

**HB**

**151**

# FISCAL NOTE

No: 1  
 Bill Version: CSHB 151 (JUD)  
 (H) Publish Date: 4/27/99

**STATE OF ALASKA  
 1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title <u>"...relating to revocation and reinstatement of the driver's license of a person at least 14 but not yet 21 years of age."</u>	BRU	<u>Criminal Division/Civil Division</u>
Sponsor <u>Representative Kott</u>	Component	<u>1st-4th Judicial Districts; OSPA; Human Services</u>
Requester <u>House Judiciary Committee</u>	Component Serial No.	<u>2198-99;2201/03/61/79/08</u>

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 HB 151 makes several changes to the statutes relating to revocation of driver's licenses for minors possessing and/or consuming alcohol. Possession of alcohol would no longer be grounds for license revocation. Driver's license revocations imposed under different provisions of law for the same incident would be applied concurrently, rather than consecutively. And the bill would allow license reinstatement under certain circumstances.

This bill will have no fiscal impact on the Department of Law.

Prepared by	Joan M. Kasson <i>Joan M. Kasson</i>	Phone 465-5370
Division	Attorney General's Office	Date/Time <u>3/26/99, 4:27 PM</u>
Approved by Commissioner	<i>for</i> Bruce M. Bolger <i>Bruce M. Bolger</i>	Date <u>3/26/99</u>
Agency	Department of Law	

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# SENATE COMMITTEE REPORT

DATE: 4/30/99

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Judiciary Committee considered CS FOR HOUSE BILL NO. 151(JUD) am

"An Act relating to revocation and reinstatement of the driver's license of a person at least 14 but not yet 21 years of age."

and recommends:

- be replaced with CS HB 151 (F) (JUD)
- adopt previous CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:
  - same title
  - new title
- House Bill:
  - same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Kirk Haldor</i>	✓		
		<i>J. Sellers</i>	✓		
CHAIR: <i>John T. Taylor</i>	✓	CHAIR:			

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal


**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal


APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

**STATE OF ALASKA  
1999 LEGISLATIVE SESSION**

**BILL NO. SCS CSHB 151 (JUD)**

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title "An Act relating to possession, control, or consumption of alcohol by a person under 21 years ..."	BRU	Criminal Division
Sponsor Representative Kott	Component	1st-4th Judicial Districts; Criminal Appeals/Special Litigation
Requester Senate Judiciary Committee	Component Serial No.	2198-99;2201;61;79;03

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	224.6	224.6	224.6	224.6	224.6	224.6
Travel	0.8	0.8	0.8	0.8	0.8	0.8
Contractual	39.0	39.0	39.0	39.0	39.0	39.0
Supplies	3.4	3.4	3.4	3.4	3.4	3.4
Equipment	13.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>280.8</b>	<b>267.8</b>	<b>267.8</b>	<b>267.8</b>	<b>267.8</b>	<b>267.8</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	280.8	267.8	267.8	267.8	267.8	267.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>280.8</b>	<b>267.8</b>	<b>267.8</b>	<b>267.8</b>	<b>267.8</b>	<b>267.8</b>

Estimate of any current year (FY99) cost:

**POSITIONS**

Full-time	2	2	2	2	2	2
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

SCS CSHB 151 (JUD) makes a third offense of minor consuming, possession, or control of alcohol a class B misdemeanor. Fourth and subsequent offenses become a class A misdemeanor. Under current law, these offenses are violations, and do not require Department of Law prosecution. Section 8 of the bill also increases the zero tolerance law for those under 21 who have consumed any amount of alcohol and operate a motor vehicle, by changing the penalty from a violation to a class B misdemeanor for a first offense, and a class A misdemeanor for a second offense within 5 years of the first. It also adds driving after taking any controlled substances to the zero tolerance law.

The Division of Motor Vehicles reports that in CY98, 980 minors had a third or subsequent conviction for minor consuming, which under this bill would be new cases for the Criminal Division. Approximately 135 would be

Prepared by	Joan M. Kasson <i>Joan M. Kasson</i>	Phone 465-5370
Division	Attorney General's Office	Date/Time 5/16/99, 11:38 AM
Approved by Commissioner	Bruce M. Botelho, Attorney General <i>Bruce M. Botelho</i>	Date 5/16/99
Agency	Department of Law	

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**ANALYSIS CONTINUATION**

new cases under zero tolerance (a minor driving after drinking, but not rising to the level of DWI). The Department of Law would require two new prosecutors, one in Anchorage and one in Fairbanks, to handle this new caseload.

Costs are based on the Civil Division's FY00 standard full-time equivalent attorney cost schedule (\$133,926), and include clerical support, communications, space, supplies, data processing, and other normal overhead expenses. An additional \$6,500 for one-time equipment purchases, costs that cannot be included in the rate as overhead, are added in FY00 only.

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. SCS CSHB 5(JUD)**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Department of Corrections  
 Title An Act relating to possession, control, or BRU Administration and Operations  
consumption of alcohol by a person under 21 years of age... Component All  
 Sponsor Representative Kott  
 Requester Senate Judiciary Committee Component Serial No. #0694

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	256.3	256.3	256.3	256.3	256.3	256.3
<b>TOTAL OPERATING</b>	<b>256.3</b>	<b>256.3</b>	<b>256.3</b>	<b>256.3</b>	<b>256.3</b>	<b>256.3</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	256.3	256.3	256.3	256.3	256.3	256.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>256.3</b>	<b>256.3</b>	<b>256.3</b>	<b>256.3</b>	<b>256.3</b>	<b>256.3</b>

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Section 1 of this legislation creates a class B misdemeanor for a third conviction of minor consuming, possession, or control of alcohol. Under current law this offense is a violation with no jail time. Based on data from the Division of Motor Vehicles, the Dept. of Corrections anticipates jailing 400 people a year for their third and subsequent convictions. This section will result in additional costs to the DOC of approximately \$211,400 annually.

Section 8 of this legislation institutes a zero tolerance policy for those under 21 who have consumed any amount of alcohol and operate a vehicle. The estimated number of people 18 yrs and older who will be convicted under section eight is 85. This section will result in additional costs to the DOC of approximately \$44,922 annually.

Prepared by Bruce Richards Phone \_\_\_\_\_  
 Division Commissioner's Office Date/Time 5/15/99 6:50 PM  
 Approved by Comm. Margaret M. Pugh *Margaret M. Pugh* Date 5/15/99  
 Agency Department of Corrections

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**FISCAL NOTE**

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

BILL NO. SCS for CS HB 151(JUD)

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: An Act relating to possession, control, or BRU: Alcohol and Drug Abuse Services  
consumption of alcohol by a person under 21 years of age; Component: ASAP  
 Sponsor: Rep. Kott COMPONENT SERIAL NO. #305  
 Requestor: \_\_\_\_\_ See also (SN#): \_\_\_\_\_

**Expenditures/Revenues:** (Thousands of Dollars)  
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES	130.0					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	400.0					
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>530.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	530.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
<b>TOTAL</b>	<b>530.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY1999) cost: 50.0

**POSITIONS:**

FULL-TIME	1					
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

SCS for CS for HB 151(JUD) makes changes to the "Use it Lose It" laws. This bill re-criminalizes minor consuming by making the third offense within five years a Class B Misdemeanor and the fourth offense within five years a Class A Misdemeanor. In addition it makes a minor operating a vehicle a misdemeanor on the first offense.

There are two age groups that this Division must deal with: those under 18 and those 18,19,&20. For persons under age 18 there will need to be new programs developed to assess and monitor the first and second offenders to prevent the third offense. A systematic community response to person under 18 does not exist in Alaska.

Prepared by: Loren A. Jones Phone: \_\_\_\_\_  
 Division: Alcoholism and Drug Abuse Date/Time: 5/15/99 6:33 PM

Approved by Commissioner: Karen Perdue, Commissioner Date: 5/15/99  
 Agency: Department of Health & Social Services

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# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BIL' O. SCS CSHB151(JUD)

Revision Date/Time (Note If correction): \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: Relating to revocation & reinstatement of BRU: Family and Youth Services  
driver's licenses of minors Component: McLaughlin Youth Center  
 Sponsor: Rep. Kott COMPONENT SERIAL NO. 264  
 Requestor: Senate (JUD) See also (SN#): \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES	168.0	173.0	178.2	183.6	189.1	194.8
TRAVEL						
CONTRACTUAL	6.0	6.2	6.4	6.6	6.8	7.0
SUPPLIES	12.0	12.4	12.7	13.1	13.5	13.9
EQUIPMENT	12.0	12.4	12.7	13.1	13.5	13.9
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>198.0</b>	<b>203.9</b>	<b>210.1</b>	<b>216.4</b>	<b>222.9</b>	<b>229.5</b>

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ( )						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	198.0	203.9	210.1	216.4	222.9	229.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
<b>TOTAL</b>	<b>198.0</b>	<b>203.9</b>	<b>210.1</b>	<b>216.4</b>	<b>222.9</b>	<b>229.5</b>


Estimate of any current year (FY1999) cost: \$0.0

**POSITIONS:**

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

**ANALYSIS:** (Attach a separate page if necessary)

Minor possessing and consuming alcohol has been a violation, not a criminal offense, since September, 1995. SCS CSHB151(JUD) as amended would classify third and subsequent violations of possession or consumption of alcohol by minors under AS 04.16.050 as a misdemeanor offense. Based on the case numbers provided by the Division of Motor Vehicles for CY 98, there were 980 youth who would have been subject to a district court sentence involving some period of incarceration. Assuming 600 of these offenders were between 14 and 17 years of age and each received an average sentence of three days to serve, there would be a need for 3 youth counselor FTEs to provide 24 hour supervision and control, court transportation and other functions as required to meet the responsibilities of AS 47.14 relating to operation of juvenile correctional facilities. In addition, the increase in the department's detention population would result in increased utility, supply and equipment expenses.

Prepared by: George Buhite Phone: 465-2212  
 Division: \_\_\_\_\_ Date/Time: 5/15/99 5:13 PM  
 Approved by Commissioner:  Date: 5/15/99  
 Agency: Department of Health & Social Services

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# LEGAL SERVICES

## DIVISION OF LEGAL AND RESEARCH 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

May 16, 1999

**SUBJECT:** Sectional Summary of SCS CSHB 151()  
(Work Order No. 1-LS0492P)

**TO:** Senator Robin Taylor  
Attn: Mel

**FROM:** Michael 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.** This section increases from seven to 10 days the time period in which a person who is at least 14 but not yet 21 may appeal a driver's license revocation for possession or consumption of alcohol, use of a controlled substance, operation of a vehicle after consuming alcohol, or refusal to take a breath test.

**Section 2.** This section makes conforming amendments for changes in sec. 1.

**Section 3.** This section changes the revocation periods to 30 days for a first offense, 60 days for a second offense, 90 days for a third offense, and a year for a fourth or subsequent offense.

**Section 4.** This section provides that for a person who receives multiple periods of driver's license revocation under AS 28.15.183, the revocation periods run concurrently. Also a person who receives a license revocation of at least 60 days can apply for a limited license and a person who has more than a year of license revocation may apply for reinstatement under the provisions of sec. 5.

**Section 5.** Allows a person to have their license reinstated if the person has had their license revoked for at least a year, the person completes alcoholism or drug treatment, and the person has no other violations. Also provides for immediate reinstatement of the license if the state fails to prosecute the offense that triggers the license revocation, the case is dismissed, or if the person is found not guilty.

Senator Robin Taylor  
May 16, 1999  
Page 2

**Section 6.** This section makes conforming amendments for changes to section 1.

**Section 7.** Provides that sec. 5, regarding reinstatement of a drivers license, applies to offenses occurring before, on, or after the effective date of this Act. Provides that other than sec. 5, the provisions of this Act apply to offenses occurring after the effective date of the Act.

MFF:lmb  
99-088.lmb

## **Underage Drinking**

The problem of underage drinking is two-fold. First, underage drinking is unlawful and should be punished. Second, some underage drinkers become underage drivers, and that becomes a threat to others. Because drinking and driving is more dangerous than simply drinking, drinking and driving should be a more serious offense.

The underage drinker harms himself. The penalty should be proportionate to that fact. The underage driver harms others. Likewise, the penalty should recognize that.

Presently, the law hits both targets equally. A more rational approach would be to decrease the penalty for underage drinking which does not involve a vehicle and increase the penalty for drinking while in or around a vehicle.

### **PROPOSAL**

#### **Minor Consuming**

- 1<sup>st</sup> offense** (violation) - **[alternative 10 day suspension]**
- 2<sup>nd</sup> offense** (violation) - **[alternative 30 day suspension]**
- 3<sup>rd</sup> offense** (class B misdemeanor) - **[alternative 90 day suspension]**
- 4<sup>th</sup> offense** (class A misdemeanor) - **[alternative up to 1 year suspension]**

#### **Minor Driving After Consuming Alcohol (AS 28.35.280)**

- 1<sup>st</sup> offense** (class B misdemeanor) - loss of license for 90 days
- 2<sup>nd</sup> offense** (class A misdemeanor) - loss of license for up to 1 year

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1-LS0492VP  
Ford  
5/16/99

SENATE CS FOR CS FOR HOUSE BILL NO. 151( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KOTT, Ansterman, Dyson, Rokeberg, Smalley, Cissna

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to revocation and reinstatement of the driver's license of a  
2 person at least 14 years of age but not yet 21 years of age."

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

4 \* Section 1. AS 28.15.183(a) is amended to read:

5 (a) If a peace officer has probable cause to believe that a person who is at  
6 least 14 years of age but not yet 21 years of age has possessed or used a controlled  
7 substance in violation of AS 11.71 [,] or a municipal ordinance with substantially  
8 similar elements, [OR] possessed or consumed alcohol in violation of AS 04.16.050  
9 or a municipal ordinance with substantially similar elements, operated a vehicle after  
10 consuming alcohol in violation of AS 28.35.280, or refused to submit to a chemical  
11 test under AS 28.35.285, and the peace officer has cited the person or arrested the  
12 person for the offense [A VIOLATION OF AS 11.71, AS 04.16.050, AS 28.35.280,  
13 OR 28.35.285 OR THE MUNICIPAL ORDINANCE WITH SUBSTANTIALLY  
14 SIMILAR ELEMENTS], the peace officer shall read a notice and deliver a copy to the

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person. The notice must advise that

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

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

(3) if the person has a driver's license or permit, the notice itself is a temporary driver's license or permit that expires 10 [SEVEN] days after it is delivered to the person;

(4) revocation of the person's driver's license or permit, privilege to drive, or privilege to obtain a license or permit, takes effect 10 [SEVEN] days after delivery of the notice to the person unless the person, within 10 [SEVEN] days, requests an administrative review;

(5) if the person has been cited under AS 28.35.280 or under AS 28.35.285, that person, under AS 28.35.290, may not operate a motor vehicle, aircraft, or watercraft during the 24 hours following issuance of the citation.

\* Sec. 2. AS 28.15.183(c) is amended to read:

(c) Unless the person has requested an administrative review, the department shall revoke the person's driver's license or permit, privilege to drive, or privilege to obtain a license or permit, effective 10 [SEVEN] days after delivery to the person of the notice required under (a) of this section, upon receipt of a sworn report of a peace officer

(1) that the officer had probable cause to believe that the person is at least 14 years of age but not yet 21 years of age and has violated one of the offenses described in (a) of this section [POSSESSED OR USED A CONTROLLED SUBSTANCE IN VIOLATION OF AS 11.71, OR A MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, OR POSSESSED OR CONSUMED ALCOHOL IN VIOLATION OF AS 04.16.050 OR A MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, OPERATED A VEHICLE AFTER CONSUMING ALCOHOL IN VIOLATION OF AS 28.35.280, OR REFUSED TO SUBMIT TO A CHEMICAL TEST OF BREATH UNDER AS 28.35.285];

(2) that the peace officer has cited or arrested the person [OR

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ARRESTED THE PERSON] for

(A) a violation of AS 11.71, AS 04.16.050, AS 28.35.280, or 28.35.285; or

(B) possession or use of a controlled substance or alcohol in violation of a municipal ordinance with substantially similar elements;

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

(4) describing the circumstances surrounding the offense [VIOLATION OF THE CONTROLLED SUBSTANCES PROVISIONS OF AS 11.71, THE ALCOHOLIC BEVERAGES PROVISIONS OF AS 04.16.050, OR THE MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, THE MINOR OPERATING A VEHICLE AFTER CONSUMING ALCOHOL UNDER PROVISIONS OF AS 28.35.280, OR THE MINOR REFUSING TO SUBMIT TO A CHEMICAL TEST OF BREATH UNDER PROVISIONS OF AS 28.35.285].

\* Sec. 3. AS 28.15.183(d) is amended to read:

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

(1) for a first revocation, for a period of 30 [90] days;

(2) for a second revocation, for a period of 60 days [ONE YEAR];

[OR]

(3) for a third [OR SUBSEQUENT] revocation, for a period of 90

days; or

(4) for a fourth or subsequent revocation. for a period of one year

[THREE YEARS].

\* Sec. 4. AS 28.15.183(f) is amended to read:

(f) A revocation imposed under this section shall be consecutive to a revocation imposed under another provision of law, except that (1) a revocation imposed under this section shall be concurrent with a prior revocation imposed under this section; and (2) a revocation imposed under this section for an offense for which a revocation is required under AS 28.15.185 shall be concurrent with a revocation imposed under AS 28.15.185 that is based on the same incident. A [DEPARTMENT HEARING OFFICER MAY GRANT LIMITED LICENSE PRIVILEGES IN ACCORDANCE WITH THE STANDARDS SET OUT IN

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AS 28.15.201 TO A] person whose driver's license, permit, or privilege was revoked for a period of at least 60 days under this section may apply for limited license privileges under AS 28.15.201(d). A person whose driver's license, permit, or privilege to drive was revoked for a period of more than one year under this section may apply for reinstatement as provided under (i) of this section.

\* Sec. 5. AS 28.15.183 is amended by adding a new section to read:

(j) A person whose driver's license, permit, or privilege was revoked under this section may apply for reinstatement of the person's driver's license as provided in this subsection. A person may apply to the department for reinstatement by filing a written request for review of the revocation imposed under this section with the department. The department shall issue a new license or reissue the person's driver's license

(1) as provided under AS 28.15.211(d) if the department finds that

(A) the application for reinstatement is filed at ~~least~~ one year after the person's license, permit, or privilege was revoked;

(B) the person complies with (g) of this section; and

(C) the person has not violated a provision of this title or a regulation of the department since the revocation; or

(2) immediately if

(A) the offense described under (a) of this section for which the person was cited or arrested is not prosecuted or the prosecution results in dismissal by a court; or

(B) a court or jury finds that the person is not guilty of the offense described under (a) of this section for which the person was cited or arrested.

\* Sec. 6. AS 28.15.184(b) is amended to read:

(b) A request for review of the department's revocation under AS 28.15.183 shall be made within 10 [SEVEN] days after receipt of the notice under AS 28.15.183 or the right to review is waived and the action of the department under AS 28.15.183(c) is final. If a written request for a review is made after expiration of the 10-day [SEVEN-DAY] period, and if it is accompanied by the applicant's verified

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1 statement explaining the failure to make a timely request for a review, the department  
 2 shall receive and consider the request. If the department finds that the person was  
 3 unable to make a timely request because of lack of actual notice of the revocation or  
 4 because of factors of physical incapacity such as hospitalization or incarceration, the  
 5 department shall waive the period of limitation, reopen the matter, and grant the review  
 6 request.

7 \* Sec. 7. APPLICABILITY. (a) Section 5 of this Act applies to a driver's license  
 8 revocation occurring before, on, or after the effective date of this Act.

9 (b) Sections 1 - 4 and 6 of this Act apply to a driver's license revocation for an  
 10 offense that occurs on or after the effective date of this Act.

*draft new*  
*C.S.*

SENATE CS FOR CS FOR HOUSE BILL NO. 151(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KOTT, Austerman, Dyson, Rokeberg, Smalley, Cissna

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to possession, control, or consumption of alcohol by a person  
2 under 21 years of age; relating to revocation and reinstatement of the driver's  
3 license of a person at least 14 years of age but not yet 21 years of age; and  
4 relating to offenses involving operating a motor vehicle by a person not yet 21  
5 years of age."

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

7 \* Section 1. AS 04.16.050(b) is repealed and reenacted to read:

8 (b) A person who violates (a) of this section is guilty of a

9 (1) violation and upon conviction the court may impose a fine of not  
10 less than \$100;

11 (2) class B misdemeanor if, within the five years preceding the  
12 violation, the person has been previously convicted twice under (a) of this section; or

13 (3) class A misdemeanor if, within the five years preceding the

1 violation, the person has been previously convicted three or more times under (a) of  
2 this section.

3 \* Sec. 2. AS 28.15.183(a) is amended to read:

4 (a) If [A PEACE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT]  
5 a person who is at least 14 years of age but not yet 21 years of age has possessed or  
6 used a controlled substance in violation of AS 11.71 [,] or a municipal ordinance with  
7 substantially similar elements, [OR] possessed or consumed alcohol in violation of  
8 AS 04.16.050 or a municipal ordinance with substantially similar elements, operated  
9 a vehicle after consuming alcohol in violation of AS 28.35.280, or refused to submit  
10 to a chemical test under AS 28.35.285, and the peace officer has cited the person or  
11 arrested the person for the offense [A VIOLATION OF AS 11.71, AS 04.16.050,  
12 AS 28.35.280, OR 28.35.285 OR THE MUNICIPAL ORDINANCE WITH  
13 SUBSTANTIALLY SIMILAR ELEMENTS], the peace officer shall read a notice and  
14 deliver a copy to the person. The notice must advise that

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

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

18 (3) if the person has a driver's license or permit, the notice itself is a  
19 temporary driver's license or permit that expires 10 [SEVEN] days after it is delivered  
20 to the person;

21 (4) revocation of the person's driver's license or permit, privilege to  
22 drive, or privilege to obtain a license or permit, takes effect 10 [SEVEN] days after  
23 delivery of the notice to the person unless the person, within 10 [SEVEN] days,  
24 requests an administrative review;

25 (5) if the person has been cited under AS 28.35.280 or under  
26 AS 28.35.285, that person, under AS 28.35.290, may not operate a motor vehicle,  
27 aircraft, or watercraft during the 24 hours following issuance of the citation.

28 \* Sec. 3. AS 28.15.183(c) is amended to read:

29 (c) Unless the person has requested an administrative review, the department  
30 shall revoke the person's driver's license or permit, privilege to drive, or privilege to  
31 obtain a license or permit, effective 10 [SEVEN] days after delivery to the person of

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the notice required under (a) of this section, upon receipt of a sworn report of a peace officer

(1) that [THE OFFICER HAD PROBABLE CAUSE TO BELIEVE THAT] the person is at least 14 years of age but not yet 21 years of age and has violated one of the offenses described in (a) of this section [POSSESSED OR USED A CONTROLLED SUBSTANCE IN VIOLATION OF AS 11.71, OR A MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, OR POSSESSED OR CONSUMED ALCOHOL IN VIOLATION OF AS 04.16.050 OR A MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, OPERATED A VEHICLE AFTER CONSUMING ALCOHOL IN VIOLATION OF AS 28.35.280, OR REFUSED TO SUBMIT TO A CHEMICAL TEST OF BREATH UNDER AS 28.35.285];

(2) that the peace officer has cited or arrested the person [OR ARRESTED THE PERSON] for

(A) a violation of AS 11.71, AS 04.16.050, AS 28.35.280, or 28.35.285; or

(B) possession or use of a controlled substance or alcohol in violation of a municipal ordinance with substantially similar elements;

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

(4) describing the circumstances surrounding the offense [VIOLATION OF THE CONTROLLED SUBSTANCES PROVISIONS OF AS 11.71, THE ALCOHOLIC BEVERAGES PROVISIONS OF AS 04.16.050, OR THE MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, THE MINOR OPERATING A VEHICLE AFTER CONSUMING ALCOHOL UNDER PROVISIONS OF AS 28.35.280, OR THE MINOR REFUSING TO SUBMIT TO A CHEMICAL TEST OF BREATH UNDER PROVISIONS OF AS 28.35.285].

\* Sec. 4. AS 28.15.183(d) is amended to read:

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

(1) for a first revocation, for a period of 10 [90] days;

(2) for a second revocation, for a period of 30 days [ONE YEAR];

[OR]

- 1 (3) for a third [OR SUBSEQUENT] revocation, for a period of 90  
2 days; or  
3 (4) for a fourth or subsequent revocation, for a period of one year  
4 [THREE YEARS].

5 \* Sec. 5. AS 28.15.183(f) is amended to read:

6 (f) A revocation imposed under this section shall be consecutive to a  
7 revocation imposed under another provision of law, except that (1) a revocation  
8 imposed under this section shall be concurrent with a prior revocation imposed  
9 under this section; and (2) a revocation imposed under this section for an offense  
10 for which a revocation is required under AS 28.15.185 shall be concurrent with a  
11 revocation imposed under AS 28.15.185 that is based on the same incident. A  
12 [DEPARTMENT HEARING OFFICER MAY GRANT LIMITED LICENSE  
13 PRIVILEGES IN ACCORDANCE WITH THE STANDARDS SET OUT IN  
14 AS 28.15.201 TO A] person whose driver's license, permit, or privilege was revoked  
15 for a period of more than 30 days under this section may apply for limited license  
16 privileges under AS 28.15.201(d). A person whose driver's license, permit, or  
17 privilege to drive was revoked for a period of more than one year under this  
18 section may apply for reinstatement as provided under (i) of this section.

19 \* Sec. 6. AS 28.15.183 is amended by adding a new section to read:

20 (j) A person whose driver's license, permit, or privilege was revoked under  
21 this section may apply for reinstatement of the person's driver's license as provided in  
22 this subsection. A person may apply to the department for reinstatement by filing a  
23 written request for review of the revocation imposed under this section with the  
24 department. The department shall issue a new license or reissue the person's driver's  
25 license as provided under AS 28.15.211(d) if the department finds that

- 26 (1) the application for reinstatement is filed at least one year after the  
27 person's license, permit, or privilege was revoked;  
28 (2) the person complies with (g) of this section; and  
29 (3) the person has not violated a provision of this title or a regulation  
30 of the department since the revocation.

31 \* Sec. 7. AS 28.15.184(b) is amended to read:

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

12 \* Sec. 8. AS 28.35.280(d) is repealed and reenacted to read:

13 (d) A person convicted under this section is guilty of a

14 (1) class B misdemeanor; or

15 (2) class A misdemeanor if, within the five years preceding the  
16 violation, the person has been previously convicted under this section.

17 \* Sec. 9. AS 28.35.285(d) is repealed and reenacted to read:

18 (d) A person convicted under (a) of this section is guilty of a

19 (1) class B misdemeanor; or

20 (2) class A misdemeanor if, within the five years preceding the  
21 violation, the person has been previously convicted under this section.

22 \* Sec. 10. AS 28.35.290(b) is repealed and reenacted to read:

23 (b) A person convicted under (a) of this section is guilty of a

24 (1) class B misdemeanor; or

25 (2) class A misdemeanor if, within the five years preceding the  
26 violation, the person has been previously convicted under this section.

27 \* Sec. 11. Sections 14, 15, 16, and 23, ch. 143, SLA 1996 are repealed.

28 \* Sec. 12. APPLICABILITY. (a) Section 6 of this Act applies to a driver's license  
29 revocation occurring before, on, or after the effective date of this Act.

30 (b) Sections 1 - 5 and 7 of this Act apply to a driver's license revocation for an  
31 offense that occurs on or after the effective date of this Act.

1 (c) Sections 8 - 10 apply to offenses that occur on or after the effective date of this  
2 Act.

**AMENDMENT**

**BY SENATOR TAYLOR**

**OFFERED IN THE SENATE**

**TO: SCS CSHB 151(JUD)  
"Work Draft LS0492\Z"**

Page 5, following line 11:

Insert a new bill section to read:

**\*Sec. 8.** AS 28.15.184(j) is amended to read:

(j) If the issues set out in (g) of this section are determined in the affirmative by a preponderance of the evidence, the hearing officer shall sustain the action of the department. A person who has been acquitted of the offense upon which the arrest or citation is based may present evidence of the acquittal to the hearing officer for consideration in deciding the issues set out in (g) of this section. If one or more of the issues is determined in the negative or the person has been acquitted of the offense upon which the arrest or citation is based, the department's revocation action shall be rescinded.

Renumber following sections accordingly.

1-LS0492\Y

Ford

5/11/99

*adopted*

SENATE CS FOR CS FOR HOUSE BILL NO. 151(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES KOTT, Austerman, Dyson, Rokeberg, Smalley, Cissna

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to revocation and reinstatement of the driver's license of a  
2 person at least 14 but not yet 21 years of age."

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

4 \* Section 1. AS 28.15.183(a) is amended to read:

5 (a) If a peace officer has probable cause to believe that a person who is at  
6 least 14 years of age but not yet 21 years of age has possessed or used a controlled  
7 substance in violation of AS 11.71, or a municipal ordinance with substantially similar  
8 elements, or possessed or consumed alcohol in violation of AS 04.16.050 or a  
9 municipal ordinance with substantially similar elements, operated a vehicle after  
10 consuming alcohol in violation of AS 28.35.280, or refused to submit to a chemical  
11 test under AS 28.35.285, and the peace officer has cited the person or arrested the  
12 person for the offense [A VIOLATION OF AS 11.71, AS 04.16.050, AS 28.35.280,  
13 OR 28.35.285 OR THE MUNICIPAL ORDINANCE WITH SUBSTANTIALLY  
14 SIMILAR ELEMENTS], the peace officer shall read a notice and deliver a copy to the

1 person. The notice must 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 10 [SEVEN] days after it is delivered  
7 to the 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 10 [SEVEN] days after  
10 delivery of the notice to the person unless the person, within 10 [SEVEN] days,  
11 requests an administrative review;

12 (5) if the person has been cited under AS 28.35.280 or under  
13 AS 28.35.285, that person, under AS 28.35.290, may not operate a motor vehicle,  
14 aircraft, or watercraft during the 24 hours following issuance of the citation.

15 \* Sec. 2. AS 28.15.183(c) is amended to read:

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 10 [SEVEN] days after delivery to the person of  
19 the 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 to believe that the person is at  
22 least 14 years of age but not yet 21 years of age and has violated one of the offenses  
23 described in (a) of this section [POSSESSED OR USED A CONTROLLED  
24 SUBSTANCE IN VIOLATION OF AS 11.71, OR A MUNICIPAL ORDINANCE  
25 WITH SUBSTANTIALLY SIMILAR ELEMENTS, OR POSSESSED OR  
26 CONSUMED ALCOHOL IN VIOLATION OF AS 04.16.050 OR A MUNICIPAL  
27 ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, OPERATED A  
28 VEHICLE AFTER CONSUMING ALCOHOL IN VIOLATION OF AS 28.35.280, OR  
29 REFUSED TO SUBMIT TO A CHEMICAL TEST OF BREATH UNDER  
30 AS 28.35.285];

31 (2) that the peace officer has cited or arrested the person [OR

1 ARRESTED THE PERSON] for

2 (A) a violation of AS 11.71, AS 04.16.050, AS 28.35.280, or  
3 28.35.285; or

4 (B) possession or use of a controlled substance or alcohol in  
5 violation of a municipal ordinance with substantially similar elements;

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

7 (4) describing the circumstances surrounding the offense [VIOLATION  
8 OF THE CONTROLLED SUBSTANCES PROVISIONS OF AS 11.71, THE  
9 ALCOHOLIC BEVERAGES PROVISIONS OF AS 04.16.050, OR THE MUNICIPAL  
10 ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, THE MINOR  
11 OPERATING A VEHICLE AFTER CONSUMING ALCOHOL UNDER  
12 PROVISIONS OF AS 28.35.280, OR THE MINOR REFUSING TO SUBMIT TO A  
13 CHEMICAL TEST OF BREATH UNDER PROVISIONS OF AS 28.35.285].

14 \* Sec. 3. AS 28.15.183(d) is amended to read:

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

16 (1) for a first revocation, for a period of 30 [90] days;

17 (2) for a second revocation, for a period of 180 days [ONE YEAR];

18 or

19 (3) for a third or subsequent revocation, for a period of one year  
20 [THREE YEARS].

21 \* Sec. 4. AS 28.15.183(f) is amended to read:

22 (f) A revocation imposed under this section shall be consecutive to a  
23 revocation imposed under another provision of law, except that (1) a revocation  
24 imposed under this section shall be concurrent with a prior revocation imposed  
25 under this section; and (2) a revocation imposed under this section for an offense  
26 for which a revocation is required under AS 28.15.185 shall be concurrent with a  
27 revocation imposed under AS 28.15.185 that is based on the same incident. A  
28 [DEPARTMENT HEARING OFFICER MAY GRANT LIMITED LICENSE  
29 PRIVILEGES IN ACCORDANCE WITH THE STANDARDS SET OUT IN  
30 AS 28.15.201 TO A] person whose driver's license, permit, or privilege was revoked  
31 for a period of more than 30 days under this section may apply for limited license

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privileges under AS 28.15.201(d) or reinstatement as provided under (i) of this section.

\* Sec. 5. AS 28.15.183 is amended by adding a new section to read:

(j) A person whose driver's license, permit, or privilege was revoked under this section may apply for reinstatement of the person's driver's license as provided in this subsection. A person may apply to the department for reinstatement by filing a written request for review of the revocation imposed under this section with the department. The department shall issue a new license or reissue the person's driver's license as provided under AS 28.15.211(d) if the department finds that

- (1) the application for reinstatement is filed at least one year after the person's license, permit, or privilege was revoked;
- (2) the person complies with (g) of this section; and
- (3) the person has not violated a provision of this title or a regulation of the department since the revocation.

\* Sec. 6. AS 28.15.184(b) is amended to read:

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

\* Sec. 7. AS 28.15.219 is amended by adding a new paragraph to read:

(4) "possessed alcohol" means having physical possession of or the exercise of dominion or control over the alcohol, except that the driver of a vehicle is not considered to be in possession of alcohol that is in the possession of another person in the vehicle.

1       \* **Sec. 8. APPLICABILITY.** (a) Section 5 of this Act applies to a driver's license  
2 revocation occurring before, on, or after the effective date of this Act.  
3       (b) Sections 1 - 4, 6, and 7 of this Act apply to a driver's license revocation for an  
4 offense that occurs on or after the effective date of this Act.

The Municipality does not argue that the district court's ruling, if erroneous, was harmless error. Accordingly, the judgement of the district court is REVERSED.

derage drinkers. U.S.C.A. Const.Amend. 5; Const. Art. 1, § 9; AS 04.16.050, 28.15.183.

See publication Words and Phrases for other judicial constructions and definitions.



Steven K. REXFORD, Appellant,

v.

STATE of Alaska, Appellee.

No. A-6195.

Court of Appeals of Alaska.

July 25, 1997.

After defendant's driver's license was administratively revoked based on arrest for possessing or consuming alcohol while under age of 21, defendant moved to dismiss charges of minor consuming alcohol on double jeopardy grounds. The District Court, Second Judicial District, Barrow, Karen R. Hegyi, Magistrate, denied motion, and defendant was subsequently convicted. Defendant appealed. The Court of Appeals, Mannheim, J., held that administrative revocation of a minor's license for alcohol-related violation is not "punishment" for double jeopardy purposes.

Affirmed.

#### Double Jeopardy ⇄24

Administrative revocation of a minor's driver's license for alcohol-related violation is not "punishment" for double jeopardy purposes; valid regulatory purpose exists in restricting or revoking driver's licenses of un-

\* Sitting by assignment of the chief justice made pursuant to Article IV, Section 16 of the Alaska Constitution.

Rebecca Wright, Assistant Public Defender, Barrow, and Barbara K. Brink, Public Defender, Anchorage, for Appellant.

Eric A. Johnson, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

Before COATS, C.J., MANNHEIMER, J., and JOANNIDES, District Court Judge.\*

#### OPINION

MANNHEIMER, Judge.

Steven K. Rexford was arrested for possessing or consuming alcohol while under the age of 21, AS 04.16.050. Based on this arrest, the Department of Public Safety commenced administrative proceedings against Rexford's driver's license under AS 28.15.183. Rexford's license was ultimately revoked in these administrative proceedings.

In the meantime, Rexford's prosecution for minor consuming alcohol was still pending in the district court. Following the administrative revocation of his driver's license, Rexford asked the district court to dismiss the criminal prosecution. Rexford contended that the administrative revocation of his license was a "punishment" for purposes of the double jeopardy clauses of the federal and state constitutions.<sup>1</sup> He argued that because he had already been punished once for his violation of the liquor laws, it would be illegal to punish him again for the same conduct.

Rexford acknowledged that this court had rejected a similar argument in *State v. Zerkel*, 900 P.2d 744 (Alaska App.1995). In *Zerkel*, we held that the administrative revocation of a driver's license based on a breath test result or a breath test refusal did not constitute "punishment" for double jeopardy pur-

1. See the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Alaska Constitution.

poses. Rexford argued, however, that *Zerkel* was distinguishable from his case because, unlike the defendants in *Zerkel*, Rexford had not engaged in any act of driving—only drinking. Rexford argued that the Department of Public Safety had no valid administrative interest in regulating or restricting his ability to drive based on his act of drinking, when that drinking was unconnected to the operation of a motor vehicle.

Magistrate Karen R. Hegyi agreed with Rexford that the issue was whether a minor's act of consuming liquor "bears a direct relation to the government's regulatory goals or to the proper administration or enforcement of the regulatory scheme". *Zerkel*, 900 P.2d at 757. However, Magistrate Hegyi concluded that a minor's consumption of alcohol did, in fact, bear "a direct relation to the government's proper regulatory goal of making the highways safe". Magistrate Hegyi wrote,

Studies have shown that young drivers who drink are a danger not only to themselves but to everyone else. Teenagers have the highest alcohol-involved fatal accident rate of any age group. Alcohol-related traffic deaths are the number one killer of fifteen- to twenty-four-year-olds, and they account for approximately fifty percent of all teenage deaths. In addition, sixteen- to twenty-four-year-old drivers represent twenty percent of licensed drivers in the United States and [they account for fewer] than twenty percent of total miles driven, yet they account for forty-two percent of all fatal alcohol-related deaths. See *Johnson v. State Hearing Examiner's Office*, 838 P.2d 158, 182 (Wy. 1992), (dissenting opinion of Justice Brown), citing Rosenthal, *The Minimum*

2. In his trial memorandum, Rexford asserts in conclusory fashion that the State could have no valid purpose in taking administrative action against the driver's license of an underage drinker. Rexford does not anticipate or respond to the findings made by Magistrate Hegyi regarding the disproportionate danger that teenage drinking poses to highway safety.

3. Rexford's decision not to file a brief also means that he has failed to address the fact that one of

*Drinking Age for Young People*, 92 Dickenson L.Rev. 649, 654-660 (1987-88).

"Memorandum Order Denying Motion to Dismiss", pp. 6-7 (with some minor editorial changes). The magistrate therefore denied Rexford's motion to dismiss, and Rexford was subsequently convicted of minor consuming.

Rexford has appealed the district court's decision, but he has elected to rely on his trial court memorandum rather than file a brief in this court. This is his right under Alaska Appellate Rule 217(f). However, Rexford's trial memorandum was written before Magistrate Hegyi issued her decision, and Rexford's choice not to file a brief means that he has presented no rebuttal to Magistrate Hegyi's findings regarding the valid administrative purpose for revoking the driver's licenses of underage drinkers.<sup>23</sup>

Based on the district court's findings, we too conclude that there is a valid regulatory purpose in restricting or revoking the driver's licenses of underage drinkers. We therefore hold that administrative license revocations under AS 28.15.183 are not "punishment" for double jeopardy purposes. A minor whose license has been revoked in an administrative proceeding under that statute may still be prosecuted for the offense of minor consuming.

The judgement of the district court is AFFIRMED.



the cases he relied on heavily in his memorandum, *United States v. \$405,089.23 in U.S. Currency*, 33 F.3d 1210 (9th Cir.1994), was reversed by the United States Supreme Court four months before Rexford filed this appeal. See *United States v. Ursery*, — U.S. —, 116 S.Ct. 2135, 115 L.Ed.2d 549 (1996).

# Alaska State Legislature

## House of Representatives

COMMITTEES  
JUDICIARY COMMITTEE, CHAIR  
RULES  
MILITARY & VETERANS AFFAIRS  
UTILITY RESTRUCTURING  
ETHICS



INTERIM:  
10928 EAGLE RIVER RD., SUITE 141  
EAGLE RIVER, AK 99577

SESSION:  
ALASKA STATE CAPITOL  
JUNEAU, AK 99801

### Memorandum

TO: Senator Robin Taylor, Chairman  
Senate Judiciary Committee

FROM: Representative *Pete Kott*

SUBJECT: Request for Hearing, HB 151

DATE: May 3, 1999

I request that HB 151, an Act relating to revocation and reinstatement of the driver's license of a person at least 14 but not yet 21 years of age, be heard. Enclosed with this request is the following:

- Current version of the bill
- Sponsor statement
- Sectional Analysis
- Zero Fiscal Note

If there are any additional information is need contact Cory Winchell x4990.



### Representative Pete Kott

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# Alaska State Legislature

## House of Representatives

COMMITTEES  
JUDICIARY COMMITTEE, CHAIR  
RULES  
MILITARY & VETERANS AFFAIRS  
UTILITY RESTRUCTURING  
ETHICS



INTERIM:  
10928 EAGLE RIVER RD., SUITE 141  
EAGLE RIVER, AK 99577

SESSION:  
ALASKA STATE CAPITOL  
JUNEAU, AK 99801

### SPONSOR STATEMENT HB 151

The "Use It, Lose It" law incurs results that are inequitable toward teens who, after maturing and amending delinquent behavior, lose the valuable privilege of driving for substantial periods of time. Furthermore, the delinquent behavior by the juvenile need not be attached in any way to a vehicle under the current statute. This bill hopes to keep the intent of the "Use It, Lose It" legislation intact while dampening the harsher aspects associated with the legislation. When the law was ratified it was the legislature's belief that 2500 revocations per year would occur. That number has jumped to over 4500. The bill hopes to.

- **authorize administrative hearers to re-issue licenses upon a showing of:**
  - compliance with the statute;
  - compliance with the title or department regulation;
  - the license will allow the offender to attend school, care for a dependant child, or earn a livelihood without creating a danger to the public.
- **amend current law by requiring a "nexus" to a vehicle.**
- **remove "consecutive" penalties and run them "concurrently".**
- **require "physical possession" of alcohol rather than mere "constructive possession".**

The State of Alaska has a genuine interest in promoting driving safety as well as curbing teen alcohol use. Nevertheless, to punish a youth by administratively taking away his or her license for twenty years, for flighty mistakes made while very young is far too severe. When a person at a young age makes several mistakes, which become determinative of his or her future, consideration should be taken for amelioration of that youth's behavior. The "Use It, Lose It" law should be based on it's premise—if alcohol is used, the license is revoked. As a policy measure, if the youth shows corrective behavior upon reaching majority, the privilege of a license ought to be returned. I strongly urge your support for HB 151.



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### SECTIONAL ANALYSIS HB 151

- Section 1, 2, 4, and 6** These sections are amended, establishing a "nexus" to a vehicle before an administrative revocation occurs. Basically, physical possession or consumption of alcohol must occur in the vehicle.
- Section 3:** This section is amended requiring that revocations run "concurrently" rather than "consecutively". Furthermore, this section provides for a limited license to be issued in light of the revocation.
- Section 5:** This is a new section which provides youth offenders who ameliorate their bad habits to be re-issued a license. The person must show compliance with both statute and regulation, and must show that they need license to attend school, care for a dependant child, or travel to work.
- Section 7:** This section is added to redefine "alcohol possession" to mean physical possession. This would mean, in-hand or on-person possession.
- Section 8:** This section is the applicability portion of the legislation of the bill.



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①

Hearing of  
Senate Judiciary Committee  
re: HB 151

Although I would like to see the "Use It-Lose It" law completely abolished as we already have laws to deal with underage drinking and driving after drinking, HB 151 is a start. I would like to voice my opinion on this issue.

The Dept. of Administration's power to revoke a young person's driver's license is particularly unconstitutional if they haven't been convicted of any crime. If the Court system has dismissed a case the Administration should not then be allowed to penalize kids.

My child and our family have suffered irreparable harm by this Law. My Son was not found guilty of any crime by the court but was subjected to license revocation by the administration anyway. As it stands the law subjects children & their families to emotional & financial hardships that are simply unfair.

(2)

It is difficult enough for a young person to begin their adult pathway. This law has imposed the additional stress of not being able to secure part time work, get themselves independantly to school and participate in many functions a teen should enjoy. We must change this law drastically to allow children to have their rights reinstated.

Thank you  
Sincerely Yours,

Melinda Steinhilber  
(44855 Eddy Hill Dr.  
Soldotna, AK 99669  
262-5190

# Alaska State Legislature



## House of Representatives House Judiciary Committee

### MEMORANDUM

DATE: May 17, 1999  
TO: Senator Donley  
FROM: Representative Pete Kott, Chair  
Subject: HB 151

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There are two versions to HB 151 that approach the subject very differently. The X.a version that passed out of House Judiciary and passed the floor of the House on April 29, 1999, incorporates several important changes into the existing Use It, Lose It law.

#### VERSION X.a

- (1) This bill establishes a nexus, or a connection, to a vehicle before a police officer can administratively revoke a license. This follows the rationale of Supreme Court analysis and is just good policy. Administratively taking a license from a youth who consumes in relation to a vehicle.
- (2) This bill also provides that penalties remain the same for youths who violate. First offense is 90 days, second offense is a year and third offense is three years. It does, however, provide that subsequent offenses of three years run concurrently rather than consecutively. This prevents stacking of three year offenses, which have in the past led to thirty-year revocations.
- (3) Most importantly, this bill provides a re-issuance hearing for youths who have changed their lifestyle, and have abided all statutes, regulations and administrative provisions after two years of a three year license loss.

# Alaska State Legislature



## House of Representatives

### House Judiciary Committee

- (4) Finally, this bill refines the definition of "alcohol possession" to mean physical possession. This will remove the more draconian cases of Use It, Lose It, which have taken licenses from youths who have not consumed alcohol, and have never even touched it, but are at a party and surrounded by alcohol. We do not want to administratively revoke licenses for mere guilt by association—that is far too harsh.

**VERSION F :** This version was adopted by the Senate Judiciary on Friday, May 14, 1999.

- (1) This bill sets up a complex and convoluted system of the first two violations becoming an administrative violation and the third and fourth violation going to a district court. This change in the bill, which added the district courts, added a fiscal note to an otherwise zero fiscal note bill.
- (2) This bill removes any nexus or connection to a vehicle, so that police officers can administratively revoke licenses for youths anywhere, anytime, upon a mere showing of probable cause. This does not address the problems which the bill sought to remedy. 4800 revocations per year under this standard, with fact pattern scenarios that borderline on ridiculous. We can expect far more unnecessary revocations in the years to come under this type of standard.
- (3) This bill then lessens the penalties for offenses. The first being a 30 day revocation, the second being 60 days, the third 180 days and the fourth totaling a year. This is not the type of message we want to send out for youths who violate the intent of use it lose it. We should rather make a stronger standard (ie. Nexus) and impose stricter penalties than make a weak standard, resulting in many violations, and than lessen the penalties. This version does not address the problems of Use It Lose It. It creates more problems to the current standard and is not even close to the bill that passed out of the House unanimously.

AMENDMENT

BY SENATOR TAYLOR

OFFERED IN THE SENATE

TO: SCS CSHB 151 (JUD)

Page 5, line 10:

Following "immediately"

Insert: "if a court dismisses or"

1 in violation of AS 28.35.280 or possession or use of a controlled substance in  
2 violation of AS 11.71 or a municipal ordinance with substantially similar elements.

3 \* Sec. 7. AS 28.15.183 is amended by adding a new section to read:

4 (j) A person whose driver's license, permit, or privilege was revoked under  
5 this section may apply for reinstatement of the person's driver's license as provided in  
6 this subsection. A person may apply to the department for reinstatement by filing a  
7 written request for review of the revocation imposed under this section with the  
8 department. The department shall issue a new license or reissue the person's driver's  
9 license

10 (1) as provided under AS 28.15.211(d) if the department finds that

11 (A) the application for reinstatement is filed at least one year  
12 after the person's license, permit, or privilege was revoked;

13 (B) the person complies with (g) of this section; and

14 (C) the person has not violated a provision of this title or a  
15 regulation of the department since the revocation; or

16 (2) immediately <sup>if a court dismisses or</sup> if a court or jury finds that the person is not guilty  
17 of the offense described under (a) of this section for which the person was cited or  
18 arrested;

19 \* Sec. 8. AS 28.15.184(b) is amended to read:

20 (b) A request for review of the department's revocation under AS 28.15.183  
21 shall be made within 10 [SEVEN] days after receipt of the notice under AS 28.15.183  
22 or the right to review is waived and the action of the department under  
23 AS 28.15.183(c) is final. If a written request for a review is made after expiration of  
24 the 10-day [SEVEN-DAY] period, and if it is accompanied by the applicant's verified  
25 statement explaining the failure to make a timely request for a review, the department  
26 shall receive and consider the request. If the department finds that the person was  
27 unable to make a timely request because of lack of actual notice of the revocation or  
28 because of factors of physical incapacity such as hospitalization or incarceration, the  
29 department shall waive the period of limitation, reopen the matter, and grant the review  
30 request.