

**CS FOR HOUSE BILL NO. 299(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**EIGHTEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 3/9/94**

**Referred: 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; to fees  
3 for reinstatement of a driver's license; and 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 is enrolled in and is in compliance with, or has successfully

22 completed and paid for

23 (1) an alcoholism education and rehabilitation treatment program, if the

24 revocation resulted from possession or consumption of alcohol in violation of

25 AS 04.16.050; or

26 (2) a drug rehabilitation treatment program, if the revocation resulted

27 from possession or use of a controlled substance in violation of AS 11.71.

28 (h) In this section, "peace officer" does not include a person employed by the

29 Department of Corrections.

30 Sec. 28.15.184. ADMINISTRATIVE REVIEW OF REVOCATION OF A

31 MINOR'S LICENSE. (a) A person who has received a notice under AS 28.15.183(a)

1 may make a written request for administrative review of the department's action. If  
2 the person's driver's license or permit has not been previously surrendered to the  
3 department, it shall be surrendered to the department at the time the request for review  
4 is made.

5 (b) A request for review of the department's revocation under AS 28.15.183  
6 shall be made within seven days after receipt of the notice under AS 28.15.183 or the  
7 right to review is waived and the action of the department under AS 28.15.183(c) is  
8 final. If a written request for a review is made after expiration of the seven-day  
9 period, and if it is accompanied by the applicant's verified statement explaining the  
10 failure to make a timely request for a review, the department shall receive and consider  
11 the request. If the department finds that the person was unable to make a timely  
12 request because of lack of actual notice of the revocation or because of factors of  
13 physical incapacity such as hospitalization or incarceration, the department shall waive  
14 the period of limitation, reopen the matter, and grant the review request.

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

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

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

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

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

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

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

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

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

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

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

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

14 \* Sec. 3. AS 28.15.211(c) is amended to read:

15 (c) At the end of a period of suspension or limitation, when that limitation  
16 follows a suspension, the person whose license has been suspended or limited may  
17 apply to the department and, upon payment of the proper fees, including a  
18 reinstatement fee [OF \$100], be issued a duplicate driver's license if the person is  
19 otherwise entitled to the license under this title.

20 \* Sec. 4. AS 28.15.211(d) is amended to read:

21 (d) At the end of a period of revocation or limitation following a revocation,  
22 a person whose driver's license has been revoked may apply to the department for the  
23 issuance of a new license, but shall submit to reexamination, pay all required fees  
24 including a reinstatement fee [OF \$100], and if the license was revoked under  
25 AS 28.15.181(a)(5) or (8), submit proof of

26 (1) enrollment in and compliance with or completion of an alcoholism  
27 education and rehabilitation treatment program if the person was sentenced under  
28 AS 28.15.181(c)(1); or

29 (2) completion of and payment for an alcoholism education and  
30 rehabilitation treatment program if the person was convicted under AS 28.15.181(c)(2)  
31 - (4).

1 \* Sec. 5. AS 28.15.271(b) is amended to read:

2 (b) In addition to the fees under (a) of this section,

3 (1) a person who renews a driver's license by mail shall pay a fee of

4 \$1; [AND]

5 (2) a person who applies for a limited driver's license under  
6 AS 28.15.201 shall pay a fee of \$100; and

7 (3) a person who applies for reinstatement of a driver's license  
8 under AS 28.15.211 shall pay a fee of \$250.

9 \* Sec. 6. APPLICABILITY. This Act applies to violations of AS 04.16.050 or AS 11.71  
10 that occur on or after the effective date of this Act.

11 \* Sec. 7. This Act takes effect July 1, 1994.