

Introduced: 3/1/74
Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 759

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to motor vehicle operator's licenses;
7 changing Rule of Criminal Procedure 11(e)(6)(i); and
8 providing for an effective date."

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

10 * Section 1. AS 28.15.070 is amended by adding a new subsection to read:

11 (d) The department, under regulations promulgated under the
12 Administrative Procedure Act (AS 44.62), may waive the demonstration
13 of driving ability required by (a) of this section, provided that the
14 applicant for a license furnishes adequate proof of driving ability.

15 * Sec. 2. AS 28.15.080 is amended to read:

16 Sec. 28.15.080. LICENSES ISSUED TO OPERATORS. Upon payment of
17 the prescribed fee [PRESCRIBED] and upon the surrender of all out-
18 of-state operator's licenses held by the applicant, the department
19 shall issue an operator's license to a qualified applicant. The
20 license shall be sealed in plastic. The license shall contain a
21 distinguishing number assigned to the licensee, the full name, date
22 of birth, address, and a brief description of the licensee, a
23 picture of the licensee or a notation that no facilities were
24 available for picture taking, a space for information as to whom
25 to notify in case of emergency, a space for the name of the licensee's
26 doctor, a space for a notation of any allergies of the licensee,
27 and either a facsimile of the signature of the licensee or a space
28 upon which the licensee shall write his signature in ink immediately
29 upon receipt of the license. A license is not valid until it is

1 signed by the licensee.

2 * Sec. 3. AS 28.15.180 is amended to read:

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

9 * Sec. 4. AS 28.15.190(c) is amended to read:

10 (c) A conviction on a plea of nolo contendere accepted by the
11 court or a forfeiture of bail or collateral deposited to secure a
12 defendant's appearance in court which has not been vacated is
13 equivalent to a conviction for purposes of this chapter.

14 * Sec. 5. AS 28.15.190 is amended by adding a new subsection to read:

15 (d) A court which convicts a person of an offense described in
16 this chapter, or of any other law or regulation of this state or a
17 municipal ordinance regulating the operation or movement of motor
18 vehicles on highways shall set out in the judgment of conviction and
19 in the reports which the court is required to forward to the depart-
20 ment under (a) and (b) of this section any aggravating circumstances
21 in the commission of the offense for which the defendant could be
22 assessed additional points under the point system regulations
23 authorized by sec. 282(a) and (b) of this chapter.

24 * Sec. 6. AS 28.15.210 is amended to read:

25 Sec. 28.15.210. MANDATORY REVOCATION, SUSPENSION OR LIMITATION
26 OF LICENSE. (a) The following offenses are grounds for the immediate
27 revocation of an operator's license:

28 (1) manslaughter or negligent homicide resulting from
29 the operation of a motor vehicle;

1 (2) a felony in the commission of which a motor vehicle is
2 used;

3 (3) failure to stop and give aid as required under the
4 laws of this state when a motor vehicle accident results in the death
5 or personal injury of another;

6 (4) perjury or the making of a false affidavit or statement
7 under oath to the department under a law relating to the ownership
8 or operation of a motor vehicle.

9 (b) A court shall, upon convicting a person of any of the
10 offenses listed in (a) of this section or upon a complaint and a
11 showing by the department that a person has committed an offense
12 listed in (a) of this section, revoke or limit that person's oper-
13 tor's license in accordance with (c) of this section. For those
14 offenses for which the court is permitted to impose either a license
15 limitation or a revocation under (c) of this section, the court
16 shall revoke the license unless the court determines that

17 (1) the person's ability to earn a livelihood would be
18 severely impaired, and

19 (2) a limitation can be placed on the license which will
20 enable the person to earn a livelihood without excessive risk of
21 danger to the public.

22 * Sec. 7. AS 28.15.210 is amended by adding new subsections to read:

23 (c) Revocation or limitation of an operator's license by a court
24 under (a) and (b) of this section shall be

25 (1) not less than one year nor more than three years'
26 revocation for the offenses listed in (a)(1) and (4) of this section;

27 (2) not less than 90 days nor more than three years'
28 revocation or limitation for the offenses listed in (a)(2) and (3)
29 of this section.

1 (d) A court, as part of the sentence, shall revoke, suspend or
2 limit, in accordance with (e) of this section, the operator's license
3 of a person upon convicting him of

4 (1) driving a motor vehicle while under the influence of
5 intoxicating liquor or a narcotic drug; or

6 (2) reckless driving.

7 (e) For the offenses listed in (d)(1) and (2) of this section,
8 revocation, suspension or limitation by a court under (d) of this
9 section shall be

10 (1) not less than 30 days nor more than one year's
11 suspension or limitation for the first conviction, provided that a
12 limitation may not be imposed in place of a suspension unless the
13 court determines that

14 (A) the person's ability to earn a livelihood would
15 be severely impaired if his license were suspended, and

16 (B) a limitation can be placed on the license which
17 will enable the person to earn a livelihood without excessive
18 risk of danger to the public;

19 (2) one year's suspension or revocation for the second
20 conviction;

21 (3) three years' revocation for the third or subsequent
22 conviction.

23 (f) A court may not suspend that part of a sentence which
24 revokes, suspends or limits an operator's license as required under
25 this section. If a court fails to revoke, suspend or limit the
26 operator's license of a person convicted of an offense for which
27 this section provides a mandatory revocation, suspension or
28 limitation of the offender's license, the department, upon
29 receiving notice of the conviction, shall impose the minimum

1 revocation, suspension or limitation required by this section and
2 shall notify the licensee accordingly. For purposes of this
3 subsection, a limitation of an operator's license is a lesser penalty
4 than a suspension or revocation.

5 * Sec. 8. AS 28.15.225(a) is amended to read:

6 (a) When a court or the department limits a license, it shall
7 require the surrender of the license, and in the case of a court,
8 shall forward it to the department with a description of the
9 limitation imposed. A court [IT] shall, unless the period of
10 limitation is to be preceded by a period of suspension, issue to
11 the licensee a certificate, valid for not more than two weeks,
12 authorizing him to operate a motor vehicle subject to the limita-
13 tions described in the certificate. When the department limits a
14 license, it shall issue a similar certificate to the licensee, unless
15 the department can, at the time the order of limitation is imposed,
16 issue the licensee a license form with the nature and date of
17 termination of the limitation clearly set out on it.

18 * Sec. 9. AS 28.15.225(b) is amended to read:

19 (b) When the department receives a license with a report from
20 a court that it has been limited, or when the department limits a
21 license and issues a certificate under (a) of this section, the
22 department [IT] shall immediately prepare and send to the licensee
23 a license form with the nature and date of termination of the
24 limitation clearly set out on it.

25 * Sec. 10. AS 28.15.225 is amended by adding a new subsection to read:

26 (d) If a licensee is convicted of a violation of sec. 305 of
27 this chapter, neither a court nor the department may issue him
28 another limited license for a period of three years after the date of
29 conviction, except that the department may issue him a limited

1 license under sec. 283(c) of this chapter. If a court issues a
2 limited license to a person who may not be issued a limited license
3 in accord with this subsection, the department shall notify the
4 licensee that the court made a mistake and that he will not be
5 issued a limited license by the department under (b) of this section.
6 If the court imposes the limitation on the license under sec. 220(b)
7 of this chapter, the department shall inform the court of the
8 licensee's conviction under sec. 305 of this chapter, and shall
9 return the license to the court and request the court to reconsider
10 its action. If the court imposes a limitation, in place of
11 a mandatory suspension or revocation under sec. 210 of this chapter,
12 the department shall suspend or revoke the license for the minimum
13 period of suspension or revocation required under sec. 210 of this
14 chapter.

15 * Sec. 11. AS 28.15.260(a) is amended to read:

16 (a) The court may not limit or suspend an operator's license or
17 privilege to drive a motor vehicle on the public highways for a
18 longer period than one year, except as provided in sec. 210 of this
19 chapter [THAT, FOR THE OFFENSES LISTED UNDER SEC. 220(a)(1) AND (2)
20 OF THIS CHAPTER, LIMITATION OR SUSPENSION SHALL BE AS FOLLOWS:

- 21 (1) 30 DAYS FOR THE FIRST CONVICTION;
22 (2) ONE YEAR FOR THE SECOND CONVICTION;
23 (3) THREE YEARS FOR A THIRD OR SUBSEQUENT CONVICTION].

24 * Sec. 12. AS 28.15.270 is amended to read:

25 Sec. 28.15.270. SURRENDER AND RETURN OF LICENSE. When a court
26 or the department suspends or revokes a license, it shall require the
27 surrender of the license, and in the case of a court, shall forward
28 it to the department. In cases of suspension, the department shall
29 keep the license during the period of suspension, and, subject to the

1 requirements of the Motor Vehicle Safety Responsibility Act (AS 28.20),
2 shall return it promptly to the licensee at the end of the period.

3 * Sec. 13. AS 28.15 is amended by adding a new section to read:

4 Sec. 28.15.275. ACTION AGAINST OPERATOR'S LICENSE EFFECTIVE
5 ALTHOUGH LICENSE NOT SURRENDERED. A suspension, revocation, limitation
6 or cancellation of an operator's license is effective whether or
7 not the license is surrendered to a court or to the department by
8 the licensee.

9 * Sec. 14. AS 28.15.282 is repealed and re-enacted to read:

10 Sec. 28.15.282. POINT SYSTEM. (a) For the purposes of identi-
11 fying habitual or frequent violators of traffic laws and problem
12 drivers, the commissioner of public safety shall promulgate regu-
13 lations, under the Administrative Procedure Act (AS 44.62), estab-
14 lishing a uniform system assigning demerit points for convictions of
15 violations of traffic laws which are required to be reported to the
16 department under sec. 190 of this chapter. The commissioner of
17 public safety may adopt other regulations necessary to carry out the
18 purposes of secs. 282 - 287 of this chapter.

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

23 (1) the gravity of the offense as indicated by the penalty
24 provisions of the statute, regulation or ordinance defining the
25 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
29 the 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
3 assessing points under this section unless the aggravating cir-
4 cumstances are shown on the judgment of conviction and on the report
5 which the court is required to furnish to the department under sec.
6 190 of this chapter.

7 (d) A person who accumulates 12 or more points as a result of
8 offenses committed during a consecutive 12-month period or who
9 accumulates 18 or more points as a result of offenses committed
10 during a consecutive 24-month period shall be identified as a
11 habitual or frequent violator of traffic laws. The regulations
12 adopted under (a) of this section shall include a designated level
13 of point accumulation which identifies problem drivers. The
14 designated level of point accumulation which identifies problem
15 drivers shall be no less than six points as a result of offenses
16 committed during a consecutive 12-month period and no less than nine
17 points as a result of offenses committed during a consecutive 24-
18 month period.

19 (e) The commissioner of public safety may assess points for
20 convictions in other states of offenses which, if committed in this
21 state, would be grounds for the assessment.

22 (f) Notice of each assessment of points may be given to the
23 licensee, but notice shall be given when the point accumulation
24 reaches 50 per cent of the number at which a licensee is identified
25 as a habitual or frequent violator of traffic laws.

26 (g) No points may be assessed for violating a provision of a
27 state law or regulation or of a city or borough ordinance regulating
28 standing, parking, equipment, size or weight; nor may points be
29 assessed for violations by pedestrians, passengers or bicycle riders,

1 or for violations of provisions relating to the preservation of the
2 condition of traffic-control devices on the highway. Points may be
3 assessed, however, for violations of those provisions of oversize or
4 overweight permits which restrict speed or hours of operation.

5 (h) If a licensee is convicted of two or more traffic violations
6 committed on a single occasion, the licensee shall be assessed points
7 for only one offense, and if the offenses involved have different
8 point values, the licensee shall be assessed for the offense having
9 the greater point value. If a licensee receives a citation for a
10 traffic violation from a peace officer, and following the issuance
11 of the citation, the licensee commits another violation for which
12 he receives a citation, the second violation shall be considered a
13 separate occasion under this subsection.

14 (i) The time periods provided for in this section for the accu-
15 mulation of points are based upon the date of violation, but points
16 may not be assessed until after conviction for violation of traffic
17 laws.

18 (j) Two points shall be deducted from a licensee's assessed
19 total if he has not been convicted of a violation of traffic laws
20 which occurred during the 12-month period after the date of his last
21 violation of which he was convicted. In addition, two points shall
22 be deducted from the assessed total upon the licensee's furnishing
23 to the department adequate proof of successful completion of a driver
24 improvement course approved by the department, except that no more
25 than one course may be used to obtain a reduction of points in a
26 12-month period. The regulations adopted under (a) of this section
27 shall provide for a deduction of points from a licensee's assessed
28 total upon the termination, without further violations, of a period
29 of suspension, revocation or limitation authorized under sec. 284

1 of this chapter. The number of points deducted upon the termination
2 of a period of suspension, revocation or limitation of an operator's
3 license may be based on the nature of the action taken against the
4 operator's license and on the duration of that action.

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

8 (l) The provisions of secs. 282 - 287 of this chapter apply to
9 all operators of motor vehicles in this state, whether or not
10 licensed in this state, and wherever the term "licensee" appears in
11 secs. 282 - 287 of this chapter, that term applies to any operator
12 of a motor vehicle in the state, whether or not he is licensed in
13 this state.

14 * Sec. 15. AS 28.15.283 is repealed and re-enacted to read:

15 Sec. 28.15.283. DRIVER IMPROVEMENT INTERVIEW. (a) When the
16 department's records show that a licensee has accumulated a sufficient
17 number of points to be identified as a problem driver, the department
18 acquires jurisdiction to initiate driver improvement action and may
19 require the licensee to appear for a driver improvement interview
20 before a driver improvement examiner.

21 (b) After determining that a licensee should appear for a
22 driver improvement interview, the department shall determine the
23 time and place of the interview and shall serve upon the licensee,
24 by registered mail addressed to the last known address of the licensee
25 as shown by the records of the department or by personal service, a
26 written notice of the interview at least 10 days before the interview.
27 Driver improvement interviews shall be held at the office of the
28 department nearest to the residence of the licensee, unless the
29 department and the licensee agree that the interview is to be held

1 elsewhere. The notice shall inform the licensee that he has been
2 identified, through his point accumulation, as a problem driver,
3 and that if he does not appear for the driver improvement interview
4 at the time and place specified or does not contact the department
5 to request a delay, his operator's license will be subject to sus-
6 pension by the department for not more than 30 days.

7 (c) The purpose of a driver improvement interview is to
8 determine the cause of a problem driver's difficulties and to propose
9 remedial action. The interview shall be conducted in an informal
10 manner. A driver improvement examiner may require a problem driver
11 to take a re-examination under sec. 250 of this chapter or to take
12 and successfully complete a driver improvement course. Also the
13 driver improvement examiner may place a limitation on the problem
14 driver's operator's license for a period of not more than 30 days
15 and may place the problem driver on probation for a period of not
16 more than six months on the condition that he not violate any
17 traffic laws during the period of probation. Upon the violation
18 of probation, the department may suspend the operator's license of
19 the problem driver for not more than 10 days in the same manner as
20 provided in (e) of this section. The driver improvement examiner
21 shall serve upon the licensee, at the close of the interview, a
22 written order setting out specifically the action, if any, which
23 the licensee must take and informing the licensee of his right to
24 appeal under (d) of this section.

25 (d) If a problem driver contests the jurisdiction of the
26 department to initiate driver improvement action under this section
27 or contests the reasonableness of the driver improvement examiner's
28 order, he may, within 10 days after the examiner's order, appeal to
29 the commissioner of public safety.

1 (e) If a problem driver, without good cause, fails to appear
2 at a scheduled driver improvement interview, or fails to comply with
3 the order of the driver improvement examiner to take a re-examination
4 or to take and successfully complete a driver improvement course,
5 or violates a limitation placed upon his operator's license by the
6 driver improvement examiner, the department may suspend his operator's
7 license for not more than 30 days in the same manner, where appli-
8 cable, as if he had accumulated sufficient points for his operator's
9 license to be suspended under sec. 284 of this chapter. In admini-
10 strative and judicial proceedings to contest the department's
11 decision to suspend his operator's license under this section, the
12 licensee may contest the jurisdiction of the department to initiate
13 driver improvement action under this section and to contest the
14 reasonableness of the driver improvement examiner's order, in addition
15 to the issues which he is permitted to contest under secs. 285 - 287
16 of this chapter.

17 * Sec. 16. AS 28.15.284 is repealed and re-enacted to read:

18 Sec. 28.15.284. SUSPENSION, REVOCATION, LIMITATION: NOTICE.

19 (a) The commissioner of public safety shall promulgate regulations,
20 under the Administrative Procedure Act (AS 44.62), establishing
21 standards for the suspension, revocation or limitation of the operator's
22 license of a person who has been identified as a habitual or fre-
23 quent violator of traffic laws under sec. 282 of this chapter. The
24 standards shall set forth the circumstances on which the department
25 will rely in determining whether the operator's license of a person
26 who has been so identified should be suspended, revoked or limited and
27 in determining the duration of the suspension or revocation. The
28 department may take into account such factors as the number of points
29 accumulated, the number of prior suspensions, revocations or limi-

1 tations imposed by the department on the licensee under this section,
2 and the type of offenses which resulted in the point accumulation.
3 The department shall suspend or revoke the operator's license of a
4 person who has been identified two or more times in a five-year
5 period as a habitual or frequent violator of traffic laws under sec.
6 282 of this chapter and may not issue that person a limited license
7 under this section.

8 (b) The department shall suspend, revoke or limit, after
9 administrative review and a hearing or upon a failure by the licensee
10 to request an administrative review or a hearing as provided in this
11 section, the operator's license of a person when his driving record
12 identifies him as a habitual or frequent violator of traffic laws
13 under sec. 282 of this chapter. No suspension, revocation or
14 limitation of an operator's license under this section may be for
15 more than one year.

16 (c) The points assessed and the application of them against
17 a licensee by the department under sec. 282 of this chapter are in
18 addition to, and not in substitution for, a penalty imposed by a
19 court. However, when a court, as part of a sentence for conviction
20 of a traffic offense, suspends or revokes a person's operator's
21 license, that suspension or revocation shall be credited towards
22 later suspension or revocation imposed under this section and based
23 in part on the points assessed by the department because of that
24 conviction.

25 (d) When the department's records show that a licensee has
26 accumulated a sufficient number of points for his operator's
27 license to be subject to suspension, revocation or limitation, the
28 department shall determine whether the license should be suspended,
29 revoked or limited and, if so, the duration of the suspension,

1 revocation or limitation. If the licensee does not request an admini-
2 strative review within 15 days after service of the notice required
3 under (e) of this section, the initial determination of the department
4 is final and effective.

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

17 (f) The notice shall inform the licensee that he must request
18 an administrative review of his case before being entitled to a
19 hearing under sec. 286 of this chapter; that he must list the issues
20 which he wishes the department to review; that issues which he
21 does not raise in the administrative review may not be raised at
22 a later hearing except upon a showing of excusable neglect; that he
23 should list the facts which he believes will support his contention
24 that his license should not be suspended, revoked or limited, or
25 should be suspended, revoked or limited for a shorter period of time;
26 and that he may request a personal interview under sec. 285 of
27 this chapter. The notice shall also include

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

- 1 (2) the number of points assessed for each violation;
- 2 (3) the regulations which set out the number of points
- 3 to be assessed for each type of violation;
- 4 (4) the grounds upon which points may be deducted under
- 5 sec. 282(j) of this chapter;
- 6 (5) the number of points actually deducted from the
- 7 licensee's assessed total under sec. 282(j) of this chapter;
- 8 (6) the regulations promulgated under (a) of this section;
- 9 (7) the department's initial determination made under
- 10 (d) of this section; and
- 11 (8) the issues which may be contested in the administrative
- 12 review under sec. 285(c) of this chapter.

13 * Sec. 17. AS 28.15.285 is repealed and re-enacted to read:

14 Sec. 28.15.285. PERSONAL INTERVIEW; ADMINISTRATIVE REVIEW. (a)

15 Upon receipt of a request for a personal interview from the licensee,

16 the department shall determine the time and place and shall serve

17 upon the licensee, in the same manner as provided for in sec. 284(d)

18 of this chapter, a written notice of the time and place of the per-

19 sonal interview at least seven days before the interview. Interviews

20 shall be held at the office of the department nearest to the residence

21 of the licensee, unless the department and the licensee agree that

22 the interview is to be held elsewhere. A delay in the interview

23 may be granted by the department for good cause.

24 (b) At the personal interview the licensee may present evidence

25 and arguments relevant to the issues which may be contested in the

26 administrative review, and the department shall disclose to the

27 licensee any information in its possession relevant to those issues.

28 During or within five days after the interview, the licensee may amend

29 his list of contested issues and his list of supporting facts.

1 (c) Upon receipt of a request from the licensee for an admini-
2 strative review of the department's initial determination and after
3 a personal interview as provided for in (a) and (b) of this section
4 or upon a failure by the licensee to request a personal interview,
5 the department shall review its initial determination. The department
6 may affirm, modify or rescind its initial determination. The review
7 shall be based on the contested issues and supporting facts listed
8 by the licensee in his request for an administrative review and on
9 the personal interview. The review conducted under this section
10 shall be limited to the issues of

11 (1) whether the convictions were those of the licensee;

12 (2) whether there was a variance between a conviction and
13 the complaint on which it was based such that the conviction was
14 for a different offense than that charged in the complaint, except
15 that conviction of a lesser included offense of the offense charged
16 shall not be considered a different offense;

17 (3) whether points were improperly calculated;

18 (4) whether credits, in the form of reductions, were
19 wrongfully withheld;

20 (5) whether errors appeared in the report of a conviction;

21 (6) whether the particular type of proposed action
22 against a license and the duration of the proposed action is con-
23 sistent with sec. 284 of this chapter and the regulations adopted
24 under sec. 284(a) of this chapter.

25 (d) Upon completing review of its initial determination, the
26 department shall make a final determination. If the department's
27 final determination sustains some form of action against the license,
28 the department shall suspend, revoke or limit the license accordingly,
29 unless the licensee requests a hearing within 15 days after service

1 of the notice required by (e) of this section.

2 (e) Upon making a final determination, the department shall
3 notify the licensee of its decision in the same manner as provided
4 for in sec. 284(d) of this chapter. If the final determination
5 sustains some form of action against the operator's license, the
6 notice shall inform the licensee that unless he requests a hearing
7 within 15 days after service of the notice, the final determination
8 of the department will become effective, and his operator's license
9 will be suspended, revoked or limited in accordance with that
10 determination. The notice shall also inform the licensee that he
11 may raise the same issues at the hearing which he raised in the
12 administrative review and that he may raise additional issues
13 permitted under (c) of this section upon a showing of excusable
14 neglect.

15 * Sec. 18. AS 28.15.286 is repealed and re-enacted to read:

16 Sec. 28.15.286. HEARING. (a) Upon receipt of a request for
17 a hearing, the department shall determine the time and place and
18 shall serve upon the licensee, in the same manner as provided for
19 in sec. 284(d) of this chapter, a written notice of hearing at least
20 10 days before the hearing. Hearings held by the department under
21 this section shall be held at the office of the department nearest
22 to the residence of the licensee, unless the department and the
23 licensee agree that the hearing be held elsewhere. A hearing
24 delay may be granted by the department only if the licensee presents
25 the department with good cause for the delay. If a hearing is
26 delayed, the department shall set a new date for the hearing no
27 later than 30 days after the initial date set for the hearing.

28 (b) A hearing requested under this section shall be presided
29 over by a hearing officer appointed by the commissioner of public

1 safety. The hearing officer may not be a commissioned law enforce-
2 ment officer.

3 (c) Hearings conducted under this section are limited to the
4 same issues contested in the administrative review under sec. 285(c)
5 of this chapter. Upon a showing of excusable neglect by the licensee,
6 the hearing officer may consider additional issues permitted under
7 sec. 285(c)(1) - (6) of this chapter which were not raised by the
8 licensee during the administrative review.

9 (d) The hearing officer may administer oaths and may issue
10 subpoenas for the attendance of witnesses and the production of books,
11 papers and records and may apply to the district court for the
12 enforcement of a subpoena by contempt proceedings. A licensee may
13 be represented by counsel, may present relevant evidence, and may
14 confront and cross-examine all witnesses testifying against him. The
15 proceedings at the hearing shall be recorded. The hearing officer
16 shall make findings of fact and shall enter a written order based on
17 his findings.

18 (e) If at the hearing it appears that the record sustains the
19 final determination of the department, the hearing officer shall so
20 order and the department shall immediately suspend, revoke or limit
21 the operator's license accordingly. If at the hearing it appears
22 that the record does not sustain the final determination of the
23 department, the hearing officer may modify or overrule the final
24 determination of the department and may enter an appropriate order,
25 and the department may only suspend, revoke or limit the operator's
26 license in accordance with the hearing officer's order. If the
27 hearing officer determines that the licensee's accumulated point
28 total, as reflected in the records of the department, is incorrect,
29 the department shall adjust the licensee's accumulated point total

1 accordingly.

2 * Sec. 19. AS 28.15.287 is repealed and re-enacted to read:

3 Sec. 28.15.287. JUDICIAL REVIEW. (a) A licensee whose
4 operator's license is suspended, revoked or limited under secs. 282 -
5 286 of this chapter may initiate a proceeding in the district court
6 to rescind the department's action by filing a notice of appeal
7 within 30 days after the final order of a hearing officer under
8 sec. 286 of this chapter.

9 (b) Upon the filing of a notice of appeal, the department or
10 the court may, in its discretion, stay the suspension, revocation or
11 limitation of an operator's license pending judicial review of the
12 department's action.

13 (c) The court proceeding under this section shall be without
14 jury and shall be limited to a review of the issues set out in sec.
15 285(c) of this chapter. The court may not review an issue not
16 contested in the administrative review or at the hearing provided
17 for in secs. 285 - 286 of this chapter. The district court's review
18 shall be on the record of the hearing, except that the court may, in
19 its discretion, augment the hearing record. The court shall make an
20 independent determination of the issues set out in sec. 285(c)(1) -
21 (5) of this chapter which are preserved for appeal, but may review
22 the issue set out in sec. 285(c)(6) of this chapter only for abuse
23 of discretion.

24 (d) If the issue set out in sec. 285(c)(1) of this chapter
25 is determined in the affirmative, the issues set out in sec. 285(c)(2)
26 - (5) of this chapter are determined in the negative, and the court
27 determines that there was no abuse of discretion in the hearing
28 officer's determination of the issue set out in sec. 285(c)(6) of
29 this chapter, the court shall sustain the action of the department.

1 If the issue set out in sec. 285(c)(1) of this chapter is determined
2 in the negative or one or more of the issues set out in sec. 285(c)
3 (2) - (5) of this chapter is determined in the negative, the court
4 shall recompute the licensee's accumulated point total accordingly,
5 and if the corrected total is less than the level necessary to
6 sustain action against an operator's license under sec. 284 of this
7 chapter, the department's action shall be rescinded and the depart-
8 ment shall adjust the licensee's point total accordingly. If the
9 corrected point total would be sufficient to sustain some action
10 against an operator's license under sec. 284 of this chapter, the
11 court may take any action against the operator's license which the
12 department is authorized to take under sec. 284 of this chapter
13 and the regulations promulgated under that section, except that the
14 court shall take into account the recomputation of the point total
15 in determining the duration and type of action taken against the
16 operator's license. If the court determines that there was an abuse
17 of discretion in the hearing officer's determination of the issue
18 set out in sec. 285(c)(6) of this chapter, the court may modify the
19 department's action and may take any action against the operator's
20 license which the department is authorized to take under sec. 284 of
21 this chapter and the regulations promulgated under that section.
22 Alternatively, the court may remand the case to the department for a
23 redetermination of its action in light of the court's judgment.

24 * Sec. 20. AS 28.15.290 is amended by adding a new paragraph to read:
25 (8) to operate a motor vehicle in violation of the
26 regulations adopted under sec. 70 of this chapter.

27 * Sec. 21. AS 28.15.300 is amended to read:

28 Sec. 28.15.300. DRIVING WHILE LICENSE CANCELLED, SUSPENDED OR
29 REVOKED. A person who drives a motor vehicle on a public highway

1 in this state at a time when his license or privilege to do so is
2 cancelled, suspended or revoked is guilty of a misdemeanor and is
3 punishable by a fine of not more than \$1,000, or by imprisonment for
4 not more than one year. For a first conviction under this section,
5 the punishment shall include imprisonment for not less than three
6 days, none of which may be suspended by the court, and in the case of
7 a second or subsequent conviction under this section, the punishment
8 shall include imprisonment for not less than 10 days, none of which
9 may be suspended by the court. If a court suspends imposition of
10 sentence, it shall require, as a condition of probation, imprisonment
11 for not less than the minimum period of time required by this section
12 upon conviction of the offense defined by this section.

13 * Sec. 22. AS 28.15.340 is amended by adding a new subsection to read:

14 (b) The department may provide by regulation for additional fees
15 not to exceed \$10 for those classified licenses or endorsements
16 issued under sec. 70(b) of this chapter which require additional
17 testing other than the testing required for a standard operator's
18 license or which create additional administrative burdens for the
19 department.

20 * Sec. 23. AS 28.35.030 is amended to read:

21 Sec. 28.35.030. DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING
22 LIQUOR OR DRUGS. A person who, while under the influence of intoxi-
23 cating liquor or narcotic drugs, operates or drives an automobile,
24 motorcycle or other motor vehicle in the state upon conviction is
25 punishable by a fine of not more \$1,000, or by imprisonment for not
26 more than one year, or by both. In addition, his operator's license
27 shall [MAY] be revoked, suspended or limited [OR SUSPENDED] in
28 accordance with AS 28.15.210(d) - (f) [AS 28.15.260(a)].

29 * Sec. 24. AS 44.62.330(a)(23) is amended to read:

1 (23) Department of Public Safety, as to suspension,
2 revocation, cancellation or limitation of driver's licenses, except
3 as to revocations and suspensions under AS 28.35.031 - 28.35.034 and
4 except as to suspensions, revocations, limitations, or denials under
5 AS 28.15.282 - 28.15.287 [28.15.288] and mandatory minimum revocations,
6 suspensions or limitations under AS 28.15.210(f) and AS 28.15.225(d).

7 * Sec. 25. AS 28.15.220(a) and (b)(1), (3) and (4) and AS 28.15.288
8 are repealed.

9 * Sec. 26. Section 4 of this Act has the effect of changing Rule 11(e)
10 (6)(1), Rules of Criminal Procedure, by providing that a conviction on
11 a plea of nolo contendere for those offenses required to be reported by
12 the courts to the Department of Public Safety under AS 28.15.190 shall be
13 equivalent to a conviction on a plea of guilty for purposes of AS 28.15
14 and is admissible against the defendant in a criminal or administrative
15 proceeding based upon AS 28.15.

16 * Sec. 27. This Act takes effect on the day after its passage and
17 approval or on the day it becomes law without approval.
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