

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

1172 SENATE JUDICIARY

1 the injury or death.

2 * Sec. 53. AS 23.30.105(a) is amended to read:

3 (a) The right to compensation for disability under this chapter is barred unless
4 a claim for it is filed within two years after the employee has knowledge of the nature
5 of the employee's disability and its relation to the employment and after disablement.
6 However, the maximum time for filing the claim in any event other than arising out of
7 an occupational disease shall be four years from the date of injury, and the right to
8 compensation for death is barred unless a claim [THEREFOR] is filed within one year
9 after the death, except that, if payment of compensation has been made without an
10 award on account of the injury or death, a claim may be filed within two years after
11 the date of the last payment of benefits under AS 23.30.041, 23.30.180, 23.30.185,
12 23.30.190, 23.30.200, or 23.30.215. In [IT IS ADDITIONALLY PROVIDED THAT,
13 IN] the case of latent defects pertinent to and causing compensable disability, the
14 injured employee has the full right to claim compensation as shall be determined by a
15 hearing panel [THE BOARD], time limitations notwithstanding.

16 * Sec. 54. AS 23.30.107 is amended to read:

17 **Sec. 23.30.107. Release of information.** (a) Upon written request, an
18 employee shall provide written authority to the employer, carrier, rehabilitation
19 specialist, or reemployment benefits administrator to obtain medical and rehabilitation
20 information relative to the employee's injury. The request must include notice of the
21 employee's right to file a petition for a protective order with the division [BOARD]
22 and must be served by certified mail to the employee's address on the notice of injury
23 or by hand delivery to the employee. This subsection may not be construed to
24 authorize an employer, carrier, rehabilitation specialist, or reemployment benefits
25 administrator to request medical or other information that is not applicable to the
26 employee's injury.

27 (b) Medical or rehabilitation records in an employee's file maintained by the
28 division or held by the commission [BOARD] are not public records subject to
29 public inspection and copying under AS 40.25. This subsection does not prohibit

30 (1) the reemployment benefits administrator, the division, the office of
31 the commission [BOARD], or the department from releasing medical or rehabilitation

1 records in an employee's file, without the employee's consent, to a physician providing
2 medical services under AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by
3 the employee, or a governmental agency; or

4 (2) the quoting or discussing of medical or rehabilitation records
5 contained in an employee's file during a hearing on a claim for compensation [,] or in
6 a decision and order of the hearing examiner, hearing panel, or commission
7 [BOARD].

8 * Sec. 55. AS 23.30.108 is amended to read:

9 **Sec. 23.30.108. Prehearing conferences [PREHEARINGS] on discovery**
10 **matters; objections to requests for release of information; sanctions for**
11 **noncompliance.** (a) If an employee objects to a request for written authority under
12 AS 23.30.107, the employee must file a petition with the division [BOARD] seeking a
13 protective order within 14 days after service of the request. If the employee fails to file
14 a petition and fails to deliver the written authority as required by AS 23.30.107 within
15 14 days after service of the request, the employee's rights to benefits under this chapter
16 are suspended until the written authority is delivered.

17 (b) If a petition seeking a protective order is filed, the division shall
18 promptly notify the commission, and the commission clerk [BOARD] shall set a
19 prehearing conference within 21 days after the filing date of the petition. At a
20 prehearing conference conducted by a hearing examiner [THE BOARD'S
21 DESIGNEE], the hearing examiner [BOARD'S DESIGNEE] has the authority to
22 resolve disputes concerning the written authority. If the hearing examiner [BOARD
23 OR THE BOARD'S DESIGNEE] orders delivery of the written authority and if the
24 employee refuses to deliver it within 10 days after being ordered to do so, the
25 employee's rights to benefits under this chapter are suspended until the written
26 authority is delivered. During any period of suspension under this subsection, the
27 employee's benefits under this chapter are forfeited unless a hearing examiner [THE
28 BOARD], or the court determining an action brought for the recovery of damages
29 under this chapter, determines that good cause existed for the refusal to provide the
30 written authority.

31 (c) At a prehearing conference on discovery matters conducted by a hearing

1 examiner [THE BOARD'S DESIGNEE], the hearing examiner [BOARD'S
2 DESIGNEE] shall direct parties to sign releases or produce documents, or both, if the
3 parties present releases or requests for documents that are likely to lead to admissible
4 evidence relative to an employee's injury. If a party refuses to comply with an order by
5 a hearing examiner [THE BOARD'S DESIGNEE OR THE BOARD] concerning
6 discovery matters, a hearing examiner [THE BOARD] may impose appropriate
7 sanctions in addition to any forfeiture of benefits, including dismissing the party's
8 claim, petition, or defense. A party may petition the commission for expedited
9 review of an order of a hearing examiner on discovery matters within seven days
10 after the date of service of the challenged order, and a party opposing the petition
11 shall respond within seven days after service of the petition. The commission
12 shall determine whether to grant or deny a petition for review within 10 days
13 after a response is due. If [A DISCOVERY DISPUTE COMES BEFORE] the
14 commission grants a petition [BOARD] for expedited review of a discovery
15 determination by a hearing examiner [THE BOARD'S DESIGNEE], the commission
16 [BOARD] may not consider any evidence or argument that was not presented to the
17 hearing examiner [BOARD'S DESIGNEE], but shall determine the issue solely on
18 the basis of the written record. The decision by the commission [BOARD] on a
19 discovery dispute shall be made within 30 days. The commission [BOARD] shall
20 uphold a hearing examiner's [THE DESIGNEE'S] decision except when the hearing
21 examiner's [BOARD'S DESIGNEE'S] determination is an abuse of discretion.

22 * Sec. 56. AS 23.30.110 is amended to read:

23 Sec. 23.30.110. Procedure on claims and petitions. (a) Subject to the
24 provisions of AS 23.30.105, a claim for or petition relating to compensation or
25 benefits or both may be filed with the division [BOARD] in accordance with its
26 regulations at any time after the first seven days of disability following an injury, or at
27 any time after death, and a hearing panel [THE BOARD] may hear and determine all
28 questions with [IN] respect to the claim or petition, except as otherwise provided by
29 this chapter.

30 (b) Within 10 days after a claim or petition is filed, the division [BOARD], in
31 accordance with its regulations, shall notify the opposing party, employer, and any

1 other person, other than the claimant or petitioner, whom the director [BOARD]
2 considers an interested party that a claim or petition has been filed. The notice may
3 be served personally [UPON THE EMPLOYER OR OTHER PERSON,] or sent by
4 certified [REGISTERED] mail.

5 (c) Before a hearing is scheduled, the party seeking a hearing shall file with
6 the office of the commission a request for a hearing together with an affidavit stating
7 that the party has completed necessary discovery, has obtained necessary evidence,
8 and is prepared for the hearing. An opposing party shall have 10 days after the hearing
9 request is filed to file a response. If a party opposes the hearing request, a hearing
10 examiner [THE BOARD OR A BOARD DESIGNEE] shall, within 30 days after
11 [OF] the filing of the opposition, conduct a pre-hearing conference, plan the timing
12 and sequence of discovery and other preliminary matters, and set a reasonable
13 hearing date. If opposition is not filed, a hearing examiner shall schedule a hearing
14 not [HEARING SHALL BE SCHEDULED NO] later than 60 days after the receipt of
15 the hearing request. The commission clerk [BOARD] shall give each party at least 10
16 days' notice of the hearing, either personally or by certified mail. After a hearing has
17 been scheduled, the parties may not stipulate to change the hearing date or to cancel,
18 postpone, or continue the hearing, except for good cause as determined by the hearing
19 examiner. The hearing shall be before a hearing panel unless otherwise provided
20 by this chapter [BOARD]. After completion of the hearing, the hearing panel
21 [BOARD] shall close the hearing record. If a settlement agreement is reached by the
22 parties less than 14 days before the hearing, the parties shall appear at the time of the
23 scheduled hearing to state the terms of the settlement agreement. A decision by a
24 majority of the hearing panel shall be the decision of the panel. After the hearing
25 panel has reached a decision, the hearing examiner shall prepare a draft of the
26 decision and circulate the decision to the other panel members for comment,
27 revision, and approval. A panel member who does not agree, in whole or in part,
28 with the decision of the hearing panel shall prepare a written dissent. Within 30
29 days after the hearing record closes, the hearing examiner [BOARD] shall file the
30 hearing panel's [ITS] decision with any dissent. If the employer controverts a claim
31 on a director-prescribed [BOARD-PRESCRIBED] controversion notice and the

1 employee does not request a hearing within two years following the filing of the
2 controversion notice, the claim is denied.

3 (d) At the hearing, the parties [CLAIMANT AND THE EMPLOYER] may
4 each present evidence with [IN] respect to the claim or petition and may be
5 represented by any person authorized in writing for that purpose.

6 (e) The order rejecting the claim or petition, or making the award, referred to
7 in this chapter as a compensation order, shall be filed in the office of the commission
8 [BOARD], and a copy of it shall be sent by certified [REGISTERED] mail to the
9 parties [CLAIMANT AND TO THE EMPLOYER] at the last known address of each.

10 (f) An award of compensation for disability or an order dismissing a claim
11 may be made after the death of an injured employee.

12 (g) An injured employee claiming or entitled to compensation shall submit to
13 the physical examination by a duly qualified physician that a hearing panel [WHICH
14 THE BOARD] may require. The place or places shall be reasonably convenient for
15 the employee. The physician or physicians as the employee, employer, or carrier may
16 select and pay for may participate in an examination if the employee, employer, or
17 carrier so requests. Proceedings shall be suspended and no compensation may be
18 payable for a period during which the employee refuses to submit to examination.

19 (h) The filing of a hearing request under (c) of this section suspends the
20 running of the two-year time period specified in (c) of this section. However, if the
21 employee subsequently requests a continuance of the hearing and the request is
22 granted [APPROVED BY THE BOARD], the granting of the continuance renders the
23 request for hearing inoperative, and the two-year time period specified in (c) of this
24 section continues to run again from the date of a hearing examiner's [THE
25 BOARD'S] notice to the employee of [THE BOARD'S GRANTING OF] the
26 continuance and of its effect. If the employee fails to again request a hearing before
27 the conclusion of the two-year time period in (c) of this section, the claim is denied.

28 * Sec. 57. AS 23.30.110 is amended by adding new subsections to read:

29 (i) An order dismissing a claim in whole or in part may be made before a
30 hearing on the merits of the claim when (1) the claim requests relief that cannot be
31 granted under this chapter; (2) there is a lack of jurisdiction over the subject matter of

1 the claim or the person under this chapter; (3) division process or service of process
2 was insufficient; (4) the claim has not been prosecuted or a hearing was not requested
3 within the time allowed in (c) of this section; or (5) the claim is barred by a statute of
4 limitation. If, within 60 days after service of an order dismissing a claim under (1) -
5 (3) of this subsection, the defects stated in the order are cured, the dismissal may be
6 vacated. Otherwise, the order of dismissal is a final compensation order.

7 (j) At any time, a party may petition for a summary decision on all or part of a
8 claim. The hearing panel shall grant the petition if (1) the hearing panel finds all
9 reasonable discovery has been made on the issues presented; and (2) the record shows
10 that there is no genuine issue of any material fact and that the petitioner is entitled to a
11 decision as a matter of law. The hearing examiner may file a compensation order in
12 favor of the petitioner if the hearing panel's summary decision adjudicates all issues in
13 the claim with respect to the petitioner.

14 * **Sec. 58.** AS 23.30 is amended by adding new sections to read:

15 **Sec. 23.30.112. Hearing examiners.** (a) Unless otherwise provided in this
16 chapter, hearings on claims and petitions shall be presided over by a hearing examiner
17 employed by the commission. A hearing examiner shall

18 (1) be licensed to practice law in this state at the time of appointment
19 and have three years of experience in this state in the field of workers' compensation
20 or in a similar field of practice;

21 (2) be compensated at Range 24 of the salary schedule in
22 AS 39.27.011(a), but is not a public employee for purposes of AS 23.40; and

23 (3) be impartial and unbiased in all proceedings under this chapter,
24 conduct hearings as a member of a hearing panel fairly and impartially on claims and
25 petitions arising under this chapter, and file written decisions and orders.

26 (b) A hearing examiner may

27 (1) for the purposes of this chapter, subpoena witnesses, administer or
28 cause to be administered oaths, and order production of parts of the books and records
29 of the parties to a proceeding or other records, documents, or papers that relate to
30 questions in dispute; the superior court, on application of the hearing examiner under
31 AS 44.62.590, shall enforce the attendance and testimony of witnesses and the

1 production and examination of books, papers, and records;

2 (2) direct a physician or hospital rendering medical treatment or
3 service under this chapter to furnish to the division periodic reports of treatment or
4 services on forms prescribed by the division;

5 (3) arrange to have hearings held by the commission, officer, or
6 tribunal having authority to hear cases arising under the workers' compensation law of
7 any other state, of the District of Columbia, or of any territory of the United States,
8 when a proceeding in this state so requires; the testimony and proceedings at the
9 hearing shall be reported to the commission and are a part of the record in the case;
10 evidence taken at the hearing is subject to rebuttal upon final hearing under this
11 chapter.

12 **Sec. 23.30.113. Hearings before a hearing examiner or hearing panel. (a)**

13 The hearing examiner or hearing panel, in a hearing under AS 23.30.11C, is not bound
14 by common law or statutory rules of evidence or by technical or formal rules of
15 procedure, except as provided by this chapter and the regulations of the commission.
16 The hearing may be conducted in the manner designed to best ascertain the rights of
17 the parties. In proceedings before hearing examiners and hearing panels, the
18 administrative adjudication procedures of AS 44.62 (Administrative Procedure Act)
19 do not apply, except that AS 44.62.410(b), 44.62.460(a) - (d), 44.62.470, 44.62.480,
20 44.62.510, and 44.62.590 shall apply to proceedings under this chapter. Declarations
21 of a deceased employee concerning the injury with respect to which the investigation
22 or inquiry is being made or the hearing conducted shall be received in evidence and
23 are, if corroborated by other evidence, sufficient to establish the injury.

24 (b) The hearing examiner shall preside over hearings of a hearing panel and
25 perform all other functions in an impartial manner with due regard for the rights of all
26 parties and the facts and the law, and consistent with the orderly and prompt dispatch
27 of proceedings under this chapter. The hearing examiner shall rule on questions of
28 procedure, the admission and exclusion of evidence and make rulings and instruct the
29 board members on matters of law.

30 (c) A hearing examiner shall voluntarily seek disqualification and withdraw
31 from a case in which the hearing examiner cannot accord a fair and impartial hearing

1 or consideration. A request for disqualification of a hearing examiner for bias or
2 partiality shall be determined by the hearing examiner concerned or, if the hearing is
3 before a hearing panel, by the other members of the panel. Except as otherwise
4 permitted by law, hearing examiners or a member of a hearing panel may not engage
5 in interviews with or hear evidence or argument from, a party directly or indirectly,
6 except upon opportunity for all parties to be present. Copies of all communications to
7 hearing examiners or a member of a hearing panel shall be served on all other parties.

8 (d) All testimony given during a hearing before a hearing examiner or a
9 hearing panel shall be recorded but need not be transcribed unless further review is
10 initiated. Hearings before a hearing examiner or a hearing panel shall be open to the
11 public.

12 * Sec. 59. AS 23.30.115 is amended to read:

13 **Sec. 23.30.115. Attendance and fees of witnesses.** (a) A person is not
14 required to attend as a witness in a hearing [PROCEEDING] before the commission,
15 a hearing panel, or hearing examiner [BOARD] at a place more than 100 miles
16 from the person's place of residence, unless the person's lawful mileage and fee for
17 one day's attendance is first paid or tendered to the person; but the testimony of a
18 witness may be taken by deposition or interrogatories according to the Rules of Civil
19 Procedure.

20 (b) A witness summoned to testify in a hearing [PROCEEDING] before the
21 commission, a hearing panel, or hearing examiner [BOARD] or whose deposition
22 is taken shall receive the same fees and mileage as a witness in the superior court.
23 The commission clerk may issue subpoenas and subpoenas duces tecum to
24 summon a witness to testify in a hearing or deposition and to produce records.
25 The superior court shall enforce the subpoenas on application by the commission
26 in the manner provided in AS 44.62.590.

27 * Sec. 60. AS 23.30.120(b) is amended to read:

28 (b) If delay in giving notice is excused by the hearing panel [BOARD] under
29 AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the
30 employee, notwithstanding the provisions of (a) of this section.

31 * Sec. 61. AS 23.30.122 is repealed and reenacted to read:

1 **Sec. 23.30.122. Credibility of witnesses.** The hearing panel has the sole
2 power to determine the credibility of testimony presented by a witness who appears in
3 a hearing. When credibility is disputed, the hearing panel's determination of
4 credibility must be supported by specific findings.

5 * **Sec. 62.** AS 23.30 is amended by adding a new section to read:

6 **Sec. 23.30.124. Reconsideration of compensation order.** (a) A hearing
7 panel may order a reconsideration of all or part of a compensation order on the hearing
8 panel's own motion or on petition of a party. A petition for reconsideration must be
9 filed with the office of the commission within 15 days after mailing of the
10 compensation order. The power to order reconsideration expires 30 days after the
11 mailing of a compensation order. If an order of reconsideration is not filed with the
12 office of the commission within the time allowed for ordering reconsideration, the
13 petition is considered denied.

14 (b) If reconsideration is ordered under (a) of this section, the compensation
15 order under reconsideration is stayed until the decision on reconsideration is filed.
16 The case may be reconsidered by the hearing panel on all the pertinent parts of the
17 record and the additional arguments that are permitted by the hearing examiner. A
18 written decision on reconsideration shall be filed with the commission within 30 days
19 after the date the order of reconsideration was filed.

20 * **Sec. 63.** AS 23.30.125 is repealed and reenacted to read:

21 **Sec. 23.30.125. Administrative review of compensation order.** (a) A
22 compensation order becomes effective when filed with the office of the commission as
23 provided in AS 23.30.110, and, unless proceedings to reconsider, suspend, or set aside
24 the order are instituted as provided in this chapter, the order becomes final on the 31st
25 day after it is filed.

26 (b) Notwithstanding other provisions of law, a decision or order of a hearing
27 examiner or a hearing panel is subject to review by the commission as provided in this
28 chapter.

29 (c) If a compensation order is not in accordance with law or fact, the order
30 may be suspended or set aside, in whole or in part, through proceedings in the
31 commission brought by a party in interest against all other parties to the proceedings

1 before the hearing panel or hearing examiner. The payment of the amounts required
2 by an award may not be stayed pending a final decision in the proceeding unless, upon
3 application for a stay, the commission, on hearing, after not less than three days' notice
4 to the parties in interest and the director, allows the stay of payment, in whole or in
5 part, where the party filing the application would otherwise suffer irreparable damage.
6 The order of the commission allowing a stay must contain a specific finding, based
7 upon evidence submitted to the commission and identified by reference to the
8 evidence, that irreparable damage would result to the party applying for a stay and
9 specifying the nature of the damage.

10 (d) Proceedings for reconsidering, suspending, setting aside, or enforcing a
11 compensation order, whether rejecting a claim or making an award, may not be
12 instituted, except as provided in this chapter.

13 * **Sec. 64.** AS 23.30 is amended by adding new sections to read:

14 **Sec. 23.30.126. Review of director's decision.** (a) A decision by the director
15 that affects a right, privilege, benefit, or duty that is imposed or conferred under this
16 chapter is subject to review by the commission. A decision by the director becomes
17 effective when filed with the division, and, unless proceedings to suspend or set aside
18 the decision are instituted as provided in this section, the decision becomes final on the
19 31st day after it is filed.

20 (b) If a decision of the director is not in accordance with law or fact, the
21 decision may be suspended or set aside, in whole or in part, through proceedings in the
22 commission brought by a party in interest against the director and all other parties to
23 the proceedings. The decision may not be stayed pending final decision in the
24 proceeding unless, upon application for a stay, the commission, on hearing, after not
25 less than three days' notice to the parties in interest and the director, allows the stay, in
26 whole or in part, where irreparable damage would otherwise result. The order of the
27 commission allowing the stay shall contain a specific finding, based upon evidence
28 submitted to the commission and identified by reference to it, that irreparable damage
29 would result to the party applying for a stay, and specifying the nature of the damage.

30 (c) Proceedings for suspending, setting aside, or enforcing a director's decision
31 or determination may not be instituted except as provided in this chapter.

1 **Sec. 23.30.127. Appeals to commission.** (a) A party in interest may appeal a
2 compensation order issued by a hearing examiner or a hearing panel to the
3 commission within 30 days after the compensation order is filed with the office of the
4 commission under AS 23.30.110. The director may intervene in an appeal. If a party
5 in interest is not represented by counsel and the compensation order concerns an
6 unsettled question of law, the director may file an appeal to obtain a ruling on the
7 question by the commission.

8 (b) A party in interest may appeal a decision of the director to the commission
9 within 30 days after the decision is filed with the division.

10 (c) An appeal shall be initiated by filing with the office of the commission

11 (1) a signed notice of appeal specifying the compensation order or
12 director's decision appealed from;

13 (2) a statement of the grounds upon which the appeal is taken; and

14 (3) other materials the commission may by regulation require.

15 (d) A cross-appeal may be initiated by filing with the office of the commission
16 a signed notice of cross-appeal within 30 days after the decision is filed or within 15
17 days after service of notice of an appeal, whichever is later. The notice of cross-
18 appeal shall specify the compensation order or director's decision appealed from and
19 the grounds upon which the cross-appeal is taken.

20 (e) The office of the commission may charge a fee not to exceed \$100, for
21 filing appeals and cross-appeals, except that the office of the commission may not
22 charge a fee if the appellant is the state or a political subdivision of the state. The
23 commission may require an appellant to pay the costs of the transcript of hearing. The
24 commission may require cross-appellants or intervenors to share in the costs.

25 (f) If a request for reconsideration of a hearing panel's decision is timely filed
26 with the office of the commission, the notice of appeal must be filed within 30 days
27 after the reconsideration decision is mailed to the parties, or the date the request for
28 reconsideration is considered denied, in the absence of any action on the request,
29 whichever is earlier.

30 (g) The commission may require written briefs and make other rules and
31 orders to facilitate the business of the commission and advance the prompt, fair, and

1 just disposition of appeals.

2 **Sec. 23.30.128. Commission proceedings.** (a) The commission may review
3 de novo all discretionary actions, findings of fact, and conclusions of law by the
4 hearing examiner, hearing panel, or the director in hearing, determining or otherwise
5 acting on any compensation claim or petition. Unless not supported by specific
6 findings, a hearing panel's findings regarding the credibility of testimony of a witness
7 who appeared in the hearing is binding on the commission, but all other findings,
8 including the weight to be accorded medical testimony and reports, may be set aside
9 by the commission. The findings of the hearing panel, if not set aside by the
10 commission, are conclusive.

11 (b) The matter on appeal shall be decided by the commission on the record
12 made before the director, hearing examiner, or hearing panel; a transcript or recording
13 of the proceedings before the director, hearing examiner, or hearing panel; and oral
14 argument and written briefs allowed by the commission. Except as provided in (c) of
15 this section, new or additional evidence may not be received with respect to the
16 appeal.

17 (c) The commission may hold hearings and receive evidence on applications
18 for (1) stays under AS 23.30.125; (2) attorney fees and costs of appeal; (3) waiver of
19 fees by indigent appellants; or (4) dismissal of appeals for failure to prosecute or upon
20 settlement. The commission may rely on new or additional evidence presented during
21 the hearing in making its decision on the application.

22 (d) The commission may affirm, reverse, or modify a decision or order upon
23 review and issue other orders as appropriate. The commission may remand matters it
24 determines were improperly, incompletely, or otherwise insufficiently developed. The
25 commission may remand for further proceedings and appropriate action with or
26 without relinquishing the commission's jurisdiction of the appeal. The administrative
27 adjudication procedures of AS 44.62 (Administrative Procedure Act) do not apply to
28 the proceedings of the commission.

29 (e) Within 90 days after written briefing on the appeal is completed or oral
30 argument is held, whichever is later, the commission shall issue a decision in writing.
31 The decision must contain a concise statement of reasons for the decision, including

1 findings of fact, if required, and conclusions of law. The commission shall serve each
2 party and the director with a copy of the decision. Appeals may be expedited for good
3 cause by the commission. Unless reconsideration is ordered under (f) of this section, a
4 decision under this subsection is the final commission decision.

5 (f) A party or the director may request reconsideration of a decision issued
6 under (e) of this section within 30 days after the date of service shown in the
7 certificate of service of the decision. The request must state specific grounds for
8 reconsideration. Reconsideration may be granted if, in reaching the decision, the
9 commission (1) overlooked, misapplied, or failed to consider a statute, regulation,
10 court or administrative decision, or legal principle directly controlling; (2) overlooked
11 or misconceived a material fact; (3) misconceived a material question in the case; or
12 (4) applied law in the ruling that has subsequently changed. The commission may
13 issue an order for reconsideration of all or part of the decision upon request of a party
14 or the director. Reconsideration is based on the record, unless the commission allows
15 additional argument. The power to order reconsideration expires 60 days after the
16 date of service, as shown on the certificate of service, of a decision issued under (e) of
17 this section. If the commission does not issue an order for reconsideration within the
18 time allowed for ordering reconsideration, a request for reconsideration is considered
19 denied. If reconsideration is ordered, the commission shall issue a decision within 30
20 days after the close of the record on reconsideration. The commission shall serve each
21 party in the case with a copy of the decision upon reconsideration. The decision upon
22 reconsideration is the final commission decision.

23 (g) A decision of the commission becomes final on the

24 (1) 31st day after the date of service of a decision if reconsideration is
25 not requested; or

26 (2) 61st day after the date of service of a decision if reconsideration is
27 requested but an order for reconsideration is not issued; or

28 (3) date of service of the commission decision upon reconsideration
29 under (f) of this section if reconsideration is requested and an order for reconsideration
30 is issued.

31 **Sec. 23.30.129. Judicial review of commission orders.** (a) Notwithstanding

1 the provisions of AS 44.62.560, orders of the commission may not be appealed to the
2 superior court. Consistent with AS 22.05.010(b), final decisions of the commission
3 may be appealed to the supreme court, and other orders may be reviewed by the
4 supreme court as provided by the Alaska Rules of Appellate Procedure.

5 (b) A finding by the commission concerning the weight to be accorded a
6 witness's testimony, including medical testimony and reports, is conclusive even if the
7 evidence is conflicting or susceptible to contrary conclusions. The commission's
8 findings of fact may be reversed on appeal if not supported by substantial evidence in
9 light of the whole record.

10 * Sec. 65. AS 23.30.130 is amended to read:

11 **Sec. 23.30.130. Modification of awards.** (a) A party in interest or the
12 director may petition to modify a compensation order [UPON ITS OWN
13 INITIATIVE, OR UPON THE APPLICATION OF ANY PARTY IN INTEREST] on
14 the ground of a change in conditions, including, for the purposes of AS 23.30.175, a
15 change in residence, or because of a mistake in a [ITS] determination of a material
16 fact. A hearing panel [, THE BOARD] may, before one year after the date of the last
17 payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190,
18 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or
19 before one year after the rejection of a claim, act on the petition and review a
20 compensation case under the procedure prescribed with [IN] respect to [OF] claims in
21 AS 23.30.110. Under AS 23.30.110, a hearing panel [THE BOARD] may issue a
22 new compensation order that [WHICH] terminates, continues, reinstates, increases, or
23 decreases the compensation, or award compensation.

24 (b) A new order does not affect compensation previously paid, except that an
25 award increasing the compensation rate may be made effective from the date of the
26 injury, and, if part of the compensation due or to become due is unpaid, an award
27 decreasing the compensation rate may be made effective from the date of the injury,
28 and payment made earlier in excess of the decreased rate shall be deducted from the
29 unpaid compensation, in the manner the hearing panel [BOARD] determines.

30 * Sec. 66. AS 23.30.135 is amended to read:

31 **Sec. 23.30.135. Procedure before the division [BOARD].** (a) The director

1 in [IN] making a decision on an investigation or inquiry or conducting a hearing,
2 [THE BOARD] is not bound by common law or statutory rules of evidence or by
3 technical or formal rules of procedure, except as provided by this chapter. The
4 director [BOARD] may make an [ITS] investigation or inquiry or conduct a [ITS]
5 hearing in the manner that [BY WHICH IT] may best ascertain the rights of the
6 parties. For purposes of investigation under AS 23.30.011, 23.30.040, 23.30.075,
7 23.30.080, 23.30.085, 23.30.090, 23.30.140, 23.30.155(i), 23.30.155(k),
8 23.30.155(m), 23.30.170, and 23.30.240 the director may subpoena witnesses,
9 administer or cause to be administered oaths, and may examine or cause to be
10 examined books, papers and records relating to the questions under
11 investigation. The superior court shall enforce the subpoenas on application by
12 the director in the manner provided in AS 44.62.590. Declarations of a deceased
13 employee concerning the injury with [IN] respect to which the investigation or inquiry
14 is being made or the hearing conducted shall be received in evidence and are, if
15 corroborated by other evidence, sufficient to establish the injury.

16 (b) All testimony given during a hearing before the director [BOARD] shall
17 be recorded, but need not be transcribed unless further review is initiated. Hearings
18 before the director [BOARD] shall be open to the public.

19 * Sec. 67. AS 23.30.140 is amended to read:

20 Sec. 23.30.140. Appointment of guardian by court. The director
21 [BOARD] may require the appointment of a guardian or other representative by a
22 competent court for any person who is mentally incompetent or a minor to receive
23 compensation payable to the person under this chapter and to exercise the powers
24 granted to or to perform the duties required of the person under this chapter. If the
25 director [BOARD] does not require the appointment of a guardian to receive the
26 compensation of a minor, appointment for this purpose is not necessary.

27 * Sec. 68. AS 23.30.145(a) is amended to read:

28 (a) Fees for legal services rendered with [IN] respect to a claim are not valid
29 unless approved by the hearing panel [BOARD], and the fees may not be less than 25
30 per cent on the first \$1,000 of compensation or part of the first \$1,000 of
31 compensation, and 10 per cent of all sums in excess of \$1,000 of compensation.

1 When [THE BOARD ADVISES THAT] a claim has been controverted, in whole or in
2 part, [THE BOARD MAY DIRECT THAT THE] fees for legal services may be paid
3 by the employer or carrier in addition to compensation awarded; the fees may be
4 allowed only on the amount of compensation controverted and awarded. When [THE
5 BOARD ADVISES THAT] a claim has not been controverted, but [FURTHER
6 ADVISES THAT] bona fide legal services have been rendered with [IN] respect to
7 the claim, then the hearing panel [BOARD] shall direct the payment of the fees out of
8 the compensation awarded. In determining the amount of fees the hearing panel
9 [BOARD] shall take into consideration the nature, length, and complexity of the
10 services performed, transportation charges, and the benefits resulting from the services
11 to the compensation beneficiaries.

12 * Sec. 69. AS 23.30.145(b) is amended to read:

13 (b) If an employer fails to file timely notice of controversy or fails to pay
14 compensation or medical and related benefits within 15 days after it becomes due or
15 otherwise resists the payment of compensation or medical and related benefits and if
16 the claimant has employed an attorney in the successful prosecution of the claim, a
17 hearing panel [THE BOARD] shall make an award to reimburse the claimant for the
18 costs in the proceedings, including [A] reasonable attorney fees [FEE]. The award is
19 in addition to the compensation or medical and related benefits ordered.

20 * Sec. 70. AS 23.30.155(a) is amended to read:

21 (a) Compensation under this chapter shall be paid periodically, promptly, and
22 directly to the person entitled to it, without an award, except where liability to pay
23 compensation is controverted by the employer. To controvert a claim, the employer
24 must file a notice, on a form prescribed by the director [BOARD], stating

25 (1) that the right of the employee to compensation is controverted;

26 (2) the name of the employee;

27 (3) the name of the employer;

28 (4) the date of the alleged injury or death; and

29 (5) the type of compensation and all grounds upon which the right to

30 compensation is controverted.

31 * Sec. 71. AS 23.30.155(b) is amended to read:

1 (b) The first installment of compensation becomes due on the 14th day after
2 the employer has knowledge of the injury or death. On this date all compensation then
3 due shall be paid. Subsequent compensation shall be paid in installments, every 14
4 days, except where a hearing panel [THE BOARD] determines that payment in
5 installments should be made monthly or at some other period.

6 * Sec. 72. AS 23.30.155(c) is amended to read:

7 (c) The insurer or adjuster shall notify the division [BOARD] and the
8 employee on a form prescribed by the director [BOARD] that the payment of
9 compensation has begun or has been increased, decreased, suspended, terminated,
10 resumed, or changed in type. An initial report shall be filed with the division
11 [BOARD] and sent to the employee within 28 days after the date of issuing the first
12 payment of compensation. If at any time 21 days or more pass and no compensation
13 payment is issued, a report notifying the division [BOARD] and the employee of the
14 termination or suspension of compensation shall be filed with the division [BOARD]
15 and sent to the employee within 28 days after the date the last compensation payment
16 was issued. A report shall also be filed with the division [BOARD] and sent to the
17 employee within 28 days after the date of issuing a payment increasing, decreasing,
18 resuming, or changing the type of compensation paid. If the division [BOARD] and
19 the employee are not notified within the 28 days prescribed by this subsection for
20 reporting, the insurer or adjuster shall pay a civil penalty of \$100 for the first day plus
21 \$10 for each day after the first day [THEREAFTER] that the notice was not given.
22 Total penalties under this subsection may not exceed \$1,000 for a failure to file a
23 required report. Penalties assessed under this subsection are eligible for reduction
24 under (m) of this section. A penalty assessed under this subsection after penalties have
25 been reduced under (m) of this section shall be increased by 25 percent and shall bear
26 interest at the rate established under AS 45.45.010.

27 * Sec. 73. AS 23.30.155(d) is amended to read:

28 (d) If the employer controverts the right to compensation, the employer shall
29 file with the division [BOARD] and send to the employee a notice of controversion on
30 or before the 21st day after the employer has knowledge of the alleged injury or death.
31 If the employer controverts the right to compensation after payments have begun, the

1 employer shall file with the division [BOARD] and send to the employee a notice of
2 controversion within seven days after an installment of compensation payable without
3 an award is due. When payment of temporary disability benefits is controverted solely
4 on the grounds that another employer or another insurer of the same employer may be
5 responsible for all or a portion of the benefits, the most recent employer or insurer
6 who is party to the claim and who may be liable shall make the payments during the
7 pendency of the dispute. When a final determination of liability is made, any
8 reimbursement required, including interest at the statutory rate, and all costs and
9 attorney [ATTORNEYS'] fees incurred by the prevailing employer, shall be made
10 within 14 days after [OF] the determination.

11 * Sec. 74. AS 23.30.155(e) is amended to read:

12 (e) If any installment of compensation payable without an award is not paid
13 within seven days after it becomes due, as provided in (b) of this section, there shall be
14 added to the unpaid installment an amount equal to 25 percent of it. This additional
15 amount shall be paid at the same time as, and in addition to, the installment, unless
16 notice is filed under (d) of this section or unless the nonpayment is excused by the a
17 hearing panel [THE BOARD] after a showing by the employer that, owing to
18 conditions over which the employer had no control, the installment could not be paid
19 within the period prescribed for the payment.

20 * Sec. 75. AS 23.30.155(f) is amended to read:

21 (f) If compensation payable under the terms of an award is not paid within 14
22 days after it becomes due, there shall be added to that unpaid compensation an amount
23 equal to 25 percent of it, which shall be paid at the same time as, but in addition to, the
24 compensation, unless review of the compensation order making the award is had as
25 provided in AS 23.30.125 and payment is stayed by an order of the commission
26 [INTERLOCUTORY INJUNCTION STAYING PAYMENTS IS ALLOWED BY
27 THE COURT].

28 * Sec. 76. AS 23.30.155(h) is amended to read:

29 (h) The director may initiate an investigation. have a medical examination
30 performed at the division's expense, or file a petition on a disputed matter for
31 hearing [BOARD MAY UPON ITS OWN INITIATIVE] at any time in a case in

1 which payments are being made with or without an award, where right to
2 compensation is controverted, or where payments of compensation have been
3 increased, reduced, terminated, changed, or suspended, upon receipt of notice from a
4 person entitled to compensation, or from the employer, that the right to compensation
5 is controverted, or that payments of compensation have been increased, reduced,
6 terminated, changed, or suspended. The director may then [, MAKE THE
7 INVESTIGATIONS, CAUSE THE MEDICAL EXAMINATIONS TO BE MADE,
8 OR HOLD THE HEARINGS, AND] take the further action considered necessary to
9 [WHICH IT CONSIDERS WILL] properly protect the rights of all parties.

10 * Sec. 77. AS 23.30.155(i) is amended to read:

11 (i) When the director [BOARD] considers it advisable, the director [IT] may
12 require an employer to make a deposit with the Department of Revenue to secure the
13 prompt and convenient payment of the compensation, and payments from the deposit
14 upon an award shall be made upon order of the director [BOARD].

15 * Sec. 78. AS 23.30.155(j) is amended to read:

16 (j) If an employer has made advance payments or overpayments of
17 compensation, the employer is entitled to be reimbursed by withholding up to 20
18 percent out of each unpaid installment or installments of compensation due. More
19 than 20 percent of unpaid installments of compensation due may be withheld from an
20 employee only on approval of a hearing panel [THE BOARD].

21 * Sec. 79. AS 23.30.155(k) is amended to read:

22 (k) An injured employee [,] or, in case of death, the employee's dependents or
23 personal representative [,] shall give receipts for payment of compensation to the
24 employer paying the compensation. [IT] and the employer shall produce the receipts
25 [THEM] for inspection by the director [BOARD], whenever required.

26 * Sec. 80. AS 23.30.155(m) is amended to read:

27 (m) On or before March 1 of each year, the insurer or adjuster shall file a
28 verified annual report on a form prescribed by the director [BOARD] stating the total
29 amount of all compensation by type, the number of claims received and the percentage
30 controverted, medical, and related benefits, vocational rehabilitation expenses, legal
31 fees, including a separate total of fees paid to attorneys and fees paid for the other

1 costs of litigation, and penalties paid on all claims during the preceding calendar year.
2 If the annual report is timely and complete when received by the division [BOARD]
3 and provides accurate information about each category of payments, the director
4 [COMMISSIONER] shall review the timeliness of the insurer's or adjuster's reports
5 filed during the preceding year under (c) of this section. If, during the preceding year,
6 the insurer or adjuster filed at least 99 percent of the reports on time, the penalties
7 assessed under (c) of this section shall be waived. If, during the preceding year, the
8 insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the
9 penalties assessed under (c) of this section shall be waived. If, during the preceding
10 year, the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the
11 penalties assessed under (c) of this section shall be waived. If, during the preceding
12 year, the insurer's or adjuster's reports have not been filed on time at least 95 percent
13 of the time, none of the penalties assessed under (c) of this section shall be waived.
14 The penalties that are not waived are due and payable when the insurer or adjuster
15 receives notification from the director [COMMISSIONER] regarding the timeliness
16 of the reports. If the annual report is not filed by March 1 of each year, the insurer or
17 adjuster shall pay a civil penalty of \$100 for the first day the annual report is late [,]
18 and \$10 for each additional day the report is late. If the annual report is incomplete
19 when filed, the insurer or adjuster shall pay a civil penalty of \$1,000.

20 * Sec. 81. AS 23.30.155(o) is amended to read:

21 (o) The director [BOARD] shall promptly notify the division of insurance if a
22 hearing panel [THE BOARD] determines that the employer's insurer has frivolously
23 or unfairly controverted compensation due under this chapter. After receiving notice
24 from the director [BOARD], the division of insurance shall determine if the insurer
25 has committed an unfair claim settlement practice under AS 21.36.125.

26 * Sec. 82. AS 23.30.170(a) is amended to read:

27 (a) In case of default by the employer in the payment of compensation due
28 under an award of compensation for a period of 30 days after the compensation is due,
29 the person to whom the compensation is payable may, within one year after the
30 default, file a petition with the division [APPLY TO THE BOARD MAKING THE
31 COMPENSATION ORDER] for a supplementary order declaring the amount of the

1 default. After completion of any investigation the director considers necessary,
2 and upon [,] notice [,] and hearing, as provided in AS 23.30.110, a hearing examiner
3 may [THE BOARD SHALL] make a supplementary order declaring the amount of the
4 default. The order shall be filed in the same manner as the compensation order.

5 * Sec. 83. AS 23.30.170(b) is amended to read:

6 (b) If the payment in default is an installment of the award, a hearing
7 examiner has [THE BOARD MAY, IN ITS] discretion to [,] declare the whole of the
8 award as the amount in default. The petitioner [APPLICANT] may file a certified
9 copy of the supplementary order with the clerk of the superior court. The
10 supplementary order is final. The court shall, upon the filing of the copy, enter
11 judgment for the amount declared in default by the supplementary order if it is in
12 accordance with law. Any time after a supplementary order is filed [BY THE
13 BOARD], the attorney general, when requested to do so by the director
14 [COMMISSIONER], shall take appropriate action to ensure [ASSURE] collection of
15 the defaulted payments.

16 * Sec. 84. AS 23.30.175(a) is amended to read:

17 (a) The weekly rate of compensation for disability or death may not exceed
18 the maximum compensation rate, may not be less than 22 percent of the maximum
19 compensation rate, and initially may not be less than \$110. However, if a hearing
20 panel [THE BOARD] determines that the employee's spendable weekly wages are
21 less than \$110 a week as computed under AS 23.30.220, or less than 22 percent of the
22 maximum compensation rate a week in the case of an employee who has furnished
23 documentary proof of the employee's wages, it shall issue an order adjusting the
24 weekly rate of compensation to a rate equal to the employee's spendable weekly
25 wages. If the employer can verify that the employee's spendable weekly wages are
26 less than 22 percent of the maximum compensation rate, the employer may adjust the
27 weekly rate of compensation to a rate equal to the employee's spendable weekly wages
28 without an order of a hearing panel [THE BOARD]. If the employee's spendable
29 weekly wages are greater than 22 percent of the maximum compensation rate, but 80
30 percent of the employee's spendable weekly wages is less than 22 percent of the
31 maximum compensation rate, the employee's weekly rate of compensation shall be 22

1 percent of the maximum compensation rate. Prior payments made in excess of the
2 adjusted rate shall be deducted from the unpaid compensation in the manner a hearing
3 panel [THE BOARD] determines. In any case, the employer shall pay timely
4 compensation. In this subsection, "maximum compensation rate" means 120 percent
5 of the average weekly wage, calculated under (d) of this section, applicable on the date
6 of injury of the employee.

7 * Sec. 85. AS 23.30.175(b) is amended to read:

8 (b) The following rules apply to benefits payable to recipients not residing in
9 the state at the time compensation benefits are payable:

10 (1) the weekly rate of compensation shall be calculated by multiplying
11 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
12 23.30.190, 23.30.200, or 23.30.215 [,] by the ratio of the cost of living of the area in
13 which the recipient resides to the cost of living in this state;

14 (2) the calculation required by (1) of this subsection does not apply if
15 the recipient is absent from the state for medical or rehabilitation services not
16 reasonably available in the state;

17 (3) if the gross weekly earnings of the recipient and the resulting
18 compensation rate are determined under AS 23.30.220(a)(6), (7), or (10), the
19 calculation required by this subsection applies only to the portion of the recipient's
20 weekly compensation rate attributable to wages earned in the state;

21 (4) application of this subsection may not reduce the weekly
22 compensation rate to less than \$154 a week, except as provided in (a) of this section;

23 (5) application of (1) - (4) of this subsection may not result in
24 raising a recipient's weekly compensation rate to an amount that exceeds the
25 weekly compensation rate that the recipient would have received if the recipient
26 had been residing in the state.

27 * Sec. 86. AS 23.30.175(c) is amended to read:

28 (c) The department [BOARD] shall provide by regulation for the
29 determination and comparison of living costs for this state and the other areas in which
30 recipients reside and for the annual redetermination and comparison of these costs.

31 * Sec. 87. AS 23.30.180(a) is amended to read:

1 (a) In case of total disability adjudged to be permanent, 80 percent of the
2 injured employee's spendable weekly wages shall be paid to the employee during the
3 continuance of the total disability. If a permanent partial disability award has been
4 made before a permanent total disability determination, permanent total disability
5 benefits must be reduced by the amount of the permanent partial disability award,
6 adjusted for inflation, in a manner determined by a hearing panel [THE BOARD].
7 Loss of both hands, [OR] both arms, [OR] both feet, [OR] both legs, or both eyes, or
8 of any two of them, in the absence of conclusive proof to the contrary, constitutes
9 permanent total disability. In all other cases, permanent total disability is determined
10 in accordance with the facts. In making this determination the market for the
11 employee's services shall be the

- 12 (1) area of residence;
- 13 (2) area of last employment;
- 14 (3) [THE] state of residence; and
- 15 (4) [THE] State of Alaska.

16 * Sec. 88. AS 23.30.190(b) is amended to read:

17 (b) All determinations of the existence and degree of permanent impairment
18 shall be made strictly and solely under the whole person determination as set out in the
19 American Medical Association Guides to the Evaluation of Permanent Impairment,
20 except that an impairment rating may not be rounded to the next five percent. The
21 department [BOARD] shall adopt a supplementary recognized schedule for injuries
22 that cannot be rated by use of the American Medical Association Guides.

23 * Sec. 89. AS 23.30.190(d) is amended to read:

24 (d) When a new edition of the American Medical Association Guides
25 described in (b) of this section is published, the director [BOARD] shall, not later
26 than 90 days after the last day of the month in which the new edition is published, hold
27 an open meeting under AS 44.62.310 to select the date on which the new edition will
28 be used to make all determinations required under (b) of this section. The date selected
29 by the director [BOARD] for using the new edition may not be later than 90 days
30 after the last day of the month in which the new edition is published. After the
31 meeting, the director [BOARD] shall issue a public notice announcing the date

1 selected. The requirements of AS 44.62.010 - 44.62.300 do not apply to the selection
2 or announcement of the date under this subsection.

3 * Sec. 90. AS 23.30.200(b) is amended to read:

4 (b) The wage-earning capacity of an injured employee is determined by the
5 actual spendable weekly wage of the employee if the actual spendable weekly wage
6 fairly and reasonably represents the wage-earning capacity of the employee. A
7 hearing panel [THE BOARD] may, in the interest of justice, fix the wage-earning
8 capacity that is reasonable, having due regard for [TO] the nature of the injury, the
9 degree of physical impairment, the usual employment, and other factors or
10 circumstances in the case that may affect the capacity of the employee to earn wages
11 in a disabled condition, including the effect of disability as it may naturally extend into
12 the future.

13 * Sec. 91. AS 23.30.205(e) is amended to read:

14 (e) The second injury fund may not be bound as to any question of law or fact
15 by reason of an award or an adjudication to which it was not a party or in relation to
16 which the director [COMMISSIONER] was not notified at least three weeks before
17 the award or adjudication, that the fund might be subject to liability for the injury or
18 death.

19 * Sec. 92. AS 23.30.205(f) is amended to read:

20 (f) An employer or the employer's carrier shall notify the director
21 [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT] of any
22 possible claim against the second injury fund as soon as practicable, but in no event
23 later than 100 weeks after the employer or the employer's carrier have knowledge of
24 the injury or death.

25 * Sec. 93. AS 23.30.215(d) is amended to read:

26 (d) Compensation under this chapter to aliens not residents, or about to
27 become nonresidents, of the United States or Canada is the same in amount as
28 provided for residents, except that dependents in a foreign country are limited to
29 widow or widower and child or children, or, if there is no widow or widower and child
30 or children, to surviving father or mother whom the employee has supported, either
31 wholly or in part, for a period of one year before the date of injury. A hearing

1 examiner, upon petition of the director, the employer, or [THE BOARD, AT ITS
2 OPTION, OR UPON THE APPLICATION OF] the insurance carrier, may commute
3 all future installments of compensation to be paid to an alien dependent who is not a
4 resident of the United States or Canada by paying or causing to be paid to the alien
5 dependent one-half of the commuted amount of the future installments of
6 compensation as determined by the hearing examiner [BOARD].

7 * **Sec. 94.** AS 23.30.220(a) is amended to read:

8 (a) Computation of compensation under this chapter shall be on the basis of an
9 employee's spendable weekly wage at the time of injury. An employee's spendable
10 weekly wage is the employee's gross weekly earnings minus payroll tax deductions.
11 An employee's gross weekly earnings shall be calculated as follows:

12 (1) if, at the time of injury, the employee's earnings are calculated by
13 the week, the weekly amount is the employee's gross weekly earnings;

14 (2) if, at the time of injury, the employee's earnings are calculated by
15 the month, the employee's gross weekly earnings are the monthly earnings multiplied
16 by 12 and divided by 52;

17 (3) if, at the time of injury, the employee's earnings are calculated by
18 the year, the employee's gross weekly earnings are the yearly earnings divided by 52;

19 (4) if, at the time of injury, the

20 (A) employee's earnings are calculated by the day, by the hour,
21 or by the output of the employee, the employee's gross weekly earnings are the
22 employee's earnings most favorable to the employee computed by dividing by
23 13 the employee's earnings, including overtime or premium pay, earned during
24 any period of 13 consecutive calendar weeks within the 52 weeks immediately
25 preceding the injury;

26 (B) employee has been employed for less than 13 calendar
27 weeks immediately preceding the injury, then, notwithstanding (1) - (3) of this
28 subsection and (A) of this paragraph, the employee's gross weekly earnings are
29 computed by determining the amount that the employee would have earned,
30 including overtime or premium pay, had the employee been employed by the
31 employer for 13 calendar weeks immediately preceding the injury and dividing

1 this sum by 13;

2 (5) if, at the time of injury, the employee's earnings have not been
3 fixed or cannot be ascertained, the employee's earnings for the purpose of calculating
4 compensation are the usual wage for similar services when the services are rendered
5 by paid employees;

6 (6) if, at the time of injury, the employment is exclusively seasonal or
7 temporary, then, notwithstanding (1) - (5) of this subsection, the gross weekly earnings
8 are 1/50 of the total wages that the employee has earned from all occupations during
9 the 12 calendar months immediately preceding the injury;

10 (7) when the employee is working under concurrent contracts with two
11 or more employers, the employee's earnings from all employers are [IS] considered as
12 if earned from the employer liable for compensation;

13 (8) if an employee when injured is a minor, an apprentice, or a trainee
14 in a formal training program, as determined by a hearing panel [THE BOARD],
15 whose wages, under normal conditions, would increase during the period of disability,
16 the projected increase may be considered by the hearing panel [BOARD] in
17 computing the gross weekly earnings of the employee;

18 (9) if the employee is injured while performing duties as a volunteer
19 ambulance attendant, volunteer police officer, or volunteer fire fighter, then,
20 notwithstanding (1) - (6) of this subsection, the gross weekly earnings for calculating
21 compensation shall be the minimum gross weekly earnings paid a full-time ambulance
22 attendant, police officer, or fire fighter employed in the political subdivision where the
23 injury occurred, or, if the political subdivision has no full-time ambulance attendants,
24 police officers, or fire fighters, at a reasonable figure previously set by the political
25 subdivision to make this determination, but, in no case, may the gross weekly earnings
26 for calculating compensation be less than the minimum wage computed on the basis of
27 40 hours work a [PER] week;

28 (10) if an employee is entitled to compensation under AS 23.30.180
29 and a hearing panel [THE BOARD] determines that calculation of the employee's
30 gross weekly earnings under (1) - (7) of this subsection does not fairly reflect the
31 employee's earnings during the period of disability, the hearing panel [BOARD] shall

1 determine gross weekly earnings by considering the nature of the employee's work,
2 work history, and resulting disability, but compensation calculated under this
3 paragraph may not exceed the employee's gross weekly earnings at the time of injury.

4 * Sec. 95. AS 23.30.240 is amended to read:

5 **Sec. 23.30.240. Officers of corporations, municipal corporations, and**
6 **nonprofit corporations as employees.** An executive officer elected or appointed and
7 empowered in accordance with the charter and bylaws of a corporation, other than an
8 official of a municipal corporation or a charitable, religious, educational, or other
9 nonprofit corporation, is an employee of the corporation under this chapter. However,
10 an executive officer of a corporation may waive coverage under this chapter, subject
11 to the approval of the director [COMMISSIONER OF LABOR AND WORKFORCE
12 DEVELOPMENT], notwithstanding AS 23.30.245(b). Notwithstanding any other
13 provision of this chapter, an executive officer of a municipal corporation or of a
14 charitable, religious, educational, or other nonprofit corporation may be brought
15 within the coverage of its insurance contract by the corporation by specifically
16 including the officer in the contract of insurance. The election to bring an executive
17 officer within the coverage continues in force for the period the contract of insurance
18 is in effect. During that period, an executive officer brought within the coverage of
19 the insurance contract is an employee of the corporation under this chapter.

20 * Sec. 96. AS 23.30.250(b) is amended to read:

21 (b) If a hearing panel [THE BOARD], after a hearing, finds that a person has
22 obtained compensation, medical treatment, or another benefit provided under this
23 chapter by knowingly making a false or misleading statement or representation for the
24 purpose of obtaining that benefit, the hearing panel [BOARD] shall order that person
25 to make full reimbursement of the cost of all benefits obtained. Upon entry of an order
26 authorized under this subsection, the hearing panel [BOARD] shall also order that
27 person to pay all reasonable costs and attorney fees incurred by the employer and the
28 employer's carrier in obtaining an order under this section and in defending any claim
29 made for benefits under this chapter. If a person fails to comply with an order of a
30 hearing panel [THE BOARD] requiring reimbursement of compensation and
31 payment of costs and attorney fees, the employer may declare the person in default

1 and proceed to collect any sum due as provided under AS 23.30.170(b) and (c).

2 * Sec. 97. AS 23.30.260 is amended to read:

3 **Sec. 23.30.260. Penalty for receiving unapproved fees and soliciting.** A
4 person is guilty of a misdemeanor [,] and, upon conviction, is punishable for each
5 offense by a fine of not more than \$1,000 [,] or by imprisonment for not more than one
6 year, or by both, if the person

7 (1) receives a fee, other consideration, or a gratuity on account of any
8 services rendered for representation or advice with [IN] respect to a claim, unless
9 the consideration or gratuity is approved by the hearing panel, the commission,
10 [BOARD] or the court; or

11 (2) makes it a business to solicit employment for a lawyer or for the
12 person with [ONESELF IN] respect to a claim or award for compensation.

13 * Sec. 98. AS 23.30.260 is amended by adding a new subsection to read:

14 (b) Notwithstanding AS 23.30.145 and (a) of this section, approval of a fee is
15 not required if the fee does not exceed \$300 and is a one-time-only charge to an
16 employee by an attorney licensed in this state who performed legal services with
17 respect to the employee's claim but did not enter an appearance.

18 * Sec. 99. AS 23.30.395(28) is amended to read:

19 (28) "self-insurer" means an employer who, instead of insuring
20 liability under this chapter as it provides, elects to pay directly the compensation
21 provided for, and who has furnished to the division [BOARD] satisfactory proof of
22 the employer's financial ability to make the direct payments;

23 * Sec. 100. AS 23.30.395 is amended by adding new paragraphs to read:

24 (35) "board" means the Workers' Compensation Hearings Board;

25 (36) "commission" means the Workers' Compensation Appeals
26 Commission;

27 (37) "director" means the director of the division of workers'
28 compensation;

29 (38) "division" means the division of workers' compensation;

30 (39) "hearing examiner" means a hearing examiner employed under
31 AS 23.30.112 to preside over hearings of hearing panels in workers' compensation

1 claims and petitions and conduct other hearings under this chapter;

2 (40) "hearing panel" means a panel formed to hear workers'
3 compensation claims and petitions under this chapter, and that consists of a member of
4 the board representative of industry, a member of the board representative of labor,
5 and a hearing examiner employed under AS 23.30.112.

6 * Sec. 101. AS 39.25.120(c)(14) is amended to read:

7 (14) the rehabilitation administrator of the division of workers'
8 compensation [WORKERS' COMPENSATION BOARD];

9 * Sec. 102. AS 39.25.120(c) is amended by adding new paragraphs to read:

10 (21) the reemployment benefits administrator of the division of
11 workers' compensation in the Department of Labor and Workforce Development.

12 * Sec. 103. AS 39.50.200(b)(31) is amended to read:

13 (31) Workers' Compensation Appeals Commission (AS 23.30.007)
14 and Workers' Compensation Hearings Board (AS 23.30.006) [BOARD
15 (AS 23.30.005)];

16 * Sec. 104. AS 44.62.300(a)(15) is amended to read:

17 (15) division of workers' compensation and its director [ALASKA
18 WORKERS' COMPENSATION BOARD], where procedures are not otherwise
19 expressly provided by AS 23.30 ([THE] Alaska Workers' Compensation Act);

20 * Sec. 105. AS 21.39.155(c) and AS 23.30.395(3) are repealed.

21 * Sec. 106. The uncodified law of the State of Alaska is amended by adding a new section
22 to read:

23 APPLICABILITY. The amendment to AS 23.30.175(b) made by sec. 85 of this Act
24 applies to an injury occurring on or after the effective date of sec. 85 of this Act.

25 * Sec. 107. The uncodified law of the State of Alaska is amended by adding a new section
26 to read:

27 TRANSITION: TERMS OF BOARD OF GOVERNORS MEMBERS. (a)
28 Notwithstanding sec. 5 of this Act, the director of insurance in the Department of Community
29 and Economic Development shall designate members of the board of governors for the Alaska
30 Insurance Guaranty Association to serve staggered initial terms in the manner provided in
31 AS 39.05.055.

1 (b) Terms of members of the board of governors for the Alaska Insurance Guaranty
2 Association serving on July 1, 2004, expire on July 2, 2004, but a member of the board of
3 governors on July 1, 2004, may continue to serve until a successor is appointed if the member
4 meets the standards set out in sec. 5 of this Act for the position in which the member was
5 serving on July 1, 2004. Members of the board of governors for the Alaska Insurance
6 Guaranty Association serving on July 1, 2004, may apply for reappointment to the board by
7 submitting a request to the director of insurance.

8 * **Sec. 108.** The uncodified law of the State of Alaska is amended by adding a new section
9 to read:

10 **TRANSITION: CONTINUANCE OF ALASKA WORKERS' COMPENSATION**
11 **BOARD; PENDING CASES.** (a) Notwithstanding the repeal and reenactment of
12 AS 23.30.005 by sec. 9 of this Act, the Alaska Workers' Compensation Board, established
13 under AS 23.30.005 as it existed on the day before the effective date of sec. 9 of this Act,
14 continues in existence for 45 days after the effective date of sec. 9 of this Act for the limited
15 purpose described in (b) of this section. Members serving on the Alaska Workers'
16 Compensation Board on the day before the effective date of sec. 9 of this Act continue to
17 serve as members of that board for the 45 days after the effective date of sec. 9 of this Act.
18 No appointments may be made to that board on or after the effective date of sec. 9 of this Act.

19 (b) A case heard by the board before the effective date of sec. 9 of this Act and
20 awaiting a decision by the board on the day before the effective date of sec. 9 of this Act shall
21 be decided by the board, and a decision or order shall be issued, no later than the 45th day
22 after the effective date of sec. 9 of this Act, under the applicable statutes and regulations in
23 effect on the day before the effective date of sec. 9 of this Act.

24 (c) In this section, "board" means the Alaska Workers' Compensation Board
25 established under AS 23.30.005 as that section existed on the day before the effective date of
26 sec. 9 of this Act.

27 * **Sec. 109.** The uncodified law of the State of Alaska is amended by adding a new section
28 to read:

29 **TRANSITION: INITIAL TERMS OF MEMBERS OF WORKERS'**
30 **COMPENSATION APPEALS COMMISSION AND THE WORKERS' COMPENSATION**
31 **HEARINGS BOARD.** (a) Notwithstanding AS 23.30.007(b), enacted by sec. 10 of this Act,

1 the terms of the initially appointed members of the Workers' Compensation Appeals
2 Commission, established by AS 23.30.007 as enacted by sec. 10 of this Act, shall be set by
3 the governor to achieve staggered terms in the manner provided in AS 39.05.055.

4 (b) Notwithstanding AS 23.30.006(a) and (b), enacted by sec. 10 of this Act, members
5 of the former Alaska Workers' Compensation Board whose terms have not expired as of the
6 effective date of this section become members of the Workers' Compensation Hearings
7 Board, established by AS 23.30.006 as enacted by sec. 10 of this Act, on the effective date of
8 this section, and may complete their original appointed terms as a member of the Workers'
9 Compensation Hearings Board. Notwithstanding AS 23.30.006(b), enacted by sec. 10 of this
10 Act, the terms of the additional members initially appointed to the Workers' Compensation
11 Hearings Board shall be set by the governor so that approximately one-third of the members
12 serve terms of one year, one-third serve terms of two years, and one-third serve terms of three
13 years, taking into account the appointed terms of the members of the former Alaska Workers'
14 Compensation Board who became members of the Workers' Compensation Hearings Board
15 under this section.

16 * Sec. 110. The uncodified law of the State of Alaska is amended by adding a new section
17 to read:

18 TRANSITION: STAFF. (a) In order to ensure the smooth transfer of functions in the
19 shortest possible time, for a period of one year after the effective date of this section, the
20 director may, with the approval of the commissioner of labor and workforce development and
21 the chair of the commission, temporarily assign division employees to the commission and the
22 commission may reimburse the division for the temporarily assigned employees. Division
23 employees temporarily assigned to the commission shall continue in the same position and
24 rate of pay for the duration of the temporary assignment as they held at the division.

25 (b) Notwithstanding AS 23.30.112(a)(1), added by sec. 58 of this Act, a workers'
26 compensation hearing officer employed by the division on the day before the effective date of
27 sec. 58 of this Act who applies for and is otherwise eligible for employment as a hearing
28 examiner, is exempt, for a period not exceeding 18 months after the effective date of sec. 58
29 of this Act, from the requirement to be licensed to practice law in this state.

30 (c) In this section,

31 (1) "commission" means the Workers' Compensation Appeals Commission

1 established by AS 23.30.007, enacted by sec. 10 of this Act;

2 (2) "director" means the director of the division of workers' compensation in
3 the Department of Labor and Workforce Development;

4 (3) "division" means the division of workers' compensation in the Department
5 of Labor and Workforce Development.

6 * Sec. 111. The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 TRANSITIONAL PROVISIONS. (a) Litigation, investigations, and other
9 proceedings pending under a law amended or repealed by this Act, or in connection with
10 functions transferred by this Act, continue in effect and may be continued and completed,
11 notwithstanding a transfer or amendment or repeal provided for in this Act.

12 (b) Certificates, decisions, and orders issued under authority of a law amended or
13 repealed by this Act remain in effect for the term issued, or until revoked, vacated, or
14 otherwise modified under the provisions of this Act. Contracts, rights, liabilities, and
15 obligations created by or under a law amended or repealed by this Act, and in effect on the
16 day before the effective date of this section, remain in effect notwithstanding this Act's taking
17 effect. Records, equipment, appropriations, and other property of agencies of the state whose
18 functions are transferred under this Act shall be transferred to implement the provisions of
19 this Act.

20 (c) Regulations adopted under AS 23.30 and in effect on the day before the effective
21 date of this Act continue in effect, and may be applied by the Alaska Workers' Compensation
22 Board, during the 45 days after the effective date of sec. 9 of this Act as provided in sec. 108
23 of this Act.

24 * Sec. 112. The uncodified law of the State of Alaska is amended by adding a new section
25 to read:

26 TRANSITION: REGULATIONS. (a) The Department of Labor and Workforce
27 Development and the director of insurance in the Department of Community and Economic
28 Development each may proceed to adopt regulations necessary to implement their respective
29 provisions of this Act. The regulations take effect under AS 44.62 (Administrative Procedure
30 Act), but not before the effective date of the statutory changes.

31 (b) In order to provide for the procedures and other administrative matters necessary

1 to ensure the on-going implementation of the state's workers' compensation laws to meet the
2 urgent needs of injured workers, and thus ensure the preservation of the public peace, health,
3 safety, or general welfare, the Workers' Compensation Appeals Commission established by
4 AS 23.30.007, enacted by sec. 10 of this Act, may adopt under AS 23.30.008, enacted by
5 sec. 10 of this Act, as emergency regulations, the regulations necessary to implement the
6 changes made by this Act.

7 * **Sec. 113.** Section 112(a) of this Act takes effect immediately under AS 01.10.070(c).

8 * **Sec. 114.** Except as provided in sec. 113 of this Act, this Act takes effect July 1, 2004.

SB

316

Alaska State Legislature

Senator Con Bunde
District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee
Member: Legislative Budget & Audit Committee

During Session:
State Capitol
Juneau, AK 99801-1182
(907) 465-4843

During Interim:
716 W. Fourth Avenue
Anchorage, AK 99501-2133
(907) 269-0181

MEMORANDUM

DATE: February 27, 2004
TO: Senator Ralph Seekins, Chair Senate Judiciary Committee
FROM: Senator Con Bunde
RE: Senate Bill 316 Hearing Request

Senator Seekins:

I respectfully request a hearing before the Senate Judiciary Committee on SB 316 regarding a primary seat belt law.

Attached please find SB 316, sponsor statement, bill information sheet, fiscal note, relevant studies, and letters of support. Thank you for your consideration of this bill.

Sincerely,


Senator Con Bunde



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee
Member: Legislative Budget & Audit Committee

Sponsor Statement

Senate Bill 316

“An Act relating to motor vehicle safety belt violations.”

Currently, Alaska state law requires *all* individuals to wear a seat belt while driving or riding in any vehicle. Senate Bill 316 changes the enforcement measures of this law to allow police officers and state troopers to pull over individuals who are not wearing their seat belt. Presently, officers may cite drivers only if they are pulled over for another violation. As a direct result of this legislation, we have the opportunity to save lives, collect millions of dollars in Federal highway funding that comes with compliance of a primary seat belt law and save the state hundreds of thousands of dollars in emergency, rehabilitative and insurance costs annually.

Motor vehicle accidents are the *leading cause of death* for Americans of every age from 6 to 33 years of age and Alaska has one of the leading accident related death rates of all 50 states. Although seat belt use is required by statute and is the single most effective safety device in preventing injuries and fatalities, we are currently unable to enforce its use. In Alaska, a change in enforcement powers would lead to a 10-15% increase in seat belt use. That increase alone will prevent hundreds of injuries and save 12-15 lives in the first year alone.

The State of Alaska will automatically receive \$3,921,250 as a one time Federal grant for enacting a primary seat belt law (U.S. Department of Transportation, SAFETEA Primary Safety Belt Law Incentives Program). The grant may be used towards any road improvement plan statewide, including work on guardrails, new lanes, hazard elimination or any needed repairs. Additional funds to run advertisement campaigns and awareness programs will also be available based on current seat belt use and public compliance with the law.

Lastly, the primary enforcement seat belt law has been proven to save billions of dollars that society bears annually from motor vehicle accidents. Eighty-five percent of all costs involved in a motor vehicle crash are borne by society. On a national level in 2000, the total cost of motor vehicle crashes was over *230 billion dollars* (Alaska paid nearly a half a billion dollars), a cost of \$820 per person (National Highway Traffic Safety Administration). Safety belt usage saves approximately 50 billion dollars annually; conversely we spend an *extra 26 billion* on non-use.

Enacting a primary seat belt law may save more lives than any other single piece of legislation we consider this session. Currently, 20 states plus the District of Columbia have chosen to enforce a primary seat belt law. If every state did, we would save 1,900 lives, prevent 49,000 injuries and save Americans billions of dollars in health care, taxes and insurance costs in the first year alone. This bill saves money and lives. I urge you to consider the evidence before you and support SB 316.

Senate Bill: 316

Short Title: "An Act relating to motor vehicle safety belt violations."

Sponsor: Senator Con Bunde

Current Version: SB 316

Contact Information: Lauren Wickersham 907-465-4843

Summary:

- Changes the current seat belt law from a secondary offense to a primary offense.
- Changes the enforcement measures of our current seat belt law to allow police officers and state troopers to pull over individuals who are not wearing their seat belt.
- Does not change or affect that fact that drivers and passengers are currently required by state law to wear a seat belt while in a motor vehicle.

Benefits:

- Primary seat belt laws have been proven to save lives and reduce injuries related to motor vehicle crashes.
- The State of Alaska will collect close to 4 million dollars in Federal highway funding that comes with compliance of a primary seat belt law.
- Enacting a primary seat belt law will save the State of Alaska hundreds of thousands of dollars in emergency, rehabilitative and insurance costs annually.

Background

- Primary seat belt laws have been enacted by 20 other states, plus the District of Columbia
- Commissioner Tandeske, the Chief of Police in both Fairbanks and Anchorage and many public safety groups locally and nationally are in full support of a primary seat belt law.
- For specific information, contact Lauren Wickersham in Senator Bunde's office.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 316
 (S) Publish Date: 2/27/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title Motor Vehicle Seat Belt Violations RDU Alaska State Troopers
 Component AST Detachments
 Sponsor Sen. Bunde
 Requester S. State Affairs Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill will repeal AS 28.05.095(e) that will, in affect, change seat belt violations from a "secondary" violation to a "primary" violation. This will allow law enforcement officers to contact motorists when a seatbelt violation is observed. As the law is now, the officer must have another reason to contact the violator before enforcement action can be taken for the seatbelt violation.

 It is anticipated the implementation of this bill will have no fiscal impact on the Department of Public Safety.

Prepared by: Lt. Al Storey Phone 269-4532
 Division Alaska State Troopers Date/Time 2/23/04 9:24 AM
 Approved by: Commissioner William Tandeske Date 2/23/2004
 Agency Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 316
 (S) Publish Date: 2/27/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
 Title Seat Belt Violation as Primary Offense RDU Administration & Support
 Component Commissioner's Office
 Sponsor Bunde
 Requester Senate State Affairs Component No. 530

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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1003 GF Match						
1004 GF						
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1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by: Nona Wilson Phone 465-6973
 Division Legislative Liaison Date/Time 2/20/04 9:12 AM
 Approved by: John MacKinnon Date 2/20/2004
 Agency Deputy Commissioner

Sec. 28.05.095. Use of seat belts and child safety devices required.

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

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

(2) may not operate a motor vehicle unless restrained by a safety belt.

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

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

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

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

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

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

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

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

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Alaska Seat Belt Cost Analysis EXECUTIVE SUMMARY

OBJECTIVES

An average of more than 39,000 Alaskans are involved in motor vehicle crashes every year. It is an expensive and painful problem with no single cause. For the citizens of Alaska, the medical costs alone are estimated to be over \$14.5 million per year, while property damage and long-term disabilities add millions more to this figure. Alaskans pay a significant portion of these costs through publicly funded programs.

It is well documented that wearing a seat belt significantly reduces the severity of injury and decreases the risk of death in a motor vehicle crash. The *Alaska Seat Belt Cost Analysis* attempted to quantify the medical costs associated with restrained and unrestrained occupants involved in motor vehicle crashes and the sources of payment for these hospitalizations.

RESULTS

With data supplied by the Alaska Department of Transportation and Public Facilities and the Alaska Trauma Registry (ATR), a thorough analysis of the health care costs to treat restrained and unrestrained vehicle occupants was undertaken. The data covered the years 1996 through 1999.

The study revealed that the decision not to wear a seat belt has economic consequences for everyone:

- ✓ During the time period analyzed, medical costs for those who were not wearing a seat belt at the time of the crash totaled \$13 million. Of this amount, 50% was paid with public funds.
- ✓ Victims of crashes in Alaska spent a cumulative average of 2,672 days in the hospital each year. The majority of these individuals - 58% - were unrestrained at the time of the crash.
- ✓ Medicaid costs to treat 83 crash victims under the age of 20 totaled \$1.6 million.
- ✓ Post-hospitalization care for victims of motor vehicle crashes is also expensive. Nineteen crash survivors were placed in "skilled nursing facilities" at a cost of \$1 million, of which 77% was paid by public sources. Of those 19 individuals, 13 were not wearing a seat belt at the time of their crash.

More than \$2.6 million in public funds is spent each year to care for unbuckled victims of motor vehicle crashes, and these are just the documented economic costs. Death and long-term disabilities involving the brain or spinal cord take their own toll on individuals and families and are very difficult to quantify.

CONCLUSIONS AND RECOMMENDATIONS

The *Alaska Seat Belt Cost Analysis* makes a compelling economic case for the use of seat belts. The most recent observational survey of seat belt use conducted in July 2003 showed that Alaskans are buckling up at a rate of 78.9%. While higher than previous years, there is a substantial segment of the population who is still not wearing a seat belt. Introduction and implementation of programs and public policies to encourage seat belt use will result in fewer injuries and deaths, ultimately reducing the financial burden on the taxpayers of Alaska.

Alaska Seat Belt Cost Analysis

**Alaska Injury
Prevention Center**



Ron Perkins, MPH

**Anchorage, Alaska
September 2003**

This research was made possible with funding from the Automotive Coalition for Traffic Safety, Inc.

EXECUTIVE SUMMARY

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Introduction

Motor vehicle crashes are the leading cause of death for Americans between the ages of 2 to 33 years.¹ Every 13 minutes, someone in America dies in a traffic crash, and every 10 seconds, someone is injured.² Each year in the U.S., traffic crashes claim about 42,000 lives and result in approximately three million injuries. These crashes cost every person in the U.S. an average of \$820 each.³ The financial costs are minor compared with the pain and suffering of the victims or the loss of a loved one.

According to the National Highway Traffic Safety Administration (NHTSA), in the year 2002, 42,815 people were killed in motor vehicle-related crashes and 2.92 million were injured. The total cost was \$230.6 billion.⁴ NHTSA also reported that failure to wear seat belts led to approximately 9,200 deaths and 143,000 injuries, costing the U.S. economy \$26 billion.

In 1999, Alaska had the highest unintentional injury death rate of all the 50 states. Of these deaths, motor vehicle-related fatalities were over twice as high as the next leading cause.⁵ Seat belts are the single most effective safety device in preventing serious injuries and reducing fatalities in motor vehicle crashes. Research has shown that lap and shoulder safety belts, when used properly, reduce the risk of fatal injury to front-seat occupants by 45% and the risk of moderate-to-critical injury by 50%. Child safety seats, when used properly, reduced infant fatalities in passenger cars by 71%.⁶

A 1995 NHTSA study, *Safety Belt Use Laws: An Evaluation of Primary Enforcement and Other Provisions*, showed that states with primary enforcement laws have significantly higher safety belt usage than states with secondary laws. Belt use was about 15% higher in the states with primary enforcement laws. Primary enforcement allows a police officer to stop a vehicle when occupants are unrestrained, while secondary enforcement allows for citing the unbelted motorist only if another infraction resulted in the stop.

Given the documented effectiveness of seat belts in reducing fatalities, the severity of injuries in traffic crashes and, therefore, medical costs associated with those injuries, the Alaska Injury Prevention Center decided to investigate the economic implications of unrestrained vehicle occupants involved in crashes.

This report attempts to quantify the hospital costs associated with seat belt use and non-use in Alaska, as well as to determine what portions of those costs are borne by taxpayers. The research was conducted by the Alaska Injury Prevention Center with funding support from the Automotive Coalition for Traffic Safety, Inc.

Methods

The *Alaska Seat Belt Cost Analysis* project used data from the Department of Transportation and Public Facilities (DOT&PF) from 1990-2001, to compare seat belt usage patterns for all Alaskan motor vehicle occupants. The DOT&PF data are taken from police reports that document seat belt use, property damage, fatalities, time of day, weather conditions, passenger seat belt use, contributing factors, etc.

The Alaska Trauma Registry (ATR) was used extensively for this study because it documents every trauma case resulting in at least one overnight stay in an Alaskan hospital. The ATR contains information about the length of stay, costs for treatment, source of payment, reported seat belt use, age, sex, injury severity, etc. The ATR does not contain information about outpatient visits, scene deaths, private physician contacts, chiropractor visits, and other costs for motor vehicle-related injuries.

Another database maintained by Medicaid, was explored but found to be of limited use because it did not track the cause of injury. If the Medicaid data could be linked with DOT&PF and ATR by age, sex, date of injury, etc., some of the long-term expenses beyond the hospital stay could potentially be tracked.

Hospitalization costs (from the Alaska Trauma Registry) for belted and unbelted occupants injured in a motor vehicle crash in Alaska, for the years 1996 – 1999 were compared. Hospital costs were analyzed by seat belt use or non-use, source of payment, days spent in the hospital, discharge location, and fatalities.

Restraint use was categorized into either the YES group or the NO group in the following manner:

YES	NO
Air Bag and Seat Belt	Air Bag Only (not restrained)
Seat Belt only	None
Infant/Child Restraint	

Many of the entries listed restraint use as UNKNOWN. The case narrative field in the ATR was used to re-categorize a few of the unknowns, but restraint use or non-use could not be determined for most of the unknowns, therefore they were analyzed separately.

In a landmark publication, *The Cost of Injury in the United States*, Rice and MacKenzie documented motor vehicle-related injuries per victim as the most costly of all unintentional injury categories. The average cost for each person

hospitalized for motor vehicle-related injuries was calculated to be \$43,409.⁷ Several studies have estimated the loss of productivity or quality of life costs for various types of injury, but for this analysis only the quantifiable hospital related costs were examined.

Costs attributed to the "general public" included payments from programs such as Medicaid, Medicare, Indian Health Service, military, CHAMPUS (military dependents), and no-pay patients. We could not adequately define uninsured motorists' costs which could also be attributed to public costs.

Results

Observational surveys completed by the University of Alaska's Institute for Social and Economic Research showed that in the Year 2000, 62% of the front seat occupants of motor vehicles were wearing seat belts. In the Year 2001, 63% of the front seat occupants of motor vehicles were wearing seat belts. These statistically valid surveys represent the driving population of the state and are important when examining seat belt use percentages among motor vehicle crash victims who are injured, hospitalized, or merely involved in a crash.

According to Alaska DOT&PF data from 1998 through 2000, an annual average of 39,613 motor vehicle occupants were involved in traffic crashes, and approximately 62 of these occupants lost their lives each year.⁸ Of all the motor vehicle occupants involved in a crash, only 6% reported not wearing a restraint, 66% were wearing a restraint, and 28% had unknown restraint use (see Table 1). When all of the cases with documented restraint use were analyzed separately, 9% were reportedly not wearing a seat belt, while 60% of the fatalities were unrestrained.

Table 1
Alaska Seat Belt Use (DOT&PF Data)
1998, 1999, 2000 Combined and Averaged

	All Motor Vehicle Occupants	All Occupants Where Seat Belt use Documented	All FataIs	FataIs Where Seat Belt use Documented	Major Injuries	Minor Injuries	No Injuries
No Restraint	6% (7,641)	9%	54% (34)	60%	37%	15%	5%
Restraint Used	66% (77,936)	91%	37% (23)	40%	49%	74%	65%
Unknown Use	28% (33,263)		9% (5)		12%	11%	31%
<i>Annual Average</i>	39,613		62				

The Alaska Trauma Registry provided additional information on the more seriously injured occupants after they were admitted to a hospital. Of all the motor vehicle occupant hospitalizations, 48% were not wearing a restraint, 43% were wearing a restraint, and 9% had unknown restraint use (see Table 2). When all cases with documented restraint use were analyzed separately, 53% were unrestrained, and of the fatalities who died in the hospital, 56% were unrestrained.

Table 2

**Alaska Trauma Registry Data
Hospitalizations
1996 - 1999 Combined**

	All Motor Vehicle Occupant Hospitalizations	Cases with Seatbelt Use Documented	Fatals	Fatals with Seatbelt Use Documented
No Restraint	48% (887)	53%	49% (30)	56%
Restraint Used	43% (790)	47%	39% (24)	44%
Unknown Use	9% (167)	0%	11% (7)	

Another measure of severity used in this analysis was total number of hospital days for restrained and unrestrained occupants. An average of 2,672 days was spent in hospitals every year for motor vehicle occupant injuries in Alaska. Of the total hospital days where restraint use was documented, 58% of the patients had been unrestrained at the time of their crash and 42% were restrained (Table 3).

Table 3

**Hospital Days
1996 - 1999 Average**

	Avg. Hospital Days per Year	%	% by "Known" Use
No Restraint	1402	52%	58%
Restraint Used	1009	38%	42%
Use Unknown	261	10%	

In 1994, the Federal Highway Administration published a technical report, *Motor Vehicle Accident*, and included the following lifetime injury costs by Abbreviated Injury Severity (AIS) score:

<u>Severity</u>	<u>Descriptor</u>	<u>Cost per Injury</u>
AIS 1	Minor	\$ 5,000
AIS 2	Moderate	\$ 40,000
AIS 3	Serious	\$ 150,000
AIS 4	Severe	\$ 490,000
AIS 5	Critical	\$1,980,000
AIS 6	Fatal	\$2,600,000

When correlating the AIS scores with seat belt use in Alaska, 60% of the patients with the lowest score of AIS 1, were wearing restraints at the time of their crash. The most severely injured patients, having scores of AIS 5, had the lowest percentage of restraint use at 45%.

Post-hospitalization costs are substantial, but difficult to measure. The most severe non-fatal cases are discharged to "skilled nursing" facilities which typically require round-the-clock monitoring. Of the patients discharged to skilled nursing, 13 had been unrestrained and 6 were restrained during the motor vehicle crash. The hospital costs for these 19 patients before they were discharged were nearly \$1 million, of which 77% was derived from public sources. Unfortunately, it was impossible to track post-hospitalization costs.

Costs

The costs for hospitalized motor vehicle occupants in Alaska were analyzed by the source of payment data in the ATR. These costs are not considered to be complete, since some of the costs are billed by sources outside of the hospital, such as medical specialists, chronic care facilities, pharmacies, medical and prosthetic equipment companies, etc. Generally, costs were paid by one or more of the following sources: motor vehicle property and casualty insurance, private health and medical insurance, CHAMPUS insurance for military dependents, military branches, Medicaid, Medicare, IHS for Alaska Native beneficiaries, and workers compensation insurance.

The Alaska Department of Health and Social Services, Section of Community Health and EMS recently completed a research project that analyzed injuries among Medicaid-eligible youth ages 0-20.⁹ The report compiled hospital costs for various types of injuries for the years 1995-1999.

Motor vehicle occupant injuries are the most expensive injury category for Medicaid. During the four-year period, there were 83 Medicaid-eligible Alaskans who were 0-20 years old and involved in motor vehicle crashes.

The breakdown of the medical costs to treat these individuals included:

- The average cost per case was \$20,000.
- Average cost per hospital day was \$3,300.
- Average number of days in the hospital was 6 days per case.
- Total number of Medicaid patients was 83, with a total estimated cost of \$1.6 million.

For the years 1996 through 1999, an analysis of hospital costs documented in the ATR for motor vehicle occupant injuries was undertaken. Only 66% of the patients had medical costs reported in the ATR because several of the hospitals serving federal beneficiaries and a few of the public hospitals did not report costs associated with individuals. Of the cases where costs were reported, over \$22.2 million was spent on direct medical care. When extrapolating average costs per case, the four-year costs were:

- \$21.8 million for unrestrained occupants and
- \$15.8 million for restrained occupants.

When including the "unknowns," an additional \$6.1 million is added, for a total of \$43.6 million. Of the total hospital costs reported, 59% represented unrestrained occupants (see Table 4).

Table 4

Alaska MV Hospital Costs

1996 - 1999

	Total Costs	Total Cases	Average Costs per Case	% of Total
No Restraint Used	\$13,039,797	534	\$24,419	59%
Restraint Used	\$9,177,849	460	\$19,952	41%

Of the total ATR costs for motor vehicle-related hospitalizations, 44% was paid by the general public through programs such as Medicaid, Medicare, Indian Health Service, military, CHAMPUS, and no-pay patients. Of this 44% paid by the public, 69% of the costs were for unrestrained occupants (see Table 5).

Table 5

**Public Costs for Alaska MV Hospitalizations
1996 - 1999**

	Total Costs	Total Cases	Average Costs per Case	% of Total
No Restraint Used	\$6,514,907	181	\$35,994	69%
Restraint Used	\$3,226,035	263	\$12,266	31%

There is well over \$2.6 million dollars spent each year on beneficiaries of public programs who are hospitalized for motor vehicle-related injuries. This number excludes the very costly pedestrian and bicycle victims injured by motor vehicles.

Conclusions

A substantial body of research demonstrates that seat belt use greatly reduces the number of traffic crash-related fatalities and the severity of injuries. In general, the more severe the injury, the less likely it will be that the individual was buckled up. The *Alaska Seat Belt Cost Analysis* shows that restraint use or non-use also affects the number of hospitalizations, length of stay in the hospital, and the overall cost of hospitalizations for motor vehicle occupants involved in crashes.

The analysis also shows that 44% of motor vehicle crash-related hospital costs are borne by the citizens of Alaska. Close to 40,000 vehicle occupants are involved in traffic crashes each year in Alaska. More than \$2.6 million dollars is spent each year for beneficiaries of public programs who are hospitalized for motor vehicle related injuries. Thus, the decision to wear or not wear a seat belt is not just a matter of personal choice, but a decision that has economic implications for all Alaskans.

This study only analyzed hospitalization costs of vehicle occupants involved in crashes. For those suffering some types of injuries, including those to the brain and spinal cord, long-term care and rehabilitation costs vastly exceed the initial hospitalization costs. Thus, the total cost to the public is significantly higher than those documented in this study.

Fortunately, seat belt use in Alaska is on the rise. The most recent observed seat belt use survey found that belt use was 78.9% in 2003 up from 66% in 2002. Still, experience from other states and Canada suggests that the largest reductions in

fatalities, injury severity (and thus medical costs) do not occur until belt use rates reach the 90 percent range.¹⁰

Most frequently, those who refuse to buckle up also tend to exhibit other high-risk behaviors like speeding and driving while impaired. It is critical that all drivers and passengers use seat belts and child restraints, as appropriate, if hospital and other medical costs resulting from motor vehicle crashes are to be substantially reduced. Programs and policies that result in higher restraint use will reduce traffic crash fatalities as well as the severity of injuries and costs to individuals and to the taxpayers of Alaska.

References

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- ¹ NHTSA, Traffic Safety Facts, 2002
 - ² NHTSA, Status of Occupant Protection in America, Buckle Up America Report, Nov. 2001.
 - ³ USDOT&PF, News Release, July 17, 2003.
 - ⁴ Ibid.
 - ⁵ CDC, WISQARS, Injury Mortality Report, All Injury Deaths and Rates per 100,000 by State.
 - ⁶ NHTSA, Traffic Safety Facts 2001 – Occupant Protection, DOT&PF HS 809 474.
 - ⁷ Rice DP, MacKenzie EJ, et. al., Cost of Injury in the United States, Report to Congress 1989.
 - ⁸ Alaska Traffic Accidents, Annual reports from the Alaska Department of Transportation and Public Facilities.
 - ⁹ Report on Injury Prevention Activities of Community Health and EMS Targeting Medicaid-Eligible Youth, by Martha Moore and the State Injury Prevention staff, 2003.
 - ¹⁰ NHTSA, Status of Occupant Protection in America, Buckle Up America Report, Nov. 2001.

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January 16, 2004

Memorandum

TO: Senator Con Bunde
FROM: Cherie Nienhuis 
Legislative Analyst
RE: Primary Safety Belt Laws

You asked about primary safety belt laws in other states. A safety belt law is primary when law enforcement officers are allowed to stop vehicles solely for safety belt violations. This type of law contrasts with secondary safety belt laws, which allow officers to cite safety belt violations only after stopping vehicles for other violations.

As of fall 2003, 20 states plus the District of Columbia have passed primary safety belts laws, and 29 states, including Alaska, have passed secondary safety belt laws.¹ New Hampshire does not have a safety belt law. According to a study completed for The National Safety Council, an estimated 12,177 motorists died since 1995 because of their states' failure to implement a primary safety belt law. The study estimates that, in Alaska alone, 43 lives could have been saved over the eight-year period had state lawmakers passed a primary safety belt law rather than a secondary one.

The Insurance Institute for Highway Safety publishes information about safety belt laws in each state, including whether they are primary (also called "standard"), and what the maximum fines are for first offenses. We include this information as Attachment B. We also include, as Attachment C, primary safety belt laws for three states whose laws changed from secondary to primary laws fairly recently.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

¹ Neil K. Chaudhary, PhD, David F. Preusser, PhD, and the Preusser Research Group, Inc., "Lives Lost by States' Failure to Implement Primary Safety Belt Laws," November 5, 2003. We include a copy of this publication as Attachment A.

**Lives Lost by States'
Failure to Implement Primary
Safety Belt Laws**

November 5, 2003

Prepared by:

Neil K. Chaudhary, PhD
David F. Preusser, PhD
Preusser Research Group, Inc.
Trumbull, CT

For:

The National Safety Council's
Air Bag & Seat Belt Safety Campaign

OBJECTIVE:

The purpose of this study is to estimate the number of lives lost due to the failure of states to pass primary enforcement safety belt laws. Primary laws allow officers to stop motorists based solely on an observed seat belt violation. Secondary laws allow officers to enforce the safety belt law if and only if the motorist is first stopped for some other violation. In 2002, eighteen states plus the District of Columbia had primary laws (see Table 1). Historically, safety belt use has been higher in "primary states" than in states without primary laws. Figure 1 shows primary versus secondary states based on standard National Highway and Traffic Safety Administration (NHTSA) approved observational studies.

Table 1.
Dates of Primary Law Enactment (Source: NTSB)

State	Enacted	State	Enacted
Alabama	12/09/99	Maryland	10/01/97
California	01/01/93	Michigan	03/10/00
Connecticut	01/01/36	New Jersey	05/01/00
Delaware*	06/30/03	New Mexico	01/01/86
District of Columbia	10/01/97	New York	12/01/84
Georgia	07/01/96	North Carolina	10/01/85
Hawaii	12/16/85	Oklahoma	11/01/97
Illinois*	07/03/03	Oregon	12/07/90
Indiana	07/01/98	Texas	09/01/85
Iowa	07/01/86	Washington	04/02/02
Louisiana	09/01/95		

* Law Changed in 2003

PROCEDURE:

The first step was to determine the likely increase in the safety belt use rate associated with the passage of a primary law. Three methods were used to establish convergent validity.

Effectiveness of Primary Law

State wide observations:

The first estimate used NHTSA verified statewide observations of day-time belt use rates. We compared rates for states with primary laws to states without primary laws for each year starting with

1995 and ending with 2002 (See Table 2). For this analysis, as well as all following analyses, data from the District of Columbia and Indiana were excluded. DC simultaneously implemented a primary law and applied more strict consequences for violation of the law (high fines and points to the license) making it difficult to attribute change in belt use to the primary law alone. IN implemented a primary law in 1999, which was soon after ruled unconstitutional, then reinstated some time later, making it difficult to set a specific date for the onset of the primary law.

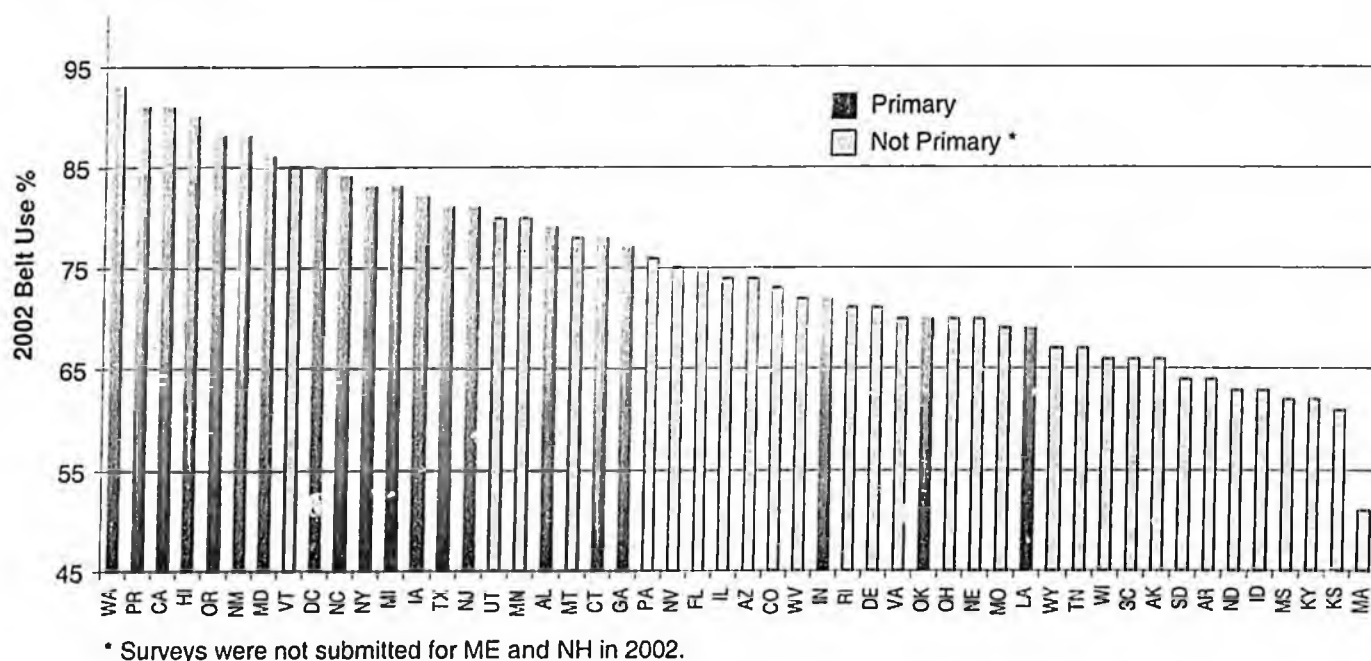


FIGURE 1. Belt use rates in 2002 (Data Source: NHTSA).

Table 2
Statewide Observed Belt Use 1995-2002 for Primary* Versus
Non-primary Law States

	1995	1996	1997	1998	1999	2000	2001	2002	ALL
Primary	75%	74%	75%	78%	79%	79%	81%	83%	78%
not-Primary	60%	59%	60%	61%	63%	65%	67%	70%	63%
Difference	15%	15%	14%	17%	16%	14%	14%	13%	15%

* Excludes DC & IN

The results indicate that front seat occupants in primary states are between 13 and 17 percentage points ($M = 15$) more likely to be properly restrained than those in non-primary states.

FARS data estimations:

The second estimate of the value of primary laws was based on NHTSA's Fatality Analysis Reporting System (FARS); a database of crashes that resulted in at least one fatal injury. Using FARS, we compiled the number of fatally injured front seat occupants, ages 16 and older, of passenger vehicles who were, and were not, wearing safety belts. Theoretically, the number of belted drivers is underrepresented in the FARS database. This is because the proper use of safety belts reduces fatalities preventing the crash from entering the database. Thus, to estimate the number of belted drivers in "Potentially Fatal Crashes" (PFCs) we use the NHSTA estimation that safety belts are 45% effective in reducing fatalities in PFCs for passenger cars and 60% effective for light trucks (including pickups, SUVs and vans). That is, we estimated the number of front seat occupants who were involved in PFC's by hypothesizing that the number of belted drivers who died is 55% of all the belted drivers involved in crashes serious enough to potentially cause a fatality. An additional number of drivers in PFC's did not die because they were wearing seat belts.

We established a percentage of front seat occupants who were belted, and unbelted, in PFC's (see Table 3). Using these estimates, we established that front seat occupants of vehicles involved in PFC's in states with primary laws have 15 percentage point higher belt use than persons in states without primary laws.

Within state estimations:

The third method was to compare observed belt use rates in those states that changed from secondary to primary. Two years of NHTSA verified statewide observed belt use rates prior to the law change for 8 states that changed their laws were compared to the two years after the law change. The year in which the law changed was excluded. The results indicated that observed belt use was, on average, 15 percentage points higher in the two years after than the two years before (see Table 4).

Table 3
Actual and Estimated Safety Belt use rates for Fatal, and
Potentially Fatal Crashes (Data Source: FARS 1995 – 2002)

		Primary*		Not Primary		Difference
		N	Est. Belted	N	Est. Belted	
Passenger Cars	Unbelted Dead	21520		50630		
	Belted Dead	27807		33010		
	Est. Belted Alive	22751		27008		
	Est. Total PFCs	72078	70%	110648	54%	16%
Light Trucks (Pickups, SUVs, Vans)	Unbelted Dead	16381		29320		
	Belted Dead	9069		9199		
	Est. Belted Alive	13604		13799		
	Est. Total PFCs	39054	58%	52318	44%	14%
Combined	Unbelted Dead	37901		79950		
	Belted Dead	36876		42209		
	Est. Belted Alive	36355		40807		
	Est. Total PFCs	106597	66%	158366	51%	15%

* Excludes DC & IN

Table 4
Change in Statewide Observed Belt use Prior to and After Law Changes
(Data Source: NHTSA)

	Years relative to Law Change					Difference
	-2	-1	0	1	2	
CA	48%	50%	59%	59%	67%	
LA	57%	53%	58%	65%	74%	
GA	57%	53%	58%	65%	74%	
MD	70%	70%	71%	83%	83%	
OK	46%	48%	60%	56%	61%	
AL	52%	52%	58%	71%	79%	
MI	70%	70%	84%	82%	83%	
NJ	63%	63%	74%	78%	81%	
	58%	57%	65%	70%	75%	
Means	58%			73%		15

These analyses provided three estimates of effectiveness of primary laws. All three of the methods suggest that belt use was likely to have increased about 15 percentage points had a state adopted a primary safety belt law during the period included in this study (1995 – 2002).

RESULTS

For the present study, we estimate that belt use would have increased an average of 15 percentage points after implementation of a primary law over the 8 year period from 1995 – 2002. Using the estimated 15 percentage point gain in belt use by implementation of a primary law, we estimated how many front seat occupants of passenger vehicles (16 and older) died because their states did not implement a primary law. The estimated effectiveness of the safety belt is 45% for passenger cars and 60% for light trucks. We calculated that since 1995 an estimated 12,177 motorists died because of their states' failure to implement a primary law (see Table 5). The number killed was highest in 1995 and generally decreased in later years as more states switched to primary (See Figure 2). The estimated lives lost per state ranges from 33 in Rhode Island to 1333 in Florida (See Table 6).

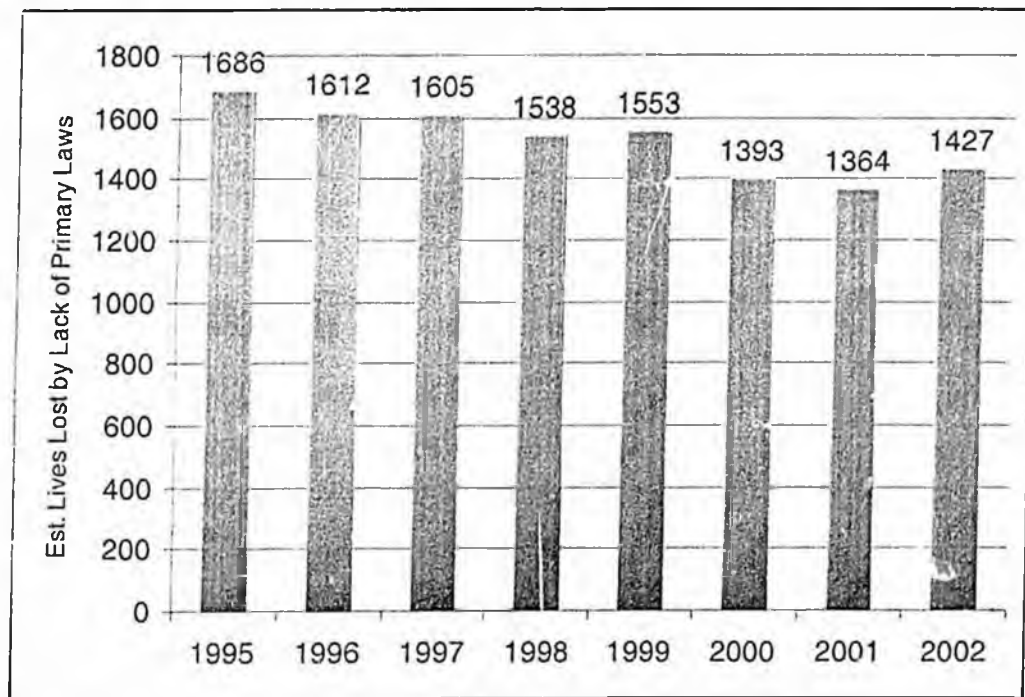


FIGURE 2. Est. Lives lost per year due to no primary enforcement safety belt law.

Table 5
Est. Lives Lost Due to Lack of Primary Laws (1995-2002)

	States without Primary Laws	If Primary Law	Lives Lost
Unbelted Dead	79930	55505	
Belted Dead	42209	54477	
Est. Belted Survivors	40807	52984	
Total Dead	122159	109982	12177

CONCLUSION

Failure to implement primary laws in all states resulted in more than 12,000 lives were lost during the years 1995 - 2002. If the situation remains the same as in 2002, an estimated additional 1,400 motorists will be killed next year alone.

Table 6
Est. Lives Lost Due to Lack of Primary Laws by State (1995-2002)

State	Est. Lives Lost	State	Est. Lives Lost
Alaska	43	Nevada	169
Arizona	415	New Hampshire	60
Arkansas	316	North Dakota	50
Colorado	357	Ohio	732
Florida	1333	Pennsylvania	667
Idaho	143	Rhode Island	33
Kansas	247	South Carolina	525
Kentucky	482	South Dakota	73
Maine	96	Tennessee	675
Massachusetts	157	Utah	172
Minnesota	314	Vermont	47
Mississippi	481	Virginia	478
Missouri	579	West Virginia	205
Montana	135	Wisconsin	387
Nebraska	134	Wyoming	94

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ATTACHMENT B

SAFETY BELT USE LAWS

State	Effective date	Standard enforcement?	Who is covered? In what seats?	Maximum fine 1st offense	Damages reduced for nonuse?
Alabama	7/18/91	yes; effective 12/9/99	6+ yrs. in front seat	\$25	no
Alaska	9/12/90	no	16+ yrs. in all seats	\$15	yes
Arizona	1/1/91	no	5+ yrs. in front seat; 5 through 15 in all seats	\$10	yes
Arkansas	7/15/91	no	15+ yrs. in front seat	\$25 ^{1,2}	no
California	1/1/86	yes; effective 1/1/93	16+ yrs. in all seats	\$20	no
Colorado	7/1/87	no	16+ yrs. in front seat	\$15	yes ³
Connecticut	1/1/86	yes	4+ yrs. in front seat	\$15	no
Delaware	1/1/92	yes; effective 6/30/03	16+ yrs. in all seats	\$25	no
District of Columbia	12/12/85	yes; effective 10/1/97	16+ yrs. in all seats	\$50 ¹	no
Florida	7/1/86	no	6+ yrs. in front seat; 6 through 17 yrs. in all seats	\$30	yes
State	Effective date	Standard enforcement?	Who is covered? In what seats?	Maximum fine 1st offense	Damages reduced for nonuse?
Georgia	9/1/88	yes; effective 7/1/96	5 through 17 yrs. in all seats; 18+ yrs. in front seat	\$15 ⁴	no
Hawaii	12/16/85	yes	4 through 17 yrs. in all seats; 18+ yrs. in front seat	\$45	no
Idaho	7/1/86	no	4+ yrs. in all seats	\$25	no
Illinois	1/1/88	yes; effective 7/3/03	6+ yrs. in front seat; all in all seats if driver is younger than 18 yrs.	\$25	no
Indiana	7/1/87	yes; effective 7/1/98	4 through 11 yrs. in all seats; 12+ yrs. in front seat	\$25	no
Iowa	7/1/86	yes	6+ yrs. in front seat	\$10	yes ³
Kansas	7/1/86	no	14+ yrs. in front seat	\$10	no
Kentucky	7/15/94	no	more than 40 in. in all seats	\$25	no
Louisiana	7/1/86	yes; effective 9/1/95	13+ yrs. in front seat	\$25	no
Maine	12/26/95	no	18+ yrs. in all seats	\$50	no

Standard Who is covered? In Maximum fine Damages reduced for

State	Effective date	enforcement?	what seats?	1st offense	nonuse?
Maryland	7/1/86	yes; effective 10/1/97	16+ yrs. in front seat	\$25	no
Massachusetts	2/1/94	no	12+ yrs. in all seats	\$25 ⁴	no
Michigan	7/1/85	yes; effective 4/1/2000	4+ yrs. in front seat; 4 through 15 yrs. in all seats	\$25	yes ³
Minnesota	8/1/86	no	all in front seat; 3 through 10 yrs. in all seats	\$25	no
Mississippi	7/1/94	no (yes for children <8)	4 through 7 yrs. in all seats/8+ yrs. in front seat	\$25	no
Missouri	9/28/85	no (yes for children <16)	4+ yrs. in front seat; 4 through 15 yrs. in all seats	\$10	yes ³
Montana	10/1/87	no	6+ yrs. in all seats	\$20	no
Nebraska	1/1/93	no	16+ yrs. in front seat	\$25	yes ³
Nevada	7/1/87	no	5+ yrs. in all seats	\$25	no
New Hampshire	n/a	no law	no law	no law	no

State	Effective date	Standard enforcement?	Who is covered? In what seats?	Maximum fine 1st offense	Damages reduced for nonuse?
New Jersey	3/1/85	yes; effective 5/1/2000	7 yrs. and younger and more than 80 lbs.; 8 through 17 in all seats; 18+ in front seat	\$20	yes
New Mexico	1/1/86	yes	18+ yrs. in all seats	\$25 ¹	no
New York	12/1/84	yes	16+ yrs. in all seats	\$50 ¹	yes
North Carolina	10/1/85	yes	16+ yrs. in front seat	\$25	no
North Dakota	7/14/94	no	18+ yrs. in front seat	\$20	yes
Ohio	5/6/86	no	4+ yrs. in front seat	\$30 driver/\$20 passenger	yes
Oklahoma	2/1/87	yes; effective 11/1/97	all in front seat	\$20	no
Oregon	12/7/90	yes	16+ yrs. in all seats	\$75	yes
Pennsylvania	11/23/87	no	8 through 17 yrs. in all seats; 18+ yrs. in front seat	\$10	no
Rhode Island	6/18/91	no (yes for children <13)	7+ yrs. in all seats	\$57	no

State	Effective date	Standard enforcement?	Who is covered? In what seats?	Maximum fine 1st offense	Damages reduced for nonuse?
South Carolina	7/1/89	no (yes for children <18 yrs.) ⁵	6+ yrs. in front seat; 6+ yrs. in rear seat with shoulder belt	\$10	no
South Dakota	1/1/95	no	5+ yrs. in front seat	\$20	no
Tennessee	4/21/86	no	4+ yrs. in front	\$10	no

State	Effective Date	Requirement	Age Group	Fine	Points
Texas	9/1/85	yes	4 through 16 yrs. in all seats; 17+ yrs. in front seat	\$200	no
Utah	4/28/86	no (yes for children <19 yrs.)	16+ yrs. in all seats	\$45	no
Vermont	1/1/94	no	16+ yrs. in all seats (eff. 1/1/04)	\$25 (eff. 1/1/04)	no
Virginia	1/1/88	no	16+ yrs. in front seat	\$25	no
Washington	6/11/86	yes; 7/1/2002	all in all seats	\$37	no
West Virginia	9/1/93	no	9+ yrs. in front seat; 9 through 17 yrs. in all seats	\$25	yes ²
Wisconsin	12/1/87	no	4+ yrs. in front seat; 4 through 15 yrs. in rear seat with shoulder belt	\$10	yes ³
Wyoming	6/8/89	no	5+ yrs. in all seats	\$25 ² driver/\$10 passenger	no

¹These states assess points for violations.

²Arkansas and Wyoming reward belt use by reducing the fine for the primary violation by \$10.

³Under the safety belt defense, Wisconsin allows a maximum 15 percent damage reduction (in Missouri, a maximum 1 percent). In 3 states (Iowa, Michigan, and Nebraska), the damage reduction may not exceed 5 percent. In Colorado, damages may be reduced for pain and suffering only, not economic or medical losses. In West Virginia, an award for medical expenses only may be reduced by no more than 5 percent.

⁴In Georgia, the maximum fine is \$25 if the child is 5-18 yrs. Drivers in Massachusetts may be fined \$25 for violating the belt law themselves and \$25 for each unrestrained passenger 12-16 yrs.

⁵Police are prohibited in South Carolina from enforcing safety belt laws at checkpoints designed for that purpose. However, safety belt violations may be issued at license and registration checkpoints.

Child Restraint, Belt Laws main page

- Tables:**
Child Restraint Laws
Children Not Covered by Safety Belt or Child Restraint Laws



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For Immediate Release, November 17, 2003
 Contact: John Chambers at 202.338.8700 or 202.285.0448 (cell)

AS NATIONWIDE SEAT BELT CRACKDOWN BEGINS, NEW DATA UNDERSCORES DEADLY IMPACT OF FAILURE TO ADOPT PRIMARY SEAT BELT LAWS

More than 12,000 Deaths Since 1995 Because States Have Failed To Enact Primary Enforcement Seat Belt Laws Proven To Increase Belt Use

Washington, D.C. - As more than 12,000 law enforcement agencies begin a nationwide crackdown to enforce seat belt and child passenger safety laws this Thanksgiving holiday, a new study shows that more than 12,000 people have needlessly died due to the failure of states to follow a 1995 National Transportation Safety Board recommendation to enact primary enforcement seat belt use laws. Today, the NTSB reissued that call to states.

"A primary seat belt law is likely to save more lives than possibly any single piece of legislation a state will consider," said NTSB Chairman Ellen G. Engleman. "It is why the Safety Board recommended states adopt these laws in 1995, and why we continue to urge enactment of these laws as a safety priority. It is tragic that 30 states have failed to act to implement this safety countermeasure that costs nothing, but could save so many."

Primary seat belt laws enable law enforcement officers to ticket motorists based solely on an observed seat belt violation, just as they do any other motor vehicle law. Primary laws cover 60 percent of the U.S. population. Currently, 29 states have secondary laws (New Hampshire does not have an adult seat belt law), which means officers can only enforce the seat belt law if the motorist is first stopped for some other violation such as speeding.

According to the study released today by the National Safety Council, states that have enacted primary laws since 1995 on average experienced a 15-percentage point increase in belt use. Seat belts are proven to reduce the risk of serious injury or death in a crash by 45 percent, and the study shows 12,177 lives have been lost since 1995 because 30 states have failed to enact the stronger laws.

"We have a vaccine for the leading cause of death for Americans from ages two through 33 - safety belts. Primary safety belt laws are our most effective public policy tool," said Jeffrey W. Runge, M.D., Administrator for the National Highway Traffic Safety Administration. "If all states moved right now to enact them, 1,400 more lives could be saved next year alone in preventable traffic injury."

On November 13, 2003, Chairman Engleman on behalf of the NTSB sent a letter to the governors and legislative leadership of the 29 states with secondary laws and New Hampshire, reminding them of the Safety Board's recommendation and encouraging them to step-up their efforts to enact a primary law in their state.

The national Click It or Ticket Mobilization, which runs from November 17 - 30, is based on a public health model proven to increase belt use, and places specific emphasis on teens and young adults who are least likely to buckle up and most likely to die in a traffic crash.

According to NHTSA, nearly 4,530 teens and young adults, ages 16-19, died in traffic crashes last year and thousands more were injured. Of the 32,519 people killed in crashes in 2002, nearly 60 percent were not wearing a safety belt.

Also see:

- [Lost Lives by States'](#) (pdf; 182kb)
- [Participating Law Enforcement Agencies](#) (MS Word; 135kb)

If the situation remains the same as in 2002, the study, conducted by Neil K. Chaudhary and David F. Preusser of PRG Research Group, Inc., estimated an additional 1,400 motorists will be killed next year alone. (State-by-state results are available online, at www.nsc.org)

"Law enforcement officers all over this country are doing a great job saving lives through seat belt enforcement, but in 30 states they are doing it with one hand tied behind their back," said Chuck Hurley, Executive Director of the National Safety Council's Air Bag & Seat Belt Safety Campaign. "We would be saving far more lives if state legislators in the states with secondary laws would respond to the overwhelming majority of voters who support primary laws."

A national survey of 800 Americans conducted by Public Opinion Strategies for the Air Bag & Seat Belt Safety Campaign in May, 2003, showed people in states with secondary laws support enactment of primary laws in their states by a 2-to-1 margin.

"It's especially tragic that teens and young adults are suffering the most as a result of this government inaction," added Hurley. This year, Illinois and Delaware became the 19th and 20th states to pass a primary law respectively.

"At the Naval Safety Center, our job is to look out for all our Sailors, Marines, and civilians," said RADM Brooks. "It's our priority to ensure as safe a working environment as possible, to identify the hazards we all face in both our professional and personal lives, to educate everyone in the vital importance of risk management in everything we do, and to improve readiness. Across our force it's up to the leaders of every Navy and Marine Corps command to promote awareness and set the example, for traffic safety truly is a matter of life and death."

During the Mobilization, law enforcement officers will intensify enforcement of seat belt and child passenger safety laws by setting up checkpoints or saturation patrols across the country. Seat belt violators and drivers failing to restrain their child passengers will be ticketed.

Thanksgiving is one of the most dangerous holidays for motorists. The National Safety Council predicts that 544 people will die and 28,300 people will suffer disabling injuries resulting from traffic crashes during the Thanksgiving holiday period.

"Thanksgiving is a joyous holiday for many Americans, but it is also traditionally one of the deadliest on the roadways," said Lynne Goughler, Vice President of Public Policy at Mothers Against Drunk Driving. "Impaired driving and lack of safety belt usage are the leading killers in automobile crashes, especially during the holiday season."

Mobilizations are conducted twice yearly by the Air Bag & Seat Belt Safety Campaign of the National Safety Council in conjunction with law enforcement agencies, state highway safety offices, NHTSA, the National Transportation Safety Board and MADD. Following the Mobilization in May, 2003, national belt use reached a record high of 79 percent, according to NHTSA.

The Air Bag & Seat Belt Safety Campaign, a program of the National Safety Council, is a public/private partnership of automotive manufacturers, insurance companies, child safety seat manufacturers, government agencies, health professionals and child health and safety organizations. The goal of the Campaign is to increase the proper use of safety belts and child safety seats and to inform the public about how to maximize the lifesaving capabilities of air bags while minimizing the risks.

For additional information about the National Safety Council, visit www.nsc.org.

The National Safety Council is a nonprofit, nongovernmental, international public service organization dedicated to protecting life and promoting health. Members of NSC include more than 45,000 businesses, labor organizations, schools, public agencies, private groups and individuals. Founded in 1913, and chartered by the U.S. Congress in 1953, the primary focus of the NSC is preventing injuries in workplaces,

in transportation and in homes and communities.

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National Safety Council

A Membership Organization Dedicated to Protecting Life and Promoting Health

1121 Spring Lake Drive, Itasca, IL 60143-3201

Tel: (630) 285-1121; Fax: (630) 285-1315

November 25, 2003

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 11, 2004
(Senate)

STATEMENT OF ADMINISTRATION POLICY
S. 1072 - Safe, Accountable, Flexible, and Efficient Transportation Equity Act
(Senator Inhofe (R) Oklahoma and 3 cosponsors)

The Administration supports enactment of a six-year highway, highway safety, and transit authorization bill and procedural efforts that would limit consideration of extraneous amendments and bring the bill to an up or down vote. Such a multi-year authorization would provide States and localities with predictable funding that enhances long-term transportation planning. The Administration's proposal, as modified by the President's FY 2005 Budget, would provide \$256 billion over six years, an historically high level of investment for highways and transit. This proposal represents a \$45 billion, or 21 percent, increase over the Transportation Equity Act for the 21st Century (TEA-21), the six-year bill enacted in 1998.

The Administration believes that surface transportation reauthorization legislation should exhibit spending restraint and adhere to the following three principles: (1) transportation infrastructure spending should not rely on an increase in the gas tax or other Federal taxes; (2) transportation infrastructure spending should not be funded through bonding or other mechanisms that conceal the true cost to Federal taxpayers; and (3) highway spending should be financed from the Highway Trust Fund, not the General Fund of the Treasury. All spending for highways should be authorized and appropriated from the Trust Fund and derived from taxes imposed on highway use, thereby maintaining the link between Trust Fund revenues and highway spending.

However, the bill pending before the Senate authorizes: \$262 billion on highways and highway safety, which is \$50 billion above the President's request, and \$56 billion on mass transit, which is \$12 billion above the President's request. In total the Senate bill authorizes \$318 billion in spending on highways, highway safety, and mass transit over the next six years, a full \$62 billion above the President's request for the same period.

The Administration's proposed authorization level of \$256 billion over six years is consistent with the three principles listed above. We support a responsible six-year bill and support many of the provisions contained in this legislation. However, we oppose S. 1072 and the pending substitute because their spending levels are too high and they violate these principles discussed above. Accordingly, if legislation that violates these principles (such as this legislation, which authorizes \$318 billion) were presented to the President, his senior advisors would recommend that he veto the bill.

In addition, the Administration opposes inclusion in a surface transportation bill of unrelated provisions regarding Amtrak. Any legislation regarding the future of Amtrak should be considered separately and should provide for meaningful reforms, such as those proposed by the Administration. If surface transportation legislation containing such provisions were presented to the President, his senior advisors would recommend that he veto the bill.

The Administration wants to work closely with Congress to achieve an acceptable bill and recommends attention to the following areas.

Safety. The Administration appreciates the creation of a new Highway Safety Improvement Program (HSIP) and a strong safety belt incentive program, but believes the bill should also require States that have not enacted primary safety belt laws or achieved safety belt use rates of 90 percent to spend no less than 10 percent of core highway safety construction HSIP funds on behavioral safety projects eligible under the Section 402 program. In addition, the Administration opposes limiting a State's flexibility to use HSIP funds by requiring mandatory set-asides for rail-highway grade crossings or safe routes to schools. The Administration believes that several programs of the National Highway Traffic Safety Administration (NHTSA) should be consolidated and a portion of those funds should be used to reward States that aggressively reduce fatalities in the manner proposed by Section 2001(a) of the Administration's proposal. Also, language similar to that included in the Administration's proposal on providing for NHTSA-administered highway safety data grants should be added to help States improve their data to reasonable standards.

Environmental Provisions. The Administration opposes substantially broadening the list of eligible projects for Congestion Mitigation and Air Quality (CMAQ) funding because many of these new projects would have minimal air quality benefits. Eligibility for CMAQ funds should be limited to projects that achieve air quality benefits, particularly because the number of Clean Air Act nonattainment areas, which need this type of funding, will increase. The Administration believes that the bill should improve project delivery while protecting our environment. The bill should include a 180-day statute of limitations for legal challenges following final agency approval of highway and transit projects. This limit is necessary to reduce litigation uncertainty that can impede project development for years. The bill should also avoid adding new requirements to the transportation planning process, and integrate the transportation planning process with other environmental review processes to reduce redundancies.

With respect to project review under the National Environmental Policy Act, the bill should clarify the authority of State and local governments to be joint lead agencies, with the U.S. Department of Transportation, in preparing environmental documents. The Administration also notes that section 1511 is inconsistent with the President's proposal in SAFETEA, and encourages the Senate to adopt the President's proposal.

The Administration also believes that the bill should clarify standards pertaining to public park and recreation lands, wildlife and waterfowl refuges, and historic sites -- commonly referred to as "Section 4(f)." A clarification of the Section 4(f) definition of "prudent" is needed to forestall confusing standards applied unevenly by the Federal Courts of Appeals. In addition, the bill should address the overlap between Section 4(f) and Section 106 of the National Historic Preservation Act to decrease project delays and uncertainty.

In addition, the Administration believes that the bill should not include a mandatory two percent set-aside from the Surface Transportation Program (STP) to support a highway stormwater discharge mitigation program. Stormwater discharge mitigation costs are already eligible under STP.

New Regulatory Mandates. The Administration strongly opposes the numerous

mandated rulemakings for NHTSA and the FMCSA. These provisions predetermine timetables and outcomes without adequate grounding in science, engineering and proof of net safety benefits. By prescribing specific requirements and mandating priorities, these provisions will delay or interfere with ongoing safety initiatives and may have the unintended consequence of redirecting agency resources away from programs that will do more overall good for safety. The Administration also objects to the inclusion of: (1) costly and burdensome provisions of the bill requiring FMCSA to issue medical certificates to 6.5 million commercial drivers while limiting the performance of medical examinations to physicians alone; and (2) the bill's expansion of hours-of-service safety exemptions.

Financing and Freight Mobility. The Administration appreciates the bill's expansion of the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program by lowering the project threshold and broadening the list of eligible projects to include freight projects. However, the Administration opposes removing the TIFIA program requirement that a borrower have a dedicated source of revenue for repaying its TIFIA loan. Likewise, the Administration opposes allowing railroads to use Federal grants to pay the credit risk premium or repay Railroad Rehabilitation and Improvement Financing loans.

The Administration supports amending the bill to give States the ability to manage congestion and raise additional revenue by allowing drivers of single occupant vehicles to use High Occupancy Vehicle lanes by paying tolls. The Administration also supports amending the bill to provide States flexibility to implement variable tolls on interstates for congestion management or air quality improvement purposes. In addition, the Administration supports amending the bill to incorporate the Administration's proposal to amend the Internal Revenue Code to permit the issuance by State and local governments of "private activity bonds" for highways and surface freight transfer facilities.

Public Transportation Programs. Aside from concerns about overall funding levels, the Administration is pleased that the bill includes provisions to improve human service transportation coordination and expand the "New Starts" program, but is disappointed by the omission of a performance incentive program to reward transit agencies based on increases in transit ridership.

Accountability and Oversight. The Administration is pleased that the bill includes stringent project management and financial plan requirements which were requested by the Administration. Improved accountability and focused oversight by the Federal Highway Administration will help maximize the effective use of available funds.

Funding Firewalls and Guarantees. The Administration supports a separate category or "firewalls" for determining the level of spending from the Highway Trust Fund, but only in the context of the Administration's proposal for annual statutory limits on discretionary spending. In addition, the Administration does not propose the creation of "firewalls" for general fund spending on such critical areas as defense and homeland security, and therefore opposes such treatment for general fund spending on mass transit programs.

Byrd Test Change. The Administration opposes weakening the Byrd Test to compare spending authority to current resources plus four years, rather than two years, of estimated future revenue. The Byrd Test was established at the creation of the Highway Trust Fund in 1956 to

ensure that future revenues would be sufficient to cover outstanding spending authority. The Byrd Test has been successful in ensuring the Highway Trust Fund's solvency for nearly 50 years, and modification could allow levels of spending that cannot be sustained by estimated revenues to the Highway Trust Fund.

Park Roads. The Administration supports the funding level for park roads, but opposes the provisions of section 1806 of the bill that establish a park funding priority system that would reduce the Administration's ability to implement the President's Park Legacy Program. Allocation of park road funding should be consistent with the sound asset management approach on which the President's Park Legacy Program is based and which is currently used by the National Park Service, in a manner that will best address the needs of all parks, not just a few.

Cross-Border Transportation. The Administration opposes the bill's provisions defining foreign trucks and buses engaged in the cross-border transportation of cargo and passengers into the United States as "imports." Existing statutory provisions already address cross-border transportation safety, and the revised definition would significantly disrupt the almost \$2 billion daily cross-border movement of goods.

MAGLEV. The Administration opposes the continued authorization of funding for Magnetic Levitation Transportation Technology Deployment (MAGLEV). The Administration's SAFETEA proposal did not seek funding for MAGLEV and believes funds can be better spent investing in the Nation's public transportation systems.

Budget Estimates and Enforcement

This bill would affect direct spending and receipts. It is critical to exercise responsible restraint over Federal spending in a manner that ensures deficit reduction and the Administration looks forward to working with Congress to control the cost of this bill. The Budget Enforcement Act's pay-as-you-go requirements and discretionary spending caps expired on September 30, 2002. The President's FY 2005 Budget includes a proposal to extend the discretionary caps through 2009, a pay-as-you-go requirement that would be limited to direct spending, and a new mechanism to control the expansion of long-term unfunded obligations. OMB's cost estimate of this bill currently is under development.

* * * * *



State of Alaska
Department of
Public Safety

Frank H. Murkowski, Governor
William Tandeske, Commissioner

February 18, 2004

The Honorable Con Bunde
Alaska State Senate
State Capitol, Room 506
Juneau, AK 99801

Dear Senator Bunde:

As I have previously discussed with you, I support the implementation of primary seat belt legislation in Alaska. My support is based on twenty-six years of service as an Alaska State Trooper where I personally investigated a large number of motor vehicle crashes resulting in serious injury or death. Without question, seat belts save lives.

As Commissioner of Public Safety, I am committed to doing all that is reasonable to ensure the safety of all Alaskans. Primary seat belt legislation would provide a viable means for law enforcement to ensure compliance with seat belt regulations and thereby reduce the incidents of serious injury or loss of life.

I believe that primary seat belt legislation and ongoing education efforts are excellent strategies to reduce the alarming number of serious injuries or deaths on our highways. If the Department of Public Safety can be of assistance to you in your legislative endeavors, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "William Tandeske".

William Tandeske
Commissioner



Service Since 1921

ANCHORAGE POLICE DEPARTMENT MEMORANDUM

Date: February 19, 2004
To: Senator Con Bunde
From: Captain Ross Plummer Patrol Division
Subject: Seatbelt Law

The Anchorage Police Department in conjunction with State and local law enforcement agencies has the responsibility to protect the public. At times this task is difficult and often compounded by inadequate laws. Anchorage Police Department is contributing to public safety by enforcing the existing occupant protection laws within our jurisdiction. Officers are far too familiar with the often tragic results of not wearing safety belts during a collision. The loss of lives and injuries sustained in our city are far too many.

National studies show seat belts save lives. The Anchorage Police Department is dedicated in the fight to save lives. A primary seat belt law would assist in our efforts to help make our streets safer. At this time Officers are unable to stop drivers who choose not to wear a safety belt. The new proposed seat belt law will enable officers to stop and cite violators. This will help save lives by encouraging more people to wear safety belts. The Anchorage Police Department has dedicated resources to a new traffic unit and believes this bill will allow officers to make a difference in lowering our fatalities and decreasing injuries within the city of Anchorage.

During 2002 there were 36 vehicle fatalities in the city of Anchorage. During 2003 Anchorage Police Department worked with the National Highway Transportation and Safety Office to proactively increase seat belt usage in the state of Alaska. During 2003 Anchorage increased seatbelt use by 13%. This is the highest increase in the nation. Our compliance rate is now over 85%. In 2003 our fatalities went down 13% from 36 to 23. One must ask if this is coincidental or correlated to the increased enforcement.

In the last quarter of 2003 there were 4 fatalities that could have been prevented if the driver would have been wearing a seatbelt. Having a primary seatbelt law will not ensure that everyone will wear them but the possibility of saving one life is something worthy of acknowledgement.

The Anchorage Police Department supports this bill and all efforts towards saving lives and making our streets safer.



Mayor Mark Begich

Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • 825 "L" Street • <http://www.muni.org>



Department of Health and Human Services

February 23, 2004

Senator Con Bunde
State Capitol, Room 506
Juneau, AK 99801-1182

Subject: Primary Seatbelt Law, SB 316

Dear Senator Bunde,

The Municipality of Anchorage, Department of Health and Human Services strongly supports the primary seatbelt law because it can save more lives by increasing the Alaska use rate to 90%. A seatbelt law already exists but this bill would lift the restriction for public safety officers to pull a motorist over for not wearing a seatbelt.

We know from the Alaska Trauma Registry that 84% of the belted occupants in crashes walked away uninjured compared with only 60% of the unbelted occupants. In a ten year period, the patients who were not buckled up at the time of the crash were almost twice as likely to sustain a serious head injury and over one and a half times more likely to be discharged with a permanent disability. One in three of these people billed a government program for their hospital care and the cost to a rehabilitation or skilled nursing facility. A permanent disability, especially head trauma and brain damage, which many of the injuries are, can cost Medicaid millions of dollars per patient. With a decrease in crashes and injuries, the state can reduce the financial burden for emergency response, public safety officers, hospitalization, rehabilitation and legal expenses.

It has been 12 years since a seatbelt law was first introduced in Alaska. Twenty states and DC have passed a primary seatbelt law and it is time for Alaska to get the benefit of this public health policy.

Sincerely,

A handwritten signature in cursive script that reads "Joan Diamond".

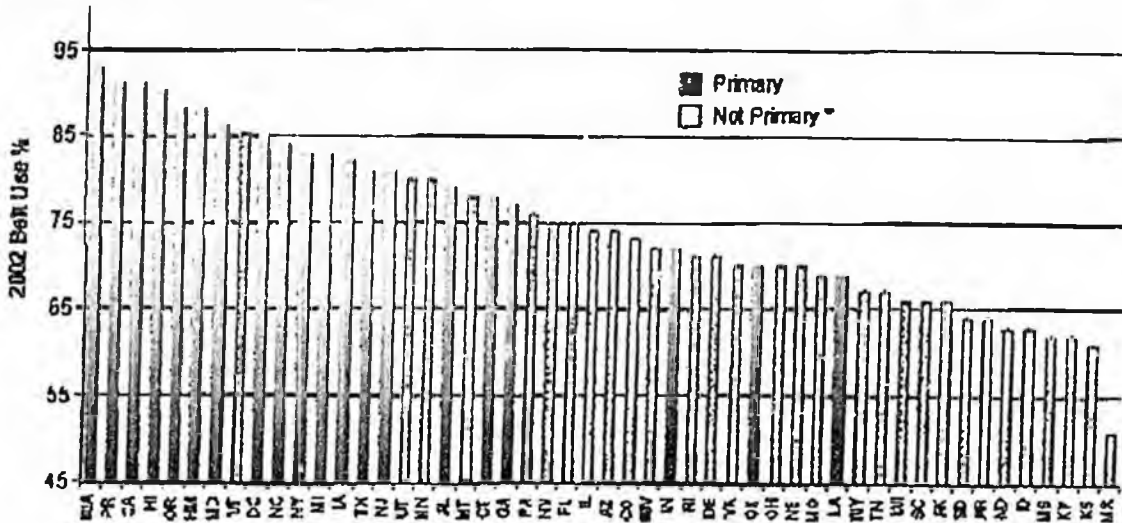
Joan Diamond
Municipality of Anchorage
Department of Health and Human Services
Injury Prevention

Community, Security, Prosperity

Dear Senator Bunde,

Thank you for introducing SB316.

The following graph clearly illustrates the effectiveness of primary seat belt laws in the nation.



**Alaska Injury
Prevention Center**



Alaska Injury Prevention Center

PO Box 210736

Anchorage, AK 99521-0736

Tel. 907-929-3941

FAX 907-929-3940

Email: asc1@alaska.net

February 18, 2004

Senator Con Bunde
State Capitol, Room 506
Juneau, AK 99801-1182

Dear Senator Bunde,

I would like to take this opportunity to offer my expertise and experience in support of SB 316. I recently completed a study funded by a non-profit group called the Automotive Coalition for Traffic Safety. This research project, *Alaska Seat Belt Cost Analysis*, compiled and analyzed the hospital costs associated with seat belt use in Alaska. The research is already getting statewide recognition as an argument to be used for primary enforcement of seat belt laws. The study shows that from 1996 through 1999, medical costs for unbelted occupants totaled more than \$13 million dollars of which, 50% were paid with public funds. I've attached a copy of the Executive Summary for your use.

Fairbanks was the first city in Alaska to pass an ordinance giving police the authority to stop someone for not wearing a seat belt - primary enforcement. There was considerable public backlash over the new ordinance and it was eventually repealed, but the fine for the existing law was significantly increased. Anchorage was also considering a similar municipal ordinance that would allow primary enforcement of seat belt use within the city limits and asked for a copy of the research findings.

Alaska was recently chosen by the National Highway Traffic Safety Administration as one of 13 states to receive special initiatives to reduce our DUI deaths, and to increase our seat belt usage. At 79%, Alaska's seat belt usage rate has improved tremendously over previous years, but there are still a significant number of non-users in the state. If we are able to get a primary enforcement law passed, we would expect to see the seat belt usage rate climb to around 90%.

As the evaluator for the recent Click It or Ticket enforcement campaigns, we conducted random telephone surveys on 1,600 Anchorage residents. One of the questions asked if they were in favor or opposed to police stopping someone for not wearing a seat belt. Sixty-seven (67%) percent said they were in favor of such a law.

I hope this helps,

Ron Perkins, MPH
Executive Director, AIPC



Mothers Against Drunk Driving
JUNEAU CHAPTER
211 4th St., Suite 314
Juneau, AK 99801
Phone (907)463-2562
Fax (907)463-2540
madd@alaska.net
www.madd.org/ak/juneau

February 18, 2004

Senator Con Bunde
State Capitol Building, room 506
Juneau, Alaska 99801-1182

Re: Senate Bill 316, "An Act relating to motor vehicle safety belt violations."

Dear Senator Bunde,

Mothers Against Drunk Driving (MADD) supports Senate Bill 316. MADD advocates increase use of occupant protection for all motor vehicle drivers and passengers and recognizes the need for publicized, enforce safety belt and child seat laws as a major defense against alcohol-and other drug-impaired drivers. A seat belt is our best defense against drunk driving.

Studies have found that states which pass a primary seat belt law increase their average seat belt usage by nine to fourteen percentage points. This in turn, decreases crash fatalities by an average of eight percent and decreases the severity of injuries in crashes.

Seat belts are proven to reduce the risk of serious injury or death in a crash by forty five percent, and a study shows 12,177 lives have been lost since 1995 because 30 states, including Alaska, have failed to enact a primary seat belt law.

Some argue that they should be able to choose not to wear a seat belt. However, seat belt use is the law already. Additionally, the decision to wear a seat belt affects those too young to make a conscious choice.

Adults who do not buckle up are sending a message to children that it is all right not to use seat belts-the probability of a fatally injured child being unrestrained is more than twice as likely when the adult driving was unrestrained.

85 percent of the costs of crashes are borne by society, not by the individuals in the crash. Considering that a crash costs 55 percent more when a crash victim is unbelted, we have a financial imperative to enact primary seat belt law, in addition to the moral and ethical imperatives.

Sincerely,

Cindy Cashen
Executive Director



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★ *Driving Trucking's Success*

Bill Graves Chief Executive Officer
President

February 13, 2004

The Honorable Frank Murkowski
Governor of Alaska
Office of the Governor
State Capitol
P.O. Box 110001
Juneau, AK 99811-001

DEPARTMENT OF PUBLIC SAFETY
JUNEAU, ALASKA

FEB 23 2004

COMMISSIONER'S OFFICE

Dear Governor Murkowski,

While the National Highway Traffic Safety Administration (NHTSA) has reported that safety belt usage among passenger vehicle drivers has risen to an all-time high of 79 percent, the news is not as positive among our nation's truck drivers.

Recently the U.S. Department of Transportation (DOT) released a new national study that found only 48 percent of truck drivers wear safety belts. In 2002, 588 truck drivers lost their lives in crashes. Half of them were not wearing their safety belts. Of the 171 drivers that were ejected from their trucks, 80% hadn't buckled up. We can, and must, do a better job to help save lives on our roads.

As the national trade association that actively promotes highway safety while representing every type and class of motor carrier in the trucking industry, the American Trucking Associations (ATA) is concerned that the usage rate among truck drivers falls well short of the nationwide average among passenger vehicle drivers. Along with the Alaska Trucking Association, Inc., I'm writing to ask for your assistance.

According to the NHTSA, states with primary safety belt laws have usage rates about 8 percentage points better than states with secondary enforcement laws. I strongly urge you to be the champion for a primary safety belt law in your state by seeking legislative action as soon as the opportunity arises. Doing so will make a real difference. As a former Governor, I understand the difficult task that I'm asking you to undertake, however, by doing so you will be directly responsible for helping to save lives in Alaska.

February 11, 2004

TO: Lauren Wickersham – Senator Bunde's Office

FROM: Don Smith – Alaska Highway Safety Office

PRIMARY SAFETY SEAT BELT LAW

Primary enforcement allows a law enforcement officer to stop a vehicle and issue a citation when the officer observes an unbelted driver or passenger. Secondary enforcement, which is what Alaska has now, means that a citation for not wearing a safety belt can be written only after the officer stops the vehicle or cites the offender for another infraction

A primary seat belt law will not only save lives and reduce injuries in Alaska, but will also save Alaska's citizens substantial amounts of money in associated health care costs.

The average safety belt use in States with primary enforcement laws was 11 percentage points higher than in States without primary enforcement.

When States upgrade their laws from secondary to primary, dramatic increases in safety belt use are often observed.

If Alaska can raise its safety belt use rate 11 percentage points by passing a primary belt use law, it is estimated that 6 lives could be saved in Alaska annually.

Primary safety belt laws also help save the lives of children. Citizens are much more likely to buckle up and place their children in child safety seats when there is the possibility of receiving a citation for not doing so

Safety belts reduce the risk of death to front seat passenger car occupants by 45% and the risk of moderate to critical injury by 50%. In light truck occupants, safety belts reduce the risk of death by 60 % and moderate to critical injury by 65%.

Also, even if you are a good driver, wearing your seat belt is your best defense against drunk, drowsy, and aggressive drivers.

It is estimated that in the year 2000 safety belt use saved about \$50 billion in medical care, lost productivity and other injury related cost in the United States. Conversely, safety belt non-use cost society about \$26 billion. Each critically injured survivor costs an average of \$1.1 million. Medical costs and lost productivity account for 84 % of the cost for this most serious level of non-fatal injury.

Those not directly involved in crashes pay for nearly ¾ of all crash costs, primarily through insurance premiums, taxes, and travel delay. These costs, borne by society rather than by crash victims – totaled over \$170 billion in 2000 for all traffic crashes

Safety belts save lives!

Subject: Senate Bill 316 - PRIMARY Seat Belt Law

Date: Thu, 26 Feb 2004 11:52:52 -0900

From: Lisa Kibbee <LKibbee@mcc-cpa.com>

To: "Senator_Gary_Stevens@legis.state.ak.us" <Senator_Cary_Stevens@legis.state.ak.us>, "Senator_John_Cowdery@legis.state.ak.us" <Senator_John_Cowdery@legis.state.ak.us>, "Senator_Bert_Stedman@legis.state.ak.us" <Senator_Bert_Stedman@legis.state.ak.us>, "Senator_Gretchen_Guess@legis.state.ak.us" <Senator_Gretchen_Guess@legis.state.ak.us>, "Senator_Lyman_Hoffman@legis.state.ak.us" <Senator_Lyman_Hoffman@legis.state.ak.us>, "Senator_Con_Bunde@legis.state.ak.us" <Senator_Con_Bunde@legis.state.ak.us>

Senators,

As a volunteer medical professional I urge you to pass SB 316. It could really save lives here in Alaska. Please make this a reality for those families who have lost their loved ones already and the many more lives you are likely to save in the future.

Sincerely,

Lisa Kibbee
Lieutenant - Team One
EMT 1
Alaska Professional Volunteers

Subject:

Date: Wed, 25 Feb 2004 23:41:17 -0800 (PST)

From: J McArthur <judithmcArthur@yahoo.com>

To: Senator_Con_Bunde@legis.state.ak.us

Senator Bunde,
Please support S.B. 316. Wearing a seat belt is what
saved my child's life when she was hit by a drunk
driver.

Judith McArthur
P.O.Box 773111
Eagle River AK 99577

Do you Yahoo!?
Get better spam protection with Yahoo! Mail.
<http://antispam.yahoo.com/tools>

Subject:

Date: Wed, 28 Jan 2004 08:12:15 -0900

From: "Thomas Remaley" <remaley@palmerpolice.com>

To: <Senator_Con_Bunde@legis.state.ak.us>

I live in Wasilla and work in Palmer. In reading AS 28.05.095 reference the use of seatbelts, I see that it is required by law, however, police officers can not stop a vehicle solely to address a seatbelt violation. I would ask that you introduce and support a bill to allow officers to address this issue without having to establish some other probable cause to stop the vehicle. After all, if the wearing of seatbelts makes the motoring public that much more safe, why not make it important enough (or less difficult) to enforce?

Thomas Remaley

Subject: SB 316

Date: Thu, 26 Feb 2004 09:42:21 -0900

From: "PATRICIA HONG" <afpah@uaa.alaska.edu>

To: <Senator_Con_Bunde@legis.state.ak.us>

Dear Senator Bunde --

Thank you for sponsoring SB 316, which would establish a primary seat belt law here in Alaska. As a former Girdwood resident, I know how many lives are either lost or forever changed by automobile crashes on the Seward Highway. A primary seat belt law would have prevented many of those deaths.

As a nurse, I've taken care of far too many car crash victims. Seat belts would have mitigated the severity of many of those injuries!

Please do all you can to pass this bill and put it on the Governor's desk ASAP!

Thanks, Patti Hong, RN

Patricia Hong<?xml:namespace prefix = o ns =
"urn:schemas-microsoft-com:office:office" />

UAA School of Nursing

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**National
Transportation
Safety Board**

Safety Information

Washington, D.C. 20594

STATEMENT OF

KEVIN E. QUINLAN, CHIEF

SAFETY ADVOCACY DIVISION

NATIONAL TRANSPORTATION SAFETY BOARD

BEFORE THE

ALASKA SENATE

COMMITTEE ON THE JUDICIARY

ON

SENATE BILL 316

PRIMARY SAFETY BELT ENFORCEMENT

JUNEAU, ALASKA