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BILL CONTACT/ACTION

DATE	CONTACT/ACTION
3/14	NOTIFIED OF MEETING COMMENCING ON 3/20
	# 27 - all bills will be heard, 1005
	ME. 1005: DEPT. DOWNSIDE (4372) SUM WADEN
	SENATOR RAY (4922)
3/18	NOTIFIED SUM WADEN (#4322) OF 3/20 MEETING
	ALSO SENATOR RAY (#4922). SHOULD GO 1ST
	DURING THIS MEETING - UPSET AT NOT
	BEING CALLED & BEING KEPT WAITING 3/17

DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - CS SB 323 (S.A.)

Neutral

February 4, 1986

CS SB 323 (S.A.) An Act relating to suspension and revocation of a minor's license to drive and the definition of driver's license.

The committee substitute addresses the problem areas previously addressed in the original bill.

As a point of information, current law (AS 28.20.240) will require the individual to file and maintain proof of financial responsibility for the future (SR-22 insurance) for three years. If the SR-22 is not filed the license action will continue for that additional three year period.


ROBERT J. SUNDBERG
Commissioner

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 323 (State Affairs)
 Title : An Act relating to suspension
 and revocation of a minor's license
 to drive.....
 Sponsor : Ray
 Requestor : Senate State Affairs
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Motor Vehicles

 Components : Driver Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		5.4	7.5	7.9	8.3	8.7
TRAVEL						
CONTRACTUAL		.2	.2	.2	.2	.2
SUPPLIES		.1	.1	.1	.1	.1
EQUIPMENT		2.3				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		8.0	7.8	8.2	8.6	9.0

CAPITAL						
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REVENUE		1.0	10.0	20.0	40.0	40.0
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FUNDING : (Thousands of Dollars)

GENERAL FUND		8.0	7.8	8.2	8.6	9.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME		1	1	1	1	1
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

One part-time clerical position will be necessary to handle additional work load, including preparing file, entry of license action on computer, preparing certified copies, notifying individual, maintaining proof of insurance file, preparation of records for microfilm, entry of data on microfilm retrieval system, etc. Cost breakdown attached.

Prepared by : Bill Brown
 Division : Motor Vehicles

Phone : 465-2650

Date : 2/03/86

Approved by Commissioner : [Signature]
 Agency : _____

Date : 2/3/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 323(State Affairs)

DETAIL

100	Personal Services		
	One Document Processing Clerk II	5.4	5.4
	Part time - 2 hours per day		
300	Contractual		
	310 Postage and tolls	.2	.2
400	Commodities		
	Normal office supplies	.1	.1
500	Equipment		
	1 typewriter	1.2	
	1 desk	.6	
	1 chair	.2	
	1 file cabinet	.3	
		2.3	
	TOTAL		8.0

INFORMATION

It has been learned that of the total number of youth ages 13 to 17 who are arrested for offenses outlined in AS 28.15.185(a)(1) & (2), an estimated 300 to 400 will be convicted or adjudicated by a juvenile court. Therefore, a full time position will not be required to process the additional workload, and the fiscal note has been revised downward for a part-time position only.

With the effective date being September 1, 1986, documents will not start being received from the Court until around October 1, 1986. Therefore, personal services for FY87 reflect a nine month period with the employee being hired October 1, 1986. Other items are budgeted accordingly with the first full year being FY88.

FY88 and subsequent years reflect a 5% inflation factor

REVENUE

Statutes require payment of a \$100.00 reinstatement fee prior to issuance of a driver's license following a suspension or revocation. The revenue indicated is based on an estimation of the number of minor's whose driving privileges were taken away under this legislation who would not have otherwise lost those privileges, and who will apply for a license and pay the \$100.00 fee.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSB 323 (SA)
 Title : "An Act relating to suspension
 and revocation of a minor's license
 to drive..."
 Sponsor : Senator Ray
 Requestor : Senate Judiciary
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Alaska State Troopers

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

K Niles
 Prepared by : Kathy Niles, Admin. Assistant Phone : 465-4336
 Division : Commissioner's Office Date : 2/19/86

Approved by Commissioner : *[Signature]* Date : _____
 Agency : Public Safety

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)



CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

10002 Glacier Hwy., Rm. 201
Juneau, AK 99801 (907) 789-4889

September 11, 1985

Senator Bill Ray
Alaska State Capitol
Pouch Y
Juneau, AK 99811

Dear Senator Ray:

What can we do to help stop our youth from drinking and driving?

The state of Oregon has found the answer! In 1984 they adopted a law called "Youth Substance Abuse and Driving Accident Prevention". Since the law was adopted in September of 1984 the Division of Motor Vehicles of Oregon has denied driving privileges to more than 1,292 youths. (See attachments)

As supervisor of the local alcohol/drug abuse clinic I know there is an extremely high correlation between youths receiving minor consuming charges and a year or two later showing up at the clinic with a DWI. I feel this type of legislation has a twofold beneficial effect: it will initially make our roads safer and secondly it will help to impact the severity of drinking and driving on our youth.

Please give this legislation your careful attention!

If I can be of any assistance please call on me!

Sincerely,

W J PLATTE
Clinical Supervisor

WJP/bjl

Merry

Enrolled

House Bill 2975

Sponsored by Representatives LOMBARD, AGRONS, ANDERSON, BELLAMY, BROGOITTI, CALOURI, DeBOER, FARMER, FORD, HARPER, MARKHAM, MILLER, PARKINSON, VAN VLIET, VanLEEuwEN, YOUNG, ZAJONC, Senator THORNE, Representatives BURROWS, JOHNSON, D. JONES, Senators HANNON, HEARD (at the request of Wes Smith, Principal, Ashland Jr. High School)

CHAPTER.....

AN ACT

Relating to driving privileges; creating new provisions; and amending ORS 482.470.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) Whenever a person who is 17 years of age or younger, but not younger than 13 years of age, is convicted of any offense described in this subsection or determined by a juvenile court to have committed one of the described offenses, the court in which the person is convicted shall prepare and send to the Motor Vehicles Division, within 24 hours of the conviction or determination, an order of denial of driving privileges for the person so convicted. This section applies to any crime, violation, infraction or other offense involving the possession, use or abuse of alcohol or controlled substances.

(2) If a court has issued an order of denial of driving privileges under this section, the court, upon petition of the person, may review the order and may withdraw the order at any time the court deems appropriate except as provided in the following:

(a) A court may not withdraw an order for a period of 90 days following the issuance of the order if it is the first such order issued with respect to the person.

(b) A court may not withdraw an order for a period of one year following the issuance of the order if it is the second or subsequent such order issued with respect to the person.

SECTION 2. Section 3 of this Act is added to and made a part of ORS chapter 482.

SECTION 3. (1) In addition to any other authority to suspend driving privileges under this chapter, the division shall suspend all driving privileges of any person upon receipt of an order of denial of driving privileges under section 1 of this 1983 Act. The suspension shall be imposed without hearing. The driving privileges of the person shall be suspended as provided in the following:

(a) Upon receipt of the first order denying driving privileges, the division shall impose a suspension for one year, or until the person so suspended reaches 17 years of age, whichever is longer.

(b) Upon receipt of a second or subsequent order denying driving privileges, the division shall suspend for one year or until the person reaches 18 years of age, whichever is longer.

(2) If the division receives notice from a court that it has withdrawn an order issued under section 1 of this 1983 Act, the division shall immediately reinstate any driving privileges that have been suspended under this section because of the issuance of the order.

SECTION 4. ORS 482.470 is amended to read:

482.470. (1) The division shall not suspend a license for a period of more than one year except:

- (a) As provided in ORS 482.430 (3) and (4) and section 3 of this 1983 Act;
- (b) As provided in ORS 482.440 in the case of offenses which, if committed by a driver under ORS 482.430, would result in mandatory suspension or revocation for more than one year;
- (c) When the suspension results from failure to obtain medical clearance when requested to do so under ORS 482.260 (1)(d)(B);
- (d) When the driver fails to complete reexamination as required under ORS 482.260 (4); or
- (e) When the driver fails to complete a requirement of ORS 482.850.

(2) When the operator's or chauffeur's license of any person has been suspended, the division shall not issue an operator's or chauffeur's license to the person prior to the expiration of the suspension period, except as otherwise provided in this chapter.

(3) When any license is suspended or revoked it shall be surrendered to and retained by the division. Upon the conviction of any operator or chauffeur for any offense which by this chapter is cause for mandatory suspension or revocation, the court in which the conviction was had shall issue an order of suspension or revocation, take up the operator's or chauffeur's license and immediately forward the license and a copy of the order to the division. When necessary to give full effect to this section, the court shall issue a temporary operator's permit, on a form provided by the division, to the convicted person which shall be valid until midnight of the day of the conviction. At the end of the period of suspension upon a license so surrendered, it shall be returned to the licensee upon request being made to the division by the licensee. However, the division may require the licensee to furnish evidence to the effect that the licensee is qualified to continue as an operator or chauffeur under this chapter, before returning the license.

SECTION 5. Section 6 of this Act is added to and made a part of ORS chapter 482.

SECTION 6. Notwithstanding any suspension of driving privileges under section 3 of this 1983 Act, the division may issue a special temporary permit described under ORS 482.160 (2) to a person whose driving privileges are suspended under section 3 of this 1983 Act if the person qualifies for the special temporary permit. For purposes of this section an emergency situation that leaves the applicant with no alternative means to travel to and from school is an emergency for purposes of ORS 482.160 (2) in addition to other emergency situations.

SECTION 7. If House Bill 2965 becomes law, section 6 of this Act is repealed and section 8 of this Act is enacted in lieu thereof.

SECTION 8. Notwithstanding any suspension of driving privileges under section 3 of this 1983 Act or ORS 165.805 or 471.430, the division may issue a special temporary permit described under ORS 482.160 (2) to a person whose driving privileges are suspended under section 3 of this 1983 Act or under ORS 165.805 or 471.430 if the person qualifies for the special temporary permit. For purposes of this section an emergency situation that leaves the applicant with no alternative means to travel to and from school is an emergency for purposes of ORS 482.160 (2) in addition to other emergency situations.

Passed by House June 16, 1983

Repassed by House July 15, 1983

.....
 Chief Clerk of House

.....
 Speaker of House

Passed by Senate July 11, 1983

.....
 President of Senate

Received by Governor:

..... M., 1983

Approved:

..... M., 1983

.....
 Governor

Filed in Office of Secretary of State:

..... M., 1983

.....
 Secretary of State

600 denied privileges

More than 600 Oregon youths between the ages of 13 and 17 were denied driving privileges during the first six months in 1985, according to Motor Vehicles Division.

Denials are based on court convictions involving alcohol or drug

possession, use or abuse. Courts then order DMV to deny licenses.

Most of the 627 denials ordered during the first six months of this year were for alcohol offenses. Minors in possession of alcohol or drugs accounted for 577, or 92 percent of the total. Twenty-seven denials were for having an open container or drinking alcohol in a motor vehicle, and eight were for driving under the influence.

Fifteen denials were ordered for miscellaneous alcohol and drug offenses, such as theft, delivery or manufacturing of a controlled substance.

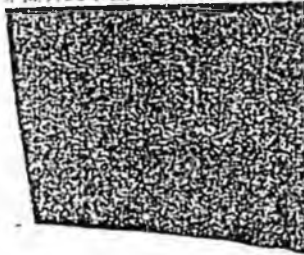
Males accounted for 74 percent of the 627 total.

Denials of driving privileges for first offenders is one year or until the person becomes 17, whichever is longer. Repeat offenders are suspended for a year or until the person becomes 18, whichever is longer.

DMV statistics show 62 second denials and four third denials (all males) during the first six months of 1985.

FACE

os County



Licenses revoked

Myrtle Point, Oregon 10/31/84

Seventy-one young people were denied driving privileges by court order during September. Denials were based on violations of alcohol or drug laws by young people between the ages of 13 and 17.

Most of the young people (48) who were denied driving privileges last month were males. The most frequent reason for denial was "minor

in possession of alcohol" which, alone, accounted for 76 percent (54) of the court ordered denials.

The Motor Vehicles Division's administrator, David P. Moonaw, said that the September figure brings the number of denials so far this year to 692. The law took effect late in 1983.

Other grounds for denial last month were minor in possession of drugs, 11; having an open container of an alcoholic beverage in a motor vehicle, 4; and intoxicated minor (not related to driving), 2.

Three denials were for 13-year olds. Five were 14 years old; 10 were 15 years old; 21 were 16 years old and 32 were 17 years old.

Under the law, denial means no license can be issued or a license already issued must be taken away for one year or until the person becomes 17, whichever is longer. Repeat offenders, however, are suspended or denied a license for one year or until the person becomes 18, whichever is longer.

~~100 P2 and 815~~

... which they supply convey a certain impression of unreliability, and it is proper to demand that some evidence of their credibility and reliability be shown. One practical way of making such a showing is to point to accurate information which they have supplied in the past.

Erickson, 507 P.2d at 517 (footnote omitted).

(1) Somewhat surprisingly, courts faced with anonymous informants in contexts similar to this one have been willing to characterize the informant as a citizen informant. See, e.g., *Campbell v. State Department of Licensing*, 31 Wash.App. 823, 644 P.2d 1219, 1220 n. 1 (1982). Upon closer examination, however, the reason becomes clear. Informants from the criminal milieu are distrusted because they often give evidence against the defendant: (1) for pay; (2) for immunity from punishment; or (3) for personal advantage or vindication. See *Evans v. State*, 550 P.2d 830, 843 & n. 35 (Alaska 1976). Since the informant here is anonymous and his tip conveyed by police through a police dispatcher, it is unlikely that he gave information in expectation of any one of these rewards. While the possibility of an anonymous informant's hostility to the defendant motivated by a false claim is always present, it is of less significance in the context of a R.E.D. report than other considerations. A primary reason for distrusting anonymous informants is the fear that there will in fact be no informant and that the officer will blame a fictional informant to account for information which in fact was illegally obtained or to justify a search or seizure based on an unsupported hunch that ultimately proved inaccurate. The court must be sensitive to the risk that an anonymous informant is fictitious. Where the court has induced the risk that the police induced an informant in order to justify a search or seizure on illegally obtained evidence or to justify a successful search, courts are more likely to classify an anonymous informant as a "citizen informant." See, e.g., *Commonwealth v. An-*

[P]olice at the Boston Greyhound terminal were summoned by a dispatcher and handed a note saying that there was a black man wearing a blue hat carrying a brown paper bag who had a gun and narcotics on the bus from New York to Boston. The dispatcher explained that the note had been given by a bus driver, who in turn received it from a man in a toll booth who said he had been thrown into the booth by someone on a New York to Boston bus, and who passed the other bus and arrived at the terminal ahead of it. The bus from which the note had been thrown then arrived, and the first passenger to exit was a black man with a blue hat carrying a brown paper bag, who walked briskly when he saw the police on the scene. In upholding the stop which was then made, the court properly emphasized (i) that the police could not be faulted for not having more details, and (ii) that there was no risk of fabrication.

LaFave then quotes from the case:

In this case we are of the opinion that there exists indicia of reliability to sustain the police officer's actions. First, the inference could be drawn from the note that the informant was on the same bus as the defendant and very probably based his information on personal observations. The brevity and the lack of detail of the note are explainable by a need to act quickly in getting the message to the toll booth operator for the authorities. It is not unimportant that the message was in writing and was passed on by some disinterested citizen, thus eliminating the possibility of a police fabrication which is a principal concern in assessing the propriety of a threshold inquiry launched by an anonymous tip.

3 W. LaFave, *supra*, § 9.3, at 102-03, quoting *Anderson*, 318 N.E.2d at 838. The facts here are substantially similar to those in *Anderson*. The informant reported

... is that he observed Effenbeck ... and reached the conclusion that ... was intoxicated based on that ... The brevity and lack of detail ... description are explainable by the ... need to act quickly to get the ... to the police so that they could ... Effenbeck before he injured ... Finally, the circumstances virtu- ... eliminate the possibility of police fabri-

A further comment by Professor LaFave

Finally, it must be acknowledged that stoppings for investigation are not all of one kind and that in some instances the need for immediate action may be so great that substantial doubts about the reliability of the informant or his information cannot be permitted to stand in the way of prompt police action. But the fact that this is so in certain extraordinary situations is not to suggest that the same sacrifice of reliability must be made across the board in stopping-for-investigation cases.

3 W. LaFave, *supra*, § 9.3, at 103. LaFave goes on to distinguish cases such as this one where police action is necessary to intercept and prevent injurious conduct and cases where an investigatory stop is made to seize drugs or gambling paraphernalia. *Id.* at 103-04. In Alaska, our supreme court has essentially limited investigatory stops to the first situation. See *Ebona v. State*, 577 P.2d 698, 700 (Alaska 1978); *Coonan v. State*, 553 P.2d 10, 43 (Alaska 1976). Given the information the officer had, corroborated in part by his observing Effenbeck leaving a bar parking lot, we are satisfied that the exigencies of this situation warranted the investigatory stop.

The judgment of the district court is AFFIRMED.

* Johnstone, Superior Court Judge, sitting by assignment made pursuant to article IV, section

Roberts

v.
STATE of Alaska, Appellee.

No. A-312.

Court of Appeals of Alaska.

May 31, 1985.

Defendant was convicted of driving while his license was suspended, and defendant filed motion for postconviction relief. The District Court, Third Judicial District, Anchorage, Natalie K. Finn, J., denied motion, and defendant appealed. The Court of Appeals, Bryner, C.J., held that defendant who did not have valid driver's license in any jurisdiction when State purported to suspend his privilege to drive could not be convicted of offense of driving while license was suspended.

Reversed.

Automobiles §326

Defendant who did not have valid driver's license in any jurisdiction when State purported to suspend his privilege to drive could not be convicted of offense of driving while license was suspended. AS 28.15.011(a), 28.15.291, 28.35.230(b)(now AS 28.40.050(b)).

James L. Johnston, Anchorage, for appellant.

Russell S. Babcock, Asst. Dist. Atty., Victor C. Krumm, Dist. Atty., Anchorage, and Norman C. Gorsuch, Atty. Gen., Juneau, for appellee.

OPINION

Before BRYNER, C.J., SINGLETON, J., and JOHNSTONE, Superior Court Judge.*

16 of the Constitution of Alaska.

REASON FOR SECTION 3 Lawsuit

700 P.2 815

... while his license was suspended (DWLS), in violation of AS 28.15.011. He later filed a motion for post-conviction relief, seeking to set aside his conviction based on this court's decision in *Francis v. Anchorage*, 641 P.2d 226 (Alaska App. 1982). District Court Judge Natalie K. Finn denied the motion. Roberts has appealed, claiming that the District Court erred in failing to vacate his DWLS conviction. We reverse.

Roberts has apparently never had an Alaska driver's license. It is uncontested that his California driver's license expired sometime during or prior to 1981. In 1982 and 1983 the State of Alaska purported to suspend Roberts' driver's license or privilege to drive based on (1) a conviction for driving while intoxicated, (2) an accumulation of points, and (3) failure to provide proof of financial responsibility.

Subsequently, on June 8, 1983, Roberts was arrested for DWLS. After being convicted of that offense, Roberts moved to have the conviction vacated. He argued that, since he did not have a valid driver's license in any jurisdiction when the state purported to suspend his privilege to drive in 1982-1983, he had no license or driving privilege to suspend. Accordingly, Roberts

1. At the time of Roberts' offense, AS 28.15.291 provided in relevant part:

Driving while license cancelled, suspended, or revoked, or in violation of limitation.

(a) No person may drive a motor vehicle on a highway or vehicular way or area in this state at a time when his driver's license, or privilege to drive in this state if he is licensed in another jurisdiction, has been cancelled, suspended or revoked, or when he is driving in violation of the limitation placed upon his license, even when he is driving under a license issued in another jurisdiction....

2. We have previously held, as a matter of policy, that an attack on the validity of an administrative suspension could not properly be brought the first time collaterally, in a prosecution for DWLS. See *McClain v. State*, 641 P.2d 1277 (Alaska App. 1982). Our decision in *McClain* however, involved a non-judicial challenge—one that did not implicate the authority of the suspending agency. We note that cases from other jurisdictions have drawn distinctions between collateral challenges involv-

ing the District Court of his post-conviction motion, Roberts appeals, reasserting the argument he raised below.²

In *Francis v. Anchorage*, 641 P.2d 226 (Alaska App. 1982), we considered a case which was similar to the one raised by Roberts. *Francis* involved a fifteen-year-old driver who was convicted of DWLS under section 9.12.010(B) of the Anchorage Municipal Code.³ Prior to Francis' DWLS arrest, the state had suspended his driving privilege for failure to furnish proof of financial responsibility following an accident. Francis argued that he could not properly be convicted of DWLS because, at the time the state purported to suspend his driving privilege, he had no license or privilege to suspend. In reversing Francis' conviction, we expressly ruled that a driver's license or privilege to drive cannot properly be suspended unless the driver was in fact licensed or otherwise actually privileged to drive a motor vehicle within the state. Specifically, we held:

In the context of the municipal ordinances and the state's driver's licensing scheme, we conclude that "privilege to drive" must mean some kind of legal authorization to drive. The privilege in this sense follows issuance of a driver's

ing jurisdictional and non-jurisdictional arguments against the validity of a driver's license suspension. See, e.g., *State v. Putman*, 137 Vt 410, 407 A.2d 161 (1979). Ultimately, we need not decide whether a collateral attack raising jurisdictional questions should generally be adjudicated on its merits in cases such as the present one. Roberts' claim is clearly jurisdictional in nature. Judge Finn ruled on the merits of Roberts' argument below, and the state has not contended, either below or on appeal, that a collateral attack should not be considered in this case. Under these circumstances, we have deemed it appropriate to decide Roberts' claim despite its collateral nature.

3. At the time of Francis' offense, AMC 9.12.010(B) provided:

No person may violate a condition or privilege of such license, nor may any person drive a vehicle while such license is suspended, revoked, refused or cancelled....

argument. We reject the interpretation suggested by the city that privilege to drive means nothing more than privilege to apply for a driver's license. While we recognize that at age fourteen, Francis had the opportunity under state law to apply for two categories of licenses, such an opportunity gave him no privilege to drive a vehicle on the public streets; that privilege is earned only by successfully completing the application process, including passing a written test, driving test, and eye test.

641 P.2d at 227 (citations omitted).

The only arguably significant distinction we perceive between the present case and *Francis* is that Roberts was convicted of DWLS under state law, while *Francis* was convicted under the Anchorage Municipal Code. Although the state relies on this distinction in urging us not to apply our decision in *Francis* to the present case, we decline to do so. As we noted in our opinion, the DWLS ordinance in *Francis* was analogous to the Alaska Statutes. *Francis*, 641 P.2d at 227. Moreover, while *Francis* was convicted under the municipal DWLS ordinance, it was the state, not the municipality, that had previously purported to suspend Francis' license. The validity of the state suspension was thus the legal issue on which Francis' claim ultimately turned. Since Francis' driving privileges had been suspended under state law rather than city ordinance, our holding in that case was necessarily based on an interpretation of both state and municipal law.

The state nevertheless requests that we consider overruling *Francis*. It advances two arguments in support of this request. Initially, the state relies on former AS 28.35.230(b) (renumbered AS 28.40.050), which states:

(b) A person convicted of a misdemeanor for a violation of a provision of this title for which another penalty is not specifically provided is punishable by a fine of not more than \$500, or by imprisonment for not more than ninety days, or

may be suspended or revoked. (emphasis added).

The state points out that the penalties specified in this statute are applicable to the offense of DWLS, since no penalties are otherwise expressly provided for that offense. See AS 28.15.011(b). The state's argument is that, since a license suspension is expressly authorized under former AS 28.35.230(b), and since that provision applies to persons convicted of DWLS, then it must follow that it is possible to suspend the license, or "privilege to drive," of an unlicensed driver.

The state's argument might seem plausible if former AS 28.35.230(b) were a penalty provision dealing specifically with the offense of DWLS. Yet it is not. Instead, former AS 28.35.230(b) is a generic penalty provision, broadly applicable to violations of all Title 28 provisions for which the specific penalties are given. Consequently, inclusion of license suspension as a possible penalty in AS 28.35.230(b) gives little realistic insight to whether the legislature actually intended unlicensed drivers to be subject to license suspensions.

The state's second statutory argument is based on AS 28.15.011(a), which provides:

(a) No person shall be denied the privilege to drive a motor vehicle upon a highway in this state, except as prescribed by law.

The state argues that the effect of this statute is to confer on all citizens of Alaska a "privilege to drive," which can be restricted only by law. Under this interpretation, all persons—presumably including infants and children—are privileged drivers, and, hence, their driving privileges can be suspended before they are licensed.

The state's interpretation of AS 28.15.011(a) was implicitly rejected by our holding in *Francis*. In our view, the provisions of AS 28.15.011(a) constitute a broad statement of the legislature's intent, in enacting the motor vehicle code, to adopt a statutory scheme that deals with the licensing of Alaska drivers in a comprehensive and uni-

form manner. We do not read this subsection as a legislative commitment to the philosophical concept of an innate privilege to drive.⁴

In short, we discern no basis for holding that this case is not wholly governed by our decision in *Francis*, nor are we convinced of any sound reason for overruling that precedent.

We are not insensitive to the fact that the current statutory scheme governing the suspension of driver's licenses and the offense of DWLS, as interpreted by this court in *Francis*, may in certain instances lead to undesirable results. We emphasize, however, that *Francis* comports with Alaska's current statutory language and reflects the result reached in other jurisdictions that have addressed similar issues

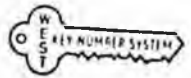
4. In any event the state's reading of AS 28.15.011(b) ultimately fails to advance its argument. Assuming that the statute originally vested Roberts with a broad "privilege to drive," it is manifest that, under the provisions of the motor vehicle code, the privilege was extinguished by Roberts' failure to renew his California driver's license or to apply for an Alaska license. Thus, even under the state's theory it would be possible to conclude, that prior to the state's action to suspend driving privilege, his "privilege to drive" had in effect been denied "as prescribed by law." AS 28.15.011(a).

under similar statutory language. See *Francis*, 611 P.2d at 228.

At this stage we believe that the solution for any problems stemming from the current statutory language should properly be resolved through legislative action rather than by the process of judicial interpretation.⁵

The conviction is REVERSED.

COATS, J., not participating.



5. The New York legislature has apparently recently dealt with this issue and remedied prior legislation by expressly providing for suspension of "the privilege to obtain a license." Moreover, for the purposes of the offense of DWLS, New York Statutes expressly define an expired driver's license to fall within the definition of "license." See *People v. Rivera*, 95 Misc.2d 933, 408 N.Y.S.2d 723 (N.Y.Crim.Ct. 1978); *People v. Goodenough*, 89 Misc.2d 455, 391 N.Y.S.2d 940 (N.Y. Justice's Ct. 1977).

Jerry JONES and Sandra Jones, husband and wife, Plaintiffs/Appellees,
v.

PAK-MOR MANUFACTURING COMPANY, Defendant/Appellant.

No. 17412-PR.

Supreme Court of Arizona,
En Banc.

Jan. 17, 1985.

Garbage collector brought product liability action against manufacturer of garbage compactor for injuries he sustained while riding on exterior of compactor. The Superior Court, Pima County, No. 179374, Robert B. Buchanan, J., entered verdict in favor of plaintiff, and defendant appealed. The Court of Appeals, 700 P.2d 830, affirmed, and defendant petitioned for review. The Supreme Court, Feldman, J., held that: (1) in product liability cases involving a claim of defective design, trial court has discretion to admit evidence of safety history concerning both existence and nonexistence of prior accidents, provided that the proponent establishes the necessary predicate for the evidence, but (2) testimony of manufacturer's president that manufacturer had had no reports of any injuries similar to that sustained by plaintiff was inadmissible.

Opinion vacated in part and approved in part.

1. Products Liability \approx 81

In products liability actions, although trial court has discretion to admit evidence of prior accidents, rule relating to inadmissibility of evidence of absence of prior accidents is a per se rule.

2. Products Liability \approx 81

3. Products Liability \approx 74

In product liability actions based on defective design, relevant issues may include whether defendant should have foreseen the potential danger from use of the product as designed, whether a defect existed, and whether a particular danger was unreasonable, including the likelihood of its causing serious injury. 17A A.R.S. Rules of Evid., Rules 401, 402.

4. Products Liability \approx 81

In product liability cases involving a claim of defective design, whether based on negligence, strict liability, or both, trial court has discretion to admit evidence of safety history concerning both existence and nonexistence of prior accidents, provided that the proponent establishes the necessary predicate for the evidence. 17A A.R.S. Rules of Evid., Rule 403.

5. Products Liability \approx 81

In product liability cases involving a claim of defective design, evidence of safety history is admissible on issues pertaining to whether design caused the product to be defective, whether the defect was unreasonably dangerous, whether it was a cause of the accident, or, in negligence cases, whether defendant should have foreseen that the design of the product was not reasonably safe for its contemplated uses. 17A A.R.S. Rules of Evid., Rule 403.

6. Products Liability \approx 81

In cases involving a manufacturing flaw, fact that product as a whole has a demonstrated safety history is irrelevant. 17A A.R.S. Rules of Evid., Rule 402.

7. Products Liability \approx 81

In products liability action brought by garbage collector against manufacturer of garbage compactor, testimony of manufacturer's president that during period of time compactor had been in use, manufacturer had received no reports of any injuries similar to those sustained by plaintiff was inadmissible to show product was not de-

Ford
3/19/86

Original sponsor: Ray

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 323 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to suspension and revocation of a
7 minor's license to drive and the definition of driv-
8 er's license; and providing for an effective date."

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

10 * Section 1. AS 28.15.181(c) is amended to read:

11 (c) Except for court revocation of a minor's license to drive
12 under AS 28.15.185, a [A] court convicting a person of an offense
13 described in (a)(5) or (8) of this section arising out of the opera-
14 tion of a motor vehicle for which a driver's license is required shall
15 revoke that person's driver's license as provided in this subsection.
16 The revocation may be concurrent with or consecutive to an administra-
17 tive revocation under AS 28.15.165. The court may not, except as
18 provided in (e) of this section, grant limited license privileges for
19 the following periods:

20 (1) not less than 90 days if, within the preceding 10
21 years, the person has not previously been convicted of an offense

22 (A) described in (a)(5) or (8) of this section; or

23 (B) under a law or ordinance in another jurisdiction
24 with elements substantially similar to an offense described in
25 (a)(5) or (8) of this section;

26 (2) not less than one year if, within the preceding 10
27 years, the person has been previously convicted of one offense

28 (A) described in (a)(5) or (8) of this section; or

29 (B) under a law or ordinance in another jurisdiction

1 with elements substantially similar to an offense described in
2 (a)(5) or (8) of this section;

3 (3) not less than 10 years if, within the preceding 10
4 years, the person has been previously convicted of more than one of
5 the following offenses or has more than once been previously convicted
6 of one of the following offenses:

7 (A) an offense described in (a)(5) or (8) of this
8 section; or

9 (B) an offense under another law or ordinance in
10 another jurisdiction with elements substantially similar to an
11 offense described in (a)(5) or (8) of this section.

12 * Sec. 2. AS 28.15 is amended by adding a new section to read:

13 Sec. 28.15.185. COURT REVOCATION OF A MINOR'S LICENSE TO DRIVE.

14 (a) A person who is at least 13 years of age, but not older than 17
15 years of age who is convicted, or adjudicated by a juvenile court, of
16 having committed one of the following offenses shall have the person's
17 driver's license revoked:

18 (1) misconduct involving a controlled substance (AS 11.71);

19 (2) possession or consumption of alcohol (AS 04.16.050);

20 (3) driving a motor vehicle while intoxicated (AS 28.35.-
21 030);

22 (4) refusal to submit to a chemical test (AS 28.35.032).

23 (b) The court shall impose the revocation as follows:

24 (1) for a first conviction or adjudication, the revocation
25 shall be for one year or until the person reaches 17 years of age,
26 whichever is longer;

27 (2) for a second or subsequent conviction or adjudication,
28 the revocation shall be for one year or until the person reaches 18
29 years of age, whichever is longer.

1 (c) Upon conviction or adjudication of an offense listed in (a)
2 of this section the court may, upon petition of the person, review the
3 revocation and may restore the driver's license, except a court may
4 not restore the driver's license for a period of

5 (1) 90 days for the first conviction or adjudication;

6 (2) one year for second or subsequent convictions or adju-
7 dications.

8 * Sec. 3. AS 28.40.100(a)(5) is amended to read:

9 (5) "driver's license" or "license" when used in relation
10 to driver licensing, means a license, permit or privilege to obtain a
11 driver's license, whether or not a person holds a valid license issued
12 in this or another jurisdiction, to drive a motor vehicle under the
13 laws of this state;

14 * Sec. 4. AS 47.10.090(a) is amended to read:

15 (a) The court shall make and keep records of all cases brought
16 before it. The court's official records may be inspected only with
17 the court's permission and only by persons having a legitimate inter-
18 est in them. All information and social records pertaining to a minor
19 and prepared by an employee of the court or by a federal, state or
20 city agency in the discharge of the employee's or agency's official
21 duty, are privileged and may not be disclosed directly or indirectly
22 to anyone without the court's permission, except for traffic offenses
23 and driver's license action taken under AS 28.15.185. Traffic of-
24 fenses and driver's license action may not be disclosed without the
25 court's permission, except as specified in AS 28.15.151. However, a
26 state or city law-enforcement agency shall disclose information re-
27 garding a case which is needed by the person or agency charged with
28 making a preliminary investigation for the information of the court.
29 The court shall forward a record of adjudication of a violation of an

1 offense listed in AS 28.15.185(a) to the Department of Public Safety.
 2 Within 30 days of the date of a minor's 18th birthday or, if the court
 3 retains jurisdiction of a minor past the minor's 18th birthday, within
 4 30 days of the date on which the court relinquishes jurisdiction over
 5 the minor, the court shall order sealed all the court's official
 6 records, information and social records pertaining to that minor, as
 7 well as records of all criminal proceedings against the minor and
 8 punishments assessed against the minor except for traffic offenses and
 9 driver's license action taken under AS 28.15.185. A person may not
 10 use these sealed records for any purpose except that the court may
 11 order their use for good cause shown or may order their use by an
 12 officer of the court in making a presentencing report for the court.

13 * Sec. 5. This Act takes effect September 1, 1986.
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