HB

430

Alaska State Legislature
House of Representatives

Committees
Rules Committee, Chair
Legislative Council
International Trade & Tourism
Military & Veterans Affairs
World Trade & State/Federal Relations

Interim:
10928 Eagle River Rd. Suite 141
Eagle River, AK 99577

Session:
Alaska State Capitol
Juneau, AK 99801

SPONSOR STATEMENT (REVISED)
HB 430

This bill denies recovery for noneconomic damages (e.g., pain, suffering) to those convicted of driving while under the influence of intoxicating liquor, or any controlled substance and to uninsured motorists who were injured while operating a vehicle . The bill provides one exception: when an uninsured motorist is injured by a subsequently convicted drunk driver. With this one exception, an insurer is not liable for noneconomic damages.

This bill would limit the liability of certain people to sue to recover losses suffered in accidents. This measure prohibits the recovery of noneconomic losses in certain car accidents. Specifically, an uninsured driver or a driver subsequently convicted of driving while intoxicated at the time of an accident could not sue someone at fault for the accident for noneconomic losses. These drivers could still sue for economic losses. However, an uninsured motorist injured by a drunk driver in an accident could still sue to recover noneconomic losses from the drunk driver.

This legislation should reduce the number of lawsuits handled by the courts, reducing court related costs. The legislation should also result in fewer lawsuits filed against state and local governments with savings as a result of avoiding these lawsuits. Further the legislation could result in lower costs or "premiums" for auto insurance.

I urge your support for this legislation

Representative Pete Kott

Juneau Office (907) 465-3777 Toll Free 1-800-861-KOTT(5688) Fax (907) 465-2819
Eagle River Office (907) 694-8944 Fax (907) 694-8945 **E-Mail:** representative_pete_kott@legis.state.ak.us

P. 3/13.

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599
Telephone (907) 786-8500
http://www.ci.anchorage.ak.us

Rick Mystrom,
Mayor

POLICE ANCHORAGE ALASKA

Service since 1921

March 10, 1998

Representative Pete Kott
Alaska State Capitol (MS-3100)
Juneau, Alaska 99801-1182

Dear Representative Kott:

This letter is written in support of HB 430, an act related to non-economic damages claimed by drunk drivers and uninsured motorists.

Each year, hundreds of accidents involving drunk drivers are investigated by the Anchorage Police Department. Most are the direct result of intoxication. Despite stepped-up enforcement and increased penalties, many continue to drive while under the influence. These uncaring individuals should not be allowed to benefit from the damage they cause.

Motorists who drive without insurance should also be prevented from claiming non-economic damages, since they refuse to assume responsibility for their actions.

We therefore encourage this legislation in an effort to relieve the courts of unnecessary lawsuits and reduce the cost of insurance for responsible drivers.

Sincerely,

Duane S. Udland

Duane S. Udland
Chief of Police

DSU/ros

LESSMEIER & WINTERS
LAWYERS - LLC
124 WEST 5TH STREET
JUNEAU, ALASKA 99801

MICHAEL L. LESSMEIER
GREGORY W. LESSMEIER
SHELDON E. WINTERS
BETH LEIBOWITZ

TELEPHONE: (907) 586-5912
FACSIMILE: (907) 463-3020

March 31, 1998

Representative Pete Kott
Alaska State Legislature
State Capitol, Room 432
Juneau, Alaska

Re: HB430

Dear Representative Kott:

I am writing on behalf of State Farm in support of House Bill 430. From our point of view the issue raised by this bill is one of fundamental fairness. The intent of the bill is to require motorists to themselves be financially responsible at least to the minimum limits required by law if they themselves are going to expect to recover non-economic damages. While many side issues have been raised which we will certainly attempt to respond to, we believe the issue raised by House Bill 430 is one of fundamental fairness and we also believe the concept is one that members of the driving public will wholeheartedly endorse.

Over the past five years, our ratio of uninsured motorist claims to bodily injury claims in Alaska has ranged from approximately 17 to 21 percent. Over the last ten years, the ratio of uninsured motorist claims to bodily injury claims has ranged from a low of 16% to a high of 23%. Regardless of whether we are at the low end of a trend or at the high end, it is thus apparent that every Alaskan faces a significant degree of risk from uninsured motorists. We believe the enactment of HB 430 cannot help but reduce the number of uninsured motorists on our roadways.

Those that oppose this legislation have inquired about the percentage of reduction in insurance premiums one would expect to see if this legislation were enacted. Because insurance rates are based on so many different factors we cannot make a specific statement as to the effect this legislation would have on the number of uninsured drivers in Alaska. What we can say is that we believe this will help our experience in Alaska and we remain committed to passing on any savings that might accrue to Alaska insureds. As I am sure you know, State Farm Mutual Automobile Insurance has recently returned approximately 6.6 million dollars to Alaskan policyholders. It reduced automobile insurance premiums by 2.4 percent. We believe that legislation like HB 430 will help this trend continue.

As you know, California through the initiative process passed similar legislation in November of 1996. While the California legislation has been in effect for a little over a year and it has been challenged in Court, California's Insurance Commissioner said it has already lowered insurance rates by 5%. Mercury Insurance Group, now California's sixth largest automobile insurer, has applied for and received a rate reduction. While it is too soon for us to make any definitive statements about the effect of the California initiative, it again it is hard to see how the effect will be anything but positive.

A number of concerns were raised at the hearing regarding how HB 430 would actually work. For

LESSMEIER & WINTERS
LAWYERS • LLC

example, one of the issues raised concerned the effect of this law on the driver of uninsured automobile who is injured in an automobile accident which is not at all their fault. If HB 430 is passed, such a person would be able to recover all economic damages, but would be prohibited from recovering non-economic damages since they chose to drive a vehicle without insurance in violation of the law. While the opponents of HB 430 argue it is unfair for what they term as an innocent victim to be deprived of recovery non-economic damages, we believe that focus is misplaced. A person who chooses to drive without insurance in violation of the law can hardly be said to be free of fault. In fact, Justice Frederick Woods of the California Supreme Court explained this concept of fault when he said "taxpaying, law-abiding citizens will no longer need to support those who choose to break the law" by not buying automobile insurance. Justice Woods, of course, was describing exactly what happens with uninsured drivers: those who are insured and follow the law do indeed support those who choose to break the law by driving without insurance. It is this wrong that HB 430 is designed to rectify.

A second concern raised by those who oppose this bill is the concern that an insurer might refuse to pay what is owed pending the outcome of a criminal trial to determine whether a vehicle was being operated in violation of A.S. 28.35.030. As we understand it, the concern is that an insurer might withhold payment for economic losses pending the outcome of the criminal trial on the operating under influence issue. This sort of conduct is already prohibited by A.S. 21.36.125 (13). In other words, it is already against the law for an insurer to withhold payments which it clearly owes simply because it cannot determine whether additional payments are somehow owed. Again, we do not see this as a legitimate concern which justifies opposition to this legislation.

A third concern raised has to again do with what opponents of this legislation term as another category of innocent victim, that being the person who relies on someone else to insure a vehicle but the vehicle ultimately turns out to be uninsured. Certainly there are a variety of reasons as to why a vehicle might not be insured but the fact is the law mandates liability insurance. When someone drives without liability insurance, they are breaking the law. The true victim in such a situation is the person who is injured by such a financially irresponsible driver, not the financially irresponsible driver.

If there is further information we can provide, please let us know. Thank you.

Sincerely,

LESSMEIER & WINTERS

By: _____
Michael L. Lessmeier

MLL/ma
15-6/324LTKOT.WPD

ALLSTATE INSURANCE GROUP
LAW AND REGULATION
3100 Zinfandel Dr., Suite 400
Rancho Cordova, CA 95670

Writer's Direct Dial 916-852-4869
Telecopier 916-852-4953

THERESA BEDOY
Government Relations Manager

February 26, 1998

Representative Pete Kott
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Via Facsimile

RE: HB 430 - An Act Relating to Noneconomic Damages Resulting From An Automobile Accident (SUPPORT)

Dear Representative Kott:

I am writing on behalf of the Allstate Insurance Company which is the number 2 insurer in the state of Alaska. Allstate supports HB 430 in its efforts to put a practical, common sense approach in place to deal with individuals who do not comply with the state law requiring drivers to insure their vehicles. HB 430 is fair and balanced because it allows uninsured drivers involved in an accident to still recover damages from the other driver for economic losses, such as medical care and lost wages even though they are breaking the law, yet work to restore balance to our justice system. Currently uninsured motorists enjoy the fruits of the insurance system without contributing to it; fairness dictates that individuals who do not contribute directly to the costs of the insurance system should do so indirectly, by foregoing some (but not all) of their damages.

Opponents contend that laws like HB 430 arbitrarily singles out uninsured motorists to ease the financial burden on others. They also argue that similar laws violate equal protection because it has a disparate impact on the poor and on ethnic minorities. In California where Proposition 213, "The Personal Responsibility Act of 1996," was passed by an overwhelming majority (76.8%) and has been upheld by the state's Supreme Court, those who defend Prop. 213 state that the distinction between insured and uninsured drivers is not arbitrary because uninsured motorists drive in violation of the law.

Proposition 213 is fair; the law's requirement that access to pain and suffering damages is directly related to relieving the inequitable financial burden placed on those drivers who do comply with the financial responsibility laws displays this balance. Defenders of Prop. 213 also state that the law affects rich and poor alike; observing that many drivers from poor neighborhoods carry auto insurance while many from wealthy neighborhoods do not.

HB 430 fixes a justice system that is out of balance and is about fairness. It is aimed at those who break the law. It stops uninsured drivers from cashing in on those insured drivers who shell out their hard-earned money to carry auto insurance. It puts back in balance the question of fairness in a system that allows an insured driver to be sued for all he has yet protects an asset proof uninsured motorist who hits them.

Allstate would appreciate your "AYE" vote on this legislation.

Respectfully Submitted,

Theresa Bedoy

Theresa Bedoy
Government Relations Manager

ct: House Judiciary Committee

National Association of Independent Insurers

2600 River Road, Des Plaines, IL 60018-3286

TRISHA M. CONNORS
COUNSEL

February 24, 1998

Jessie file w/ packet

Honorable Pete Kott
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

RE: HB 430
NAII POSITION: SUPPORT

Dear Representative Kott,

I am writing on behalf of the National Association of Independent Insurers (NAII) and its 570 property and casualty company members to support your Personal Responsibility Act, HB 430. As you know, this bill would preclude uninsured motorists from "winning the lottery" in an accident caused by an insured driver.

Specifically, HB 430 would provide that drivers who choose to violate your state's mandatory auto insurance law cannot collect pain and suffering damages following an accident in which an insured driver was at fault. The uninsured driver will recover for his or her actual medical costs, wage loss and car repair, but he or she would not collect from the insurance pool for the non-economic losses he or she may have suffered.

The NAII supports HB 430 because it is fair. Drivers who obey the law and buy insurance pay premiums to protect themselves from injury and from lawsuits by other people they may accidentally injure in an accident. Drivers who violate the law and do not pay these premiums should not **benefit** from their illegal activity.

Thank you again for introducing this important bill. I hope to see it enacted during the 1998 session.

Sincerely,

Trisha M. Connors

Trisha M. Connors
Counsel

cc: House Judiciary Committee

Phone: (847) 297-7800 FAX: (847) 297-5064
FAX on demand: 1-800-291-0229 Internet address: http://www.naii.org

February 24, 1998

The Honorable Pete Kott
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear ~~Representative~~ Pete Kott:

I wish to express USAA's strong support for House Bill 430, which you and Representative Mulder have introduced. I am also expressing similar support for Senate Bill 283.

As evidenced by a similar measure enacted by ballot initiative in California, the measure you propose will be a self-enforcing measure to effectively deal with Alaska's uninsured motorist problem. At the same time, the act will save millions of dollars for the large majority of Alaska drivers who buy insurance and operate within the law. It will also provide those same savings to businesses and self-insured entities such as state and local government agencies.

As you probably know, California voters (who are generally regarded as more liberal than the voters of other western states) approved Proposition 213, California's Personal Responsibility Act, in 1996 with a 78% majority of those voting. The measure has withstood all legal and constitutional challenges and has been upheld by two California appellate courts. A year later insured motorists still give the measure a 78% approval rating and, astonishingly, uninsured motorists also give the measure a 78% approval rating.

You may be aware that USAA has continued to question the effectiveness of uninsured motorist data base programs which are expensive to our policyholders and provide them with no benefits for the extra expenses they incur. Additionally, the data base program is only effective in keeping track of the vehicles that are registered. It does nothing to impact the vehicles registered in other states or which are simply not registered. In contrast, the measure you have proposed would reduce consumer costs, be self-enforcing and, most importantly, restore some fairness for those who do obey the financial responsibility laws.

.. hopeful that you will aggressively pursue enactment of House Bill 430 this session. If I can provide any assistance in that effort, please call on me.

Very truly yours,

James R. Jinks, AVP
USAA Senior Legislative Counsel

JRJ:djn

USAA State Legislative Affairs 915 L Street, Suite 1100 Sacramento, CA 95814
TELEPHONE (916) 552-6715 FACSIMILE (916) 442-1328

LEONARD THOM KELLEY
MICHAELA KELLEY

KELLEY & KELLEY
ATTORNEYS AT LAW
821 'N' STREET, SUITE 206
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 276-9185

March 3, 1998

Representative Pete Kott
126 Chichagof PL
Chugiak AK 99567

Dear Representative Kott:

I am in your district and am expressing my opposition to HB 430 and SB 283, which you have introduced with Representative Kott. I have grave concern. This proposed legislation is classest and attacks the most poor and weak of our community.

This bill would have the effect of denying compensation for non-economic damages for non-negligent persons. For example, a husband and wife are driving home from celebrating their 25th wedding anniversary by having a nice dinner and some wine in late December. The husband and wife are impaired by alcohol. They are legally stopped at a red light, insured and wearing their seatbelts. The husband and wife are rear-ended by a tractor trailer truck that is speeding and has summer tires on. The husband and wife are pushed several hundred feet into the intersection. The couple sustained broken legs and injuries to their head that are permanent in nature. Their lives will never be the same. Under House bill 430 and Senate bill 283, the husband and wife would not be entitled to compensation for non-economic damages.

HB 430 and Senate bill 283 deny compensation to non-negligent drivers because they are impaired or uninsured. In other words, a negligent/reckless and or intentional act by an insured (or uninsured) person visited upon an innocent impaired or uninsured victim would not be liable for general damages (pain and suffering and loss of enjoyment of life). The negligent/reckless and or intentional acts would be absolved because one is impaired or uninsured, even when the impairment or lack of insurance has nothing to do with what caused the accident or harm. Just because one is irresponsible (impaired or uninsured), does not mean they can be harmed or run over by insured or uninsured negligent people.

I have represented folks that were impaired passengers and on one occasion an impaired driver and through no fault of their own was injured by the act of a clearly reckless driver. Alaskans that are under the influence as drivers, passengers or pedestrians are often times injured through no fault of their own. These people are entitled to compensation when they are hurt by the negligent conduct of another. If ones impairedness is a causational factor in the injuries sustained – then a jury can take those facts into consideration and render a verdict accordingly. One should not be denied compensation for real injuries simply because they are impaired or uninsured.

If you have any questions feel free to contact me directly at my home (907) 688-4829 or at my office (907) 276 – 8185

Sincerely,

Leonard T. Kelley

CC: Randy Phillips 4654979

4652819

MEMORANDUM February 19, 1998

SUBJECT: Sectional Summary of HB430, An Act relating to noneconomic damages suffered by drunk drivers and uninsured drivers

A sectional summary of a bill should not be considered an authoritative interpretation of the bill—the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 09.17.010(a) and adds the wording "Except as provided under AS 09.65.215, in"

Section 2 of the bill amends AS 09.65 by adding a new section:

Subsection (a) prohibits the recovery of civil damages for noneconomic losses if the person was

(1) injured while operating the vehicle in violation of AS 28.35.030 and was convicted of the violation or

(2) the owner or operator of a vehicle involved in the accident and was not insured as required by AS 28.22.011

Subsection (b) provides one exception if the injury resulted from the operation of the other vehicle by another person who is subsequently convicted under AS 28.35.030

Section 3 of the bill applies the legislation to a cause of action that accrues on or after the effective date of the Act.