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Without Enforcement, U.S. Belt Laws Fail to Increase Use

Three jurisdictions in the United States have laws or regulations requiring seat belt use. Everywhere else, belt use is voluntary. Across the United States, use rates have remained virtually unchanged at 10 to 15 percent of drivers since 1978, and even fewer passengers use belts.

The following is a summary of the limited experience in the United States with mandatory seat belt laws:

Puerto Rico was the first major U.S. jurisdiction to pass a seat belt use law, which took effect on January 1, 1974. The law applies to virtually everyone riding in a belt-equipped vehicle.

A 1974 survey of belt use in Puerto Rico by the U.S. Department of Transportation indicated a use rate of 18 percent, about the same rate as was being observed elsewhere in the country during that year. At that time, an official in Puerto Rico told *Status Report* that the law was not being enforced because citizens "made such a stink about it." (See *Status Report*, Vol. 9, No. 14, July 26, 1974.)

In late 1983, Insurance Institute for Highway Safety researchers observed seat belt use in Puerto Rico and found a compliance rate of about three percent.

Brooklyn, Ohio, a Cleveland suburb, is the only U.S. municipality with a mandatory seat belt use law, enacted in 1966 by a unanimous city council vote. Signs advising motorists of the law are posted at Brooklyn's city limits, and the police chief has said that citations for nonuse of belts are issued with those for other violations — but *only* with those for other violations. The penalty for a first violation is an oral reprimand; second and third violations carry fines of $2 and $5, respectively.

A law similar to the one in Brooklyn, Ohio, was adopted in early 1984 by the council of Richland, Michigan. However, residents subsequently rejected the measure by a 3 to 1 margin in a voter referendum.

New York recently became the first state to pass a mandatory seat belt use law, which will take effect on January 1, 1985. In addition, New York currently has in effect an administrative regulation requiring holders of learners permits to use seat belts. Research sponsored by the Insurance Institute for Highway Safety indicates higher belt use among New York's permit holders than other drivers at some locations — 39 percent among the learners compared to 7 percent among other drivers at one survey location; 32 percent and 12 percent, respectively, at another location; and 6 percent for both learners and drivers at a third location. "If the regulation has increased use rates, these rates are still quite low," the researchers concluded, and most learners are ignoring the requirement.

Outlook for Seat Belt Laws in the U.S.

Prospects for passage of seat belt use laws are, for the most part, strongest in states whose economies are dependent on the automobile industry, an informal survey by the Insurance Institute for Highway Safety shows.

In interviews with governors' representatives and others, the Institute focused on states with large population centers and obtained a profile of the immediate outlook for action on belt use laws. The automatic restraint rule as presently worded will be rescinded if two-thirds of the nation's population is covered by such laws as of April 1989. (See *Status Report*, Vol. 19, No. 13, July 28, 1984.)

Covering two-thirds of the population would require a minimum of 16 state legislatures to pass seat belt laws. If California, the most populous state, is not among them, 22 states would be required. If neither California nor Texas is among the states passing belt use laws, 26 states would be required.

Outlook in Selected States

Michigan: In this state where the auto industry and its suppliers dominate the economy, Secretary of State Richard Austin said a bill to require the use of seat belts "has a better than 50 percent chance of passage after the November election."

Pennsylvania: Governor Richard Thornburgh is "studying" the issue of a seat belt law in this state, where steel production levels are heavily affected by domestic auto production. State Senator Edward M. Early, who has introduced several belt use bills, said: "I feel very confident" that eventually the state will enact belt use legislation — either incrementally or all at once.

Early said his bill to require front-seat occupants to wear seat belts "has a pretty good chance because there are 19 cosponsors." Early succeeded in getting the state senate to adopt an amendment to a house-passed bill that would require learners permit holders and junior license holders to wear belts. That measure will be worked out in a conference between the two

bodies, although, Early acknowledged, the house voted to reject his amendment. Even so, he said, Dole's recent ruling "enhances our chances" by making automatic restraints or belt use laws an "either-or" proposition.

Illinois: The house passed a bill to require belt use, but Kathy Selcke, a press aide to Governor James Thompson, has reported the bill was stopped in the senate. Of 59 senators, only 10 would go on record — three for, six against, and one voting "present" — when the bill came to the floor.

"With Dole coming out trying to circumvent the air bag, they're [lobbyists] pressuring us," said Selcke. "I think we're going to hear about this again. The auto dealers were very prevalent [during the last session] and they sent some very powerful people. She's holding it out against air bags — everybody is." Selcke said the issue is a "touchy" one for politicians because there's little public support for a state belt use law.

New Jersey: Paul Wolcott, spokesman for Governor Thomas Kean, reported that bills to require seat belt use have been introduced in both houses of the legislature. Kean has said he would probably sign such a measure, although he has "substantial questions" about the enforceability of belt laws and their infringement on individual rights, Wolcott said.

The governor "would have preferred a definitive order requiring the installation of air bags," Wolcott said, adding the governor believes air bags can effectively be distributed throughout the automobile fleet only when the cost is brought down by the large-scale production that would follow a federal mandate.

Texas: A major educational program is underway to increase belt use among state employees, Tom Griebal, a transportation aide in the governor's office, told the Institute. During a special session of the legislature this summer, Texas finally adopted a child restraint use law, he noted. (Only Wyoming remains without such a requirement.)

Governor Mark White has not yet taken a position on the necessity for a state belt use law. "Texas is a frontier state and was once an independent nation," Griebal said, noting that any attempt to pass a belt use law in this individualistic state would be "difficult."

"This one isn't on the front burner yet," said Griebal. "I realize we're going to be key." Texas is pivotal to efforts to meet Dole's two-thirds population requirement of the automatic restraint standard.

California: Governor George Deukmejian has taken no position on belt use laws but is studying a legislative proposal to raise the state's child restraint law to cover children up to age seven, Kevin Brett, deputy press secretary, said.

Jeanette Burton, chief aide to California Senator Diane Watson, said the senator intends to push forward her legislative proposal to require state vehicles to be equipped with air bags. (See *Status Report*, Vol. 19, No. 5, March 24, 1984.)

Massachusetts: Governor's press aide Barbara Kopans noted that "while legislation was introduced last year, it didn't go anywhere." Governor Michael Dukakis has been promoting an educational campaign, hoping to increase voluntary belt use, she reported. Kopans said the governor believes that because so few people use seat belts voluntarily, "it would be nearly impossible to enforce" a law. Dukakis has issued an executive order requiring public employees to wear belts when driving on state business.

Ohio: Governor Richard Celeste has also signed an executive order requiring state employees to wear seat belts when traveling on government business. "There will be some lobbying to get a law introduced," said David Jacobsen of the state's highway safety office. He would not comment on the prospects for such legislation, however.

Virginia: The state legislature had one bill to require belt use introduced last year, but it died in committee, according to Phil Abraham of Governor Charles Robb's office. "The Dole rule obviously is a new factor and whatever efforts the auto industry makes will be a new factor" during the legislature's next session, he noted. "I do know it will be a real fight in this state to obtain passage of such a law," he added.

North Carolina: Deputy press secretary to Governor James Hunt, Lynne Garrison, said the state's legislature will be in flux during the next session. Neither Hunt nor the current lieutenant governor will be in office next January. Garrison predicted little if any activity, noting that no bill had been brought up during the legislature's last session.

Georgia: Governor Joe Frank Harris' press assistant, Barbara Morgan, said there has been no effort to adopt belt use legislation. Nor is the governor undertaking any public campaign to increase voluntary belt use, she said.

Judy Stone, of the National Association of Governors' Highway Safety Representatives, believes that at least a handful of states will adopt such laws by the 1989 deadline. But, she added, she had not heard anyone say, "Gee, the Secretary's rule is going to make it easier for me to get my [belt use] bill through." Stone said she expects many governors to sit back and watch what happens in New York before advocating laws in their states.

insurance institute for highway safety

the highway loss reduction

Status Report

Vol. 20, No. 1

January 19, 1985

Seat Belt Use Bill Passes in Illinois

Illinois became the third state to pass a mandatory seat belt use law, following New York and New Jersey. The bill, signed by Governor James R. Thompson on Jan. 8, 1985, requires drivers and front-seat passengers to wear seat belts or face a maximum $25 fine beginning July 1985.

In Michigan a similar bill was four votes short of passage in the House. Rep. David Hollister plans to reintroduce the legislation in the next session.

The Illinois law states that failure to wear a seat belt should not be considered to be evidence of negligence, and it does not limit the liability of an insurer or reduce the damages awarded in a civil suit. Offenders will be charged only when stopped for another traffic violation.

Federal Motor Vehicle Safety Standard (FMVSS) 208 stipulates that a state's mandatory use law must meet certain qualifications for the state to be counted as part of the two-thirds of the United States population covered by such laws that would trigger rescinding the requirement that automakers equip all cars with air bags or automatic seat belts by 1990. Because states must include penalties of $25 or more for each violation and they must have a provision that allows failure to use a seat belt to reduce the damages in an injury lawsuit, it is uncertain whether Illinois' 11.4 million residents would be counted as covered by the FMVSS 208 requirements. (See *Status Report*, Vol. 19, No. 13, July 28, 1984.)

Facts about Air Cushions

A booklet, "Myths and Facts about Air Cushions," providing factual responses to 14 common misconceptions, is now available from the Insurance Institute for Highway Safety. The booklet addresses such myths as "Air cushions have not been adequately tested" and "Car buyers do not want air cushions," with factual rebuttals based on a comprehensive review of IIHS, government, and automobile company research, and government and public documents.

Copies of the booklet, "Myths and Facts about Air Cushions," may be obtained free by writing Publications, Insurance Institute for Highway Safety, Watergate 600, Washington, D.C. 20037.

With permission of the *Baltimore Sun*

The Trapdoor

By William Haddon, Jr.

Maryland may soon follow New York and New Jersey in enacting a law requiring the use of seat belts by drivers and front-seat passengers. Such a law can help reduce deaths and injuries. But before Maryland adopts one, there are some points to be considered.

Although such laws in four Canadian provinces increased the use of seat belts from about 20 percent to about 60 percent, the reduction in deaths (11 percent) and injuries (6 percent) was not nearly as great as anticipated. Seat-belt use was lower among young drivers (who have substantially higher crash rates) than among older drivers.

The frequency with which seat belts are used in places with seat-belt laws is highly dependent on enforcement. During a three-stage enforcement program in one Canadian city, use rates went to a high of 84 percent in the stage with most intense enforcement. In a community without strong enforcement, the belt-use rate remained about 44 percent even though there was a law.

By themselves, seat-belt laws are not enough.

To provide protection for passengers in a crash, there should be a baseline of automatic protection, with seat belts as a supplement for those who will use them.

This automatic protection can and should include windshields that are less likely to cause cuts in crashes, and doors and door locks that are designed to decrease the likelihood of being thrown onto the pavement in a crash.

But especially it should include air bags, which can protect the front-seat occupants automatically in the head-on and front-angle collisions which cause most deaths and serious injuries in automobile accidents.

Cars equipped with air bags have now traveled more than a billion miles in the United States and Canada. The Insurance Institute for Highway Safety has studied frontal crashes violent enough to deploy air bags and has found that in the more severe crashes the air bags reduced the severity of injuries to front-seat occupants by 65 percent.

The U.S. Department of Transportation (DOT) is phasing in a requirement that new cars be equipped with automatic restraints such as air bags or automatic seat belts, starting with 10 percent of production with the 1990 models.

Despite the fact that we need *both* automatic crash protection and seat-belt laws, the important life-saving requirement for automatic protection will be rescinded if state legislatures covering two-thirds of the population enact and enforce mandatory seat-belt-use laws by 1989.

Most auto manufacturers, which have fought air bags for years, will probably press for enactment of mandatory seat-belt laws as an alternative.

But this could mean that, if state legislatures reach the two-thirds point on enacting seat-belt laws and stop there, as many as 75 million people (the remaining one-third of Americans) could be left without the legally mandated protection of either automatic restraints or seat belts.

The rescission provision in the DOT requirement has become known as the "trapdoor." Officials of New York state (where a seat belt law was passed before the DOT rule was announced) and a number of insurance companies and associations have filed suits challenging the rescission provision. The New York officials contend the provision creates a paradox whereby trying to protect their citizens by adopting mandatory use laws, they find themselves simultaneously furthering the elimination of needed nationwide protection.

Legislators in other states adopting seat-belt laws are recognizing the serious dilemma produced by the DOT rule. They are inserting provisions that they hope will prevent their laws from being counted towards the two-thirds point that would trigger rescission of automatic protection.

For example, the Transportation Department stipulated that the penalty for a violator in a qualifying law must be not less than $25. In some cases legislators are calling for a lower penalty.

There also have been proposals for automatically terminating a seat-belt law whenever it is about to be counted in the two-thirds and for requiring that all 1990 (or later) models registered in a state have automatic restraints.

Motor vehicle crashes cause thousands of deaths and millions of injuries every year. Among males 15 to 19 years old, one out of three deaths from all causes is the result of injuries as a motor vehicle occupant.

Seat-belt laws can help reduce this toll. But they should complement automatic protection. They should not be enacted in a manner that would defeat attainment of the goal of automatic protection for everyone.

This life-saving goal is entirely feasible, especially because the new, all-mechanical air bag systems, developed by New Jersey's Breed Corporation and available in about two years, will cost about $40 for a driver's air bag or about $4 a year over the life of the car.

Automatic protection and a requirement that all front-seat occupants belt themselves combine to provide the best crash protection. If they were to be established as antagonists, many people would needlessly be injured or die.

Seat Belts *and* Air Bags

The American Osteopathic College of Rehabilitation Medicine has adopted a resolution calling on automakers to provide automatic seat belts and air bags to consumers.

The group also urged car makers to encourage state adoption of seat belt use laws, and said the U.S. Department of Transportation should expedite rules "to protect the lives of United States citizens by promoting both mandatory seat belt usage and passive restraints by 1986."

The osteopaths also urged states to enact legislation requiring both belt use and installation of automatic restraints in cars.

The American Osteopathic College of Rehabilitation Medicine is comprised of osteopathic physicians specializing in the treatment of moderate to severe physical disabilities including head injuries and paralysis.

Judge Denies Trial In Suit Over Failure To Install Air Bags

A Florida judge has denied a jury trial for a brain injured victim of a car crash, saying that as a matter of public policy, General Motors is not obliged to provide air bags in order to make cars more crashworthy.

The case has been appealed.

In a hearing on a motion for summary judgement, Judge George C. Carr, of the U.S. District Court for the Middle District of Florida in Tampa, said he believes air bags are effective.

"I would like to have one in my automobile," Judge Carr told the plaintiff, Alexander Evers, Jr., husband of the permanently injured woman, and his attorney, Jon Anderson, "but I don't think as a matter of public policy that this court could impose...on every automobile manufacturer an obligation to put in a passive restraint by way of an air bag."

The injured woman, Marcia Evers, was driving a 1977 Pontiac Grand Prix when another auto ran a stop sign and struck her car on the left front bumper. The striking vehicle then rotated and "side-slapped" the Evers car on the driver side. During the crash — even though she was wearing a seat belt — Mrs. Evers' head was partially ejected and the windshield pillar of the striking car struck her head, the plaintiff's complaint reported.

An expert witness testified in an affidavit that an air bag system could have reduced or eliminated the woman's head injury, and the judge accepted the expert testimony.

Since the 1979 crash, Mrs. Evers has remained in a coma and requires constant nursing care. "She weighs 60 or 65 pounds," Anderson told *Status Report.*

Briefs filed in support of the appeal include submissions by the American Trial Lawyers Association, the Trial Lawyers for Public Justice, Air Bag Information Center, Inc., and an attorney associated with the Johns Hopkins School of Public Health.

14-1016
Levy
4/15/85

IN THE HOUSE BY NAVARRE AND M.M.MILLER

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to school vehicle safety; and providing for an effective date."

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

* Section 1. AS 28.05 is amended by adding a new section to read:

Sec. 28.05.100. CHILD SAFETY DEVICES IN SCHOOL VEHICLES. (a) A school bus or other vehicle for transporting children that is purchased or leased by the state or a school district after the effective date of this Act must

(1) be equipped with seatbelts or, if the vehicle is to be used to transport children under four years of age, child safety devices meeting the standards of the United States Department of Transportation for child safety devices for infants; the number of seatbelts or child safety devices in each vehicle must be equal to the seating capacity of the vehicle;

(2) be equipped with seat backs that are at least 28 inches high, if the vehicle is over 10,000 pounds gross vehicle weight; and

(3) comply with the safety standards of the United States Department of Transportation for school vehicles.

(b) The chief school administrator of each school district and regional educational attendance area shall set standards for instruction in the use of seatbelts and child safety devices.

(c) The Department of Public Safety shall provide for periodic inspections of school vehicles to ensure compliance with this section.

(d) The driver of a school vehicle is not personally liable for injury to a passenger caused by failure of a passenger in a school vehicle to use a seatbelt or child safety device.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10[illegible]0(c).

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 28, 1985

Ms. Laurel Osborne
Regional Co-Coordinator
National Coalition for
Seatbelts on School Buses
P.O. Box 225
Galena, AK 99741

Dear Ms. Osborne:

This is in response to your letter of February 14 regarding the negative, unsolicited seat belt safety information sent to you by Romayne Kareen of the Department of Education. Thank you for letting me know of your concern.

My Administration supports the use of seat belts in all vehicles, especially those vehicles transporting children.

I have asked Ron Raynolds, Commissioner of the Department of Education, to look into this matter and respond directly to you. He has also been asked to keep this office informed of the progress being made to resolve this concern.

If I can be of any further assistance to you, don't hesitate to write or call.

Sincerely,

Bill Sheffield
Governor

cc: Ron Raynolds, Commissioner
Department of Education

SPECULATION ON SEATBELTS IN SCHOOL BUSES

A great many of the arguements against seatbelts in school buses are speculative in nature. Most of the speculation can be laid to rest by the experience of districts which have seatbelts in their large school buses. There are presently seatbelts in school buses in school districts in the states of New York, New Jersey, Illinois, Georgia, Michigan, Oregon, Arizona and Vermont. Greenburgh Central School District No. 7 and Ardsley Union Free Districts in New York report the following facts:

1. Safety belts are installed on the seat frame, not on the floor, so tripping on the anchors is not an issue.
2. The short end of the belt is on the aisle, does not dangle and trip passengers and so is not an issue.
3. No districts report students using safety belts (which are very lightweight) as weapons. This is not an issue.
4. There are no problems with insurance.
5. The belts are color coded, three sets to a seat. When two children ride in the seat, they do not use the middle set.
6. Drivers report fewer discipline problems with belted students.
7. Small children, when belted, no longer slide off the seat.
8. These districts report that 80% of their students wear their belts. Additionally many of the children are now buckling up in their family cars as an extension of what they have learned in their school safety belt program. For example, three teenagers who were avid non-users of seatbelts were involved in serious accidents where seatbelts saved their lives. They directly attributed the wearing of belts to the Ardsley school bus seatbelt program.
9. Students, including kindergarteners, can unbuckle their seat belts in emergency circumstances; they do not need driver assistance. Two separate accidents in 1979 involved school vans which overturned and left very young, belted passengers "hanging upside down". They instantaneously unbuckled their belts and all very quickly and calmly escaped unhurt.
10. No extra time has been added to bus runs. Students have found it possible to take the approximately ten seconds necessary to buckle up without causing any delays.
11. Seatbelts are not expensive. The cost is about $1000 on a new bus. The cost of retrofitting is about the same--belts cost $6.25 each, and a district can install them itself with little trouble.

Speculation aside, there are two basic issues in the controversy over seatbelts on school buses which are critical.

1. The NHTSA and the NSTA claim that post 1977 buses utilize the concept of "compartmentalization".
2. The NHTSA and the NSTA claim that "compartmentalization" has been proven in tests to be adequate protection for school children.

THE MYTH OF COMPARTMENTALIZATION

A DECEPTION WHICH PUTS ALL SCHOOL CHILDREN AT RISK

In the late 1960's the United States Department of Transportation asked the Institute of Transportation and Traffic Engineering at UCLA to undertake a study to find out if crash characteristics of school buses were similar to automobiles and to find out what features of school bus construction cause injury and death during school bus accidents.

The engineers conducted a series of tests and concluded that the major cause of injury in school buses was inadequacy of the bus seat. At that time the seat backs were not padded, were 20" high and had exposed metal bars. The UCLA team determined that a "safety seat" would be the best protection against injuries in school buses.

> "An adequately designed, properly structured and anchored high backed contoured (28" or higher well padded back rest) provided with well padded armrests, harness or a lap belt, built into the seat unit with retractable, inertial-lock mechanism, represents the essential features of a safety seat that provides sufficient protection for a bus passenger to sustain, with probably no more than minor injuries, a 30 mph head-on or a 60 mph side and rear end collision as reported in this study."

This was "compartmentalization". Essential to this concept were 28 inch high seat backs, armrests and seatbelts. "Seatback height for all school buses should be at least 28 inches." "High back seats (28 in. or more) greatly contribute to the compartmentalization of passengers thereby reducing the chances of injuries sustained by passengers being hurled against one another, regardless of their size." "Seats having strong but well padded armrests provide important lateral constraint." "During the bus side-impact experiment, it was observed that armrests provided a significant improvement in passenger safety..."

> "These bus experiments, the many actual school bus accidents, investigated by the authors, the many types of collision experiments conducted during the past 16 years clearly establish the value in passenger protection of lap belts when used with high back seats. The greatest single contribution to school bus passenger safety is

MEDICAL OPINION CONCERNING SEATBELTS IN SCHOOL BUSES

The following medical associations strongly endorse seatbelts in school buses:

1. The American Medical Association
2. The American College of Preventative Medicine
3. The American Academy of Orthopedic Surgeons
4. The American Academy of Pediatrics
5. The Physicians For Automotive Safety

The American Association for Automotive Medicine has been misquoted in a number of papers and articles. In a response to one such article, Elaine Petrucelli, Executive Director for the American Association for Automotive Medicine wrote:

> "I recently had occasion to see a news clipping from the Depew Herald dated April 14, 1983 on the subject of seat belts on school buses. In that column you mentioned that the American Association For Automotive Medicine advises against securing young children soley by lap belts in either passenger autos or buses. I do not know the source of your information concerning this Association, but the statement you made is absolutely incorrect. We have never taken a position as you stated in the newspaper article. I would appreciate knowing who or what your source of information is so we may correct this erroneous information."

The medical opinions against seatbelts in school buses are limited to that of one doctor, Dr. H. Raof Noer, an orthopedic surgeon. He is quoted as saying that seat belts crush kidneys and rupture bladders and are unsafe for children under eleven years of age.

The Honerable Ed Mehler, Mayor of the City of Lomita, California, before the sub-committee on Commerce and Finance on Bill HR 4137 (The School Bus Safety Act of 1973) said the following:

> "When I talked to Dr. Noer regarding his comments, he said he had been widely misquoted. In talking to me he did <u>not</u> say he was opposed to seat belts in school buses, although he felt other safety requirements should be met first, such as adequate strength of bus bodies, better anchorage of seats and a better seat design such as the one recommended by UCLA and escape hatches. He also felt that the seats should be turned around. He stated that if these things were done, he then would recommend seat belts be provided in all school buses."

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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2. The NHTSA and the NSTA claim that "compartmentalization" has been proven in tests to be adequate protection for school children.

Both of these claims are false and are based on misrepresentation and misquotes from studies and tests.

In the paper "The Myth of Compartmentalization, A Deception Which Puts All School Children At Risk," the theory of compartmentalization will be discussed, from its inception at UCLA in 1967 to the final misapplication of the concept to all post 1977 buses.

The National Highway Transportation Safety Administration and the National School Transportation Association quote a number of tests and studies saying that they prove the present school bus seat provides adequate protection for passengers, and that seatbelts are unnecessary and dangerous. Careful examination of these reports reveal the opposite conclusions.

The NHTSA and the NSTA claim that medical opinion is against seatbelts in school buses. They quote one doctor's opinion. That doctor says he has been widely misquoted. Five major medical associations support seatbelts on school buses at this time.

The NHTSA and the NSTA claim that statistically school buses are safer than other modes of transport. It should be noted that statistics involving school bus fatalities and injuries <u>never</u> include accidents which occur on field trips and other extra-curricular activities. The majority of injuries and fatalities occur on field trips.

Some school bus manufacturers say that their post 1977 buses may not be able to withstand seatbelt loads. Federal Standard No. 222 says "The seat is strong enough to take the force of occupants against the seat back if no belts are utilized, or the force of occupants against seat belts if occupants are restrained by belts attached to the seat frame through anchorages provided." These buses apparently do not meet the Federal Standard.

THE MYTH OF COMPARTMENTALIZATION

A DECEPTION WHICH PUTS ALL SCHOOL CHILDREN AT RISK

In the late 1960's the United States Department of Transportation asked the Institute of Transportation and Traffic Engineering at UCLA to undertake a study to find out if crash characteristics of school buses were similar to automobiles and to find out what features of school bus construction cause injury and death during school bus accidents.

The engineers conducted a series of tests and concluded that the major cause of injury in school buses was inadequacy of the bus seat. At that time the seat backs were not padded, were 20" high and had exposed metal bars. The UCLA team determined that a "safety seat" would be the best protection against injuries in school buses.

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> "These bus experiments, the many actual school bus accidents, investigated by the authors, the many types of collision experiments conducted during the past 16 years clearly establish the value in passenger protection of lap belts when used with high back seats. The greatest single contribution to school bus passenger safety is

> the high strength, high back safety seat. Next in importance is the use of a three-point belt, a lap belt or other form of effective restraint. These restraints can be added to the safety seat at very little added cost and their presence provides the continuity needed for proper training of youth concerning habitual use of restraints when riding in any vehicle."

The Department of Transportation then asked UCLA to conduct a second series of tests to develop a seat which would provide protection without the use of a seat belt--a passive seat. The resulting safety seat was massive in construction, had a padded side wall, a heavy padded side arm to compartmentalize the passenger in a side collision and the seat back was made of a mesh yielding material which would absorb the impact of crash forces and virtually catch and contain the child. Unfortunately the mesh had to be replaced after every impact, the seat itself was very expensive and because of its size would have greatly reduced the passenger carrying capacity of the bus.

In 1976 legislation was enacted by Congress to require the NHTSA to set standards to upgrade school bus construction. They were specifically instructed to upgrade the inadequate seat. The resulting seat is well anchored and well padded, but is only raised to a height of 24 inches. It fails to protect the average high school student from whiplash in a rear collision and from neck and chest injuries in a frontal collision. There is no padded side wall, no padded side arm or lateral restraint, and there is no seat belt. The NHTSA's Vehicle Safety Standard No. 222 says:

> "The standard relies on compartmentalization between well-padded and well-constructed seats to provide occupant protection on school buses."

But there is no compartment. The NHTSA adopted the word "compartmentalization" from the UCLA studies and applied it to a padded bench seat of inadequate height.

MEDICAL OPINION CONCERNING SEATBELTS IN SCHOOL BUSES

The following medical associations strongly endorse seatbelts in school buses:

1. The American Medical Association
2. The American College of Preventative Medicine
3. The American Academy of Orthopedic Surgeons
4. The American Academy of Pediatrics
5. The Physicians For Automotive Safety

The American Association for Automotive Medicine has been misquoted in a number of papers and articles. In a response to one such article, Elaine Petrucelli, Executive Director for the American Association for Automotive Medicine wrote:

> "I recently had occasion to see a news clipping from the Depew Herald dated April 14, 1983 on the subject of seat belts on school buses. In that column you mentioned that the American Association For Automotive Medicine advises against securing young children soley by lap belts in either passenger autos or buses. I do not know the source of your information concerning this Association, but the statement you made is absolutely incorrect. We have never taken a position as you stated in the newspaper article. I would appreciate knowing who or what your source of information is so we may correct this erroneous information."

The medical opinions against seatbelts in school buses are limited to that of one doctor, Dr. H. Raof Noer, an orthopedic surgeon. He is quoted as saying that seat belts crush kidneys and rupture bladders and are unsafe for children under eleven years of age.

The Honerable Ed Mehler, Mayor of the City of Lomita, California, before the sub-committee on Commerce and Finance on Bill HR 4137 (The School Bus Safety Act of 1973) said the following:

> "When I talked to Dr. Noer regarding his comments, he said he had been widely misquoted. In talking to me he did <u>not</u> say he was opposed to seat belts in school buses, although he felt other safety requirements should be met first, such as adequate strength of bus bodies, better anchorage of seats and a better seat design such as the one recommended by UCLA and escape hatches. He also felt that the seats should be turned around. He stated that if these things were done, he then would recommend seat belts be provided in all school buses."

TESTS AND STUDIES CONCERNING SEATBELTS IN SCHOOL BUSES

The National Highway Transportation Safety Administration and the National School Transportation Association quote a number of tests and studies saying that they prove the present school bus seat provides adequate passenger protection and that seatbelts are unnecessary and dangerous. Careful examination of these reports reveal the opposite conclusions. Even those reports which appear to be against seatbelts in buses stress that more research is needed .

A STUDY RELATING TO SEAT BELTS FOR USE IN BUSES
Southwest Research Institute, San Antonio, Texas
Sponsored by the California Highway Patrol
Printed by the U.S. Department of Transportation 1977

> "This program involved a study of farm labor buses, school buses and transit buses in these various categories of new and used buses. The study included visits, inspections and in-depth discussions with bus owners, operators, maintenance personnel, seat manufacturers, belt manufacturers ...
>
> Southwest Research Institute has concluded the study with the recommdation that seat belts not be installed in any category of bus in the State of Calif. until adequate research and design be completed to justify a factual decision in either direction. Sufficient research has not been accomplished to date."

This report was an opinion survey of those persons who do not favor seatbelts in school buses. No tests, experiments or research were conducted in this study.

ACCIDENT DATA ANALYSIS OF VEHICLE CRASHWORTHINESS--TEN PAPERS
Prepared by the U.S. Department of Transportation, National Highway Traffic Safety Administration, April 1981

> "The summary cases from the Ultrasystems Inc. report show that the seats and interior panels cause injuries, sever ty unknown, to the occupants of the school buses. Also, some cases show that the seats dislodged from their mountings due to the severity of the accident."

The National School Transportation Association provides information in their National School Bus Report, Spring 1984 which refers to the UCLA studies done in the late 1960's. They say "UCLA conducted crash sled tests using seat-belted dummies. The greatest injuries occurred to passengers that were seat belted in the bus. The least injuries occurred to passengers who sat unsecured in the bus." "In addition to several studies that have been done, the Institute of Transportation and Traffic Engineering of the University of California, Los Angeles conducted one of the most comprehensive studies on potential school bus passenger injuries. The use of lap belt restraints was discouraged, especially with the low, unpadded seat backs in use at that time." The NSTA has chosen one isolated test of the UCLA report to support their position and has chosen to ignore the conclusions and recommendations of that report.

SCHOOL BUS PASSENGER PROTECTION
by Derwyn M. Severy, Harrison M. Brink, and Jack Bair
Institute of Transportation and Traffic Engineering, University of California, Los Angeles 1967

"1. Low back seat units, seatback height less than 28 in., greatly increase chances of injuries during school bus accidents. Seats most commonly encountered in school buses have seatback heights ranging from 18-20 in. These low back units provide no head support except for very young school children and leave the passenger in an extremely vulnerable condition when the vehicle is rear-ended. In addition, for the head-on collision, the lap-belted passenger, even the 3-year-old in some instances pivoted about the belt and struck the top horizontal edge of the low seatback ahead in a manner that applied extremely dangerous forces to the face, neck and chest of the individual."

"7. For the moderately severe collision exposures reported in this paper, it was established that a well-designed safety seat would protect passengers from sustaining more than minor injuries. It is apparent that far safer seats can be provided on the basis of performance guidelines established by this paper. School districts quite properly specify for purchase of the least expensive, most durable seats available. However considering that school buses are used more than a decade, a higher initial investment that provides greatly improved safety and comfort is money well spent.

8. Seatback height for all school buses should be at least 28 in. High-back seats (28 in. or more) greatly contribute to the compartmentalization of passengers thereby reducing the chances of injuries sustained by passengers being hurled against one another, regardless of their size.

9. Seat belts recommended for safety seats. These bus experiments, the many actual school bus accidents investigated by the authors, the many types of collision experiments conducted during the past 16 years by the authors and investigations by others, clearly establish the value in passenger protection of lap belts when used with high back seats. The greatest single contribution to school bus passenger collision safety is the high strength, high back safety seat. Next in importance is the use of a three point belt, a lap belt or other form of effective restraint. These restraints can be added to the safety seat at very little added cost and their presence provides continuity needed for proper training of youth concerning habitual use of restraints when riding in any vehicle."

BUS COLLISION CAUSATION AND INJURY PATTERNS

by A.W. Siegel and A.M. Nahum of the Trauma Research Group, University of California, San Diego
D.E. Punge , Automobile Club of Southern California, 1971

The National Highway Traffic Safety Administration provided financial support. "The authors wish particularly to single out the assistance given by David Soule of the NHTSA."

Restraint Systems and Seats

"In all cases where an individual is ejected from a seat to strike either the forward seat or other areas within the bus, the passenger injury level is increased. It is, therefore, recommended that the seats be padded and that all buses be equipped with restraint systems capable of being activated by each individual. Restraint within the seat area is essential for injury minimization. Restraint must be coupled with removal or reduction of the hazard of the forward front seat back.

For many years certain public and pupil transportation officials have been presenting arguments against installation of restraint systems in buses, particularly school buses. Some insist that it is too costly to retrofit new seats or to pad upper seat backs. Some say that seat structures are too weak, that restraint system maintenance is too difficult, and that bus discipline would be hampered. In part, these arguments are emotional excuses and have delayed needed injury reducing design changes.

Regardless of the cost and the problems, it can be stated quite categorically that the absence of load-distributing, energy-absorbing seats, coupled with the absence of bus passenger restraint systems has and will continue to be directly responsible for the majority of bus injuries and fatalities."

The following report contains the results of a series of tests performed by and for the National Highway Transportation Safety Administration, U. S. Department of Transportation in 1978. The final report is 151 pages long and in a handwritten format. The author very clearly warns of the biases and limitations of the report and stresses that more research needs to be done. All tests were frontal impacts at speeds of 15-20 mph. Unbelted adult dummies suffered serious impact to neck and throat areas, but the author was only allowed to evaluate head, torso, and knee accelerations as potential injuries. The unbelted 6 year old dummy experienced a "severe spinal whipping" on impact, and "All seats fail the injury criteria at 20 mph. For all seat spacings.'

Excerpts from:

SCHOOL BUS PASSENGER SEAT AND LAP BELT SLED TESTS
December 1978 Final Report
Prepared for the U.S. Department of Transportation
National Highway Traffic Safety Administration, Washington D.C.

Abstract: Sled tests were performed to determine the response of dummies in simulated frontal collisions with and and without lap belts on both route and activity passenger seats; and the effect of increased spacing of passenger seats on occupant protection..

3.2 Injury Criteria

In the evaluation of the test data of referance, it is necessary to establish a set of restraint performance criteria. These criteria will serve as a basis for judging the restraint effectiveness for a given impact event. In this study, the criteria summarized in Table 1 were assumed (head, torso and knee acceleration forces only). It should be noted that these criteria are not all inclusive. That is, there are other potentially harmfull body loadings that are not covered by Table 1. This became very apparent when viewing the high speed film documentation of the sled tests... resulted with the dummy impacting the seat back with its throat. There are no currently established injury criteria for this body loading. Another example is reflected in Test #27 (it is apparent in many other tests as well). Of particular interest here is the response of the child dummy (unbelted). Because the knee padding was quite stiff, the dummy's hip was stopped abruptly (relative to the sled) allowing the torso to rotate until the head made contact with the seat back. Once the head made contact with the seat back a violent whipping set in the dummy's spine as it attempted to "beam" the inertial loads of the torso to the knee and head contact points. It is not known if this "whipping action" is unique to the dummy structure or is evidence of a real injury problem. Regardless, there are no existing injury criteria to cover this potential injury mode.

4.0 Evaluation and Discussion of Test Data

The first rather obvious observation that can be made of the data is that the Ward seat appears to greatly outperform the Thomas seat in head protection. However, based on the discussion in section 3.0 there are a number of factors affecting the head response of the dummies. Some of these factors eg. head contact geometry) can lead to other potential injury modes which are not covered by acceleration and force measurements (eg. impacts to the throat.) One key observation that can be made of the data in Table 4 is that there are distinct differences in the head contact geometry between the two seat configurations. These differences appear to be more predominate for the unbelted dummies. ...for the Thomas seat, the head contacted solidly to the mouth and chin whereas for the Ward seats a grazzing blow to the dummy's chin results (ie primary blow is taken by the dummy's neck and throat). Thus, other things being equal, the head acceleration can be expected to be higher for the Thomas seat for these test runs. Comparison shows that, ingeneral, the use of the lap belts do not reduce the peak head accelerations but in fact, in most cases, actually cause an increase in peak accelerations. Table 4 indicates that this increase is probably due to the head contact point moving up on the dummy head with the use of the seat belts. It may also be due to the redirection of the head impact into the stiff axis of the seat back structure.

4.1.2 Dummy Torso Response Evaluation

2. The effect of use/non use of lap belts on torso response is insignificant.

4.1.3. Dummy Knee Response Evaluation

4. Use of belts has a decreasing effect on the dummy's knee loading for both seat configurations.

4.1.4 Compartmentalization Evaluation

Compartmentalization is defined herein as the percentage of the dummy remaining within a reference volume during and following impact. The data shows that in general a belted dummy receives more containment than an unbelted dummy both during impact and rebound. It should be noted that all of the sled tests conducted were normal (0) frontal impacts. It is expected that compartmentalization will be somewhat sensitive to the obliqueness, or angle, or impact (this will be especially true for the unbelted dummy).

4.2.1.1 50th Percentile Adult Dummy

2. The difference in the acceleratiion response between the Wayne/ Carpenter seats and the Blue Bird seats appear to be due to the differences in the head/seat-back contact geometry. (see Table 8). Table 8 shows that the shorter seats (Wayne and Carpenter) result with impacts to the neck and upper chest of the dummies. This results with lower head accelerations due to the relatively "soft" loading point and the longer head stroke caused by the head rotating over the seat back during impact. The Blue-Bird seat results with impacts directed to the chin and mouth of the dummy (a much more solid blow, causing higher head accelerations).

* As explained later, the low accelerations are a result of a "softer" blow to the neck of the dummy. It remains to be proven that this loading is non-injurious.

3.0 The effect of the use of seat belts on head acceleration appears to be insignificant for the Wayne and Carpenter seats (approximately a 20% increase in peak head accelerations.. still well below the design limit). However, the Blue Bird seat appears to show a significant decrease in head accelerations due to the use of seat belts (Figure 16a). This can be explained by looking at Test #38 Table 8 (note 4 indicates floor attachment tore). The noted structural failure could have caused the noted decrease.

4.2.1.2 6 Yr. Child Dummy

1. All seats satisfy the injury criteria at 15 mph impacts.
2. All seats fail the injury criteria at 20 mph. For all seat spacings.

4.2.2.2 6 Yr. Child Dummy

The following observations can be made...

1. The Wayne and Carpenter seats appear* to satisfy the torso injury criteria for both 15 mph and 20 mph impacts. The Blue Bird seat appears* to provide adequate torso protection to 15 mph.

2. Impact speed has a greater, increasing effect on the child dummy as compared to the adult.

* High speed film coverage show that the child dummy's spine undergoes a severe spinal whipping from the "beaming" of the torso inertial loads to the head and knee contact points. There are no currently established criteria for this potential injury mode.

5.0 Conclusions and Recommendations

1. Lap belts do not appear to have a significant effect on the response characteristics of a 50th percentile adult male dummy, for the ~~the~~ test conditions considered herein.

2. Seat spacing appears to have only a minor effect on the response characteristics of the adult dummy and only a slighly higher effect on the child dummy.

3. The head response of the adult dummy appears to be dictated by the head/seat back contact geometry. Impacts to the neck and throat of the dummy appear to offer the greatest protection from head accelerations. However, the injury potential of this loading configuration has yet to be determined. FURTHER STUDY IS NEEDED..

4. Impacts involving the child dummy show a severe spinal whipping which seems to be caused by the "beaming" of the torso inertial loads to the head and knee contact points (generally the child dummy's torso does not contact the seat back padding during impact). It is not known if this spinal whipping phenomenon is unique to the dummy structure or if it represents a real injury threat. Additional studies are needed to investigate this area.

note: all emphasis is author's own.

March 5, 1985

Representative Mike Miller
Pouch V
Juneau, Alaska 99811

Dear Representative Miller;

I would like to commend you on introducing House Bill No. 224, for requiring the use of safety devices in motor vehicles. There is no question that many lives will be saved with the mandatory use of seat belts.

I do note, however, that under subsection (c) (1) that passengers in a school bus are exempt from this requirement. I feel that such an exemption for school buses will result in a negative re-inforcement of the seat belt law. Children who from infancy have ridden in child restraints, step onto the school bus and find no safety devices what-so-ever.

Perhaps you have already heard the arguement put forth by the school bus industry, that school buses are the safest vehicle on the road. They claim fewer than 100 deaths since 1977. That figure is not realistic because no deaths which occur on school field trips are included in these statistics. Thousands of injuries occur on school buses every year, most of which are serious head injuries, and most of which would have been preventable with seatbelts.

During the last eight months I have thoroughly researched the subject of seatbelts on school buses. I have coalesed the information into a fairly concise format and have included a copy for you to examine. I hope that you will find the information useful in assessing the value of seatbelts on school buses.

Please be aware that if any school bus manufacturer should claim that their school buses would not be able to withstand the stress of seatbelt loads, then they are admitting that their buses do not meet Motor Vehicle Safety Standard No. 222 which states:

> "The seat is strong enough to take the force of occupants against the seat back if no belts are utilized, or the force of occupants against seat belts if occupants are restrained by belts attached to the seat frame through the anchorages provided."

If any post-1977 bus cannot withstand seatbelt loads, then it is substandard and should be recalled and taken off the road.

Please amend subsection (c)(1) to read:

> "passengers in a school bus purchased before January 1986;"

I am working with Senator Vic Fischer's office on a bill which would require that all new school buses purchased by the state or contracted for by the state must have seat belts and 28 inch high seat backs.

This is a very important issue which will soon be receiving much attention both statewide and nationally. I just received a letter from Governor Sheffield

supporting seatbelts on school buses. I have enclosed a copy of this letter for your information. If you have any questions, please feel free to contact me. As I will be out of the country from March 21 to May 8 another Alaskan contact is my co-coordinator Bridget Ernst.

135 Cityview Ave.
Homer, Alaska 99603
235-7240

Thank you very much for your time and I hope you will pursue this issue.

Sincerely yours,

Laurel Osborne

Laurel Osborne
Regional Co-coordinator
National Coalition For
Seatbelts on School Buses
Box 225
Galena, Alaska 99741
656-1345

THE GOVERNMENT PULSE

SAFETY

Don't Like Seat Belts? You May Have to Move

It's up to the states: belt laws or air bags

By Sue Anne Pressley
Washington Post Staff Writer

New York drivers are not known for their meekness. But even some of the crustiest and most reluctant among them have buckled down and buckled up since Jan. 1, rather than risk a fine of up to $50 for failing to fasten their seat belts. A state survey during January in four areas of metropolitan New York showed that between 63 and 76 percent of the drivers who were stopped were abiding by the state law in its first month.

"I didn't buckle up before the law went through," said Baez Bernardino, 51, of Brooklyn. "They're not very comfortable, and sometimes you can't maneuver the way you want to, and most of the time traffic on local streets is bumper-to-bumper anyway. But I'm trying. I still have to think about it before I wear it."

New York is the leader in a state-by-state response to a U.S. Department of Transportation ruling last July. Transportation Secretary Elizabeth Hanford Dole announced then that states representing two-thirds of the nation's population must pass seat belt laws by 1989.

If such laws are not passed, Dole said, automakers will have to install air bags or other automatic restraints in new cars. An air bag is a device that inflates automatically on forceful impact, protecting the victim with a cushion between the seat and the windshield.

In the months following Dole's announcement, the reaction by state lawmakers has been mixed.

Ten states—Georgia, Maryland, Mississippi, the Dakotas, Utah, Arkansas, Oregon, Virginia and Wyoming—have killed belt-use bills.

Maryland's action early in March arose out of a distrust of government interference in the private decisions of citizens, as well as resentment that automakers were supporting the bill as a way "of ducking air bags," according to Joseph Owens, chairman of the legislative committee that killed the bill.

The Virginia bill's failure last month also was attributed to the state's long-held resentment of federal interference.

A few states, accounting for about 20 percent of the U.S. population, passed seat belt laws—with moderate controversy among legislators and maximum lobbying by the auto industry. On March 1, New Jersey became the second state to enforce such a law. Legislation in Illinois, New Mexico, Michigan and Missouri have approved similar laws, which will take effect later this year.

Twenty-nine states are considering seat belt bills, including California, which has 10 percent of the nation's population.

To the auto industry, the seat belt debate is a high-stakes test of influence and political power. For nearly a decade, automakers have resisted air bags as too expensive and only partially effective. This year alone, the industry expects to pump $12 million to $15 million into its fight to promote seat belt legislation, says Tom Hanna, president of Traffic Safety Now Inc., a coalition of major automakers.

To consumer and insurance interests, the intense effort by the auto industry is no more than a means of escaping federal regulations on automatic restraints. The two groups have formed the National Coalition to Reduce Car Crash Injuries to promote air bags as an important safety standard that could save as many as 9,000 lives a year. So far, the coalition has about $25,000 to spend, according to Joan Claybrook, president of Private Citizen, a consumer advocacy organization.

But to the public at large, which is caught in the middle of the debate, seat belts represent one of two things—either a dangerous intrusion by government into private habits or a sensible way of getting people to take a precaution they might not take voluntarily. In New York, both views are easy to find.

"This is not supposed to be Russia where the government tells you what to do and when to do it," grumbles Alvin Rippey, 35, owner of a Bronx construction firm.

"I wish it was mandatory for everybody, because it's worth it," says Xenia Barley, 29, a Manhattan store clerk. "If any of my friends give me lip about seat belts, I just remind them of those commercials where people go sailing through the windshield."

Seat belts have been offered as standard equipment in passenger vehicles for almost 20 years. But, while the Transportation Department estimates that belts can reduce serious injury and death by 45 to 55 percent, only 15 percent of the population routinely uses them. Of the 30,500 drivers and passengers who died in traffic accidents in 1983, less than 3 percent were wearing seat belts.

Generally, more women than men are frequent users, and people with higher incomes and more education use them more frequently than other groups, says Charles Pulley, president of the American Seatbelt Council.

The groups that wear seat belts less frequently are people over age 55 and between the ages of 17 and 24—the latter group representing 8 percent of the drivers and 22 percent of the fatalities, Pulley says.

Nonusers complain that seat belts are uncomfortable or could trap them inside the car if an accident occurred. Another excuse from sometime-users is that they see no need to wear the belt when driving on short excursions in their neighborhoods. Pulley points out, however, that 80 percent of fatal accidents occur within 25 miles of home.

More than 35 countries have seat belt laws. Since Britain's law went into effect Jan. 1, 1983, surveys have shown that usage has risen to 96 percent. In previous voluntary campaigns, seat belt usage had reached only 30 percent.

"The advantage of having a law," says Pulley, "is that the vast majority of people are law-abiding."

In the state of New York, residents are learning the penalty for disregarding their law. Statewide, about 3,000 tickets, ranging from $10 to $50, have been given to unbelted drivers and their front-seat passengers. New York city police have issued almost 1,000 tickets.

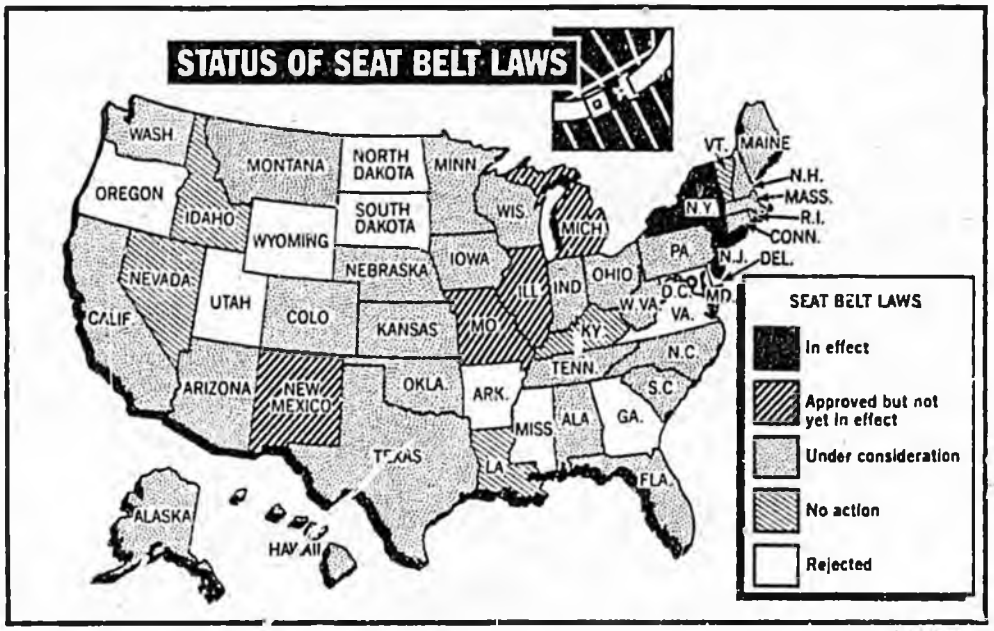
"The passengers are the people who complain," says New York police officer Joel Crosby. "They say, 'I wasn't doing anything. I was just sitting there.' "

While most New Yorkers are trying to live with the law, others are working for repeal, including Republican state Sen. Michael Norzolio, who has collected 23,000 signatures from people who hate the law.

Betty Shufelt of Rutland, Vt., who gained a certain unwanted publicity for being the first person ticketed under New York's law, would just as soon forget the whole issue. Shufelt, a 29-year-old factory worker, was stopped for a moving violation in Whitehall, N.Y., 10 minutes after midnight on Jan. 1. She ended up with a $10 ticket for not wearing a seat belt.

"It was a lot of hassle, and I don't like being told what to do," Shufelt says.

When she crosses the New York state line again, however, Shufelt will fasten her seat belt. "I won't want to," she says, "but I will." ■



By Brad Wye for The Washington Post

> **"The passengers are the people who complain. They say, 'I wasn't doing anything. I was just sitting there.'"**
>
> New York police officer Joel Crosby

Buckling up saves lives

Rep. Mike Miller, D-Juneau, wants to add Alaska's name to the list of states that require automobile passengers to wear seat belts. "It's real simple," Miller says of his proposal. "It saves lives."

The automobile has brought Americans undreamed mobility and opportunity since it was introduced at the turn of the century. But there is a darker side to the story. About 2.5 million Americans have been killed in automobile accidents during the past 80 years. Another 7.5 million people have suffered injuries. Last year, 134 Alaskans were killed and 7,000 more were injured.

Preliminary figures from New York, which began enforcing seat belt requirements in January, suggest the seat belt law there will save 450 to 500 lives in 1985 and $250 million in health insurance and hospital costs, workers' compensation payments and legal fees — costs paid, in the end, by all of us.

That's a convincing case for seat belts. The need for extra legal encouragement is underscored by the fact that only one in nine Americans voluntarily buckled up before state requirements were introduced.

Required seat belts can and should help save lives in Alaska, too. They would surely reduce the terrible cost of treating the victims of highway carnage. Even Alaskans who don't become involved in accidents pay millions annually for insurance premiums and the cost of responding to auto injuries. A law encourageing Alaskans to buckle up is the easiest, cheapest and most effective thing we can do to bring safer streets and reduced highway safety costs.

3/25/85 Daily News

Q. "Should Alaska require use of seat belts?"

A. Most people don't use seat belts

Should Alaska require mandatory use of seat belts? No. Even though it can easily be shown that seat belts save lives and reduce injuries in accidents it can also be shown that most people do not use them. Even in New York where their use is required, it is estimated that only 70 percent of the people comply with the law. Clearly some other means of protection is needed if one is truely concerned with safety.

The U.S. Government has decided that autos must automatically prevent serious injury and death in collisions below 20 mph. Ten percent of all cars sold after Sept. 1, 1986 must meet this requirement. The next year 25 percent of all vehicles sold must meet this requirement and by 1988 it becomes 40 percent. By 1989 every new car must meet this requirement. To comply with this, auto makers may use air bags, automatic seat, belts, or some other form of automatic protection.

I would rather have 100 percent of all new cars equipped with automatic protection thereby eliminating any chance of not using a seat belt. If, however, two-thirds of the U.S. population enact mandatory seat belt laws by April 1, 1989, the auto maker does not have to provide their automatic protection. Until I have a car with automatic protection I will use my seat belts sometimes, but not every time.

—Lee Plummer

A. Don't let legislators control you

Do we need a mandatory seat belt law? How many laws will we allow to be passed for our safety? Does the legislature really care for our safety? Does the legislature really care for our safety or do they want a better grip on our lives?

There is presently a law requiring us to buckle in our children. Have you looked inside the buses your precious little loved ones ride to school in? Does it have seat belts? Is this in violation of the law or did they exempt themselves from their own law? I can receive a fine for driving my kids downtown without their seat belts on, is it all right to take the city bus that does not even provide seat belts? Is this an example of government concern for our safety?

I am sure this bill was spurred by federal government's air bag requirement unless two-thirds of the U.S. population is covered by state seat belt laws. Where is their concern for the other third?

Your legislature is supposed to represent you. Write yours to advise him of your opinion. Don't let them control you.

— B.J. Huffman

A. Time better spent outlawing abortions

If the legislature is truly serious about saving lives they would be well advised to work to outlaw abortions and leave seat belts alone. After all, the victims of abortion are just as dead and they never even had a choice.

— David Hall

A. People should make own choice

Freedom of choice and the willingness to accept the consequences of one's actions must dominate discussions of a mandatory seat belt law in Alaska. That states like New York, New Jersey and Illinois have enacted similar legislation is probably as good a reason not to have a mandatory seat belt law as most Alaskans will require.

I personally believe that the current law requiring that children wear seat belts is appropriate . . . so how come school buses don't have seat belts. I wear a seat belt all the time and encourage my friends to wear them, but I don't want the government to put them in jail or take their money if they choose not to.

The story is always the same. Whenever government attempts to protect individuals from everything that could harm them, they create more problems than they solve.

"Should Alaska require mandatory use of seat belts in cars?" No!

— Chuck Hutchins

A. Belted people walk away from wrecks

The Southern Region Emergency Medical Services Council, Inc., a nonprofit corporation which promotes improved emergency medical care in Southcentral and western Alaska, supports HB 224 which requires all occupants of a motor vehicle to buckle their seat belts.

It should be obvious why we support the seat belt requirement. EMS workers see the lifesaving capacity of seat belts on a daily basis. Quite simply, belted people walk away from wrecks where unbelted people don't. This is a fact to which even the opponents of the legislation will admit.

We believe the state should step in because as a society we have known of the benefits of seat belts for 20 years. We have even had them in our cars for that long. Nevertheless, the majority of drivers and passengers still do not use them every time they get into their cars.

Until the law passes, your local ambulance service pleads with you to buckle yourself up every time you get in a car and insist that your passengers do also. And more importantly, restrain your children in a car seat and insist that your older children buckle up themselves.

— Jerome Selby, chairman
Board of Directors

A. Not wearing seat belts costs billions

It never ceases to amaze me how people will make countless excuses for not wearing their seat belts.

The personal freedom advocates really amuse me. They forget that driving is a priviledge extended to them and not their right. Stoplights, stop signs, speed limits and other regulations are generally adhered to without our "personal freedom" being violated. I don't want a good law rejected for fear of Big Brother.

Those whose stupidity exceeds only their ignorance have created a need for this law. Billions are wasted annually on unnecessary medical costs, not to mention the personal grief from injury and death.

— Kevin w. Ramadell

A. We all pay for those not buckling up

I support the passage of a mandatory seat belt law in Alaska. And while I am also a supporter of individual liberty I don't feel that individuals have a right to engage in behavior which adversely affects me or anyone else.

You may ask yourself "how does my becoming seriously injured because I didn't have a seat belt on affect anyone other than myself?" Well, if an insurance company or government pays the medical bills then you are forcing us all to pay either higher insurance premiums or more taxes. And because almost no one pays their own hospital bills these days, and just about all of us are paying for the irresponsibility of those who choose to not wear their seatbelt.

Well I'm tired of paying for other people's unnecessary deaths and injuries through my insurance premiums and taxes.!

— Tom Scott

A. EMT never unbuckled a dead person

For the last four years I have been an emergency medical technician (EMT) in the State of Alaska. During that time I have never had to unbuckle the seat belt of a person that died in a motor vehicle accident. Not only should seat belts be mandatory for private vehicles but they should also be installed in all school busses and public transportation. Attached to this bill should be a mandatory helmet law as well as a law requiring all users of 3-wheelers and snowmobiles under the age of 16 to complete an eight hour safety course. Alaska is the only state in the country that has accidents as the number 1 cause of death. Let's all start doing something about this alarming statistic!

— Russ [illegible]

A. Others affected by not wearing a seat belt

The current seat belt legislation in the House has my total support. I have worked in a supporting role in emergency medical services for eight years and know well how a person's "right" to not wear a seat belt can affect others — the EMTs, paramedics, nurses and physicians who have to care for victims of violent trauma, as well as the families of those same victims.

As a 37 year resident of Alaska, I understand well the mentality that "demands" its personal freedoms, and I can't buy this one. It's time to legislate the wearing of seatbelts.

— Beckie Brocles

A. Seat belts do help save lives

I think the state should require the use of seat belts in cars because it helps save lives. Many people die each year because they don't wear seat belts. Many people live if they do wear seat belts. The chances of surviving a real bad accident without wearing a seat belt are slim.

— Kristine Olson
Fifth Grade Mountain View Elementary School

A. Law would only be one more intrusion

I feel that a mandatory seatbelt law is another onerous intrusion by groups such as the insurance lobby, the moral majority, M.A.D.D., and others on the lunatic fringe still trying to legislate morality. I suggest that we pass legislation making it mandatory for citizens to purchase and carry umbrellas at all times. If it prevents even one case of pneumonia a year, it's worth it. It's for our own good. Since Alaskans apparently are without integrity or common sense, we'd better assure our spineless survival by codifying, registering and inspecting everything.

Seatbelts indeed. Save me.

—A.S. Faithful

A. Alaska already has too many laws

Mandatory use of seat belts? I think Alaska already has too many laws. The objective of seat belts is to save lives. What is wrong with dying? It's quite popular. People are doing it every day and there is a lot less suffering in a car accident than with cancer, etc.

Seat belts are a good idea but if you think they are a good idea then wear them.

Brushing your teeth is good for you. Maybe we ought to have a law that a person must brush his teeth at least once a day. Sellers of tooth paste and tooth brushes would love that. Maybe they will sponsor such a law.

—E.C. Polk

A. Requirement takes away freedom

I feel Alaska should not require mandatory use of seat belts in cars. I feel that the law takes away the freedom that the constitution promises. If someone wants to take the chances of possibly flying through a windshield or breaking parts of their body on the dashboard or the steering wheel, they won't wear their seat belts. If someone wants to reduce possible chances of doing these things, they will wear their seat belts.

— Dwight Sawyer
Fifth Grade Mountain View Elementary School

A. Seat belts shouldn't be forced on us

No! We should not be "required" to wear seat belts, if we decide otherwise.

We are not senseless individuals that need some over zealous legislator to make up laws that protect us from ourselves.

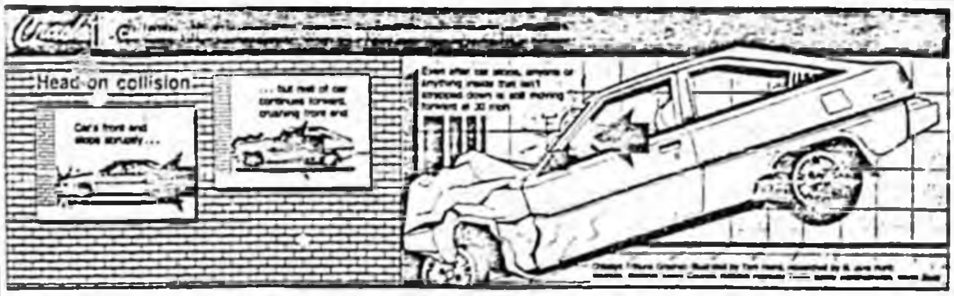
Granted, seat belts are a good idea but, should the decision to wear them be forced upon us by some over protective government?

— Einar J. Norton

A. Not wearing seat belts is stupid

Nobody has the right to die in public, while I or my children witness, just because they were too stupid, too lazy, or too cool to use their seat belts.

—Jay Sullivan



BATTLE TO BUCKLE IN ALASKANS

By ANN CONY
Daily News reporter

JUNEAU — Rep. Mike Miller, D-Juneau, says a bill he has introduced that would require drivers and passengers to wear seat belts has just one goal: To reduce carnage on the streets and roads of Alaska.

"It's real simple," Miller said. "It saves lives."

In Alaska 131 people died in traffic accidents in 1984, and an estimated 7,000 people were injured, according to state troopers.

There has been a demonstrable reduction in traffic deaths in other countries that require people to wear safety belts, Miller said.

In Great Britain, for instance, fatalities have dropped 23 percent and injuries have dropped 25 percent since 1983, when a mandatory seat belt law went into effect there, according to research done by Miller's staff.

"You don't know whose life you'll save," Miller said. "But you will save lives."

"Mike is quite right. Buckling up will save lives," said Andre Marrou, the legislature's only Libertarian.

"I always wear seat belts," Marrou said. "However, we should not be forcing people to wear seat belts to save their own lives, any more than we should force motorcycle drivers to wear helmets. It makes about as much sense as a law prohibiting suicide."

Miller's bill is scheduled tentatively for its first committee hearing a week from Tuesday before the House State Affairs Committee.

If the bill is approved, failure to buckle up would be treated as a traffic infraction, and violators could have demerit points assessed against their driving record.

Miller said he envisions fines comparable to parking tickets, though the exact amount of fines would be left to the courts to decide, but it would be within the range of $10 to $300 prescribed by law for traffic violations.

"You want it to have enough of a bite, but on the other hand you don't want it to be oppressive," he said.

With Miller's bill, Alaska becomes the 44th state to consider a mandatory seat belt law for adults, according to Paul Doyle, a research analyst with the National Conference of State Legislatures in Denver.

Every state except Wyoming now has a similar law for infants and young children.

Laws requiring drivers and adult passengers to wear seat belts have gone into effect in the last few months in New York and New Jersey. A similar law will be enforced in Illinois beginning in July. Legislatures in Michigan and Missouri also have passed seat belt bills, which the governors of those states are expected to sign soon, Doyle said.

In New York, use of seat belts for all drivers, front-seat passengers and children under the age of 10 became mandatory Dec. 1, and enforcement began Jan. 1.

According to preliminary figures, traffic deaths for the month of January were down 28 percent compared to January of last year and down 13 percent compared to the average for the month of January during the previous five years, said George Filleau, a spokesman for the Department of Motor Vehicles.

He emphasized that the figures for January 1985 are preliminary, but there is a clear indication that the law is saving lives.

The DMV estimates that about 70 percent of drivers and passengers in New York are complying with the law, Filleau said.

"There's been resistance. The opponents have been loud and vocal," he said.

But public opinion surveys conducted in October showed 54 percent of New Yorkers favored the law, he added.

Before the law went into effect, the state estimated that a 50 percent compliance rate would save between 300 and 600 lives a year, eliminate or reduce the severity of 75,000 traffic injuries and save $250 million a year in health insurance costs, hospital costs, workers' compensation and the cost of responding to traffic accidents involving death or injury, Filleau said.

Now the state estimates that if the January trend continues, 450 to 500 lives will be saved a year, he said.

Because police are enforcing the seat belt law in the course of enforcing other traffic violations, the cost of enforcement is far less than the savings anticipated from the seat belt law, Filleau said.

While Miller said he is only interested in saving lives, much of the impetus for mandatory seat belt laws in the Lower 48 come from the auto industry.

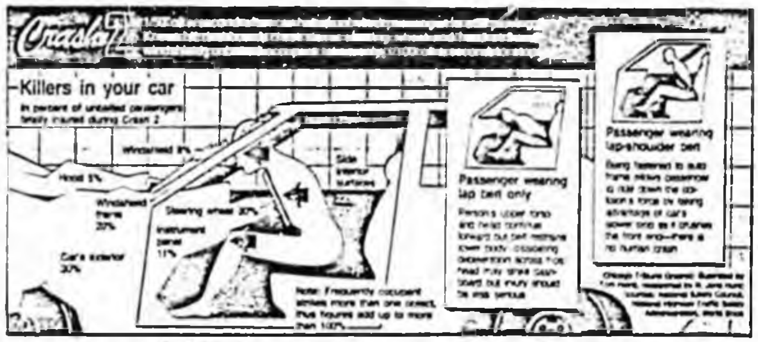
Last year, the [illegible] administration announced that auto manufacturers will be required to equip new cars with air bags, or other passive restraints beginning in 1989 unless states representing two-thirds of the U.S. population enact mandatory seat belt laws.

In the Lower 48 the big question among states is whether to conform to federal guidelines and contribute to the two-thirds needed to nullify the air bag requirements, Doyle said.

Like some representatives in other states, Miller said he would like to see both mandatory seat belt laws and air bags.

But since Alaska's population is so low compared to other states, the outcome of seat belt legislation here is

See Page C-3, SEATBELTS



Continued from Page C-1

unlikely to have much effect on the two-thirds requirement, meaning the auto industry is not likely to concentrate much, if any, of its lobbying efforts in Alaska, Miller and others agreed.

Here the debate is likely to be limited to the issue of seat belts and safety versus civil liberties.

Marrou said the law enacted in Alaska last year requiring parents to buckle up infants and young children makes some sense because youngsters may not be able to make an informed decision to protect their own safety without guidance from adults.

But the government has no business forcing adults to wear seat belts, he said. "It's really not the state's [illegible] to do that."

If the government were in the business of [illegible] adults to take care of themselves, it could [illegible] them from going barefoot at home as a means of guarding against colds, he said.

Miller said he doesn't think his bill is outrageous.

"I think it is [illegible] reasonable," he said, comparing a law on using seat belts to requirements that cars have working brakes and headlights.

Filleau said the state of New York has taken the position that people don't have a constitutional right not to wear seat belts any more than they have a constitutional right to drive a car and [illegible] stop signs or red lights.

"We don't think anyone has the right to risk their own life and limb at a cost of $250 million a year," he said.

Marrou said he agrees that government shouldn't pay hospital bills and other costs for people who are injured in car accidents when they weren't wearing seat belts.

Both Miller and Marrou give the mandatory seat belt law 50-50 chances of being approved by the 14th Legislature.

"I'm hoping it can move right along," Miller said. "It's not very complicated. Either you think it's a good idea or not. Either you're in favor of saving lives and you're not for it or you think it infringes on civil liberties so you're against it."

"We should not be forcing people to wear seat belts to save their own lives."
— Rep. Andre Marrou

"You don't know whose life you'll save, but you will save lives."
— Rep. Mike Miller

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Opinion

Seatbelt law needed

As Chief of the State EMS Bureau and as a licensed EMT with the Tesuque Volunteer Fire Department I am shocked and dismayed with the conclusions of your February 22 editorial concerning mandatory seat belt usage entitled: "Even Dummies Have Their Rights."

The accurate and dramatic figures which you quoted indicating that perhaps 200 New Mexican lives could be saved annually are but a small part of the overall impact. Our greatest concern should not be with dead victims who have refused or neglected to buckle-up, but rather with the overwhelming pain and suffering of the surviving friends, loved-ones and relatives. The social costs from the carnage on our highways is enormous. The economic costs of losing a breadwinner in the prime of their life has caused many families to become dependent upon welfare for years to come. We all pay for this.

Further, the most costly "dollar and sense" impact is not with those "fortunate" enough to die in a serious vehicular accident, but with those who survive — permanently disabled and/or seriously impaired. As we are all aware, the medical care costs of these traumatic injuries are astronomical and quickly outdistance even the best health insurance policies (for those of us who are fortunate enough to have such protection). These unfortunate victims are ultimately cared for and sustained with federal and state tax dollars through medical assistance and other rehabilitation programs. Last year, 10 of the top 50 most costly Medicaid insurance claims in New Mexico involved vehicular accidents. In addition to the welfare costs, these expensive "unbelted" and unnecessary injuries have a dramatic and direct impact in raising our insurance rates. We all pay for this too.

I agree that we all need to be continuously sensitive to the concerns about "personal freedom" and the intrusion of government into our daily lives. However, your editorial analogy of the use of seat belts to wearing a helmet to walk up stairs is patently absurd, although reflective of the all too commonly articulated "pro-idiocy" doctrine. A more acruate analogy would be that we as a society have already collectively decided that it is illegal to drink and drive. The consequences are just too dire. Or further, that when we approach a stop sign or red light we must apply the brakes and stop. It is the law. It makes sense compared to the consequences of having no such agreement.

Thus far, through the current Legislative session, I am encouraged that the vast majority of the public (based upon all the statewide polls) and their elected representatives understand these issues. The Child Restraint Law Amendments, the Front Seat Belt Law, the Motor Cycle Helmet Law and numerous DWI-related proposals are receiving substantive hearings and many favorable committee votes. If most or all of these measures pass, New Mexico will have taken a giant step forward towards becoming a safer and saner place to live.

Thus far in 1985 (as of 2-12-85) there were 20 motor vehicle fatalities in New Mexico. Seventeen of these were not wearing seat belts. We must stop the waste. We must protect ourselves from ourselves.

Barak Wolff
Santa Fe

Right to work hurts

K. Clayton Roberts of the National right to Work committee uses statistics on employment in Right-to-work states to "prove" that they are more prosperous

Julie Padilla, [illegible]
Other than the editorial, the opin[illegible]

Editorial

Even dummies have their rights

After learning how effectively seat belts save lives and reduce injury, only an idiot would neglect to buckle up.

In New Mexico, the Department of Transportation estimates that using seat belts could save 200 lives a year and reduce disabling injuries such as damage to the spinal cord, head injuries and paralysis by as much as 60 percent. Of the 335 people who died from traffic accident injuries last year, only 10 were wearing seat belts.

A study by the department showed that a driver is more than five times more likely to be killed in a crash when not wearing a seat belt than when wearing one. Passengers in a rear seat are twice as likely to be killed without a seat belt.

Since New Mexico is among the leaders in traffic deaths per capita, everyone ought to take the seat belt message to heart.

Using seat belts is the easiest and most effective way to protect oneself from injury or death in a traffic accident.

Bouyed by these statistics, Senate Bill 111 was introduced, seeking to make the use of seat belts mandatory. Sponsored by Sen. Victor Marshall, R-Bernalillo, it would provide for a fine of from $25 to $50 for a driver and front seat passengers who don't buckle up.

As valuable as seat belts are, state officials should work hard to educate the public to elect their use. But it is not the state's business to require them. People who choose not to wear seat belts have a right to accept the risk this choice involves. They have a right to do what they choose in the privacy of their own front seat.

The mandatory law means that the choice to take a personal risk is not acceptable to the state. Those who insist that their personal safety is their own business would be violating the law. The philosophy used to justify requiring seat belts — giving up a little freedom for the public good — is the same thinking which gave us prohibition and could be extended to include outlawing tobacco. In the home, stairs are a major cause of injury. Should the state intervene by requiring safety helmets in houses of more than one story?

Ultimately, in a democracy, people should have a right to be idiots — the right not to wear seat belts — if they so choose. It's not the government's business to protect us from our own stupidity.

Student de

Bill Bennett spent his first weeks as secretary of education striving for an 800 on an achievement test in Outrageousness. By now his description of student life on borrowed money has been immortalized. The guaranteed-loan student of the 1980s is a car-owning, stereo-buying, beach-hopping youngblood with books, a variation on the theme of the Cadillac-driving welfare mom.

According to Bennett, the profligate young won't join the truly suffering if the proposed budget cuts are enacted. If a cap of $4,000 a year is put on all federal student aid, some would merely trade down from private colleges to public. If the family-income cutoff is lowered to $32,500, families would just "tighten the belt."

Alas, nobody has yet devised a competency test for Cabinet members. But it appears that cooler heads may yet prevail. A chorus of students, families and private colleges joined a refrain of complaints. The Congress seems to have heard them.

What has been lost in all of the high-ed hullabaloo was any serious critique of what debt does to students. At the moment, about 60 percent of the full-time undergraduate students at four-year institutions borrow money for tuition. The average amount they borrow is about $2,200 a year, or $8,800 per degree. The average medical student is nearly $40,000 in debt by graduation.

For the most part, we have approved this deficit financing of education in the name of equal opportunity. Schools have been the centerpiece of the dream of equality. We pride ourselves on the notion that Americans who begin life on different economic footing can educate themselves up to the same starting line.

But as the debt burden grows, the concept of education as the great American equalizer shrinks. Frank Newman, president of the Education Commission of the States, says that

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Sen. Housto

One way to save money in state government would be to

BUCKLE UP — SAVE A CHILD

Lorrie Horning

Profile of an Accident

The "typical" child who is killed is a one year old male infant riding in the front seat of a passenger care without a restraint on a clear or overcast day. The driver of the car is the mother who is also not wearing a seat belt. The accident occurs between 8 am and 3 pm within a few miles from home on a dry surface state route. The mother has not been drinking an alcoholic beverage and there are no defects in the family car that contribute to the accident (1).

Cost of an Accident

In the few seconds involved in an auto accident, a victim who is seriously injured may be transformed from a healthy individual to one who must spend the rest of his life in a wheelchair. It will require some 200 medical professionals, including paramedics, doctors, nurses and therapists, to save his life and care for him during a lengthy rehabilitation process. After initial emergency room treatment, the rehabilitation process begins with estimated costs ranging from $350,000 to $600,000 (2).

Statistics show two things: 1) only 1 out of 11 children are buckled in a safety restraint device and 2) 1 out of every 40 infants born this year will die in a motor vehicle while 1 out of 20 will be seriously injured.

More children die each year as a result of auto accidents than die from polio, diptheria, mumps and measles. Auto accidents kill more children than leukemia, crib death and spinal meningitis. Among children ages 1-6, motor vehicle collisions are the major cause of death and disability. According to the National Center for Health Statistics, in 1980, approximately 90,000 children under 6 years of age were injured by motor vehicle accidents. Children under 5 are at special risk because adult seat belt systems are not designed for their small, fragile, top-heavy body structure. Infant safety seats have been shown to reduce mortality in the under 5 group by as much as 90% and serious injury up to 78% (3). A two year project carried out by a Michigan Insurance Company was evaluated by the National Safety Administration. In the two year project which began in mid-1979, the company distributed 7,140 child safety seats to 58,000 policy holders. Injuries among children riding in cars involved in accidents and insured by the company declined 45% in the period compared to the preceding two years. Severe and fatal injuries were reduced 66.7% and claim costs declined by 76% (4).

One of the reasons most given for not using child restraints is the cost of purchasing the seat. A community organization, the Anchorage Medical Society Auxiliary began an Infant Seat Loaner Program last April to help the situation. Their objective is to make as many infant seats available as are needed in the community and as inexpensively as possible. They hope to encourage and stimulate the widespread use of infant safety seats and thereby reduce the number of infant mortalities and injuries due to automobile accidents. The program is called PECABU: Protect Every Child And Buckle Up. PECABU is open to any greater Anchorage area parent, regardless of income. Clients for the program are parents with newborns going home from the hospital, parents who have infants several months old, and parents who are from out of town visiting family and friends. Since PECABU opened a year ago, it has loaned over 1700 infant seats. The program has two offices, one at Providence Hospital and one at Humana Hospital Alaska. The deposit on the rental is $15 with a $10 refund when the seat is returned. PECABU uses the Century Products Infant Loveseat, Model #4500 and loans it out for a period of 9 months or until the infant weighs 20 pounds. Parents complete a rental contract, observe and participate in a demonstration of proper use of the

infant seat. General safety and infant comfort techniques are also stressed. This model infant seat is one of the simplest to use and is approved by The National Safety Administration. There are loaner programs similar to PECABU at Cook Inlet Native Association, Copper Center, and Dillingham. Loaner programs are also beginning in Fairbanks, Seward, Kodiak and Kenai.

The Alaska Child Passenger Safety Association has developed as a result of recent increased interest in automobile safety for children. Spearheaded by an Anchorage physician, Dr. Clint Lillibridge, a task force of interested individuals formed the Association with the intention of stimulating awareness and interest throughout the state concerning child passenger safety and to urge the use of restraint devices for children in automobiles. Members of the Association include State Troopers, Municipal Health Department Staff, hospital, military and Federal Safety Department representatives, Medical Auxiliary officers and interested, concerned parents. The organization has been responsible for setting up displays in shopping malls, demonstrating all types of child restraints, answering questions, passing out literature, and encouraging support for restraint device legislation.

Other community group efforts to create an awareness of child passenger safety include an Anchorage Educational Resource Center. Funded by a grant from the Municipality of Anchorage, the Resource Center acts as a referral center for all community groups interested in educational and promotional aspects of child passenger safety. The Center conducts surveys, makes presentations in schools and provides materials, speakers, and films concerning the importance of using child restraint devices.

At the present time 42 states have passed some form of legislation for compulsory use of child restraints in automobiles. A bill is before the Senate and House regarding such a law for Alaska. Both Fort Richardson and Elmendorf Air Force Base have restrictions for people on their property concerning seat belts and/or child restraint devices.

Researchers at the University of Kansas Medical School have proven that "buckled up equals better behavior". In several studies they observed children riding in cars with their parents. When not buckled up, the children squirmed around on the seats, stood up, complained, fought, and pulled at the steering wheel. When buckled into car safety seats, however, there were 95% fewer incidents of bad behavior. Children feel secure when buckled up. In sudden stops and swerves, they are held snugly and comfortably in place. Most car safety seats lift children high enough to see out the window. Children are also less likely to feel car sick and more likely to fall asleep. Think for a moment: how much attention do we pay to our driving when our child falls off the seat, hangs out the window, pulls our hair, or tries to open the door?. With our children buckled up we can concentrate on our driving without having to worry about their being hurt. We will also be calmer and more relaxed, as will our children, during the drive and when we arrive at our destination.

Here are a few tips to help make your child's ride in the car a safe and happy one and to keep you using your restraint device.

1) Read the directions for proper use of the car seat you have. Use it exactly as recommended, or your child will not be as safe as possible.

2) Put children in the back seat whenever possible. It is the safest place in your car.

3) Have everyone in the car buckled up. An unrestrained child or adult can be thrown into other passengers and cause serious or even fatal injuries.

4) Have a special toy that is used only in the car. It provides more interest and a special attitude concerning the ride.

5) Make a special point of having a treat together with your child for the times that the ride has been particularly good. We all like rewards.

6) Be consistent. Parents need to start with the first ride home from the hospital using a safety seat and use it every ride. Make your child's ride in the car a safe and happy one.

7) Use your child safety seat and your seat belts. Encourage your friends to do the same. With the number of hours children spend in the car these days and knowing that car accidents are the number one threat to a young child's life, it is a good reason to use your child's safety seat and give them the only crash protection they need for the rest of their life - immunize them against the automobile accident!

REFERENCES

1. Scherz RG. Fatal motor vehicle accidents of child passengers from birth through 4 years of age in Washington state. Ped 1981;68:572-575.
2. Chicago Sun Times, Wed, Dec 24, 1980.
3. Schera R. Washington State Seat Belt Study, 1970-77.
4. National Safety Council, Newsletter, Women's Division Summer, 1983.

STATEMENT BEFORE

HOUSE STATE AFFAIRS COMMITTEE

HEARING ON HB 224

PRESENTED ON BEHALF OF STATE FARM INSURANCE COMPANY

AND ALLSTATE INSURANCE COMPANY

March 27, 1985

Madam Chairman, members of the State Affairs Committee, my name is Michael Lessmeier. I am a lawyer from Juneau and am here on behalf of Allstate Insurance Company and State Farm Insurance Company to comment on the mandatory seatbelt usage law that has been introduced.

Both State Farm and Allstate share the objectives of those who are interested in highway safety, and for that reason we would like to maximize the occupant restraint measures that are currently available to Alaska citizens. House Bill 224, introduced by Representative Miller, is a step in the right direction. If it is strictly enforced, this law will save the lives and reduce the injuries of many of those involved in automobile accidents in Alaska. That is the intended effect of the law. However, because of a recent Federal Department of Transportation ruling this law may have several unintended effects. Our goal here today is to urge this Committee to consider amendments to

House Bill 224 which would assure that the effect of this bill is to save lives and reduce injuries and not to limit the totality of those safety systems available to people in the entire United States.

There are two types of passenger restraints that work together to provide the maximum protection currently available. One is manual--the passenger must remember to use it each time and to choose to use it. The other is automatic--it protects the passenger regardless of selection and regardless of memory. Examples of automatic restraints are airbags, automobile seatbelts that are attached to the door, and cushioned interiors that are energy absorbing.

In a July 1984 ruling, the Department of Transportation created an unfortunate "either-or" proposition: EITHER states with two-thirds of the U.S. population enact mandatory seatbelt usage laws meeting certain criteria by April 1, 1989, OR all new cars must have automatic restraints beginning September 1, 1989 following a percentage phase in beginning September 1, 1986.

If the sixteen most populous states enact mandatory seatbelt usage laws meeting the Department of Transportation's criteria, then the automatic restraint requirement will be killed. Thus,

the remaining thirty-four states and their more than 80 million people could end up with neither a seatbelt law nor a federal automatic restraint standard.

We feel the effort to repeal the Department of Transportation ruling is a serious setback for automotive safety. Seatbelt laws may make a temporary dent in the statistics--approximately 45,000 killed and approximately 1.7 million injurred annually--but will fall far short of the substantial reductions automatic restraints would bring.

This Department of Transportation ruling creates additional issues which must be dealt with when considering the adoption of a mandatory seatbelt usage law. Because of this ruling, such a law would have the unintended effect of counting as a vote against another form of highway safety, that being passive restraints. Because of this ruling, such a law could have the unintended effect of changing the highway safety prospectives of the other states. Furthermore, because of this ruling, such a law may have the unintended effect of depriving many people of any form of occupant protection.

To achieve the intended objective of reducing injuries and saving lives, we suggest the addition of three provisions to the

proposed mandatory seatbelt legislation. First, a purpose statement should be added which clearly states the Alaska seatbelt law was written to be compatible with federal safety standards requiring automatic crash protection, not as an alternative to such protection. Second, a mitigation of damages provision should be added permitting courts to consider the use or non-use of seatbelts as an element in apportioning damages. This will strengthen the law by assuring everyone that the legislature believes seatbelt use is important and we believe this provision to be a very effective enforcement mechanism. The third suggested amendment is a sunset provision which states that the mandatory seatbelt law shall cease to be effective on December 31, 1988 and that the Department of Motor Vehicles shall, on or before December 31, 1987 submit a report to the legislature on the degree of compliance in this state and its impact on highway safety. Such a provision would in effect provide for a sunset review of the law to determine the degree of compliance and the laws impact on highway safety. If the law is not being enforced and if it has no impact on safety it should be allowed to sunset. This is another way of insuring that this mandatory seatbelt law will not be counted by the Secretary of Transportation for the purpose of rescinding the passive restraint standard.

The required use of seatbelts may well save lives and reduce injuries resulting from automobile accidents. However, we believe passive restraints will provide additional, more effective protection to those who buckle up and without question such restraints will provide the only protection for those who don't. By amending House Bill 224 as proposed we will have given our best effort to assure that the only effect of this law will be to improve highway safety.

REHABILITATION MEDICINE ASSOCIATES, P.C.

—Diplomates American Board of Physical Medicine and Rehabilitation

3201 E. 42nd AVENUE, SUITE 304, ANCHORAGE, AK 99508 (907) 563-8876

J. MICHAEL JAMES, M.D.
ROBERT T. FU, M.D.
MORRIS R. HORNING, M.D.
SHAWN HADLEY, M.D.

19 March 1985

Representative Mike Miller
House of Representatives
State Offices
Juneau, Alaska

Dear Representative Miller:

I was very pleased to see in the Anchorage Daily News, March 18th that you have introduced a bill to require the use of seat belts in automobiles. This bill is so clearly desirable in terms of saving life, limb and tax payers money that at first glance it seems everyone would embrace it wholeheartedly. Yet I know many staunch conservatives bridle at this excessive government control of their private actions. I agree wholeheartedly that seat belt legislation falls in the same category as requiring cars to have well functioning lights and brakes.

I am writing at this time to applaud your efforts and also to offer any support I can. If you would have any suggestions of key opponents to this legislation to whom we could address a letter campaign, I'd be eager to rally support here in Anchorage. As past president of the local Medical Society I may be able to stir up support from that quarter also.

Thank you for your efforts on behalf of the safety of all Alaskans. If this legislation is successful, you will have a larger impact on our state's health than any physician will have this year.

Sincerely yours,

Morris R. Horning

Morris R. Horning, M.D.

MRH:cc

Original sponsor: M.M.Miller

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 224 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to mandatory use of safety devices."

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

* Section 1. AS 28.05.095 is repealed and reenacted to read:

Sec. 28.05.095. USE OF SAFETY DEVICES REQUIRED. (a) Except as provided in (c) of this section, a person may not occupy a motor vehicle while in operation 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 seven in a motor vehicle unless the driver has provided 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 between four and six 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 seatbelt, whichever is appropriate for the particular child.

(c) Subsections (a) and (b) do not apply to

(1) passengers in a school bus 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 seatbelts under (a) or (b) of this section if the motor vehicle is not equipped with seatbelts; or

(5) a motor vehicle exempt under AS 28.10.011(11).

(d) A person may not remove a seatbelt from a vehicle solely to be exempted under (c)(3) of this section.

(e) Failure to comply with the requirements of this section may not

(1) be considered evidence of negligence;

(2) limit the liability of an insurer; or

(3) diminish a recovery for damages that arises out of the ownership, maintenance, or operation of a motor vehicle.

* Sec. 2. AS 28.05.096(a) is amended to read:

(a) The commissioner of public safety may adopt regulations to exempt a <u>person</u> [CHILD] or a class of <u>persons</u> [CHILDREN] from the requirements of AS 28.05.095 if the commissioner determines that the use of a [CHILD] safety device is impractical because of physical or medical conditions of the <u>person or class of persons</u> [CHILD].

* Sec. 3. AS 28.05.099 is amended to read:

Sec. 28.05.099. PENALTY. (a) A person convicted of a violation of AS 28.05.095(a), <u>(b),</u> or <u>(d)</u> [(c)] is guilty of an infraction and may be <u>fined up to $15 and</u> assessed demerit points as determined by regulations of the department, notwithstanding the provisions of AS 28.15.231(b).

(b) A person who violates <u>AS 28.05.095(b)</u> [AS 28.05.095(a)] by failing to provide a child safety device or seatbelt may provide a peace officer, including a village safety officer, proof of purchase or acquisition, and installation, of an approved child safety device or seatbelt. If the proof is provided within 30 days after the

Alaska State Legislature

House of Representatives
House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

MEMORANDUM

April 30, 1985

TO: George Edwards, Counsel
Legal Services

FROM: Rep. Mike Miller
by Denise Zachary, A.A.

RE: CS HB 224 (Judiciary)

Amendment : Page 2, line 15; delete [.] , and insert

or class of persons.

House Judiciary Letter of Intent:

It is the policy of the state that enactment of this mandatory automobile safety belt use law is intended to be compatible with support for federal safety standards requiring automatic crash protection and should not be used in any manner to rescind federal automatic crash system requirements for new cars.

Alaska State Legislature

House of Representatives
House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

HB 224

Letter of Intent

It is the policy of the state that enactment of this mandatory automobile safety belt use law is intended to be compatible with support for federal safety standards requiring automatic restraint systems and should not be used in any manner to rescind federal automatic restraint system requirements for new cars.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Date

02-519 (REV 3/78)


HB
2372

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

H. Judiciary	4/10/85	1:30 pm
" "	4/12/85	1:30 pm
" "	4/22/85	1:30 pm
" "	4/26/85	1:30 pm

4/29

COMMITTEE REPORT

HOUSE

(7) FURTHER: FINANCE

3/15/85

Date: _____

The Committee on JUDICIARY has had HB 232

"An Act relating to claims against the real estate surety fund."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 232 (Cmte) [ ] same title [X] new title

and recommends it do pass

[ ] AND attaches a "Letter of I tent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Robin L. Taylor

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Withdrawn

Amendment to HB 232

Add a new section to the bill as follows:

Sec. —

AS 08.88.— is added to read as follows:

AS 08.88.— Innocent misrepresentation. No cause of action shall lie against any person licensed under this act for innocent misrepresentation.

Comment: This reverses the holding in Bevins v Ballard, 655 P2d 757 (Alaska 1982) and State v Johnston, 682 P2d 383 (Alaska 1984).

Original sponsor: Clocksin

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 232 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to real estate claims based on innocent misrepresentation; and claims against the real estate surety fund."

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

* Section 1. AS 08.88 is amended by adding a new section to read:

Sec. 08.88.395. INNOCENT MISREPRESENTATION. A person licensed under this chapter is not liable to another person for innocent misrepresentations of fact.

* Sec. 2. AS 08.88.460(a) is amended to read:

(a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, <u>negligent or intentional</u> misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman licensed under this chapter shall make a claim to the commission for reimbursement on a form furnished by the commission. The form shall be executed under penalty of perjury, and information required to be supplied shall include the following:

(1) the name and address of the real estate broker, associate real estate broker, or real estate salesman;

(2) the amount of the alleged loss;

(3) the date or period of time during which the alleged loss occurred;

(4) the date upon which the alleged loss was discovered;

(5) the name and address of the claimant; or

(6) the general statement of facts relative to the claimant.

* Sec. 3. AS 08.88.460(d) is amended to read:

(d) A claimant under this section shall pay a filing fee of $25 [$250] to the commission at the time the claim is filed. The filing fee shall be refunded only if

(1) the commission makes an award to the claimant from the real estate surety fund; or

(2) [THE CLAIM IS DISMISSED UNDER (c) OF THIS SECTION; OR

(3)] the claim is withdrawn by the claimant before the commission holds a hearing on the claim.

* Sec. 4. AS 08.88.465(d) is amended to read:

(d) The claimant bears the burden of proof of establishing that the claimant suffered losses in a transaction as a result of fraud, negligent or intentional misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman and the extent of those losses. All facts shall be established by a preponderance of the evidence.

* Sec. 5. AS 08.88.474 is amended to read:

Sec. 08.88.474. PAYMENT OF [SMALL CLAIMS] JUDGMENT. If a [CLAIM ORIGINALLY FILED WITH THE COMMISSION IS DISMISSED AND IS HEARD AS A SMALL CLAIMS ACTION UNDER AS 08.88.460(c) AND THE] claimant prevails in a court [THE SMALL CLAIMS] action against a [THE] real estate broker, associate real estate broker, or salesman, and the action was based on conduct substantially similar to that set out in AS 08.88.460(a), the commission shall make an award from the fund of any outstanding portion of the [SMALL CLAIMS] judgment. The commission shall make the award after [ON] receipt of a copy of the final judgment and an affidavit from the claimant stating that more than 30

days have elapsed since the judgment became final and that the broker, associate broker, or salesman has not satisfied the judgment during that time. After payment of a [SMALL CLAIMS] judgment the commission is subrogated to the claimant's rights in the judgment under AS 08.-88.490.

* Sec. 6. Section 1 of this Act applies to causes of action arising on or after the effective date of this Act.

* Sec. 7. Sections 2 - 5 of this Act do not apply to a claim that a real estate broker, associate real estate broker, or real estate salesman has elected to remove to small claims court under AS 08.88.460(c) before the effective date of this Act.

* Sec. 8. The commission shall refund $225 of the filing fee paid under AS 08.88.460(d) to a claimant whose case is pending on the effective date of this Act.

* Sec. 9. AS 08.88.460(c) and 08.88.465(f) are repealed.

HB 232 File Contents

March 13, 1985

1) Bill Summary -- Legislative Reporting Service

2) Overview -- Roger Poppe, Committee Staff

3) Overview and Sectional Analysis -- Memo from Rep. Clocksin to Rep. Navarre, March 4, 1985

4) Questions and Answers regarding Surety Fund -- Memo from J. Ellis to Rep. Clocksin -- February 22, 1985

5) Chapter 150 Session Laws of 1984

6) State v. Johnston -- Supreme Court of Alaska, May 4, 1984, Pacific Reporter, pp. 382-387

7) Letter to Real Estate Clients -- W. Richard Fossey -- August 9, 1984

8) Various materials relating to SCS for CS HB 705 (L & C) am S (which became Chapter 150 of the Session Laws of 1984)

   a) Written Comments of Elizabeth Johnson in opposition to HB 705 to House L & C Chair John Cowdery (April 9, 1984).

   b) Testimony for the record on HB 705 by Gary Wilken -- April 24, 1984 before the House Labor & Commerce Committee

   c) Memo from James Magowan to Commissioner Lyon re: Minutes of Hearing of Real Estate Commission on HB 705 and SB 537 April 26, 1984.

   d) Written Comments from Frank Austin to Barbara Hill, Chairperson of the Alaska Real Estate Commission - April 5, 1984

9) Fiscal Note -- Dept. of Commerce & ED; Real Estate Commission

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 232

Title: An Act relating to claims against the real estate surety fund

Sponsor: Clocksin

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.

Program Category Affected: Consumer Protection

BRU, Program or Subprogram(s) Affected: Real Estate Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		77.0	80.0	85.0	125.0	131.0
200 TRAVEL		8.0	10.0	12.0	18.0	20.0
300 CONTRACTUAL		15.0	16.0	18.0	25.0	29.0
400 SUPPLIES		3.0	3.5	4.0	5.0	5.5
500 EQUIPMENT		12.0	.5	1.5	3.5	.5
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		250.0	300.0	300.0	375.0	425.0
800 MISCELLANEOUS						
TOTAL OPERATING		365.0	410.0	419.0	551.5	611.0
CAPITAL		0	0	0	0	0
REVENUE		5.0	6.9	8.5	10.0	11.9

FUNDING: (Thousands of Dollars)

GENERAL FUND		115.0	110.0	119.0	176.5	186.0
FEDERAL FUNDS		0	0	0	0	0
OTHER		250.0	300.0	300.0	375.0	425.0
TOTAL		365	410.0	419.0	551.5	611.0

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME		0	0	0	1	0
TEMPORARY		0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Prepared By: James L. Magowan Phone: 563-2169

Division: Real Estate Commission Date: 03/04/85

Approved by Commissioner: James Magowan Date: 3/14/85

Agency: Alaska Real Estate Commission

Distribution (by Agency preparing fiscal note):

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

7/1/84

The two main effects of this bill are:

1. To eliminate the filing fee as a deterrant to the filing of a surety claim regardless of the merits of the claim.

2. To broaden the grounds for payment of a surety claim to include losses due to innocent and negligent acts by a licensee.

Prior to the May 1984 Loken-Johnson v. AREC decision, there was no filing fee and claims for innocent and negligent misrepresentation were being paid. Prior to October 1984, there was no filing fee and the commission was receiving about 200 claims per year and that number was probably on the increase. Of the claims received, about 30% were being awarded, 70% were being denied.

Since October 2, 1984, the commission has received six claims, one of which was submitted with an NSF check for the filing fee. None of these has been heard yet, due to the backlog created when 200 claims per year were being filed, therefore there is no data on the percentage paid, however, it is expected to be very high.

The decrease in the filing fee would probably result in 150-200 or more additional claims per year being filed. It would be better to evaluate filing fees for public injury claims in general and make them all the same rather than the current system with no uniformity or conceptual basis for fees.

The change in grounds for payment would result in an additional 20-50% of these being eligible for payment. This would add up to between 40 and 100 consumers per year recovering an estimated average of $2,500 - 3,000 for innocent/negligent misrepresentations. Most of these could probably recover, even now, through a small claims action. The commission would have to hold three additional hearings for every additional claim paid for innocent/misrepresentation.

The commission would require additional clerical staff (two full-time positions) as well as the potential of an additional full time hearing examiner to carry out the above.

The high rate of dismissed claims in the past stems, in part, from the public not evaluating its cases before filing them. Why expend the effort when the State will do it?

The interaction between grounds for payment of a claim and the fee for filing a fee has generated some confusion.

The amount of the fee helps determine the degree of scrutiny a claimant will engage in prior to filing a claim. This translates into the ratio of claims paid to claims denied. The ideal fee should discourage all invalid claims but no valid claims.

If the willingness and ability of the consumer to file a claim is to be virtually unchecked by the fee there should be one or more additional checks and balances incorporated into the process.

1. If the fee is reduced to $25.00, there should be provision for initial administrative review and dismissal of claims with no discernable merit. Currently, all claims must be granted a hearing. Without the review it could add thousands of dollars of cost with little or no added public benefit.

2. There should be a provision for the claimant to be charged back the cost of a hearing in which the claim is found to be fraudulently filed.

If innocent or negligent misrepresentations are included as grounds for payment of a claim the provision of automatic suspension of a license without further hearing should be modified. and not applicable in cases of innocent misrepresentation. There is great concern by licensees that their licenses might be jeopardized by innocent errors. This is definitely an area that needs to be safeguarded against.

As the Supreme Court pointed out in its decision, the impact of Bevins v. Ballard on the surety fund if it is to pay on innocent misrepresentations could be enormous. The nature of Alaska soils, climate and building conditions makes it very difficult to know and predict everything that can happen to a property. For this reason, innocent misrepresentations may occur at a higher rate than in other parts of the country.

This bill gives the licensee great exposure for damages resulting from acts by others, acts of which the licensee has no knowledge and over which, no control. This, in effect, makes the licensee the preferred "target" when a contractor or other seller is at fault. The surety fund provides protection when a seller is gone and the fund is the only place to turn. The inexpensive access to the fund, however, also makes it the preferred action to take even when the "guilty" party is available and not a licensee. Making it easier to "go after" a licensee for an innocent act than it is to go after, say, a contractor who knowingly created the problem is manifestly unfair to the licensees.

0730E

REALTOR®

ALASKA ASSOCIATION OF REALTORS®
3301 Denali Street, Suite 200 • Anchorage, Alaska 99503
Telephone 907-276-0655

April 9, 1985

Honorable M. Mike Miller
Chairman House Judiciary Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Miller,

The Alaska Association of REALTORS testified before the House Labor and Commerce Committee in opposition to H.B. 232.

Our position has not changed and we are not in favor of this Bill. This Bill would reverse compromise legislation which was passed last year. Last year's legislation only became effective October, 1984. This Bill would also reverse a May, 1984 Supreme Court decision regarding innocent misrepresentation. We do not feel that sufficient time has passed to evaluate the effect of those decisions.

As an Association, we feel strongly that the public is served by strict application of the Alaska Statutes regarding licensure and examination enforcement. We also believe that those licensees who are harming the public should be strictly, severely and promptly dealt with.

On the matter of the $250 Surety Fund filing fee, we have felt and still feel that this figure is perhaps too large.

As a part of an ongoing process, the industry, the Real Estate Commission and the Administration, are making legislative and regulatory changes which will be proposed this summer. Part of the suggested legislation will include the lowering of the $250 Surety Fund filing fee.

This proposed legislation will be before you in 1986 for consideration and refinement. For this reason, we feel passage of H.B. 232 is premature.

Sincerely,

Betty Lou Cipra
1985 President

BLC/dd

M E M O R A N D U M

TO: All Members, House Labor and Commerce Committee

FROM: Roger Poppe, Committee Staff

DATE: March 14, 1985

SUBJECT: Overview, HB 232

On March 14 at 1:15 pm the House Labor and Commerce Committee met in Room 102 of the Capitol Building on HB 232 by Clocksin: Relating to the Real Estate Surety Fund:

Last session, there were bills in the House and the Senate dealing with this issue: HB 705 and SB 537, which were introduced in the separate houses by the respective Labor and Commerce Committees. HB 705 with numerous amendments, became law as Chapter 150 SLA 1984 (see your file).

The HB 232 before the Committee is an attempt to make some further adjustments in that legislation from last year, and sponsor Clocksin has both a sectional analysis and a succinct overview that cover the issues succinctly (see file -- Memo from Clocksin to Navarre March 4, 85).

Also included in your file is some of the written testimony from last year on HB 705 in either House Labor and Commerce Committee Hearings or else the related Real Estate Commission Hearings; many of the points covered in this bill are raised as issues and concerns by various parties in testimony last year.

James McGowan, head of the Real Estate Commission, will be testifying on this bill from the Anchorage LIO. Additionally, several representatives of the real estate industry in Anchorage and Juneau are expected to testify in opposition to the legislation. The Committee may also wish to refer to some comments by W. Richard Fossey to real estate clients, in which he points out several ways in which last year's legislation is not advantageous to the real estate industry.

M E M O R A N D U M

TO: Representative Mike Navarre DATE: March 4, 1985

FROM: Representative Don Clocksin SUBJECT: HB 232 - Real Estate Surety Fund

This memo is to request action on HB 232 relating to the Real Estate Surety Fund.

The Fund is established in AS 08.88.450 - .500 to provide a source of funds to reimburse consumers who have been "taken" by real estate licensees. Prior to 1984, the Fund consisted of fees paid by real estate licensees.

Last year the Legislature, over my objection, 1) imposed a $250 fee before consumers could file a complaint; and 2) allowed a real estate licensees to force the consumer to file a lawsuit rather than an administrative proceeding; and 3) equalized licensee fees. Chapter 150, SLA 1984 (copy attached).

The result has been a larger than necessary fund, the reduction of fees of real estate brokers, and the discouragement of consumer complaints. As of last month, only four complaints had been filed since October, 1984, when the new law went into effect! Broker fees dropped from $125 to $80 and the Fund contained over $630,000 - $130,000 over the statutory maximum.

In addition, in 1984 the Alaska Supreme Court ruled that a consumer could not recover from the Real Estate Surety Fund for innocent misrepresentations. State of Alaska v. Johnston, 682 P.2d 383 (Alaska 1984). (copy attached).

House Bill 232 seeks to reverse portions of the legislation from last year and correct the unfairness to consumers caused by the Johnston decision.

Sections one and three of the bill would expand the law to allow recovery from the fund for innocent and negligent misrepresentation.

Section two of the bill reduces the filing fee from $250 to $25.

Section four allows a consumer who obtains a court judgment against a real estate licensee to collect that judgment from the Fund. Current law only allows that remedy for small claims court actions which the real estate licensee forced the consumer to file.

Section five leaves unchanged those court cases already removed under last year's law.

Section six provides for a refund of the excess filing fee in pending cases.

Section seven repeals the provision forcing a consumer into court - .460(c) - and a conforming section - .465 (f).

Thank you for your attention to this bill.

DC:blg

Attachments:
- Chapter 150, SLA 1984
- State v. Johnston
- Memo from J. Ellis

M E M O R A N D U M

TO: Representative Don Clocksin DATE: February 22, 1985

FROM: J. Ellis SUBJECT: Answers to your questions regarding the Real Estate Surety Fund

I spoke with Jim McGowan, Executive Director of the Real Estate Commission and he answered the following questions:

1. Why was salesman fee ($40) repealed last year? It wasn't. Salesmen paid $40 while brokers paid $125. The Commission saw no actuarial basis for different fees. They look at annual expenses and divided them by the number of licenses issued to determine and set a standard fee of $80 for everyone. Fees were equalized. They believe this will greatly reduce administrative overhead.

2. How many surety fund complaints have been filed since October 1, 1984? Four.

3. Is the fund sound? "Yes, incredibly sound".

   How much is in it? $630,000 as of October '84, $130,000 over the Caps.

   What is the revenue each year? Approximately $240,00, with approximately 1,000 new licensees per year.

   What claims are pending against the fund and what is the backlog? Nov. 1: 200-300 case backlog. The Commission hired 2 half-time hearing officers to work on the backlog.

   Approximately 1000 claims remain and are affected by the Supreme Court decision.

   $100 - 150,000 in claims to be paid.

4. What is time taken to process claims?

   - the average time widely varies.
   - in the past; 1 to 2 years.
   - currently, 6-7 months - as quickly as they can get people together and process the paper.
   - their goal is 4 months from receipt to hearing.

JE:blg

HB 237

Chapter 150

AN ACT

Relating to the real estate surety fund.

---

* Section 1. AS 08.88.071(b) is repealed and reenacted to read:

(b) When an award is made from the real estate surety fund under this chapter in reimbursement of losses suffered by a claimant as a result of fraud, misrepresentation, deceit, or conversion of trust funds on the part of a licensed broker, associate broker, or salesman, the commission may consider the hearing on the claim to be a hearing on the suspension of the license of the broker, associate broker, or salesman, and may suspend the license of the broker, associate broker, or salesman. A suspension ordered under this subsection shall be lifted if the commission and the broker, associate broker, or salesman reach an agreement with the commission on terms and conditions for the repayment to the real estate surety fund of the money awarded to the claimant and the costs of hearing the claim under AS 08.88.465. The suspension shall be reimposed if the broker, associate broker, or salesman violates the terms of a repayment agreement entered into under this subsection.

* Sec. 2. AS 08.88.450 is amended to read:

Sec. 08.88.450. REAL ESTATE SURETY FUND. <u>The real estate surety fund is established</u> [THERE IS CREATED A SPECIAL ACCOUNT] in the general fund [KNOWN AS THE REAL ESTATE SURETY FUND] to carry out the purposes of AS 08.88.450 - 08.88.500. The fund <u>is</u> [SHALL BE] composed of payments made by licensed real estate brokers and salesmen under

AS 08.88.455 and filing fees retained in accordance with AS 08.88.4[illegible]. The fund may not exceed $500,000 and amounts in the fund in excess of $250,000 may be appropriated for real estate educational purposes as provided in AS 08.88.091.

* Sec. 3. AS 08.88.455(a) is amended to read:

(a) A licensed real estate broker, [OR] associate broker, or salesman when obtaining or renewing a real estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission in addition to the license fee, a surety fund [BOND] fee not to exceed $125 [. AND A LICENSED SALESMAN, WHEN OBTAINING OR RENEWING A LICENSE IN LIEU OF OBTAINING A CORPORATE SURETY BOND, SHALL PAY TO THE COMMISSION IN ADDITION TO THE LICENSE FEE, A BOND FEE NOT TO EXCEED $62]. After the fund reaches $250,000 the commission shall by regulation adjust the surety fund [BOND] fees so that, taking into account anticipated expenditures for claims against the fund and real estate educational purposes, the fund is maintained at a level not less than $250,000.

* Sec. 4. AS 08.88.460 is amended by adding new subsections to read:

(c) Within seven days after receipt of notice of a claim under (b) of this section the real estate broker, associate real estate broker, or real estate salesman against whom the claim is made may elect to defend the claim as a small claims action in district court under District Court Civil Rules 8 - 22, if the claim does not exceed the small claims jurisdictional limit. An election to defend a claim in district court under the small claims rules may not be revoked by the broker, associate broker, or salesman without the consent of the claimant. Upon receipt of a valid written election under this subsection the commission shall dismiss the claim filed with the commission and notify the claimant that the claim must be brought as a small

claims action in the appropriate state court.

(d) A claimant under this section shall pay a filin[illegible] to the commission at the time the claim is filed. Th[illegible] shall be refunded only if

(1) the commission makes an award to the claim[illegible] real estate surety fund;

(2) the claim is dismissed under (c) of this sec[illegible]

(3) the claim is withdrawn by the claimant [illegible] commission holds a hearing on the claim.

* Sec. 5. AS 08.88.465 is amended by adding a new subsecti[illegible]

(f) The provisions of this section do not apply to [illegible] is dismissed under AS 08.88.460(c).

* Sec. 6. AS 08.88 is amended by adding a new section to re[illegible]

Sec. 08.88.474. PAYMENT OF SMALL CLAIMS JUDGMENT. [illegible] originally filed with the commission is dismissed and is [illegible] small claims action under AS 08.88.460(c) and the claimant [illegible] the small claims action against the real estate broker, as[illegible] estate broker, or salesman, the commission shall make an[illegible] the fund of any outstanding portion of the small claims [illegible] receipt of a copy of the final judgment and an affidav[illegible] claimant stating that more than 30 days have elapsed sinc[illegible] ment became final and that the broker, associate broker, [illegible] has not satisfied the judgment during that time. After p[illegible] small claims judgment the commission is subrogated to the[illegible] rights in the judgment under AS 08.88.490.

the other elements of a fraudulent misrepresentation claim have been demonstrated.

One additional aspect of Bubbel's misrepresentation claim requires discussion: Bubbel contends that Wien misrepresented its legal capacity to hire him as a permanent employee.[10] Specifically, Bubbel argues that because Wien had the benefit of house counsel and outside attorneys, Wien knew that it had a unilateral right under the Railway Labor Act, and under federal cases, to renege on its promised "permanency" of employment. Bubbel reasons that in so far as Wien did not apprise him of that limitation on his permanent status, Wien misrepresented the permanency of his position.

Bubbel's argument on this theory is a narrow one: he does not dispute that when it hired him, Wien had the legal capacity to hire permanent replacement employees.[11] Bubbel concedes that Wien was not legally obliged to accept the settlement agreement proposed by the Presidential Emergency Board. Wien could have rejected the proposed settlement, defied the strikers, and continued to operate with its replacement pilots. Instead, Wien voluntarily chose to accept the settlement and furlough its replacement employees. This branch of Bubbel's misrepresentation theory, then, turns solely on Wien's failure to inform its "permanent" replacement employees that Wien could voluntarily settle the strike and thus use the collective bargaining agreement reached to override inconsistent individual employment contracts.

This court has not previously considered the question of whether a claim for relief may arise from a misrepresentation of law. Traditionally, courts have refused to recognize such representations as tortious, basing their conclusion upon the principle that "ignorance of the law is no excuse."[12] However, several recent decisions have held that this rule should be relaxed in appropriate circumstances, as for example, when

> the person making the misrepresentation "has superior means of information, professes a knowledge of the law, and thereby obtains an unconscionable advantage of another who is ignorant and has not been in a situation to become informed."

Ford Motor Credit Co. v. Milburn, 615 F.2d 892, 895 (10th Cir.1980), *quoting White v. Harrigan*, 77 Okl. 123, 186 P. 224, syl. 1 (1919). *Accord, White v. Mulvania*, 575 S.W.2d 184, 192 (Mo.1978) (en banc); *Nesbitt v. Home Federal Savings & Loan Ass'n*, 440 P.2d 738, 743 (Okl.1968); *see also National Conversion Corp. v. Cedar Building Corp.*, 23 N.Y.2d 621, 298 N.Y.S.2d 499, 246 N.E.2d 351 (1969).

Recognizing the importance of the question, and the limited treatment it received in the briefing of this case, we decline to adopt a flat rule that misrepresentations of law are not actionable in this state. Instead, we hold, on the basis of this record, only that Wien did not misrepresent its hiring capacity.

[10, 11] Central to our decision on this point is the character of the alleged misrepresentation. Wien did not tell Bubbel anything false, it merely failed to inform him of the legal consequences of something which might happen (i.e.: that Wien could possibly settle the ALPA strike).[13] There is no evidence in the record suggesting that Wien anticipated such a settlement with the striking pilots at the time it hired Bubbel. On the contrary, the record reflects Wien's intention to keep the replacement pilots in their jobs even after the strike ended. Moreover, as the holding in *Belknap* reflects, Wien's right to voluntarily breach its individual employment contracts was not absolute: the subsequent collective bargaining agreement does not relieve Wien of liability for breach of inconsistent individual contracts. In such circumstances, the appropriate remedy for Wien's breach of its commitment to keep the replacements is a suit for breach of contract, rather than for misrepresentation of Wien's capacity to enter into such contracts.[14]

Thus, we affirm the superior court's grant of a directed verdict against Bubbel on his misrepresentation claims.

For the reasons set forth above, the judgment of the superior court is REVERSED and this case is REMANDED for further proceedings consistent with this opinion.

10. For example, Bubbel argues that

> There can be little doubt that if Wien had explained to Bubbel at the time of his employment hire that the employment was "permanent," but that Wien had the unilateral right at any time to settle the strike with ALPA; that the terms of the settlement may very well affect Bubbel's continued employment—Bubbel would not have believed the employment was "permanent." . . . Wien had an obligation to advise and inform Mr. Bubbel that he was not a "permanent" employee. . . .

11. Following an economic strike "the employer may hire permanent replacements whom it need not discharge even if the strikers offer to return to work unconditionally." *Belknap v. Hale*, — U.S. —, —, 103 S.Ct. 3172, 3174, 77 L.Ed.2d 798, 803 (1983).

In contrast, an employer hiring replacement employees during an unfair labor practice strike governed by the NLRA may lack the legal capacity to offer permanent employment to such replacements. *Id.*, — U.S. —, —, 103 S.Ct. 3172, 3174, 77 L.Ed.2d 798, 803; *NLRB v. International Van Lines*, 409 U.S. 48, 93 S.Ct. 74, 34 L.Ed.2d 201 (1972). In such circumstances, the employer's representation of its capacity to hire permanent replacements might well be false and thus actionable.

12. See, e.g., *Hamming v. Murphy*, 83 Ill.App.3d 1130, 39 Ill.Dec. 435, 404 N.E.2d 1026 (1980) where the court refused to impose liability for misrepresentation upon a defendant-vendor of real estate who affirmatively assured a plaintiff purchaser that a contemplated use of the property was permitted under the existing zoning ordinance. The *Hamming* court reasoned that

> [g]enerally, one is not entitled to rely upon a representation of law as both parties are presumed to be equally capable of knowing and interpreting the law . . . . We conclude plaintiff was charged with knowledge of the permitted uses of this property under applicable zoning ordinances . . . .

404 N.E.2d 1026 at 1030.

13. If a failure to warn a party of the possibility of a voluntary breach constitutes an actionable misrepresentation, then all contracts would involve misrepresentations.

14. We recognize that the Supreme Court's opinion in *Belknap v. Hale*, *supra*, contains language suggesting that an action for misrepresentation might be appropriate in factual circumstances similar to those before this court. However, the Supreme Court in *Belknap* held only that federal labor law does not preclude "otherwise actionable" misrepresentation suits. — U.S. at —, 103 S.Ct. 3172 at 3178, 77 L.Ed.2d 798, 808. The Court recognized that state law determines whether an action for misrepresentation will lie in any particular case. *Id.* We conclude that our decision on Bubbel's misrepresentation claim is consistent with the holding in *Belknap*.

STATE of Alaska, REAL ESTATE COMMISSION, Appellant,

v.

Myrna JOHNSTON and Eva Loken, Appellees.

No. 7826.

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Purchasers of real estate who had scinded earnest money agreement fi claim with Real Estate Commission for imbursement of earnest money from R Estate Surety Fund, alleging that brok had misrepresented boundaries of proper The hearing officer concluded that broke misrepresentation was innocent, but t Fund provided recovery for such misrep sentations and recommended that Fund imburse purchasers' deposit. Commiss adopted decision and awarded depo amount, and brokers appealed. The Su rior Court, Third Judicial District, Anch age, Milton Souter, J., reversed award, a Commission appealed. The Supreme Co held that Real Estate Surety Fund does provide reimbursement to claimants for nocent misrepresentations made by m bers of real estate profession.

Affirmed.

1. Brokers ⇐4

Real Estate Surety Fund does not p vide reimbursement to claimants for in

cent misrepresentations made by members of real estate profession. AS 08.88.450–08.88.500, 08.88.460.

2. Appeal and Error ⇐812(8)

Applicable standard of review of superior court's decision construing statute is one of independent judgment.

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If legislative intent or general meaning of statute is not clear, meaning of doubtful words may be determined by reference to their association with other associated words and phrases.

4. Brokers ⇐1

"Misrepresentation" as employed in statute allowing recovery from Real Estate Surety Fund for losses suffered as result of fraud, misrepresentation, deceit, or conversion of trust funds on part of real estate broker does not include innocent misrepresentation. AS 08.88.460(a, b).

See publication Words and Phrases for other judicial constructions and definitions.

Richard D. Monkman, Asst. Atty. Gen., Anchorage, Norman C. Gorsuch, Atty. Gen., Juneau, for appellant.

W. Richard Fossey, Bankston & McCollum, Anchorage, and Peggy Alayne Roston, Anchorage, for appellees.

Lewis Gordon, Baily & Mason, Anchorage, for Alaska Ass'n of Realtors, amicus curiae.

Before BURKE, C.J., and RABINOWITZ, COMPTON and MOORE, JJ.

OPINION

PER CURIAM.

This appeal presents a first impression question as to the scope and applicability of Alaska's Real Estate Surety Fund.[1] The issue raised is one of statutory construction, namely, whether the Real Estate Surety Fund provides recovery to claimants who, in the context of real estate transactions, suffer losses due to innocent misrepresentations made by real estate brokers or agents.

I. FACTS

Newly arrived in Alaska the Mulhollands sought to purchase a home and contacted Eva Loken, a sales person with Area Realtors. In August of 1981, Loken showed the Mulhollands Larry Gross' home located near Eagle River. The following day the Mulhollands made an offer on the house to which the owner counter-offered. On August 10, 1981, the parties entered into an earnest money agreement and the Mulhollands tendered one thousand dollars in earnest money to Loken.

Subsequent to the initial earnest money agreement the Mulhollands contemplated rescinding on the purchase agreement and signing an earnest money agreement on another home; they were distraught over what they perceived as apparent misrepresentations made by Loken concerning mid-winter sunlight and driveway accessibility. Eventually, after discussions with Loken and Myrna Johnston, an associate broker with Area Realtors, the Mulhollands decided to go through with the deal and they signed an extension to the earnest money agreement.

On October 11, 1981, the Mulhollands were asked to accept an "as-built" survey of the property; however, because the survey failed to depict the driveway the Mulhollands refused to sign or accept the survey. Johnston ordered an updated survey. The updated survey revealed that the driveway encroached upon neighboring land to the extent of ten feet by thirty feet.

Having contacted the seller, Larry Gross, to discuss alternative solutions to the encroachment problem, Johnston informed Loken, who in turn contacted the Mulhollands. During the phone conversation between Loken and the Mulhollands a meeting was arranged for October 23, 1981—the day the earnest money agreement expired.

At the October 23rd meeting between the Mulhollands and Johnston, the Mulhollands terminated the transaction and signed a recission agreement which provided that the earnest money would be returned. Johnston, however, on the advice of Area Realtors' attorney, never executed the recission agreement; the Area Realtors' attorney felt that the encroachment was a curable defect which did not render title to the property unmarketable.

In December 1981, the Mulhollands filed a claim with the Real Estate Commission for the reimbursement of their earnest money deposit. Thereafter, a Real Estate Commission hearing examiner conducted a hearing on the Mulhollands' reimbursement claim. The hearing examiner concluded that Loken and Johnston had innocently misrepresented the boundaries of the Gross property. The misrepresentation of fact, according to the hearing officer's finding, "consisted of the implied assertion that the driveway was included in the boundaries of the Gross property." Concluding that the Real Estate Surety Fund provided recovery for innocent misrepresentations of this nature the hearing officer recommended that the Fund reimburse the Mulhollands' earnest money deposit.

The Real Estate Commission adopted the recommended decision and awarded the Mulhollands the equivalent of their earnest money deposit. The Commission's decision was then appealed to the superior court. The superior court reversed the award, holding that the Surety Fund did not provide recovery for innocent misrepresentation. The State of Alaska Real Estate Commission now brings this appeal.

II. THE REAL ESTATE SURETY FUND DOES NOT PROVIDE REIMBURSEMENT TO CLAIMANTS FOR INNOCENT MISREPRESENTATIONS MADE BY MEMBERS OF THE REAL ESTATE PROFESSION.

[1] As indicated at the outset, the principal issue presented in this appeal is whether the Real Estate Surety Fund is obligated to reimburse claimants for innocent misrepresentations made by members of the real estate profession. In relevant part AS 08.88.460(a) provides as follows:

> *Claim for payment.* (a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker ... shall make a claim to the commission for reimbursement....[2]

The superior court concluded that "misrepresentation" as used in AS 08.88.460(a) was intended to encompass only intentional wrongdoing, not innocent or negligent wrongdoing. More particularly the superior court reasoned as follows:

> I think the term misconduct as used in Section (b) of the statute implies inten-

1. AS 08.88.450-500.

2. The full text of AS 08.88.460(a) and (b) reads as follows:

> (a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman licensed under this chapter shall make a claim to the commission for reimbursement on a form furnished by the commission. The form shall be executed under penalty of perjury, and information required to be supplied shall include the following:
>
> (1) the name and address of the real estate broker, associate real estate broker, or real estate salesman;
>
> (2) the amount of the alleged loss;
>
> (3) the date or period of time during which the alleged loss occurred;
>
> (4) the date upon which the alleged loss was discovered;
>
> (5) the name and address of the claimant; or [sic?]
>
> (6) the general statement of facts relative to the claimant.
>
> (b) A copy of a claim filed with the commission under (a) of this section shall be sent to the real estate broker, associate real estate broker, or real estate salesman alleged to have committed the misconduct resulting in losses, as well as a real estate broker employing an associate real estate broker or real estate salesman alleged to have committed the conduct resulting in losses, at least 20 days before any hearing held on the claim by the commission.

tional-type wrongdoing, not negligent or innocent wrongdoing. And I think the statute's use of the phrase fraud, deceit, misrepresentation or conversion, particularly with the term misrepresentation coming sandwiched between fraud and deceit and coming as it does amidst a group of intentional-type wrongdoings, coupled with the presence of the word misconduct in subsection (b), all indicate that the proper construction of this statute lies in construing it as including among its terms only intentional-type wrongdoing, not innocent or negligent but nonreckless wrongdoing. And I think that that's squarely in line with the comments of the chairman of the commerce committee. Furthermore, it seems to me that with a real estate fund limited by law to only $500,000.00, if we're going to open the flood gates to innocent and negligent misrepresentation claims being made against this fund, there very likely soon wouldn't be any fund to collect for dishonest-type actions on the part of the real estate profession. So I'm going to reverse the real estate commission and award judgment in this case in favor of the appellants.

[2] In our view, the superior court correctly analyzed the question, and thus we affirm the superior court's construction of AS 08.88.460.[3]

Prior to the establishment of the Real Estate Surety Fund in 1974, real estate brokers were required to obtain a real estate bond. This corporate bond was made payable to the state and was breached if the licensee injured another by a wrongful act or default in the conduct of the business for which the license was issued. In 1974 the legislature created the Real Estate Surety Fund. AS 45.85.010. [§ 1 Ch. 143 SLA 1974] As originally enacted the Real Estate Surety Fund functioned similarly to the surety bond requirement. In relevant part the Surety Fund Act provided that a licensed real estate broker when obtaining or receiving a real estate license, in lieu of obtaining a corporate surety bond, had to pay a bond fee to the commissioner. [AS 45.85.020(a)] Recovery from the newly established surety fund was conditioned upon the claimant first obtaining "a final judgment in a court against a real estate broker ...." If judgment was not satisfied within thirty days from the court order, the claimant could apply for a post-judgment order directing payment out of the Real Estate Surety Fund.

In 1980 the Real Estate Surety Fund Act was amended, providing for a simpler recovery process. [AS 08.88.450-.500] The 1980 amendment obviated the requirement that the claimant first obtain a civil judgment before filing a claim for reimbursement; instead, the Real Estate Commission was remolded to function in a quasi-judicial role, adjudicating the merits of Surety Fund claims in administrative hearings. [§§ 34-36 Ch. 167 SLA 1980] Procedures governing the Real Estate Commission's administration of Surety Fund claims are provided for in 12 AAC 64.280-.330.

[3] As the superior court correctly emphasized, nothing in the historical development of the Real Estate Surety Fund directly indicates legislative intent as to the scope of the Fund's coverage. Given this background, we think a textual analysis of AS 08.88.460 is controlling.[4] The apposition of the term "misrepresentation" to the terms "fraud," "deceit," and "conversion" persuades us that misrepresentation should be limited to only wrongful misrepresentations. A widely applied tenet of statutory interpretation is that if "the legislative intent or general meaning of a statute is not clear, the meaning of doubtful words may be determined by reference to their associa-

3. The applicable standard of review here is one of independent judgment. *Wien Air Alaska, Inc. v. Dept. of Revenue*, 647 P.2d 1087, 1090 (Alaska 1982).

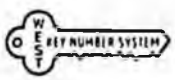
4. In *State v. Alex*, 646 P.2d 203, 209 n. 4 (Alaska 1982), we held that the plainer the statute's language, the more convincing contrary legislative history must be. *See also City of Homer v. Gangl*, 650 P.2d 396, 400 n. 4 (Alaska 1982); *see gen. North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 540 (Alaska 1978) (where we first adopted this sliding scale approach).

tion with other associated words and phrases." 2A C. Sands, *Sutherland Statutory Construction*, § 47.16 at 101 (4th ed. 1973); *in accord: United States v. Raynor*, 302 U.S. 540, 58 S.Ct. 353, 82 L.Ed. 413 (1938); *State v. Taylor*, 49 Hawaii 624, 425 P.2d 1014, 1021 (1967); *Heathman v. Giles*, 13 Utah 2d 368, 374 P.2d 839, 840 (1962). Similarly: *Matter of Hutchinson's Estate*, 577 P.2d 1074, 1075 (Alaska 1977) (all sections are to be construed together so that all have meaning and no section conflicts with another); *City of Anchorage v. Scavenius*, 539 P.2d 1169, 1174 (Alaska 1975) (each part of a statute should be construed with every other part or section so as to produce a harmonious whole).

[4] In short, we hold that innocent misrepresentations are not within the ambit of the term "misrepresentation" as that is employed in AS 08.88.460(a). In ing this conclusion we have carefull sidered each of the state's argument taining to legislative history, policy erations, and textual analysis and found none of them persuasive.[5] Th affirm the superior court's construct AS 08.88.460(a) and (b).[6]

AFFIRMED.

MATTHEWS, J., not participating.



5. We think it appropriate to further note that when the Surety Fund was first established in 1974 and amended in 1980, Alaska did not recognize a cause of action for innocent misrepresentation. In *Bevins v. Ballard*, 655 P.2d 757 (Alaska 1982), this court first recognized a cause of action against a real estate broker for innocent misrepresentation.

6. The amicus has attempted to raise the tion of whether on this record any in misrepresentation was made. In the proc context of this case this issue is not p before us and thus will not be addressed

other elements of a fraudulent misrepentation claim have been demonstrated. One additional aspect of Bubbel's misrepentation claim requires discussion: Bubcontends that Wien misrepresented its al capacity to hire him as a permanent ployee.[10] Specifically, Bubbel argues t because Wien had the benefit of house nsel and outside attorneys, Wien knew t it had a unilateral right under the lway Labor Act, and under federal es, to renege on its promised "permany" of employment. Bubbel reasons that so far as Wien did not apprise him of t limitation on his permanent status, en misrepresented the permanency of position.

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Affirmed.

1. Brokers ⇐4

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cent misrepresentations made by members of real estate profession. AS 08.88.450–08.88.500, 08.88.460.

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OPINION

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> I think the term misconduct as used in Section (b) of the statute implies inten-

2. The full text of AS 08.88.460(a) and (b) reads as follows:

(a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman licensed under this chapter shall make a claim to the commission for reimbursement on a form furnished by the commission. The form shall be executed under penalty of perjury, and information required to be supplied shall include the following:

(1) the name and address of the real estate broker, associate real estate broker, or real estate salesman;

(2) the amount of the alleged loss;

(3) the date or period of time during which the alleged loss occurred;

(4) the date upon which the alleged loss was discovered;

(5) the name and address of the claimant; or [sic?]

(6) the general statement of facts relative to the claimant.

(b) A copy of a claim filed with the commission under (a) of this section shall be sent to the real estate broker, associate real estate broker, or real estate salesman alleged to have committed the misconduct resulting in losses, as well as a real estate broker employing an associate real estate broker or real estate salesman alleged to have committed the conduct resulting in losses, at least 20 days before any hearing held on the claim by the commission.

tional-type wrongdoing, not negligent or innocent wrongdoing. And I think the statute's use of the phrase fraud, deceit, misrepresentation or conversion, particularly with the term misrepresentation coming sandwiched between fraud and deceit and coming as it does amidst a group of intentional-type wrongdoings, coupled with the presence of the word misconduct in subsection (b), all indicate that the proper construction of this statute lies in construing it as including among its terms only intentional-type wrongdoing, not innocent or negligent but nonreckless wrongdoing. And I think that that's squarely in line with the comments of the chairman of the commerce committee. Furthermore, it seems to me that with a real estate fund limited by law to only $500,000.00, if we're going to open the flood gates to innocent and negligent misrepresentation claims being made against this fund, there very likely soon wouldn't be any fund to collect for dishonest-type actions on the part of the real estate profession. So I'm going to reverse the real estate commission and award judgment in this case in favor of the appellants.

[2] In our view, the superior court correctly analyzed the question, and thus we affirm the superior court's construction of AS 08.88.460.[3]

Prior to the establishment of the Real Estate Surety Fund in 1974, real estate brokers were required to obtain a real estate bond. This corporate bond was made payable to the state and was breached if the licensee injured another by a wrongful act or default in the conduct of the business for which the license was issued. In 1974 the legislature created the Real Estate Surety Fund. AS 45.85.010. [§ 1 Ch. 143 SLA 1974] As originally enacted the Real Estate Surety Fund functioned similarly to the surety bond requirement. In relevant part the Surety Fund Act provided that a licensed real estate broker when obtaining or receiving a real estate license, in lieu of obtaining a corporate surety bond, had to pay a bond fee to the commissioner. [AS 45.85.020(a)] Recovery from the newly established surety fund was conditioned upon the claimant first obtaining "a final judgment in a court against a real estate broker ...." If judgment was not satisfied within thirty days from the court order, the claimant could apply for a post-judgment order directing payment out of the Real Estate Surety Fund.

In 1980 the Real Estate Surety Fund Act was amended, providing for a simpler recovery process. [AS 08.88.450–.500] The 1980 amendment obviated the requirement that the claimant first obtain a civil judgment before filing a claim for reimbursement; instead, the Real Estate Commission was remolded to function in a quasi-judicial role, adjudicating the merits of Surety Fund claims in administrative hearings. [§§ 34–36 Ch. 167 SLA 1980] Procedures governing the Real Estate Commission's administration of Surety Fund claims are provided for in 12 AAC 64.280–.330.

[3] As the superior court correctly emphasized, nothing in the historical development of the Real Estate Surety Fund directly indicates legislative intent as to the scope of the Fund's coverage. Given this background, we think a textual analysis of AS 08.88.460 is controlling.[4] The apposition of the term "misrepresentation" to the terms "fraud," "deceit," and "conversion" persuades us that misrepresentation should be limited to only wrongful misrepresentations. A widely applied tenet of statutory interpretation is that if "the legislative intent or general meaning of a statute is not clear, the meaning of doubtful words may be determined by reference to their associa-

3. The applicable standard of review here is one of independent judgment. *Wien Air Alaska, Inc. v. Dept. of Revenue*, 647 P.2d 1087, 1090 (Alaska 1982).

4. In *State v. Alex*, 646 P.2d 203, 209 n. 4 (Alaska 1982), we held that the plainer the statute's language, the more convincing contrary legislative history must be. *See also City of Homer v. Gangl*, 650 P.2d 396, 400 n. 4 (Alaska 1982); *see gen. North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 540 (Alaska 1978) (where we first adopted this sliding scale approach).

tion with other associated words and phrases." 2A C. Sands, *Sutherland Statutory Construction*, § 47.16 at 101 (4th ed. 1973); *in accord: United States v. Raynor*, 302 U.S. 540, 58 S.Ct. 353, 82 L.Ed. 413 (1938); *State v. Taylor*, 49 Hawaii 624, 425 P.2d 1014, 1021 (1967); *Heathman v. Giles*, 13 Utah 2d 368, 374 P.2d 839, 840 (1962). Similarly: *Matter of Hutchinson's Estate*, 577 P.2d 1074, 1075 (Alaska 1977) (all sections are to be construed together so that all have meaning and no section conflicts with another); *City of Anchorage v. Scavenius*, 539 P.2d 1169, 1174 (Alaska 1975) (each part of a statute should be construed with every other part or section so as to produce a harmonious whole).

[4] In short, we hold that innocent misrepresentations are not within the ambit of the term "misrepresentation" as that term is employed in AS 08.88.460(a). In reaching this conclusion we have carefully considered each of the state's arguments pertaining to legislative history, policy considerations, and textual analysis and have found none of them persuasive.[5] Thus we affirm the superior court's construction of AS 08.88.460(a) and (b).[6]

AFFIRMED.

MATTHEWS, J., not participating.

5. We think it appropriate to further note that when the Surety Fund was first established in 1974 and amended in 1980, Alaska did not recognize a cause of action for innocent misrepresentation. In *Bevins v. Ballard*, 655 P.2d 757 (Alaska 1982), this court first recognized a cause of action against a real estate broker for innocent misrepresentation.

6. The amicus has attempted to raise the question of whether on this record any innocent misrepresentation was made. In the procedural context of this case this issue is not properly before us and thus will not be addressed.

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August 9, 1984

Dear Real Estate Clients:

During the last Legislative session, the Alaska Legislature amended the Real Estate Surety Fund statute. The changes in the law are significant.

First, under the new law, the Real Estate Commission has the option of considering a Surety Fund hearing to be a hearing on the suspension of a licensee's real estate license. If a Surety Fund claimant receives an award from the surety fund after a hearing, the Commission may suspend the license of a broker, associate broker, or real estate salesman until the licensee repays the surety fund award plus the cost of the Surety Fund hearing.

Second, if a Real Estate Surety Fund claim is less than $2,000, the real estate licensee now has the option of requiring the claimant to bring a small claims action in District Court rather than proceed through the Surety Fund hearing process. It is not clear from the statute whether a broker could elect to convert the small claims action to a court action under the Rules of Civil Procedure.

Third, the new law requires a Real Estate Surety Fund claimant to pay a filing fee of $250. This fee will only be refunded if the claimant wins an award from the Surety Fund, the claim is dismissed prior to a hearing, or the claim is transferred from the Real Estate Commission to the District Court as a small claims action.

On the whole, we believe this is a bad piece of legislation for real estate licensees. Under the new law, a real estate licensee faces the prospect of having his license suspended if there is a Surety Fund award against him unless he makes arrangements to pay the award. Thus, it is no longer true that a Real Estate Surety Fund claim is a claim against the Surety Fund and not the licensee. The Commission now has the option of requiring the licensee to pay the award as a condition of keeping his license.

The new law gives a broker the option for forcing the

claimant to bring a small claims action if the claim is $2,000 or less. This provision merely encourages a claimant to increase the amount of his claim to more than $2,000 if he wants to avoid proceeding through the courts. Moreover, it is unclear under the new law whether a small claims judgment for a Real Estate Surety Fund claimant could lead to a license suspension. If that is the case, then a real estate licensee's license could be suspended by the Real Estate Commission after an informal small claims hearing by a district court judge. Since the district judges are often plaintiff oriented in small claims proceedings, electing the small claims procedures could be risky business for a real estate licensee.

The only good feature of this new legislation is the $250 filing fee. This fee may discourage the patently frivilous Real Estate Surety Fund claims that are currently being filed by claimants.

As you know, the Real Estate Surety Fund statutes have caused real estate licensees nothing but trouble since the law was changed in 1980 to allow the real estate commission to pay claims from the fund without requiring claimants to proceed through the courts. Since 1980, the Surety Fund statutes have been changed twice, both times to the detriment of real estate licensees. In 1982, the law was changed to require, in certain circumstances, a real estate licensee to pay the cost of Real Estate Surety Fund hearings if an award is made against him.

To summarize, under the new Real Estate Surety Fund statutes, the Real Estate Commission may treat a Real Estate Surety Fund claim hearing as a license suspension proceeding. If an award is made against a real estate licensee, the Commission has the option of suspending the licensee's license until the licensee agrees to pay the Surety Fund award plus the cost of the hearing under terms that are acceptable to the Real Estate Commission. Thus, a real estate licensee must take every Real Estate Surety Fund claim seriously because an adverse result could lead to suspension of the licensee's license.

In our view, the Real Estate Surety Fund statutes as presently enacted are an unnecessary burden to the real estate industry. Real estate licensees are forced to defend minor and sometimes frivilous claims at great expense. The recent statutory amendments make a bad situation worse because a Surety Fund hearing may lead to suspension of a licensee's real estate license.

We have said again and again that the Real Estate Surety Fund statutes must be repealed. We have drafted legislation requiring Real Estate Surety Fund claimants to go to court and get a judgment against a real estate licensee before applying to the Real Estate Commission for payment from the Real Estate Surety Fund. To the best of our knowledge, Alaska is the only state that allows Surety Fund claims to be processed by hearing

officers rather than requiring claimants to proceed through the courts. It is vital that the real estate industry get this law amended. Until the law is changed, real estate licensees are going to be spending alot of time and money defending Real Estate Surety Fund claims before Real Estate Commission hearing officers.

If you have any questions on this matter, please do not hesitate to contact me.

Very truly yours,

BANKSTON & McCOLLUM

Richard Fossey

W. Richard Fossey

WRF:dr
Encl.

Section 1. Application for payment out of fund of damages remaining unpaid upon judgment against licensee for fraud, etc; maximum liability per transaction.

(a) When any aggrieved person obtains a final judgment in any court of competent jurisdiction against any person or persons licensed under A.S. 08.88, under grounds of intentional fraud or or intentional conversion of trust funds arising directly out of any transaction when the judgment debtor was licensed and performed acts for which a license is required under A.S. 08.88, the aggrieved person may, upon the judgment becoming final, file a verified application in the court in which the judgment was entered for an order directing payment out of the Real Estate Surety Fund of the amount of actual and direct loss in the transaction up to the sum of ten thousand dollars ($10,000) of the amount unpaid upon the judgment; provided that nothing shall be construed to obligate that separate account for more than ten thousand dollars ($10,000) per transaction regardless of the number of persons aggrieved or parcels of real estate involved in the transaction.

In the case of a small claims court judgment, the aggrieved person shall file the verified application in the district court in which the judgment was entered in favor of the aggrieved person. The court shall then make a determination as to whether the small claims court judgment was based on facts constituting grounds for recovery under this section and may enter an order directing payment of the small claims court judgment out of the separate account in the Real Estate Surety Fund.

Section 1. Time for action by court on application for payment; required showing of person aggrieved.

The court shall conduct a hearing upon such application 30 days after service of the application upon the Real Estate Commission. Upon petition of the Real Estate Commission, the court shall continue the hearing up to 60 days further; and upon a showing of good cause may continue the hearing for such further period as the court deems appropriate. At the hearing the aggrieved person shall be required to show:

(a) He is not a spouse of the debtor, or the personal representative of such spouse.

(b) He has complied with all requirements of this article.

(c) He has obtained a judgment as set out in Section 1, stating the amount thereof and the amount owing thereon at the date of the application.

(d) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment.

(e) That by such search he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the

amount realized.

(f) That he has diligently pursued his remedies against all the judgment debtors and all other persons liable to him in the transaction for which he seeks recovery from the Real Estate Surety Fund.

(g) That he is making said application no more than one year after the judgment becomes final.

Section 3. Order of Court; grounds; defense of actions; burden of proof; presumption; dismissals; compromise of claims.

Whenever the court proceeds upon an application as set forth in Section 2, it shall order payment out of the Real Estate Surety Fund only upon a determination that the aggrieved party has a valid cause of action within the purview of Section 1 has complied with the provisions of Section 2.

The commission may defend any such action on behalf of the Real Estate Surety Fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses and the right to re-litigate any issues, material and relevant in the proceeding against the Real Estate Surety Fund, which were determined in the underlying action on which the judgment in favor of the applicant was based. If the judgment in favor of the applicant was by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant shall have the burden of proving that the cause of action against the licensee was for fraud, intentional misrepresentation, deceit, or conversion of trust funds. Otherwise, the judgment shall create a rebuttable presumption of the fraud, intentional misrepresentation, deceit, or conversion of trust funds by the licensee, which presumption shall affect the burden of producing evidence.

The commissioner may move the court at any time to dismiss the application when it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person or persons having knowledge of the facts,

and may be made on the basis that the petition, and the judgment referred to therein, does not form the basis for a meritorious recovery claim within the purview of Section 1; provided, however, that the commissioner shall give written notice at least 10 days before such motion.

The commissioner may, subject to court approval, compromise a claim based upon the application of an aggrieved party. He shall not be bound by any prior compromise or stipulation of the judgment debtor.

Section 4. Defense of actions; conclusive adjudication of issues.

The judgment debtor may defend an action against the Real Estate Surety Fund on his or her own behalf and shall have recourse to all appropriate means of defense and review, including examination of witnesses. All matters, excluding the issues of fraud, intentional misrepresentation, deceit or conversion of trust funds, which are finally adjudicated in the underlying action are conclusive as to the judgment debtor and the applicant in the proceeding against the Real Estate Surety Fund.

Section 5. Order directing payment out of fund; limitation of liability.

If the court finds after the hearing that the claim should be levied against the portion of the Real Estate Surety Fund allocated for the purpose of carrying out the provisions of this chapter, the court shall enter an order directed to the commissioner requiring payment from the Real Estate Surety Fund whatever sum it shall find to be payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in this chapter.

Notwithstanding any other provision of this chapter, the liability of the Real Estate Surety Fund for th purposes of this chapter shall not exceed twenty thousand dollars ($20,000) for any one licensee for which the cause of action occurred.

Section 6. Liability of fund insufficient to pay claims; distribution of monies; ratio; joinder.

If the amount of liability of the Real Estate Surety Fund, as provided for in Section 5, is insufficient to pay in full the valid claims of all aggrieved persons by whom claims have been filed against any one licensee, such amount shall be distributed among them in the ratio that their respective claims bear to the aggregate of such valid claims, or in such other manner as the court deems equitable. Distribution of such monies shall be among the persons entitled to share therein, without regard to the order of priority in which their respective judgment may have been obtained or their claims have been filed. Upon petition of the Real Estate Surety Fund, the court may require all claimants and prospective claimants against one licensee to be joined in one action, to the end that the respective rights of all such claimants to the separate account in the Real Estate Surety Fund for education, research, and recovery purposes may be equitably adjudicated and settled.

Section 7. Insufficient money in fund to pay claims; priority of payment when sufficient sums deposited; interest.

If, at any time, the money deposited in the Real Estate Surety Fund is insufficient to satisfy any duly authorized claim or portion thereof, the commissioner shall, when sufficient money has been deposited in the Real Estate Surety Fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of ten and one-half percent per annum.

Section 8. Subrogation.

When upon the order of the court, the commissioner has paid from the Real Estate Surety Fund any sum to the judgment creditor, the commissioner shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all his right, title and interest in the judgment to the commissioner and any amount and interest so recovered by the Real Estate Commissioner on the judgment shall be deposited in the Real Estate Surety Fund.