

**SENATE BILL NO. 224**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - FIRST SESSION

**BY SENATOR COWDERY**

**Introduced: 5/14/03**

**Referred: Transportation, State Affairs**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to lowering the legal level of intoxication for operating a motor vehicle,**  
2 **aircraft, or watercraft to .02 percent or the equivalent for persons under 21 years of age;**  
3 **relating to implied consent for purposes of determining consumption of alcohol; and**  
4 **providing for an effective date."**

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

6 \* **Section 1.** AS 28.15.165(a) is amended to read:

7 (a) A law enforcement officer shall read a notice, and deliver a copy of it, to a  
8 person operating a motor vehicle, commercial motor vehicle, or aircraft, if a chemical  
9 test administered under AS 28.33.031(a) or AS 28.35.031(a) or (g) produces a result  
10 described in AS 28.35.030(a)(2) **or (4)**; a chemical test administered under  
11 AS 28.33.031(a) produces a result described in AS 28.33.030(a)(2); or the person  
12 refuses to submit to a chemical test authorized under AS 28.33.031(a) or  
13 AS 28.35.031(a) or (g). The notice must advise that

14 (1) the department intends to revoke the person's driver's license,

1 privilege to drive, or privilege to obtain a license, refuse to issue an original license to  
2 the person, or disqualify the person;

3 (2) the person has the right to administrative review of the action taken  
4 against the person's license or determination not to issue an original license;

5 (3) if the person has a driver's license or a nonresident privilege to  
6 drive, the notice itself is a temporary driver's license that expires seven days after it is  
7 delivered to the person, except that if the person was operating a commercial motor  
8 vehicle the person will be ordered out of service for 24 hours under AS 28.33.130;

9 (4) revocation of the person's driver's license, privilege to drive, or  
10 privilege to obtain a license, a determination not to issue an original license, or a  
11 disqualification of the person, takes effect seven days after delivery of the notice to the  
12 person unless the person, within seven days, requests an administrative review.

13 \* **Sec. 2.** AS 28.15.165(c) is amended to read:

14 (c) Unless the person has obtained a temporary permit or stay of a  
15 departmental action under AS 28.15.166, if the chemical test administered under  
16 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in  
17 AS 28.35.030(a)(2) **or (4)** or the person refused to submit to a chemical test authorized  
18 under AS 28.33.031(a) or AS 28.35.031(a) or (g), the department shall revoke the  
19 person's license, privilege to drive, or privilege to obtain a license, shall refuse to issue  
20 an original license, and, if the chemical test administered under AS 28.33.031(a)  
21 produced a result described in AS 28.33.030(a)(2) or the person refused to submit to a  
22 chemical test authorized under AS 28.33.031(a), shall disqualify the person. The  
23 department's action takes effect seven days after delivery to the person of the notice  
24 required under (a) of this section, and after receipt of a sworn report of a law  
25 enforcement officer

26 (1) that a chemical test administered under AS 28.33.031(a) or  
27 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2) **or (4)**, that a  
28 chemical test administered under AS 28.33.031(a) produced a result described in  
29 AS 28.33.030(a)(2), or that a person refused to submit to a chemical test authorized  
30 under AS 28.33.031(a) or AS 28.35.031(a) or (g);

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

1 (3) describing the

2 (A) circumstances surrounding the arrest and the grounds for  
3 the officer's belief that the person operated a motor vehicle, commercial motor  
4 vehicle, or aircraft while under the influence of an alcoholic beverage,  
5 inhalant, or controlled substance in violation of AS 28.33.030 or  
6 AS 28.35.030; or

7 (B) grounds for the officer's belief that the person operated a  
8 motor vehicle or commercial motor vehicle that was involved in an accident  
9 causing death or serious physical injury to another person.

10 \* **Sec. 3.** AS 28.15.166(g) is amended to read:

11 (g) The hearing for review of action by the department under AS 28.15.165  
12 shall be limited to the issues of whether the law enforcement officer had probable  
13 cause to believe that the person was operating a motor vehicle or commercial motor  
14 vehicle that was involved in an accident causing death or serious physical injury to  
15 another, or that the person was operating a motor vehicle, commercial motor vehicle,  
16 or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled  
17 substance in violation of AS 28.33.030 or AS 28.35.030 and whether

18 (1) the person refused to submit to a chemical test authorized under  
19 AS 28.33.031(a) or AS 28.35.031(a) or (g) after being advised that refusal would  
20 result in disqualification or the suspension, revocation, or denial of the person's  
21 license, privilege to drive, or privilege to obtain a license, and that the refusal is a  
22 misdemeanor;

23 (2) the chemical test administered under AS 28.33.031(a) or  
24 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2) or (4); or

25 (3) the chemical test administered under AS 28.33.031(a) produced a  
26 result described in AS 28.33.030(a)(2).

27 \* **Sec. 4.** AS 28.35.030(a) is amended to read:

28 (a) A person commits the crime of driving while under the influence of an  
29 alcoholic beverage, inhalant, or controlled substance if the person operates or drives a  
30 motor vehicle or operates an aircraft or a watercraft

31 (1) while under the influence of an alcoholic beverage, intoxicating

1 liquor, inhalant, or any controlled substance;

2 (2) when, as determined by a chemical test taken within four hours  
3 after the alleged offense was committed, there is 0.08 percent or more by weight of  
4 alcohol in the person's blood or 80 milligrams or more of alcohol per 100 milliliters of  
5 blood, or when there is 0.08 grams or more of alcohol per 210 liters of the person's  
6 breath; [OR]

7 (3) while the person is under the combined influence of an alcoholic  
8 beverage, an intoxicating liquor, an inhalant, and a controlled substance; or

9 **(4) when, as determined by a chemical test taken within four hours**  
10 **after the alleged offense was committed, there is 0.02 percent or more by weight**  
11 **of alcohol in the person's blood or 20 milligrams or more of alcohol per 100**  
12 **milliliters of blood, or when there is 0.02 grams or more of alcohol per 210 liters**  
13 **of the person's breath, and the person is less than 21 years of age.**

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

15 (a) A person who operates or drives a motor vehicle in this state or who  
16 operates an aircraft as defined in AS 28.35.030(r) or who operates a watercraft as  
17 defined in AS 28.35.030(r) shall be considered to have given consent to a chemical  
18 test or tests of the person's breath for the purpose of determining the alcoholic content  
19 of the person's blood or breath if lawfully arrested for an offense arising out of acts  
20 alleged to have been committed while the person was operating or driving a motor  
21 vehicle or operating an aircraft or a watercraft while under the influence of an  
22 alcoholic beverage, inhalant, or controlled substance **in violation of AS 28.35.030** or  
23 if lawfully arrested under AS 28.35.280 for the offense of minor operating a vehicle  
24 after consuming alcohol. The test or tests shall be administered at the direction of a  
25 law enforcement officer who has probable cause to believe that the person was  
26 operating or driving a motor vehicle or operating an aircraft or a watercraft in this state  
27 while under the influence of an alcoholic beverage, inhalant, or controlled substance  
28 **in violation of AS 28.35.030** or that the person was a minor operating a vehicle after  
29 consuming alcohol.

30 \* **Sec. 6.** AS 28.35.031(b) is amended to read:

31 (b) A person who operates or drives a motor vehicle in this state or who

operates an aircraft or watercraft shall be considered to have given consent to a preliminary breath test for the purpose of determining the alcoholic content of the person's blood or breath. A law enforcement officer may administer a preliminary breath test at the scene of the incident if the officer has probable cause to believe that a person's ability to operate a motor vehicle, aircraft, or watercraft is impaired by the ingestion of alcoholic beverages or probable cause to believe that a person under 21 years of age was operating a motor vehicle, aircraft, or watercraft while under the influence of alcohol and that the person

(1) was operating or driving a motor vehicle, aircraft, or watercraft that is involved in an accident;

(2) committed a moving traffic violation or unlawfully operated an aircraft or watercraft; in this paragraph, "unlawfully" means in violation of any federal, state, or municipal statute, regulation, or ordinance [, EXCEPT FOR VIOLATIONS THAT DO NOT PROVIDE REASON TO BELIEVE THAT THE OPERATOR'S ABILITY TO OPERATE THE AIRCRAFT OR WATERCRAFT WAS IMPAIRED BY THE INGESTION OF ALCOHOLIC BEVERAGES]; or

(3) was operating or driving a motor vehicle in violation of AS 28.35.029(a).

\* **Sec. 7.** AS 28.35.032(a) is amended to read:

(a) If a person under arrest for operating a motor vehicle or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance refuses the request of a law enforcement officer to submit to a chemical test authorized under AS 28.33.031(a)(1) or AS 28.35.031(a), or if a person involved in a motor vehicle accident that causes death or serious physical injury to another person refuses the request of a law enforcement officer to submit to a chemical test authorized under AS 28.33.031(a)(2) or AS 28.35.031(g), after being advised by the officer that the refusal will result in the denial or revocation of the driver's license, privilege to drive, or privilege to obtain a license, that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating a motor vehicle or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance in violation of

1        **AS 28.33.030 or AS 28.35.030**, and that the refusal is a crime, a chemical test may not  
2        be given, except as provided by AS 28.35.035. If a person under arrest for operating a  
3        watercraft while under the influence of an alcoholic beverage, inhalant, or controlled  
4        substance refuses the request of a law enforcement officer to submit to a chemical test  
5        authorized under AS 28.35.031(a), after being advised by the officer that the refusal  
6        may be used against the person in a civil or criminal action or proceeding arising out  
7        of an act alleged to have been committed by the person while operating a watercraft  
8        while under the influence of an alcoholic beverage, inhalant, or controlled substance,  
9        and that the refusal is a crime, a chemical test may not be given, except as provided by  
10       AS 28.35.035.

11    \* **Sec. 8.** AS 28.35.032(e) is amended to read:

12            (e) The refusal of a person to submit to a chemical test authorized under  
13            AS 28.33.031(a) or AS 28.35.031(a) or (g) is admissible evidence in a civil or criminal  
14            action or proceeding arising out of an act alleged to have been committed by the  
15            person while operating or driving a motor vehicle or operating an aircraft or watercraft  
16            while under the influence of an alcoholic beverage, inhalant, or controlled substance  
17            **in violation of AS 28.33.030 or AS 28.35.030.**

18    \* **Sec. 9.** This Act takes effect July 1, 2003.