

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SL&C 12649

# Attachment D -- Avalanche Certification & Renewal Checklist

## Alaska Mountain Rescue Group

### Experience

### Date & Initials of Trainer

- Minimum of 1 year as an AMRG Operational Member.
- Minimum 5 years of experience in winter backcountry travel (skiing, snowboarding, climbing, snowmachining,) or professional ski patrol as demonstrated by any two of the following:
  - a outdoor resume (attach copy)
  - written recommendation by no fewer than 2 AMRG members with avalanche certification (attach copy)
  - a letter of recommendation from ski patrol director or another mountain rescue unit. (attach copy)

### Training

- Has completed a Level II (or higher<sup>1</sup>) Backcountry Avalanche Hazard Evaluation course (or AAA equivalent 30+ hr course) (attach copy).
- Participation in at least two (2) AMRG interagency mock avalanche response training events to demonstrate knowledge and skills in avalanche hazard assessment and response, preferably as avalanche site commander. \_\_\_\_\_
- Field participation in at least three (3) avalanche response missions with AMRG or another MRA-accredited team. \_\_\_\_\_

### Biennial Proficiency Checklist (submit by Jan 31 of odd years)

- Active involvement in winter backcountry activities (as a skier, snowboarder, snowmachiner, climber, or professional ski-patroller) that regularly involves traveling in avalanche terrain, evaluating avalanche hazard, and practicing safe travel techniques (as verified by an AMRG member with avalanche certification)
- Assisted with coordination or instruction at the AMRG interagency avalanche training at least once during the renewal period.
- Involved in professional ski patrolling, avalanche education, or avalanche hazard assessment and mitigation efforts within Alaska during the renewal period (attach summary of work)
- Continues to pursue additional avalanche hazard evaluation, mitigation and rescue training and experience during the renewal period.<sup>1</sup>

<sup>1</sup> (e.g., ) AAA—Level III avalanche course, CAA – Level II Avalanche Modules 1, 2, or 3, AAA Professional Avalanche Worker Seminar (PAWS), attendance at ISSW, etc..

# Attachment E -- Search Manager Certification & Renewal Checklist

## Alaska Mountain Rescue Group

### Experience

Initials of Reviewer

- Minimum 1 year as an AMRG Operational Member.
- Experience in key ICS positions (IC, Planning, Operations) during at least two (2) mock ground search scenarios with AMRG.<sup>1</sup>
- Experience in at least two (2) actual search events within the past 3 years.

### Training (attach copy of certificates)

- Completion of NASAR Managing the Lost Person Incident (MLPI) (or equivalent) search management course
- Completion of:
  - NIMS IS-300 (classroom)
  - NIMS IS-800 (online course)
- Completion of at least one (1) of the following advance ICS courses:
  - NASAR Planning Section Chief (PSCSAR)
  - NASAR Incident Commander Emergency Response (ICER)
  - NIMS IS-400 (Advanced ICS)
  - ERI I-400 (Advanced ICS) (Modules 12-14)

### Triennial Proficiency Checklist

(submit by Jan 1 of every third year beginning in 2008)

- Served as the coordinator, mentor, and/or trainer for at least two (2) AMRG mock search scenario event during the renewal period
- Was involved in managing (as IC, OSC, PSC) at least 2 mock or actual search events during the renewal period.
- Conducted or assisted with at least two (2) AMRG classroom training events on ground search topics (ICS, search techniques/strategies, table top scenarios)

<sup>1</sup> Persons with extensive search management experience with another search and rescue unit will only be required to manage 1 mock search scenario with AMRG.

# Attachment F -- Agency Representative Certification & Renewal Checklist

## Alaska Mountain Rescue Group

Date & Initials of Reviewer

### Experience

- Minimum of five (5) years of experience with organized search and rescue, and
- Minimum of one (1) year of experience as a member of AMRG
- Has served as Incident Commander, Planning Section Chief, or Operations Chief in at least (4) AMRG mock scenario exercises, specifically, the annual interagency avalanche and/or ground search training exercises.

### Training (attach copy of certificates)

- Completion of AMRG Agency Representative Mentoring Program which may include one or more of the following: 
  - Review and familiarization with AMRG Mission Pre-plan packet 

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  - Completion of an IS-300 or IS-800 course

### Triennial Proficiency Checklist

(submit by Oct 30 of every third year beginning in 2007)

- Participated in at least 3 AMRG field training events during the renewal period 

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- Carried an AST notification pager for at least 4 weeks annually during the renewal period.<sup>1</sup> 

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- Participated in the command structure of at least one (1) actual AMRG mission (or mission with another agency/organization) during the renewal period (IC, PSC, OSC, Administrative or "in-town" contact). 

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# Attachment G -- Swiftwater Certification & Renewal Checklist

## Alaska Mountain Rescue Group

### Experience

- Minimum 1 year as an AMRG Operational Member.
- Minimum 5 years experience in whitewater rafting, whitewater kayaking or 2 years of experience as an active member of a Swiftwater Rescue Team, including experience with glacial rivers, rapids to class IV and night swift water rescue operations.

### Training (attach copy of certificates)

- Successful completion of a nationally certified 5-day advanced swiftwater rescue course with training in river search management, rope systems and night operations.<sup>1</sup>
- Possession of personal protective equipment for swiftwater operations: dry suit, PFD, water helmet, throw rope.
- Demonstrated understanding of AMRG technical rope rescue standards and equipment by participation in at least (1) AMRG Rope Rodeo field training.

### Biennial Proficiency Checklist (submit by Jan 31 of even years)

- Continued active involvement in whitewater boating and/or swiftwater rescue (as verified by another AMRG Swiftwater Certified member or review by the Board).
  - Participate in at least one (1) AMRG "swiftwater refresher training" during the renewal period, during which they must demonstrate proficiency in:
    - Throw-rope rescue
    - Tethered swimmer rescue
    - Rigging for tethered boat rescue
    - Strainer swim
    - Night river search (may be a tabletop exercise)
  - Instruct/co-instruct at least 1 AMRG swiftwater refresher training during the renewal period
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<sup>1</sup> AMRG does not require three-year renewal for this certification.)

# Attachment H -- Helicopter Certification & Renewal Checklist

## Alaska Mountain Rescue Group

Date & Initials of Reviewer

### Experience

- Minimum 1 year as an AMRG Operational Member.
- Successful completion of any Alaska Department of Public Safety helicopter safety and observer training program(s).

### Training (attach copy of certificates)

- Successful completion of the Dept. of Interior (DOI) Interagency Aviation Training B-3 module, or equivalent.
- Has completed AMRG Helicopter Training Program, that includes familiarity and proficiency in:
  - aviation communications
  - landing zone (LZ) management
  - helicopter loading and unloading
  - hand signals
  - night helicopter operations
  - external load operations
  - helicopter hoisting and litter management.
  - aerial search/spotter, including night vision equipment procedures.

### *Optional:*

- Completion of a forward looking infrared (FLIR) training course and a Night Vision Goggle (NVG) training course is recommended, but not required.

### Biennial Proficiency Checklist (submit by Jan 31 of even years)

- Completed at least two (2) of the following during renewal period:
  - Attended biennial refresher training on helicopter operations with other AMRG helicopter certified members,
  - Attend refresher training of DOI B-3 module, or equivalent, every 2 years
  - Served as an instructor of an AMRG helicopter operations training module.
- Performed helicopter operations management or in aerial search capacity in at least two (2) AMRG mock training events or missions during renewal period.

# Attachment I -- Transportation Certification & Renewal Checklist

## Alaska Mountain Rescue Group

Date & Initials of Reviewer

### Experience

- Minimum one (1) year as an AMRG Operational Member, and
- Minimum three (3) years of experience in backcountry mechanized travel (snowmachining or ATV/ORV). Experience may be demonstrated by resume or the written recommendation of at least two (2) AMRG members.

### Training

- Complete AMRG transportation orientation program to become familiar with AMRG transport protocols. \_\_\_\_\_
- Complete an initial checkout drive/ride with another transportation certified member of AMRG. \_\_\_\_\_
- Complete AMRG equipment trailer orientation and towing check-drive. \_\_\_\_\_
- Serve as "Transportation Chief" (head of motorpool) or Staging Area Manager for at least one (1) of the following: \_\_\_\_\_
  - AMRG interagency avalanche training
  - AMRG interagency ground search training

### Required Equipment

- Own a personal trailer for transporting motorized equipment to scene of a mission.
- Must own 4-wheeler and/or snowmachine that: 
  - Is properly maintained and ready to go at all times.
  - Has repair kit for flats, belts, and other basic repairs
  - Is equipped with winch or come-along, and a tow strap.
  - Is capable of carrying driver with his overnight pack and repair kit.
  - Is of appropriate size for our missions (i.e., carry 2 people) and can tow a sled/toboggan, OR a trailer into the field as needed.
- Must own a personal helmet(s) appropriate to the equipment driven (e.g., snowmachine) that is available at all times with eye protection.

### Optional

- Own a vehicle capable of towing 5000 pounds, a trailer hitch and a 2" ball for towing AMRG equipment trailer(s)

### Triennial Proficiency Checklist (submit by Oct 30 of every three years beginning in 2008)

- Participate in at least two (2) AMRG interagency field training events during the renewal period \_\_\_\_\_
- Complete at least two (2) of following during the renewal period: \_\_\_\_\_
  - Conduct AMRG equipment trailer orientation and towing check-drive training \_\_\_\_\_
  - Teach/assist with teaching AMRG transportation orientation program \_\_\_\_\_
  - Conduct a check-drive with another AMRG transport member \_\_\_\_\_

**MAT + SAR**  
**Search & Rescue**

PO Box 876467, Wasilla, Alaska 99687

745-6727

Dear Sirs,

This letter is to express my views on, and to support the passing of House Bill #320.

As the President of MAT+SAR search and rescue I am very interested in House Bill #320 - "An Act relating to search and rescue training and search and rescue parties; requiring certain search and rescue volunteers to be considered state employees for purposes of workers' compensation coverage; and allowing political subdivisions to elect to provide workers' compensation insurance coverage for search and rescue personnel."

It is my understanding that this bill, if passed will offer workers compensation to search and rescue (SAR) personnel that are contacted by the Alaska State Troopers. When someone calls 911 and reports a loved one is not back from an excursion in the mountains Alaska State Troopers are responsible for this call regardless of the location. AST calls on which ever of the 40 + SAR teams in Alaska is best suited to perform the search and rescue.

Alaska's big and there are many ways for people to get into trouble once off the beaten path. Every year hundreds of people call for help from the backcountry of Alaska. Just this past week in Anchorage; a woman was lost on the side of a mountain, in a blinding storm, in the middle of the night. She was rescued by Volunteer men and women that were contacted by the Alaska State Troopers, they went out into that storm to search for and help a stranger in peril. She was found by the SAR team and removed from the mountain by an AST helicopter!

Volunteer search and rescue personnel spend countless hours training for just this reason. We (search and rescue volunteers) spend several hundreds- into the thousands of dollars - out of our pockets - to outfit ourselves with the equipment necessary for the missions we are called on to conduct.

We do what we do because, first we can. We know the areas we are called to work in because we play there too and second because we care!

If we injure ourselves while in the field we are left with no medical insurance at all, no way to cover lost wages while away from work, none of the basic assistance that every other employee in every other form of public services is entitled too. Volunteer fire fighters are covered under workers compensation if they are injured on the job, the same with ambulance services.

It's time to extend these same basic services to the volunteer search and rescue teams in Alaska.

I am asking you to take care of those that will, and do take care of you and yours when they need it the most. When they are alone, maybe injured, and scared in the wilds of Alaska.

I am asking you to pass House Bill #320 on March 20<sup>th</sup>.

Thank you for time and consideration.

H Joseph Sylvia, President  
MAT+SAR Search and Rescue

**HEB**

**331**



# ALASKA STATE LEGISLATURE

## House of Representatives

**INTERIM:**

716 W. 4TH AVE.

ANCHORAGE, AK 99501

Phone: (907) 269-0265

Fax: (907) 269-0264

Website: [www.akrepublicans.org/roses.htm](http://www.akrepublicans.org/roses.htm)



**SESSION:**

STATE CAPITOL

JUNEAU, AK 99801-1182

Phone: (907) 465-4939

Toll Free: (800) 465-4939

Fax: (907) 465-2418

### Representative Bob Roses

email: [Representative\\_Bob\\_Roses@legis.state.ak.us](mailto:Representative_Bob_Roses@legis.state.ak.us)

#### CSHB 331 (L&C) – MOTOR VEHICLES:INSURANCE/LICENSES Sponsor Statement

Current law states that a person who changes their name or address must notify the Department of Public Safety or the Department of Administration within 30 days. House Bill 331 changes the crime from a Class B Misdemeanor to a fine not to exceed \$25 for those that do not notify the departments.

House Bill 331 closes a loophole in the law that has caused a number of drivers to be charged criminally for driving without auto insurance when, in fact, they had insurance. Under current law a driver can lose their license for driving without insurance, and can be criminally charged for driving when their license is subsequently suspended. Those are proper penalties. But a loophole exists in the law that lets drivers who in fact had insurance to be charged with a crime.

Currently, drivers involved in an accident must show law enforcement proof of insurance. When they do, an officer then asks the driver to fill out paperwork informing the DMV that the driver had insurance at the time of the accident. Many drivers incorrectly assume that when they show proof of insurance at the accident scene, the subsequent paperwork is unnecessary. If the DMV does not receive the paperwork, even if the law enforcement office substantiated that the driver had insurance at the scene of the accident, the driver's license will be suspended. DMV will send a reminder notice to the driver when the paperwork is not received. However, rather than sending the notice to the latest address the state knows about - normally the address provided to the police officer at the time of the accident - the law requires the notice be sent to the address on the person's license.

This bill also increases the penalty for uninsured motorists. Under CSHB 331 it is a class B misdemeanor to drive without insurance, punishable by a minimum fine of \$500 and up to 90 days in jail. It is currently an unclassified misdemeanor to drive without insurance, and the current law imposes no required fine.

House Bill 331 requires drivers to have automobile insurance, and prevents drivers from being charged with crimes they did not commit. I urge your support.

# ALASKA STATE LEGISLATURE

## House of Representatives

**INTERIM:**  
716 W. 4TH AVE.  
ANCHORAGE, AK 99501  
Phone: (907) 269-0265  
Fax: (907) 269-0264  
(website: [www.akrepublicans.org/roses.htm](http://www.akrepublicans.org/roses.htm))



**SESSION:**  
STATE CAPITOL  
JUNEAU, AK 99801-1182  
Phone: (907) 465-4939  
Toll Free: (800) 465-4939  
Fax: (907) 465-2418

### Representative Bob Roses

email: [Representative\\_Bob\\_Roses@legis.state.ak.us](mailto:Representative_Bob_Roses@legis.state.ak.us)

#### CSHB 331 (L&C) – MOTOR VEHICLES:INSURANCE/LICENSES

##### Sectional Analysis

- Section 1 – Provides that a violation of AS 28.05.071 (Notifying the DMV of a change of address) be punishable by a civil fine of up to \$25. Currently this is a class B misdemeanor.
- Section 2 – Provides a legal defense to a person charged with the crime of driving without a license, for failure to have legally required automobile insurance, when the driver proves they in fact had automobile insurance. This closes a loophole in current law.
- Section 3 – Makes driving without insurance a Class B Misdemeanor, punishable by a minimum fine of \$500. It is currently an unclassified misdemeanor to drive without insurance, and the current law imposes no required fine.
- Section 4 – Provides that DMV should send the required insurance paperwork to a driver's last known address, not just the address DMV has on file.

# STATE OF ALASKA

## DEPARTMENT OF ADMINISTRATION

**ANNETTE KREITZER, COMMISSIONER**

**SARAH PALIN, GOVERNOR**

P.O. BOX 110200  
JUNEAU, ALASKA 99811-0200  
PHONE: (907) 465-2200  
FAX: (907) 465-2135

February 19, 2008

The Honorable Bob Roses  
State Capitol Room 416  
Juneau, AK 99801

Dear Representative Roses,

Your continued concern for proper notification of licensed drivers is admirable, and HB331 demonstrates that concern.

The passage of this legislation will allow the Division of Motor Vehicles (DMV) to mail licensing notices to the most current address available following a motor vehicle crash. This will alleviate instances where the address on the departmental record has not yet been updated and drivers do not receive notices that may affect their driving privilege. DMV supports your bill that will enhance the notification procedures for the department thus helping the drivers who unfortunately have been involved in a motor vehicle crash.

Thank you for your concern. You have the Department's support.

Sincerely,

  
Annette Kreitzer

# Legislative Research Services

Alaska State Legislature  
Legislative Affairs Agency  
Division of Legal and Research Services

State Capitol, Juneau, AK 99801  
Phone: 907-465-3991  
Fax: 907-465-3908

February 20, 2008

## Memorandum

TO: Representative Bob Roses

FROM: Tim Spengler *TES*  
Legislative Analyst

RE: Mandatory Auto Insurance Law

You asked whether states have mandatory automobile insurance laws. You also wished to know what penalties states impose for individuals who do not comply with the law.

According to the Insurance Information Institute, liability insurance is currently compulsory in 48 states and the District of Columbia.<sup>1</sup> Only New Hampshire and Wisconsin do not require liability insurance. The Institute's *Issues Update on Compulsory Auto/Uninsured Motorist* from February 2008 notes that although automobile insurance is mandatory across the vast majority of states, as many as 30% of drivers in some states are estimated to be uninsured.

The following information about penalties is from *AutoInsuranceRemedy.com*:

Most states require proof of insurance which typically must be shown when the car is registered, following an accident or when driving on the highway. **Many states have severe penalties for drivers who do not carry the necessary coverage. These penalties can range from as little as a \$100 fine to the following: a suspension of a driver's license and suspension of the car registration for up to six months, up to a \$5000 fine, and up to one year in jail.**<sup>2</sup>

Below is a sampling of penalties states impose on individuals who do not comply with their mandatory automobile insurance laws:

- ◆ Alabama—Possible fine of \$500 for the first offense and a \$1,000 fine and/or license suspension for six months for the second offense.
- ◆ California—Fine of up to \$200
- ◆ Massachusetts—Fine up to \$5,000 plus jail term of up to one year in jail

The Insurance Information Institute (I.I.I.) is a primary source of information, analysis and referral concerning insurance issues.

AutoInsuranceRemedy.com is a full service auto insurance site. It includes information about the different kinds of car insurance policies and rates, plus ways to shop, compare and save on car insurance quotes.

- Minnesota—First Offense—Fine of up to \$100 or jail term of up to ninety days.
- North Dakota—Fine up to \$150 plus license suspension and registration revocation.
- Ohio—First Offense—Suspension of license for ninety days plus reinstatement fee of \$75.
- Oregon—License suspension or revocation.
- Rhode Island—First offense is \$500 fine and/or 3 months suspension of license or registration
- Texas—First offense is a fine of \$175 to \$300. Subsequent convictions, \$350 to \$1,000, suspension of license, and impoundment of vehicle.
- Washington—Fine of up to \$250.
- Wyoming—Fine up to \$750 plus jail term up to 6 months.

We hope this information is helpful. Please call if you have questions or need additional information.

# Division of Motor Vehicles

State of Alaska - Administration - DMV - Mandatory Insurance

## Mandatory Insurance Suspension

Alaska has both Mandatory Insurance and Financial Responsibility laws. The purpose of these laws is to ensure that drivers and owners of vehicles using the streets and highways are financially responsible for any damage or injury caused by motor vehicle collisions and to remove financially irresponsible drivers from the highways.

The mandatory insurance law requires the operator or owner of a motor vehicle subject to registration to have motor vehicle liability insurance **in effect** when the vehicle is driven on a highway, vehicular way or area, or other public property in the state. The owner's or driver's motor vehicle liability insurance policy must meet the minimum coverage amounts required by law. The minimum coverage amounts are \$50,000.00 for injuries or death to any one person, \$100,000.00 for total injuries or death per collision, and \$25,000.00 for property damages.

A driver who has been involved in a collision, regardless of fault, is required to show proof of motor vehicle liability insurance if the collision resulted in personal injury or death, or damage to property exceeding \$500.00. A driver may show proof by completing the Certificate of Insurance form provided by the investigating police office at the collision scene. The form is also available from any Division of Motor Vehicles Office.

The Division of Motor Vehicles must suspend the driver's license, privilege to drive or privilege to obtain a license of drivers who fail to provide proof of liability insurance. The suspension period can be 90 days to 1 year depending on prior license actions. The license suspension will occur even if the driver is not at fault in the collision.

A person may apply for a limited work purpose license during the suspension period. The application for mandatory insurance limited license may be obtained at any Division of Motor Vehicle Office. There is not a fee for this specific type of limited license due.

Drivers must reinstate their privilege to drive at the end of their suspension period.

A person's license may also be suspended for non-compliance with the Financial Responsibility law.

If you have additional questions you can call, write, e-mail or visit a DMV office.

DOA DMV JDL@Alaska.gov

Vehicle Registration Fee, License Plate Fee, Driver's License Fee, License Renewal Fee, TAG - License Alaska DMV

# DMV

DMV Web Cameras  
 Online Address Change  
 Online Registration Renewal  
 Personalized Plates Online

Forms  
 General Information  
 Links to Other Related Sites  
 Office Locations/Hours  
 Office Closures  
 Regulations  
 Research Materials  
 Senior Citizen Information  
 Statistics  
 Table of Contents  
 Partner Information

STATE OF ALASKA - DIVISION OF MOTOR VEHICLES

CERTIFICATE OF INSURANCE

<b>CRASH INFORMATION</b>	Crash Date: _____ Location: _____	
<b>DRIVER</b>	Name: _____ Date of Birth: _____ License #: _____ State: _____	
	Mailing Address: _____ Street or Box _____ City _____ State _____ Zip _____	
<b>OWNER OF VEHICLE</b>	Name: _____ Date of Birth: _____ License #: _____ State: _____	
	Mailing Address: _____ Street or Box _____ City _____ State _____ Zip _____	
<b>VEHICLE</b>	Year: _____ Make: _____ Model: _____ License Plate #: _____	VIN: _____
<b>INSURANCE</b>	Was an automobile liability policy in effect covering this crash? YES <input type="checkbox"/> NO <input type="checkbox"/>	
	Name of Insurance Company: _____	Policy Number: _____
	Name and Address of Policyholder: _____	Policy Period: From _____ To _____
<b>SIGNATURE</b>	Your Signature: _____	Date: _____
<b>Do not write below this line. The Division of Motor Vehicles will contact your Insurance Company.</b>		

**Insurance Verification:** If the motor vehicle liability insurance policy listed above was not in effect for the motor vehicle listed at the time of the crash indicated above, the insurance company is to complete the following and return this form to the Division of Motor Vehicles at the address listed on the reverse of this form. If indicated coverage was in effect at the time of the accident, no action is required.

**REASON FOR DENIAL:**

- Policy Expired Before Crash
- Policy Effective After Crash
- Policy Number Given is Incorrect
- Driver Not Covered on Policy
- Lapse in Policy
- Other \_\_\_\_\_

Signature of Authorized Representative \_\_\_\_\_ Date \_\_\_\_\_

CUT ON LINE ABOVE. RETURN TOP PORTION ONLY.

**MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY NOTICE**

If the actual or estimated damages of any one person's property involved in the crash exceeds \$501.00, or if there is any personal injury or death, you are subject to the Alaska mandatory insurance and financial responsibility laws. The mandatory insurance laws require you to file proof of insurance with the State of Alaska. Failure to do so will result in the suspension of your driver's license.

The financial responsibility laws require a person to show financial responsibility by one of the following methods: (1) an automobile liability insurance policy in effect at the time of the crash; (2) a release of liability; (3) a settlement agreement and proof of future financial responsibility (SR22 insurance); (4) a deposit of security and proof of future financial responsibility (SR22 insurance); (5) a finding of no liability by the court in a civil action (a finding of not guilty of a traffic citation does not apply). Failure to show financial responsibility by one of the listed methods will also result in the suspension of your driver's license for a period of 3 years if there is a possibility you are liable.

After any suspension you must show future financial responsibility (SR22 insurance), and pay a reinstatement fee of \$100.00 to \$500.00, in addition to the fee for the license being requested, to have your driving privileges restored. A notice of suspension returned by the post office because of an incorrect address on your driver license or DMV records will not invalidate the suspension if the notice was mailed to the last address you provided to DMV.

**IMPORTANT:** THE FORM ON THE REVERSE MUST BE FILLED IN AND SENT TO THE DIVISION OF MOTOR VEHICLES WITHIN 15 DAYS FROM THE DATE OF THE CRASH. A participant's accident report is also required if the crash was not investigated by a peace officer, and the total amount of damage exceeds \$2,000.00, or there was personal injury.

Mail Completed Form To:

STATE OF ALASKA  
 DIVISION OF MOTOR VEHICLES  
 ATTN: DRIVER LICENSING  
 PO BOX 110221  
 JUNEAU AK 99811-0221  
 (907) 465-4361

**HEB**

**357**

# SENATE COMMITTEE REPORT

DATE: 3/27/08

FURTHER:

DATE TURNED IN TO OFFICE: 4/1/08

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 357(L&C)

## HB 357 CLAIMS AGAINST REAL ESTATE LICENSEES

"An Act requiring errors and omissions insurance for real estate licensees; renaming the real estate surety fund as the real estate recovery fund and relating to that fund, and redefining the procedures and criteria used by the Real Estate Commission to make an award from the fund to a person suffering a loss caused by certain misconduct of real estate licensees; requiring a real estate licensee to maintain an office in the state; and providing for an effective date."

and recommends:

- be replaced with  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
<b>HOUSE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	
D				

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	PN#
JCCED	3/9/08			✓
JCCED	3/9/08			✓

APPROPRIATION - no fiscal note

SIGNATURE AND COMMENTS	PRINTED	DO	DATE	
<i>[Signature]</i>	Bunda			✓
B Davis	DAVIS	✓		
<i>[Signature]</i>	STEWART			X
CHAIR: <i>[Signature]</i>	ELLIS	✓		



# ALASKA STATE LEGISLATURE

## HOUSE LABOR & COMMERCE COMMITTEE

**REP. KURT OLSON**

Chairman  
State Capitol, Room 17  
Juneau, AK 99801-1182  
(907) 465-2693 FAX 465-  
3835

Rep. Mark Neuman, V-Chair  
Rep. Jay Ramras  
Rep. Gabrielle LeDoux

Rep. Carl Gatto  
Rep. Berta Gardner  
Rep. Bob Buch

### SPONSOR STATEMENT

#### **CSHB 357 (L&C) Claims Against Real Estate Licensees**

HB 357 enacts mandatory errors and omissions insurance for all real estate licensees and brokers, and changes the current surety fund system to a recovery fund. E & O Insurance is similar to professional liability insurance of other professions, as it covers the clients and customers in the event of an honest mistake or negligent error in a real estate transaction.

Currently there are two kinds of E & O remedies available: The first is voluntary E & O that covers brokers and licensees who choose to purchase the insurance; the second is the Surety Fund administered by the Real Estate Commission. Neither remedy offers the type of consumer protection necessary to protect the public in a transaction as large as purchasing a property. The Surety Fund system has been in place for 25+ years with very little modification. The industry has taken a good look at the current system and both licensee and agents agree the current Surety Fund system is broken. With the continual increase in property values and the high costs associated with home repairs the current limit of \$15,000 per claim is far too low. Most major home repairs today far exceed this \$15,000 limit. Increasing the claim limit by any large amount would make licensure too costly for many agents. E & O Insurance would cover these claims involving honest mistakes or negligent errors.

The purpose of this bill is to help protect the public by requiring every transaction to be covered, not just those where the agent has voluntarily purchased E & O insurance. As many of you are aware E & O insurance does not cover crimes such as fraud and conversion of trust, therefore, HB 357 converts the existing Surety Fund to a Recovery Fund and requires claims to be uncollectible judgments for acts requiring a license.

Mandatory E & O has been adopted by 13 other states. This bill requires the department to make basic E & O insurance available at a reasonable rate to all licensees. Licensees may obtain their own E & O insurance provided it meets the minimum threshold amounts set by the Commission.

The Commission is responsible to ensure that applicants have the required E & O insurance in place before being issued a license.

Additionally, this act clarifies the requirement for a real estate office in Alaska to actually be in Alaska, as there are issues of regulatory supervision of licensees and consumer protection with cyber offices.

## Errors & Omissions Insurance: The Experience of States with Mandatory Programs for Real Estate Licensees

James E. Larsen\* and Joseph W. Coleman\*\*

**Abstract.** Empirical and survey data collected from parties in states that require real estate licensees to have errors and omissions insurance is presented and analyzed. Satisfaction with the mandatory system was expressed by 68% of licensees and 89% of regulators. Variables that are significantly related to licensee satisfaction are identified. Perhaps most importantly, licensees who have operated under both voluntary and mandatory systems are more satisfied than those who have operated exclusively under a mandatory system. Motivations for mandating errors and omissions insurance include the desire to provide consumer and licensee protection, and affordable premiums for licensees. Recommendations for regulators considering mandating E&O insurance are presented.

### Introduction

Errors and omissions (E&O) insurance is the functional equivalent of the professional liability insurance carried by physicians, attorneys, architects, and other professionals. This type of insurance provides a means to indemnify clients and customers who are financially damaged by an honest mistake or negligent error made by a real estate licensee, which, in turn, protects the licensee because a claim filed against a licensee without E&O insurance can be both financially and professionally disastrous. Claims filed against real estate licensees run the gambit from failure to negotiate a sale to misrepresentation of a property's physical condition, but according to Evans (2000), 80% of lawsuits against brokers are brought by buyers, and two-thirds of those have to do with the condition of the property.

Currently, real estate licensees in thirty-eight states may voluntarily obtain E&O insurance, but coverage is mandatory in twelve states. Proponents of mandatory coverage assert that a mandatory program helps ensure that consumers will be protected because all, not just some, licensees have coverage. Like other types of insurance, the E&O insurance market has experienced substantial tightening in recent years. Many insurance companies have stopped writing E&O policies or have greatly increased premiums, making it difficult for some licensees to obtain coverage. Some real estate commissioners at the 2003 ARELLO Annual Meeting reported that they could not find an insurance provider willing to quote coverage at any price. However, states that have mandated coverage arrange for a group policy for their licensees, and based on the comments received from licensees and regulators in the present study, it is apparent that the availability of these group programs helps to make E&O insurance available at affordable rates.

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\*Wright State University, Dayton, OH 45435 or james.larsen@wright.edu.

\*\*Wright State University, Dayton, OH 45435 or joseph.coleman@wright.edu.

The National Association of REALTORS® (2003) provides evidence that most agents and brokers have an appreciation of E&O insurance. NAR's survey data indicates that nationwide 83% of all agents and 73% of all brokers have coverage. Stitz (2004) provides insights into why some REALTORS are not covered in states where coverage is voluntary. He reports that approximately 8% of all members of the Ohio Association of REALTORS® do not have E&O insurance; 3% indicated coverage was too expensive, 1.8% stated that they did not believe it was necessary, 1.3% indicated that they intended to obtain coverage but had not yet done so and 0.4% stated that they cannot obtain coverage due to previous claims. The relatively low premium available through the group program in mandatory states may be attractive to many licensees in voluntary states who already have coverage, as well as those who claim the reason they lack coverage is due to high premiums. Mandatory coverage would also likely be motivational for licensees who are procrastinating in obtaining coverage, good news for those who assert that they are uninsurable and resisted by those who believe coverage is unnecessary.

The purpose of this study is twofold; the first is to present information that may be useful to state policymakers contemplating a mandatory E&O insurance program for their real estate licensees. To accomplish this objective, the experience of parties in states with existing mandatory programs is investigated using survey data collected from both real estate regulators and licensees operating in mandated states, and empirical data collected from the preeminent mandatory E&O insurance contract administrator. Despite the importance of E&O insurance, a search of both the real estate and insurance literature revealed no published academic papers that address this topic. Therefore, the second purpose of this paper is to start filling this gap in the literature.<sup>1</sup>

The remainder of the paper is organized as follows. In the next section, the states that have a mandatory E&O insurance program are identified. Survey data collected from licensees in the mandatory states is presented in the third section and is analyzed in the fourth section. In the fifth section, information obtained from the insurance industry and state real estate regulators is presented. The sixth section contains recommendations for regulators contemplating the implementation of a mandatory E&O insurance program, and a conclusion is presented in the last section.

### **States with Mandatory E&O Programs**

The twelve states listed in the first column of Exhibit 1 currently require their active real estate licensees to have E&O insurance. Examination of the second column of Exhibit 1 reveals that Kentucky, in 1987, was the first to implement a mandatory E&O insurance program, and that New Mexico and North Dakota, in 2002, are the most recent states to do so.<sup>2</sup> Also shown in Exhibit 1 are data on each state's population, number of real estate licensees and the number of licensees as a percentage of population. The smallest state with a mandatory E&O program in terms of both population and number of licensees is North Dakota. The most populace state with a

**Exhibit 1**  
**Twelve States with Mandatory E&O**

State	E&O Mandatory Since	2004 Active Licensees	2004 Estimated State Population	% of Active Licensees to Population
Colorado	1-1-1988	31,963	4,550,688	0.70
Idaho	12-31-1993	6,005	1,366,332	0.44
Iowa	7-1-1991	7,899	2,944,062	0.27
Kentucky	4-1-1987	24,848	4,117,827	0.60
Louisiana	1-1-1990	14,324	4,496,334	0.32
Mississippi	7-1-1994	8,005	2,881,281	0.28
Nebraska	1-1-1993	7,383	1,739,291	0.42
New Mexico	1-1-2002	9,650*	1,874,614	0.51
North Dakota	1-1-2002	1,750	633,837	0.28
Rhode Island	7-12-1990	6,223	1,076,164	0.58
South Dakota	8-16-1993	2,649	764,309	0.35
Tennessee	12-31-1990	30,338	5,841,748	0.52

**Note:**

\*Total licensees: the licensing official at the New Mexico REC did not know the number of inactive licensees in this total.

mandatory program is Tennessee and the state with the most licensees is Colorado. Iowa (Colorado) has the lowest (highest) percentage of licensees to population.

### The Licensee Survey

A survey was delivered via email to 1,069 REALTORS licensed in one of the twelve states that require E&O insurance.<sup>1</sup> The names of the licensees to whom the survey was emailed were obtained using a "find a REALTOR\*" search engine available on the NAR website.<sup>2</sup> To be eligible to receive the survey, the licensee was required to have an individual (rather than a company) email address. The results should be viewed with some caution because of the relatively small sample size and because it is unclear what bias, if any, the data source and/or the "individual email address" requirement introduces. The results are interesting nonetheless.

Two hundred one responses were received, an overall response rate of 18.8%.<sup>3</sup> In an attempt to enhance the response rate, the survey was kept brief (eight questions). The only demographic information collected on the survey was the number of years the respondent had worked in real estate. Respondent gender was identified from a variety of Internet sources.<sup>4</sup> Approximately 48% of the respondents were female and 52% were male. Examination of the data in Exhibit 2, where respondent tenure in real

**Exhibit 2**  
**Licensee Years in Real Estate**

State	N	Mean	Low	High	Std. Dev.
Colorado	9	19.8	7	35	9.9
Idaho	26	12.5	1	30	9.3
Iowa	6	17.8	8	35	10.3
Kentucky	12	17.3	6	35	10.2
Louisiana	11	17.3	6	33	9.9
Mississippi	20	18.3	6	32	9.5
Nebraska	7	22.3	7	42	12.6
New Mexico	19	15.3	3	33	11.2
North Dakota	23	15.3	1	34	10.1
Rhode Island	21	13.9	1	33	10.3
South Dakota	21	17.6	1	35	11.0
Tennessee	26	18.5	9	30	8.0
Total	201	16.4	1	42	10.0

estate is detailed, reveals that as a group the respondents have substantial real estate experience; their average tenure in real estate is 16.4 years.<sup>7</sup>

The licensee survey contained (among others) the following three questions:

- Did you obtain your current E&O policy through your state-sponsored program?
- If E&O insurance was not mandatory and you could continue to obtain it at the same premium you are currently paying, would you continue to be covered?
- Who pays your E&O premium? (with the following choices: You, Your broker, and Shared by you and your broker).

Examination of Exhibit 3, where the responses to these questions are detailed, reveals that 72% of respondents obtained their E&O coverage through their state-sponsored provider while 28% obtained their coverage independently.<sup>8</sup> The majority (92.4%) of the respondents indicated that they would continue to carry insurance even if it were not mandatory while 7.6% indicated that they would not. It is not uncommon for sales associates to shoulder much of the cost of conducting business. Therefore, it is not surprising that 83.1% indicated that they pay for their E&O coverage. However, 11.4% reported that their broker paid the premium and 5.5% indicated that the cost was shared between them and their broker.

Survey participants were also asked: "How many claims have been filed against your E&O policy?" Examination of Exhibit 4, where the results are detailed, reveals that

**Exhibit 3**  
**Licensee Response to Three Survey Questions**

State	E&O Coverage Thru State Plan		Would Continue Coverage Even If Not Mandatory		Who Pays E&O Premium		
	Yes	No	Yes	No	Licensee	Licensee's Broker	Shared between Licensee and Broker
Colorado	8	1	6	3	9	0	0 <sup>a</sup>
Idaho	17	9	25	1	21	4	1
Iowa	2	4	5	0 <sup>a</sup>	2	3	1
Kentucky	10	2	11	1	12	0	0
Louisiana	8	3	9	2	8	2	1
Mississippi	17	2 <sup>a</sup>	19	0 <sup>a</sup>	18	1	1
Nebraska	6	1	7	0	6	1	0
New Mexico	16	3	18	0 <sup>a</sup>	13	3	3
North Dakota	12	11	20	2 <sup>a</sup>	15	6	2
Rhode Island	8	13	17	4	18	1	2
South Dakota	19	2	20	1	21	0	0
Tennessee	21	5	25	1	24	2	0
Total	144	56	182	15	167	23	11
% of Total	72.0	28.0	92.4	7.6	83.1	11.4	5.5

**Notes:**

<sup>a</sup>One respondent did not respond to question.

<sup>b</sup>Colorado has a single-class licensee system.

85.1% of the respondents indicated that they had never had an E&O claim filed against them. However, 14.9% indicated that one or more claims had been filed against them. Given information presented later in this paper concerning the total number of claims in each state, it is not surprising that the majority of the respondents have not been involved in a claim. On the other hand, licensees with a claims history may be overrepresented in the sample, but this facilitates a subsequent comparison of the two groups.

Licensees were asked to respond to the following question: "How satisfied are you with your experience with mandatory E&O insurance coverage?" Possible responses included: "very satisfied," "satisfied," "neutral," "dissatisfied" and "very dissatisfied." Examination of Exhibit 5, where the results are detailed, reveals that the mandatory programs have been fairly well received by respondents: 23.5% reported being very satisfied, 44.5% were satisfied, 29% were neutral and 3% were dissatisfied. None indicated that they were very dissatisfied. Note that 68% of the respondents were at least satisfied. This figure is significantly higher than exists in at least one

**Exhibit 4**  
**Number of E&O Claims Filed Against Respondents**

State	Zero	One	Two	Three	Four or More
Colorado	8	1	0	0	0
Idaho	23	1	1	1	0
Iowa	5	1	0	0	0
Kentucky	11	1	0	0	0
Louisiana	9	1	0	0	1
Mississippi	15	5	0	0	0
Nebraska	6	0	1	0	0
New Mexico	16	3	0	0	0
North Dakota	19	4	0	0	0
Rhode Island	18	3	0	0	0
South Dakota	18	3	0	0	0
Tennessee	23	3	0	0	0
<b>Total</b>	<b>171</b>	<b>26</b>	<b>2</b>	<b>1</b>	<b>1</b>

**Exhibit 5**  
**Licensee Satisfaction with Mandatory E&O**

State	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Total
Colorado	2	5	1	1	0	9
Idaho	2	11	12	1	0	26
Iowa	0	5	1	0	0	6
Kentucky	7	2	3	0	0	12
Louisiana	4	3	3	1	0	11
Mississippi	5	10	5	0	0	20
Nebraska	2	4	1	0	0	7
New Mexico	4	7	6	1	0	18*
North Dakota	5	14	4	0	0	23
Rhode Island	4	7	8	2	0	21
South Dakota	5	8	8	0	0	21
Tennessee	7	13	6	0	0	26
<b>Total</b>	<b>47</b>	<b>89</b>	<b>58</b>	<b>6</b>	<b>0</b>	<b>200</b>
<b>% of Total</b>	<b>23.5</b>	<b>44.5</b>	<b>29.0</b>	<b>3.0</b>	<b>0</b>	<b>100.0</b>

Note:

\*One respondent did not to respond to this question.

voluntary state. Overall REALTOR satisfaction with E&O insurance in Ohio was 40.5% as reported by Stitz (2004).

Finally, the survey gave participants the opportunity to make any comments that they wished about E&O insurance; 41 individuals, from 9 states, elected to do so. Examination of their comments, which are available at [www.wright.edu/~joseph.coleman](http://www.wright.edu/~joseph.coleman), reveals several recurring themes: (1) an appreciation of the low premium due to group purchasing power; (2) concern that claim limits are too low to be effective, (3) concern that having E&O coverage increases the probability that the licensee will be subjected to a frivolous lawsuit (although this would apply whether or not coverage was mandatory); and (4) concern that a good claims record does not result in a reduced premium.<sup>9</sup>

### Analysis of Licensee Survey Data

The results of tests conducted to identify variables that are significantly related to licensee satisfaction with mandatory E&O insurance are reported in this section. Two preliminary tests are conducted: one to investigate whether state survey response rates are related to average satisfaction level for licensees in each state, the other to determine if there is a difference in average satisfaction levels by state. It would be problematic if either result is significant. A Pearson correlation test, however, indicates that the former relationship is insignificant (correlation coefficient ( $r$ ) is .338 with a  $p$  value = .28), and ANOVA results indicate the latter relationship is also insignificant ( $p$  value = .21). The results of these two preliminary tests indicate that it is appropriate to conduct the following tests on all respondents as a single group.

A  $t$ -test is used to determine if satisfaction levels differ significantly for the following seven variables. First: between licensees who pay for their own coverage and those whose broker pays, or shares, the premium cost. A priori, it seems logical that not being responsible for the premium payment might result in greater satisfaction with a mandatory system. Second: between licensees who have, and have not, experienced an E&O insurance claim. A priori, it seems logical that a person who has gone through the claims process might be more favorably inclined toward a mandatory system (although this may depend upon how effectively the claim was handled) because the licensee has first-hand knowledge of the financial protection E&O insurance provides. A licensee who has never had a claim filed against them may view E&O insurance in general as unneeded, and, therefore, consider a mandatory system as a vehicle that forces them to carry the "unneeded" coverage. Third: between licensees who obtained E&O coverage through the state-sponsored provider and those who obtained coverage independently. It is possible that one who opposes a mandated program would signal dissatisfaction by refusing to obtain coverage with the state-sponsored carrier. Fourth: between licensees who would continue to carry E&O insurance even if it were not mandatory and those who would not. It is intuitive that a licensee who indicated that he/she would not carry E&O insurance if it were not required is unlikely to be satisfied with a program that mandates coverage. Fifth: between licensees who have operated under both a voluntary and a mandatory system and those who have only experienced a mandatory program because licensees who have operated under both

systems may be in a better position to evaluate the advantages and disadvantages of a mandatory system (e.g., premiums, claim limits). Licensees in the sample are divided into these two groups by comparing their tenure in real estate to the number of years that coverage had been mandatory in the state in which the licensee operates. Sixth: between licensees located in a state with a real estate recovery fund and those located in a state without a recovery fund. Eight of the mandatory E&O insurance states have a real estate recovery fund, including: Colorado, Idaho, Kentucky, Louisiana, North Dakota, Rhode Island, South Dakota and Tennessee. Recovery funds, normally funded by fees levied on licensees, may provide consumers with additional protection because the funds can be used to indemnify consumers that have been financially damaged in a transaction that is excluded by the E&O policy or a claim that exceeds the E&O policy claim limit. Despite this, it is possible that licensees in a state with a recovery fund view the two programs as redundant, and, therefore, hold E&O insurance in lower regard. Seventh: between male and female licensees. There is little reason to suggest that satisfaction levels should differ by licensee gender, but the gender issue is examined here because other real estate and insurance studies have identified differences based upon this criteria.<sup>11</sup>

To address the above issues, the mean satisfaction level for the two groups in each of the seven cases is calculated. The mean value is obtained by assigning a numerical value to each respondent's reported satisfaction level: 1 for very satisfied, 2 for satisfied, 3 for neutral and 4 for dissatisfied (i.e., the lower the mean value, the higher the satisfaction level). Then a two-tailed *t*-test is applied. Finally, both a one-factor ANOVA and a Tukey-Kramer multiple comparison test are employed to test whether licensee tenure in real estate (dependent variable) is significantly related to licensee satisfaction with mandatory E&O insurance. A priori, it is plausible that the more experience a licensee gains the more he/she realizes the importance of E&O insurance and, therefore, the more likely the licensee is to be satisfied with mandatory coverage.

Examination of Exhibit 6, where the results of the *t*-tests are presented, reveals that three variables are highly significantly related to satisfaction. Specifically, satisfaction is higher for licensees with an E&O claims history compared to those with no claims history; for licensees who have worked under both a voluntary and mandatory E&O coverage system compared to those who had worked only under a mandatory system and, not surprisingly, for licensees who stated that they would continue coverage even if E&O insurance were not mandatory compared to those who stated that they would not.

Examination of Exhibit 6 also reveals the four variables found not to be significantly related to satisfaction. Specifically, no difference in satisfaction is discovered between licensees that pay for their own coverage and those who pay only some, or none, of the premium; between licensees who obtained coverage through their state plan and those who obtained coverage independently; between licensees located in states with and without a recovery fund; and no difference in satisfaction levels is discovered between the females and males in the sample.

The ANOVA results indicate a significant difference between satisfaction with mandatory E&O insurance and the number of years of experience possessed by a

**Exhibit 6**  
**t-test Results: Licensee Satisfaction**

Group	Variable	N	Mean Satisfaction Level: Group 1	Mean Satisfaction Level: Group 2	t-Statistic	p Value
1	Who pays E&O premium					
	Pay own	166	2.108	2.147	0.25	.797
2	Pay none or share cost	34				
1	E&O claim history					
	none	170	2.170	1.800	2.38*	.018
2	One or more	30				
1	E&O carrier					
	State-sponsored	143	2.105	2.140	0.28	.777
2	Independent	57				
1	Would continue coverage					
	Yes	181	2.044	2.789	4.02**	<.0001
2	No	19				
1	Work experience with					
	Mandatory & voluntary	137	1.985	2.397	3.49**	.0006
2	Mandatory system only	63				
1	State has recovery fund					
	Yes	158	2.096	2.062	0.25	.810
2	No	42				
1	Gender					
	Male	104	2.086	2.146	0.52	.600
2	Female	96				

Notes: In all cases but one, the folded F-test showed the population variances for each subgroup should be assumed to be equal and the pooled t-test was used. For the variable "work experience with," the folded F-test indicated that the population variances should be assumed to be unequal and the Satterthwaite test was used.

\*Significant at the 5% confidence level.

\*\*Significance at the 1% confidence level.

licensee ( $p < .0001$ ). In order to more precisely identify the differences, a Tukey-Kramer multiple comparison test was performed. The test results indicate that the mean number of years in business for the respondents who were very satisfied (21.5 years) is significantly higher than both the mean number of years in business for the respondents that are satisfied (16.2 years) and those who are neutral (12.2 years). There is, however, no significant difference in the mean values between the very satisfied respondents and the respondents who are dissatisfied (20.5 years). All other multiple comparisons are not significantly different. Although the difference between the satisfied and neutral groups is not statistically significant, the magnitudes of the length of service tend to support the a priori hypothesis. The magnitude for the dissatisfied group with those of the other groups may be due to confounding variables outside the scope of this study (e.g., negative experience with insurance companies).

## The Regulator's Survey

This section presents information gathered by survey from the Real Estate Commission (REC) in nine of the twelve states where E&O insurance is mandatory.<sup>11</sup> The responding RECs are almost unanimous in their opinion of mandatory coverage. Eight of nine respondents reported that they were very satisfied with mandatory E&O insurance and one reported being neutral (with possible responses: very satisfied, satisfied, neutral, dissatisfied and very dissatisfied). The results of a two-tailed *t*-test ( $p$  value < .0001) verify that the regulator's mean satisfaction level is significantly higher than the licensee's mean satisfaction level. Such a high satisfaction level clearly indicates that regulators believe that the mandatory program has achieved the desired results. The near consensus response, however, prevents statistical analysis of differences in satisfaction levels for RECs as was done for licensees. The RECs response to other survey questions, however, provides a wealth of valuable information. For expository expedience, the information is divided into five groups. First, the motivations behind the implementation of mandatory E&O insurance are reviewed. Next, the advantages and disadvantages of mandatory programs are presented. Third, the focus is on program administrative costs. Fourth, some insurance policy details and related regulations are examined. Finally, data on the recent E&O insurance claims history of each mandatory E&O state is presented.

### *Motivations for Mandatory E&O*

In an open-end question, REC participants were asked to enumerate the motivations for instituting mandatory E&O insurance. Seven of the nine respondents specifically mentioned the need to maintain or increase consumer protection; three mentioned the need to provide affordable insurance coverage to licensees; and three mentioned the need to maintain or increase licensee protection.

The actions of some state legislatures have provided added incentive for real estate officials to recommend mandatory coverage. In Colorado, the REC became concerned about (then) recently-passed legislation that empowered the state to transfer money from funds such as the real estate recovery fund into the general fund. The possibility that the public could be left unprotected motivated the Colorado REC to recommend mandatory E&O legislation, which became effective in 1998. Subsequently, in 2003, funds were appropriated from the Colorado recovery fund, dropping the fund balance well below the statutory minimum. This episode may give real estate officials in other states with recovery funds pause for concern.<sup>12</sup>

In most states, regulators initiated the move to mandatory E&O insurance. For example, the REC in Nebraska (which had no real estate recovery fund before, or after, mandating E&O insurance) wanted to provide real estate consumers with some financial protection and was considering establishing a recovery fund. During its investigation the Nebraska regulators learned of the Kentucky E&O program, decided a mandatory E&O program would require less administrative time, and helped develop legislation which was enacted into law. In Iowa, however, the move to mandatory E&O insurance was initiated by the state Association of REALTORS<sup>®</sup>. According to

the Iowa REC, before E&O insurance was mandated, "coverage was difficult to obtain and the premiums were staggering. Premiums would go up, or the policy would be cancelled without claims or cause leaving the licensee without coverage."

### ***Advantages and Disadvantages of Mandatory E&O***

In this section, the advantages and disadvantages of mandatory E&O insurance programs, mentioned by insurance industry officials and state RECs are presented. Some are more subtle than others, and no guarantee is given that either list is complete.<sup>13</sup>

First, the advantages:

***Coverage Availability.*** Many insurance companies have recently stopped writing E&O policies for real estate licensees, or have greatly increased the premiums. This makes it difficult for some real estate practitioners to obtain coverage. The group program in each mandated state helps to make this important insurance available to all licensees at affordable rates.

***Affordability.*** E&O insurance in the voluntary market is costly. Premiums for individuals often range from \$300 to \$500 or more, depending on the type of real estate activities performed. However, policies are generally only sold on a firm basis (*i.e.*, the entire firm must purchase a policy and individual licensees do not have the option to obtain insurance). Minimum premiums for firm policies are in the range of \$1,500 to \$2,000. Many small companies may not be able to afford the minimum premium, so go without any E&O insurance coverage. Group plans under mandatory E&O insurance programs are designed to bring down the cost of coverage (*i.e.*, lower premiums and lower deductibles).

***Portable Coverage.*** Mandatory E&O insurance programs alleviate problems relating to individual coverage. Since E&O policies in voluntary states are generally available to firms only, an individual who changes firms may find that he/she is not covered by the new firm's policy. Also, most firm policies cover claims against members of the firm for acts of a licensee only while the licensee is employed by that firm. For example, if an employee of Firm A is sued for an act that occurred while the licensee was working for Firm B, Firm A's insurance may not cover this act. Many licensees may find themselves in this situation. Larsen and Coleman (2003) report substantial licensee movement between brokerage firms. In addition, because some firms do not carry insurance, a licensee working for an uninsured firm may be unable to obtain individual coverage. Group policies under mandatory programs are designed to provide individual coverage that will follow the licensee even if the individual changes firms.

***Coverage for Prior Acts.*** Under mandatory E&O programs, claims made during the policy period resulting from "prior acts" (a claim resulting from a transaction in a previous policy period, but where notice is not received until a subsequent policy period) are covered if the licensee has been in the

group plan continuously from the date of the alleged error to the effective date of the claim.<sup>14</sup> Prior acts coverage is also available in the voluntary market, but would not apply if the licensee switched insurance carriers between the transaction date and the claim date.

*Consumer Protection.* The purchase of a home is the largest investment most consumers make in a lifetime. An undisclosed problem or misrepresentation will likely have an adverse effect on that consumer and, if the real estate licensee who caused the damages is uninsured, the consumer may be without recourse. Mandatory E&O insurance increases consumer protection from honest mistakes and omissions by licensees because all licensees, not just some, are insured.

And, the disadvantages:

*Mistake Prone Licensees Can be Problematic.* At least two problems result from the fact that insurance underwriters base the mandatory E&O policy premium upon the weighted average risk of all licensees within the state. First, the inclusion of high risk individuals increases the premium for all licensees and licensees with a good claims record tend to resent the fact that the premium they pay does not reflect their personal claim record. Second, the insurance provider must rely on the REC to police licensees because existing programs require that the state-sponsored policy be offered to every licensee at the same price, with no right on the part of the insurance provider to cancel an individual's coverage. This is true, even if a licensee has a lot of previous claims and cannot obtain coverage on their own outside the group program. Therefore, to protect the financial integrity of the program, the REC may be required to discipline problem licensees (even revoke an individual's license in the event such action is justified) because there are only two ways the insurance provider can stop covering a problem licensee: (1) stop writing the entire group program, or (2) for the problem licensee to no longer qualify as a member of the group (*i.e.*, the individual no longer has a valid license). If the REC does not adequately monitor its licensees, the group program may be put at risk.

*Additional REC Administrative Responsibilities.* With a mandatory E&O insurance program, the REC will incur some additional administrative responsibilities. In most cases, the REC must devote time and resources to the program to help ensure that it is operated effectively. This effort will involve coordinating the activities of REC officials and staff with members of the state insurance and legal departments, which, in turn, will require these departments to also devote time and resources.

*Few Insurance Providers.* RECs in mandatory E&O insurance states are concerned by the low number of insurance companies currently underwriting policies. This limits competition and opens the possibility that even with a group plan, premiums may escalate or, at the extreme, threaten the existence of the group program. In 2003, Alabama became the first (and to date only) state to repeal its mandatory E&O requirement. The issue surfaced in 2002

when the Alabama REC conducted a review of their E&O group program and found that it had been four years since an insurance carrier had been under contract (due in part to the high number of E&O claims filed against licensees in the program). Alabama statutes provided that if the REC was unable to contract with an insurer to cover all licensees who choose to participate in the program, the requirement of E&O coverage was void during the applicable contract period. Today, the Alabama REC encourages licensees to seek E&O coverage on the open market.

#### *Program Administration Costs*

REC survey participants were asked: "How much does it cost annually to administer the state mandatory E&O program?" The responses suggest that some RECs may either not have a good grasp on this issue, consider administration costs to be too small to measure, or consider these costs to be a part of their overhead (five states gave no response for this question). With few exceptions (*i.e.*, the three states where the REC still collects the E&O premiums), the majority of administrative duties have been transferred to the external program administrator.<sup>15</sup> The primary duties maintained by the states in administering their mandatory E&O insurance program are: (1) issuing requests for proposals (RFP's) for new contracts; (2) reviewing bids; (3) negotiating final contracts; and (4) ensuring licensee compliance.<sup>16</sup> Of those RECs that did respond to the question, the estimated costs of administering the E&O program ranged from zero to \$5,000 annually. One state estimated the annual hours devoted to administrating the E&O program to be 350 hours by the staff with an additional 100 hours by management.

Special circumstances may shift administrative costs up or down. For example, in Kentucky there is a tax on insurance premiums that varies by county, so in collecting the E&O premium the REC must verify the licensee's county of residence to ensure that the correct amount of tax is collected. On the other hand, Rhode Island cut administrative costs to bare bones in recent years by operating their program without a contract with an insurance provider. Rhode Island had a contract with Rice Insurance Services Company (RISC) from 1992 through 2000. But, primarily because of the low number of E&O claims filed on licensees in the state, decided in 2000 to let RISC handle almost all of the program administrative details (RISC agreed to do so because Rhode Island's program loss experience was deemed acceptable). This decreased the RECs administrative costs because it removed it from the administrative process, but licensees can still benefit through a low group rate. Of course the Rhode Island REC remains ultimately responsible for ensuring that each of its licensees has E&O coverage.

#### *Policy Terms and Associated Regulations*

Examination of the information presented in Exhibit 7 reveals considerable variation between states regarding E&O policy terms and associated requirements. While the maximum coverage per claim, shown in the second column, is \$100,000 in every state; the total claim limit, shown in the third column, ranges from \$100,000 in Iowa

**Exhibit 7**  
**Mandated E&O Program Policy Details: November 1, 2004**

State	Coverage Limit Per Claim	Total Coverage Limit	Deductible	Maximum Annual Premium	Premium 2004 (2005)	Who Collects Premium
Colorado	\$100,000	\$300,000	\$0 defense \$1,000 damages	None	\$230 (\$215)	RISC
Idaho	\$100,000	\$300,000	\$0 defense \$1,000 damages	\$140	\$135 (\$135)	RISC
Iowa	\$100,000	\$100,000	\$0 defense \$0 damages	None	\$123 (\$134)	RISC
Kentucky	\$100,000	\$1,000,000	\$0 defense \$0 damages	\$125	\$123 (\$123)	REC
Louisiana	\$100,000	\$300,000	\$0 defense \$1,000 damages	\$500	\$217 (\$217)	REC
Mississippi	\$100,000	\$500,000	\$1,000 defense \$1,000 damages	\$150	\$148 (\$148)	RISC
Nebraska	\$100,000	\$300,000	\$0 defense \$1,000 damages	\$500	\$150 (\$150)	RISC
New Mexico	\$100,000	\$500,000	\$0 defense \$1,000 damages	\$150	\$148 (\$148)	RISC
North Dakota	\$100,000	\$500,000	\$1,000 defense \$1,000 damages	\$125	\$125 (\$125)	RISC
Rhode Island	\$100,000	\$500,000	\$1,000 defense \$1,000 damages	None	\$148/2 year (\$160/2 yr.)	RISC
South Dakota	\$100,000	\$500,000	\$500 defense \$1,000 damages	None	\$140 (\$140)	REC
Tennessee	\$100,000	\$300,000	\$0 defense \$1,000 damages	"Reasonable" as determined by Real Estate Commission	\$260/2 year (\$306/2 year)	RISC

Note: The sources are Rice Insurance Services Company and various state RECs.

to \$1,000,000 in Kentucky.<sup>17</sup> The deductible amount per claim, shown in the fourth column, ranges from zero in Iowa and Kentucky to \$2,000 in Mississippi, North Dakota and Rhode Island.

Seven states have statutes or rules, shown in the fifth column of Exhibit 7, which set an upper limit on the annual premium amount. The limit ranges from \$125 in Kentucky and North Dakota to \$500 in Louisiana and Nebraska. In the past, such limits have presented a problem in some states as market conditions drove premiums above the previously set limit. This problem cannot occur in the five states that have not set a premium limit. Actual premiums charged in 2004 and 2005 are shown in the sixth column. The annual premium for 2004 ranges from \$80 in Rhode Island (where claims have been incredibly low, see Exhibit 8) to \$230 in Colorado. The

**Exhibit 8  
Annual E&O Claim Information: 2001-2003**

	Colorado	Idaho	Iowa	Kentucky	Louisiana	Mississippi	Nebraska	New Mexico	North Dakota	South Dakota	Rhode Island	Tennessee
<b>2001 Claims</b>												
No payment or reserve	370	7	49	32	NA	29	NA	NM	NM	9	2	87
With payment or reserve	228	11	42	40	NA	35	NA	NM	NM	13	6	84
Total claims	598	18	91	72	NA	64	74	NM	NM	22	8	171
Average claim amount for claims with payment or reserve	\$18,509	\$8,054	\$6,791	\$8,990	NA	\$18,426	\$8,427	NM	NM	\$13,167	\$14,917	\$10,497
<b>2002 Claims</b>												
No payment or reserve	343	23	62	34	NA	32	NA	NA	5	6	8	72
With payment or reserve	239	16	50	42	NA	31	NA	NA	1	10	5	83
Total claims	581	39	112	76	NA	63	61	NA	6	16	13	166
Average claim amount for claims with payment or reserve	\$18,778	\$11,540	\$12,957	\$8,713	NA	\$15,245	\$4,705	NA	\$16,723	\$6,186	\$2,981	\$8,809
<b>2003 Claims</b>												
No payment or reserve	401	19	41	35	63	30	NA	NA	6	2	12	62
With payment or reserve	162	25	61	83	99	38	NA	NA	3	2	11	123
Total claims	563	44	102	118	162	68	43	NA	9	4	23	185
Average claim amount for claims with payment or reserve	\$20,963	\$11,255	\$6,895	\$8,549	\$11,220	\$11,146	\$8,782	NA	\$13,616	\$11,835	\$7,334	\$9,918

Notes: The sources are Rice Insurance Services Company and various state RECs.

NA = Not available

NM = Program not mandated this year

**Exhibit 8  
Annual E&O Claim Information: 2001-2003**

	Colorado	Idaho	Iowa	Kentucky	Louisiana	Mississippi	Nebraska	New Mexico	North Dakota	South Dakota	Rhode Island	Tennessee
<b>2001 Claims</b>												
No payment or reserve	370	7	49	32	NA	29	NA	NM	NM	9	2	87
With payment or reserve	228	11	42	40	NA	35	NA	NM	NM	13	6	84
<b>Total claims</b>	<b>598</b>	<b>18</b>	<b>91</b>	<b>72</b>	<b>NA</b>	<b>64</b>	<b>74</b>	<b>NM</b>	<b>NM</b>	<b>22</b>	<b>8</b>	<b>171</b>
Average claim amount for claims with payment or reserve	\$18,509	\$8,054	\$6,791	\$8,990	NA	\$18,426	\$5,427	NM	NM	\$13,167	\$14,917	\$10,487
<b>2002 Claims</b>												
No payment or reserve	343	23	62	34	NA	32	NA	NA	5	6	8	72
With payment or reserve	238	16	50	42	NA	31	NA	NA	1	10	5	93
<b>Total claims</b>	<b>581</b>	<b>39</b>	<b>112</b>	<b>76</b>	<b>NA</b>	<b>63</b>	<b>81</b>	<b>NA</b>	<b>6</b>	<b>16</b>	<b>13</b>	<b>165</b>
Average claim amount for claims with payment or reserve	\$18,778	\$11,540	\$12,957	\$8,713	NA	\$16,246	\$4,705	NA	\$16,723	\$6,186	\$2,981	\$9,808
<b>2003 Claims</b>												
No payment or reserve	401	19	41	35	63	30	NA	NA	6	2	12	62
With payment or reserve	182	25	61	83	99	38	NA	NA	3	2	11	123
<b>Total claims</b>	<b>563</b>	<b>44</b>	<b>102</b>	<b>118</b>	<b>162</b>	<b>68</b>	<b>43</b>	<b>NA</b>	<b>9</b>	<b>4</b>	<b>23</b>	<b>185</b>
Average claim amount for claims with payment or reserve	\$20,963	\$11,255	\$6,895	\$8,549	\$11,220	\$11,145	\$8,782	NA	\$13,616	\$11,835	\$7,334	\$9,918

Notes: The sources are Rice Insurance Services Company and various state RECs.

NA = Not available

NM = Program not mandated this year

rightmost column in Exhibit 7 shows that the state REC collects the premium in three states: Kentucky, Louisiana and South Dakota. RISC collects the premium in the other nine states. In all cases, the state REC is responsible for ensuring that each licensee is in compliance with the mandatory E&O insurance requirement.

Policy premiums are a function of a number of variables, including: the number of individuals in the group, loss experience, deductible amounts and exclusions. Exclusions are not shown in Exhibit 7 because there are few (although some) differences between the subject states. Generally, the exclusions in mandatory program policies are similar to those in non-mandatory policies, and include transactions where the licensee had a personal interest, the claim was not submitted by the insured to the insurance company during the coverage period, fraud or a crime was involved, environmental conditions are involved, and where the licensee is alleged to have caused personal injury.

Many states have reciprocity agreements for their licensees with other states. Participants in existing state-sponsored E&O programs can obtain coverage in all states with which their state has reciprocity by paying a single \$15 endorsement. As long as the licensee's home state policy meets the minimum E&O requirements of the other state, the licensee is then covered for E&O claims in the other state.

As previously mentioned, some licensees believe that the E&O claim limits, detailed in Exhibit 7, are too low to be effective. However, the \$100,000 per claim limit that currently applies in all mandated states is more than fivefold the average paid claim amount shown in Exhibit 8.<sup>18</sup> In some problem transactions, more than one licensee is involved. In cases where two (or more) licensees are liable, it is possible that the effective single-claim limit is actually \$200,000 (or higher), at least from the damaged party's perspective (*i.e.*, individual agent's claim limits are additive). In addition, because some licensees believe existing claim limits are too low, it is worth noting that the specified claim limits are minimums, not maximums, and a licensee can obtain additional coverage from the insurance provider. The premium for additional coverage depends on a number of factors including the amount of coverage, whether the applicant is a group or individual, and the claim history of the applicant (*i.e.*, policy details on coverage above state minimums are not covered by mandatory E&O insurance regulations).

#### ***Recent State-sponsored Plan Claim Activity***

The E&O claim history for state mandated programs for the period 2001 through 2003 is summarized in Exhibit 8. During this period, the number of annual claims ranged from only 4 in South Dakota during 2003 to 598 in Colorado during 2001. The average claim amount paid ranged from \$4,705 in Nebraska during 2002 to \$20,963 in Colorado during 2003. When including all states, there is no clear trend in the number of claims filed over the time period examined or in the average claim amount paid.

## **Recommendations for Policymakers Considering Mandatory E&O Insurance**

In this section, several recommendations for policymakers contemplating a mandatory E&O program are presented. First, it is best to keep statutory requirements as basic as possible because circumstances may change and it is sometimes problematic to amend legislation. To facilitate this effort, legislation from states with mandatory programs (which vary in the amount of detail) should be examined when formulating proposed legislation. Most state statutes provide that the REC shall determine the terms and conditions of coverage, including the minimum policy limits, permissible deductible and permissible exclusions through rules and regulations. This is an effective method that may ease program administration if future changes in these items are required. Rules and regulations tend to be easier to modify compared to statutes.

Second, despite the fact that the statutes of most states with mandatory E&O insurance specify a maximum policy premium (Exhibit 7), such a specification is not recommended. A statutory price limit can create problems in the event the maximum premium amount becomes unrealistic due to changes in market conditions. In fact, this problem has already occurred in more than one state, necessitating an amendment to the statutes. Again, greater flexibility is available when the statute gives the REC the authority to set a maximum price, which can be adjusted to account for inflation or a change in market conditions.

Third, specifying a minimum A.M. Best rating requirement by statute is not recommended. There are often only one or two bidders for mandated E&O insurance programs and restrictive rating requirements in the statute may further limit competition. In an effort to ensure financial stability of its insurance carrier, two states established a minimum A.M. Best rating requirement by statute (as did Alabama). Most states, however, do not include this item in their statutes. Instead their legislation allows the REC to either establish the minimum rating requirement in the RFP specifications or to consider the company's rating as a factor when evaluating bid proposals.

Fourth, if the state has a real estate recovery fund in place, it is recommended that the recovery fund be maintained to protect the public for legitimate claims that either exceed E&O policy limits or claims that are excluded by the E&O policy. However, at the time mandatory E&O insurance is being contemplated, it is important to consider the interaction of allowable claims and claim limits for both the recovery fund and E&O program. Upon implementation of mandatory E&O insurance, several states in the sample modified their recovery fund claim limits or criteria.

Fifth, licensees should be given the option to obtain coverage independently so long as the coverage at least meets state requirements. Sixth, mandatory E&O should only apply to active licensees. All states with mandatory E&O follow both of these prescriptions. Without the later, licensees considering temporarily leaving the business would have an incentive to drop their license rather than transferring to inactive status.

Seventh, in all phases of the process (e.g., drafting legislation, formulating rules and regulations and drafting RFPs), a good resource is the state's risk manager. As an expert on insurance issues, the risk manager can help establish reasonable coverage terms and conditions, and later assist in an evaluation of the financial strength of bidding companies. Finally, during the program investigation phase, regulators should make it clear to all parties exactly why the change is being contemplated (e.g., lower premiums, consumer protection). In addition, regulators should encourage, and seriously consider, licensee input on the proposal.

## Conclusion

E&O insurance provides important financial protection for the public and real estate licensees, but tightening in the insurance market is reflected in increasing premiums. The group insurance policies offered in conjunction with mandatory E&O insurance state programs offer a vehicle to help control these costs. Twelve states currently require their active real estate licensees to have E&O insurance: Colorado, Idaho, Iowa, Kentucky, Louisiana, Mississippi, Nebraska, New Mexico, North Dakota, Rhode Island, South Dakota and Tennessee. An impressive 68% of REALTORS and eight of nine regulators from these states who responded to the survey expressed satisfaction with mandatory E&O insurance. Licensee respondents did, however, express concern that having E&O insurance makes them a target for frivolous lawsuits, and also that policy claim limits are too low. The former concern may (or may not) be true regardless of whether coverage is mandatory. Regarding the latter concern, it was shown that the \$100,000 per claim limit that currently applies in all mandated E&O group policies is fivefold the average amount paid per claim over the 2001-2003 timeframe, and additional coverage can be obtained by licensees unwilling to assume the risk that they will not be the subject of a successful claim in excess of the limit.

Analysis of the survey data indicates that licensee satisfaction with mandatory E&O insurance is significantly related to four of eight variables tested. Licensees with a claims history are more satisfied than those with no claims history. Licensees who stated that they would continue coverage even if coverage was not mandatory are more satisfied than those who stated that they would not. Licensee satisfaction is also positively related to the number of years of experience possessed by a licensee. Perhaps most importantly, licensees who have worked under both a voluntary and mandatory E&O system are more satisfied with mandatory E&O insurance compared to those who had worked only under a mandatory system.

Licensee satisfaction with mandatory E&O programs was found to not be related to the other variables tested. No significant difference in satisfaction was discovered between licensees who pay for their own coverage and those who pay only some, or none, of the premium; licensees who obtained coverage through their state-sponsored plan and those who obtained coverage independently; and licensees located in a state with a recovery fund and those located in a state without a recovery fund. In addition, no significant difference in satisfaction was discovered between females and males.

Survey responses from state real estate regulators provide a wealth of valuable information. Motivations for instituting a mandatory E&O insurance program include

the desire to maintain or increase consumer and licensee protection, and to provide licensees with affordable insurance coverage. The former motivation is especially compelling in certain cases because some state governments are now (or are contemplating) raiding real estate recovery funds to supplement their general fund.

When contemplating a mandatory E&O insurance program, policymakers should consider the advantages, disadvantages and costs of such programs. Advantages include coverage availability, relatively low premiums, portable coverage, coverage for prior acts and consumer protection. Disadvantages include the fact that licensees with a bad claims history will increase the premium charged to all licensees, additional administrative responsibilities for the REC and other state agencies and (currently) the low number of insurance companies underwriting E&O group policies. Regulators' estimates of mandatory E&O program administration costs are nominal. The maximum dollar estimate of annual administrative costs offered by any respondent was \$5,000. Some states have reduced costs by transferring duties to the external program administrator. Special circumstances, however, may increase or decrease administrative costs.

Comments made by real estate regulators also suggest several recommendations for policymakers contemplating a mandatory E&O insurance program. Statutory requirements should be kept as basic as possible because it can be problematic to amend legislation. Requirements specified in rules and regulations promulgated by the REC provide greater flexibility. States with a real estate recovery fund should continue it to protect the public for claims that are excluded by, or exceed claim limits in, the E&O insurance policy. Licensees should have the option to obtain coverage independently and the mandatory E&O insurance requirement should only apply to active licensees. Finally, during the program investigation phase, regulators should make it clear to all parties exactly why the change is being contemplated, and seriously consider licensee input on the proposal.

## Endnotes

1. Several interesting nonacademic E&O insurance related articles are available on the Realty Times website ([www.realtytimes.com](http://www.realtytimes.com)).
2. Alabama formerly had mandatory E&O insurance, but repealed the requirement on April 25, 2003. More details on this situation are provided later in the paper.
3. The survey may be viewed in full at [www.wright.edu/~joseph.coleman](http://www.wright.edu/~joseph.coleman). One thousand two hundred emails were sent, but for reasons unknown (we suspect a combination of turnover in the brokerage industry and the foibles of the internet), only 1,069 emails were successfully delivered. The overall and state response rates (shown in Endnote 5) are based on the number of emails successfully delivered.
4. Website at: [realtor.org/rodesign.nsf/pages/RealtorDirectory?OpenDocument](http://realtor.org/rodesign.nsf/pages/RealtorDirectory?OpenDocument).
5. Response numbers (rates) for individual states were: Colorado: 9 of 83 (10.8%); Idaho: 26 of 93 (28.0%); Iowa: 6 of 81 (7.4%); Kentucky: 12 of 84 (14.3%); Louisiana: 11 of 100 (11.0%); Mississippi: 20 of 92 (21.7%); Nebraska: 7 of 98 (7.1%); New Mexico: 19 of 90 (21.1%); North Dakota: 23 of 82 (25.8%); Rhode Island: 21 of 89 (23.6%); South Dakota: 21 of 79 (26.6%); and Tennessee: 26 of 91 (28.6%).

6. For most respondents, we were able to determine gender from the NAR website. For three dozen with names like Chris and Terry, gender was determined by visiting their state association of REALTORS, firm, or personal website.
7. According to NAR (2003), in 2003, 52% of all REALTORS are female, and the typical NAR member had 13 years' experience in real estate.
8. As of October, 2004, the average participation rate in state-sponsored plans for active licensees in all twelve states is 71.7%. The participation rate for all active licensees in each state as of the same date are: Colorado 65.8%, Idaho 89.7%, Iowa 98.7%, Kentucky 51.6%, Louisiana 95.4%, Mississippi 70.0%, Nebraska 83.5%, New Mexico 65.3%, North Dakota 46.6%, Rhode Island 41.4%, South Dakota 67.8% and Tennessee 83.5%. A regression analysis was performed on participation rates and group premium amounts. The two variables are not significantly related ( $p$  value = .21).
9. The study includes some anecdotal evidence that is not inconsistent with the concern of increased lawsuits. Of the states that had a recovery fund at the time E&O insurance was mandated, the RECs unanimous response was that there was no significant difference in the number of recovery fund claims in the years before and after E&O insurance was mandated. However, we do not have access to the number claims against independently-obtained policies in the years surrounding the mandatory E&O insurance implementation dates.
10. For example, difference in male and female disclosure (of psychological stigma) behavior is documented in Larsen and Coleman (2001). In the health insurance industry, Feldman and Schultz (2004) find that compared to males, females have higher service quality expectations. These expectations can influence policyholder satisfaction as asserted by Kolodinsky (1996); however, she discovered no significant relationship between satisfaction and gender.
11. All twelve REC directors contacted by phone and asked if they would participate in a written survey agreed to do so. The survey and cover letter were then emailed to each. Nine responses were eventually received. Subsequently, the nine participating people were contacted by phone to gather some clarifying information. A copy of the survey may be viewed at: [www.wright.edu/~joseph.coleman](http://www.wright.edu/~joseph.coleman).
12. Similar legislation was passed in Rhode Island and Tennessee after E&O insurance was made mandatory. In Idaho, the legislature attempted, and failed, to pass such legislation. About \$1,000,000 has been transferred from the Kentucky real estate recovery fund to the general fund in the in the last two years without the benefit of enabling legislation.
13. Proponents and opponents of mandatory E&O insurance may believe that arguments for their viewpoint are missing. The researchers encourage anyone who has additional items for either list to contact them.
14. Officially, a claim is made when the insured first receives a written demand for money or services, or has received notification of a lawsuit or arbitration proceeding naming the insured.
15. In 2004, Rice Insurance Services Company, LLC of Louisville, Kentucky (RISC) was the exclusive contract administrator, servicing all states with mandatory E&O programs. In 2005, RISC is providing service to all states but Nebraska, which is switched to the Williams Underwriting Group.
16. The contracting process varies from state to state; however, in general, the REC with the assistance of the legal and/or the insurance departments issues an RFP for a contract administrator who will be responsible for obtaining an insurance carrier. The contract term may vary in most cases, from one to three years with options for extensions.

17. The limit on the number claims that may be filed on an insured licensee is a function on the dollar payments made on claims against the policy. For example, a single \$100,000 claim would exhaust the coverage of a licensee in Iowa, but twenty claims of \$5,000 each would be covered by another licensee in that state.
18. In making this observation, the researchers are aware of the story of the 6-foot tall man who drowned in a river with an average depth of two feet. In addition, Iowa's \$100,000 total claim limit may not provide adequate protection for multiple claims.

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**MANDATED PROGRAM CHART  
as of January 1, 2008**

STATE	COVERAGE REQUIRED FOR FIRM LICENSE	PER CLAIM LIMIT	AGGREGATE LIMIT	DEDUCTIBLE	POLICY PERIOD	GROUP PREMIUM Per Licensee	WHO COLLECTS
Colorado	Yes	\$100,000	\$300,000	\$0 defense \$1,000 damages	1 year 1/1/08 - 1/1/09	\$243	Company
Idaho	Yes	\$100,000	\$300,000	\$0 defense \$1,000 damages	1 year 10/1/07 - 10/1/08	\$165	Company
Iowa	Yes	\$100,000	\$100,000	None	1 year 1/1/08 - 1/1/09	\$150	Company
Kentucky	No	\$100,000	\$1,000,000	None	1 year 4/1/08 - 4/1/09	\$140	Commission
Louisiana	Yes	\$100,000	\$300,000	0 defense \$1,000 damages	1 year 1/1/08 - 1/1/09	\$184	Commission
Mississippi	No	\$100,000	\$500,000	\$1,000 defense \$1,000 damages	1 year 7/1/07 - 7/1/08	\$205	Company
Nebraska	No	\$100,000	\$300,000	0 defense \$1,000 damages	1 year 1/1/08 - 1/1/09	\$135	Company
New Mexico	No	\$100,000	\$500,000	0 defense \$1,000 damages	1 year 1/1/08 - 1/1/09	\$200	Company
North Dakota	No	\$100,000	\$500,000	\$1,000 defense \$1,000 damages	1 year 1/1/08 - 1/1/09	\$140	Company
Rhode Island	No	\$100,000	\$500,000	\$1,000 defense \$1,000 damages	2 years 4/30/06 - 4/30/08	\$160/2 year	Company
South Dakota	No	\$100,000	\$500,000	\$500 defense \$1,000 damages	1 year 1/1/08 - 1/1/09	\$130	Commission
Tennessee	No	\$100,000	\$300,000	\$0 defense \$1,000 damages	2 years 1/1/07 - 1/1/09	\$256/2 year	Company
Wyoming	No	\$100,000	\$500,000	\$1,000 defense \$1,000 damages	1 year 1/1/08 - 1/1/09	\$150	Company

**Real Estate Errors and Omissions Program  
Mandatory State Programs  
Maximum Annual Premium and Current Group Program Premium  
December 6, 2007**

<u>State</u>	<u>Maximum Annual Premium</u>	<u>Group Premium as of 1/1/2008</u>
Colorado	Not Applicable	\$243
Idaho	\$200	\$165
Iowa	Not Applicable	\$150
Kentucky	\$200	\$140
Louisiana	\$500	\$184
Mississippi	\$250	\$205
Nebraska	\$500	\$135 (WUG)
New Mexico	\$200	\$200
North Dakota	"reasonable" as determined by Real Estate Commission	\$140
Rhode Island	Not Applicable	\$160 (2-year premium)
South Dakota	Not Applicable	\$130
Tennessee	"reasonable" as determined by Real Estate Commission	\$256 (2-year premium)
Wyoming	\$300	\$150

**HEB**

**379**

# SENATE COMMITTEE REPORT

DATE: 3/14/08

FURTHER: Rules

DATE TURNED IN TO OFFICE: 4/3/08

Labor and Commerce Committee considered HOUSE BILL NO. 379

## HB 379 CPA EDUCATION REQUIREMENTS

"An Act relating to educational requirements for licensure as a certified public accountant."

and recommends:

- be replaced with  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

**SENATE BILL:**  
 Same Title  
 New Title

---

**HOUSE BILL:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Fidel	Zero	EN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Fidel	Zero	EN#
DOCED	2/21/08			✓	

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS	PRINTED LASTNAME	Do Pass	Do Not Pass	No Rec	Absent
<i>Bettye Davis</i>	DAVIS	X			
<i>[Signature]</i>	STRICK	X			
CHAIR: <i>[Signature]</i>	ELLIS	X			

# Representative Mike Hawker

## Alaska State Legislature



### House Bill 379

### Sponsor Statement

#### *Session:*

State Capitol  
Juneau, AK 99801  
907 465-4949 direct  
800 478-4950 toll free  
907 465-4979 fax

#### *Interim:*

716 W 4<sup>th</sup> Avenue  
Anchorage, AK 99501  
907 269-0244 office  
907 269-0248 fax

#### *Member:*

House Finance Committee  
Legislative Budget  
& Audit Committee

#### *House District 32:*

Eagle River  
Anchorage  
Rainbow  
Indian  
Bird  
Girdwood  
Portage  
Whittier  
Sunrise  
Hope

"An Act relating to education requirements for licensure as a certified public accountant"

HB 379 corrects a problem that occurred as a result of the passage of House Bill 274 in 2006, which became effective on January 1, 2008. HB 274 updated Alaska's statutory framework regulating the professional practice of accounting. The bill was supported by the Alaska Society of Certified Public Accountants and the Alaska Board of Public Accountancy as a way to increase accountability in their own profession.

One of the changes made by House Bill 274 was to change the education requirements to obtain a CPA license. Prior to passage of the bill, there were two allowable educational tracks:

- (1) An accounting degree with two years of experience; or
- (2) any degree with three years of accounting experience.

House Bill 274 repealed (2), which inadvertently prohibited candidates who were already out of school and working towards meeting the experience requirement from receiving licensure, unless they went back to school to get an accounting degree. The change proposed by House Bill 379 would "grandfather in" people who received their baccalaureate degrees before January 1, 2008.

This change is supported by the Alaska Board of Public Accountancy.

From: Max Mertz [mailto:max@ermcpa.com]  
Sent: Thursday, February 07, 2008 2:53 PM  
To: Rep. Mike Hawker  
Cc: mel.sands@acsalaska.net; akcpa@ak.net; Juli Lucky  
Subject: AS 08.04.120 "grandfathering" issue

Hi Representative Hawker, I hope the session is going well for you.

During the process of writing the 12 AAC 04 regulations last year, Department of Law identified a technical issue with the new language of AS 08.04.120 that did not allow us to "grandfather" in the work experience under the old AS 08.04.120 (a)(2). Under that section applicants who did not have an accounting concentration could meet the experience requirement by getting three years of experience acceptable to the Board as opposed to two years for those who had the accounting concentration.

The "three-year option" was struck from the new version of AS 08.04.120 so there is not longer a non-accounting core path for applicants to get licensed. What we are finding is that there are at least several known individuals (and we think others who simply have not applied yet) who designed their entry into the profession under the non-accounting core path. These people, who completed their education some time ago, and who are now finished, or nearly finished, with their experience requirements can now not get licensed.

In discussing this with the State Society, we wonder if it is possible to amend 08.04.120 to allow the "grand fathering" of applicants who had completed their study prior to the effective date of the new 08.04 but were still in the process of completing their experience requirement.

Thanks for considering this. Let me know if I can provide you any more information on this. Max

Max E. Mertz, CPA  
Partner  
Elgee Rehfeld Mertz , LLC  
max@ermcpa.com  
907-790-6230 (direct)  
907-789-7128 (fax)  
800-478-3178 (toll free)

9309 Glacier Hwy., Suite B-200  
Juneau, Alaska 99801

**Delayed amendment of section.** — Under §§ 10 and 58, ch. 16, SLA 2006, effective January 1, 2008, this section will read as follows: "Personal require-  
ments. An applicant for a certified public accountant license shall be at least 19 years of age and of good moral character."

**\* Sec. 08.04.120. Educational and experience requirements.** (a) The education and experience requirements for an applicant are as follows:

(1) a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board and additional semester hours of post-baccalaureate study so that the total educational program includes at least 150 hours, with an accounting concentration or equivalent as determined by the board by regulation to be appropriate, and two years of accounting experience satisfactory to the board; or

(2) a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board and additional semester hours of post-baccalaureate study so that the total educational program includes at least 150 hours, and three years of accounting experience satisfactory to the board.

(b) Notwithstanding (a) of this section, the board may grant a certificate to an applicant who has not completed the 150-hour educational program required by (a) of this section if the applicant has received a baccalaureate degree, or its equivalent, before January 1, 2001, from a college or university acceptable to the board, and if the applicant satisfies the other criteria established by the board by regulation for receiving the certificate. (§ 3(3) — (6) ch 187 SLA 1960; am § 14 ch 6 SLA 1984; am § 4 ch 21 SLA 1991; am §§ 5, 6 ch 62 SLA 1991; am §§ 22, 23 ch 29 SLA 1996)

**\* Delayed amendment of section.** — Under §§ 11 and 58, ch. 16, SLA 2006, effective January 1, 2008, this section will read as follows: "Educational and experience requirements. (a) The education and experience requirements for an applicant are a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board and additional semester hours of post-baccalaureate study so that the total educational program includes at least 150 hours, with an accounting concentration or equivalent as determined by the board by regulation to be appropriate, and two years of accounting experience satisfactory to the board.  
(b) Notwithstanding (a) of this section, the board may grant a license to an applicant who has not completed the 150-hour educational program required by (a) of this section if the applicant has received a baccalaureate degree, or its equivalent, before January 1, 2001, from a college or university acceptable to the board, and if the applicant satisfies the other criteria established by the board by regulation for receiving the license."

**Sec. 08.04.130. Examination.** An applicant shall pass an examination in accounting and reporting, in auditing, and in other related subjects that the board determines appropriate. The examination shall be designated in advance by the board as the examination for the certificate of certified public accountant. The board shall use the Uniform Certified Public Accountant Examination of the American Institute of Certified Public Accountants and the institute's advisory grading service, if available. The board shall, by regulation, establish what constitutes a passing grade on the examination for purposes of licensure under AS 08.04.100 — 08.04.240. (§ 3(7) ch 187 SLA 1960; am § 7 ch 62 SLA 1991; am § 1 ch 139 SLA 2003)

**Delayed amendment of section.** — Under §§ 12 and 58, ch. 16, SLA 2006, effective January 1, 2008, this section will read as follows: "Examination. An applicant shall pass an examination in accounting and reporting, in auditing, and in other related subjects that the board determines appropriate. The examination shall be designated in advance by the board as the examination for the license of certified public accountant. The board shall use the Uniform Certified Public Accountant Examination of the American Institute of Certified Public Accountants and the institute's advisory grading service, if available. The board shall, by regulation, establish what constitutes a passing grade on the examination for purposes of licensure under AS 08.04.105 — 08.04.240."  
**Cross references.** — For transitional provisions applicable to examinations taken under this section on or after May 1, 1999, and before January 1, 2004, see § 4, ch. 139, SLA 2003, in the 2003 Temporary and Special Acts.  
**Effect of amendments.** — The 2003 amendment, effective October 8, 2003, rewrote the third sentence and added the last sentence.

**Sec. 08.04.140. Frequency of examination [Repealed by § 3, ch. 139, SLA 2003.]**

**HEB**

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# SENATE COMMITTEE REPORT

DATE: 4/6/08

FURTHER:

DATE TURNED  
IN TO OFFICE: 4/8/08

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 383(L&C)

## HB 383 DENTIST LICENSE EXAM EXCEPTION

"An Act establishing an exemption from the dentist licensing exam for certain persons."

and recommends:

- be replaced with  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
<b>HOUSE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
DCCED	3/14/08			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS	LAST NAME	DID PASS	DID NOT PASS	NO REC	AMEND
<i>Billy Davis</i>	DAVIS	X			
<i>Paul F...</i>	SEWELL			X	
CHAIR: <i>John Ellis</i>	ELLIS	X			

