

SENATE BILL NO. 81

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY SENATORS COGHILL, Meyer

Introduced: 3/18/13

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act allowing a reduction of penalties for offenders successfully completing court-
2 ordered treatment programs for persons convicted of driving under the influence or
3 refusing to submit to a chemical test; relating to termination of a revocation of a driver's
4 license; relating to limitation of a driver's license; and relating to restoration of a
5 driver's license."

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

7 * **Section 1.** AS 28.15.181(f) is amended to read:

8 (f) The court may terminate a revocation for an offense described in (a)(5) or
9 (8) of this section if

10 (1) **either**

11 **(A)** the person's license, privilege to drive, or privilege to
12 obtain a license has been revoked for the minimum periods set out in (c) of this
13 section; **or**

1 **(B) the revocation was for a violation of AS 28.35.030 or**
 2 **28.35.032, or a similar municipal ordinance, and the person**

3 **(i) has successfully completed a court-ordered**
 4 **treatment program under AS 28.35.028;**

5 **(ii) has not been charged with or convicted of a**
 6 **violation of AS 28.35.030 or 28.35.032, or a similar municipal**
 7 **ordinance, since completing the program; and**

8 **(iii) has been granted limited license privileges under**
 9 **AS 28.15.201(g) and has successfully driven under that limited**
 10 **license for the minimum period provided in AS 28.15.201(g) for**
 11 **that offense;** and

12 (2) the person complies with the provisions of AS 28.15.211(d) and

13 (e).

14 * **Sec. 2.** AS 28.15.201 is amended by adding a new subsection to read:

15 (g) Notwithstanding (d) of this section, a court revoking a driver's license,
 16 privilege to drive, or privilege to obtain a license under AS 28.15.181(c), or the
 17 department revoking a driver's license, privilege to drive, or privilege to obtain a
 18 license under AS 28.15.165(c), may grant limited license privileges if the revocation
 19 was for a conviction under AS 28.35.030 or 28.35.032 or a similar municipal
 20 ordinance and

21 (1) the person is participating in or has successfully completed a court-
 22 ordered treatment program under AS 28.35.028;

23 (2) the court grants the limited license privileges as provided in this
 24 section for

25 (A) at a minimum, the period of revocation provided by
 26 AS 28.15.181(c) for a person convicted of a misdemeanor, including the period
 27 of revocation while the person was participating in a court-ordered treatment
 28 program under AS 28.35.028; or

29 (B) a minimum of five years, for a person convicted under
 30 AS 28.35.030(n) or 28.35.032(p), including the period of revocation while the
 31 person was participating in a court-ordered treatment program under

1 AS 28.35.028;

2 (3) the person provides proof of insurance as required by AS 28.20.230
3 and 28.20.240;

4 (4) the person totally abstains from the use of alcoholic beverages,
5 inhalants, and controlled substances and agrees to, participates in, and pays the cost of
6 testing, as ordered by the court, for the use of any of those substances; and

7 (5) the court immediately revokes the limited license if the person

8 (A) is charged with or convicted of a violation of AS 28.35.030
9 or 28.35.032 or a similar municipal ordinance; or

10 (B) tests positive under (4) of this subsection for the use of
11 alcoholic beverages, inhalants, or controlled substances.

12 * **Sec. 3.** AS 28.35.028(b) is amended to read:

13 (b) Once the court elects to proceed under this section, the defendant shall
14 enter a no contest or guilty plea to the offense or shall admit to a probation violation,
15 as appropriate. The state and the defendant may enter into a plea agreement to
16 determine the offense or offenses to which the defendant is required to plead. If the
17 court accepts the agreement, the court shall enforce the terms of the agreement. The
18 court shall enter a judgment of conviction for the offense or offenses for which the
19 defendant has pleaded or an order finding that the defendant has violated probation, as
20 appropriate. A judgment of conviction or an order finding a probation violation must
21 set a schedule for payment of restitution owed by the defendant. In a judgment of
22 conviction and on probation conditions that the court considers appropriate, the court
23 may withhold pronouncement of a period of imprisonment or a fine to provide an
24 incentive for the defendant to complete recommended treatment successfully.
25 Imprisonment or a fine imposed by a court shall comply with AS 12.55 or any
26 mandatory minimum or other sentencing provision applicable to the offense.
27 However, notwithstanding Rule 35, Alaska Rules of Criminal Procedure, and any
28 other provision of law, the court, at any time after the period when a reduction of
29 sentence is normally available, may consider and reduce the defendant's sentence,
30 **including imprisonment, fine, or license revocation**, based on the defendant's
31 compliance with the treatment plan; when reducing a sentence, the court (1) may not

1 reduce the sentence below the mandatory minimum sentence for the offense unless the
 2 court finds that the defendant has successfully complied with and completed the
 3 treatment plan and that the treatment plan approximated the severity of the minimum
 4 period of imprisonment, and (2) may consider the defendant's compliance with the
 5 treatment plan as a mitigating factor allowing a reduction of a sentence under
 6 AS 12.55.155(a). A court entering an order finding the defendant has violated
 7 probation may withhold pronouncement of disposition to provide an incentive for the
 8 defendant to complete the recommended treatment successfully.

9 * **Sec. 4.** AS 28.35.028(h)(1) is amended to read:

10 (1) "court-ordered treatment program" or "treatment plan" means a
 11 treatment program for a person who consumes alcohol or drugs and that

12 (A) requires participation for **either**

13 **(i) at least 120 consecutive days if a person has not**
 14 **been previously convicted more than once; or**

15 **(ii) at least 18 consecutive months if a person has been**
 16 **previously convicted two or more times;**

17 (B) includes planning and treatment for alcohol or drug
 18 addiction;

19 (C) includes emphasis on personal responsibility;

20 (D) provides in-court recognition of progress and sanctions for
 21 relapses;

22 (E) requires payment of restitution to victims and completion
 23 of community work service;

24 (F) includes physician-approved treatment of physical
 25 addiction and treatment of the psychological causes of addiction;

26 (G) includes a monitoring program and physical placement or
 27 housing;

28 **(H) is an evidence-based program that uses a data**
 29 **management technology plan to manage testing, data access, payment of**
 30 **fees, and any required reports;** and

31 **(I) [(H)]** requires adherence to conditions of probation;

1 * **Sec. 5.** AS 28.35.028(h) is amended by adding a new paragraph to read:

2 (3) "previously convicted" has the meaning given in AS 28.35.030.

3 * **Sec. 6.** AS 28.35.030(o) is amended to read:

4 (o) Upon request, the department shall review a driver's license revocation
5 imposed under (n)(3) of this section and

6 **(1)** may restore the driver's license if

7 **(A)** [(1)] the license has been revoked for a period of at least 10
8 years;

9 **(B)** [(2)] the person has not been convicted of a criminal
10 offense since the license was revoked; and

11 **(C)** [(3)] the person provides proof of financial responsibility;

12 **(2) shall restore the driver's license if**

13 **(A) the person has been granted limited license privileges**
14 **under AS 28.15.201(g) and has successfully driven under that limited**
15 **license for at least five years without having the limited license privileges**
16 **revoked;**

17 **(B) the person has not been convicted of a criminal offense**
18 **since the license was revoked; and**

19 **(C) the person provides proof of financial responsibility.**

20 * **Sec. 7.** AS 28.35.032(q) is amended to read:

21 (q) Upon request, the department shall review a driver's license revocation
22 imposed under (p)(3) of this section and

23 **(1)** may restore the driver's license if

24 **(A)** [(1)] the license has been revoked for a period of at least 10
25 years;

26 **(B)** [(2)] the person has not been convicted of a criminal
27 offense since the license was revoked; and

28 **(C)** [(3)] the person provides proof of financial responsibility;

29 **(2) shall restore the driver's license if**

30 **(A) the person has been granted limited license privileges**
31 **under AS 28.15.201(g) and has successfully driven under that limited**

- 1 **license for at least five years without having the limited license privileges**
2 **revoked;**
3 **(B) the person has not been convicted of a criminal offense**
4 **since the license was revoked; and**
5 **(C) the person provides proof of financial responsibility.**

6 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 APPLICABILITY. The change made to AS 28.15.181(f), as amended by sec. 1 of this
9 Act, AS 28.15.201(g), enacted by sec. 2 of this Act, the change made to AS 28.35.028(b), as
10 amended by sec. 3 of this Act, the changes made to AS 28.35.028(h), as amended by secs. 4
11 and 5 of this Act, the change made to AS 28.35.030(o), as amended by sec. 6 of this Act, and
12 the change made to AS 28.35.032(q), as amended by sec. 7 of this Act, apply to convictions
13 occurring before, on, or after the effective date of this Act for offenses occurring before, on,
14 or after the effective date of this Act.