

SENATE CS FOR CS FOR HOUSE BILL NO. 151(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/16/99
Referred: Finance

Sponsor(s): REPRESENTATIVES KOTT, Austerman, Dyson, Rokeberg, Smalley, Cissna

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to possession, control, or consumption of alcohol by a person
2 under 21 years of age; relating to revocation and reinstatement of the driver's
3 license of a person at least 14 years of age but not yet 21 years of age; and
4 relating to offenses involving operating a motor vehicle by a person not yet 21
5 years of age."

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

7 * **Section 1.** AS 04.16.050(b) is repealed and reenacted to read:

8 (b) A person who violates (a) of this section is guilty of a

9 (1) violation and upon conviction the court may impose a fine of not
10 less than \$100;

11 (2) class B misdemeanor if, within the five years preceding the
12 violation, the person has been previously convicted twice under (a) of this section; or

13 (3) class A misdemeanor if, within the five years preceding the

1 violation, the person has been previously convicted three or more times under (a) of
2 this section.

3 * **Sec. 2.** AS 28.15.183(a) is amended to read:

4 (a) If a peace officer has probable cause to believe that a person who is at
5 least 14 years of age but not yet 21 years of age has possessed or used a controlled
6 substance in violation of AS 11.71 [,] or a municipal ordinance with substantially
7 similar elements, [OR] possessed or consumed alcohol in violation of AS 04.16.050
8 or a municipal ordinance with substantially similar elements, operated a vehicle after
9 consuming alcohol **or a controlled substance** in violation of AS 28.35.280, or refused
10 to submit to a chemical test under AS 28.35.285, and the peace officer has cited the
11 person or arrested the person for **the offense** [A VIOLATION OF AS 11.71,
12 AS 04.16.050, AS 28.35.280, OR 28.35.285 OR THE MUNICIPAL ORDINANCE
13 WITH SUBSTANTIALLY SIMILAR ELEMENTS], the peace officer shall read a
14 notice and deliver a copy to the person. The notice must advise that

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

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

18 (3) if the person has a driver's license or permit, the notice itself is a
19 temporary driver's license or permit that expires **10** [SEVEN] days after it is delivered
20 to the person;

21 (4) revocation of the person's driver's license or permit, privilege to
22 drive, or privilege to obtain a license or permit, takes effect **10** [SEVEN] days after
23 delivery of the notice to the person unless the person, within **10** [SEVEN] days,
24 requests an administrative review;

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

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

29 (c) Unless the person has requested an administrative review, the department
30 shall revoke the person's driver's license or permit, privilege to drive, or privilege to
31 obtain a license or permit, effective **10** [SEVEN] days after delivery to the person of

1 the notice required under (a) of this section, upon receipt of a sworn report of a peace
2 officer

3 (1) that the officer had probable cause to believe that the person is at
4 least 14 years of age but not yet 21 years of age and has violated one of the offenses
5 described in (a) of this section [POSSESSED OR USED A CONTROLLED
6 SUBSTANCE IN VIOLATION OF AS 11.71, OR A MUNICIPAL ORDINANCE
7 WITH SUBSTANTIALLY SIMILAR ELEMENTS, OR POSSESSED OR
8 CONSUMED ALCOHOL IN VIOLATION OF AS 04.16.050 OR A MUNICIPAL
9 ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, OPERATED A
10 VEHICLE AFTER CONSUMING ALCOHOL IN VIOLATION OF AS 28.35.280, OR
11 REFUSED TO SUBMIT TO A CHEMICAL TEST OF BREATH UNDER
12 AS 28.35.285];

13 (2) that the peace officer has cited or arrested the person [OR
14 ARRESTED THE PERSON] for

15 (A) a violation of AS 11.71, AS 04.16.050, AS 28.35.280, or
16 28.35.285; or

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

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

20 (4) describing the circumstances surrounding the offense [VIOLATION
21 OF THE CONTROLLED SUBSTANCES PROVISIONS OF AS 11.71, THE
22 ALCOHOLIC BEVERAGES PROVISIONS OF AS 04.16.050, OR THE MUNICIPAL
23 ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, THE MINOR
24 OPERATING A VEHICLE AFTER CONSUMING ALCOHOL UNDER
25 PROVISIONS OF AS 28.35.280, OR THE MINOR REFUSING TO SUBMIT TO A
26 CHEMICAL TEST OF BREATH UNDER PROVISIONS OF AS 28.35.285].

27 * **Sec. 4.** AS 28.15.183(d) is amended to read:

28 (d) The department shall impose the revocation required under this section

29 (1) for a first revocation, for a period of 30 [90] days;

30 (2) for a second revocation, for a period of 60 days [ONE YEAR];

31 [OR]

1 (3) for a third [OR SUBSEQUENT] revocation, for a period of **90**
 2 **days; or**

3 **(4) for a fourth or subsequent revocation, for a period of one year**
 4 **[THREE YEARS].**

5 * **Sec. 5.** AS 28.15.183(f) is amended to read:

6 (f) A revocation imposed under this section shall be consecutive to a
 7 revocation imposed under another provision of law, except that **(1)** a revocation
 8 imposed under this section **shall be concurrent with a prior revocation imposed**
 9 **under this section; and (2) a revocation imposed under this section** for an offense
 10 for which a revocation is required under AS 28.15.185 shall be concurrent with a
 11 revocation imposed under AS 28.15.185 that is based on the same incident. A
 12 [DEPARTMENT HEARING OFFICER MAY GRANT LIMITED LICENSE
 13 PRIVILEGES IN ACCORDANCE WITH THE STANDARDS SET OUT IN
 14 AS 28.15.201 TO A] person whose driver's license, permit, or privilege was revoked
 15 **for a period of at least 60 days** under this section **may apply for limited license**
 16 **privileges under AS 28.15.201(d). A person whose driver's license, permit, or**
 17 **privilege to drive was revoked for a period of more than one year under this**
 18 **section may apply for reinstatement as provided under (j) of this section.**

19 * **Sec. 6.** AS 28.15.183(g) is amended to read:

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

24 (1) an alcoholism education or rehabilitation treatment program
 25 approved under AS 47.37, if the revocation resulted from possession or consumption
 26 of alcohol in violation of AS 04.16.050 or a municipal ordinance with substantially
 27 similar elements, from operating a vehicle after consuming alcohol in violation of
 28 AS 28.35.280, or from refusal to submit to a chemical test of breath in violation of
 29 AS 28.35.285; or

30 (2) a drug education or rehabilitation treatment program, if the
 31 revocation resulted from **operating a vehicle after consuming a controlled substance**

1 in violation of AS 28.35.280 or possession or use of a controlled substance in
 2 violation of AS 11.71 or a municipal ordinance with substantially similar elements.

3 * **Sec. 7.** AS 28.15.183 is amended by adding a new section to read:

4 (j) A person whose driver's license, permit, or privilege was revoked under
 5 this section may apply for reinstatement of the person's driver's license as provided in
 6 this subsection. A person may apply to the department for reinstatement by filing a
 7 written request for review of the revocation imposed under this section with the
 8 department. The department shall issue a new license or reissue the person's driver's
 9 license

10 (1) as provided under AS 28.15.211(d) if the department finds that

11 (A) the application for reinstatement is filed at least one year
 12 after the person's license, permit, or privilege was revoked;

13 (B) the person complies with (g) of this section; and

14 (C) the person has not violated a provision of this title or a
 15 regulation of the department since the revocation; or

16 (2) immediately if a court or jury finds that the person is not guilty
 17 of the offense described under (a) of this section for which the person was cited or
 18 arrested.

19 * **Sec. 8.** AS 28.15.184(b) is amended to read:

20 (b) A request for review of the department's revocation under AS 28.15.183
 21 shall be made within 10 [SEVEN] days after receipt of the notice under AS 28.15.183
 22 or the right to review is waived and the action of the department under
 23 AS 28.15.183(c) is final. If a written request for a review is made after expiration of
 24 the 10-day [SEVEN-DAY] period, and if it is accompanied by the applicant's verified
 25 statement explaining the failure to make a timely request for a review, the department
 26 shall receive and consider the request. If the department finds that the person was
 27 unable to make a timely request because of lack of actual notice of the revocation or
 28 because of factors of physical incapacity such as hospitalization or incarceration, the
 29 department shall waive the period of limitation, reopen the matter, and grant the review
 30 request.

1 * **Sec. 9.** AS 28.15.184(g) is amended to read:

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

11 * **Sec. 10.** AS 28.15.185(a) is amended to read:

12 (a) A person who is at least 13 years of age but not older than 17 years of age
13 is subject to revocation, under (b) of this section, of the person's driver's license,
14 privilege to drive, or privilege to obtain a license if the person is convicted of or is
15 adjudicated a delinquent minor by a court for

16 (1) misconduct involving a controlled substance under AS 11.71 or a
17 municipal ordinance with substantially similar elements; [OR]

18 (2) an offense involving the illegal use or possession of a firearm that
19 is punishable under AS 11 or a municipal ordinance with substantially similar
20 elements; **or**

21 **(3) possession or consumption of alcohol under AS 04.16.050 or a**
22 **municipal ordinance with substantially similar elements if, within five years**
23 **preceding the conviction for violating AS 04.16.050, the person has been**
24 **previously convicted two or more times of violating AS 04.16.050.**

25 * **Sec. 11.** AS 28.15.185(c) is amended to read:

26 (c) When a person described in (a) of this section has been convicted of or
27 adjudicated a delinquent minor for an offense listed in (a) of this section, the court
28 may, upon petition of the person, review the revocation and may restore the driver's
29 license, except a court may not restore the driver's license until

30 (1) at least one-half of the period of revocation imposed under this
31 section has expired; and

1 (2) the person has taken and successfully completed a state approved
 2 program of drug education or rehabilitation if convicted or adjudicated of misconduct
 3 involving a controlled substance under AS 11.71 or a municipal ordinance with
 4 substantially similar elements, **or alcohol education or rehabilitation if convicted or**
 5 **adjudicated of possession or consumption of alcohol under AS 04.16.050 or a**
 6 **municipal ordinance with substantially similar elements**; however, this paragraph
 7 does not apply to a person who resides in an area that does not offer a state approved
 8 drug **or alcohol** education or rehabilitation program or a person that the court
 9 determines does not need drug **or alcohol** education or rehabilitation.

10 * **Sec. 12.** AS 28.35.280(a) is amended to read:

11 (a) A person who is at least 14 years of age but not yet 21 years of age
 12 commits the offense of minor operating a vehicle after consuming alcohol **or a**
 13 **controlled substance** if the person operates or drives a motor vehicle or operates an
 14 aircraft or a watercraft after having consumed any quantity of alcohol **or any quantity**
 15 **of a controlled substance in violation of AS 11.71**. A peace officer who has
 16 probable cause to believe that a person has committed the offense of minor operating
 17 a vehicle after consuming alcohol **or a controlled substance** may

18 (1) place the person under arrest;

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

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

24 * **Sec. 13.** AS 28.35.280(b) is amended to read:

25 (b) If a chemical test under this section reveals any alcohol concentration
 26 within the person's blood or breath **or the police officer has probable cause to**
 27 **believe the person has consumed a controlled substance in violation of AS 11.71,**
 28 the person shall be cited for violating this section and then released unless there is a
 29 lawful reason for further detention. A person who is 18 years of age or older shall be
 30 released on the person's own recognizance. A person who is under the age of 18 shall
 31 be released to a parent, guardian, or legal custodian.

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

2 (d) A person convicted under this section is guilty of a

3 (1) class B misdemeanor; or

4 (2) class A misdemeanor if, within the five years preceding the
5 violation, the person has been previously convicted under this section.

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

7 (d) A person convicted under (a) of this section is guilty of a

8 (1) class B misdemeanor; or

9 (2) class A misdemeanor if, within the five years preceding the
10 violation, the person has been previously convicted under this section.

11 * **Sec. 16.** AS 28.35.290(a) is amended to read:

12 (a) A person who has been cited for minor operating a vehicle after consuming
13 alcohol **or a controlled substance** under AS 28.35.280 or for refusal to submit to a
14 chemical test of breath under AS 28.35.285 may not operate a motor vehicle, aircraft,
15 or watercraft during the 24 hours following issuance of the citation.

16 * **Sec. 17.** AS 28.35.290(b) is repealed and reenacted to read:

17 (b) A person convicted under (a) of this section is guilty of a

18 (1) class B misdemeanor; or

19 (2) class A misdemeanor if, within the five years preceding the
20 violation, the person has been previously convicted under this section.

21 * **Sec. 18.** Sections 14, 15, 16, and 23, ch. 143, SLA 1996 are repealed.

22 * **Sec. 19.** APPLICABILITY. (a) Section 7 of this Act applies to a driver's license
23 revocation occurring before, on, or after the effective date of this Act.

24 (b) Sections 1 - 6, 8, and 9 of this Act apply to a driver's license revocation for an
25 offense that occurs on or after the effective date of this Act.

26 (c) Sections 10 - 17 apply to offenses that occur on or after the effective date of this
27 Act.