

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 202

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY SENATOR DONLEY

Introduced: 1/27/98

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to insurance; amending Rules 79 and 82, Alaska Rules of
2 Civil Procedure; and providing for an effective date."

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

4 * **Section 1.** SHORT TITLE. This Act may be known as the Alaska Insurance Consumers
5 Protection Act.

6 * **Sec. 2.** PURPOSE. It is the purpose of this Act to amend existing law regarding
7 insurance in a manner that ensures that injured parties, whether first or third parties, are fairly
8 treated by insurers, fully compensated by applicable policy limits, and receive interest legally
9 due.

10 * **Sec. 3.** AS 21.09.250 is amended by adding a new subsection to read:

11 (b) An insurer doing business in this state may not terminate a contract with
12 an insurance producer, agent, broker, or independent adjuster, except for good cause.
13 The director shall adopt regulations to implement this subsection. The regulations
14 adopted under this subsection must include an administrative procedure that allows an

1 insurer, insurance producer, agent, broker, or independent adjuster to file a request for
2 review and appropriate action by the director.

3 * **Sec. 4.** AS 21.36.125 is amended by adding new paragraphs to read:

4 (16) restrict or limit oral or written communications between

5 (A) an agent, a claims adjuster, or other person representing an
6 insurer and an insured regarding a property or damage claim or repair estimate;
7 or

8 (B) a person who repairs damage to an automobile covered
9 under a policy of the insurer and an insured;

10 (17) restrict or limit oral or written communications between a person
11 who repairs damage to property covered under a policy of the insurer, including
12 damage to an automobile, and a claimant.

13 * **Sec. 5.** AS 21.36.210(a) is amended to read:

14 (a) An insurer may not exercise its right to cancel a policy of personal
15 automobile insurance except for the following reasons:

16 (1) nonpayment of premium; or

17 (2) the driver's license or motor vehicle registration of either the named
18 insured or of an operator who resides in the same household as the named insured or
19 who customarily operates a motor vehicle insured under the policy has been under
20 suspension or revocation during the policy period or, if the policy is a renewal, during
21 its policy period or the 180 days immediately preceding its effective date; **this**
22 **paragraph does not apply to administrative revocation as described under**
23 **AS 21.89.023.**

24 * **Sec. 6.** AS 21.42 is amended by adding a new section to read:

25 **Sec. 21.42.285. Prejudgment interest.** Prejudgment interest due an insured
26 from an insurer as a result of a claim covered under an insurance policy is not subject
27 to limitation or reduction by application of the policy limits. An insurer is liable for
28 prejudgment interest even if the payment would exceed applicable policy limits.

29 * **Sec. 7.** AS 21.42 is amended by adding a new section to read:

30 **Sec. 21.42.305. Payment of loss claims.** (a) Using due diligence, an insurer
31 shall make an estimate of those covered losses that can be reasonably determined

1 within 15 days after the date the insurer receives notice of a claim under an insurance
2 policy.

3 (b) If a claim involves a covered loss that cannot be reasonably determined as
4 required under (a) of this section, the insurer shall review and estimate the covered
5 loss within 15 days after the date the loss becomes determinable.

6 (c) Within 30 days after an insurer receives notice of a claim, the insurer shall
7 pay the claimant the amount due under (a) or (b) of this section, and this amount shall
8 be known as the undisputed covered claims. The insurer shall also provide a written
9 explanation of the payment to the insured. The written explanation must include
10 covered loss payments and any loss not covered. An insurer may not require an
11 insured to sign a release for claims that are undisputed before payment by the insurer.

12 (d) If, after the insurer makes the payment of undisputed claims required under
13 (c) of this section, the insured obtains judgment for damages resulting from the
14 disputed claims and the damages awarded by the jury or court are at least 10 percent
15 greater than the undisputed claims payment made by the insurer, the insurer shall also
16 pay reasonable actual attorney fees, actual costs incurred by the insured in obtaining
17 the judgment, interest due under AS 09.30.070, and a penalty equal to at least 20
18 percent of the damages awarded in the action.

19 (e) If the director determines that an insurer has violated (a) - (c) of this
20 section, the director or an insured who failed to receive a covered loss payment as
21 required by (c) of this section may bring an action for bad faith claims practices
22 against the insurer.

23 (f) Subsection (d) of this section does not apply to or preclude a bad faith
24 claims action described under (e) of this section and does not preclude an award of
25 interest under AS 09.30.070 if damages are 10 percent or less than the undisputed
26 claims payment.

27 * **Sec. 8.** AS 21.89.020(f) is amended to read:

28 (f) An automobile liability insurance policy must provide

29 (1) that all expenses and fees, not including counsel fees or adjuster
30 fees, incurred because of arbitration or mediation shall be paid **by the insurer; the**
31 **arbitrator may, as a part of the arbitrator's decision, require the insured to**

1 **reimburse the insurer for expenses or fees paid by the insurer** [AS DETERMINED
2 BY THE ARBITRATOR];

3 (2) liability coverage in the amount set out in AS 28.22.101(d) for
4 motor vehicles rented in the United States or Canada by a person insured under the
5 policy;

6 (3) physical damage coverage for motor vehicles rented in the United
7 States or Canada [,] if the policy provides physical damage coverage; if the insured
8 declines physical damage coverage, the insurer shall offer physical damage coverage
9 for rented vehicles;

10 (4) that payments from applicable coverage provided under (2) and (3)
11 of this subsection will be made in the following order of priority:

12 (A) from a policy or coverage purchased by the operator from
13 the person who has the vehicle available for rent;

14 (B) from a policy or coverage covering the operator of a rented
15 vehicle but not purchased from the person who has the vehicle available for
16 rent; and

17 (C) from a policy or coverage of the person who has the vehicle
18 available for rent.

19 * **Sec. 9.** AS 21.89.020(g) is amended to read:

20 (g) An insurance company offering automobile liability insurance in this state
21 shall offer a short term policy valid for **at least** [NO MORE THAN] seven **but not**
22 **more than 30** days. The coverage available for the short term policy must be
23 comparable to coverage available for longer term policies. The provisions of
24 AS 21.36.210 - 21.36.310 do not apply to short term policies issued under this
25 subsection. **The premium charged for a short term policy described under this**
26 **subsection may not exceed 200 percent of the pro rata premium charged for**
27 **longer term policies.**

28 * **Sec. 10.** AS 21.89 is amended by adding a new section to read:

29 **Sec. 21.89.023. Automobile insurance following driver's license revocation.**

30 (a) Notwithstanding AS 21.36.210, an insurer offering insurance in this state may not
31 (1) refuse to issue or renew automobile liability insurance coverage; (2) cancel an

1 existing policy of automobile liability insurance; (3) deny a covered claim; or (4)
 2 increase the premium on an automobile liability insurance policy if the refusal,
 3 cancellation, denial, or increase results only from the fact that the person's driver's
 4 license was revoked under AS 28.15.183, 28.15.185, or 28.15.187.

5 (b) The provisions of (a) of this section may not prevent an insurer from
 6 underwriting or rating for a loss experience in the same manner as it would for a
 7 person who has not had the person's driver's license revoked under AS 28.15.183,
 8 28.15.185, or 28.15.187.

9 * **Sec. 11.** AS 21.89 is amended by adding a new section to read:

10 **Sec. 21.89.027. Required telephone contact.** An insurer who offers, issues,
 11 or delivers an automobile liability insurance policy in this state against automobile
 12 liability must provide a statewide toll-free telephone listing in addition to any local
 13 listing.

14 * **Sec. 12.** AS 28.20 is amended by adding a new section to read:

15 **Sec. 28.20.447. Medical payments coverage requirements.** (a) An insurance
 16 company offering automobile liability insurance in this state shall initially and at
 17 renewal offer coverage for medical payments.

18 (b) Using due diligence, an insurer providing medical payments coverage shall
 19 make an estimate of the payment due an insured that can be reasonably determined
 20 within 15 days after the date the insurer receives notice of a claim under the policy.

21 (c) Within 30 days after the insurer receives notice of a medical claim, the
 22 insurer shall pay the claimant the amount due under (b) of this section, and this
 23 amount shall be known as the undisputed medical claim. The insurer shall also
 24 provide a written explanation of the payment to the insured. The written explanation
 25 must include the covered medical claim payment and any medical claim not covered.

26 (d) If a motor vehicle liability policy provides medical payments coverage, a
 27 medical payment claim is denied, and the claim is later determined to be covered
 28 under the policy, the insurer shall pay the insured's

29 (1) actual costs, plus interest at the rate imposed under
 30 AS 09.30.070(a);

31 (2) reasonable actual attorney fees;

1 (3) any arbitration costs related to the proceeding; and

2 (4) a penalty equal to at least 20 percent of the value of the claim.

3 (e) If a separate premium is paid for medical payments coverage, payments
4 under that coverage may not be offset or deducted from the limits of uninsured or
5 underinsured motorist coverage otherwise available to the claimant.

6 * **Sec. 13.** AS 28.22 is amended by adding a new section to article 2 to read:

7 **Sec. 28.22.150. Medical payments coverage requirements.** (a) An insurance
8 company offering automobile liability insurance in this state shall initially and at
9 renewal offer coverage for medical payments.

10 (b) Using due diligence, an insurer providing medical payments coverage shall
11 make an estimate of the payment due an insured that can be reasonably determined
12 within 15 days after the date the insurer receives notice of a claim under the policy.

13 (c) Within 30 days after the insurer receives notice of a medical claim, the
14 insurer shall pay the claimant the amount due under (b) of this section, and this
15 amount shall be known as the undisputed medical claim. The insurer shall also
16 provide a written explanation of the payment to the insured. The written explanation
17 must include the covered medical claim payment and any medical claim not covered.

18 (d) If a motor vehicle liability policy provides medical payments coverage, a
19 medical payment claim is denied, and the claim is later determined to be covered
20 under the policy, the insurer shall pay the insured's

21 (1) actual costs, plus interest at the rate imposed under
22 AS 09.30.070(a);

23 (2) reasonable actual attorney fees;

24 (3) any arbitration or all court costs related to the proceeding; and

25 (4) a penalty equal to at least 20 percent of the value of the claim.

26 (e) If a separate premium is paid for medical payments coverage, payments
27 under that coverage may not be offset or deducted from the limits of uninsured or
28 underinsured motorist coverage otherwise available to the claimant.

29 * **Sec. 14.** AS 21.42.305, enacted by sec. 7 of this Act, AS 28.20.447, enacted by sec. 12
30 of this Act, and AS 28.22.150, enacted by sec. 13 of this Act, amend Rule 79, Alaska Rules
31 of Civil Procedure, by providing for an award of costs that differs from an award under

1 Rule 79.

2 * **Sec. 15.** AS 21.42.305, enacted by sec. 7 of this Act, AS 28.20.447, enacted by sec. 12
3 of this Act, and AS 28.22.150, enacted by sec. 13 of this Act, amend Rule 82, Alaska Rules
4 of Civil Procedure, by providing for attorney fee awards in certain cases that may differ from
5 those awarded under Rule 82.

6 * **Sec. 16.** APPLICABILITY. This Act applies to a

7 (1) policy of insurance entered into or renewed on or after the effective date
8 of this Act;

9 (2) civil action that accrues on or after the effective date of this Act.

10 * **Sec. 17.** This Act takes effect January 1, 1999.