

HB

162

<TARGET><BILL>HB 162</BILL><SUBJECT>HB
162</SUBJECT><COMM>HJUD29</COMM></TARGET>

Alaska State Legislature
House of Representatives
Representative Tammie Wilson

Interim
301 Santa Claus Lane 3B
North Pole, Alaska 99705
Phone - (907) 451-2723

Session
State Capitol Rm 412
Juneau, AK 99801
Phone - (907) 465-4797



Rep.Tammie.Wilson@akleg.gov

MEMORANDUM

To: The Honorable Gabrielle LeDoux

Fr: Representative Tammie Wilson

Re: Hearing Request HB 162

Date: March 16, 2016

Dear Chair LeDoux,

I respectfully request HB 162 be considered in the House Judiciary Committee at your earliest convenience. My staff on this piece of legislation is Barbara Barnes. She can be reached at (907) 465-4797.

Sincerely,

Tammie

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SPONSOR STATEMENT FOR HB 162

"An Act relating to administrative revocation of a driver's license; and repealing Rule 603(a)(3), Alaska Rules of Appellate Procedure."

When you make poor choices and decide to drive under the influence you will face criminal prosecution. Upon conviction by a jury of your peers you might face a sentence of imprisonment, fines, and use of an ignition interlock device after you regain the privilege of a driver license. If you are found not guilty of all charges, the court shall grant you access to driving license privileges. However, the state of Alaska possesses two separate bodies of authority to determine the rights and privileges of Alaskan drivers.

Under AS 28.15.165, Department of Motor Vehicles (DMV) is authorized to conduct an administrative revocation of a driver's license when a chemical test of a person's breath shows an alcohol level of 0.08 or more, or the person refuses to take the chemical test. The administrative process by the DMV may occur whether or not there is a criminal charge for a court to process. If you wish to contest the administrative revocation you can schedule an administrative revocation hearing over the phone to review DMV's action. The hearing for review of action by the DMV is limited to the issue of whether the law enforcement officer had probable cause to believe that the person was operating a motor vehicle under the influence of drugs or alcohol. The DMV hearing officer will conduct the hearing, examine witnesses, review evidence, and make a final ruling on the issue. Administrative revocations by the DMV may be concurrent or in addition to any penalties applied by the courts and is at the discretion of the DMV hearing officer.

The state of Alaska possesses two separate bodies of authority to determine the rights and privileges of Alaskan drivers. The state of Alaska court system provides for a trial by a jury of your peers which will review the evidence and deliberate on criminal sentencing. In comparison, the DMV's authority to impose conditions on the issuance of a limited license is designed to promptly address public safety and does not necessarily involve the considerations of the verdicts of the courts. In the end, anyone who presents probable cause to a law enforcement officer is considered guilty. Even if found not guilty by a jury of your peers through the Alaska Court System, the DMV has the authority to place additional burdens on the individual. HB 162 solves this dual burden of driver license revocations by repealing the DMV's independent authority to administrative revocation of a driver's license and place it solely within the court.

Thank you for you for supporting HB 162.

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version: HB 162
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB162-DOA-DMV-2-5-16
Title: DMV REVOCATION OF DRIVER'S LICENSE
Sponsor: WILSON
Requester: (H) State Affairs

Department: Department of Administration
Appropriation: Motor Vehicles
Allocation: Motor Vehicles
OMB Component Number: 2348

Expenditures/Revenues

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

	FY2017	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2017 Request	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
OPERATING EXPENDITURES	FY 2017	FY 2017					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: <u>Amy Erickson, Director</u>	Phone: <u>(907)269-5574</u>
Division: <u>Motor Vehicles</u>	Date: <u>02/04/2016 04:10 PM</u>
Approved By: <u>Sheldon Fisher, Commissioner</u>	Date: <u>02/04/16</u>
Agency: <u>Department of Administration</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

BILL NO. HB 162

Analysis

HB 162 removes the department's authority to impose an Administrative License Revocation (ALR) on an individual's driver license. The authority to revoke driving privileges for DUI would lie solely with the court system.

Fiscal impact to State of Alaska

While there is no fiscal impact to the department, it must be noted that federal funding opportunities could be compromised. Because drunk drivers are a danger to the public and the state, the National Highway Traffic Safety Administration (NHTSA) encourages states to require prompt and mandatory revocation of a driver's license for DUI and Refusal. ALR is tied to federal grant incentives to encourage states to adopt these laws, which were adopted in Alaska in 1983.

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

November 4, 2014

SUBJECT: Administrative revocation of a driver's license
(Work Order No. 29-LS0087A)

TO: Representative Tammie Wilson
Attn: Barbara Barnes

FROM: Hilary V. Martin
Legislative Counsel

Enclosed is the bill draft you requested, which removes the ability of the Department of Administration to revoke a driver's license or commercial driver's license for an adult after a result of a chemical test that shows that a person's blood contains a certain level of alcohol (.08 under current law) or for a refusal to submit to that chemical test. A person who submits to the chemical test and whose blood meets the alcohol threshold would not have their license revoked unless the person is ultimately convicted of driving under the influence.

It is possible that removing this administrative revocation authority after there has been a result of a chemical test that meets a certain threshold could have an impact on federal funding to the state. You may wish to talk to the Department of Transportation and Public Facilities about this issue.

If I may be of further assistance, please advise.

HVM:lem
14-305.lem

Enclosure

State	Administrative license revocation by DMV	Who imposes license revocations?	Laws and statutes
Kentucky	no	License suspensions shall be imposed by the court	<u>KRS § 189A.005</u>
Michigan	no	If a person refuses the request of a peace officer to submit to a chemical test offered under section 625a(6), a <u>test shall not be given without a court order</u> , but the officer may seek to obtain the court order.	<u>MCLS § 257.625d</u>
		The <u>Secretary of State must revoke a driver's license</u> when it receives notice of the driver's second conviction for operating a motor vehicle while under the influence of intoxicating liquor within a seven-year period regardless of any order directing the issuance of a restricted license issued by the trial judge who presided over the proceedings which resulted in the second conviction.	<u>MCLS § 257.625</u>
Montana	no	DMV shall revoke an individual's driver's license or driving privilege <u>if the department receives notice from a court or another licensing jurisdiction</u> that the individual has been convicted	<u>61-5-205, MCA</u>
New Jersey	no	At the discretion of the court	<u>N.J. Stat. § 39:4-50</u>
Pennsylvania	no	The DMV shall suspend the operating privilege of any driver for one year <u>upon receiving a certified record of the driver's conviction</u> of or an adjudication of delinquency based on any of the following offenses:	<u>75 Pa.C.S. § 1532</u>
		The DMV shall suspend the operating privilege of an individual ... <u>upon receiving a certified record of the individual's conviction</u> of or an adjudication of delinquency	<u>75 Pa.C.S. § 3804</u>
		DMV, <u>upon receiving a record of the conviction</u> of any person upon a charge of driving a motor vehicle while the license of the person was suspended, shall suspend the person's license for an additional three (3) months.	<u>R.I. Gen. Laws § 31-11-18</u>

Rhode Island	no	<p><u>Every person convicted</u> of a first violation whose blood alcohol concentration is one-tenth of one percent (.1%) by weight or above, but less than fifteen hundredths of one percent (.15%), or whose blood alcohol concentration is unknown, shall be subject to a fine of not less than one hundred (\$ 100) dollars, nor more than four hundred dollars (\$ 400), and shall be required to perform ten (10) to sixty (60) hours of public community restitution and/or shall be imprisoned for up to one year.</p>	<p>R.I. Gen. Laws § 31- <u>27-2</u></p>
South Carolina	no	<p>The Department of Motor Vehicles shall revoke for five years the driver's license of a <u>person convicted</u> of reckless vehicular homicide.</p> <p>Any person violating the provisions of §§ 56-5-1590 to 56-5-1620 by driving a motor vehicle shall, <u>upon conviction</u>, be fined not less than two hundred dollars nor more than six hundred dollars or imprisoned for not less than two months nor more than six months, or both, <u>in the discretion of the trial judge</u>.</p>	<p>S.C. Code Ann. § 56- <u>5-2910</u></p> <p>S.C. Code Ann. § 56- <u>5-1620</u></p>
South Dakota	no	<p><u>If conviction for a violation of § 32-23-1</u> is for a first offense, such person is guilty of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less than thirty days. However, the <u>court may in its discretion issue an order upon proof of financial responsibility</u>, pursuant to § 32-35-113, permitting the person to operate a vehicle for purposes of employment, 24/7 sobriety testing, attendance at school, or attendance at counseling programs. The court may also order the revocation of the defendant's driving privilege for a further period not to exceed one year or restrict the privilege in such manner as it sees fit for a period not to exceed one year.</p> <p><u>If conviction for a violation of § 32-23-1</u> is for a second offense, such person is guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally revoke the defendant's driving privilege for a period of not less than one year.</p> <p>If the <u>Secretary of Public Safety</u> finds that the law enforcement officer complied with the law and the refusal was made by the person, the Secretary <u>shall revoke that person's license to drive</u> and any nonresident operating privileges for one year.</p>	<p>S.D. Codified Laws § <u>32-23-2</u></p> <p>S.D. Codified Laws § <u>32-23-3</u></p> <p>S.D. Codified Laws § <u>32-23-11</u></p>

Tennessee	no	<p>The <u>court shall prohibit any person convicted of a violation of §55-10-401</u> from driving a vehicle in this state for a period of (A) One (1) year, if the conviction is a first offense. (B) Two (2) years for a second offense. (C) Six (6) years for a third offense. (D) Eight (8) years for a fourth or subsequent offense.</p>	<p><u>Tenn. Code Ann. § 55-10-404</u></p>
		<p>Notwithstanding any other provision of this part to the contrary, a <u>person whose license has been suspended by the court pursuant to § 55-10-404</u> is not eligible for, and the court shall not have the authority to grant or order, the issuance of a restricted driver license if, based on the record of the department ... (If have violation in another state or seriously injured or killed another person)</p>	<p><u>Tenn. Code Ann. § 55-10-409</u></p>

Traffic Safety Facts

Laws

DOT HS 810 878

January 2008

Administrative License Revocation

Background

The National Highway Traffic Safety Administration encourages States to require prompt, mandatory revocation or suspension of driver's licenses for alcohol and other drug test failure or refusal. Motor vehicle crashes are the leading cause of death for people 2 through 34 years old in the United States. Forty-one percent of motor vehicle crash fatalities are alcohol-related. Suspending or revoking driver's licenses for those driving while under the influence of alcohol or other drugs has proven to be a successful deterrent when implemented by a State.

Administrative license revocation (ALR) laws are based on objective chemical tests (usually breath, sometimes blood or urine) and are similar to "illegal per se" criminal laws against impaired driving. ALR allows law enforcement and driver licensing authorities to revoke or suspend a driver's license swiftly, without long delays, while awaiting a criminal trial. The offender retains the right of due process through an administrative appeal system.

Key Facts

- To date, 41 States and the District of Columbia have enacted ALR laws that result in immediate license suspension or revocation based on a blood alcohol concentration of .08 grams per deciliter or a breath test refusal.
- Inpatient rehabilitation costs for motor vehicle injuries average \$11,265 per patient.
- In 2006, 41 percent of the fatal motor vehicle crashes nationwide were alcohol-related. This percentage equates to 17,602 alcohol-related deaths.
- Research has found that ALR laws reduced fatal crashes by approximately 9 percent during high-risk (late night) periods of alcohol involvement.

- Research in Illinois, New Mexico, Maine, North Carolina, Colorado, and Utah showed significant reductions in alcohol-related fatal crashes after these States enacted ALR laws.
- For ALR laws to be effective, publicity is an important factor because drivers must know and understand the consequences of their actions. One research study conducted in Nevada found a 12-percent reduction in alcohol-related crashes following implementation of a publicity campaign designed to inform the public about the ALR procedure.
- ALR does not have a major impact on an offender's job or income. A 1996 study compared three ALR States with one State that used other sanctions for impaired driving; there was no difference between ALR and non-ALR States in offender employment or income. In both ALR and non-ALR States, 94 percent of the offenders who were working at the time of their arrest were still working one month later; 4 percent were unemployed; and the remaining 2 percent were in school. License revocations as long as

Inside This Issue

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- How Much Does an ALR Program Cost?
- How Can ALR Be Financed?
- Incentive Grant Program
- Which States Have ALR?
- References

90 days did not lead to a loss of job or income.

- ALR is constitutional. The U.S. Supreme Court has found that the right of due process is not violated if a driver's license is suspended prior to an administrative hearing, as long as provisions are made for a swift post-suspension hearing (*Mackey v. Montrym*, 443 U.S. 1 [1979]).
- All cases in which the highest State appellate courts have considered ALR issues have held that a separate criminal trial for an impaired driving offense following an ALR action does not constitute double jeopardy under either Federal or State constitutional law.

How Do ALR Laws Work?

What Provisions Should Be Included in an ALR Law?

- The language of these laws should be consistent with the provisions of the State's administrative procedures act.
- The arresting officer should, at the time of arrest, serve the notice of revocation (or suspension), take the offender's license and issue a temporary permit.
- The driver must have the opportunity to request an administrative hearing. However, the hearing request should not be allowed to delay the revocation (or suspension).
- There should be an initial license revocation (or suspension) period for test *failure* with some period of full revocation followed by restricted driving for the remainder. Restricted driving privileges should be

permitted only in very limited circumstances, and only after an initial "hard" revocation (or suspension) period has been served. The initial license revocation (or suspension) period for a test *refusal* should be at least as long as the period for test failure, with no restricted driving privileges, to discourage offenders from refusing. For a repeat DWI offense within five years, the revocation (or suspension) period should be considerably longer with no restricted driving privileges. In addition, licensing actions should take effect within 30 days of notice.

- The administrative sanction should be handled separately from the criminal proceeding. Due to differing procedural aspects, the findings and outcome of an ALR action normally should not affect a criminal proceeding, and vice versa.
- For example, a 2000 study examined Utah's law allowing telephonic testimony at ALR hearings. After the availability of telephonic hearings, Utah experienced a statistically significant 20-percent reduction in cases where the driver's license was returned to the offender due to the absence of the arresting officer at a hearing, as a percentage of all cases where the license was returned.

How Much Does an ALR Program Cost?

A 1991 study analyzed the costs and benefits associated with ALR laws in Illinois, Mississippi, and Nevada. The study revealed that start-up and operating costs were adequately covered

with the assessment of license reinstatement fees. In addition, the annual savings in costs for nighttime crashes that were reduced as a result of ALR laws ranged from \$37 million in Nevada to \$104 million in Mississippi.

How Can ALR Be Financed?

The offenders, rather than taxpayers, should pay for these programs. Some States have increased significantly the reinstatement fee for drivers whose licenses are revoked for driving while intoxicated; some States have raised all reinstatement fees; other States have increased all license application and renewal fees. Other fines, fees, or taxes can also provide funding, such as an alcoholic beverage tax that can be earmarked for alcohol program expenses, including ALR.

Incentive Grant Program

In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Section 2007 of SAFETEA-LU continues the alcohol-impaired driving countermeasures incentive grant program (under Section 410 of chapter 4 of Title 23), awarding grants to States that adopt and implement effective programs, including ALR laws, to reduce traffic safety problems resulting from individuals driving while impaired by alcohol. A qualifying State may use these grant funds to implement impaired driving prevention programs.

To meet the ALR criterion of the Section 410 grant program, SAFETEA-LU provides that a State must adopt an ALR system for offenders who, within a 5-year

period, have been determined, based on the basis of a chemical test, to have been operating a motor vehicle while under the influence of alcohol, or have been determined to have refused to submit to such a test. In addition, to meet the ALR criterion, these offenders must be subject to the following sanctions:

- ▲ First offenders are subject to at least a 90-day license suspension, except that after 15 days a provisional license may be issued so the offender may drive to and from employment, school, an alcohol treatment program, or an interlock service facility only in a vehicle equipped with an ignition interlock.
- ▲ Repeat offenders as determined by the second or subsequent offenses committed within a five-year period are subject to at least a 1-year license suspension or revocation, except that after 45 days a provisional license may be issued so the offender may drive to and from employment, school, an alcohol treatment program, or an interlock service facility

only in a vehicle equipped with an ignition interlock; and

- ▲ Suspensions or revocations must take effect within 30 days after offenders refuse to submit to a chemical test or receive notice of having failed a breath test.

The implementing regulations for the Section 410 program are located in 23 CFR Part 1313.

Which States Have ALR?

To date, 41 States and the District of Columbia have adopted some form of administrative license revocation, although none of the State laws have been determined to comply with the new Section 410 ALR requirements. The States that currently do not have any form of ALR are Kentucky, Michigan, Montana, New Jersey, New York, Pennsylvania, Rhode Island, South Dakota, and Tennessee.

References

Knoebel, K., & Ross, H.L. (1996). *Effects of Administrative License Revocation on Employment*. DOT HS 808 462. Washington, DC: National Highway Traffic Safety Administration.

NHTSA (1992). *Administrative License Revocation: Resource Manual*. DOT HS 807 873. Washington, DC: National Highway Traffic Safety Administration.

NHTSA (1991). *Cost-Benefit Analysis of Administrative License Suspension*. DOT HS 807 689. Washington, DC: National Highway Traffic Safety Administration.

NHTSA (2006). *Rehabilitation Costs and Long-Term Consequences of Motor Vehicle Injury*. DOT HS 810 581. Washington, DC: National Highway Traffic Safety Administration.

NHTSA (1996). *Study in Four States Shows that ALR Has Little Effect on Violator's Employment or Income*. Traffic Tech. Washington, DC: National Highway Traffic Safety Administration.

Williszoski, C., Jones, R., & Lacy, J. (2003). *Examining the Effectiveness of Utah's Law Allowing for Telephonic Testimony at ALR Hearings*. DOT HS 809 602. Washington, DC: National Highway Traffic Safety Administration.



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**



Reports and additional information are available from your State Highway Safety Office; the NHTSA Regional Office serving your State; NHTSA Headquarters, Impaired Driving and Occupant Protection Office, ATTN: NTI-111, 1200 New Jersey Avenue SE., Washington, DC 20590; 202-366-2683, or NHTSA's Web site at www.nhtsa.gov.

[Alaska Stat. § 28.15.181](#)

Current through the 2014 Second Regular Session of the Twenty-Eighth State Legislature

[Alaska Statutes](#) > [TITLE 28. MOTOR VEHICLES](#) > [CHAPTER 15. DRIVERS' LICENSES](#) > [ARTICLE 2. CANCELLATION, SUSPENSION, REVOCATION, OR LIMITATION OF DRIVERS' LICENSES](#)

Sec. 28.15.181. Court suspensions, revocations, and limitations

- (a) Conviction of any of the following offenses is grounds for the immediate revocation of a driver's license, privilege to drive, or privilege to obtain a license:
- (1) manslaughter or negligent homicide resulting from driving a motor vehicle;
 - (2) a felony in the commission of which a motor vehicle is used;
 - (3) failure to stop and give aid as required by law when a motor vehicle accident results in the death or personal injury of another;
 - (4) perjury or making a false affidavit or statement under oath to the department under a law relating to motor vehicles;
 - (5) operating a motor vehicle or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance;
 - (6) reckless driving;
 - (7) using a motor vehicle in unlawful flight to avoid arrest by a peace officer;
 - (8) refusal to submit to a chemical test authorized under [AS 28.33.031\(a\)](#) or [AS 28.35.031\(a\)](#) while under arrest for operating a motor vehicle, commercial motor vehicle, or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, or authorized under [AS 28.35.031\(g\)](#);
 - (9) driving while license, privilege to drive, or privilege to obtain a license, canceled, suspended, or revoked, or in violation of a limitation;
 - (10) vehicle theft in the first degree in violation of [AS 11.46.360](#) or vehicle theft in the second degree in violation of [AS 11.46.365](#).
- (b) A court convicting a person of an offense described in (a)(1) -- (4), (6), (7), or (10) of this section shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license for not less than 30 days for the first conviction, unless the court determines that the person's ability to earn a livelihood would be severely impaired and a limitation under [AS 28.15.201](#) can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public. If a court limits a person's license under this subsection, it shall do so for not less than 60 days. Upon a subsequent conviction of a person for any offense described in (a)(1) -- (4), (6), (7), or (10) of this section occurring within 10 years after a prior conviction, the court shall revoke the person's license, privilege to drive, or privilege to obtain a license and may not grant the person limited license privileges for the following periods:
- (1) not less than one year for the second conviction; and
 - (2) not less than three years for a third or subsequent conviction.
- (c) A court convicting a person of an offense described in (a)(5) or (8) of this section arising out of the operation of a motor vehicle, commercial motor vehicle, or aircraft shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license. The revocation may be concurrent with or consecutive to an administrative revocation under [AS 28.15.165](#). The court may not, except as provided in [AS 28.15.201](#), grant limited license privileges during the minimum period of revocation. Except as provided under [AS 28.35.030\(n\)\(3\)](#) and [28.35.032\(p\)\(3\)](#), the minimum periods of revocation are

- (1) not less than 90 days if the person has not been previously convicted;
 - (2) not less than one year if the person has been previously convicted once;
 - (3) not less than 3 years if the person has been previously convicted twice;
 - (4) not less than 5 years if the person has been previously convicted more than twice.
- (d) A court convicting a person of an offense described in (a)(9) of this section shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license for not less than the minimum period under [AS 28.15.291\(b\)\(4\)](#).
- (e) **[Repealed, § 34 [ch 119 SLA 1990](#).]**
- (f) The court may terminate a revocation for an offense described in (a)(5) or (8) of this section if
- (1) the person's license, privilege to drive, or privilege to obtain a license has been revoked for the minimum periods set out in (c) of this section; and
 - (2) the person complies with the provisions of [AS 28.15.211\(d\)](#) and (e).
- (g) The court may suspend the driver's license, privilege to drive, or privilege to obtain a license of a person who fails to appear in court as required by a citation for an offense involving a moving motor vehicle, or who fails to pay a fine as required by the court for an offense involving a moving motor vehicle. If the court suspends a driver's license under this subsection, the court shall also provide notice of the suspension to the department. A suspension imposed under this subsection remains in effect until the person appears in court as required by the citation, or pays the fine as required by the court. When the person appears in court or pays the required fine, the court shall terminate the suspension imposed under this subsection and provide the department and the person with written notice of the termination.
- (h) A court convicting a person under [AS 04.16.050\(c\)](#) or (d) shall revoke the person's driver's license or permit, privilege to drive, or privilege to obtain a license as provided in [AS 04.16.050\(c\)](#) or (d).
- (i) In this section, "previously convicted" has the meaning given in [AS 28.35.030](#).

History

(§ 19 ch 178 SLA 1978; am §§ 7 – 9 ch 117 SLA 1982; am §§ 4 – 7 ch 77 SLA 1983; am §§ 11 – 15, 34 [ch 119 SLA 1990](#); am §§ 9 – 11 [ch 3 SLA 1992](#); am §§ 2, 3 [ch 59 SLA 1993](#); am § 4 [ch 55 SLA 1994](#); am § 5 [ch 47 SLA 1996](#); am §§ 7, 8 [ch 71 SLA 1996](#); am § 6 [ch 65 SLA 2001](#); am §§ 12, 13 [ch 60 SLA 2002](#))

Annotations

Notes

REVISOR'S NOTES. --

Subsection (f) was enacted as (g); relettered in 1993, at which time former (f) was relettered as (g) (now (i)). Subsection (g) was enacted as (h). Relettered in 1996, at which time former (g) was relettered as (h) (now (i)). Subsection (h) was enacted as (i); relettered in 2001, at which time former (h) was relettered as (i).

Case Notes

NOTES TO DECISIONS

THE REVOCATION PROVISIONS OF FORMER AS 28.15.210(C) WERE REENACTED by the 1978 legislature in subsection (b) of this section. [Danks v. State, 619 P.2d 720 \(Alaska 1980\)](#).

Alaska Stat. § 28.15.181

REVOCATION NOT SET ASIDE. --When a driver sought, under subsection (f), to have the driver's license revocation set aside due to the driver being acquitted of underlying criminal charges, it was not manifestly unjust to allow the revocation to stand because (1) the driver did not challenge the revocation for 16 years, and (2) the driver was not completely prohibited from driving a motor vehicle. *Poirot v. State*, -- P.3d -- (Alaska Mar. 4, 2009), (memorandum opinion).

UNDER FORMER AS 28.15.210(C), (now [AS 28.15.181\(c\)](#)) the use of "shall" excluded the idea of discretion on the part of the court in revoking the license, for the statutory time periods, of persons convicted of drunk driving if that person had previously been convicted of the same offense. [State v. Guarderas, 589 P.2d 870 \(Alaska 1979\)](#); [Danks v. State, 619 P.2d 720 \(Alaska 1980\)](#).

IN ORDER TO INVOKE THE MANDATORY ONE-YEAR LICENSE REVOCATION PENALTY OF PARAGRAPH (B)(1) of this section, the second conviction need not be for the same type of offense as the first conviction. [Belarde v. Municipality of Anchorage, 634 P.2d 567 \(Alaska Ct. App. 1981\)](#).

The one-year license revocation penalty of paragraph (b)(1) of this section may follow as a result of a conviction for any of the offenses listed under subsection (a) of this section regardless of what offense the initial conviction was predicated upon. [Belarde v. Municipality of Anchorage, 634 P.2d 567 \(Alaska Ct. App. 1981\)](#).

CONVICTION UNDER ANOTHER STATE'S STATUTE MAY BE USED for purposes of enhanced license revocation under subsection (b). [Carter v. State, 625 P.2d 313 \(Alaska Ct. App. 1981\)](#).

Convictions from other jurisdictions can be used to enhance the period of revocation. [Sather v. State DMV, 776 P.2d 1055 \(Alaska 1989\)](#).

Division of Motor Vehicles did not err in using driver's authenticated Arizona driving records reflecting an Arizona DWI conviction to enhance the period of his administrative license revocation for driving while intoxicated in Alaska. [Glascock v. State, Dep't of Pub. Safety, 890 P.2d 65 \(Alaska 1995\)](#).

CHALLENGING OUT-OF-STATE DWI CONVICTION. --The superior court had jurisdiction to consider the validity of defendant's prior DWI conviction in Wyoming since, if it had been truly entered in violation of driver's fundamental rights, it would be manifestly unjust to allow that conviction to be used to enhance the license revocation. [State, Dep't of Pub. Safety v. Fann, 864 P.2d 533 \(Alaska 1993\)](#).

APPLICATION OF PARAGRAPH (B)(2) HELD CONSTITUTIONAL. --Application of three-year license revocation provision of subsection (b) to defendant whose prior two OMVI (operating a motor vehicle while under the influence of intoxicating liquor or drugs) convictions were in 1974 and 1976 did not violate the constitutional prohibitions against ex post facto laws. [Carter v. State, 625 P.2d 313 \(Alaska Ct. App. 1981\)](#).

MAGISTRATE ERRED IN CONCLUDING FORMER SUBSECTION (C)(3) APPLIED to a defendant who at the time of his two current offenses had not been convicted of more than one driving while intoxicated offense. [Thomas v. State, 694 P.2d 789 \(Alaska Ct. App. 1985\)](#).

THE DATE OF THE LATEST ARREST must be used in calculating whether a person convicted of driving while intoxicated (DWI) or failure to submit to a breathalyzer test has been convicted of a similar offense or offenses within the preceding ten years. [Wik v. State, Dep't of Pub. Safety, 786 P.2d 384 \(Alaska 1990\)](#).

REVOCATION BEYOND LIFE OF LICENSE. --Once a license is validly revoked, the revocation remains in effect for the full period ordered, regardless of whether the originally valid license might otherwise have expired at some point during the period of revocation. [Fielding v. State, 733 P.2d 271 \(Alaska Ct. App. 1987\)](#).

CONSECUTIVE PERIODS OF REVOCATION. --The DWI provision does not expressly require consecutive periods of revocation; however, there is no indication that the legislature intended different treatment under this

section than that which it clearly provided for under [AS 28.15.291](#), and there is no reason to distinguish between revocations under these two statutes. [Fielding v. State, 733 P.2d 271 \(Alaska Ct. App. 1987\)](#).

Imposition of two 10-year driver's license revocation periods consecutively rather than concurrently was justified, where defendant's ever-lengthening record of driving offenses demonstrated both the extent of the danger to the public as well as his apparent inability to conform his conduct to the law. [Williamson v. State, Dep't of Pub. Safety, 779 P.2d 1238 \(Alaska 1989\)](#).

LIFETIME REVOCATION. --This section authorizes a court to revoke a driver's license for any period of years, including a lifetime revocation. Moreover, allowing such a lifetime license revocation does not render this section unconstitutionally vague, as the language of this section seems clear. [Dodge v. Municipality of Anchorage, 877 P.2d 270 \(Alaska Ct. App. 1994\)](#).

Defendant's revocation was vacated where there was no basis to revoke his driver's license for the rest of his life, because such a punishment should be reserved for chronic offenders whose records demonstrate that they should never be allowed to drive a motor vehicle again. [Fine v. State, 22 P.3d 20 \(Alaska Ct. App. 2001\)](#).

While intoxicated, defendant drove his vehicle off the road, hitting a boy and narrowly missing the boy's brother, and continued to drive after he hit the boy. The trial court was not clearly mistaken in finding that this case was an extreme one in which a lifetime revocation of defendant's driver's license was required to protect the public. [Bottcher v. State, 300 P.3d 528 \(Alaska 2013\)](#).

SENTENCE NOT UNCONSTITUTIONALLY EXCESSIVE. --Lifetime revocation of driver's license was not unconstitutionally excessive and so disproportionate to DWI offense as to be cruel and unusual punishment, where defendant had a 20-year history of repeated offenses involving the operation of motor vehicles while intoxicated, had caused a person's death during one of these offenses, and last DWI offense involved a serious accident, a blood-alcohol content of more than twice the legal limit, and the endangerment of numerous people. [Dodge v. Municipality of Anchorage, 877 P.2d 270 \(Alaska Ct. App. 1994\)](#).

PRESUMPTIVE SENTENCING STATUTES AS AID IN INTERPRETING SUBSECTION (C). --Because the presumptive sentencing scheme in [AS 12.55.125 -- 12.55.165](#) furthers a similar purpose as and contains similar language to subsection (c) of this section, and because the two statutes were enacted contemporaneously, the former constitutes a valuable aid in interpreting the latter. Thus, we may assume the legislature intended that "prior conviction" be defined the same way in both statutes. [Tulowitzke v. State, Dep't of Pub. Safety, 743 P.2d 368 \(Alaska 1987\)](#).

PRIOR CONVICTIONS ENTERED SIMULTANEOUSLY. --All prior driving while intoxicated convictions must be counted separately for purposes of driver's license revocation following a subsequent conviction, regardless of whether the prior convictions were entered simultaneously. [Tulowitzke v. State, Dep't of Pub. Safety, 743 P.2d 368 \(Alaska 1987\)](#).

VIOLATION OF LIMITED LICENSE AFTER CONVICTION FOR DRIVING WHILE INTOXICATED. --A person who drives in violation of a limited license that is issued following a conviction for driving while intoxicated (DWI) is subject to a minimum jail term of ten days. [State v. Robertson, 749 P.2d 902 \(Alaska Ct. App. 1988\)](#).

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 [AS 28.15.201](#), 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 01.10.100](#) (relating to the 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 former AS 28.15.291(c) (now [AS 28.15.291\(d\)](#)) and subsection (d) of this section. [Howell v. State, 834 P.2d 1254 \(Alaska Ct. App. 1992\)](#).

APPLIED IN State v. Stagno, 739 P.2d 198 (Alaska Ct. App. 1987).

QUOTED IN Wylie v. State, 797 P.2d 651 (Alaska Ct. App. 1990); Hill v. State, 32 P.3d 10 (Alaska Ct. App. 2001).

STATED IN Manderson v. State, 655 P.2d 1320 (Alaska Ct. App. 1983); Wooley v. State, 221 P.3d 12 (Alaska Ct. App. 2009).

CITED IN Swensen v. Municipality of Anchorage, 616 P.2d 874 (Alaska 1980); Anderson v. Municipality of Anchorage, 645 P.2d 205 (Alaska Ct. App. 1982); Uhde v. State, 654 P.2d 1323 (Alaska Ct. App. 1982); Caulkins v. State, Dep't of Pub. Safety, 743 P.2d 366 (Alaska 1987); State v. Waalkes, 749 P.2d 1360 (Alaska Ct. App. 1988); State, Dep't of Pub. Safety v. Conley, 754 P.2d 232 (Alaska 1988); State v. Straetz, 758 P.2d 133 (Alaska Ct. App. 1988); Thorne v. Department of Pub. Safety, 774 P.2d 1326 (Alaska 1989); Tyler v. State, 24 P.3d 1260 (Alaska 2001); Smith v. State, 83 P.3d 12 (Alaska Ct. App. 2004); Nevers v. State, 123 P.3d 958 (Alaska 2005); Stevens v. State, 135 P.3d 688 (Alaska Ct. App. 2006); Patrick v. Municipality of Anchorage, 305 P.3d 292 (Alaska 2013); Patrick v. Municipality of Anchorage, 305 P.3d 292 (Alaska 2013).

Research References & Practice Aids

COLLATERAL REFERENCES. --

What amounts to conviction or adjudication of guilt for purposes of refusal, revocation, or suspension of automobile driver's license, [79 ALR2d 866](#).

Suspension or revocation of driver's license for refusal to take sobriety test, [88 ALR2d 1064](#).

Denial, suspension, or cancellation of driver's license because of physical disease or defect, [38 ALR3d 452](#).

Validity and construction of statute or ordinance mandating imprisonment for habitual repeated traffic offender, [2 ALR4th 618](#).

Validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, [48 ALR4th 367](#).

Validity and application of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of, or ability to operate, motor vehicle, [18 ALR5th 542](#).

USER NOTE:

For more generally applicable notes, see notes under the first section of this article, chapter or title.

ALASKA STATUTES

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Alaska Stat. § 28.15.166

Current through the 2014 Second Regular Session of the Twenty-Eighth State Legislature

Alaska Statutes > TITLE 28. MOTOR VEHICLES > CHAPTER 15. DRIVERS' LICENSES > ARTICLE 2. CANCELLATION, SUSPENSION, REVOCATION, OR LIMITATION OF DRIVERS' LICENSES

Sec. 28.15.166. Administrative review of revocation

- (a) A person who has received a notice under [AS 28.15.165\(a\)](#) may make a written request for administrative review of the department's action under [AS 28.15.165\(c\)](#) or for limited license privileges under [AS 28.15.165\(d\)](#). If the person's driver's license has not been previously surrendered to the department, it shall be surrendered to the department at the time the request for review is made.
- (b) A request for review of the department's action under [AS 28.15.165](#) shall be made within seven days after receipt of the notice under [AS 28.15.165](#) or the right to review is waived and the action of the department under [AS 28.15.165\(c\)](#) is final. If a written request for a review is made after expiration of the 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 department's action 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. An initial request for limited license privileges may be made at any time. Subsequent requests for limited license privileges may not be made unless the applicant demonstrates a significant change in circumstances.
- (c) Upon receipt of a request for review, if it appears that the person holds a valid driver's license and that the driver's license has been surrendered, the department shall issue a temporary driver's permit that is valid until the scheduled date for the review. A person who has requested a review under this section may request, and the department may grant for good cause, a delay in the date of the hearing. If necessary, the department may issue additional temporary permits to stay the effective date of its action under [AS 28.15.165\(c\)](#) until the final order after the review is issued.
- (d) A person who has requested a hearing under this section and who fails to attend or appear at the hearing, for reasons other than lack of actual notice of the hearing or physical incapacity such as hospitalization or incarceration, waives the right to a hearing. The determination of the department that is based upon the enforcement officer's report becomes final.
- (e) The hearing under this section must be held by telephone unless the hearing officer finds that a telephonic hearing would substantially prejudice the rights of the person involved in the hearing or that an in-person hearing is necessary to decide the issues to be presented in the hearing. An in-person hearing must be held at the office of the department nearest to the residence of the person involved in the hearing unless the department and the person agree that the hearing is to be held elsewhere.
- (f) A review under this section shall be held before a hearing officer designated by the commissioner. The hearing officer has authority to
 - (1) administer oaths and affirmations;
 - (2) examine witnesses and take testimony;
 - (3) receive relevant evidence;
 - (4) issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;
 - (5) regulate the course and conduct of the hearing;
 - (6) make a final ruling on the issue.

Alaska Stat. § 28.15.166

- (g) The hearing for review of action by the department under [AS 28.15.165](#) shall be limited to the issues of whether the law enforcement officer had probable cause to believe that the person was operating a motor vehicle or commercial motor vehicle that was involved in an accident causing death or serious physical injury to another, or that the person was operating a motor vehicle, commercial motor vehicle, or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance in violation of [AS 28.33.030](#) or [AS 28.35.030](#) and whether
- (1) the person refused to submit to a chemical test authorized under [AS 28.33.031\(a\)](#) or [AS 28.35.031\(a\)](#) or (g) after being advised that refusal would result in disqualification or the suspension, revocation, or denial of the person's license, privilege to drive, or privilege to obtain a license, and that the refusal is a misdemeanor;
 - (2) the chemical test administered under [AS 28.33.031\(a\)](#) or [AS 28.35.031\(a\)](#) or (g) produced a result described in [AS 28.35.030\(a\)\(2\)](#); or
 - (3) the chemical test administered under [AS 28.33.031\(a\)](#) produced a result described in [AS 28.33.030\(a\)\(2\)](#).
- (h) The determination of the hearing officer may be based upon the sworn report of a law enforcement officer. The law enforcement officer need not be present at the hearing unless either the person requesting the hearing or the hearing officer requests in writing before the hearing that the officer be present. If in the course of the hearing it becomes apparent that the testimony of the law enforcement officer is necessary to enable the hearing officer to resolve disputed issues of fact, the hearing may be continued to allow the attendance of the law enforcement officer.
- (i) Testimony given by the person at the hearing is not admissible against the person in a criminal trial unless the person's testimony at the trial is inconsistent with that given at the hearing.
- (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. If one or more of the issues is determined in the negative, the department's action shall be rescinded.
- (k) If the action of the department in revoking a nonresident's privilege to drive a motor vehicle is not administratively contested by the nonresident driver or if the departmental action is sustained by the hearing officer, the department shall give written notice of action taken to the motor vehicle administrator of the state of the person's residence and to any state in which that person has a driver's license.
- (l) *[Repealed, § 34 [ch 119 SLA 1990](#).]*
- (m) Within 30 days of the issuance of the final determination of the department, a person aggrieved by the determination may file an appeal in superior court for judicial review of the hearing officer's determination. The judicial review shall be on the record, without taking additional testimony. The court may reverse the department's determination if the court finds that the department misinterpreted the law, acted in an arbitrary and capricious manner, or made a determination unsupported by the evidence in the record.
- (n) The filing of an appeal under (m) of this section or a petition for review does not automatically stay the department's order or revocation. The court may grant a stay of the order or revocation only upon a motion and hearing, and upon a finding that there is a reasonable probability that the petitioner will prevail on the merits, that the petitioner will suffer irreparable harm if the order is not stayed, and in a case where the petitioner operates a commercial motor vehicle that the public can be adequately protected by conditions imposed by the court.

History

(§ 3 ch 77 SLA 1983; am §§ 6 – 10, 34 [ch 119 SLA 1990](#); am § 2 [ch 158 SLA 1990](#); am §§ 3 – 6 [ch 3 SLA 1992](#); am § 3 [ch 55 SLA 1994](#); am §§ 7 – 9 ch 6 FSSLA 1996; am § 11 [ch 60 SLA 2002](#))

Annotations

Notes

LEGISLATIVE HISTORY REPORTS. --

For Governor's transmittal letter on HB 445 (from which [ch. 55, SLA 1994](#), which amended (g) of this section, derived), see 1994 House Journal 2262-2263.

Case Notes

NOTES TO DECISIONS

DUE PROCESS CONSIDERATIONS. --Since the same procedural safeguards apply in civil driver's license revocation proceedings for driving while intoxicated as apply in criminal prosecutions for that offense, due process requires consideration of the margin of error inherent in the breath testing procedure used. [Barcott v. State, Dep't of Pub. Safety, 741 P.2d 226 \(Alaska 1987\)](#).

Due process requires that an arrestee who fails the breath test must be afforded the opportunity at an administrative revocation hearing to present evidence that he was not driving in order to make that hearing meaningful and fundamentally fair. [Javed v. Department of Pub. Safety, 921 P.2d 620 \(Alaska 1996\)](#).

Considering the importance of the driving privilege, the greater potential for effective communication in an in-person context, the need for effective communication where the credibility of a party is at issue, and the limited nature of the prejudice that the state would suffer by providing in-person hearings in such cases, such hearings should be provided where requested by the party. [Whitesides v. Dep't of Pub. Safety, DMV, 20 P.3d 1130 \(Alaska 2001\)](#), cert. denied, [534 U.S. 888, 122 S. Ct. 200, 151 L. Ed. 2d 142 \(2001\)](#).

Application of the exclusionary rule would hamper legitimate efforts to keep drunk drivers off the roads and complicate the administration of license revocations while adding minimal deterrence to unlawful police action; in addition, consideration of evidence obtained in violation of the Fourth Amendment did not undermine the procedural fairness of revocation hearings such that the exclusionary rule was inapplicable to license revocation hearings. [Nevers v. State, 123 P.3d 958 \(Alaska 2005\)](#).

Where a driver was arrested for drunk driving, and the criminal charges were dropped because the arresting officer was deployed to Iraq and would not be available to testify at trial for more than a year, but where the administrative proceedings for the suspension/revocation of the driver's operating license were not dismissed, the driver's due process rights were not violated by the suspension of her license for almost three years after her arrest because administrative delay alone, without prejudice, did not violate due process, and any prejudice to the driver was slight because she was issued a permit that allowed her to drive throughout the delay. [Alvarez v. State, 249 P.3d 286 \(Alaska 2011\)](#).

THE STATE'S FAILURE TO PRESERVE A VIDEOTAPE OF FIELD SOBRIETY TESTS taken one hour after arrest violates the due process rights of an accused at an administrative license revocation hearing where the accused is entitled to challenge whether the arresting officer had reasonable grounds at the time of arrest to believe that the suspect was driving while intoxicated. [Thorne v. Department of Pub. Safety, 774 P.2d 1326 \(Alaska 1989\)](#).

The state's failure to preserve a videotape of field sobriety tests taken one hour after arrest did not violate defendant's right to confront and cross-examine the witnesses against him, where the officer who conducted the tests appeared at defendant's license revocation review hearing and was subjected to vigorous cross-examination by defendant's attorney. [Thorne v. Department of Pub. Safety, 774 P.2d 1326 \(Alaska 1989\)](#).

COLLATERAL ESTOPPEL EFFECT OF RULING IN CRIMINAL PROCEEDINGS. --Where defendant in criminal driving while intoxicated proceedings did not testify at a suppression hearing on the question of the legality of the stop, the suppression ruling that the officer's stop was legal should have had no collateral estoppel effect against the defendant in a civil driver's license revocation proceeding. The hearing officer was correct to examine the stop issue de novo, and the superior court incorrectly invoked collateral estoppel in refusing to review this aspect of the hearing officer's decision. [Miller v. State, Dep't of Pub. Safety, 761 P.2d 117 \(Alaska 1988\)](#).

EFFECT OF INCONSISTENT BLOOD AND BREATH TESTS. --Breath test result revealing licensee's alcohol concentration to be .089 was not rendered invalid by subsequent blood test that revealed the alcohol concentration to be .070 because the discrepancy could have resulted simply from lapse of time; breath test alone was sufficient to revoke licensee's driver license because a hearing officer could determine that licensee had been intoxicated while driving by relying upon either the breath test or blood test. [Morris v. State, 186 P.3d 575 \(Alaska 2008\)](#).

EFFECT OF ABSENCE OF WITNESS. --It is not required that a police officer be prohibited from testifying because he failed to appear telephonically at a previously scheduled hearing. The decision to hold a witness in contempt is in the hearing officer's discretion, and the driver also failed to ask that the police officer be subjected to forfeiture or damages for failing to appear. [Alvarez v. State, 249 P.3d 286 \(Alaska 2011\)](#).

STANDARD OF REVIEW OF SUPREME COURT. --The supreme court uses the same standard as set out in subsection (m) for judicial review by the superior court, since it conducts independent review. [Miller v. State, Dep't of Pub. Safety, 761 P.2d 117 \(Alaska 1988\)](#); [Saltz v. State, Dep't of Pub. Safety, 942 P.2d 1151 \(Alaska 1997\)](#).

JUDICIAL REVIEW OF DWI REVOCATIONS. --Subsection (m) governs in cases of driving while intoxicated (DWI) revocations. [Borrego v. State, Dep't of Pub. Safety, 815 P.2d 360 \(Alaska 1991\)](#).

Driver's license revocation hearing officer erred by failing to inform the driver, who was proceeding pro se, of the correct procedures for obtaining the central piece of evidence in the case, a tape recording of the stop and arrest, and therefore the driver was entitled to a new hearing. [Hartman v. State, 152 P.3d 1118 \(Alaska 2007\)](#).

[APPLIED IN Champion v. Department of Pub. Safety, 721 P.2d 131 \(Alaska 1986\)](#); [Barcott v. State, Dep't of Pub. Safety, 741 P.2d 226 \(Alaska 1987\)](#); [McGhee v. State, 951 P.2d 1215 \(Alaska 1998\)](#); [Fraiman v. Dep't of Admin., DMV, 49 P.3d 241 \(Alaska 2002\)](#).

[QUOTED IN State, Dep't of Pub. Safety v. Conley, 754 P.2d 232 \(Alaska 1988\)](#); [Richard B. v. State, 71 P.3d 811 \(Alaska 2003\)](#).

[CITED IN Tulowetzke v. State, Dep't of Pub. Safety, 743 P.2d 368 \(Alaska 1987\)](#); [Williamson v. State, Dep't of Pub. Safety, 779 P.2d 1238 \(Alaska 1989\)](#); [Pasco v. State, 45 P.3d 325 \(Alaska 2002\)](#); [Haywood v. State, 193 P.3d 1203 \(Alaska Ct. App. 2008\)](#).

Research References & Practice Aids

CROSS REFERENCES. --

For effect of the 1990 amendment of (n) of this section on Alaska Rules of Appellate Procedure 603 and 611(d), see § 35, [ch. 119, SLA 1990](#) in the Temporary and Special Acts; for the effect of the 1992 amendment of (n) of this section on Alaska Rule of Appellate Procedure 603, see § 31, [ch. 3, SLA 1992](#) in the Temporary and Special Acts.

ADMINISTRATIVE CODE. --

For hearings, see 2 AAC 93, art. 1.

For definitions, see 2 AAC 93, art. 2.

USER NOTE:

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ALASKA STATUTES

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AS 28.15.165.

Administrative Revocations and Disqualifications Resulting From Chemical Sobriety Tests and Refusals to Submit to Tests.

- (a) A law enforcement officer shall read a notice, and deliver a copy of it, to a person operating a motor vehicle, commercial motor vehicle, or aircraft, if a chemical test administered under AS 28.33.031 (a) or AS 28.35.031 (a) or (g) produces a result described in AS 28.35.030(a)(2); a chemical test administered under AS 28.33.031 (a) produces a result described in AS 28.33.030 (a)(2); or the person refuses to submit to a chemical test authorized under AS 28.33.031 (a) or AS 28.35.031 (a) or (g). The notice must advise that
- (1) the department intends to revoke the person's driver's license, privilege to drive, or privilege to obtain a license, refuse to issue an original license to the person, or disqualify the person;
 - (2) the person has the right to administrative review of the action taken against the person's license or determination not to issue an original license;
 - (3) if the person has a driver's license or a nonresident privilege to drive, the notice itself is a temporary driver's license that expires seven days after it is delivered to the person, except that if the person was operating a commercial motor vehicle the person will be ordered out of service for 24 hours under AS 28.33.130 ;
 - (4) revocation of the person's driver's license, privilege to drive, or privilege to obtain a license, a determination not to issue an original license, or a disqualification of the person, takes effect seven days after delivery of the notice to the person unless the person, within seven days, requests an administrative review.
- (b) After reading the notice under (a) of this section, the law enforcement officer shall seize the person's driver's license if it is in the person's possession and shall deliver it to the department with a sworn report describing the circumstances under which it was seized. If the person was operating a commercial motor vehicle, the officer shall order the person out of service under AS 28.33.130.
- (c) Unless the person has obtained a temporary permit or stay of a departmental action under AS 28.15.166 , if the chemical test administered under AS 28.33.031 (a) or AS 28.35.031 (a) or (g) produced a result described in AS 28.35.030 (a)(2) or the person refused to submit to a chemical test authorized under AS 28.33.031 (a) or AS 28.35.031 (a) or (g), the department shall revoke the person's license, privilege to drive, or privilege to obtain a license, shall refuse to issue an original license, and, if the chemical test administered under AS 28.33.031(a) produced a result described in AS 28.33.030 (a)(2) or the person refused to submit to a chemical test authorized under AS 28.33.031(a), shall disqualify the person. The department's action takes effect seven days after delivery to the person of the notice required under (a) of this section, and after receipt of a sworn report of a law enforcement officer
- (1) that a chemical test administered under AS 28.33.031 (a) or AS 28.35.031(a) or (g) produced a result described in AS 28.35.030 (a)(2), that a chemical test administered under AS 28.33.031 (a) produced a result described in AS 28.33.030 (a)(2), or that a person refused to submit to a chemical test authorized under AS 28.33.031 (a) or AS 28.35.031(a) or (g);
 - (2) that notice under (a) of this section was provided to the person; and
 - (3) describing the
 - (A) circumstances surrounding the arrest and the grounds for the officer's belief that the person operated a motor vehicle, commercial motor vehicle, or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance in violation of AS 28.33.030 or AS 28.35.030 ; or
 - (B) grounds for the officer's belief that the person operated a motor vehicle or commercial motor vehicle that was involved in an accident causing death or serious physical injury to another person.
- (d) The period of revocation of a driver's license, privilege to drive, privilege to obtain a license, refusal to issue an original license, or disqualification shall be for the appropriate minimum period for court revocations

under AS 28.15.181 (c) or court disqualifications under AS 28.33.140 . A department hearing officer may grant limited license privileges in accordance with the standards set out in AS 28.15.201 to a person whose driver's license or nonresident privilege to drive was revoked under this section. The department may terminate a revocation imposed under this section and issue a driver's license to the person, if the license, privilege to drive, or privilege to obtain a license was revoked for an offense described in AS 28.15.181(a)(5) or (8) and the person meets the conditions set out for termination of a revocation by the court under AS 28.15.181 (f).

Montana Code Annotated 61-5-206

61-5-206 Authority of department to suspend license or driving privilege — right to hearing.

(1) The department may suspend the driver's license or driving privilege of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

- (a) has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;
- (b) has falsified the licensee's date of birth on the application for a driver's license;
- (c) is under 21 years of age and has altered the licensee's or another's driver's license, identification card, or tribal identification card to obtain alcohol; or
- (d) has authorized another to use the licensee's driver's license, identification card, or tribal identification card to obtain alcohol.

(2) If the department suspends a driver's license under 61-5-207 or this section or reinstates a license suspension or revocation upon conviction or forfeiture of bail not vacated of any traffic violation by a person who holds a probationary driver's license under 61-2-302, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing as early as practical, within 20 days after receipt of the request, in the county in which the licensee resides unless the department and the licensee agree that the hearing may be held in some other county. At the hearing, the department through its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. At the hearing, the department shall either rescind its order of suspension or, for good cause, may affirm, reduce, or extend the period of suspension of the license.

Montana Code Annotated 61-5-205

61-5-205 Mandatory revocation or suspension of license upon certain convictions — duration of action — exceptions.

(1) The department shall revoke an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

- (a) negligent homicide resulting from the operation of a motor vehicle;
- (b) any felony in the commission of which a motor vehicle is used;
- (c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
- (d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;
- (e) fleeing from or eluding a peace officer; or
- (f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

- (a) a driving offense under 61-8-401, 61-8-406, or 61-8-411;
- (b) three reckless driving offenses committed within a period of 12 months; or
- (c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense.

(3) A revocation under subsections (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1 year. A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction under 61-7-103.

(4)

- (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be for a period of 1 year.
- (b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208.
- (c) A suspension under subsection (2)(c) must be for one of the following periods:
 - (i) 30 days for a first offense;
 - (ii) 6 months for a second offense; and
 - (iii) 1 year for a third or subsequent offense.

Montana Code Annotated 61-8-401

61-8-401 Driving under influence of alcohol or drugs — definitions.

(1) It is unlawful and punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the influence of:

- (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;
- (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;
- (c) any other drug to drive or be in actual physical control of a vehicle within this state; or
- (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3)

- (a) “Under the influence” means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person’s ability to safely operate a vehicle has been diminished.
- (b) Subject to 61-8-440, as used in this part, “vehicle” has the meaning provided in 61-1-101, except that the term does not include a bicycle.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person’s blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

- (a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.
- (b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.
- (c) If there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, 61-8-411, 61-8-714, 61-8-722, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with the word "state" in 61-8-406, 61-8-411, and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties provided in the ordinance.

(7) Absolute liability as provided in 45-2-104 is imposed for a violation of this section.

Montana Code Annotated 61-8-402

Title 61: Motor Vehicles

Chapter 8: Traffic Regulations

Part 4: Driving Under Influence of Alcohol or Drugs

61-8-402 Implied consent — blood or breath tests for alcohol, drugs, or both — refusal to submit to test — administrative license suspension.

(1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

- (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401 or 61-8-465;
- (ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or
- (iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:
 - (A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage;
 - (B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or
 - (C) in violation of 61-8-465.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given except as provided in subsection (5), but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to

the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (7).

(5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, 61-8-401, 61-8-406, or 61-8-411 or a similar statute in another jurisdiction, the officer may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

(6) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

(7) (a) Except as provided in subsection (7)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

- (i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;
- (ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

- (b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:
 - (i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and
 - (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (7)(b).

(8) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(9) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(10) A suspension under this section is subject to review as provided in this part.

(11) This section does not apply to tests, samples, and analyses of blood or breath used for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(12) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6).