

Introduced: 5/16/77  
Referred: State Affairs

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 SENATE BILL NO. 361 *AM*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to subpoenas, notice and hearings  
7 under AS 28; and providing for an effective date."

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

9 \* Section 1. AS 28.05 is amended by adding new sections to read:

10 Sec. 28.05.070. SUBPOENAS; WITNESSES AND DOCUMENTS. (a) The  
11 commissioner and officers and employees of the department designated by  
12 the commissioner may subpoena witnesses to give testimony under oath or  
13 to give written deposition upon a matter under the jurisdiction of the  
14 department with respect to this title and regulations adopted under this  
15 title. A subpoena issued under this section may require the production  
16 of relevant books, papers, documents, records or other tangible things  
17 designated in the subpoena.

18 (b) A subpoena issued under this section shall be served at least  
19 10 days before the return date, either by personal service made by a  
20 peace officer or another person who is not less than 18 years of age or  
21 by registered or certified mail. Return and acknowledgement is required  
22 to prove service by mail. Failure to obey a subpoena served under this  
23 section is a misdemeanor. The fees for the attendance and travel of wit-  
24 nesses are the same as for witnesses appearing before the district  
25 court.

26 (c) A subpoena issued under this section may be enforced by the  
27 district court.

28 Sec. 28.05.072. GIVING OF NOTICE. When the department is autho-  
29 rized or required to give notice under this title or regulations adopted

1 under this title, unless a different method of giving notice is other-  
2 wise expressly provided, notice shall be given by a person 18 years of  
3 age or older, either by personal delivery to the person to be notified  
4 or by registered or certified mail, return receipt requested, addressed  
5 to the person at his address as shown in the records of the department.  
6 The giving of notice by mail is considered complete upon the return of  
7 the receipt or upon return of the notice as undeliverable. Proof of the  
8 giving of notice in either manner may be made by the affidavit of the  
9 person giving the notice by personal delivery or by mail, naming the  
10 person to whom the notice was given and specifying the time, place, and  
11 manner of giving the notice.

12 Sec. 28.05.074. OPPORTUNITY FOR HEARING REQUIRED. (a) Unless  
13 otherwise specifically provided or unless immediate action in suspend-  
14 ing, revoking, canceling, limiting, restricting, denying or impounding  
15 is necessary for the protection of the health, safety or welfare of the  
16 public, the department shall give notice of the opportunity for an  
17 administrative hearing before a license, registration, title, permit or  
18 privilege issued or allowed by this title or regulations adopted under  
19 this title is suspended, revoked, canceled, limited, restricted or  
20 denied or a vehicle is impounded by the department. If immediate action  
21 is required under this section and prior opportunity for a hearing  
22 cannot be afforded, the department shall promptly give notice of the  
23 opportunity for a hearing as soon after the action as is practicable for  
24 the parties involved.

25 (b) The notice required under this section shall state the reasons  
26 for the department's action and provide for a reasonable return date of  
27 not less than 10 days after service of the notice. If there is no  
28 request for a hearing by the return date specified in the notice, the  
29 hearing is considered to have been waived.

1 (c) This section does not apply to point system procedures under  
2 AS 28.15.282 - 28.15.288.

3 Sec. 28.05.076. HEARINGS AND APPEALS. (a) Unless otherwise  
4 specifically provided, all hearings required under this title or regu-  
5 lations adopted under this title shall be conducted by the department  
6 under regulations adopted by the commissioner governing practice and  
7 procedure and consistent with due process of law. Hearings shall be  
8 informal, and technical rules of evidence do not apply. A person who  
9 requests a hearing may retain an attorney if he so desires. The hearing  
10 officer shall be appointed by the commissioner and may be appointed from  
11 the department. A hearing officer need not be an attorney, but must be  
12 impartial and may not have participated in the decision which is under  
13 review. The hearing officer does not have to file a full opinion or  
14 make formal findings of fact or conclusions of law, but he must state  
15 the reasons for his determination and indicate the evidence relied upon.  
16 The proceedings at the hearing shall be recorded.

17 (b) A person aggrieved by the decision of the hearing officer may  
18 initiate a proceeding in district court to rescind the department's  
19 action by filing a notice of appeal in accordance with the applicable  
20 rules of court governing appeals in civil matters. The court shall  
21 conduct a hearing de novo. The scope of review applied in a determi-  
22 nation under this section shall be as provided in AS 44.62.570(b) and  
23 (c). The decision of the department suspending, revoking, canceling,  
24 limiting, restricting or denying a license, registration, title, permit  
25 or privilege is stayed and does not take effect during the pendency of  
26 an appeal to the court.

27 (c) This section does not apply to point system procedures under  
28 AS 28.15.282 - 28.15.288.

29 \* Sec. 2. AS 28.17.051(b) is repealed and re-enacted to read:

1 (b) A suspension, revocation, or denial of a license under this  
2 chapter is subject to the notice and hearing requirements of AS 28.05.-  
3 074 - 28.05.076.

4 \* Sec. 3. AS 44.62.330(a)(23) is repealed and re-enacted to read:

5 (23) Department of Public Safety, as to suspension or revoca-  
6 tion of a security guard's license under AS 18.65.400 - 18.65.490

7 \* Sec. 4. AS 28.15.170(c), AS 28.20.030, and 28.20.620 are repealed.

8 \* Sec. 5. Sections 1 and 2 of this Act specifically apply to all actions  
9 awaiting an administrative hearing on the effective date of this Act.

10 \* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-  
11 070(c).