

SB

110

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Alaska State Legislature



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House of Representatives

May 12, 1980

Rep. Charles Parr  
House Judiciary  
Capitol, Rm 124

Attached is information which I just  
received from the home office of State Farm  
Insurance. It may be helpful in your consideration  
of SB 110.

A handwritten signature in cursive script, likely belonging to the sender of the letter.

Copies members  
SB 110

May 8, 1980

Senator Don Bennett  
Senator Glenn Hackney  
Senator George Hohnan  
Senator Jalmar Kerttula  
Senator Bill Ray  
Senator Bill Sumner

Re: SB-110

Dear Senator:

Allow us to respectfully offer a brief comment on SB-110 as now amended because information provided by drivers' records is of vital interest to us in the proper handling of our business.

In Alaska, we have approximately 34,000 auto policies in force. In equitably pricing and placement of those policyholders, the information supplied from motor vehicle reports or drivers' records, is necessary.

If those records were not available, the driver with multiple traffic violations would be charged the same rate as the driver with no violations. This would be unfair to a great majority of the driving public, perhaps 90 percent that comply with traffic laws and rarely become involved in accidents. In short, the good risks would be subsidizing the poorer risks, because we would have no proper basis to evaluate driving habits.

Additionally, in the Alaska Insurance Plan, surcharges are added for points accumulated based on traffic violations. If information available from drivers' records were not available, that procedure could not continue and the better risks in the Plan would be subsidizing the poorer risks. Hopefully, this proposed legislation which would allow insurance carriers to purchase copies of drivers' records for their confidential use will succeed in the legislature and gain the signature of the governor.

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Page Two

We appreciate the opportunity to offer these comments in support of S.L.  
110 as amended.

Very truly yours,

John Gordon  
Associate Counsel

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SB 110  
TESTIMONY OF THE DIVISION OF INSURANCE  
BEFORE THE SENATE JUDICIARY COMMITTEE  
FEBRUARY 12, 1980

The Division of Insurance supports this legislation. AS 28.15.151 was added to the statutes with 19 Ch. 178 SLA 1978. That statute bars access to motor vehicle records by insurance companies. The effect of the statute is presently under a temporary restraining order issued by the court. The proposal before you would, again, permit insurers access to motor vehicle records.

Almost all automobile insurance rating plans used in Alaska and, indeed in most other states, use motor vehicle data in the rating plan as a means to distribute their auto insurance premium loads. The driver with moving violations is likely to be paying a higher premium for his insurance than is the driver with no moving violations, and we view that as appropriate. If the motor vehicle records are denied insurers, then all of the automobile rating structures on file with the Division of Insurance will have to be replaced with one that no longer considers that information. The effect of this will be to redistribute those surcharge premiums, currently being applied to drivers with violations, to all drivers, resulting in an increase of premium for the driver with no violations on record. Additionally, most carriers utilize motor vehicle record information in their selection of business, even aside from the rating of that selection. This selection has generally resulted in some wide variations in rates amongst insurers. With removal of this tool of selectivity, it is expected that the companies with lower rate structures will have increases in their rate structures as the experience on the new selection is felt. We do not believe that this result is desirable. We would urge that the committee act to continue availability of this data to insurers.

Failure to pass this or a similar bill will result in a vacation of the temporary restraining order already mentioned by the court. The impact of that on our program will be substantial since many new rating proposals will have to be reviewed for propriety, compliance with statute and waiting of new forms of discrimination for fairness. Further, the statistical studies and data available for previous years in Alaska will no longer be usable. This will leave Alaska automobile rate levels in doubt for at least three or four years to come. Passage of this particular legislation is very important.

STATEMENT OF MIKE THOMAS  
(REPRESENTING THE AMERICAN INSURANCE ASSOCIATION)  
CONCERNING SB 110

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On the last day of the Tenth Legislature, FCCS CSSB 471 was passed by both houses of the Legislature. That bill had gone to Free Conference as a 3-page bill dealing with motor vehicle fees, and came back as an 84-page bill made up of what had been SB 471, SB 321 (a revision of the Motor Vehicle Code) and SB 594 (extending an industrial incentive tax credit). SB 321 had been referred to Senate Judiciary and Finance Committees, and on the last day of the Session it was still in Senate Judiciary.

Within SB 321, and therefore in the version of SB 471 that passed, was a new AS 28.15.151, a copy of which is attached as Exhibit A. That section limits access to drivers' records maintained by DMV, to certain other agencies and to the driver himself. It expressly forbids insurance companies from requiring access to the records as a condition of selling insurance to the driver.

Insurance companies, of course, rely heavily on the driver's record to determine whom to insure and what rates to charge. All their rating plans depend on access to those records. In fact, in other states, companies are criticized heavily for using factors other than driving records, such as age, sex or neighborhood, as underwriting criteria. If companies don't know who are good drivers and who are not, they will have to set rates assuming that some unknown number of applicants will be risks that are so bad they would not be written voluntarily, or would be written only with a substantial surcharge, as in the assigned risk pool. The rates that would result would of course be higher, and very unfair to those with good records. They could lead in turn to more uninsured motorists (now estimated at 25-40%), and less competition by insurers in Alaska.

The application of AS 28.15.151 has been enjoined by the Superior Court, pending reconsideration of that provision by the Legislature. In entering the injunction, the Court found that there were "serious and substantial" questions concerning the manner in which SB 471 was passed, and further found that an injunction was in the public interest. The Court had before it affidavits of Richard L. Block, then Director of Insurance, and Roger Crummett, then President of the Alaska Independent Insurance Agents and

Brokers, Inc., a trade association of most of the independent agents and brokers in the State. Pertinent excerpts from those affidavits are attached as Exhibits B and C. (Full copies of all pleadings are available).

Nobody wants or intends to go forward with the lawsuit, since it raises questions that would go to the validity of all of SB 471, and not just the section we are concerned with here.

What we ask is only that insurance companies - and perhaps others with legitimate need - be given access to the drivers' records. As set out more fully in the statements of Mr. Block and Mr. Grummett, we think that such access is essential if we are to try to keep insurance rates rationally related to the risk insured, and if we are to encourage competition in the Alaska insurance markets.

EXCERPT FROM AFFIDAVIT OF RICHARD L. BLOCK

The effect of Section 28.15.151 of Chapter 178, SLA 1978, and particularly subparagraphs (e) and (f) of that section, is to deny access by insurance companies to drivers' records maintained on drivers licensed in the State of Alaska, either directly or indirectly. That denial of access would have predictable and adverse effects upon large numbers of persons buying insurance in the State of Alaska, and upon the insurance industry itself.

Most rating plans for the sale of automobile insurance within the State of Alaska which are presently approved by my Division and in effect assume access to driving records as a basis for underwriting. The driving records are used both to screen for acceptable risks and to set rates. Companies set their own internal policies as to what risks they will voluntarily write, and drivers with records reflecting traffic violations or traffic accidents are often required to procure insurance from alternate insurance programs offered by the insurer or pay scheduled surcharges. Many companies also offer a range of rates depending on driving records, offering premium credits for the same coverage in the event the driver has a clean driving record.

There is in operation in the State of Alaska an "assigned risk plan" for private passenger automobiles and an "assigned risk pool" for commercial automobile risks, to insure that persons that want automobile insurance but do not meet underwriting criteria of the carriers are able to buy insurance. Risks are allocated to the companies who write automobile insurance in the State, and those companies are allowed to charge a substantially higher rate, recognizing the increased risk that persons who do not meet company underwriting standards present.

The effect of Section 151 would be to prohibit the use of driving records as a criteria for underwriting and thereby to invalidate the underlying assumptions in the rating plans presently approved. The indirect effect would be to force the companies to write insurance for an unknown number of persons who did not meet their underwriting criteria, persons who would normally be placed in the assigned risk pool. Some companies, especially those who now as a matter of company underwriting policy, write only better risks, would have to consider whether they could or would write on this completely different basis in the State of Alaska. All companies would be forced to file new rating plans taking into consideration the lack of access to driving records.

Predictably, companies would seek approval of rates which would be high enough to provide for the inclusion of risks which the companies have found by experience to be unprofitable at any rate lower than the assigned risk pool rates. Should the Division approve these rate filings, substantial numbers of insureds would be forced to pay substantially in excess of current rates and substantially in excess of what the experience of their hazard class dictates, thus making the rate unfairly discriminatory and violative of AS 21.36.080. If the Division disapproves, many insurers could be expected to withdraw from writing in this State further exacerbating the now tenuous automobile insurance market in this State.

The enforcement of Section 151 would have a definite tendency to make automobile insurance less competitive and more expensive within the State of Alaska, particularly for those persons who have average or better than average driving records.

EXCERPTS FROM AFFIDAVIT OF ROGER GRUMMETT

The principals of my company, and indeed all insurance agents actively engaged in the business in this State, are quite concerned about the impact of Section 28.15.151 of Chapter 178, SLA 1978. If it goes into effect on October 15, 1978, it will have a severe impact on all facets of automobile insurance in the State.

There will undoubtedly be a severe restriction in available market, since virtually all companies writing private passenger automobile insurance base their underwriting and rating on past driving experience and motor vehicle reports. Denial of access to those reports will result in a substantial loss of business to the companies presently in the market, and therefore will result in very restricted markets for the consumer. It is likely that the restricted market will mean overall higher rates for those consumers that are still able to obtain automobile insurance through standard companies. As a matter of fact, we have already received notice from one of our major underwriters, indicating that because of the passage of the statute, they will not accept any new private passenger automobile business. The restriction in market, which has already begun, will also undoubtedly have adverse impact on those drivers who have clean records, not only because of the restriction in markets and lessening of competition, but also because the carriers will have to charge higher rates to cover the unknown risks.

There will also be a substantial amount of lost revenue to the brokers and agents in the State of Alaska. Attempting to market any individual private passenger automobile risk will become very time consuming and expensive for the brokers. Further, many accounts that are not written in standard markets will undoubtedly wind up in the assigned risk pool, which charges a higher rate to the insured but develops a lower commission rate. It is also quite likely that a number of individuals will choose to do without insurance due to the higher rates, which is not only a poor result for the remainder of the driving public, but will result in additional lost revenue to agents and brokers.

Sec. 28.15.121. Restricted driver's license. (a) The department, in issuing a driver's license, may for good cause impose restrictions suitable to the licensee's driving ability with respect to mechanical control devices required on a motor vehicle which the licensee drives. The department may impose other restrictions applicable to the licensee that it determines to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The department may issue a special restricted license or may issue out restrictions on the usual license form.

(c) The department may, upon receiving satisfactory evidence of a violation of the restrictions on a license restricted or issued under this section, suspend the restricted license for a period not to exceed 30 days.

(d) No person may drive a motor vehicle in violation of the restrictions imposed on a restricted license. (§ 19 ch 178 SLA 1978)

Sec. 28.15.131. License to be carried and exhibited on demand. Every licensee shall have his driver's license in his immediate possession at all times when driving a motor vehicle, and shall present for inspection his license upon the demand of a peace officer or other authorized representative of the department who identifies himself as such. However, a person charged with violating this section may not be convicted if he produces in court or in the office of the arresting or citing officer, a driver's license previously issued to him which was valid at the time of his arrest or citation. (§ 19 ch 178 SLA 1978)

A licensing statute cannot be used as a means for obtaining information or evidence not related to the licensing requirement. *Schraff v. State*, Sup. Ct. Op. No. 1223 (File No. 2-53), 544 P.2d 1 (1975), decided under former AS 28.15.131.

Sec. 28.15.141. Duplicate driver's license. If a valid driver's license issued under this chapter is lost or destroyed, the person to whom the license was issued may, upon payment of the required fee, obtain a duplicate license. A person who recovers an original license for which a duplicate has been issued shall immediately surrender the duplicate to the department. (§ 19 ch 178 SLA 1978)

Sec. 28.15.151. Records to be kept by the department. (a) The department may maintain a file of

- (1) every driver's license application, license or permit and duplicate driver's license issued by it;
- (2) every license which has been suspended, revoked, canceled, limited, restricted, or denied, and the reasons for those actions; and
- (3) all accident reports required to be forwarded to the department under this title.

(b) The department may also maintain a file of all accident reports, abstracts of court records of convictions of vehicle, driver and traffic offenses, and other information which the department considers necessary to carry out the purposes of this chapter.

(c) The department shall, upon request, subject to the applicable provisions of AS 12.62 and (f) of this section and without charging a fee

Exhibit A

Mining

Title 28  
Motor Vehicles

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Article 2. Canc  
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28.15.161. Cancel  
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... Ct. Op. No. 574 (Fil

a municipal, state or federal administrative or judicial agency certified abstract of the driving record of a driver. The abstract include a listing of accidents in which the driver has been fined by the department or a court of competent jurisdiction to been liable, convictions of vehicle, driver and traffic offenses, any taken upon his license, and information relating to financial liability.

The department shall, upon request and payment of a fee fixed by the commissioner, furnish a driver with an abstract of driver's record as provided in (c) of this section.

An insurance carrier may not require a person to furnish an abstract of his driving record to the carrier as a condition for providing person with motor vehicle insurance.

Except as provided otherwise in this section, information and records under this section are declared confidential and private. (§ 19 ch 178 SLA 1978)

Article 2. Cancellation, Suspension, Revocation or Limitation of Drivers' Licenses.

	Section
Cancellation of driver's license	191. Court reports to department
Driving privileges of a person suspended in another jurisdiction:	201. Limitation of driver's license
Returning convictions, suspensions, and revocations	211. Periods of limitation, suspension or revocation; opportunity for hearing and surrender of license
On suspensions, revocations, and limitations	

28.15.161. Cancellation of driver's license. (a) The department may cancel a driver's license upon determination that the licensee is not medically or otherwise entitled to the issuance or retention of the license, or has been adjudged incompetent to drive a vehicle; there is an error or defect in the license; the licensee failed to give the required or correct information in application; or the license was obtained fraudulently. The licensee may apply for a new license at any time after cancellation upon removal of the cause for the cancellation. (§ 19 ch 178 SLA 1975)

of act. — This act plainly shows the intent that all revocations and suspensions of operators' licenses be made by the Department of Public Safety. See City of Anchorage, Sup. Ct. Op. No. 59, 358 P.2d 375 (1960), and other points in Roberts v. City of Anchorage, Sup. Ct. Op. No. 574 (File No. 992). 458 P.2d 340 (1969), Glasgow v. State, Sup. Ct. Op. No. 616 (File No. 1049), 469 P.2d 682 (1970), and Baker v. City of Fairbanks, Sup. Ct. Op. No. 618 (File No. 1141), 471 P.2d 386 (1970). These cases were decided under former AS 28.15.170. Am. Jur., ALR and C.J.S. references. — 5 Am. Jur., Automobiles, § 157 et seq.; 5A

Title 30  
Navigation, Harbors  
and Shipping

1-4-22  
Foster

Title 29  
Municipal Government

TESTIMONY OF THE DIVISION OF INSURANCE  
BEFORE THE SENATE JUDICIARY COMMITTEE  
FEBRUARY 12, 1980

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Failure to pass this or a similar bill will result in a vacation of the temporary restraining order already mentioned by the court. The impact of that on our program will be substantial since many new rating proposals will have to be reviewed for propriety, compliance with statute and waiting of new forms of discrimination for fairness. Further, the statistical studies and data available for previous years in Alaska will no longer be usable. This will leave Alaska automobile rate levels in doubt for at least three or four years to come. Passage of this particular legislation is very important.

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**House of Representatives**

May 12, 1980

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House Judiciary  
Capitol, Rm 124

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May 8, 1980

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Very truly yours,

John Gordon  
Associate Counsel

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CSSB 110  
TESTIMONY OF THE DIVISION OF INSURANCE  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
MAY 22, 1980

The Division of Insurance supports CSSB 110 and considers it a top priority legislative proposal. It would ammend a law adopted in 1978 (19 ch 178 SLA 1978) which bars access by an insurance company to the motor vehicle record of a person it insures both directly and indirectly. The 1978 law is not presently operable because of a court restraining order which in effect , continues access to motor vehicle records in the same manner that existed before the 1978 law.

The proposal before you would allow access to motor vehicle records of a driver by a person, including an insurance company, designated by that driver.

Almost all automobile insurance rating plans used in Alaska, and in most other states, use motor vehicle record data in the rating plan as a means to distribute their automobile insurance premium needs amongst policyholders. The driver with moving violations is likely to be paying a higher premium for his insurance than is the driver without moving violations, and we view that as appropriate. It is a reflection of his propensity to have loss.

If the motor vehicle record information is denied insurers, then all of the automobile rating structures on file with the Division of Insurance will have to be replaced with something that no longer considers that information, such as age, sex and marital status which though statistically supportable, is less socially acceptable. The effect of this will be to redistribute those surcharge premiums currently being applied to drivers with violations, to all drivers, resulting in an increase of premium for the driver with no violations on record. Those insurance companies that elect to write automobile insurance in this state will adjust to the new set of rules, but they are not the ones who would suffer the consequences of the 1978 law. The good driver will be the primary one to suffer since there would no longer be available to the insurance company a means to separate the two.

Failure to pass this bill will result in a vacation of the temporary restraining order already mentioned, by the court. The impact of such an action on our program will be substantial since many new rating proposals will have to be reviewed for propriety and compliance with statute. We will also have to consider new forms of discrimination for fairness. The statistical studies and data available for previous years in Alaska will no longer be usable leaving our rate levels in doubt for at least three or four years to come. Passage of this legislation is very important. We would urge your action on this bill to continue availability of motor vehicle record data to insurers.