

CS FOR HOUSE BILL NO. 299(FIN) am S
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 5/6/94

Amended: 3/29/94

Sponsor(s): REPRESENTATIVES TOOHEY, Bunde, Mulder, Williams, Nordlund

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 by a
3 person at least 14 but not yet 21 years of age; to fees for reinstatement of a
4 driver's license; and providing for an effective date."

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

6 * Section 1. AS 28.15 is amended by adding new sections to read:

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

1 advise that

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

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

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

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

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

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

21 (1) that the officer had probable cause and based on personal
22 observations that the person is at least 14 years of age but not yet 21 years of age and
23 has possessed or used a controlled substance in violation of AS 11.71, or possessed or
24 consumed alcohol in violation of AS 04.16.050;

25 (2) that the peace officer has cited the person or arrested the person for
26 a violation of AS 11.71 or AS 04.16.050;

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

28 (4) describing the circumstances surrounding the violation of the
29 controlled substances provisions of AS 11.71 or the alcoholic beverages provisions of
30 AS 04.16.050.

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

- 1 (1) for a first revocation, for a period of 90 days;
2 (2) for a second revocation, for a period of one year; or
3 (3) for a third or subsequent revocation, for a period of three years.

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

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

13 (g) Except as provided under (h) of this section, the department may not issue
14 a new license or reissue a license to a person whose driver's license, permit, or
15 privilege to drive has been revoked under this section unless the person is enrolled in
16 and is in compliance with, or has successfully completed

17 (1) an alcoholism education and rehabilitation treatment program, if the
18 revocation resulted from possession or consumption of alcohol in violation of
19 AS 04.16.050; or

20 (2) a drug rehabilitation treatment program, if the revocation resulted
21 from possession or use of a controlled substance in violation of AS 11.71.

22 (h) The department may waive the provisions of (g) of this section if a person
23 who is required to obtain drug or alcoholism treatment resides in an area where drug
24 rehabilitation or alcoholism treatment is unavailable.

25 (i) In this section, "peace officer" does not include a person employed by the
26 Department of Corrections.

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

1 is made.

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

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

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

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

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

- 29 (1) administer oaths and affirmations;
30 (2) examine witnesses and take testimony;
31 (3) receive relevant evidence;

1 (4) issue subpoenas, take depositions, or cause depositions or
2 interrogatories to be taken;

3 (5) regulate the course and conduct of the hearing;

4 (6) make a final ruling on the issue.

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

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

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

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

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

29 (l) Within 30 days of the issuance of the final determination of the department,
30 a person aggrieved by the determination may file an appeal in superior court for
31 judicial review of the hearing officer's determination. The judicial review shall be on

1 the record without taking additional testimony. The court may reverse the
2 department's determination if the court finds that the department misinterpreted the
3 law, acted in an arbitrary and capricious manner, or made a determination unsupported
4 by the evidence in the record.

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

11 * Sec. 2. AS 28.15.211(c) is amended to read:

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

17 * Sec. 3. AS 28.15.211(d) is amended to read:

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

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

26 (2) completion of and payment for an alcoholism education and
27 rehabilitation treatment program if the person was convicted under AS 28.15.181(c)(2)
28 - (4).

29 * Sec. 4. AS 28.15.271(b) is amended to read:

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

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

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\$1; [AND]

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

(3) a person who applies for reinstatement of a driver's license under AS 28.15.211 shall pay a fee of

(A) \$100 if the person's driver's license has, within the 10 years preceding the application, been suspended, revoked, or limited under the provisions of this chapter only once; or

(B) \$250 if the person's driver's license has, within the 10 years preceding the application, been suspended, revoked, or limited under the provisions of this chapter two or more times.

* Sec. 5. APPLICABILITY. This Act applies to violations of AS 04.16.050 or AS 11.71 that occur on or after the effective date of this Act.

* Sec. 6. This Act takes effect July 1, 1994.