

Original sponsor: Ray

Offered: 3/20/73
Referred: Rules

1 IN THE SENATE BY THE COMMERCE COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 5 *Am H*
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 licenses."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

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

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

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

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

26 (3) particular aggravating circumstances involved in the
27 commission of an offense, such as the occurrence of an accident,
28 personal injury, or damage to property as a result of the offense.

29 (c) Aggravating circumstances shall not be considered in assessing

1 points under this section, unless the aggravating circumstances are
2 shown on the judgment of conviction and on the report which the courts
3 are required to furnish to the department under sec. 190 of this
4 chapter.

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

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

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

28 (g) No points may be assessed for violating a provision of a
29 state law or regulation, or a city or borough ordinance, regulating

1 standing, parking, equipment, size or weight; nor may points be
2 assessed for violations by pedestrians, passengers or bicycle riders,
3 or for violations of provisions relating to the preservation of the
4 condition of traffic-control devices on the highway. Points may be
5 assessed, however, for violations of those provisions of oversize or
6 overweight permits which restrict speed or hours of operation.

7 (h) If a licensee is convicted of two or more traffic violations
8 committed and resulting from a single contact by a peace officer, the
9 licensee shall be assessed points for only one offense, and if the
10 offenses involved have different point values, the licensee shall be
11 assessed for the offense having the greater point value.

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

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

1 revocation or limitation of an operator's license shall be based on the
2 nature of the action taken against the operator's license and on the
3 duration of such action.

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

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

9 Sec. 28.15.283. DRIVER IMPROVEMENT INTERVIEW. (a) When the
10 department's records show that a licensee has accumulated a sufficient
11 number of points to be identified as a problem driver, the department
12 may require the licensee to appear for a driver improvement interview
13 before a driver improvement examiner.

14 (b) Upon a determination that a licensee should appear for a
15 driver improvement interview, the department shall determine the time
16 and place and shall serve upon the licensee, by registered mail addressed
17 to the last known address of the licensee as shown by the records of
18 the department or by personal service, a written notice of the inter-
19 view at least 10 days before the interview. Driver improvement inter-
20 views shall be held at the office of the department nearest to the
21 residence of the licensee, unless the department and the licensee agree
22 that the interview is to be held elsewhere. The notice shall inform
23 the licensee that he has been identified, through his point accumula-
24 tion, as a problem driver, and that if he does not appear for the driver
25 improvement interview at the time and place specified or does not con-
26 tact the department to request a delay, his operator's license will be
27 subject to suspension by the department for not more than 30 days.

28 (c) When the department requires a problem driver under the age
29 of 18 years to appear for a driver improvement interview, the department

1 may also request the appearance of the licensee's parents or legal
2 guardian.

3 (d) The purpose of a driver improvement interview is to determine
4 the cause of a problem driver's difficulties and to propose remedial
5 action. The interview shall be conducted in an informal manner. A
6 driver improvement examiner may require a problem driver to take a re-
7 examination under sec. 250 of this chapter, to take and successfully
8 complete a driver improvement course, and may limit or suspend the
9 license of the problem driver. A limitation under this section may not
10 be imposed for more than 30 days. A suspension under this section may
11 not exceed 10 days. The examiner shall serve upon the licensee, at the
12 close of the interview, a written order setting out specifically the
13 action which the licensee must take and informing the licensee of his
14 right to appeal under (e) of this section.

15 (e) If a problem driver contests the reasonableness of the
16 examiner's order, he may, within 10 days after receipt of the order,
17 appeal to the commissioner of public safety.

18 (f) If a problem driver, without good cause, fails to appear at
19 a scheduled driver improvement interview or fails to comply with the
20 order of the examiner, the department may suspend his operator's license
21 for not more than 30 days in the same manner, where applicable, as if
22 he had accumulated sufficient points for his operator's license to be
23 suspended under sec. 284 of this chapter. In administrative and judi-
24 cial proceedings to contest the department's decision to suspend his
25 operator's license under this section, the licensee shall be permitted
26 to contest the reasonableness of the examiner's order, in addition to
27 the issues which he is permitted to contest under secs. 284 and 285 of
28 this chapter.

29 Sec. 28.15.284. SUSPENSION, REVOCATION, ADMINISTRATIVE REVIEW;

1 POINT SYSTEM HEARING. (a) The department shall promulgate regulations,
2 under the Administrative Procedure Act (AS 44.62), establishing standards
3 for the suspension or revocation of the operator's license of a person
4 who has been identified as a habitual or frequent violator of traffic
5 laws under sec. 282 of this chapter. The standards shall set out the
6 circumstances which the department will rely upon in determining whether
7 the operator's license of a person who has been so identified should be
8 suspended or revoked and in determining the duration of the suspension
9 or revocation. The department may take into account such factors as the
10 number of points accumulated, the number of prior suspensions, revocations
11 or limitations imposed by the department on the licensee under this
12 section and the type of offenses which resulted in the point accumula-
13 tion.

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

21 (c) When the department's records show that a licensee has accumu-
22 lated a sufficient number of points for his operator's license to be
23 subject to suspension or revocation, the department shall determine
24 whether the operator's license should be either suspended or revoked and,
25 if so, the duration of the suspension or revocation. If the licensee
26 does not request an administrative review within 15 days after service
27 of the notice required under (d) of this section, the initial determina-
28 tion of the department shall become final and effective.

29 (d) Upon making an initial determination under (c) of this section,

1 the department shall notify the licensee that he has been identified,
2 through his point accumulation, as a habitual or frequent violator of
3 traffic laws and that his operator's license will be suspended or
4 revoked unless he requests an administrative review of his case within
5 15 days after service of the notice to determine whether his operator's
6 license should be suspended or revoked or to determine the duration of
7 the suspension or revocation. The notice shall be furnished to the
8 licensee in writing by registered mail, addressed to the last known
9 address of the licensee as shown by the records of the department or by
10 personal service.

11 (e) The notice shall inform the licensee that he must request an
12 administrative review of his case before being entitled to a hearing
13 under (k) of this section; that he must list the issues which he wishes
14 to be reviewed by the department; that any issues which he does not
15 raise in the administrative review may not be raised at a later hearing
16 except upon a showing of excusable neglect; that he should list the
17 facts which he believes will support his contention that his operator's
18 license should not be suspended or revoked, or should be suspended or
19 revoked for a shorter period of time, as the case may be; and that he
20 may request a personal interview under (f) of this section. The notice
21 shall also include

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

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

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

27 (4) the grounds upon which points may be deducted under sec.
28 282(j) of this chapter;

29 (5) the number of points actually deducted from the licensee's

1 assessed total under sec. 282(j) of this chapter;

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

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

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

7 (f) Upon receipt of a request for a personal interview from the
8 licensee the department shall determine the time and place and shall
9 serve upon the licensee, in the same manner as provided for in (d) of
10 this section, a written notice of the time and place of the personal
11 interview at least seven days before the interview. Interviews
12 shall be held at the office of the department nearest to the residence
13 of the licensee, unless the department and the licensee agree that
14 the interview is to be held elsewhere. A delay in the interview shall
15 be granted by the department only if the licensee presents the
16 department with good cause for the delay. If an interview is delayed,
17 the department shall set a new date for the interview no later than
18 10 days after the date of the original interview, unless the licensee
19 presents good cause for a longer delay.

20 (g) At the personal interview the licensee shall be permitted
21 to present evidence and arguments relevant to the issues which may
22 be contested in the administrative review, and the department shall
23 disclose to the licensee any information in its possession relevant
24 to those issues. During or within five days after the interview,
25 the licensee may amend his list of contested issues and his list of
26 supporting facts.

27 (h) Upon receipt of a request from the licensee for an adminis-
28 trative review of the department's initial determination and after a
29 personal interview as provided for in (f) and (g) of this section or

1 upon a failure by the licensee to request a personal interview, the
2 department shall review its initial determination. The department
3 may affirm, modify or rescind its initial determination. The review
4 shall be based on the contested issues and supporting facts listed
5 by the licensee in his request for an administrative review and on
6 the personal interview. The review conducted under this section shall
7 be limited to the issues of

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

9 (2) whether there was a clerical mistake as to the entry
10 of a conviction or as to the report to the department required by
11 sec. 190 of this chapter;

12 (3) whether points were improperly calculated;

13 (4) whether credits, in the form of reductions, were wrong-
14 fully withheld;

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

16 (6) whether the particular type of proposed action against
17 the license is consistent with the regulations adopted under (a) of
18 this section; and

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

22 (i) Upon completing review of its initial determination, the de-
23 partment shall make a final determination. If the department's final
24 determination sustains some form of action against the license, the de-
25 partment shall suspend or revoke the license accordingly, unless
26 the licensee requests a hearing within 15 days after service of the
27 notice required by (j) of this section.

28 (j) Upon making a final determination, the department shall noti-
29 fy the licensee of its decision in the same manner as provided for in

1 (d) of this section. If the final determination sustains some form of
2 action against the operator's license, the notice shall inform the
3 licensee that unless he requests a hearing within 15 days after service
4 of the notice, the final determination of the department will become
5 effective, and his operator's license will be suspended or revoked in
6 accordance with that determination. The notice shall also inform the
7 licensee that he may raise the same issues at a hearing which he raised
8 in the administrative review and that he may raise additional issues
9 permitted under (h) of this section upon a showing of excusable neglect.

10 (k) Upon receipt of a request for a hearing, the department shall
11 determine the time and place and shall serve upon the licensee, in the
12 same manner as provided for in (d) of this section, a written notice of
13 hearing at least 10 days before the hearing. Hearings held by the
14 department under this section shall be held at the office of the depart-
15 ment nearest to the residence of the licensee, unless the department
16 and the licensee agree that the hearing is to be held elsewhere. A
17 hearing delay may be granted by the department only if the licensee
18 presents the department with good cause for the delay. If a hearing is
19 delayed, the department shall set a new date for the hearing no later
20 than 30 days after the date of the original hearing.

21 (l) A hearing requested under this section shall be presided over
22 by a hearing officer appointed by the commissioner of public safety.
23 The hearing officer may not be a commissioned enforcement officer.

24 (m) Hearings conducted under this section are limited to the
25 same issues which were contested in the administrative review provided
26 for in (h) of this section. Upon a showing of excusable neglect by the
27 licensee, the hearing officer may consider additional issues permitted
28 under (h)(1) - (7) of this section but which were not raised by the
29 licensee during the administrative review.

1 (n) The hearing officer may administer oaths and may issue sub-
2 poenas for the attendance of witnesses and the production of books,
3 papers and records and may apply to the district court for the enforce-
4 ment of a subpoena by contempt proceedings. A licensee may be repre-
5 sented by counsel, may present relevant evidence, and shall be given
6 full opportunity to confront and cross-examine all witnesses testifying
7 against him. The proceedings at the hearing shall be recorded. The
8 hearing officer shall make findings of fact and shall enter a written
9 order based on his findings.

10 (o) If at the hearing it appears that the record sustains the
11 final determination of the department, the hearing officer shall so
12 order and the department shall immediately suspend or revoke
13 the operator's license accordingly. If at the hearing it appears
14 that the record does not sustain the final determination of the
15 department, the hearing officer may modify or overrule the final
16 determination of the department and may enter an appropriate order,
17 and the department may only suspend or revoke the operator's
18 license in accordance with the hearing officer's order. If the
19 hearing officer determines that the licensee's accumulated point
20 total, as reflected in the records of the department, was incorrect
21 for any reason, the department shall adjust the licensee's accumulated
22 point total accordingly.

23 (p) The points assessed and the application of them against a
24 licensee by the department under sec. 282 of this chapter are in addi-
25 tion to, and not in substitution for a penalty imposed by a court.
26 However, when a court, as part of a sentence for conviction of a traffic
27 offense, suspends or revokes a person's operator's license, that sus-
28 pension or revocation shall be credited towards any later suspension
29 or revocation imposed under this section and based in part on the points

1 assessed by the department because of that conviction.

2 Sec. 28.15.285. JUDICIAL REVIEW UNDER POINT SYSTEM. (a) A person
3 whose operator's license is suspended, revoked or limited under secs.
4 282 - 284 of this chapter may initiate a proceeding in the district
5 court to rescind the department's action by filing a notice of appeal
6 within 30 days after the final order of a hearing officer.

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

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

22 (d) If the issue set out in sec. 284(h)(1) of this chapter is
23 determined in the affirmative, the issues set out in sec. 284(h)(2) -
24 (5) of this chapter are determined in the negative, and the court
25 determines that there was no abuse of discretion in the hearing officer's
26 determination of the issues set out in sec. 284(h)(6) - (7) of this
27 chapter, the court shall sustain the action of the department. If the
28 issue set out in sec. 284(h)(1) of this chapter is determined in the
29 negative or one or more of the issues set out in sec. 284(h)(2) - (5)

1 of this chapter is determined in the affirmative, the court shall recom-
2 pute the licensee's accumulated point total accordingly, and if the
3 corrected total is less than the level necessary to sustain action
4 against an operator's license under sec. 284 of this chapter, the
5 department's action shall be rescinded and the department shall adjust
6 the licensee's point total accordingly. If the corrected point total
7 would be sufficient to sustain some action against an operator's license
8 under sec. 284 of this chapter, the court may take any action against
9 the operator's license which the department is empowered to take under
10 sec. 284 of this chapter, except that the court shall take into account
11 the recomputation of the point total in determining the duration and
12 type of action taken against the operator's license. If the court
13 determines that there was an abuse of discretion in the hearing offi-
14 cer's determination of the issues set out in sec. 284(h)(6) - (7) of
15 this chapter, the court may modify the department's action and may take
16 any action against the operator's license which the department is
17 empowered to take under sec. 284 of this chapter.

18 Sec. 28.15.286. PROBATION IN LIEU OF SUSPENSION OR REVOCATION.

19 When the department has discretionary authority to suspend or revoke a
20 license under the provisions of secs. 283 and 284 of this chapter, the
21 department may, in lieu of a suspension or revocation, place the licensee
22 on probation, the terms of which may include a suspension as a condition
23 of probation and such other reasonable terms and conditions as shall be
24 considered by the department to be appropriate, provided that the dura-
25 tion of probation may not exceed six months.

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

27 Sec. 28.15.180. SUSPENDING, REVOKING OR LIMITING PRIVILEGES OF
28 NONRESIDENTS. The privilege of driving a motor vehicle on the highways
29 of this state given to a nonresident under this chapter is subject to

1 suspension, revocation and limitation in the same manner and for the
2 same cause as an operator's license issued under this chapter.

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

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

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

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

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

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

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

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

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

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

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

16 Sec. 28.15.275. ACTION AGAINST OPERATOR'S LICENSE EFFECTIVE
17 ALTHOUGH LICENSE NOT SURRENDERED. A suspension, revocation, limitation
18 or cancellation of an operator's license shall be effective notwith-
19 standing the fact that the license is not surrendered to a court or to
20 the department by the licensee.

21 * Sec. 9. AS 28.15.225 is amended by adding a new subsection to read:

22 (d) If a licensee has a conviction for a violation of limitation
23 placed upon his license during the period that he is provided with a
24 limited license under this chapter, he may not be issued, for any cause
25 whatsoever, another limited license for a period of five years.

26 * Sec. 10. AS 44.62.330(23) is amended to read:

27 (23) Department of Public Safety, as to suspension, revoca-
28 tion, cancellation or limitation [ETC.,] of driver's licenses, except
29 as to revocation and suspension [REVOCATIONS] under AS 28.35.031 -

1 28.35.034 and except as to suspension, revocation or limitation under
2 AS 28.15.282 - 28.15.286

3 * Sec. 11. AS 28.15.220(b)(3) and (4) are repealed.
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