

Offered: 3/12/90
Referred: Judiciary

6-0665J

Original sponsor(s): REP. DONLEY, Koponen, Brown, Leman, Collins, Hudson,
Menard, Ulmer

1 IN THE HOUSE BY THE HESS COMMITTEE

2 CS FOR HOUSE BILL NO. 236 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the offenses of driving while
7 intoxicated and refusal to take a chemical test of
8 breath; and providing for an effective date."

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

10 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

11 (1) the number of persons under 21 who are drinking and driving
12 in an impaired condition is a matter of serious concern;

13 (2) a given amount of alcohol generally has a greater effect on
14 a driver who is under the age of 21 than on a person who is 21 years of age
15 or older;

16 (3) for purposes of establishing an effective legal limit of
17 alcohol consumption above which a person under age 21 will lose their
18 privilege to drive, it is necessary to distinguish between those people who
19 are under age 21, and those who are 21 years of age or older;

20 (4) establishing a lower limit of alcohol consumption for per-
21 sons under age 21 is consistent with existing law that prohibits a person
22 under age 21 from legally consuming an alcoholic beverage;

23 (5) there is a rational relationship between establishing a
24 lower limit of alcohol consumption for persons under age 21, and reducing
25 the number of alcohol-related accidents and fatalities.

26 (b) It is the purpose of this Act to promote the general welfare and
27 public safety by imposing a more restrictive legal limit on alcohol con-
28 sumption for persons who are under age 21, above which the person will lose
29 their privilege to drive.

1 * Sec. 2. AS 12.55.102(a) is amended to read:

2 (a) The court may order as a condition of probation that a
3 defendant convicted of an offense involving the use, consumption, or
4 possession of an alcoholic beverage may not operate a motor vehicle
5 during the period of probation unless the vehicle is equipped with a
6 properly functioning, monitored, and maintained ignition interlock
7 device. A condition of probation imposed under this subsection takes
8 effect after any period of license revocation imposed under AS 28.15.-
9 165(e) [AS 28.15.165(d)] or 28.15.181(c).

10 * Sec. 3. AS 28.15.165 is repealed and reenacted to read:

11 Sec. 28.15.165. ADMINISTRATIVE REVOCATIONS RESULTING FROM CHEMI-
12 CAL SOBRIETY TESTS AND REFUSALS TO SUBMIT TO TESTS. (a) A law en-
13 forcement officer shall read the notice required under (b) of this
14 section, and deliver a copy to a person operating a motor vehicle if
15 the person

16 (1) takes a chemical test administered under AS 28.35.-
17 031(a)(1) and the test produces a result described in AS 28.35.-
18 030(a)(2);

19 (2) takes a chemical test administered under AS 28.35.-
20 031(a)(2) and the test reveals that there is 0.04 percent or more by
21 weight of alcohol in the person's blood or 40 milligrams or more of
22 alcohol per 100 milliliters of blood, or that there is 0.04 grams or
23 more of alcohol per 210 liters of the person's breath; or

24 (3) refuses to submit to a chemical test under AS 28.35.-
25 031(a).

26 (b) The notice required under (a) of this section must advise
27 that

28 (1) the department intends to revoke the person's driver's
29 license, privilege to drive, or privilege to obtain a license, or

1 refuse to issue an original license to the person;

2 (2) the person has the right to administrative review of
3 the revocation or determination not to issue an original license;

4 (3) if the person has a driver's license or a nonresident
5 privilege to drive, the notice itself is a temporary driver's license
6 that expires seven days after it is delivered to the person;

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

12 (c) After reading the notice required under (a) of this section,
13 the law enforcement officer shall seize the person's driver's license
14 if it is in the person's possession and shall deliver it to the de-
15 partment with a sworn report describing the circumstances under which
16 it was seized.

17 (d) The department shall revoke a person's driver's license,
18 privilege to drive, or privilege to obtain a license, or refuse to
19 issue an original license effective seven days after delivery of the
20 notice required under (a) of this section, upon receipt of a sworn
21 report of a law enforcement officer

22 (1) that

23 (A) a chemical test under AS 28.35.031(a)(1) adminis-
24 tered to the person produced a result described in AS 28.35.-
25 030(a)(2);

26 (B) a chemical test under AS 28.35.031(a)(2) adminis-
27 tered to the person produced a result described in (a)(2) of this
28 section; or

29 (C) a person refused to submit to a chemical test

1 under AS 28.35.031(a);

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

4 (3) describing

5 (A) the circumstances surrounding the arrest and the
6 grounds for the officer's belief that the person was intoxicated
7 while operating a motor vehicle if the chemical test was adminis-
8 tered under AS 28.35.031(a)(1); or

9 (B) the grounds for the officer's belief that the
10 person was operating a motor vehicle with 0.04 percent or more by
11 weight of alcohol in the person's blood or 40 milligrams or more
12 of alcohol per 100 milliliters of blood, or 0.04 grams or more of
13 alcohol per 210 liters of the person's breath if the chemical
14 test was administered under AS 28.35.031(a)(2).

15 (e) Except as provided in (f) of this section, the period of
16 revocation of a driver's license, privilege to drive, or privilege to
17 obtain a license by the department under this section shall be for the
18 appropriate minimum period for court revocations under AS 28.15.-
19 181(c).

20 (f) If the person is less than 21 years of age, the department
21 shall revoke the person's driver's license, privilege to drive, or
22 privilege to obtain a license

23 (1) for one year, if the person's license, privilege to
24 drive, or privilege to obtain a license has not been previously
25 revoked under this section;

26 (2) for two years or until the person is 21 years of age,
27 whichever is longer, if the person's license, privilege to drive, or
28 privilege to obtain a license has been previously revoked once under
29 this section;

1 (3) for the appropriate minimum period for court revoca-
2 tions under AS 28.15.181(c), if the person's license, privilege to
3 drive, or privilege to obtain a license has been previously revoked
4 two or more times under this section.

5 * Sec. 4. AS 28.15.166(a) is amended to read:

6 (a) A person who has received a notice under AS 28.15.165(a) may
7 make a written request for administrative review of the department's
8 action under AS 28.15.165(d) [AS 28.15.165(c)]. If the person's
9 driver's license has not been previously surrendered to the depart-
10 ment, it shall be surrendered to the department at the time the re-
11 quest for review is made.

12 * Sec. 5. AS 28.15.166(b) is amended to read:

13 (b) A request for review shall be made within seven days after
14 receipt of the notice under AS 28.15.165 or the right to review is
15 waived and the action of the department under AS 28.15.165(d) [AS 28.-
16 15.165(c)] is final. If a written request for a review is made after
17 expiration of the seven-day period, and if it is accompanied by the
18 applicant's verified statement explaining the failure to make a timely
19 request for a review, the department shall receive and consider the
20 request. If the department finds that the person was unable to make a
21 timely request because of lack of actual notice of the revocation or
22 because of factors of physical incapacity such as hospitalization or
23 incarceration, the department shall waive the period of limitation,
24 reopen the matter, and grant the review request.

25 * Sec. 6. AS 28.15.166(c) is amended to read:

26 (c) Upon receipt of a request for review, if it appears that the
27 person holds a valid driver's license and that the driver's license
28 has been surrendered, the department shall issue a temporary driver's
29 permit that is valid until the scheduled date for the review. A person

1 who has requested a review under this section may request, and the
2 department may grant for good cause, a delay in the date of the hear-
3 ing. If necessary, the department may issue additional temporary
4 permits to stay the effective date of its action under AS 28.15.165(d)
5 [AS 28.15.165(c)] until the final order after the review is issued.

6 * Sec. 7. AS 28.15.166(g) is repealed and reenacted to read:

7 (g) The hearing under this section shall be limited to the
8 issues of whether the

9 (1) arresting officer had reasonable grounds to believe
10 that the person was operating a motor vehicle while intoxicated if the
11 chemical test was required under AS 28.35.031(a)(1) and whether

12 (A) the person refused to submit to a chemical test
13 after being advised that refusal would result in the suspension,
14 revocation, or denial of the person's license, privilege to
15 drive, or privilege to obtain a license, and that the refusal is
16 a misdemeanor; or

17 (B) the chemical test produced a result described in
18 AS 28.35.030(a)(2); or

19 (2) the law enforcement officer had probable cause to
20 believe that the person was operating a motor vehicle with 0.04 per-
21 cent or more by weight of alcohol in the person's blood or 40 milli-
22 grams or more of alcohol per 100 milliliters of blood, or 0.04 grams
23 or more of alcohol per 210 liters of the person's breath if the chemi-
24 cal test was administered under AS 28.35.031(a)(2) and whether

25 (A) the person refused to submit to a chemical test
26 after being advised that refusal would result in suspension,
27 revocation, or denial of the person's license, privilege to
28 drive, or privilege to obtain a license, and that refusal is a
29 misdemeanor if the person's license, privilege to drive, or

1 privilege to obtain a license has been previously revoked two or
2 more times under AS 28.15.165(f); or

3 (B) the chemical test produced a result described in
4 AS 28.15.165(a)(2).

5 * Sec. 8. AS 28.15.166(1) is amended to read:

6 (1) A hearing officer revoking a driver's license because a
7 chemical test administered to the person produced a result described
8 in AS 28.15.165(a)(2) or AS 28.35.030(a)(2) may grant limited license
9 privileges if the person has not been previously convicted within the
10 preceding 10 years of an offense (A) described in AS 28.15.181(a)(5)
11 or (8); or (B) under a law or ordinance in another jurisdiction with
12 elements substantially similar to an offense described in AS 28.15.-
13 181(a)(5) or (8). The privileges may be granted for for the final 60
14 days during which the license is revoked if the hearing officer deter-
15 mines that the person's ability to earn a livelihood would be severely
16 impaired and a limitation under AS 28.15.201 can be placed on the
17 license that will enable the the person to earn a livelihood without
18 excessive danger to the public. A hearing officer may not grant
19 limited license privileges when revoking a driver's license because
20 the person refused to submit to a chemical test.

21 * Sec. 9. AS 28.15.181(e) is amended to read:

22 (e) A court revoking a driver's license under (c) of this sec-
23 tion, or sustaining the action of the department under AS 28.15.165(d)
24 [AS 28.15.165(c)], may grant limited license privileges for the final
25 60 days during which the license is revoked if the

26 (1) revocation was for driving while intoxicated but not if
27 the revocation was for refusal to submit to a chemical test of breath
28 under AS 28.35.032;

29 (2) person has not been previously convicted within the

1 preceding 10 years of an offense
2 (A) described in (a)(5) or (8) of this section; or
3 (B) under a law or ordinance in another jurisdiction
4 with elements substantially similar to an offense described in
5 (a)(5) or (8) of this section;
6 (3) court determines that the person's ability to earn a
7 livelihood would be severely impaired; and
8 (4) court determines that a limitation under AS 28.15.201
9 can be placed on the license that will enable the person to earn a
10 livelihood without excessive danger to the public.

11 * Sec. 10. AS 28.35.030(a) is amended to read:

12 (a) A person commits the crime of driving while intoxicated if
13 the person operates or drives a motor vehicle or operates an aircraft
14 or a watercraft

15 (1) while under the influence of intoxicating liquor, or
16 any controlled substance listed in AS 11.71.140 - 11.71.190;

17 (2) when, as determined by a chemical test taken within
18 four hours after the alleged offense was committed, there is 0.10
19 percent or more by weight of alcohol in the person's blood or 100
20 milligrams or more of alcohol per 100 milliliters of blood, or when
21 there is 0.10 grams or more of alcohol per 210 liters of the person's
22 breath; [OR]

23 (3) while the person is under the combined influence of
24 intoxicating liquor and another substance; or

25 (4) when, as determined by a chemical test taken within
26 four hours after the alleged offense was committed, there is 0.04
27 percent or more by weight of alcohol in the person's blood or 40
28 milligrams or more of alcohol per 100 milliliters of blood, or when
29 there is 0.04 grams or more of alcohol per 210 liters of the person's

1 breath, the person is less than 21 years of age, and the person's
2 driver's license has previously been revoked two or more times under
3 AS 28.15.165(a)(2).

4 * Sec. 11. AS 28.35.031(a) is amended to read:

5 (a) A person who operates or drives a motor vehicle in this
6 state or who operates an aircraft as defined in AS 28.35.030(h)(1) or
7 who operates a watercraft as defined in AS 28.35.030(h)(2) shall be
8 considered to have given consent to a chemical test or tests of the
9 person's breath for the purpose of determining the alcoholic content
10 of the person's blood or breath if (1) lawfully arrested for an of-
11 fense arising out of acts alleged to have been committed while the
12 person was operating or driving a motor vehicle or operating an air-
13 craft or a watercraft while intoxicated; or (2) the person is under
14 the age of 21 and a law enforcement officer has probable cause to
15 believe that the person was operating a motor vehicle with 0.04 per-
16 cent or more by weight of alcohol in the person's blood or 40 milli-
17 grams or more of alcohol per 100 milliliters of blood, or 0.04 grams
18 or more of alcohol per 210 liters of the person's breath. The test or
19 tests shall be administered at the direction of a law enforcement
20 officer [WHO HAS REASONABLE GROUNDS TO BELIEVE THAT THE PERSON WAS
21 OPERATING OR DRIVING A MOTOR VEHICLE OR OPERATING AN AIRCRAFT OR A
22 WATERCRAFT IN THIS STATE WHILE INTOXICATED].

23 * Sec. 12. AS 28.35.031(b) is amended to read:

24 (b) A person who operates or drives a motor vehicle in this
25 state or who operates an aircraft or watercraft shall be considered to
26 have given consent to a preliminary breath test for the purpose of
27 determining the alcoholic content of the person's blood or breath. A
28 law enforcement officer may administer a preliminary breath test at
29 the scene of the incident if the officer has reasonable grounds to

1 believe that a person's ability to operate a motor vehicle, aircraft,
2 or watercraft is impaired by the ingestion of alcoholic beverages, or
3 probable cause to believe that a person under age 21 was operating a
4 motor vehicle with 0.04 percent or more by weight of alcohol in the
5 person's blood or 40 milligrams or more of alcohol per 100 milliliters
6 of blood, or 0.04 grams or more of alcohol per 210 liters of the
7 person's breath and that the person

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

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

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

19 * Sec. 13. AS 28.35.031(f) is amended to read:

20 (f) If a driver or operator is arrested, the provisions of
21 (a)(1) [(a)] of this section apply. If the person is not arrested and
22 is under the age of 21 years, the provisions of (a)(2) of this section
23 apply. The preliminary breath test authorized in this section is in
24 addition to any tests authorized under (a) of this section.

25 * Sec. 14. AS 28.35.032(a) is repealed and reenacted to read:

26 (a) A chemical test may not be given, except as provided by
27 AS 28.35.035, if a person refuses the request of a law enforcement
28 officer to submit to a chemical test under

29 (1) AS 28.35.031(a)(1), after being advised by the officer

1 that the refusal

2 (A) will, if that person was arrested while operating
3 or driving a motor vehicle, result in the denial or revocation of
4 the person's driver's license, privilege to drive, or privilege
5 to obtain a license;

6 (B) may be used against the person in a civil or
7 criminal action or proceeding arising out of an act alleged to
8 have been committed by the person while operating or driving a
9 motor vehicle or operating an aircraft or a watercraft while
10 intoxicated; and

11 (C) is a misdemeanor; or

12 (2) AS 28.35.031(a)(2), after being advised by the officer
13 that the refusal

14 (A) will result in the denial or revocation of the
15 person's driver's license, privilege to drive, or privilege to
16 obtain a license;

17 (B) may be used against the person in a civil or
18 criminal action or proceeding arising out of an act alleged to
19 have been committed by the person while the person was operating
20 a motor vehicle with 0.04 percent or more by weight of alcohol in
21 the person's blood or 40 milligrams or more of alcohol per 100
22 milliliters of blood, or 0.04 grams or more of alcohol per 210
23 liters of the person's breath; and

24 (C) is a misdemeanor if the person's license, privi-
25 lege to drive, or privilege to obtain a license has been previ-
26 ously revoked two or more times under AS 28.15.165(f).

27 * Sec. 15. AS 28.35.032(e) is amended to read:

28 (e) The refusal of a person to submit to a chemical test of
29 breath under AS 28.35.031(a) [(a) OF THIS SECTION] is admissible

1 evidence in a civil or criminal action or proceeding arising out of an
2 act alleged to have been committed by the person.

3 (1) while operating or driving a motor vehicle or operating
4 an aircraft or watercraft while intoxicated; or

5 (2) while operating a motor vehicle with 0.04 percent or
6 more by weight of alcohol in the person's blood or 40 milligrams or
7 more of alcohol per 100 milliliters of blood, or 0.04 grams or more of
8 alcohol per 210 liters of the person's breath.

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

10 (f) Refusal to submit to a chemical test of breath authorized by
11 AS 28.35.031(a)(1) [AS 28.35.031(a)] is a class A misdemeanor. Re-
12 fusal to submit to a chemical test of breath authorized by AS 28.-
13 35.031(a)(2) is a class A misdemeanor if the person's driver's license
14 has been previously revoked two or more times under AS 28.15.-
15 165(a)(2).

16 * Sec. 17. This Act takes effect July 1, 1990.