SB

323

Introduced: 1/13/86
Referred: State Affairs
and Judiciary

IN THE SENATE BY RAY

SENATE BILL NO. 323

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to suspension and revocation of a minor's license to drive and the definition of driver's license; and providing for an effective date."

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

* Section 1. AS 28.15 is amended by adding a new section to read:

Sec. 28.15.163. ADMINISTRATIVE SUSPENSION OF A MINOR'S LICENSE. (a) In addition to any other authority in this chapter to cancel, suspend or revoke a driver's license, the department shall suspend a minor's license to drive upon receipt of a record of conviction or adjudication of a violation of an offense listed in AS 28.15.185(a). The department shall impose the suspension as follows:

(1) for a first conviction or adjudication, the suspension shall be for one year or until the person reaches 17 years of age, whichever is longer.

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

(b) If the department receives notice from a court that it has restored a minor's license to drive under AS 28.15.185(b), the department shall immediately reinstate a driver's license that has been suspended under this section.

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

Sec. 28.15.185. COURT REVOCATION OF A MINOR'S LICENSE TO DRIVE. (a) A person who is at least 13 years of age, but not older than 17

years of age who is convicted, or adjudicated by a juvenile court, of having committed one of the following offenses shall have the person's driver's license revoked:

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

(2) possession or consumption of alcohol (AS 04.16.050).

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

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

(2) one year for second or subsequent convictions or adjudications.

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

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

* Sec. 4. AS 47.10.080(g) is amended to read:

(g) <u>Except for purposes of driver's licensing under AS 28.15.-163, an</u> [NO] adjudication under this chapter upon the status of a child may <u>not</u> operate to impose any of the civil disabilities ordinarily imposed by conviction upon a criminal charge, nor may a minor afterward be considered a criminal by the adjudication, nor may the adjudication be afterward deemed a conviction, nor may a minor be charged with or convicted of a crime in a court, except as provided in this chapter. The commitment and placement of a child and evidence given in the court are not admissible as evidence against the minor in a subsequent case or proceedings in any other court, nor does the

commitment and placement or evidence operate to disqualify a minor in a future civil service examination or appointment in the state.

* Sec. 5. AS 47.10.090(a) is amended to read:

(a) The court shall make and keep records of all cases brought before it. The court's official records may be inspected only with the court's permission and only by persons having a legitimate interest in them. All information and social records pertaining to a minor and prepared by an employee of the court or by a federal, state or city agency in the discharge of the employee's or agency's official duty, are privileged and may not be disclosed directly or indirectly to anyone without the court's permission. However, a state or city law-enforcement agency shall disclose information regarding a case which is needed by the person or agency charged with making a preliminary investigation for the information of the court. <u>The court shall forward a record of adjudication of a violation of an offense listed in AS 28.15.185(a) to the Department of Public Safety.</u> Within 30 days of the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the date on which the court relinquishes jurisdiction over the minor, the court shall order sealed all the court's official records, information and social records pertaining to that minor, as well as records of all criminal proceedings against the minor and punishments assessed against the minor except for traffic offenses. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court.

* Sec. 6. This Act takes effect September 1, 1986.

Senate Bill 323

This bill is modeled after the State of Oregon law titled "Youth Substance Abuse and Driving Accident Prevention". A young person (between the ages of 13-17)is denied driving privileges for alcohol or controlled substance violations. Suspension for the first conviction or adjudication is one year or until the person reaches 17. Suspension for the second conviction or adjudication is one year or until the person reaches 18.

Section 1

Adds new language- after an adjudicative hearing (all minors do not go to court for violations) for specific violations, a minor's drivers license, permit, or privilege to obtain a license, will be suspended.

Section 2

Adds new language- the court can revoke a minor's drivers license, permit, or privilege to obtain a license for specific violations.

Section 3

Adds new language to the definition of driver's license or license. (Fixes a loophole in the definition a license, because of the successful lawsuit of Roberts vs the State of Alaska, the state could not suspend the right to drive if there is no license to suspend)

Section 4

Adds new language for consistency within the statute.

Section 5

Adds new language- that the Court can forward the names of juveniles who are adjudicated for certain violations to the Department of Public Safety

Section 6

Effective date clause

AK — (Good) Idea!

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,

WJ Platte

W J PLATTE
Clinical Supervisor

WJP/bjl

Mervy

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 482.440, 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

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Chief Clerk of House

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Speaker of House

Passed by Senate July 11, 1983

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President of Senate

Received by Governor:

..... M., ... 1983

Approved:

..... M., ... 1983

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Governor

Filed in Office of Secretary of State:

..... M., ... 1983

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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.

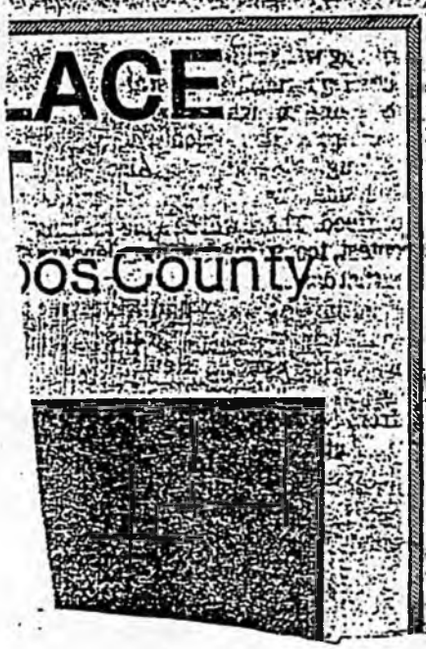
Most of the 627 denials ordered during the first six months of this year were for alcohol offenses. Minors in possession of alcohol or drugs accounted for 577, or 92 percent of the total. Twenty-seven denials were for having an open container or drinking alcohol in a motor vehicle, and eight were for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



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. Moomaw, 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-years 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.

...ness 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).

[4] 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. 523, 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 phone 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 motivating a false claim is always present, it is of less significance in the context of a R.E.D.D.I. 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 utilize 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 accurate. The court must always be sensitive to the risk that an alleged informant is fictitious. Where the circumstances reduce the risk that the police have fabricated an informant in order to base a search or seizure on illegally obtained evidence or to justify a successful hunch, courts are more likely to classify an anonymous informant as a "citizen informant." *See, e.g., Commonwealth v. An-*

...as follows:

[P]olice at the Boston Greyhound Bus terminal were summoned by a dispatcher and handed a note saying that there was a black man wearing a blue hat and 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 him by a bus driver, who in turn received it from a man in a toll booth who said it 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

...erence is that he observed Effenbeck ...onally and reached the conclusion that ...nbeck was intoxicated based on that ...ervation. The brevity and lack of detail ...the description are explainable by the ...rmant's need to act quickly to get the ...sage to the police so that they could ...ntercept Effenbeck before he injured ...someone. Finally, the circumstances virtually eliminate the possibility of police fabrication.

A further comment by Professor LaFave is apt:

> 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); *Coleman v. State*, 553 P.2d 40, 43 (Alaska 1976). Given the information the officer got, 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 16 of the Constitution of Alaska.

Roberts..

v.

STATE of Alaska, Appellee.

No. A-342.

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.*

700 P.2d 815

[illegible] of driving while his license was suspended (DWLS), in violation of AS 28.15.291.[1] 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 the District Court of his post-conviction motion, Roberts appeals, reasserting the argument he raised below.[2]

In *Francis v. Anchorage*, 641 P.2d 225 (Alaska App.1982), we considered a claim 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

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 to the validity of an administrative license suspension could not properly be raised for the first time collaterally, in a prosecution for DWLS. *See McClain v. State*, 641 P.2d 1265 (Alaska App.1982). Our decision in *McClain*, however, involved a non-jurisdictional 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 involving 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....

quirement. 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 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 under similar statutory language. *See Francis*, 641 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.

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).

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 ⇐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 ⇐81

3. Products Liability ⇐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 ⇐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 ⇐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 ⇐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 403.

7. Products Liability ⇐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-

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SENATE BILL 323

"An Act relating to suspension and revocation of a minor's license to drive and the definition of driver license; and providing for an effective date."

Discussion

Senate Bill 323 will attempt to reduce drinking and drug use by minors, persons under age eighteen, by placing time restrictions on the minor's privilege to obtain or retain a driver's license, if the minor is convicted of misconduct involving a controlled substance or possession or consumption of alcohol. The suspension period for a first offense is one year or until a person reaches the age of 17, whichever is longer, and the suspension period for a second offense is one year or until a person reaches the age of 18, whichever is longer.

This bill is patterned after an Oregon law that was enacted in July, 1983. In 1985, 1510 Oregon youth were denied driving privileges under the provision of this law. Of this number, 94% or 1414 denials were for the offense of possession of alcohol or drugs; 46 denials were for open container violations, 14 for driving under the influence, and 36 were for miscellaneous offenses. Of the 1510 convictions, 1352 were first offenses. 1985 was the second year of experience with this law. It has been reported in the Oregon press that judges in metropolitan areas have been ignoring this law because of heavy case loads or a belief that the penalty is too harsh for the offense.

Drinking and drug use among youth is a serious problem in Alaska. In the six year period of 1979-1984, 42 youth 0-18 years of age have died as a result of alcohol related motor vehicle accidents. According to the 1983 Crime in Alaska report, 1146 minors were arrested for liquor law violations; 336 for drug offenses; 234 for vandalism; and 97 for driving under the influence. Drinking and drug use account for a high number of school suspensions and family discord.

Position

The Department of Health and Social Services is supportive of the approach taken in SB 323 towards the prevention of drinking and drug use by Alaska youth. The privilege to obtain or retain a driver's license is held in high regard by this age group and it is hoped that this strategy will be an effective deterent indiscrimination use of chemicals. The Department recognizes that the majority of youth drinking and drug use is experimental in nature, nevertheless the strong influence of "peer preasure" upon this age group often results in unplanned use during social interactives. This legislation may serve as a constant reminder that the privilege driving must be earned through responsible behavior. There are statistical indications that a number of Alaska youth have serious problems with chemicals. In 1985, 882 youth 17 years of age and younger had diagnosed problems severe enough to warrant treatment for alcoholism and drug abuse in State funded programs. The Department would like the committee to consider one

possible addition to the bill, a provision that convicted youth be required to undergo a screening process to determine the need for education or treatment. A process similar to the present Alcohol Safety Action Program (ASAP) and state treatment system could be used for this purpose. This process would impact the high risk youth with a more intensive response while providing relevent education to an offender.

The Department will be pleased to provide additional information on drinking and drug use among youth upon request.

Recommended by: Matt Felix by Geo Munday

Matthew C. Felix
Coordinator
Office of Alcoholism/
Drug Abuse

Date: 1/20/86

Approved by: John R. Pugh

John R. Pugh
Commissioner
Department of Health
& Social Services

Date: 1/22/86

PP86/1

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : Senate Bill 323
Title : An Act relating to suspension and revocation of a minor's licence to drive
Sponsor : Senator Ray
Requestor : N/A
Date of Request : N/A

FISCAL DETAIL

Agency Affected : Health & Social Services
BRU : Alcoholism & Drug Abuse

Components : Alcohol Abuse Grants

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-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Matthew C. Felix Matt Felix for Leo Rhoades
Division : Alcoholism/ Drug Abuse
Phone : 586-6201
Date : 1/20/86

Approved by Commissioner : Jon R. Bos
Agency : Health and Social Services
Date : 1/22/86

JCC 1/23

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SB 323

Neutral

January 20, 1986

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

It appears the bill was drafted by using Oregon law as a model, and not taking into account the difference in how the Courts and DMV operate in the two states. In Alaska the Court is generally empowered with the authority to revoke a driver's license at the time of sentencing for a criminal offense (ie: DWI, Hit & Run, etc.). It is recommended Section 1 of the bill be deleted, and the data be incorporated in Section 2. The bill would then specify the court imposes the revocation, whether it be 90 days, one year, or until a specific age. This would be more in line with current Alaska law, and would eliminate the need for DMV to offer an administrative hearing before the administrative suspension is imposed.

Lines 10 and 11 of Section 5 indicate information concerning the license action could not be disclosed. This would prevent enforcement of the action, thus making it meaningless. In order to allow DMV to enter the license action on the defendant's record line 23 of Section 5 should be amended to reflect ".... except for traffic offenses or license action taken under AS 28.15.163 or AS 28.15.185.".

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. : SB 323
Title : An Act relating to suspension and revocation of a minor's license to drive....
Sponsor : Ray
Requestor : Senate State Affairs
Date of Request : 1/16/86

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		21.2	29.6	31.1	32.7	34.3
TRAVEL						
CONTRACTUAL		6.8	8.4	8.8	9.2	9.7
SUPPLIES		.5	.6	.6	.7	.7
EQUIPMENT		8.2				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		36.7	38.6	40.5	42.6	44.7
CAPITAL						
REVENUE		10.0	70.0	150.0	170.0	180.0

FUNDING : (Thousands of Dollars)

GENERAL FUND		36.7	38.6	40.5	42.6	44.7
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

One 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 BB — Phone : 465-2650
Division : Motor Vehicles — Date : 1-16-86

Approved by Commissioner : [signature] — Date : 1-16-86
Agency : _____

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 323

DETAIL

100	Personal Services		
	One Document Processing Clerk II	21.2	21.2
300	Contractual		
	310 Postage	2.9	
	382a DP line charges - 1 CRT	1.7	
	DP data circuit - 1 CRT	1.3	
	Maintenance - 1 CRT	.5	
	Maintenance - 1 printer	.4	
		6.8	6.8
400	Commodities		
	Normal office supplies	.5	.5
500	Equipment		
	1 CRT terminal	3.0	
	1 CRT feature board	.8	
	1 printer	1.8	
	1 typewriter	1.2	
	1 desk	.6	
	1 chair	.2	
	1 file cabinet	.3	
	1 CRT table	.3	
		8.2	8.2
		TOTAL	36.7

INFORMATION

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.

Position Title			No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Document Processing Clerk II			1	8b	GGU			
Time Status	Staff Months	RP Number	Location		Election District	Leg.		
PFT	12		Juneau		4			

Type of Expenditure		Amount
1	2	3
Salary		
Benefits		
Premium Pay		
Other		
Total Personal Services		21.2
Travel		
Contractual		6.8
Commodities		.5
Equipment		8.2
Other		
Total Cost		36.7

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	36.7
	General Funds	1004	
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This legislation will require action against the driving privileges of approximately 1,800 individuals who are convicted of, or adjudicated for offenses which do not currently require action. This position will prepare files, establishing beginning and ending dates of the action; enter the license action on the individual's driving record; change the status on the individual's record; send a notice to the individual concerning the action and requirements for reinstatement; prepare certified copies for prosecutors when individual is arrested for driving while suspended or revoked; maintain proof of insurance file after reinstatement; change status on driving record when license action is over; prepare record for microfilm; enter data on microfilm retrieval system; and assist in correspondence concerning the license action.

This form prepared reflectirg nine months cost. Position to begin October 1, 1986.

Request For New Position

Agency: Public Safety
BRU: Motor Vehicles
Component: Driver Services

Revised Date

FY 87