

Original sponsors: Randolph and Warwick

Offered: 2/27/73
Referred: Judiciary

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 9

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to motor vehicle operator's
7 licenses."

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

9 * Section 1. AS 28.15 is amended by adding new sections to article 2
10 to read:

11 Sec. 28.15.282. POINT SYSTEM. (a) For the purpose of identi-
12 fying habitually reckless or negligent drivers, habitual or frequent
13 violators of traffic laws and problem drivers, the commissioner of
14 public safety shall promulgate regulations, under the Administrative
15 Procedure Act (AS 44.62), establishing a uniform system assigning
16 demerit points for convictions of violations of traffic laws which are
17 required to be reported to the department under sec. 190 of this
18 chapter.

19 (b) The regulations adopted under (a) of this section shall
20 provide for the assessment of no more than six points for any single
21 offense. In assigning points for particular traffic offenses, the
22 commissioner of public safety shall take into account

23 (1) the intrinsic gravity of the offense as indicated by
24 the penalty provisions of the statute, regulation or ordinance defining
25 the offense;

26 (2) the danger to the public which the experience of the
27 department indicates is presented by the offense; and

28 (3) particular aggravating circumstances involved in the
29 commission of an offense, such as the occurrence of an accident,

1 personal injury, or damage to property as a result of the offense.

2 (c) Aggravating circumstances shall not be considered in assess-
3 ing points under this section, unless the aggravating circumstances are
4 shown on the judgment of conviction and on the report which the courts
5 are required to furnish to the department under sec. 190 of this
6 chapter.

7 (d) The regulations adopted under (a) of this section shall
8 include a designated level of point accumulation which identifies
9 drivers who are habitually reckless or negligent or who are habitual
10 or frequent violators of traffic laws, so as to show a disrespect for
11 traffic laws and a disregard for the safety of other persons. In the
12 interest of interstate uniformity, the designated level of point
13 accumulation which so identifies drivers shall be 12 or more points as
14 a result of offenses committed during any consecutive 12-month period
15 and 18 or more points as a result of offenses committed during any
16 consecutive 24-month period. The regulations adopted under (a) of this
17 section shall also include a designated level of point accumulation
18 which identifies problem drivers. The designated level of point accum-
19 ulation which identifies problem drivers shall be no less than six
20 points as a result of offenses committed during any consecutive 12-
21 month period and no less than nine points as a result of offenses com-
22 mitted during any consecutive 24-month period, except that a different
23 level of point accumulation may be designated for drivers under the
24 age of 18 years.

25 (e) The commissioner of public safety may assess points for con-
26 victions in other states of offenses which, if committed in this state,
27 would be grounds for the assessment.

28 (f) Notice of each assessment of points may be given, but notice
29 shall be given when the point accumulation reaches 50 per cent of the

1 number at which a licensee is identified as a habitually reckless or
2 negligent driver or as a habitual or frequent violator of traffic laws.

3 (g) No points may be assessed for violating a provision of a
4 state law or regulation, or a city or borough ordinance, regulating
5 standing, parking, equipment, size or weight; nor may points be assess-
6 ed for violations by pedestrians, passengers or bicycle riders, or for
7 violations of provisions relating to the preservation of the condition
8 of traffic-control devices on the highway. Points may be assessed,
9 however, for violations of those provisions of oversize or overweight
10 permits which restrict speed or hours of operation.

11 (h) If a licensee is convicted of two or more traffic violations
12 committed on a single occasion, the licensee shall be assessed points
13 for only one offense, and if the offenses involved have different point
14 values, the licensee shall be assessed for the offense having the
15 greater point value.

16 (i) The time periods provided for in this section for the accumu-
17 lation of points shall be based upon the date of violation, but points
18 may not be assessed until after conviction for violation of traffic
19 laws.

20 (j) The regulations adopted under (a) of this section shall
21 provide for the deduction of two points from a licensee's assessed
22 total if he has not been convicted of a violation of traffic laws which
23 occurred during the 12-month period after the date of his last vio-
24 lation of which he was convicted. The regulations shall also provide
25 for the deduction of two points from the assessed total upon the
26 licensee's furnishing to the department adequate proof of successful
27 completion of a driver improvement course approved by the department,
28 except that no more than one course may be used to obtain a reduction
29 of points in any 12-month period. In addition, the regulations shall

1 provide for a deduction of points from a licensee's assessed total upon
2 the termination, without further violations, of a period of suspension,
3 revocation or limitation authorized under sec. 284 of this chapter.

4 The number of points deducted upon the termination of a period of sus-
5 pension, revocation or limitation of an operator's license shall be
6 based on the nature of the action taken against the operator's license
7 and on the duration of such action.

8 (k) In this section "traffic laws" means statutes, regulations,
9 and local ordinances governing the operation or movement of vehicles.

10 (l) The provisions of secs. 282 - 286 of this chapter shall apply
11 to all operators of motor vehicles in this state, regardless of whether
12 or not they are licensed in this state.

13 Sec. 28.15.283. DRIVER IMPROVEMENT INTERVIEW. (a) When the de-
14 partment's records show that a licensee has accumulated a sufficient
15 number of points to be identified as a problem driver, the department
16 may require the licensee to appear for a driver improvement interview
17 before a driver improvement examiner.

18 (b) Upon a determination that a licensee should appear for a
19 driver improvement interview, the department shall determine the time
20 and place and shall serve upon the licensee, by registered mail address-
21 ed to the last known address of the licensee as shown by the records of
22 the department or by personal service, a written notice of the interview
23 at least 10 days before the interview. Driver improvement interviews
24 shall be held at the office of the department nearest to the residence
25 of the licensee, unless the department and the licensee agree that the
26 interview is to be held elsewhere. The notice shall inform the licensee
27 that he has been identified, through his point accumulation, as a pro-
28 blem driver, and that if he does not appear for the driver improvement
29 interview at the time and place specified or does not contact the de-

1 partment to request a delay, his operator's license will be subject to
2 suspension by the department for not more than 30 days.

3 (c) Whenever the department requires a problem driver under the
4 age of 18 years to appear for a driver improvement interview, the de-
5 partment may also request the appearance of the licensee's parents or
6 legal guardian.

7 (d) The purpose of a driver improvement interview is to determine
8 the cause of a problem driver's difficulties and to propose remedial
9 action. The interview shall be conducted in an informal manner. A
10 driver improvement examiner may require a problem driver to take a re-
11 examination under sec. 250 of this chapter or to take a driver improve-
12 ment course. If the examiner determines that a licensee must take a
13 reexamination or a driver improvement course, the examiner shall serve
14 upon the licensee, at the close of the interview, a written order set-
15 ting out specifically the action which the licensee must take and in-
16 forming the licensee of his right to appeal under (e) of this section.

17 (e) If a problem driver contests the jurisdiction of the driver
18 improvement examiner or the reasonableness of his order, he may, within
19 10 days after the examiner's order, appeal to the commissioner of public
20 safety.

21 (f) If a problem driver, without good cause, fails to appear at
22 a scheduled driver improvement interview or fails to comply with the
23 order of the examiner, the department may suspend his operator's li-
24 cense for not more than 30 days in the same manner, where applicable, as
25 if he had accumulated sufficient points for his operator's license to
26 be suspended under sec. 284 of this chapter. In administrative and
27 judicial proceedings to contest the department's decision to suspend
28 his operator's license under this section, the licensee shall be per-
29 mitted to contest the jurisdiction of the driver improvement examiner

1 and the reasonableness of his order, in addition to the issues which he
2 is permitted to contest under secs. 284 and 285 of this chapter.

3 Sec. 28.15.284. SUSPENSION, REVOCATION, LIMITATION; ADMINISTRA-
4 TIVE REVIEW; POINT SYSTEM HEARING. (a) The department shall promulgate
5 regulations, under the Administrative Procedure Act (AS 44.62), estab-
6 lishing standards for the suspension, revocation or limitation of the
7 operator's license of a person who has been identified as a habitually
8 reckless or negligent driver or as a habitual or frequent violator of
9 traffic laws under sec. 282 of this chapter. The standards shall set
10 out the circumstances which the department will rely upon in deter-
11 mining whether the operator's license of a person who has been so iden-
12 tified should be suspended, revoked or limited and in determining the
13 duration of the suspension, revocation, or limitation. The department
14 may take into account such factors as the number of points accumulated,
15 the number of prior suspensions, revocations or limitations imposed by
16 the department on the licensee under this section, the type of offenses
17 which resulted in the point accumulation, undue hardship which would
18 result from a suspension or revocation and other reasonable factors
19 which the department considers appropriate in making such determi-
20 nations.

21 (b) The department may suspend, revoke or limit, after admini-
22 strative review and a hearing or upon a failure by the licensee to re-
23 quest an administrative review or a hearing as provided in this section,
24 the operator's license of a person when his driving record identifies
25 him as a habitually reckless or negligent driver or as a habitual or
26 frequent violator of traffic laws under sec. 282 of this chapter. No
27 suspension, revocation or limitation of an operator's license under
28 this section may be for more than one year.

29 (c) When the department's records show that a licensee has

1 accumulated a sufficient number of points for his operator's license
2 to be subject to suspension, revocation or limitation, the department
3 shall determine whether the operator's license should be suspended, re-
4 voked or limited, and if so, the duration of the suspension, revocation
5 or limitation. If the licensee does not request an administrative re-
6 view within 15 days after service of the notice required under (d) of
7 this section, the initial determination of the department shall become
8 final and effective.

9 (d) Upon making an initial determination under (c) of this section,
10 the department shall notify the licensee that he has been identified,
11 through his point accumulation, as a habitually reckless or negligent
12 driver or as a habitual or frequent violator of traffic laws and that
13 his operator's license will be suspended, revoked or limited unless he
14 requests an administrative review of his case within 15 days after
15 service of the notice to determine whether his operator's license should
16 be suspended, revoked or limited or to determine the duration of the
17 suspension, revocation or limitation. The notice shall be furnished to
18 the licensee in writing by registered mail, addressed to the last known
19 address of the licensee as shown by the records of the department or by
20 personal service.

21 (e) The notice shall inform the licensee that he must request an
22 administrative review of his case before being entitled to a hearing
23 under (k) of this section; that he must list the issues which he wishes
24 to be reviewed by the department; that any issues which he does not
25 raise in the administrative review may not be raised at a later hearing
26 except upon a showing of excusable neglect; that he should list the
27 facts which he believes will support his contention that his operator's
28 license should not be suspended, revoked or limited, or should be sus-
29 pended, revoked or limited for a shorter period of time, as the case

1 may be; and that he may request a personal interview under (f) of this
2 section. The notice shall also include

3 (1) a list of the violations and their dates upon which the
4 proposed suspension, revocation or limitation is based;

5 (2) the number of points assessed for each violation;

6 (3) the regulations which set out the number of points to
7 be assessed for each type of violation;

8 (4) the grounds upon which points may be deducted under sec.
9 282(i) of this chapter;

10 (5) the number of points actually deducted from the licen-
11 see's assessed total under sec. 282(i) of this chapter;

12 (6) the regulations promulgated under (a) of this section;

13 (7) the department's initial determination made under (c)
14 of this section; and

15 (8) the issues which may be contested in the administrative
16 review under (h) of this section.

17 (f) Upon receipt of a request for a personal interview from the
18 licensee the department shall determine the time and place and shall
19 serve upon the licensee, in the same manner as provided for in (d) of
20 this section, a written notice of the time and place of the personal
21 interview at least seven days before the interview. Interviews shall
22 be held at the office of the department nearest to the residence of the
23 licensee, unless the department and the licensee agree that the inter-
24 view is to be held elsewhere. A delay in the interview shall be
25 granted by the department only if the licensee presents the department
26 with good cause for the delay. If an interview is delayed, the depart-
27 ment shall set a new date for the interview no later than 10 days after
28 the date of the original interview, unless the licensee presents good
29 cause for a longer delay.

1 (g) The purpose of the personal interview is to insure the
2 adequacy of the administrative review under (h) of this section, to
3 lessen the need for further administrative and judicial review and to
4 promote mutual understanding of the respective positions of the
5 licensee and the department. To this end, the proceedings at the per-
6 sonal interview shall be informal and need not be recorded. The li-
7 censee shall be permitted to present evidence and arguments relevant to
8 the issues which may be contested in the administrative review, and the
9 department shall disclose to the licensee any information in its pos-
10 session relevant to those issues. During or within five days after the
11 interview, the licensee may amend his list of contested issues and his
12 list of supporting facts.

13 (h) Upon receipt of a request from the licensee for an admini-
14 strative review of the department's initial determination and after a
15 personal interview as provided for in (f) and (g) of this section or
16 upon a failure by the licensee to request a personal interview, the de-
17 partment shall review its initial determination. The department may
18 affirm, modify or rescind its initial determination. The review shall
19 be based on the contested issues and supporting facts listed by the
20 licensee in his request for an administrative review and on the per-
21 sonal interview. The review conducted under this section shall be
22 limited to the issues of

- 23 (1) whether the convictions were those of the licensee;
24 (2) whether there was a variance between a conviction and
25 the complaint on which it was based;
26 (3) whether points were improperly calculated;
27 (4) whether credits, in the form of reductions, were wrong-
28 fully withheld;
29 (5) whether errors appeared in the report of a conviction;.

1 (6) whether the particular type of proposed action against
2 the license is consistent with the regulations adopted under (a) of
3 this section; and

4 (7) whether the duration of the proposed suspension, revo-
5 cation or limitation is consistent with the regulations adopted by the
6 department under (a) of this section.

7 (i) Upon completing review of its initial determination, the de-
8 partment shall make a final determination. If the department's final
9 determination sustains some form of action against the license, the de-
10 partment shall suspend, revoke or limit the license accordingly, unless
11 the licensee requests a hearing within 15 days after service of the
12 notice required by (j) of this section.

13 (j) Upon making a final determination, the department shall noti-
14 fy the licensee of its decision in the same manner as provided for in
15 (d) of this section. If the final determination sustains some form of
16 action against the operator's license, the notice shall inform the li-
17 censee that unless he requests a hearing within 15 days after service
18 of the notice, the final determination of the department will become
19 effective, and his operator's license will be suspended, revoked or
20 limited in accordance with that determination. The notice shall also
21 inform the licensee that he may raise the same issues at a hearing which
22 he raised in the administrative review and that he may raise additional
23 issues permitted under (h) of this section upon a showing of excusable
24 neglect.

25 (k) Upon receipt of a request for a hearing, the department shall
26 determine the time and place and shall serve upon the licensee, in the
27 same manner as provided for in (d) of this section, a written notice of
28 hearing at least 10 days before the hearing. Hearings held by the de-
29 partment under this section shall be held at the office of the depart-

1 ment nearest to the residence of the licensee, unless the department
2 and the licensee agree that the hearing is to be held elsewhere. A
3 hearing delay may be granted by the department only if the licensee
4 presents the department with good cause for the delay. If a hearing is
5 delayed, the department shall set a new date for the hearing no later
6 than 30 days after the date of the original hearing.

7 (1) A hearing requested under this section shall be presided over
8 by a hearing officer appointed by the attorney general at the request of
9 the commissioner of public safety. The hearing officer shall be pro-
10 vided through a contract executed between the attorney general and the
11 commissioner of public safety.

12 (m) Hearings conducted under this section are limited to the same
13 issues which were contested in the administrative review provided for in
14 (h) of this section. Upon a showing of excusable neglect by the licen-
15 see, the hearing officer may consider additional issues permitted under
16 (h)(1) - (7) of this section but which were not raised by the licensee
17 during the administrative review.

18 (n) The hearing officer may administer oaths and may issue sub-
19 poenas for the attendance of witnesses and the production of books,
20 papers and records and may apply to the district court for the enforce-
21 ment of a subpoena by contempt proceedings and may require a reexami-
22 nation of the licensee under the provisions of sec. 250 of this
23 chapter. A licensee may be represented by counsel, may present relevant
24 evidence, and shall be given full opportunity to confront and cross-
25 examine all witnesses testifying against him. The proceedings at the
26 hearing shall be recorded. The hearing officer shall make findings of
27 fact and shall enter a written order based on his findings.

28 (o) If at the hearing it appears that the record sustains the
29 final determination of the department, the hearing officer shall so

1 order and the department shall immediately suspend, revoke or limit the
2 operator's license accordingly. If at the hearing it appears that the
3 record does not sustain the final determination of the department, the
4 hearing officer may modify or overrule the final determination of the
5 department and may enter an appropriate order, and the department may
6 only suspend, revoke or limit the operator's license in accordance with
7 the hearing officer's order. If the hearing officer determines that the
8 licensee's accumulated point total, as reflected in the records of the
9 department, was incorrect for any reason, the department shall adjust
10 the licensee's accumulated point total accordingly.

11 (p) The points assessed and the application of them against a
12 licensee by the department under sec. 282 of this chapter are in addi-
13 tion to, and not in substitution for a penalty imposed by a court.
14 However, when a court, as part of a sentence for conviction of a traffic
15 offense, suspends, revokes or limits a person's operator's license, that
16 suspension, revocation or limitation shall be credited towards any later
17 suspension, revocation or limitation imposed under this section and
18 based in part on the points assessed by the department because of that
19 conviction, except that a court's limitation of an operator's license
20 shall not be credited towards a later suspension or revocation of an
21 operator's license imposed by the department under this section.

22 Sec. 28.15.285. JUDICIAL REVIEW UNDER POINT SYSTEM. (a) A person
23 whose operator's license is suspended, revoked or limited under secs.
24 282 - 284 of this chapter may initiate a proceeding in the district
25 court to rescind the department's action by filing a notice of appeal
26 within 30 days after the final order of a hearing officer and in
27 accordance with applicable rules of the court governing appeals in
28 civil matters.

29 (b) Upon the filing of a notice of appeal the department or the

1 court may, in its discretion, stay the suspension, revocation or limita-
2 tion of an operator's license pending judicial review of the depart-
3 ment's action.

4 (c) The court proceeding under this section shall be without jury
5 and shall be limited to a review of the issues set out in sec. 284(h) of
6 this chapter. The court shall not review any issue not contested in
7 the administrative review or at the hearing provided for in sec. 284 of
8 this chapter. The district court's review shall be on the record of
9 the hearing, except that the court may, in its discretion, augment the
10 hearing record in whole or in part, or hold a hearing de novo. The
11 court shall make an independent determination of the issues set out in
12 sec. 284(h)(1) - (5) of this chapter which are preserved for appeal, but
13 shall review the issues set out in sec. 284(h)(6) - (7) of this chapter
14 only for abuse of discretion.

15 (d) If the issue set out in sec. 284(h)(1) of this chapter is de-
16 termined in the affirmative, the issues set out in sec. 284(h)(2) - (5)
17 of this chapter are determined in the negative, and the court determines
18 that there was no abuse of discretion in the hearing officer's determi-
19 nation of the issues set out in sec. 284(h)(6) - (7) of this chapter,
20 the court shall sustain the action of the department. If the issue set
21 out in sec. 284(h)(1) of this chapter is determined in the negative or
22 one or more of the issues set out in sec. 284(h)(2) - (5) of this chap-
23 ter is determined in the affirmative, the court shall recompute the
24 licensee's accumulated point total accordingly, and if the corrected
25 total is less than the level necessary to sustain action against an
26 operator's license under sec. 284 of this chapter, the department's
27 action shall be rescinded and the department shall adjust the licensee's
28 point total accordingly. If the corrected point total would be suffi-
29 cient to sustain some action against an operator's license under sec.

1 284 of this chapter, the court may take any action against the operator s
2 license which the department is empowered to take under sec. 284 of this
3 chapter, except that the court shall take into account the recomputation
4 of the point total in determining the duration and type of action taken
5 against the operator's license. If the court determines that there was
6 an abuse of discretion in the hearing officer's determination of the
7 issues set out in sec. 284(h)(6) - (7) of this chapter, the court may
8 modify the department's action and may take any action against the
9 operator's license which the department is empowered to take under sec.
10 284 of this chapter.

11 Sec. 28.15.286. PROBATION IN LIEU OF SUSPENSION OR REVOCATION.
12 Whenever the department has discretionary authority to suspend or re-
13 voke a license under the provisions of secs. 283 and 284 of this chap-
14 ter, the department may, in lieu of a suspension or revocation, place
15 the licensee on probation, the terms of which may include a suspension
16 as a condition of probation and such other reasonable terms and con-
17 ditions as shall be deemed by the department to be appropriate, pro-
18 vided that the duration of probation is limited to the period of time
19 for which the department would otherwise be permitted to suspend or
20 revoke the license.

21 * Sec. 2. AS 28.15.180 is amended to read:

22 Sec. 28.15.180. SUSPENDING, REVOKING OR LIMITING PRIVILEGES OF
23 NONRESIDENTS. The privilege of driving a motor vehicle on the highways
24 of this state given to a nonresident under this chapter is subject to
25 suspension, revocation and limitation in the same manner and for the
26 same cause as an operator's license issued under this chapter.

27 * Sec. 3. AS 28.15.190(c) is amended to read:

28 (c) A plea of nolo contendere accepted by the court or a for-
29 feiture of bail or collateral deposited to secure a defendant's appear-

1 ance in court which has not been vacated is equivalent to a conviction
2 for purposes of this chapter.

3 * Sec. 4. AS 28.15.190 is amended by adding a new subsection to read:

4 (d) A court which convicts a person of an offense described in
5 this chapter, or of any other law of this state or a municipal ordinance
6 regulating the operation of motor vehicles on highways shall set out in
7 the judgment of conviction and in the report which the court is required
8 to forward to the department under (a) and (b) of this section any
9 aggravating circumstances in the commission of the offense for which the
10 defendant can be assessed additional points under the point system regu-
11 lations authorized by sec. 282(a) and (b) of this chapter.

12 * Sec. 5. AS 28.15.225(a) is amended to read:

13 (a) When a court or the department limits a license, it shall re-
14 quire the surrender of the license, and in the case of a court, shall
15 forward it to the department with a description of the limitation im-
16 posed. A court [IT] shall, unless the period of limitation is to be
17 preceded by a period of suspension, issue to the licensee a certificate,
18 valid for not more than two weeks, authorizing him to operate a motor
19 vehicle subject to the limitations described in the certificate. When
20 the department limits a license, it shall issue a similar certificate
21 to the licensee, unless the department is in a position to concurrently
22 issue him a license form with the nature and date of termination of the
23 limitation clearly set out on it.

24 * Sec. 6. AS 28.15.225(b) is amended to read:

25 (b) When the department receives a license with a report from a
26 court that it has been limited, or when the department limits a license
27 and issues a certificate under (a) of this section, the department [IT]
28 shall immediately prepare and send to the licensee a license form with
29 the nature and date of termination of the limitation clearly set out on

1 it.

2 * Sec. 7. AS 28.15.270 is amended to read:

3 Sec. 28.15.270. SURRENDER AND RETURN OF LICENSE. When a court
4 or the department suspends or revokes a license, it shall require the
5 surrender of the license, and in the case of a court, shall forward it
6 to the department. In cases of suspension the department shall keep the
7 license during the period of suspension, and, subject to the require-
8 ments of the Motor Vehicle Safety Responsibility Act (AS 28.20), shall
9 return it promptly to the licensee at the end of the period.

10 * Sec. 8. AS 28.15 is amended by adding a new section to read:

11 Sec. 28.15.275. ACTION AGAINST OPERATOR'S LICENSE EFFECTIVE AL-
12 THOUGH LICENSE NOT SURRENDERED. A suspension, revocation, limitation
13 or cancellation of an operator's license shall be effective notwith-
14 standing the fact that the license is not surrendered to a court or to
15 the department by the licensee.

16 * Sec. 9. AS 44.62.330(23) is amended to read:

17 (23) Department of Public Safety, as to suspension, revoca-
18 tion, cancellation or limitation [ETC.,] of driver's licenses, except
19 as to revocation and suspension [REVOCATIONS] under AS 28.35.031 -
20 28.35.034 and except as to suspension, revocation or limitation under
21 AS 28.15.282 - 28.15.286

22 * Sec. 10. AS 28.15.220(b)(3) and (4) are repealed.
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