



LAWS OF ALASKA

1977

Source

SB 361 am

Chapter No.

140

AN ACT

Relating to subpoenas, notice and hearings under AS 28, and providing for an effective date.

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

* Section 1. AS 28.05 is amended by adding new sections to read:

Sec. 28.05.070. SUBPOENAS; WITNESSES AND DOCUMENTS.

(a) The commissioner and officers and employees of the department designated by the commissioner may subpoena witnesses to give testimony under oath or to give written deposition upon a matter under the jurisdiction of the department with respect to this title and regulations adopted under this title. A subpoena issued under this section may require the production of relevant books, papers, documents, records or other tangible things designated in the subpoena.

(b) A subpoena issued under this section shall be served at least 10 days before the attendance date, either by personal service made by a peace officer or another person who is not less than 18 years of age or by registered or certified mail. Return and acknowledgement is required to prove service by mail. Failure to obey a subpoena served under this section is a misdemeanor. The fees for the attendance and travel of witnesses are the same as for witnesses appearing before the district court.

(c) A subpoena issued under this section may be enforced by the district court.

Sec. 28.05.072. GIVING OF NOTICE. When the department is authorized or required to give notice under this title or regulations adopted under this title, unless a different method of giving notice is otherwise expressly

provided, notice shall be given by a person 18 years of age or older, either by personal delivery to the person to be notified or by registered or certified mail, return receipt requested, addressed to the person at his address as shown in the records of the department. The giving of notice by mail is considered complete upon the return of the receipt or upon return of the notice as undeliverable. Proof of the giving of notice in either manner may be made by the affidavit of the person giving the notice by personal delivery or by mail, naming the person to whom the notice was given and specifying the time, place, and manner of giving the notice.

Sec. 28.05.074. OPPORTUNITY FOR HEARING REQUIRED.

(a) Unless otherwise specifically provided or unless immediate action in suspending, revoking, canceling, limiting, restricting, denying or impounding is necessary for the protection of the health, safety or welfare of the public, the department shall give notice of the opportunity for an administrative hearing before a license, registration, title, permit or privilege issued or allowed by this title or regulations adopted under this title is suspended, revoked, canceled, limited, restricted or denied or a vehicle is impounded by the department. If immediate action is required under this section and prior opportunity for a hearing cannot be afforded, the department shall promptly give notice of the opportunity for a hearing as soon after the action as is practicable for the parties involved.

(b) The notice required under this section shall state the reasons for the department's action and provide for a reasonable attendance date of not less than 10 days after service of the notice. If there is no request for a hearing by the attendance date specified in the notice, the hearing is considered to have been waived.

(c) This section does not apply to point system procedures under AS 28.15.282 - 28.15.288.

Sec. 28.05.076. HEARINGS AND APPEALS. (a) Unless otherwise specifically provided, all hearings required under this title or regulations adopted under this title shall be conducted by the department under regulations adopted by the commissioner governing practice and procedure and consistent with due process of law. Hearings shall be informal, and technical rules of evidence do not apply. A person who requests a hearing may retain an attorney if he so desires. The hearing officer shall be appointed by the commissioner and may be appointed from the department. A hearing officer need not be an attorney, but must be impartial and may not have participated in the decision which is under review. The hearing officer does not have to file a full opinion or make formal findings of fact or conclusions of law, but he must state the reasons for his determination and indicate the evidence relied upon. The proceedings at the hearing shall be recorded.

(b) A person aggrieved by the decision of the hearing officer may initiate a proceeding in district court to rescind the department's action by filing a notice of appeal in accordance with the applicable rules of court

governing appeals in civil matters. The court shall conduct a hearing de novo. The scope of review applied in a determination under this section shall be as provided in AS 44.62.570(b) and (c). The decision of the department suspending, revoking, canceling, limiting, restricting or denying a license, registration, title, permit or privilege is stayed and does not take effect during the pendency of an appeal to the court.

(c) This section does not apply to point system procedures under AS 28.15.282 - 28.15.288.

* Sec. 2. AS 28.17.051(b) is repealed and re-enacted to read:

(b) A suspension, revocation, or denial of a license under this chapter is subject to the notice and hearing requirements of AS 28.05.074 - 28.05.076.

* Sec. 3. AS 44.62.330(a)(23) is repealed and re-enacted to read:

(23) Department of Public Safety, as to suspension or revocation of a security guard's license under AS 18.65.400 - 18.65.490

* Sec. 4. AS 28.15.170(c), AS 28.20.030, and 28.20.620 are repealed.

* Sec. 5. Sections 1 and 2 of this Act specifically apply to all actions awaiting an administrative hearing on the effective date of this Act.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.070(c).