

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

May 2, 2018

1:54 p.m.

MEMBERS PRESENT

Representative Jonathan Kreiss-Tomkins, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chris Tuck
Representative Adam Wool
Representative Chris Birch
Representative Gary Knopp

MEMBERS ABSENT

Representative DeLena Johnson
Representative Andy Josephson (alternate)
Representative Chuck Kopp (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 408

"An Act relating to revocation of a driver's license."

- MOVED CSHB 408 (STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 408

SHORT TITLE: REVOCATION OF DRIVER'S LICENSE

SPONSOR(S): JUDICIARY

04/04/18	(H)	READ THE FIRST TIME - REFERRALS
04/04/18	(H)	STA, JUD
04/26/18	(H)	STA AT 3:15 PM GRUENBERG 120
04/26/18	(H)	Heard & Held
04/26/18	(H)	MINUTE (STA)
05/01/18	(H)	STA AT 3:15 PM GRUENBERG 120
05/01/18	(H)	-- Delayed to 5/2/18 --
05/02/18	(H)	STA AT 1:45 PM GRUENBERG 120

WITNESS REGISTER

GREG SMITH, Staff
Representative Gabrielle LeDoux,
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented Amendment 1 on behalf of House Judiciary Standing Committee.

NANCY MEADE, General Counsel;
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 408.

ACTION NARRATIVE

[1:54:32 PM](#)

CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 1:54 p.m. Representatives Kreiss-Tomkins, LeDoux, Wool, Birch, and Knopp were present at the call to order. Representative Tuck arrived as the meeting was in progress.

HB 408-REVOCATION OF DRIVER'S LICENSE

[1:54:58 PM](#)

CHAIR KREISS-TOMKINS announced that the only order of business would be HOUSE BILL NO. 408, "An Act relating to revocation of a driver's license."

[1:55:23 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Amendment 1, labeled 30-LS1554\A.6, Martin, 5/2/18 which read as follows [original punctuation provided]:

Page 1, line 3, through page 2, line 13:

Delete all material and insert:

"* Section 1. AS 28.35.030(o) is amended to read:

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

(1) may restore the driver's license if

(A) the license has been revoked for a period of at least 10 years;

(B) the person has not been convicted of a driving-related criminal offense since the license was revoked; and

(C) the person provides proof of financial responsibility;

(2) shall restore the driver's license if

(A) the person has been granted limited license privileges under AS 28.15.201(g) and has successfully driven under that limited license for three years without having the limited license privileges revoked;

(B) the person has successfully completed a court-ordered treatment program under AS 28.35.028 or a rehabilitative treatment program under AS 28.15.201(h);

(C) the person has not been convicted of a violation of AS 28.35.030 or 28.35.032 or a similar law or ordinance of this or another jurisdiction since the license was revoked;

(D) the person is otherwise eligible to have the person's driving privileges restored as provided in AS 28.15.211; in an application under this subsection, a person whose license was revoked for a violation of AS 28.35.030(n) or 28.35.032(p) is not required to submit compliance as required under AS 28.35.030(h) or 28.35.032(l); and

(E) the person provides proof of financial responsibility;

(3) may restore the driver's license if

(A) the license has been revoked for a period of at least 10 years;

(B) the person has not been convicted of a driving-related criminal offense

(i) in the 10 years preceding the request for restoration of the driver's license; and

(ii) since the license was revoked, and, as part of the same act or criminal episode for which the person was convicted of the driving-related criminal offense, the person was not convicted of a crime under AS 11.41.100 - 11.41.170, 11.41.200, 11.41.210, 11.41.280, or 11.41.282 or a law or ordinance in another jurisdiction with similar elements;

(C) as part of the same act or criminal episode for which the person was convicted or previously convicted for purposes of (n) of this section, the person was not convicted of a crime under AS 11.41.100 - 11.41.170, 11.41.200, 11.41.210,

11.41.280, or 11.41.282 or a law or ordinance in another jurisdiction with similar elements; and
(D) the person provides proof of financial responsibility."

CHAIR KREISS-TOMKINS objected for the purpose of discussion.

[1:55:46 PM](#)

REPRESENTATIVE LEDOUX reminded members that the committee heard HB 408 at its last meeting. She became aware that a number of people outside the committee had expressed concern that [HB 408] may give a pathway for license restoration to someone who had killed or seriously injured someone during the [DUI] causing the initial revocation or for subsequent driving-related offenses. Amendment 1 would allow a pathway for a person who has not killed or seriously injured someone during the event [DUI] causing the initial revocation or for subsequent driving-related offenses to have his/her driver's license restored. She added the caveat was that the person must have a "clean" driving record for ten years.

REPRESENTATIVE LEDOUX clarified that Amendment 1 would make it more difficult for those desiring to reinstate their driver's licenses than the language in the original bill.

[1:57:39 PM](#)

REPRESENTATIVE KNOPP asked for clarification if it was more complicated to do so under Amendment 1.

REPRESENTATIVE LEDOUX answered that it would be more difficult to obtain the license restoration since it would not allow a person who had killed or seriously injured someone in the DUI or in the driving-related offense subsequent to the revocation to have a pathway.

[1:58:30 PM](#)

CHAIR KREISS-TOMKINS related his understanding that under Amendment 1, a driver whose license was revoked has two paths to restore his/her license. One pathway would be to have ten years of a clean driving record so long as the original offense(s) did not lead to someone being hurt or killed. The second pathway would be for those who had killed or seriously injured someone during a DUI or in the driving-related offense subsequent to the revocation; however, it would be more difficult to do so.

REPRESENTATIVE LEDOUX answered no. She clarified that under current law a person whose license was revoked and who had a subsequent driving-related criminal offense would not have any pathway to restore his/her license except if the person was convicted of another DUI and was referred to [and completed] a therapeutic court process. In that instance, the driver could obtain a limited license and if he/she remained clean would be eligible for a regular driver's license.

REPRESENTATIVE LEDOUX explained that the original bill, HB 408, would provide a way for a person whose driver's license had been permanently revoked to be restored so long as the person did not have any driving-related offenses for 10 years preceding the request for license restoration. Under current law, a driver with a DUI revocation who was subsequently convicted of another DUI while driving with a suspended license (DWSL) but was referred to and completed a therapeutic court program could have driving privileges restored. The bill would fix this inconsistency. She referred to AS 28.35.030(o)(1)(B), which read as follows [original punctuation provided]:

(B) the person has not been convicted of a driving-related criminal offense in the 10 years preceding the request for restoration of the license [SINCE THE LICENSE WAS REVOKED]; and

REPRESENTATIVE LEDOUX reiterated that Amendment 1 would address the concern that the penalty was too lenient for someone whose DUI or whose subsequent driving-related offense after the driver's license revocation led to serious physical injury or death of another person.

[2:01:47 PM](#)

GREG SMITH, Staff, Representative Gabrielle LeDoux, Alaska State Legislature, acknowledged that Representative LeDoux has appropriately explained Amendment 1. He offered that a number of scenarios could occur during a lifetime driver's license revocation under AS 28.35.030(n)(3), including subsequent driving-related criminal offenses.

MR. SMITH reiterated that the goal of HB 408 was to provide a pathway for those with a lifetime driver's license revocation, who had been convicted of a driving-related offense after the revocation. Amendment 1 would put up a side bar and prohibit anyone who had a DUI that had killed or seriously injured

someone from having their driver's license restored. That prohibition exists in current law, he said. The trigger prohibiting people from having a driver's license restored is the post revocation driving-related criminal offense, which ranges from a person who was driving with a suspended or revoked license or to a person who was convicted of criminally-negligent homicide or vehicular manslaughter.

[2:03:48 PM](#)

REPRESENTATIVE KNOPP asked for clarification whether a person who had several DUIs but was "clean" for 10 years, had no further driving-related offenses, would be prohibited from driver's license restoration. He related a scenario that had happened several years ago, in which a person driving a passenger bus ran into a car who had slowed to turn left at Portage Glacier [in which people were killed].

MR. SMITH answered if one of the person's DUIs resulted in manslaughter or criminally-negligent homicide that [the person would be prohibited from reinstating his/her driver's license.]

[2:05:22 PM](#)

REPRESENTATIVE KNOPP interjected that the bus driver had not been charged with a DUI. He asked whether the driver would be eligible for license restoration if the driver had subsequently been convicted of additional DUIs and the person's driver's license was suspended.

MR. SMITH related his understanding that the person would be eligible to have the driver's license restored so long as the criminally-negligent homicide was not connected to a DUI.

[2:06:49 PM](#)

REPRESENTATIVE KNOPP said he had a sense that the exemptions [in Amendment 1] would defeat the purpose of the bill.

MR. SMITH disagreed that Amendment 1 would defeat the bill. He reiterated the intent of bill was to provide a pathway for those who had a DUI license revocation with a subsequent driving offense to have their driver's license restored after 10 years with a clean record. Amendment 1 would allow that group to be eligible for a license so long as they had not killed or seriously injured someone during the course of DUIs that led to the revocation or in subsequent driving-related criminal

activity. In further response to Representative Knopp, he said if the person killed or seriously injured a person during a DUI that led to the revocation or in subsequent driving-related offense(s), the person would not be able to get his/her license restored.

CHAIR KREISS-TOMKINS passed the gavel to Representative Wool.

[2:09:11 PM](#)

The committee took a brief at-ease.

[2:10:00 PM](#)

REPRESENTATIVE BIRCH referred to an [e-mail] dated May 1, 2018 from [Minta C.] Montalbo [to Mr. Greg Smith] in members' packets with statistics for the number of drivers who reoffend after having their driver's licenses restored. He said that the total number of approved felony termination of revocation applicants from 2012 to the present was 171 with two reoffenders of DUI or refusals after an approved application. He characterized [the reoffenders] as negligible. He said he appreciated the information, which he found supportive.

[2:11:08 PM](#)

REPRESENTATIVE LEDOUX advised members that nothing in Amendment 1 would make it more difficult [to apply for driver's license restoration] than current law; however, she acknowledged that Amendment 1 was more restrictive than the language in HB 408.

MR. SMITH agreed, but highlighted that Amendment 1 would allow a small group of people to have their driver's licenses restored.

[2:12:49 PM](#)

ACTING CHAIR WOOL asked whether someone convicted of vehicular homicide or manslaughter would be subject to lifetime driver's license revocation.

MR. SMITH related his understanding that lifetime driver's license revocation was primarily tied to felony DUIs. He recalled the e-mail referenced earlier had mentioned one case of vehicular homicide or manslaughter led to permanent driver's license revocation. In further response to Representative Wool, he agreed the bill would apply to someone who had a felony DUI

revocation and a post-revocation driving offense, but who had a clean record for a minimum of ten years.

ACTING CHAIR WOOL reiterated who would be eligible to have his/her driver's license restored: a person with a felony DUI revocation, who has a clean ten-year post-revocation period.

MR. SMITH agreed.

[2:15:15 PM](#)

ACTING CHAIR WOOL related a scenario in which a person with a DUI revocation drove with a suspended license in year five. He asked whether this would start a new 10-year period in terms of establishing a clean record.

MR. SMITH answered yes.

[2:15:46 PM](#)

ACTING CHAIR WOOL asked for confirmation that Amendment 1 would prohibit someone from who was convicted of a DUI that seriously hurt or killed a person from having his/her driver's license restored.

MR. SMITH answered yes.

[2:16:17 PM](#)

ACTING CHAIR WOOL asked what constituted a "serious injury."

MR. SMITH said the sponsor collaborated with the Division of Motor Vehicles (DMV), who preferred that the bill refer to specific statutes. He referred to page 2, lines 14-16 and 20-21 of Amendment 1, to AS [Alaska Statute] 28.35.030(o)(3)(B)(ii), "... the person was not convicted of a crime under AS 11.41.100 - 11.41.170, 11.41.200, 11.41.210, 11.41.280, or 11.41.282 He related that AS 11.41.100 - 11.41.170 refers to murder in the first degree, murder in the second degree, manslaughter, criminally-negligent homicide, murder of an unborn child, manslaughter of an unborn child, and criminally-negligent homicide of an unborn child. He further related that AS 11.41.200 - 11.41.210 refers to assault in the first degree and assault in the second degree, which have a serious physical injury component; and AS 11.41.280, or 11.41.282 refer to assault of an unborn child in the first and second degree, which also have a serious physical injury component, as well.

[2:17:50 PM](#)

REPRESENTATIVE TUCK related his understanding that under current law a person whose license was revoked could apply to have driver's privileges restored if the person has not been convicted of a driving-related offense for ten years.

MR. SMITH agreed.

[2:18:42 PM](#)

REPRESENTATIVE TUCK related his understanding that Amendment 1 would allow persons convicted of a driving-related offense after a felony conviction to apply to have their driver's privileges restored if they had not been convicted of a driving-related offense for ten years; however, the driver's license revocation would be permanent if the person's license revocation was due to a serious injury or death.

MR. SMITH responded that under Amendment 1, if the person's license revocation was due to a serious injury or death but the person was later convicted of a subsequent driving-related offense, the person would not be eligible for license restoration, which is current law; that license revocation is permanent for that group. He referred members to a chart in their packets dated May 2, 2018, prepared by Representative LeDoux's office.

[2:20:16 PM](#)

ACTING CHAIR WOOL referred to [an e-mail dated May 1, 2018, from Minta Montalbo that the committee discussed earlier] which read as follows [original punctuation provided]:

DUI/REFUSAL misdemeanor:
1st offense -90 days
2nd offense - 1 year
3rd offense - 3 years
4th or more offense - 5 years

Typically, by the 3rd offense or more within a 10 year period, the charge is a felony, but we have seen multiple offenses charged as a misdemeanor.

ACTING CHAIR WOOL asked for clarification on whether the decision to impose a five-year or lifetime revocation is up to the judge.

MR. SMITH said he did not believe so. He deferred to the Alaska Court System but related his understanding that the felony DUI is triggered when the person has three DUIs within a ten-year period. He speculated that perhaps a person could get a fourth misdemeanor offense if it was spread out beyond the ten-year period.

[2:21:18 PM](#)

REPRESENTATIVE KNOPP asked for further clarification from the department.

[2:21:41 PM](#)

NANCY MEADE, General Counsel; Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), responded that the court does not have any discretion with a felony DUI and must revoke the driver's license permanently. She stated that Mr. Smith was correct that there could be multiple misdemeanor DUIs; however, if the DUIs were spread out over a long period of time they would not constitute a felony.

[2:22:12 PM](#)

REPRESENTATIVE KNOPP asked whether the committee was interpreting the bill [and Amendment 1] correctly. He related his understanding that if a person reoffended during the ten-year period it would reset the clock for another ten years; although he thought the penalty [in Amendment 1] might be too tough for post-conviction driving offenses, but not for the [original DUI convictions] that resulted in deaths.

REPRESENTATIVE LEDOUX remarked that resetting the clock for ten years might seem like a long period of time, but [under current law] without HB 408 or Amendment 1, the clock would not ever be reset with no path for the person to have driving privileges restored.

[2:23:42 PM](#)

REPRESENTATIVE KNOPP acknowledged that the [bill and Amendment 1] was a step forward; however, this also allowed the committee

to have the conversation to discuss that the clock should be reset regardless of the charges.

ACTING CHAIR WOOL stated that Representative LeDoux pointed out at a previous meeting that although current law imposes a permanent license revocation, if the person was convicted of yet another DUI the driver could use the therapeutic court process to restore the person's driver's license privileges. He questioned the inconsistency of the two situations.

[2:24:21 PM](#)

MS. MEADE interpreted Amendment 1, which would provide three avenues for a person to restore his/her driver's license under AS 28.35.030(o). She referred to page 1, line 6 of Amendment 1, which states current law, AS 28.35.030(o)(1), that would allow restoration of a driver's license if the person has not had any driving-related criminal offenses for 10 years since the date of revocation. The person must also provide proof of insurance, which is a stipulation for all reinstatements. That language existed before and it exists now, she said. It was added when the permanent revocation language was adopted by the legislature as a means to provide a pathway for restoring driving privileges.

MS. MEADE related that a second pathway to restore a driver's license revocation is provided under AS 28.35.030(o)(2), which she noted was current law. The provision provides that if a person had successfully completed therapeutic court in 2002, that the person could apply for a limited driver's license, and after three years with no driver's license violations the DMV could restore driver's privileges. She clarified that this path was untouched by HB 408.

MS. MEADE related HB 408 provides a third pathway related to a person who was convicted of driving while license suspended (DWLS) after revocation, who has been excluded under AS 28.35.030(o)(1) from obtaining driver's license restoration. She explained the DMV can restore a revoked driver's license if the person has not been convicted of any driving offenses in the 10 years prior to the application; however; [Amendment 1] added the stipulation that any subsequent driving-related conviction cannot have resulted in death or serious injury. Further, AS 28.35.030(o)(3)(C) also added language that that the person could not have [seriously injured] or killed someone in any of DUIs that led up to the felony DUI. She reiterated that if a person had a [a subsequent driving-related offense] after a

felony DUI conviction, the person could apply under AS 28.35.030(o)(3) to have his/her driver's license restored. She offered her belief that the stipulation that the language in Amendment 1 that the driver must have "a clean record" for 10 years before applying for driver's license restoration was added to be consistent with AS 28.35.030(o)(1).

[2:27:04 PM](#)

ACTING CHAIR WOOL related a scenario in which a driver had three DUIs, triggering a felony lifetime driver's license revocation, with one DUI that resulted in [serious] bodily injury. He related his understanding that person would never be eligible to have his/her driver's license restored even after having ten years of driving without any driving-related offenses.

MS. MEADE agreed that was how she interpreted the language on page 2, lines 18-21 of Amendment 1, which read as follows [original punctuation provided]:

(C) as part of the same act or criminal episode for which the person was convicted or previously convicted for purposes of (n) of this section, the person was not convicted of a crime under AS 11.41.100 - 29 11.41.170, 11.41.200, 11.41.210, 11.41.280, or 11.41.282 or a law or ordinance in another jurisdiction with similar elements; and

MS. MEADE offered her belief that the wording was intended to apply to any of the DUIs that led to the person being charged under subsection (n) of this section. She stated this language was essentially identifying a felony DUI. She added that if the person was proceeding under AS 28.35.030(o)(3) that none of the DUIs may have resulted in [serious bodily injury or death].

[2:28:16 PM](#)

ACTING CHAIR WOOL recalled that Mr. Smith previously identified violations and the definition of assault, including intentional physical harm. He was unsure of the threshold of injury that would result in permanent driver's license revocation.

MS. MEADE said that a person seeking a pathway [for license restoration] under AS 28.35.030(o)(3), after conviction of assault in the first or second degree, which had resulted in serious bodily harm [or death] in connection with the DUI would be disqualified under AS 28.35.030(o)(3). However, that person

could still apply for license restoration under AS 28.35.030(o)(1) if the person was convicted of felony DUI, but subsequently was not convicted of [any driver-related] offenses after his/her license was revoked. Under that scenario, the current law would apply, and the person could apply for driver's license restoration. She clarified that the provisions related to death, manslaughter, or assault in connection with a DUI would only apply under the language added by this bill; that the person had not been convicted of any driving-related criminal offenses since his/her license revocation.

[2:30:01 PM](#)

REPRESENTATIVE TUCK related his understanding that a person [would be eligible to apply] for a driver's license restoration after ten years if the person "stays clean" [that the person had not been convicted of any driving-related criminal offenses]; however, if the person was convicted of a moving violation [after the felony DUIs], the person would need to wait an additional ten years [to be eligible for license restoration] unless the original crime resulted in the death or serious injury, in which case the license revocation would be permanent.

MS. MEADE answered yes. She commented that manslaughter, criminal-negligence, homicide, or serious-bodily harm felony convictions would be considered when a person sought the [license restoration] pathway under AS 28.35.030(o)(3) because the person had also incurred some type of driving-related criminal offense since the revocation occurred.

[2:31:02 PM](#)

ACTING CHAIR WOOL asked for further clarification for the person with a driver's license revocation [due to DUI felony conviction] who subsequently was convicted of an assault not related to a motor vehicle offense; for example, the person got into a fight. He asked whether that would apply or if these provisions only related to motor vehicle offenses.

MS. MEADE responded that the language in Amendment 1 specifies the other criminal offenses must be as part of the same act or criminal episode for which the person had a driving-related criminal offense or DUI conviction.

[2:31:39 PM](#)

REPRESENTATIVE KNOPP said that the explanations helped considerably.

[2:31:48 PM](#)

REPRESENTATIVE TUCK reviewed the evaluation chart [in members' packets; prepared by the office of Representative LeDoux dated May 2, 2018], in which the check mark refers to a conviction of DUI/refusal. He referred to scenario 2, listing 3 DUIs [noting the heading indicates that it] leads to permanent revocation under (n)(3), which is a felony conviction. The person would be eligible for driver's license restoration after a "clean" record of 10 years. He referred to scenario 1 in which the person had two DUIs; however, the third DUI resulted in a death or serious-physical injury (D/SPI). He noted the person must have a clean record with no subsequent moving violation to be eligible to have his/her driving privileges restored. He referred to scenario 4, in which the first DUI offense resulted in D/SPI, followed by two more DUIs. He asked whether a person could be convicted of a felony DUI on the first offense.

MS. MEADE responded that if the person caused a death or serious physical injury during a DUI would receive multiple charges; however, the DUI would not constitute a higher level of crime in itself. She stated the person could be convicted of first time DUI plus manslaughter or have a second DUI plus criminally-negligent homicide; however, it would still be considered a misdemeanor DUI, but the other charge would be considered a felony.

[2:33:58 PM](#)

REPRESENTATIVE TUCK related a scenario in which someone whose first DUI resulted in death or serious physical injury and the person was also charged with manslaughter, but had no further DUIs, whether the person would be subject to a lifetime suspension of his/her driver's license or if the court would consider the charges separately.

MS. MEADE answered that the court would consider the two charges separately.

[2:34:52 PM](#)

The committee took a brief at-ease.

[2:35:19 PM](#)

A roll call vote was begun. Representatives Knopp, LeDoux, and Wool voted in favor of Amendment 1.

ACTING CHAIR WOOL asked for an at-ease.

[2:35:59 PM](#)

The committee took a brief at-ease.

[2:36:31 PM](#)

ACTING CHAIR WOOL voided the roll call vote on Amendment 1.

[2:36:51 PM](#)

A roll call vote was taken. Representatives Tuck, Knopp, Wool, LeDoux, and Birch voted in favor of Amendment 1. Therefore, Amendment 1 was adopted by a vote of 5-0.

[2:38:19 PM](#)

REPRESENTATIVE KNOPP moved to report HB 408, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no further objection, CSHB 408(STA) was reported from the House State Affairs Standing Committee.

[2:38:44 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 2:38 p.m.