

HB

299

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 18, 1994

SUBJECT: Revocation of drivers license - (CSHB 299(HES))

TO: Representative Cynthia Toohey

FROM: Michael F. Ford *M.F.*
Legislative Counsel

I wanted to alert you that CSHB 299(HES) contains a provision that should be changed in order to avoid confusion. In new sec. 28.15.183(g), a person whose driver's license is revoked is required to comply with the provisions of AS 28.15.-211(d) in order to receive a new license. However, the provisions of AS 28.15.211(d) are not readily applicable, at least not without considerable interpretation. This matter should be cleared up by amending AS 28.15.183(g) to clearly indicate which provisions of AS 28.15.211(d) are required to be met.

If you have further questions please contact me.

MFF:pl
94-140.plm

Amendment to proposed House Health and Social Services Committee
work draft 8-LS0961\O, dated 2/11/94

Page 3, after line 18, create new subsection (g) and insert:

In this section, if a person's driver's license, permit, or privilege to drive, or privilege to obtain a license is revoked under this section, the person's license may not be issued or reinstated until the person demonstrates compliance with the terms of A.S. 28.15.211 (d).

Mike, here is the proposed language. If technical changes are necessary, proceed.



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE CYNTHIA TOOHEY

State Capitol
Juneau, AK 99801-1182

DISTRICT 13

SPONSOR STATEMENT

House Bill 299

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

This sponsor statement addresses the proposed committee substitute which is referred to as *"Use it-Lose it"* legislation.

There is no doubt that the dangerous association of controlled substances and alcohol with driving begins at an early age. It cannot be stressed enough that usage of alcohol or controlled substances causes a reduction of mental and physical capabilities and can severely impair one's ability to drive in a responsible manner. HB299 would provide the Department of Public Safety with a tool to help discourage youth from starting the dangerous and often fatal association of controlled substances and alcohol with driving.

Driving is a privilege looked forward to by all youngsters. Loss of this privilege can be a powerful deterrent. The intent of this bill is to provide the strongest possible incentive for our children to say "no" to controlled substances or alcohol. It gives youth a reason, that is acceptable to their peers, to say "no," while providing positive reinforcement to alcohol and drug-free teenagers by maintaining their eligibility to drive.

Under HB299, a minor who is old enough to have either a permit or license to drive would lose that license, permit, or privilege if said minor possessed, used, or consumed a controlled substance or alcohol. Revocation would be through an administrative proceeding.

This bill is supported by the Department of Public Safety, the Alaska Medical Association, the Alaska Council on Prevention of Alcohol and Drug Abuse, Alaskans for Drug-Free Youth, the Alaska Association of Chiefs of Police, and others. It has a fiscal note from the Department of Public Safety, but it is anticipated the revenue generated would more than cover the cost of the implementation. It would also enable the State to access additional federal funds. The Department of Law has a zero fiscal note. Your support would be appreciated.

SPONSOR STATEMENT

POSITION PAPER - Department of Public Safety

BILL NO: CSHB 299 (HES)

DATE:

February 15, 1994

TITLE: Driver's License Revocation; Alcohol/Drugs

CONTACT:

Lorn M. Campbell
Executive Director
Highway Safety
Planning Agency

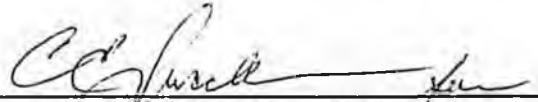
"An Act relating to revocation of a youth under 21 years of age driver's license for illegal possession or use of a controlled substance or illegal possession or consumption of alcohol."

Under Alaska Statute 28.15.011 the exercise to drive or have any degree of control over a motor vehicle upon a highway is a privilege and not a right guaranteed by law. Impaired driving and impaired-related crashes involving young drivers constitute a major problem in every motorized country in the world. In the United States, drivers age 16-19 have the highest crash rate--20.1 crashes per million miles driven in 1990--compared with a rate of 5.3 for all other ages combined.

Alaska is no exception to this problem as alcohol/drugs continue to be a major contributor in youthful traffic accidents and deaths in the State of Alaska. Statistics for 1992 showed 44.4 percent of youths under the age of 21 were impaired at the time of their deaths. Autopsy results disclosed that all of the youth who were impaired had blood alcohol levels well over 0.10.

As consumption or possession of alcohol or a controlled substance is unlawful by all persons under the age of 21 years, license revocation is a particularly appropriate penalty for young drivers for a number of reasons. First of all, mile for mile the teenage driver is a high-risk operator, especially when drinking. Every mile that this high-risk driving can be reduced by significant safety dividends for the individual and the public. Since the privilege to drive is important to a teenager, loss of the driver's license is particularly relevant in motivating the young driver to avoid alcohol or drug related offenses.

The Department of Public Safety strongly supports passage of CSHB 299 (HES) or similar legislation that saves the lives of our State's most valuable resource--our youth.


Richard L. Burton,
Commissioner

8-LS0961NO
Ford
2/11/94

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

BY

Offered:
Referred:

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

25 (b) A request for review of the department's revocation under AS 28.15.183
26 shall be made within seven days after receipt of the notice under AS 28.15.183 or the
27 right to review is waived and the action of the department under AS 28.15.183(c) is
28 final. If a written request for a review is made after expiration of the seven-day
29 period, and if it is accompanied by the applicant's verified statement explaining the
30 failure to make a timely request for a review, the department shall receive and consider
31 the request. If the department finds that the person was unable to make a timely

1 request because of lack of actual notice of the revocation or because of factors of
2 physical incapacity such as hospitalization or incarceration, the department shall waive
3 the period of limitation, reopen the matter, and grant the review request.

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

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

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

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

21 (1) administer oaths and affirmations;

22 (2) examine witnesses and take testimony;

23 (3) receive relevant evidence;

24 (4) issue subpoenas, take depositions, or cause depositions or
25 interrogatories to be taken;

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

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

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

1 violation of AS 04.16.050.

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

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

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

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

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

28 (m) The filing of an appeal under (l) of this section or a petition for review
29 does not automatically stay the department's order or revocation. The court may grant
30 a stay of the order or revocation under the applicable rules of court, after a motion and
31 hearing, and upon a finding that there is a reasonable probability that the petitioner

1 will prevail on the merits and that the petitioner will suffer irreparable harm if the
2 order is not stayed.

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

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

HOUSE COMMITTEE REPORT

(9)

Date Referred: May 6, 1993

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 2/17/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 299

HOUSE BILL NO. 299

DRIVER'S LIC REVOCATION/ALCOHOL PROGRAMS

"An Act relating to education programs on consumption of alcohol and to revocation of a driver's license for illegal consumption of alcohol; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 299 (HESS) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact Public Safety

fiscal note(s) _____

zero fiscal note Law

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Fred L. Starn</i>	✓				
<i>Carl Breuck</i>	✓				
<i>[Signature]</i>	✓				
<i>Bruce Davis</i>	✓				
<i>[Signature]</i>	✓				
<i>Tom Brice</i>	✓				

Carl Breuck
CHAIRMAN'S SIGNATURE

Rep Brief



Alaska State Legislature
 House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: 2/11/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 * HB 299: DRIVER'S LICENSE REVOCATION; Alcohol/Drugs
 * HB 417: POSSESSION OF FIREARMS IN SCHOOL LOCKERS
 * HB 418: EXTEND BOARD OF PAROLE
 * INDICATES FIRST PUBLIC HEARING

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Sam Russell	JDHS	William O'Neil		740-2646		(Y) N	299
Kai Morrison	TDHS	Concepcion Ponce Sitka HR417		586-2883		(Y) N	299
Alisha Heric	JDHS			789-5120		(Y) N	299
Jesse Gemmill	JDHS			5864016		(Y) N	299
Vernon Marshall		NEA-AK				(Y) N	417-299
M.E. Olson	Member AKRP (S) (S)	1032 W. 11th Anchorage, AK		272-915		Y (N)	-
JAMIE MARKS	NEA/T					(Y) N	299
Margot Knuth	Law-Crim				3428	(Y) N	HB 299 HB 417
Terrie Stoll	KIDPAC				3-6744	(Y) N	HB 417 - I have an appt at 4:15 so that's
						Y N	
						Y N	



Alaska State Legislature
 House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: 2/6/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
RICHARD COLLIN	PAROLE BOARD	Box 112000 JUNEAU AK.	99811		465-3354	Y	N	HB 418
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: CSHB 299 (HES)

Revision Date: _____ Dept. Affected: Public Safety
 Title: An Act relating to revocation of a driver's BRU: Motor Vehicles
license ... and providing for an effective date. Component: Driver Services
 Sponsor: Representative Toohy
 Requestor: (H) HESS COMPONENT SERIAL NO. 500, 502

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	126.1	126.1	126.1	126.1	126.1	126.1
TRAVEL	1.5	0	0	0	0	0
CONTRACTUAL	17.4	16.1	16.1	16.1	16.1	16.1
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	42.0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	188.0	143.2	143.2	143.2	143.2	143.2
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES (1005) <small>Revenue Code</small>	225.0	225.0	225.0	225.0	225.0	225.0

FUNDING: (Thousands of Dollars)

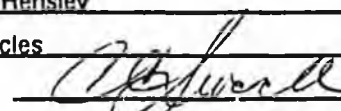
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	188.0	143.2	143.2	143.2	143.2	143.2
1006 GF/MHTIA						
Other						
TOTAL	188.0	143.2	143.2	143.2	143.2	143.2

Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
See Attached

Prepared By: Juanita M. Hensley Phone: 465-2650
 Division: Motor Vehicles Date: 2/16/94
 Approved by Commissioner:  Date: _____
 Agency: Richard L. Burton, Dept. of Public Safety

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

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This bill will require the Division of Motor Vehicles to administratively revoke the driver's license of any person between the ages of 14 through 20 who has consumed or who is in possession of drugs or alcohol. The Division of Family and Youth Services (DFYS) reports approximately 1,200 youths between the ages of 14 through 17 are referred to their agency by police authorities for alcohol or drug offenses yearly. The Department of Public Safety Uniform Crime Report for 1992 shows approximately 1,300 persons between the ages of 18 through 20 are arrested or charged with drug and alcohol offenses (other than DWI) each year. The total number of youths whose driver's license or privilege to drive would be revoked is approximately 2,500.

In order to handle the additional 2,500 additional license revocations a year, and provide due process for the minor, one full-time Driver Improvement Specialist/Hearing Officer, and two full-time Motor Vehicle Representative I/II's would be required. The cost for personal services for a Driver Improvement Specialist/Hearing officer is 52.8; the cost for two Motor Vehicle Representative I/II's is 73.3. The total for personal services is 126.1. The Driver Improvement Specialist and one Motor Vehicle Representative will be located in the Juneau Driver Services office and will handle the all paperwork and hearings associated with administering the revocation of the driver's license. The second Motor Vehicle Representative will be located in the Anchorage Field Services section and will be used in the Motor Vehicle Field office to handle the reinstatement and issuance of a driver's license.

To revoke 2,600 additional driver's licenses a year takes over 30 processing steps per revoked license. It takes approximately 20 minutes to one hour to conduct an administrative hearing. Each processing step varies in the time it takes to complete. Complete accuracy is essential, as an error of entry onto a record could result in civil liability to the State. It takes approximately 20 minutes per applicant to reinstate a revoked driver's license; this time is exclusive of the time it takes a person to take the required tests; the person must make a new application for the driver's license or permit, take all of the required tests, and if the person is under the age of 18 a parent or legal guardian must give consent for the driver's license or permit, and pay the reinstatement fee. Travel and per-diem requested is to send the hearing officer to the National Judicial College for professional training in the fair hearing process.

Under existing law, each person whose license has been revoked must pay a \$100 fee when applying for reinstatement of his or her driver's license. Assuming that 90 percent of the minors who are eligible for reinstatement will comply with the reinstatement requirements, approximately 225.0 will be generated annually as program receipt/general fund revenue.

DETAIL	FY95	FY96
PERSONAL SERVICES	126.1	126.1
2 Motor Vehicle Representative I/II		
1 Driver Improvement Specialist/Hearing Officer		
TRAVEL	1.5	
Airfare and per-diem to National Judicial College		
Travel is a one-time expense		
CONTRACTUAL	17.4	16.1
323 sq. ft. office space lease		
@\$1.95 per sq. ft. 7.6		
Postage and tolls 1.7		
Telephone charges/conference call and long distance charges 6.8		
Tuition for National Judicial College 1.3		
Tuition is a one-time expense		
SUPPLIES	1.0	1.5
Routine Office Supplies		
EQUIPMENT	42.0	
3 Complete workstations 10.0 each		
Copier 11.0		
Telephone Purchase 1.0		
Equipment is a one-time expense		
TOTAL	188.0	143.2

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 299 (HES)

Revision Date: February 18, 1994
Title: "...revocation of a driver's license for illegal possession or use of a controlled substance...alcohol..."
Sponsor: Representative Toohy
Requestor: Representative Toohy

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division

Phone: 465-3672
Date: February 18, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Date: February 18, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 299 (HES)

ANALYSIS CONTINUATION:

The House HES Committee version of HB 299 adds a new section to AS 28.15 that provides for the revocation of a driver's license of a person that is at least 14 years of age, but not yet 21 years of age, for the possession or use of a controlled substance in violation of AS 11.17, or the possession or use of alcohol in violation of AS 04.16.050.

Revocation would be handled administratively by the Department of Public Safety if a police officer had probable cause based on personal observation that the possession or use occurred. The administrative process includes a provision for an administrative appeals hearing, as well as providing for subsequent judicial review. A police officer would be required to read a notice and to deliver a copy to the person advising that revocation will occur in seven days, unless the person requests an administrative review within the seven days. The written notice would serve as a temporary seven day license or permit, and the police officer would seize the person's license or permit if it is in the person's possession. Revocation would include the person's driver's license, permit, privilege to drive, or privilege to obtain a license or permit. A first revocation would result in a revocation for a period of 90 days; a second revocation would result in a revocation for a period of one year; and a third revocation would result in revocation for a period of three years.

Current statute (AS 28.15.185) contains similar penalties for the same offense; however, the existing statute is limited to youths ages 13 through 17, and the penalties can be invoked only if the person is adjudicated by a juvenile court of misconduct involving a controlled substance or alcohol.

Because the revocation process will be handled administratively within the Department of Public Safety, the bill is unlikely to have a direct fiscal impact on the Department of Law. However, we are concerned that there will be a secondary impact caused by youthful offenders who drive while their license is revoked or who cannot obtain a license or permit during a revocation period. We also expect that there will be a larger number of revocations than now occurs under the existing statute, because the age span covered by the bill is greater and because revocation will not require an adjudication. Thus it appears that the incidence of DWLS offenses will increase. However, data is not available that would give any clear idea on the amount of increase that will result if the bill is approved. Consequently, fiscal impact costs have not been shown. We therefore caution that increasing prosecutor caseload at a time when revenues are decreasing, and at a time when the existing caseload is already increasing, will result in prosecutors being forced to decline prosecution of certain offenses in favor of prosecuting more serious offenses.

Finally, we note that the bill includes well-reasoned findings in respect to the dangers involved in mixing alcohol and driving and the particular danger to youths under the age of 21. However, no findings have been included in respect to controlled substances and the dangers they present to youths under the age of 21.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 15, 1994

SUBJECT: Sectional Summary of CSHB 299()
(Work Order No. 8-LS0961\O)

TO: Representative Cynthia Toohey

FROM: Michael F. Ford *M.F. Ford*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Findings.

Section 2.

Sec. 28.15.183. Requires administrative revocation of a driver's license of a person who is at least 14, but not yet 21 years old, who has illegally consumed or possessed alcohol or a controlled substance. Establishes periods of mandatory revocation. Provides that revocation under this section is consecutive to revocation under another provision of law, except for a revocation under AS 28.15.185. Allows for the Department of Public Safety to grant limited license privileges.

Sec. 28.15.184. Provides for review of the administrative revocation before a hearing officer. If the illegal possession or consumption is proven by a preponderance of the evidence the revocation is required to be sustained. Provides for appeal of the hearing officer's decision to superior court.

Section 3. Applicability.

Section 4. Effective date.

MFF:pl
94-132.plm

Sec. 04.16.050. Possession or consumption by persons under the age of 21. A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051(b). (§ 3 ch 131 SLA 1980; am § 8 ch 109 SLA 1983)

Effect of amendments. — The 1983 amendment substituted "21" for "19."

NOTES TO DECISIONS

Cited in *M.O.W. v. State*, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Sec. 28.20.240. Proof required when driving privilege is restricted. Whenever under a law of this state the license of a person is suspended, revoked, limited under AS 28.15.201, or canceled for any reason, the department may not issue to that person a new or renewal of license until permitted to do so under the motor vehicle laws of this state. A period of suspension, revocation, or cancellation continues until proof of financial responsibility for the future is provided. Upon expiration of a period of limitation, the license remains revoked until proof of financial responsibility for the future is provided. (§ 26 ch 163 SLA 1959; am § 7 ch 78 SLA 1982; am § 12 ch 77 SLA 1983)

NOTES TO DECISIONS

A person convicted of operating a motor vehicle while under the influence of intoxicating liquor is required to furnish proof of his financial responsi-

bility for the future. *Paulson v. National Indem. Co.*, 498 P.2d 731 (Alaska 1972).

Cited in *Manderson v. State*, 655 P.2d 1320 (Alaska Ct. App. 1983).

Sec. 28.20.250. Action in respect to unlicensed person. (a) If a person does not have a license, but by final order or judgment is convicted of, or forfeits bail or collateral deposited to secure an appearance for trial for an offense requiring the suspension or revocation of license, or for driving a motor vehicle upon the highways without being licensed to do so, or for driving an unregistered vehicle upon the highways, a license may not be issued to the person unless the person gives and thereafter maintains proof of financial responsibility for the future.

(b) Whenever the department suspends or revokes a nonresident's operating privilege for conviction or forfeiture of bail, the privilege remains suspended or revoked unless the person has previously given or immediately gives proof of financial responsibility for the future. (§ 27 ch 163 SLA 1959)

NOTES TO DECISIONS

Effect of application. — AS 28.20.160 and this section provide simply that the unlicensed driver subject to those laws "may not be licensed" until certain conditions are met; they do not use the lan-

guage of "suspending" or refer to any "privilege" the unlicensed driver may have had. *Francis v. Municipality of Anchorage*, 641 P.2d 226 (Alaska Ct. App. 1982).

Sec. 28.15.185. Court revocation of a minor's license to drive.

(a) A person who is at least 13 years of age but not older than 17 years of age who is adjudicated by a juvenile court of misconduct involving a controlled substance under AS 11.71 or possession or consumption of alcohol under AS 04.16.050 is subject to revocation of the person's driver's license under (b) of this section.

(b) The court shall impose the revocation for an offense described in (a) of this section as follows:

(1) for a first conviction or adjudication, the revocation may be for a period not to exceed 90 days;

(2) for a second or subsequent conviction or adjudication, the revocation may be for a period not to exceed one year.

(c) Upon conviction or adjudication of an offense listed in (a) of this section the court may, upon petition of the person, review the revocation and may restore the driver's license, except a court may not restore the driver's license until

(1) at least one-half of the period of revocation imposed under this section has expired; and

(2) the person has taken and successfully completed a state approved program of drug rehabilitation if convicted of misconduct involving a controlled substance under AS 11.71, or alcohol rehabilitation if convicted of possession or consumption of alcohol under AS 04.16.050; this paragraph does not apply to a person who resides in an area that does not offer a state approved drug or alcohol rehabilitation program or a person that the court determines does not need alcohol or drug rehabilitation.

(d) Notwithstanding the provisions of AS 28.20.240 and 28.20.250, upon conviction of an offense specified in (a) of this section, the department may not require proof of financial responsibility before restoring or issuing the person's driver's license. (§ 1 ch 130 SLA 1988)

Sec. 28.15.201. Limitation of driver's license. (a) A court of competent jurisdiction revoking a person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181(b) may, for good cause, impose limitations upon the driver's license of a person that will enable the person to earn a livelihood without excessive risk or danger to the public. A limitation may not be placed upon a driver's license until after a review has been made of the person's driving record and other relevant information, and a limitation may not be imposed when a statute specifically prohibits the limitation of a license for a violation of its provisions.

(b) A court imposing a limitation under (a) of this section shall (1) require certification of employment;

(2) require proof of enrollment in and compliance with or completion of an alcoholism treatment program when appropriate;

(3) require the surrender of the driver's license; and

(4) issue to the licensee a certificate valid for the duration of the limitation.

(c) After the termination of a limitation as shown on the certificate issued under (b) of this section, the license of a person on whom a limitation was imposed is revoked until the person receives a new license meeting the requirements set out in AS 28.15.211.

(d) A court revoking a driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181(c), or the department when revoking a driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant limited license privileges for the final 60 days during which the license is revoked if

(1) the revocation was for a violation of AS 28.15.181(a)(5) and not for a violation of AS 28.15.181(a)(8);

(2) the person has not been previously convicted; in this paragraph, "previously convicted" has the meaning given in AS 28.35.030 and also includes convictions based on laws presuming that the person was under the influence of intoxicating liquor if there was 0.08 percent or more by weight of alcohol in the person's blood;

(3) the court or the department determines that the person's ability to earn a livelihood would be severely impaired without a limited license;

(4) the court or the department determines that a limitation under (a) of this section can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public; and

(5) the court or the department determines that the person is enrolled in and is in compliance with, or has successfully completed, an alcoholism education and rehabilitation treatment program. (§ 19 ch 178 SLA 1978; am §§ 10, 11 ch 117 SLA 1982; am §§ 8, 9 ch 77 SLA 1983; am §§ 16 — 18 ch 119 SLA 1990; am § 12 ch 3 SLA 1992; am § 4 ch 59 SLA 1993)

Revisor's notes. — In 1990, the word "five" was substituted for "six" in the last sentence of (d) of this section to correct a manifest error in § 18, ch. 119, SLA 1990.

Effect of amendments. — The 1990 amendment, effective January 1, 1991, inserted "or a hearing officer under AS 28.15.165" in the first sentence and added the provision relating to considerations in determining whether to grant limited license privileges in subsection (a); inserted "or hearing officer" in subsection (b); and added subsections (d)-(f).

After July 1, 1993, Section 12(b), ch. 59, SLA 1993 provides that "[s]tatutes amended or added by this Act that refer to previous convictions apply according to

The 1992 amendment, effective April 1, 1992, rewrote subsection (f).

The 1993 amendment, effective July 1, 1993, rewrote this section.

Editor's notes. — Section 30, ch. 3, SLA 1992 provides that for the purposes of the amendment made to (f) of this section by § 12, ch. 3, SLA 1992, convictions for offenses committed before April 1, 1992 are considered previous convictions.

Section 12(a), ch. 59, SLA 1993 provides that the 1993 amendment of this section "applies to offenses that are committed af-

ter July 1, 1993." the terms of those statutes whether the previous convictions occurred before, on, or after July 1, 1993."

NOTES TO DECISIONS

Issuance of limited licenses. — This section affirmatively vests the courts with ongoing power to issue a limited license, provided that issuance of such license is not prohibited under a provision of law in effect when the limited license is requested. *Howell v. State*, 834 P.2d 1254 (Alaska Ct. App. 1992).

Although subsections (d) and (e) specifically authorize the issuance of limited licenses to drivers whose license is revoked for DWI/refusal convictions, nothing in subsection (a) restricts the issuance of limited licenses only to such drivers. *Howell v. State*, 834 P.2d 1254 (Alaska Ct. App. 1992).

Application held not retroactive. — Where defendant, whose driver's license

had been revoked, moved for the issuance of a limited license, in reliance on newly amended language in this section, and did so within the time limitations of R. Crim. P. 35(a), it was error for the trial court to rule the issuance of such license was precluded by AS 01.10.101 (relating to effect of repeals or amendments) because defendant had been sentenced prior to the amended provision's effective date. Application of this provision prior to the effective date of the amendment was not a retroactive application of an amendment to the sentencing scheme promulgated under AS 28.15.181(d) and 28.15.291(c). *Howell v. State*, 834 P.2d 1254 (Alaska Ct. App. 1992).

Sec. 28.05.141. Hearings and appeals. (a) Unless otherwise specifically provided, all hearings required under this title or regulations adopted under this title shall be conducted by the department under regulations adopted by the commissioner governing practice and procedure and consistent with due process of law. Hearings must be informal, and technical rules of evidence do not apply. A person who requests a hearing may retain an attorney. The hearing officer shall be appointed by the commissioner and may be appointed from the department. A hearing officer need not be an attorney, but must be impartial and may not have participated in the decision that is under review. The hearing officer does not have to file a full opinion or make formal findings of fact or conclusions of law, but the hearing officer must state the reasons for the determination and indicate the evidence relied upon. The proceedings at the hearing shall be recorded.

* (b) A hearing ordered under (a) of this section shall be held at the office of the department nearest to the residence of the person requesting the hearing unless the department and the person agree that the hearing is to be held elsewhere. The department shall grant a hearing delay if the person presents good cause for the delay. If a person fails to appear for the hearing at the time and place stated by the department and if a hearing delay has not been granted, the person's failure to appear is considered a waiver of the hearing and the department may take appropriate action with respect to the person.

(c) If at the hearing under (a) of this section it appears that the record of the person sustains suspension, revocation, limitation, denial, or other remedial action, the hearing officer shall so order and the department may suspend, revoke, limit, deny, or take other remedial action against that person's license, registration, or title and, if appropriate, the department shall adjust the person's point total accumulated under AS 28.15.031.

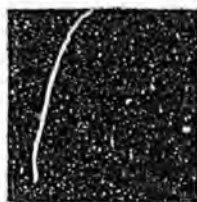
(d) A person aggrieved by the decision of the hearing officer may, within 30 days, initiate a proceeding in district court to rescind the department's action by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. The court shall conduct a hearing de novo. The decision of the department suspending, revoking, canceling, limiting, restricting, or denying a license, registration, title, permit, or privilege is stayed and does not take effect during the pendency of an appeal. (§ 6 ch 178 SLA 1978; am § 2 ch 60 SLA 1986)

Cross references. — For rules of court relating to appeals from administrative proceedings, see App. Rules 601-611.

Effect of amendments. — The 1986 amendment in subsection (c) inserted " registration, or title."

NOTES TO DECISIONS

This section does not apply to a revocation of a license under AS 28.35.032. *Graham v. State*, 633 P.2d 211 (Alaska 1981).



ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662

February 13, 1994

Representative Cynthia Tohey
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, AK 99811

Dear Representative Tohey:

On behalf of the Alaska State Medical Association I would like to offer you our organization's strongest support for your committee substitute for House Bill #299. As physicians we are well aware of the trauma alcohol and drugs inflict upon Alaskans. These problems often begin while our youth are in their teens and this bill will serve as a ringing wake-up call that substance abuse has serious consequences and will not be tolerated. This bill is elegant in its simplicity and will be eloquent in its message once under-age drivers realize that substance abuse is incompatible with driving privileges. When enacted, this bill will be a model for other states to deal with this problem.

I thank you and your staff for your hard and thoughtful work on this bill. If I can be of any assistance to you in its passage, do not hesitate to contact me. If my testimony would ever be helpful, I would be happy to assist you.

Sincerely yours,

Donald P. Lehmann, M.D., A.B.F.P.
President, Alaska State Medical Association

DRL:bj

Alaska Association Chiefs of Police



February 15, 1994

Representative Cynthia Toohey
Room 104
State Capital Building
Juneau, Alaska, 99801-1182

Dear Representative Toohey:

On behalf of the Alaska Association of Chiefs of Police I would like to offer our support for CSHB 299 (work draft of 2/11/94).

The number of teenagers killed while drinking and driving is an endless and ever increasing tragedy in today's society. In Alaska, where the illegal use of drugs and alcohol by minors is significantly higher than other parts of the country, the number of dysfunctional teens seems to be growing at an alarming rate.

The standard law enforcement approach of arrest and incarceration for possession or consumption has not solved or reduced this growing problem. (In the case of teens under the age of eighteen (18) it is simply a ride home with a later court appearance.) Education and counseling, along with innovative incentives is the only hope for reducing this behavior. Revocation of a minor's drivers license for any illegal possession or consumption, regardless of whether a vehicle was involved, is an extremely innovative approach to a very old problem. Because driving is such a cherished past time with most young people, the threat of losing this privilege may be the catalyst needed for some to finally "just say no".

If we can be of any assistance in the passage of this bill please let me know.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ronald L. Otte", is written over a horizontal line.

Ronald L. Otte
President

RLO/lp



Alaskans For Drug-Free Youth

Statewide Headquarters

2417 Tongass, Suite #114, Ketchikan, Alaska 99901
 Phone: 907-247-2273, 1-800-478-2273, fax 907-247-2232

February 15, 1994

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The Honorable Cynthia Toohey
 State Capitol
 Juneau, AK 99801-1182

Dear Representative Toohey:

Thank you for sending us the latest draft of HB 299. Our organization fully supports the "Use It - Lose It" administrative revocation of minors' permits and licenses. We believe this will be a very cost effective tool for law enforcement and more importantly, will provide our young people with a reason not to drink and use other drugs.

If there is one thing teenagers have in common, it is that they are all anxious to have a drivers license. The threat of losing it should make them think twice about taking a drink.

We are also interested in incorporating a .00 BAC for those under 21 years old. If it is possible to amend this bill to include that provision, we would appreciate it. We will continue to advocate for it in any case.

Thank you for being responsive to our suggestions for changes to your bill. If there is anything else we can do to help, please let us know. Lynda Adams will be back in the office next week and will be happy to answer any questions you may have.

Sincerely,

Cheri Davis,
 Development Director





ALASKA COUNCIL ON
PREVENTION
OF ALCOHOL AND DRUG ABUSE, INC.

Founded 1962

February 15, 1994

Representative Cynthia Toohey
House of Representatives
State Capitol, Room 104
Juneau, AK 99801-1182

Dear Representative Toohey,

Thank you for informing me about C.S. House Bill 299 draft dated February 11, 1994. The data you are about to read comes from the Robert Wood Johnson Foundation report dated October 1993. Prepared by the Institute for Health Policy, Brandeis University entitled *Substance Abuse the Nations Number One Health Problem, Key Indicators for Policy*. I am in support of this bill for the following reasons:

- Adolescent is a period of experimentation with substance use and teenagers are particularly at risk for being involved with alcohol and drug related vehicle injuries.
- Traffic crashes remain the single greatest cause of death among American youth and young adults and almost half of all traffic fatalities are alcohol-related.
- Diverse efforts under way in communities across the country including prompt license suspension, sobriety police checks, zero tolerance for underage drivers and public education have had an impact on alcohol impaired driving decline.
- The public supports stringent sanctions against driving while intoxicated and according to a national poll would like to see tougher enforcement of drinking age laws (64%) automatic license suspension for the first offense (89%) and automatic confiscation of plates for the second offense (89%).

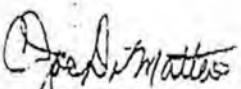
Representative Tooley
February 15, 1994
Page two

- Alcohol in any quantity is a risk factor for young drivers and nearly 40% of 16 to 19 year old drivers in alcohol involved fatal crashes had a B.A.C. level under 0.10%.
- Early use is related to later problems. By the eighth grade 70% of adolescents have consumed alcohol.

The above statistics show that any intervention we create as a community for young people will save many lives. Tougher laws and higher prices on alcohol and tobacco have proven to be effective deterrents for substance use and abuse among young people.

I wish you success in getting House Bill 299 approved. If there is anything that I can do to help, please feel free to call me.

Sincerely,


Joseph DiMatteo
Executive Director

/JDM