

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 ~~5~~

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

HCS  
AM

FCCS

~~5~~

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 12-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, but notice  
23 shall be given when the point accumulation reaches 50 per cent of the  
24 number at which a licensee is identified as a habitual or frequent  
25 violator of traffic laws.

26 (g) No points may be assessed for violating a provision of a  
27 state law or regulation, or 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 issuance of the  
11 citation, the licensee commits another violation for which he receives  
12 a citation, the second violation shall be considered a separate  
13 occasion under this subsection.

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

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

1 deducted upon the termination of a period of suspension, revocation or  
2 limitation of an operator's license shall be based on the nature of the  
3 action taken against the operator's license and on the duration of such  
4 action.

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

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

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

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

29 (c) When the department requires a problem driver under the age of

1 18 years to appear for a driver improvement interview, the department may  
2 also request the appearance of the licensee's parents or legal 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. In addition, the driver improvement  
9 examiner may place a limitation on the problem driver's operator's license  
10 for a period of not more than 30 days and may place the problem driver on  
11 probation for a period of not more than six months on the condition that  
12 he not violate any traffic laws during the period of probation. Upon the  
13 violation of probation under this subsection, the department may suspend  
14 the operator's license of the problem driver for a period of not more than  
15 10 days in the same manner as provided in (f) of this section. The ex-  
16 aminer shall serve upon the licensee, at the close of the interview, a  
17 written order setting out specifically the action which the licensee must  
18 take and informing the licensee of his right to appeal under (e) of this  
19 section.

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

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

1 license under this section, the licensee shall be permitted to contest  
2 the reasonableness of the examiner's order, in addition to the issues  
3 which he is permitted to contest under secs. 284 and 285 of this chapter.

4 Sec. 28.15.284. SUSPENSION, REVOCATION, ADMINISTRATIVE REVIEW;  
5 POINT SYSTEM HEARING. (a) The department shall promulgate regulations,  
6 under the Administrative Procedure Act (AS 44.62), establishing standards  
7 for the suspension or revocation of the operator's license of a person  
8 who has been identified as a habitual or frequent violator of traffic  
9 laws under sec. 282 of this chapter. The standards shall set out the  
10 circumstances which the department will rely upon in determining whether  
11 the operator's license of a person who has been so identified should be  
12 suspended or revoked and in determining the duration of the suspension or  
13 revocation. The department may take into account such factors as the  
14 number of points accumulated, the number of prior suspensions, revocations  
15 or limitations imposed by the department on the licensee under this  
16 section and the type of offenses which resulted in the point accumulation.

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

24 (c) When the department's records show that a licensee has accumu-  
25 lated a sufficient number of points for his operator's license to be  
26 subject to suspension or revocation, the department shall determine  
27 whether the operator's license should be either suspended or revoked and  
28 if so, the duration of the suspension or revocation. If the licensee  
29 does not request an administrative review within 15 days after service

1 of the notice required under (d) of this section, the initial determina-  
2 tion of the department shall become final and effective.

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

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

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

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

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

1 (4) the grounds upon which points may be deducted under sec.  
2 282(j) of this chapter;

3 (5) the number of points actually deducted from the licensee's  
4 assessed total under sec. 282(j) of this chapter;

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

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

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

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

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

29 (h) Upon receipt of a request from the licensee for an adminis-

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

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

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

13 (3) whether points were improperly calculated;

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

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

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

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

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

29 (j) Upon making a final determination, the department shall notify

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

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

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

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

1 licensee during the administrative review.

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

11 (o) If at the hearing it appears that the record sustains the  
12 final determination of the department, the hearing officer shall so order  
13 and the department shall immediately suspend or revoke the operator's  
14 license accordingly. If at the hearing it appears that the record does  
15 not sustain the final determination of the department, the hearing officer  
16 may modify or overrule the final determination of the department and may  
17 enter an appropriate order, and the department may only suspend or revoke  
18 the operator's license in accordance with the hearing officer's order.  
19 If the 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.  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29