

CS FOR HOUSE BILL NO. 299(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 2/18/94

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES TOOHEY, Bunde, Mulder

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to revocation of a driver's license for illegal possession or use
2 of a controlled substance or illegal possession or consumption of alcohol; and
3 providing for an effective date."

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

5 * Section 1. FINDINGS. The legislature finds that

6 (1) drinking alcohol is a factor in approximately one-half of all fatal motor
7 vehicle accidents;

8 (2) any blood alcohol level affects driving ability and increases the likelihood
9 of accidents;

10 (3) youthful drivers who consume alcohol are far more likely than sober
11 teenage drivers to be killed in single vehicle accidents;

12 (4) drinking and driving is a leading killer of youths in this country;

13 (5) youths under the age of 21 are twice as likely as any other age group to
14 be involved in an alcohol-related automobile accident; and

1 (6) schools in this state should conduct educational programs to teach youths
2 about the dangers of drinking or using controlled substances and driving.

3 * Sec. 2. AS 28.15 is amended by adding new sections to read:

4 Sec. 28.15.183. ADMINISTRATIVE REVOCATION OF A MINOR'S
5 LICENSE TO DRIVE. (a) If a peace officer has probable cause based on personal
6 observation that a person who is at least 14 years of age but not yet 21 years of age
7 has possessed or used a controlled substance in violation of AS 11.71, or possessed or
8 consumed alcohol in violation of AS 04.16.050, the peace officer shall read a notice
9 and deliver a copy to the person. The notice must advise that

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

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

13 (3) if the person has a driver's license or permit, the notice itself is a
14 temporary driver's license or permit that expires seven days after it is delivered to the
15 person;

16 (4) revocation of the person's driver's license or permit, privilege to
17 drive, or privilege to obtain a license or permit, takes effect seven days after delivery
18 of the notice to the person unless the person, within seven days, requests an
19 administrative review.

20 (b) After reading the notice under (a) of this section, the peace officer shall
21 seize the person's driver's license or permit if it is in the person's possession and shall
22 deliver it to the department with a sworn report describing the circumstances under
23 which it was seized.

24 (c) Unless the person has requested an administrative review, the department
25 shall revoke the person's driver's license or permit, privilege to drive, or privilege to
26 obtain a license or permit, effective seven days after delivery to the person of the
27 notice required under (a) of this section, upon receipt of a sworn report of a peace
28 officer

29 (1) that the officer had probable cause based on personal observations
30 that the person is at least 14 years of age but not yet 21 years of age and has
31 possessed or used a controlled substance in violation of AS 11.71, or possessed or

1 consumed alcohol in violation of AS 04.16.050;

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

3 (3) describing the circumstances surrounding the violation of the
4 controlled substances provisions of AS 11.71 or the alcoholic beverages provisions of
5 AS 04.16.050.

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

7 (1) for a first revocation, for a period of 90 days;

8 (2) for a second revocation, for a period of one year; or

9 (3) for a third or subsequent revocation, for a period of three years.

10 (e) Notwithstanding the provisions of AS 28.20.240 and 28.20.250, the
11 department may not require proof of financial responsibility before restoring a driver's
12 license, permit, or privilege that is revoked under this section.

13 (f) A revocation imposed under this section shall be consecutive to a
14 revocation imposed under another provision of law, except that a revocation imposed
15 under this section shall be concurrent with a revocation imposed under AS 28.15.185
16 that is based on the same incident. A department hearing officer may grant limited
17 license privileges in accordance with the standards set out in AS 28.15.201 to a person
18 whose driver's license, permit, or privilege was revoked under this section.

19 (g) The department may not issue a new license or reissue a license to a
20 person whose driver's license, permit, or privilege to drive has been revoked under this
21 section unless the person demonstrates compliance with the provisions of
22 AS 28.15.211(d).

23 Sec. 28.15.184. ADMINISTRATIVE REVIEW OF REVOCATION OF A
24 MINOR'S LICENSE. (a) A person who has received a notice under AS 28.15.183(a)
25 may make a written request for administrative review of the department's action. If
26 the person's driver's license or permit has not been previously surrendered to the
27 department, it shall be surrendered to the department at the time the request for review
28 is made.

29 (b) A request for review of the department's revocation under AS 28.15.183
30 shall be made within seven days after receipt of the notice under AS 28.15.183 or the
31 right to review is waived and the action of the department under AS 28.15.183(c) is

1 final. If a written request for a review is made after expiration of the seven-day
2 period, and if it is accompanied by the applicant's verified statement explaining the
3 failure to make a timely request for a review, the department shall receive and consider
4 the request. If the department finds that the person was unable to make a timely
5 request because of lack of actual notice of the revocation or because of factors of
6 physical incapacity such as hospitalization or incarceration, the department shall waive
7 the period of limitation, reopen the matter, and grant the review request.

8 (c) Upon receipt of a request for review, if it appears that the person holds a
9 valid driver's license or permit and that the driver's license or permit has been
10 surrendered, the department shall issue a temporary driver's permit that is valid until
11 the scheduled date for the review. A person who has requested a review under this
12 section may request, and the department may grant for good cause, a delay in the date
13 of the hearing. If necessary, the department may issue additional temporary permits
14 to stay the effective date of its action under AS 28.15.183(c) until the final order after
15 the review is issued.

16 (d) A person who has requested a hearing under this section and who fails to
17 appear at the hearing, for reasons other than lack of actual notice of the hearing or
18 physical incapacity such as hospitalization or incarceration, waives the right to a
19 hearing. The determination of the department that is based upon the officer's report
20 becomes final.

21 (e) Notwithstanding AS 28.05.141(b), the hearing under this section may be
22 held telephonically at the discretion of the hearing officer.

23 (f) A review under this section shall be held before a hearing officer
24 designated by the commissioner. The hearing officer may

- 25 (1) administer oaths and affirmations;
26 (2) examine witnesses and take testimony;
27 (3) receive relevant evidence;
28 (4) issue subpoenas, take depositions, or cause depositions or
29 interrogatories to be taken;
30 (5) regulate the course and conduct of the hearing;
31 (6) make a final ruling on the issue.

1 (g) The hearing for review of a revocation by the department under
2 AS 28.15.183 shall be limited to the issues of whether the person was at least 14 years
3 of age but not yet 21 years of age and whether the person possessed or used a
4 controlled substance in violation of AS 11.71 or possessed or consumed alcohol in
5 violation of AS 04.16.050.

6 (h) The determination of the hearing officer may be based upon the sworn
7 report of a peace officer, if the sworn report is supported by probable cause based on
8 personal observations as required under AS 28.15.183(a). The peace officer need not
9 be present at the hearing unless either the person requesting the hearing or the hearing
10 officer requests in writing before the hearing that the officer be present. If in the
11 course of the hearing it becomes apparent that the testimony of the peace officer is
12 necessary to enable the hearing officer to resolve disputed issues of fact, the hearing
13 shall be continued to allow the attendance of the peace officer.

14 (i) Testimony given at the hearing is not admissible in a criminal trial unless
15 the testimony given at the trial is inconsistent with testimony given at the hearing.

16 (j) If the issues set out in (g) of this section are determined in the affirmative
17 by a preponderance of the evidence, the hearing officer shall sustain the action of the
18 department. If one or more of the issues is determined in the negative, the
19 department's revocation action shall be rescinded.

20 (k) If the action of the department in revoking a nonresident's privilege to
21 drive a motor vehicle is not administratively contested by the nonresident driver or if
22 the departmental action is sustained by the hearing officer, the department shall give
23 written notice of action taken to the motor vehicle administrator of the state of the
24 person's residence and to any state in which that person has a driver's license.

25 (l) Within 30 days of the issuance of the final determination of the department,
26 a person aggrieved by the determination may file an appeal in superior court for
27 judicial review of the hearing officer's determination. The judicial review shall be on
28 the record without taking additional testimony. The court may reverse the
29 department's determination if the court finds that the department misinterpreted the
30 law, acted in an arbitrary and capricious manner, or made a determination unsupported
31 by the evidence in the record.

1 (m) The filing of an appeal under (l) of this section or a petition for review
2 does not automatically stay the department's order or revocation. The court may grant
3 a stay of the order or revocation under the applicable rules of court, after a motion and
4 hearing, and upon a finding that there is a reasonable probability that the petitioner
5 will prevail on the merits and that the petitioner will suffer irreparable harm if the
6 order is not stayed.

7 * **Sec. 3. APPLICABILITY.** This Act applies to violations of AS 04.16.050 or AS 11.71
8 that occur on or after the effective date of this Act.

9 * **Sec. 4.** This Act takes effect July 1, 1994.