 or a municipal ordinance with substantially similar elements, **from**
3 **operating a vehicle after consuming alcohol in violation of AS 28.35.280, or from**
4 **refusal to submit to a chemical test of breath in violation of AS 28.35.285;** or

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

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

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

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

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

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

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

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

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

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

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

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

15 (1) shall impose a fine of not less than \$5,000 and 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 or
21 more times;

22 (2) may not

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

26 (B) suspend imposition of sentence;

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

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

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

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

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

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

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

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

27 (n) If a person fails to satisfy the requirements of an authorized agency under
28 (m) of this section, the court

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

32 (2) may punish the failure as contempt of the authority of the court

1 under AS 09.50.010 or as a violation of a condition of probation; and

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

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

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

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

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

16 (B) 240 days if the person has been previously convicted three
17 times;

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

20 (2) the court may not

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

24 (B) suspend imposition of sentence;

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

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

31 (5) the sentence imposed by the court under this subsection shall run

1 consecutively with any other sentence of imprisonment imposed on the person; and
2 (6) the court may also order forfeiture under AS 28.35.036, of the
3 vehicle or aircraft used in the commission of the offense, subject to remission under
4 AS 28.35.037.

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

6 Sec. 28.35.039. DEFINITIONS FOR AS 28.35.029 - 28.35.039. In
7 AS 28.35.029 - 28.35.039,

8 (1) “controlled substance” has the meaning given in AS 28.33.190;

9 (2) **“alcohol safety action program” means a program designated by**
10 **the commissioner of health and social services as an alcohol safety action program.**

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

12 ARTICLE 6. CERTAIN OFFENSES RELATING TO MINORS.

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

20 (1) place the person under arrest;

21 (2) request that the person submit to a chemical test or tests of the
22 person’s breath for the purpose of determining the alcoholic content of the person’s
23 blood or breath; and

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

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

31 (c) A person who is cited for violating this section shall be advised by a peace
32 officer that it is unlawful under AS 28.35.290 for the person to operate a motor vehicle,

1 aircraft, or watercraft during the 24 hours following the issuance of the citation.

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

7 (e) In this section,

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

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

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

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

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

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

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

31 Sec. 28.35.290. DRIVING DURING THE 24 HOURS AFTER BEING CITED
32 FOR ALCOHOL OR BREATH TEST OFFENSES. (a) A person who has been cited

1 for minor operating a vehicle after consuming alcohol under AS 28.35.280 or for refusal
2 to submit to a chemical test of breath under AS 28.35.285 may not operate a motor
3 vehicle, aircraft, or watercraft during the 24 hours following issuance of the citation.

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

11 (c) 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. 14.** AS 28.35.280(d) is repealed and reenacted to read:

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

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

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

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

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

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

2 Sec. 28.40.060. BREATH TEST RESULT VALIDITY. If an offense described
3 under this title requires that a chemical test of a person's breath produce a particular
4 result, and the chemical test is administered by a properly calibrated instrument approved
5 by the Department of Public Safety, the result described by statute is not affected by the
6 instrument's working tolerance.

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

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

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

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

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

23 (a) Scheduling. At the time guilt in a felony case is established by verdict or
24 plea, the judge shall establish the date for a sentencing hearing and a presentencing
25 hearing, if appropriate, and **except as provided under subsection (f) of this rule,**
26 shall order a presentence investigation by the Department of Corrections. If the judge
27 elects to schedule a single hearing, all of the procedures for the presentencing and
28 sentencing hearings shall be applicable at the single hearing.

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

31 (f) When Presentence Investigation Not Required. Unless a person may be
32 sentenced to a presumptive term of imprisonment under AS 12.55.125(e)(1) or (2), a

1 presentence investigation by the Department of Corrections is not required for a
2 defendant convicted of driving while intoxicated under AS 28.35.030(n) or refusal to
3 submit to a chemical test under AS 28.35.032(p).

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

8 * **Sec. 23.** Sections 14 - 16 of this Act take effect only upon a final decision by the Alaska
9 Court of Appeals and the Alaska Supreme Court that the possibility of imposing community
10 work service by the court for the offenses prohibited under AS 28.35.280, 28.35.285, and
11 28.35.290 gives rise to the right to court appointed counsel and trial by jury.