

HB

95

<TARGET><BILL>HB 95</BILL><SUBJECT>HB
95</SUBJECT><COMM>HTRA27</COMM></TARGET>

Alaska State Legislature
House of Representatives
Representative Tammie Wilson

Interim
301 Santa Clause Lane
North Pole, AK 99705
(907) 488.0857 - Phone
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Session
State Capitol
Juneau, AK 99801
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Rep.Tammie.Wilson@legis.state.ak.us

MEMORANDUM

To: Rep. Peggy Wilson, Chair, House Transportation Committee
From: Rep. Tammie Wilson
Date: February 3, 2011
Re: Request for Hearing

Enclosed is House Bill 95—"An Act making failure by certain persons to wear a safety belt when operating certain motor vehicles a secondary violation."

Accompanying the bill is a sponsor statement and initial committee packet documents.

Please contact me if you have any questions or concerns.

Thank you for your consideration.

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 62

BY REPRESENTATIVE HOLMES

1 Page 1, line 2, following "**tax**":

2 Insert "**; and providing for an effective date**"

3

4 Page 2, following line 12:

5 Insert a new bill section to read:

6 "*** Sec. 2.** This Act takes effect immediately under AS 01.10.070(c)."

Alaska State Legislature House of Representatives

Representative Tammie Wilson

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Sponsor Statement

House Bill 95 –27th Legislature

House Bill 95 redefines the violation of failing to wear a seat belt, while driving, from a primary offense to a secondary offense.

This means that while wearing a seat belt remains state law, an officer may not use lack of seat belt use as an exclusive reason for pulling over a vehicle.

The secondary offense law was the *status quo* in Alaska for fifteen years.

HB 95 acknowledges that:

- Seat belt use is important and increased use, across the population, can be attained through other means.
- Police officer time and energy are important and, therefore, should be focused on substantive enforcement activity;
- The public is best served when Public Safety is concerned with caliber of driving instead of components that do not affect driving ability;
- Seatbelts, while a component of responsible driving, do not prevent accidents;
- The primary offense law is a violation of privacy; being pulled over for apparently failing to wear a seatbelt is an authority easily abused. It can be used as an excuse to stop a driver for any number of unrelated reasons.

As a way of respecting Alaskans' right to privacy, expectation to be treated as adults, and efficient use of law enforcement time and resources, HB 95 should be enacted.

I appreciate the committee's consideration for this bill and request your support.

HB 95 is introduced to emphasize efficiency in law enforcement activity with respect to traffic violations, and highlight several civil rights concerns related to the primary offense law.

Simply put, the sponsors maintain that wearing a seat belt is important, and should remain in law, but that expecting an officer to pull over a driver, on that basis alone, is unnecessary and a waste of a legitimate resource.

Moreover, as the current data shows, 18 states, across the political spectrum, have secondary offense laws exclusively. Of those states, a comparable percentage of drivers use seat belts. States have seen an increase of seat belt use with only a secondary offense enforced. A dramatic increase in usage, therefore, is due to factors other than issuing seatbelt citations.

If increased seat belt use is the goal, it can be accomplished through other means.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
Bill Version HB095 1A
() Publish Date _____

Identifier (file name): HB095-LAW-CRIM-03-11-11
Title An Act making failure by certain persons to wear a safety belt when operating certain motor vehicles a secondary violation.
Sponsor REPRESENTATIVE(s) T. WILSON, GARDNER
Requester (H) Transportation

Dept. Affected Law
Appropriation Criminal
Allocation Criminal Justice Litigation

OMB Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES

CHANGE IN REVENUES							
---------------------------	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Eileen Donahue, Division Operations Manager
Division Administrative Services

Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
Date/Time 3/11/11 4:30 PM
Date 3/11/2011

FISCAL NOTE

**STATE OF ALASKA
2011 LEGISLATIVE SESSION**

BILL NO. HB 095 VA

Analysis

This bill provides that a law enforcement officer may not stop a vehicle for failure of a person 16 years of age or older to wear a seat belt while the vehicle is driving on a highway unless there is probable cause to stop the vehicle for violation of another law or ordinance.

This would have zero fiscal impact on the Department of Law.

Seat Belt Use 1997 - 2009



AS 28.05.095. Use of Seat Belts and Child Safety Devices Required.

(a) Except as provided in (c) of this section, a person

(1) 16 years of age or older may not occupy a motor vehicle while being driven on a highway unless restrained by a safety belt; and

(2) may not drive a motor vehicle on a highway unless restrained by a safety belt.

(b) Except as provided in (c) of this section, a driver may not transport a child under the age of 16 in a motor vehicle unless the driver has provided the required safety device and properly secured each child as described in this subsection. If the child is less than four years of age, the child shall be properly secured in a child safety device meeting the standards of the United States Department of Transportation for a child safety device for infants. If the child is four but not yet 16 years of age, the child shall be properly secured in a child safety device approved for a child of that age and size by the United States Department of Transportation or in a safety belt, whichever is appropriate for the particular child.

(c) Subsections (a) and (b) of this section do not apply to

(1) passengers in a school bus, unless the school bus is required to be equipped with seat belts by the United States Department of Transportation, or an emergency vehicle;

(2) a vehicle operator acting in the course of employment delivering mail or newspapers from inside the vehicle to roadside mail or newspaper boxes;

(3) a person or class of persons exempted by regulation under AS 28.05.096;

(4) a person required to be restrained by safety belts under (a) or (b) of this section if the motor vehicle is not equipped with safety belts; or

(5) operators or passengers of motorcycles, motor-driven cycles, off-highway vehicles, electric personal mobility vehicles, snowmobiles, and similar vehicles not designed to be operated on a highway.

(d) A person may not remove a safety belt from a vehicle solely to be exempted under (c)(4) of this section.

(e) Notwithstanding any other provision of law, a peace officer may not stop or detain a motor vehicle to determine compliance with (a) of this section, or issue a citation for a violation of (a) of this section, unless the peace officer has probable cause to stop or detain the motor vehicle other than for a violation of (a) of this section.

~~(f) In a prosecution under (a) of this section, the prosecution must prove that the peace officer stopping or detaining the vehicle personally observed the violation of (a) of this section before stopping or detaining the vehicle or otherwise had probable cause to stop or detain the vehicle.~~



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March 16, 2011

The Honorable Peggy Wilson, Chair
House Transportation Committee
Alaska State Capitol, Room 408
Juneau, AK 99801-1182

RE: HB 95 (T. Wilson and Gardner)--Oppose

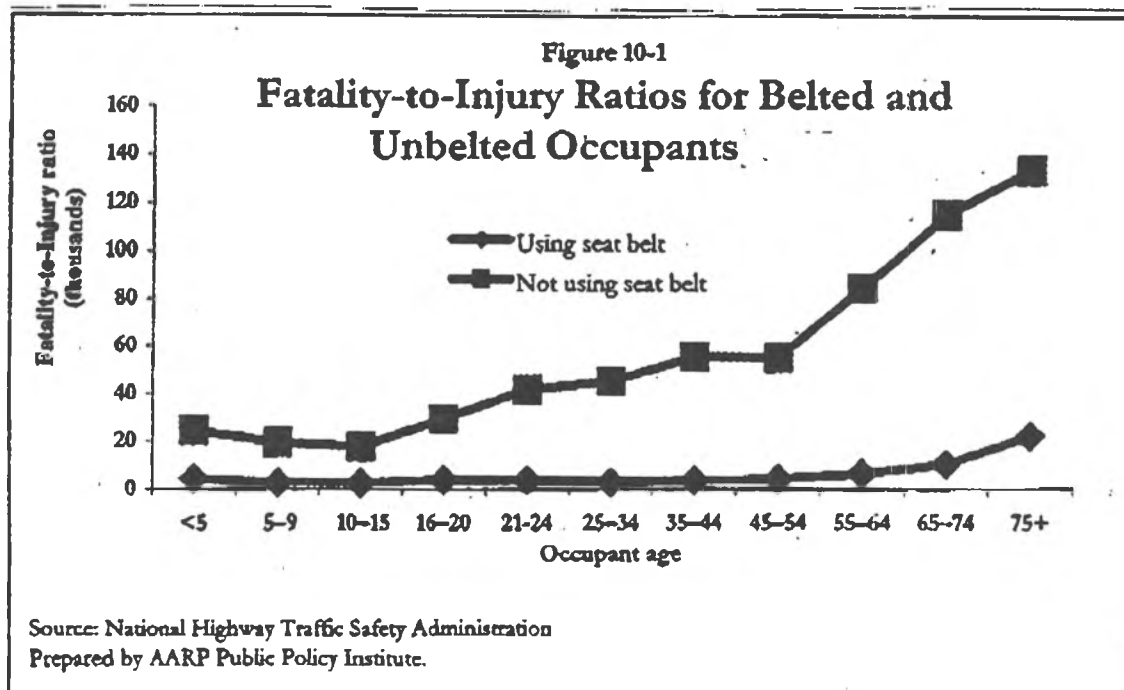
Dear Chair Wilson:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the House Transportation Committee to oppose HB 95, authored by Representatives Tammie Wilson and Berta Gardner and co-sponsored by Representative Bill Stoltze.

HB 95 will make a seat belt violation a secondary offence instead of a primary offence.

AARP supported SB 87 in 2006 for several reasons.

In crashes of the same severity, older individuals are more likely to die than younger people. Increased seat belt use does reduce fatalities and the severity of injuries. Research from the National Highway Traffic Safety Administration shows a clear correlation between seat belt use and a reduced likelihood of crash fatalities for individuals 55 and over.



In addition, Alaska is eligible for significant additional federal funding under the SAFETEA-LU provisions developed under Congressman Don Young's Chairmanship because seat belt violations are a primary offence.

Safety belt usage in Alaska increased after the passage of SB 87 and is now a bit higher than the national average. States that have stronger seat belt laws have higher compliance, according to research done by the NHTSA.

It was estimated that passage of SB 87 annually saved Alaska:

- 7 lives
- 102 serious injuries
- \$29 million in costs

The fatality rate of Alaska's traffic deaths in rural areas was more than twice that in urban locations.

Having seat belt violations as a primary offence is not a step toward a "nanny state." It is a step toward public safety and common sense.

Please do what you can to save Alaskan lives.

AARP requests a "Nay" vote on HB 95.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Vice-Chair Lance Pruitt
Representative Eric Feige
Representative Craig Johnson
Representative Max Gruenberg
Representative Pete Peterson

Representative Tammie Wilson
Representative Berta Gardner

Law Office of Robert John
P.O. Box 73570
Fairbanks, Alaska 99707
907-456-6056/907-456-6057 (fax)
Attorney for Steven Chase

IN THE SUPREME COURT OF THE STATE OF ALASKA

STEVEN CHASE,)
)
Petitioner,) Supreme Court No. S-14154
)
vs.)
)
STATE OF ALASKA,)
)
Respondent.)
_____)
Trial Court Case No. 4FA-07-02939 CR
Court of Appeals No. A-10433

PETITION FOR HEARING

VRA Certification

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in A.S. 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

PRAYER FOR REVIEW

Pursuant to Appellate Rule 302(a)(1), Steven Chase (Chase) hereby petitions the Alaska Supreme Court for hearing from the December 3, 2010 Opinion of the Alaska Court of Appeals which is published as Chase v. State, 243 P.3d 1014 (Alaska App. 2010).¹ Chase respectfully prays that the Alaska Supreme Court grant review.

STATEMENT OF FACTS

In addition to the facts set forth by the Court of Appeals, this Court should also consider the legislative history of the seatbelt-violation-seizure law, as well as the

¹ See Appendix 1.

available statistics on seatbelt usage and seatbelt-violation seizures in Alaska. This includes data before and after the law's passage.

The proponents of the law repeatedly contended that police would not use the primary-violation law as a basis for pulling more people over, that it would not be used as an enforcement issue of its own.² The proponents also contended that passage of the law would dramatically increase seatbelt usage from the stated 84 percent to 94 to 96 percent.³ However, as it turns out, the proponents were wrong on both counts.

As to seatbelt usage statewide, it stands at 84.9 percent (according to data through 2008), rising in 2008 after dropping to 82.4 percent in 2007.⁴ Any increase in seatbelt usage is logically not the result of the primary-violation law; rather, it appears that educational efforts over the years have resulted in a general uptrend in seatbelt usage since at least 1999.⁵

As to the police use of the law to seize Alaskans, the number of people who have had their privacy and liberty invaded by the police in the name of seatbelts has increased dramatically since the passage of the primary-violation law. For example, in this case Trooper Manns was paid overtime solely to peer and peep into people's vehicles for seatbelt violations and to then detain them therefor.⁶ Another officer, Trooper Sands, has

² See Appendix 2 at 3-9, 21-29.

³ See Appendix 2 at 4-5, 26-27.

⁴ See Appendix 2 at 36.

⁵ See Appendix 2 at 35.

⁶ See Appendix 2 at 61.

testified to the same, although he even more prolifically stops and detains people solely for seatbelt violations.⁷

Consistent with Trooper Sands are the actions of the City of Fairbanks Police Department since the primary-violation law went into effect. In 2005, Fairbanks Police (FPD) issued 226 seatbelt citations.⁸ In 2006, that number skyrocketed to 1,113 and became the number one category for FPD traffic citations.⁹ In 2007 and 2008 the numbers went down somewhat, to 788 at 467, respectively, but are still more than two to three times higher than prior to the passage of the primary-violation law.¹⁰ Interestingly, the 2007 statistics show that two Traffic Enforcement Officers alone cited over 300 people, essentially comparable to the number of persons cited by Trooper Sands.¹¹

This is echoed on a statewide basis. In 2005, the last year before the law's passage, approximately 3,600 Alaskans were cited for seatbelt violations.¹² By 2007, the first full year after the law's passage, that number had essentially tripled to more than 10,700 Alaskans seized in the name of seatbelts.¹³ This is consistent with the candor of an Anchorage Police Officer who confessed to Representative Gardner that the police

⁷ See Appendix 2 at 15-19.

⁸ See Appendix 2 at 41-42.

⁹ See Appendix 2 at 43-44.

¹⁰ See Appendix 2 at 45-46;

see also <http://www.ci.fairbanks.ak.us/departments/police/news.htm> (2008 Annual Report at pages 15-16).

¹¹ See Appendix 2 at 46; compare Appendix 2 at 15-19.

¹² See Appendix 2 at 51.

¹³ See Appendix 2 at 51.

would relish the law because it would allow them to do "something they love to do," engage in a "fishing" expedition.¹⁴

**STATEMENT OF POINTS AND AUTHORITIES RELIED UPON FOR
REVERSAL OF THE DECISION OF THE COURT OF APPEALS**

**Under Article I, §§14 And 22 Of The Alaska Constitution, It Is
An Unreasonable Seizure For The Police To Stop An
Individual Solely For Not Wearing A Seatbelt Or To Then
Conduct A Full-Fledged Traffic Investigation.**

In this Petition, Chase seeks to draw principled distinctions between categories of conduct to highlight those such as seatbelt violations where it is unreasonable to seize a person simply because their conduct may have been deemed illegal by the legislature.¹⁵ This is especially so when one considers the "epidemic" number of seizures of citizens that have resulted from the police practices at issue in this case, an instance where the "potential for abuse" has "ripened into a reality."¹⁶

Lest we forget, the starting point in our constitutional analysis is that this case involves a warrantless seizure of Chase and thousands upon thousands of other Alaskans. As such, it is the State that bears the burden of demonstrating a pressing need for the seizure at issue and that the seizure is otherwise reasonable in scope and duration.¹⁷

¹⁴ See Appendix 2 at 6-7.

¹⁵ Cf. State v. Day, 168 P.3d 1265, 1268 & fn.6. (Wash. 2007) (legislative labeling is neither binding nor determinative when the Court is determining the scope of constitutional protections).

¹⁶ Atwater v. City of Lago Vista, 532 U.S. 318, 354 n.25 (2001).

¹⁷ See Schraff v. State, 544 P.2d 834, 838 (Alaska 1975).

The Fourth Amendment protects "against unreasonable searches and seizures," including seizures that involve only a brief detention short of traditional arrest.¹⁸ The essential purpose of the proscriptions of the Fourth Amendment is to impose a standard of "reasonableness" upon the exercise of discretion by government officials, including law enforcement agents, in order to safeguard the privacy and security of individuals against arbitrary invasions.¹⁹ Thus, "the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests."²⁰ Accordingly, as Professor LaFave observes, the nature of the conduct at issue is pertinent in determining whether a particular traffic stop is reasonable or not.²¹

As this Court long ago observed:

The guiding criterion in resolving search and seizure issues is one of reasonableness in the constitutional sense. Concerning the problem of reasonableness, we said:

There seems to be no exact formula for the determination of reasonableness in connection with a search and seizure and so each case must be decided on its own facts and circumstances.²²

When this Court then makes its reasonableness determination under Article I, §§14 and 22 of the Alaska Constitution, law enforcement practices are held to a stricter standard

¹⁸ U.S. Const. Amend. IV.; United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975).

¹⁹ Delaware v. Prouse, 440 U.S. 648, 653-54 (1979).

²⁰ Id. at 654.

²¹ See 4 Wayne R. LaFave, Search and Seizure, §9.3(a) at 364-65 (4th ed. 2004).

²² Sleziak v. State, 454 P.2d 252, 256 (Alaska 1969) (quoting Ellison v. State, 383 P.2d 716, 719 (Alaska 1963)) (citation omitted).

than under the Fourth Amendment; thus, the people's protection from police intrusion is not swept away in the swollen tide of political emotion.²³

Contrary to the Court of Appeals' conclusion,²⁴ this Court's reasonableness analysis in Coleman²⁵ and most recently in Miller²⁶ is applicable in cases where the police have probable cause -- at least where the purported probable cause involves at most a so-called traffic violation. As Coleman details, the investigative-stop exception to the warrant requirement derived from situations where a demonstrably dangerous situation may well exist or a crime of a serious nature has recently occurred, one whose occurrence would likely subject a person to arrest.²⁷

The problem is that the safeguards of Coleman and its progeny are being nullified by legislative and administrative fiat as an ever-growing web of traffic regulations is claimed to justify the police seizure of persons whenever, as in Chase's case, there is probable cause to believe a violation has occurred. As the Court of Appeals has observed:

In recent years[,] more Fourth Amendment battles have been fought about police activities incident to [investigative stops] for a traffic infraction, what courts call a "routine traffic stop," than in any other context. There is a reason why it is so, and it is not that police have taken an intense interest in such matters as burned-out taillights and unsignaled lane changes per se. Rather, the renewed interest of the police in traffic enforcement is attributable to a federally-sponsored initiative related to the war on drugs.²⁸

²³ See Coleman v. State, 553 P.2d 40, 46-47 (Alaska 1976).

²⁴ See Chase v. State, 243 P.3d 1014, 1018 (Alaska 2010).

²⁵ See Coleman, 553 P.2d at 43-47.

²⁶ See State v. Miller, 207 P.3d 541, 543-51 (Alaska 2009).

²⁷ See Coleman, 553 P.2d at 44-45.

²⁸ Brown v. State, 182 P.3d 624, 629 (Alaska App. 2008) (quoting 4 Wayne R. LaFare, Search and Seizure, §9.3 at 358-59)(emphasis in original)(brackets in Brown).

Because "the police have co-opted our traffic codes as a weapon to be used in the 'war on drugs,'"²⁹ the Court needs to apply the reasonableness test to implement principled restraints on police conduct so that persons are not seized where, as in Chase's case, "some technical or trivial offense produces the necessary excuse for a traffic stop."³⁰ The principles of Coleman, as they have evolved through Miller, provide such a basis.

In Miller, the Court first inquired into the nature of the conduct and the corresponding need for police intrusion amounting to a seizure.³¹ In this inquiry, statistics matter. The Court placed great weight on domestic-violence data in reaching its decision in Miller.³² If the Court then places equal weight on the evidence presented by Chase, the Court will see that the lynchpins of the legislation -- the arguments that caused the legislature to pass it -- are two false pretenses: (1) seizing people for seatbelt violations will instantly cause a dramatic rise in seatbelt usage; and (2) the police will not target seatbelt enforcement so as to pull over a host of citizens for seatbelt violations.

As to the first false pretense, the head of the matter, there is no evidence that seizing people for seatbelt violations has had any demonstrable effect on seatbelt usage. Rather, as noted in the Statement of Facts, supra: (1) seatbelt usage was trending upward since at least 1999; (2) the first year after passage of the law the usage more or less continued its trend; and (3) the next year seatbelt usage actually went down! Even assuming for the purposes of argument that seatbelt usage has increased marginally since

²⁹ 4 Wayne R. LaFare, Search and Seizure, §9.3(a) at 361.

³⁰ Id., §9.3 at 359.

³¹ See Miller, 207 P.3d at 544-47.

³² See id. at 545-46.

then, that is only consistent with the historical trend and in any event has no demonstrable connection to the law or to the misrepresentations made to secure its passage.

As to the second false pretense, the tail that wags the dog, there has been a shocking increase, essentially a tripling of seatbelt tickets so that more than 10,000 Alaskans each year are being subjected to police seizure over a seatbelt. And the reason for the increase is obvious, Chase's case being a prime example. Police are being paid federally funded overtime solely to roam our streets with the single purpose of locating seatbelt violators to seize -- the first hook in a fishing expedition to snag citizens by casting into their privacy.

In their own regard, seatbelt violations are sui generis in the world of traffic enforcement. Being sans seatbelt is not akin to speeding or weaving or some other form of driving that would indicate a danger is present or imminently threatened. Nor is a seatbelt violation akin to an equipment violation that would pose a danger itself or of which the driver may be unaware and would need to be alerted.

In Miller, the Court secondly inquired into how immediate the investigative stop was to the alleged conduct.³³ As in Miller, here "the alleged crime was quite immediate to the investigative stop."³⁴

The third inquiry the Court undertook in Miller involved ascertaining the strength of the officer's knowledge that illegal conduct had occurred.³⁵ The majority of the Court

³³ See id. at 547.

³⁴ Id.

³⁵ See id. at 547-49.

in Miller deemed that the officer had reasonable suspicion.³⁶ The officer in Chase's case did have stronger knowledge, probable cause.³⁷

The fourth and final factor into which the Court inquired in Miller was the intrusiveness of the police conduct.³⁸ The Court first determined that the officer had no non-intrusive means of addressing the situation short of a seizure.³⁹ The Court then determined that after commencing an investigative stop, the officer had properly confined the scope and duration of the seizure.⁴⁰

In contrast to Miller, there were numerous non-intrusive or shorter-duration alternatives to the seizure that occurred in Chase's case. For example: (1) the officer could have used a bullhorn or otherwise signaled to Chase that Chase should wear his seatbelt; (2) the State could send a ticket to the registered owner of the vehicle based on its license plate, ala a parking ticket or a photo-red-light ticket or photo-speeding ticket; or (3) the officer could have stopped Chase and simply told Chase to put on his seatbelt. Accordingly, the stop of Chase violates the fundamental principles that an investigative stop must employ the least-intrusive means and must be limited in its duration.⁴¹ As with any exception to the warrant requirement, an investigative stop "must be no broader or more intrusive than necessary to fairly effect the governmental purpose which serves as

³⁶ See id. at 549.

³⁷ See Chase, 243 P.3d at 1018.

³⁸ See id. at 547, 549.

³⁹ See id. at 547.

⁴⁰ See id. at 549.

⁴¹ See Brown, 182 P.2d at 625, 627-28.

its justification."⁴²

In sum, when Chase's case is compared to Miller, the four factors come out in Chase's favor. Only one factor is more favorable to the State -- the existence of probable cause versus reasonable suspicion. The time factor is the same in each case. However, first and fourth factors -- the seriousness of the purported conduct being investigated and the intrusiveness of the investigation -- weigh heavily in Chase's favor. In short, there was no practical necessity for the seizure of Chase which occurred in this case. The Court should accordingly hold that it is an illegal seizure for the police to conduct an investigative stop solely for a seatbelt violation and that even if the stop of Chase were legal at its inception, the stop became an illegal seizure once the officer went beyond informing Chase to wear his seatbelt.⁴³

**STATEMENT OF CONCRETE REASONS WHY THE ISSUES HAVE
IMPORTANCE BEYOND THIS CASE AND REQUIRE DECISION BY THIS
COURT**

As to the intrusiveness and duration of the police contact with Chase, the decision of the Court of Appeals appears to conflict with its own decision in Brown, supra, and with this Court's decision in Reeves, supra, as well as with this Court's standards for evaluating investigative stops as first enunciated in Coleman, supra, and as applied most recently in Miller, supra. To those extents, the Court should grant review under Appellate Rule 304(a).

Even in the absence of any conflict, the Court of Appeals has decided an important

⁴² Reeves v. State, 599 P.2d 727, 735 (Alaska 1979).

⁴³ See Miller, 207 P.3d at 549-51.

question of Alaska constitutional law which has not previously been decided by this Court. The question is whether the Coleman/Miller balancing test for evaluating investigative stops applies to so-called traffic violations or whether instead probable cause to believe that any purported traffic violation has occurred allows the police to effect a seizure regardless of the nature of the violation.

As best articulated by Professor LaFave, the co-opting of the traffic codes by the police is a matter of grave constitutional concern. Perhaps Alaska's seatbelt law is the foremost example, based not only upon the vast number of persons subjected to the corresponding seizures, but also based upon a process where (under false pretenses) the police secure passage of the seatbelt law, which secures for the police federal funding, under which officers are being paid overtime solely to seize what is by now tens of thousands of Alaskans. For these reasons, the Court should grant review under Appellate Rule 304(b).

CONCLUSION

For the reasons stated, the Court should grant the Petition for Hearing. Steven Chase respectfully prays that the Court so order.

DATED this ____ day of February, 2011.

LAW OFFICE OF ROBERT JOHN

ROBERT JOHN
Alaska Bar No. 8911069
Attorney for Steven Chase

Certificate of Typeface and Point Size

The above Petition For Hearing is printed in 13-point (proportionately spaced)

Times New Roman.

ROBERT JOHN

Certificate of Service

I hereby certify that a true copy of
the above document was mailed to:

Ann B. Black

Assistant Attorney General

310 K Street, Suite 308

Anchorage, AK 99501

this ___ day of February, 2011.

INDEX OF APPENDICES

Appendix 1

Chase v. State, 243 P.3d 1014 (Alaska App. 2010) [9 Pages]

Appendix 2

Portions Of The Excerpt Of Record In The Alaska Court Of Appeals [61 Pages]

STATUS REPORT

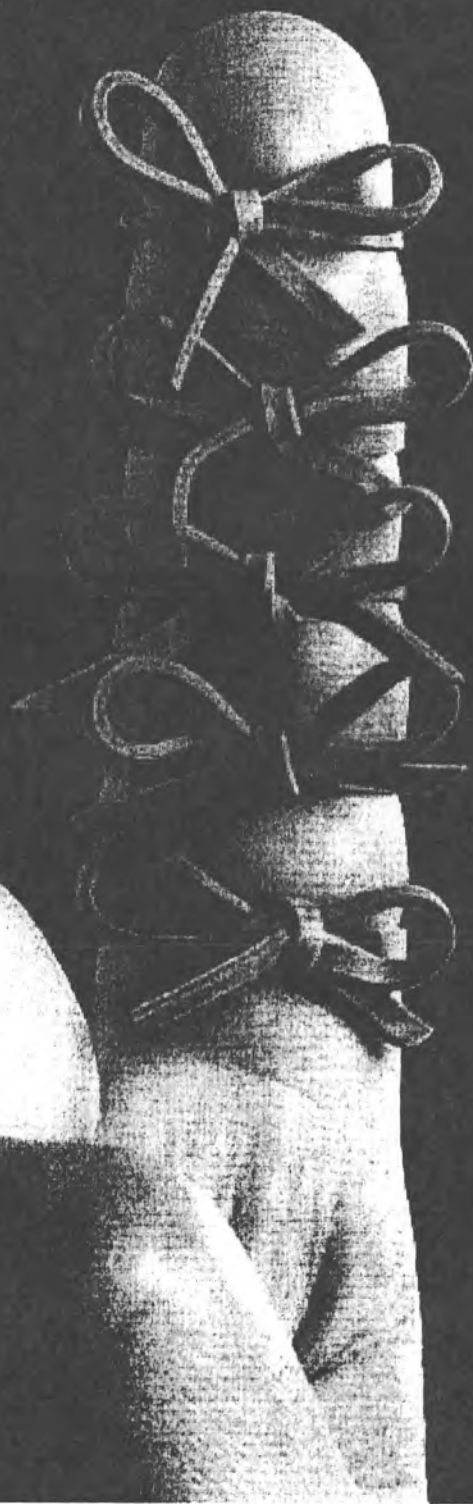
INSURANCE INSTITUTE
FOR HIGHWAY SAFETY

Vol. 39, No. 4, March 27, 2004

Some of us need a

More and more automakers are reminding us to buckle up

Safety belt use on U.S. roads approaches 80 percent, up from fewer than 20 percent in the early 1970s. But what about the holdouts, those who are hard to convince to buckle up? Ford was first among automakers to try to reach these motorists by going beyond the safety belt reminder systems required in all passenger vehicles. Now, spurred by the National Highway Traffic Safety Administration (NHTSA), virtually every automaker is going beyond the sound-and-light warning



that's required if a driver's safety belt isn't fastened. This warning is brief. NHTSA isn't allowed to require any sound persisting longer than eight seconds.

"It's easy to ignore such a brief warning," says Institute chief scientist Allan Williams, "and under current federal law it isn't possible for NHTSA to require longer warnings that might prove more effective."

But automakers may install any kind of reminder they want. The first voluntary system, a chime-and-light sequence that persists in intervals for up to five minutes if a driver doesn't buckle up, was introduced in 2000 model Fords.

"Call it benevolent nagging. The chime Ford uses isn't unpleasant, and it keeps on reminding you for five minutes. When we evaluated this system we found it produces a modest but important increase in belt use," Williams says (see *Status Report*, Feb. 9, 2002; on the web at www.highwaysafety.org).

Based in part on the Institute's evaluation of Ford's reminder system, NHTSA Administrator Jeffrey Runge urged all automakers in February 2002 to "consider voluntarily adding inexpensive, but effective, buckle up reminder systems" and to do so "as quickly as possible." Now reminders are in most 2004 model passenger vehicles.

All reminders aren't alike: There's variation among automakers in terms of the kinds of belt reminders they're using and how many models they're equipping. Audi, Ford, Hyundai, Porsche, and Volkswagen say they're putting reminders with intermittent lights and chimes in all 2004 passenger vehicles. Other manufacturers report lesser percentages. The loudness, urgency, sequence, and duration of the lights and chimes vary somewhat. General Motors adds a text message instructing drivers to buckle up.

Less elaborate reminders are in Infiniti, Lexus, Nissan, Saab, Scion, and Toyota models (except Toyota Prius). A light stays on, but no chime persists beyond eight seconds (the Prius does have a persistent chime).

In contrast, enhanced reminders aren't in any Hummers or models made by Isuzu, Land Rover, Mini, Mercedes, Subaru, or Volvo.

"Lights-only reminders haven't been evaluated yet, but the systems with audible warnings are almost certainly going to be more effective because a repeating chime or other sound is harder to ignore," Williams says.

Idea of enhanced reminders isn't new: In the early 1970s when only about 20 percent of drivers were buckling up, NHTSA tried several approaches to improve the situation. First there was a mandatory 60-second buzzer light in cars without automatic restraints (virtually no cars back then had such restraints). Starting with 1974 models, cars without automatic restraints couldn't be started if front-seat occupants weren't belted.

The buzzer-light reminder wasn't effective, Institute research found, but ignition interlocks did work. A separate Institute study found 59 percent of drivers using their belts in cars with interlocks, while the use rate was only 28 percent in cars with buzzer lights.

The problem was that many motorists didn't like interlocks. Public outcry against them led Congress to prohibit NHTSA from requiring them. Congress also told the agency it couldn't require any audible signal exceeding eight seconds.

"Nowadays motorists apparently don't object so much to being reminded. Maybe interlocks still wouldn't be accepted, but reminders of the type Ford pioneered seem to be okay," Williams says. The Institute surveyed Ford owners, most of whom said they like their reminders. Almost half said they buckle up more often because they're being reminded (see *Status Report*, June 16, 2003; on the web at www.highwaysafety.org).

Belt reminders in Europe, too: No requirement forces automakers to equip cars in the European Union with any kind of reminder (Sweden does require them). Although belt use rates exceed 90 percent in many European countries, reminders still are needed because use rates in serious crashes are lower. And now there's a powerful incentive to install reminders because doing so can boost a vehicle's consumer safety rating.

The European New Car Assessment Program rates passenger vehicles based primarily on performance in front and side crash tests. Since 2002 points may be added to a

REMINDERS IN 2004 MODELS

Light & chime:

Acura (63% of sales)	MDX & TL
Audi	All models
BMW (23% of sales)	5, 6, & 7 series
DaimlerChrysler (50% of sales)	Chrysler Crossfire Chrysler Pacifica & Sebring Dodge Durango Dodge Ram pickup Dodge Stratus & Viper Jeep Liberty
Ford	All models
Honda (70% of sales)	Accord & Insight Pilot & S2000 Civic except hatchback
Hyundai	All models
Jaguar (80-90% of sales)	X-Type XJ series
Kia (21% of sales)	Amanti & Spectra
Lincoln	All models
Mazda (40% of sales)	B-series pickup Mazda 3 & Tribute
Mercury	All models
Mitsubishi (90% of sales)	All except Montero Sport
Porsche	All models
Suzuki (28% of sales)	XL-7 only
Toyota	Prius only
Volkswagen	All models

Light, chime, & text message:

General Motors (50% of sales)	Cadillac Escalade Chevrolet Avalanche Chevrolet Silverado Chevrolet Suburban Chevrolet Tahoe GMC Denali & Sierra GMC Suburban & Yukon
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Light only:

All Infiniti, Lexus, Nissan, Saab, Scion, Toyota (except Prius) models

No enhanced reminder:

AM General (Hummer), Isuzu, Land Rover, Mini, Mercedes, Subaru, Volvo

Note: Sales estimates reflect percentages of all models sold by the manufacturer.



SAFETY BELT REMINDER SYSTEMS

(continued from p.1) up and they're especially effective among motorists who say they do use belts but not all the time.

A new Institute study indicates that reminders boosted belt use among Honda drivers from 84 to 90 percent. The use rate went up among both men and women and in various kinds of passenger vehicles — cars, minivans, and SUVs. Only 6 percent of the unbuckled drivers who encountered the reminder systems reported ignoring the annoyance.

Results are especially impressive among drivers who reported that they usually but not always buckle up. Eighty-one percent of the people in this group said they buckled up the last time they encountered the belt reminder.

The findings confirm the results of a previous Institute study of the effectiveness of reminders in Ford vehicles. These systems boosted belt use from 71 to 76 percent in 2000-02 vehicles, compared with earlier models of the same Fords without reminders (see *Status Report*, Feb. 9, 2002; on the web at iihs.org).

"Boosting belt use by 5 or 6 percentage points might not sound like a lot but, remember, these are the hard-to-convince motorists, and what the reminders are doing is convincing them to buckle up more often. The idea is to turn them into full-time belt users," says Susan Ferguson, Institute senior vice president for research.

Ford was first to equip vehicles with extended reminders, beginning with some 2000 models. In 2006 most models have some kind of reminder system, but not all of them are as intrusive as the Ford and Honda systems (see facing page).

Reminders go beyond what's required: These systems exceed the federal government's modest requirement of a reminder that lasts 4 to 8 seconds. The reminders in Fords persist in intervals for up to 5 minutes if drivers don't buckle up, and those in Honda vehicles are even more persistent.

There's an intermittent flashing light, sometimes including a "fasten seat belt" message, plus a chime that lasts for at least 9 minutes. Most 2004 and all later Hondas have such reminders.

Despite the potential annoyance, an overwhelming 89 percent of drivers of Hondas with reminders said they like having the systems in their vehicles. Eighty-eight percent said they would want one in their next vehicle.

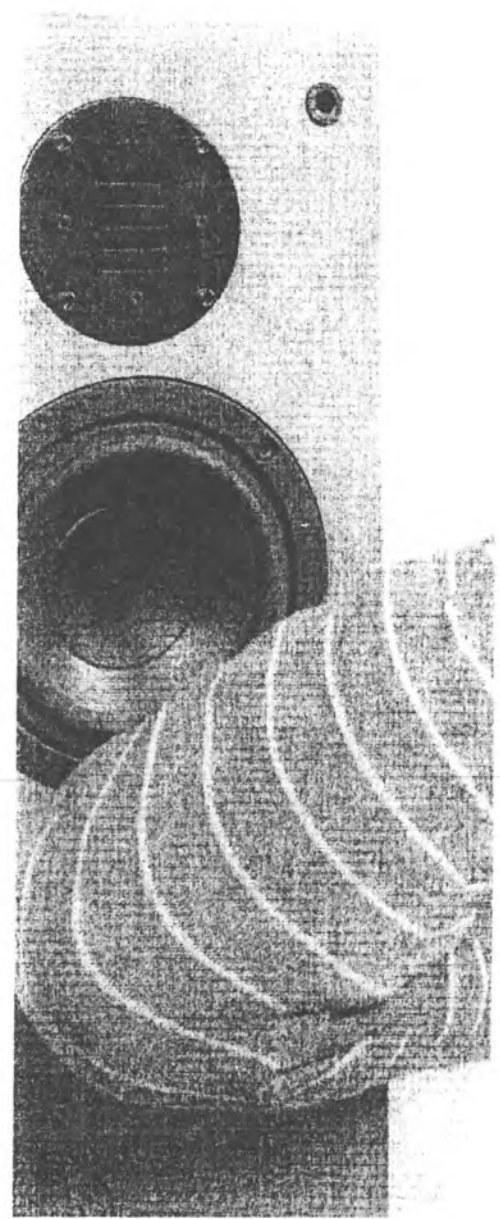
"These findings are important because, while the purpose is to annoy drivers into buckling up, it wouldn't be beneficial to overdo it and alienate people enough so they want to disable their reminder systems. The goal is benevolent nagging — just enough to accomplish the purpose," Ferguson says.

Why reminders are needed: The US belt use rate has topped 80 percent for two straight years, up from less than 20 percent in the early 1980s and about 60 percent as late as 1994 (see *Status Report*, Jan. 11, 2003; on the web at iihs.org). The gains during the 1980-90s resulted largely from enacting and enforcing belt use laws in every state except New Hampshire.

"What the reminders do is complement the laws and enforcement programs," Ferguson explains. "They help convince motorists to comply with the belt laws, and they give motorists an incentive to do so because buckling up is the easiest way to stop the annoying lights and chimes."

What if all vehicles had reminders similar to those in Hondas? Ferguson estimates that at least 730 passenger vehicle driver deaths could have been prevented in 2004 if all vehicles had been equipped with reminders that increased belt use by 6 percentage points.

Researchers studying the Honda systems surveyed belt use among drivers of 2004-06 model cars, minivans, and SUVs with reminders, comparing use rates in these vehicles with rates in 2002-04 Hondas without reminders. The observations were conducted at Honda dealerships in the Philadelphia area during the fall of 2005



when vehicles were brought in for service. Mail-in surveys also were distributed to drivers of vehicles with reminders, and 62 percent of these drivers replied.

For a copy of "Effectiveness and driver acceptance of the Honda belt reminder system" by S. Ferguson et al., write: Publications, Insurance Institute for Highway Safety, 1005 North Glebe Road, Arlington, VA 22201, or email publications@iihs.org.

The following graph shows the trend line of seat belt use in Alaska from 1999 – 2010.

% Seat Belt Use in Alaska 1999 - 2010

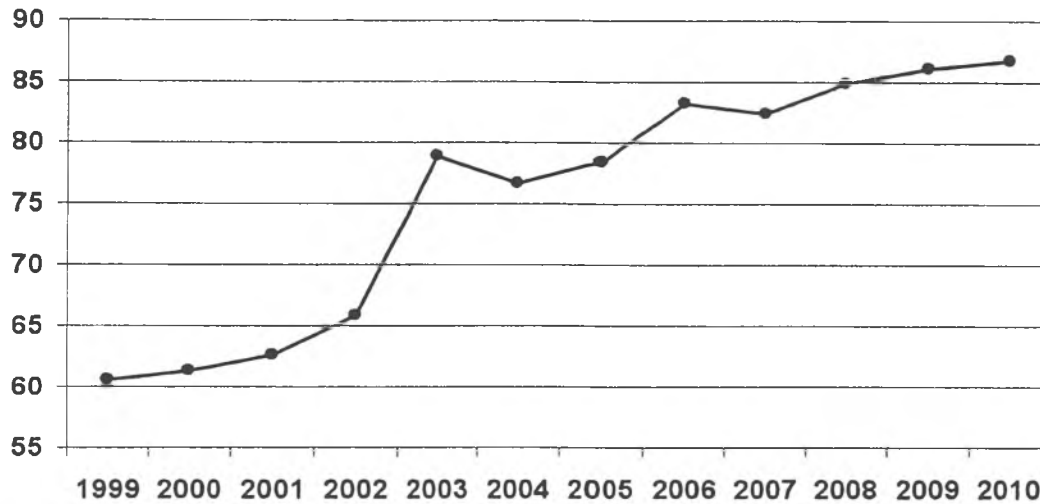


Table 1 shows the percent of drivers, passengers, and combined occupants who were wearing seat belts and the change across study years (weighted).

Table 1: Seat belt Use in Alaska, 2004-2010

		2010	2009	2008	2007	2006	2005	2004
All Vehicles	Share of Drivers Belted	.874	0.866	0.859	0.828	0.834	0.785	0.772
	Share of Passengers Belted	.846	0.841	0.812	0.810	0.825	0.779	0.750
	Share of Occupants Belted	.868	0.861	0.849	0.824	0.832	0.784	0.767
Cars	Share of Drivers Belted	.879	0.888	0.878	0.856	0.842	0.797	0.798
	Share of Passengers Belted	.852	0.854	0.801	0.828	0.829	0.777	0.756
	Share of Occupants Belted	.873	0.882	0.862	0.850	0.840	0.793	0.789
Vans	Share of Drivers Belted	.899	0.874	0.898	0.859	0.887	0.838	0.810
	Share of Passengers Belted	.869	0.879	0.864	0.841	0.881	0.837	0.800
	Share of Occupants Belted	.892	0.876	0.889	0.854	0.885	0.838	0.808
SUVs	Share of Drivers Belted	.898	0.883	0.883	0.854	0.869	0.827	0.812
	Share of Passengers Belted	.876	0.858	0.844	0.834	0.853	0.830	0.786
	Share of Occupants Belted	.894	0.879	0.874	0.850	0.865	0.827	0.806
Trucks	Share of Drivers Belted	.830	0.813	0.792	0.753	0.770	0.716	0.689
	Share of Passengers Belted	.789	0.782	0.764	0.742	0.761	0.706	0.685
	Share of Occupants Belted	.822	0.806	0.787	0.750	0.768	0.714	0.689

In Alaska, 80 percent of drivers and 76 percent of passengers were wearing seatbelts. The share of occupants wearing seatbelts was 79 percent. This is an increase of 13 percent above that observed in 2002. The rate for occupants of cars was higher than that for trucks. Eighty-two percent of car occupants compares with 70 percent of truck occupants.

Table 1 shows the percent of drivers, passengers, and occupants who were wearing seatbelts. Data cover 1997 to 2003.

Table 1: Seatbelt Use in Alaska, 1997-2003

		2003	2002	2001	2000	1999	1998	1997
All Vehicles	Share of Drivers Belted	0.797	0.663	0.634	0.615	0.609	0.613	0.604
	Share of Passengers Belted	0.762	0.643	0.602	0.607	0.599	0.601	0.572
	Share of Occupants Belted	0.789	0.658	0.626	0.613	0.606	0.610	0.596
Cars	Share of Drivers Belted	0.826	0.700	0.675	0.656	0.652	0.653	na
	Share of Passengers Belted	0.790	0.664	0.625	0.646	0.631	0.632	na
	Share of Occupants Belted	0.818	0.691	0.662	0.654	0.646	0.648	na
Trucks	Share of Drivers Belted	0.707	0.556	0.518	0.490	0.478	0.513	na
	Share of Passengers Belted	0.670	0.568	0.528	0.474	0.489	0.509	na
	Share of Occupants Belted	0.699	0.558	0.520	0.487	0.481	0.512	na

According to federal guidelines, the reliability of survey results should be expressed as the ratio between the standard error and the percent of the target population observed to wear seatbelts. This ratio, termed the relative standard error, should be less than or equal to five percent. Using SPSS statistical software, we calculated a standard error of .00258. The relative standard error for the percent of occupants who are belted is .0033.

There were 126 motorcycles in the sample. Sixty-six percent of drivers were wearing helmets. The number of motorcycles is too small to use in more detailed analysis and still be confident in the reliability of the results.

We noted in our survey when children were outboard passengers. Area wide, 75 percent of children were wearing seatbelts. This is an increase of 22 percent over 2002. In Anchorage, 78 percent of children were wearing seatbelts. The number of children in our samples from other areas is too small to use in more detailed analysis. Statewide, we observed 519 children riding as outboard passengers.

It is important to note that survey results reflect restraint use by the driver and outboard passenger in a probability sample of vehicles drawn from the most populated areas of Alaska. Included in this area are the Municipality of Anchorage, the Matanuska-Susitna Borough, the Juneau Borough, the Kenai Peninsula Borough, and the Fairbanks North Star Borough.

Table 2 presents the share of drivers, passengers, and occupants who were wearing seatbelts by region. The table presents data from 1997 through 2003.

IMPLEMENTATION OF ALASKA'S PRIMARY SEAT BELT LAW

MAY 2006

ALASKA SEAT BELT FACTS

- May 1989: Alaska State Legislature passes a law requiring seat belt use by all occupants in a motor vehicle. Failure to wear a seat belt for anyone over 16 years of age is a secondary traffic violation.
- January 2006: Alaska State Legislature amends the seat belt law making it a primary traffic violation.
- January 31, 2006: Alaska Governor Frank Murkowski signs the primary seat belt bill into law.
- May 1, 2006: Alaska's primary seat belt law goes into effect.
- Primary seat belt law permits a law enforcement officer to stop a vehicle and issue a citation for a seatbelt violation even if it was the only violation observed.

ALASKA'S PRIMARY SEAT BELT LAW

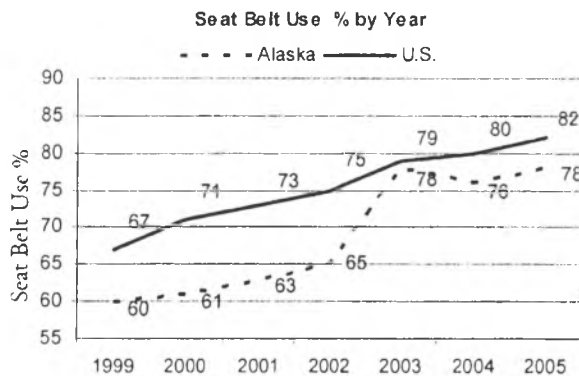
WHAT IT IS...

- It is a way to save an estimated seven lives, 102 serious injuries and \$29 million annually in Alaska. Nearly 75% of the costs of motor vehicle crashes are borne by people not involved through increased taxes, insurance premiums, medical, and legal costs.
- It is a no-cost way to increase seat belt use by Alaska's citizens. Use of seat belts is an effective and proven method to prevent death and injuries in motor vehicle crashes.
- It is a way to protect our families and friends from being killed or injured when an unbelted occupant is thrown around a vehicle following a collision.
- It is a way to decrease the fatality rate in Alaska. States with primary seat belt laws have consistently lower fatality collision rates than those states with secondary seat belt laws.

- *Motor vehicle crashes are the leading cause of death for Americans ages 3-33. (Centers for Disease Control & Prevention)*
- *In 2004, 55% of Alaskans killed in motor vehicle crashes were not wearing a seat belt. Seat belts reduce the risk of death in a crash by 50%. (National Highway Traffic Safety Administration)*

WHAT IT IS NOT...


















- It is not an infringement on personal rights. We live in a society where we all pay for the cost to treat individuals in need of medical care including those injured who were not wearing a seat belt. As citizens, we have the right not to pay for preventable death and injuries caused by those who choose not to buckle up.
- It is not a revenue-generating public policy. Law enforcement does not receive a direct benefit from seat belt citations and fines.
- It is not a quota program to get law enforcement officers to write more tickets. There is no place for quotas in professional policing.
- It is not a way for law enforcement officers to use the violation as a pretext to stop citizens to gain entry to their vehicles. There is no place in professional policing for biased policing. In states with primary seat belt laws, research has shown no evidence that seat belt enforcement has been used as a tool for biased policing.





































Alaska trails the national average for seat belt use. Enactment of a primary seat belt law in other states has resulted in increased belt use rates of 7% to 9%.

WHAT CAN THE PUBLIC EXPECT BEGINNING MAY 1, 2006?

- A coordinated, statewide effort to boost compliance with the seat belt law. Law enforcement will be compassionate, consistent and fair when enforcing the law with the goal of changing the behavior of those citizens who do not buckle up.
- A public education campaign regarding the importance of buckling up and the strict enforcement of the seat belt law.
- An increase in seat belt citations. In other states, the increase in citations issued lasts four to six months following enactment of a primary seatbelt law.
- The beginning of a trend showing a decrease in death and injuries on Alaska's roads and highways.

State ⌵	Type of law ⌵	Date of first law ⌵	Who is covered ⌵	Base fine before fees ⌵	Usage ^[3] ⌵
 New Hampshire	No law	No law	None	None	69.2%
 Alabama	Primary Enforcement	July 18, 1991	Age 15+ in front seats	\$25	86.1%
 Alaska	Primary Enforcement	September 12, 1990	Age 16+ in all seats	\$15 (\$25 actual)	84.9%
 Arkansas	Primary Enforcement	July 15, 1991	Age 15+ in front seats	\$25	70.4%
 California	Primary Enforcement	January 1, 1986	Age 16+ in all seats	\$20 (\$88 actual) \$50 second offense (\$190 actual) ^[4]	95.7%
 Connecticut	Primary Enforcement	January 1, 1986	Age 7+ in front seats	\$92	88.0%
 Delaware	Primary Enforcement	January 1, 1992	Age 16+ in all seats	\$25	91.3%
 District of Columbia	Primary Enforcement	December 12, 1985	Age 16+ in all seats	\$50 ²	90.0%
 Florida	Primary Enforcement	July 1, 1986	6+ years in front seat; 6 through 17 years in all seats	\$30	81.7%
 Georgia	Primary Enforcement	September 1, 1988	Age 6-17 in all seats; Age 18+ in front seats	\$15	89.6%
 Hawaii	Primary Enforcement	December 16, 1985	Age 8-17 in all seats; Age 18+ in front seat	\$45 (\$92 actual)	97.0%
 Illinois	Primary Enforcement	January 1, 1988	Age 16+ in front seats	\$25 (\$60 actual or \$95 if choosing traffic school)	90.5%
 Indiana	Primary Enforcement	July 1, 1987	Age 16+ in all seats	\$25	91.2%
 Iowa	Primary Enforcement	July 1, 1986	Age 11+ in front seats	\$25	92.9%
 Kansas	Primary Enforcement	July 1, 1986	Age 14-17 in all seats; age 18+ in front seat	\$30	77.4%
 Kentucky	Primary Enforcement	July 15, 1994	More than 40 in. tall in all seats	\$25	73.3%
 Louisiana	Primary Enforcement	July 1, 1986	Age 13+ in front seats	\$25	75.5%
				\$70 1st offence,	

 Maine	Primary Enforcement	December 26, 1995	Age 18+ in all seats	\$160 second up to \$310 for a 3rd offense	83.0%
 Maryland	Primary Enforcement	July 1, 1986	Age 16+ in front seats	\$25	93.3%
 Michigan	Primary Enforcement	July 1, 1985	Age 4+ in front seats; Age 4-15 in all seats	\$25	97.2%
 Minnesota	Primary Enforcement	August 1, 1986	All in front seats; Age 3-10 in all seats	\$25	86.7%
 Mississippi	Primary Enforcement	July 1, 1994	Age 4-7 in all seats; Age 8+ in front seat	\$25	71.3%
 New Jersey	Primary Enforcement	March 1, 1985	Age 18+ in front seat ⁵ ; age 8-17 in all seats	\$50 per person	91.8%
 New Mexico	Primary Enforcement	January 1, 1986	Age 18+ in all seats	\$25 ²	91.1%
 New York	Primary Enforcement	December 1, 1984	Age 16+ in front seats	\$50 (\$135 Actual after surcharges) ^[5]	89.1%
 Oklahoma	Primary Enforcement	February 1, 1987	Age 13+ in front seats	\$20	84.3%
 Oregon	Primary Enforcement	December 7, 1990	Age 16+ in all seats	\$90	96.3%
 South Carolina	Primary Enforcement	July 1, 1989	Age 6+ in all seats	\$25	79.0%
 Tennessee	Primary Enforcement	April 21, 1986	Age 16+ in front seats	\$50	81.5%
 Texas	Primary Enforcement	September 1, 1985	Age 8+ in all seats	\$200	91.2%
 Washington	Primary Enforcement	June 11, 1986	Age 16+ in all seats	\$124	96.5%
 Wisconsin	Primary Enforcement	December 1, 1987	Age 8+ in all seats	\$10	74.2%
 North Carolina	Primary Enforcement ¹	October 1, 1985	Age 16+ in all seats	\$25	89.8%
 Arizona	Secondary Enforcement	January 1, 1991	Age 5+ in front seats; Age 5-15 in all seats	\$10 (\$37.20 actual)	79.9%
 Idaho	Secondary Enforcement	July 1, 1986	Age 7+ in all seats	\$10 (\$51.50 actual)	76.9%
 Massachusetts	Secondary Enforcement	February 1, 1994	Age 11+ in all seats	\$25	66.8%
 Missouri	Secondary Enforcement	September 28, 1985	Age 16+ in front seats	\$10	75.8%

 Montana	Secondary Enforcement	October 1, 1987	Age 6+ in all seats	\$20	79.3%
 Nebraska	Secondary Enforcement	January 1, 1993	Age 18+ in all seats	\$25	82.6%
 Nevada	Secondary Enforcement	July 1, 1987	Age 6+ in all seats	\$25	90.9%
 North Dakota	Secondary Enforcement	July 14, 1994	Age 18+ in front seats	\$20 (actual \$100.50)	81.6%
 Ohio	Secondary Enforcement	May 6, 1986	Age 15+ in front seat; 4-14 in all seats	\$30	82.7%
 Pennsylvania	Secondary Enforcement	November 23, 1987	Age 8+ in front seats	\$10	85.1%
 Rhode Island	Secondary Enforcement	June 18, 1991	Age 13+ in all seats	\$75	72.0%
 South Dakota	Secondary Enforcement	January 1, 1995	Age 18+ in front seats	\$20	71.8%
 Utah	Secondary Enforcement	April 28, 1986	Age 16+ in all seats	\$45	86.0%
 Vermont	Secondary Enforcement	January 1, 1994	Age 16+ in all seats	\$25	87.3%
 West Virginia	Secondary Enforcement	September 1, 1993	Age 8+ in front seats; 8-17 in all seats	\$25	89.5%
 Wyoming	Secondary Enforcement	June 8, 1989	Age 9+ in all seats	\$25	68.6%
 Virginia	Secondary Enforcement ⁴	January 1, 1988	Age 16+ in front seats ^[6]	\$25	80.6%
 Colorado	Secondary Enforcement; Primary for children	July 1, 1987	All front seats; under 16 all seats	\$71	81.7%

Rebecca Rooney

From: Bob Kallio [bob.kallio@gmail.com]
Sent: Tuesday, March 22, 2011 6:23 AM
To: Rep. Peggy Wilson
Subject: HR B95

*Put in
Packet*

It is ironic that yesterday in Rep. Tammie Wilson's district, three young people in one vehicle and 1 older person in another were involved in a fatal car crash. The three young people were not wearing seat belts and the older man in a pickup was. A young woman and young man in the one car were not wearing seat belts and both were pronounced dead at the scene. Seat belts do save lives. Hopefully HR B 95 will be left in committee and never heard of again.