

**CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 202(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/3/98

Referred: Judiciary

Sponsor(s): SENATOR DONLEY

**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 21.36.125 is amended by adding new paragraphs to read:

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

12 (A) an insurance producer, a claims adjuster, or other person  
13 representing an insurer and an insured regarding a property or damage claim  
14 or repair estimate; this paragraph does not apply to oral or written

1 communications between a person representing an insurer and an attorney  
2 representing an insurer; or

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

5 (17) restrict or limit oral or written communications between a person  
6 who repairs damage to property covered under a policy of the insurer, including  
7 damage to an automobile, and a claimant;

8 (18) terminate a contract with an insurance producer if the termination  
9 results from

10 (A) refusal to perform an unfair or deceptive claim settlement  
11 practice identified under this chapter; or

12 (B) the reporting of an unfair or deceptive claim settlement  
13 practice by the insurance producer to the director.

14 \* **Sec. 4.** AS 21.36 is amended by adding new sections to read:

15 **Sec. 21.36.212. Prejudgment interest.** Prejudgment interest due an insured  
16 or a third party from an insurer as a result of a claim covered under an insurance  
17 policy is not subject to limitation or reduction by application of the policy limits. An  
18 insurer is liable for prejudgment interest even if the payment would exceed applicable  
19 policy limits.

20 **Sec. 21.36.214. Payment of loss claims.** (a) Using due diligence, an insurer  
21 shall make an estimate of those covered losses that can be reasonably determined  
22 within 15 days after the date the insurer receives notice of a claim under an insurance  
23 policy.

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

27 (c) Within 30 days after an insurer receives notice of a claim, the insurer shall  
28 pay the claimant the amount due under (a) of this section. A claim described under  
29 (b) of this section shall be paid within 30 days after the loss becomes determinable.  
30 An amount paid under (a) or (b) of this section shall be known as the undisputed  
31 covered claims. The insurer shall also provide a written explanation of the payment

1 to the insured. The written explanation must include covered loss payments and any  
 2 loss not covered. An insurer may not require an insured to sign a release for claims  
 3 that are undisputed before payment by the insurer.

4 (d) If, after the insurer makes the payment of undisputed claims required under  
 5 (c) of this section, the insured obtains judgment for damages resulting from the  
 6 disputed claims and the damages awarded by the jury, court, appraiser, or arbitrator  
 7 are at least 10 percent greater than the undisputed claims payment made by the insurer,  
 8 the insurer, in addition to interest due under AS 09.30.070, shall also pay reasonable  
 9 actual attorney fees, actual costs incurred by the insured in obtaining the judgment, and  
 10 a penalty equal to at least 10 percent of the damages awarded in the action.

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

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

19 **Sec. 21.36.216. Required telephone contact.** An insurer who offers, issues,  
 20 or delivers an automobile liability insurance policy in this state against automobile  
 21 liability must provide a statewide toll-free telephone listing in addition to any local  
 22 listing.

23 \* **Sec. 5.** AS 21.89.020(f) is amended to read:

24 (f) An automobile liability insurance policy must provide

25 (1) that all expenses and fees, not including counsel fees or adjuster  
 26 fees, incurred because of arbitration or mediation shall be paid **by the insurer, if**  
 27 **applicable, from the claim; the arbitrator may, as a part of the arbitrator's**  
 28 **decision, require the insured to reimburse the insurer for expenses or fees paid**  
 29 **by the insurer; if the arbitrator awards expenses or fees to the insurer, the**  
 30 **insurer may deduct the awarded expenses or fees from an amount due the insured**  
 31 [AS DETERMINED BY THE ARBITRATOR];

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

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

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

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

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

15 (C) from a policy or coverage of the person who has the vehicle  
16 available for rent;

17 **(5) medical payment coverage required under AS 28.20.447 or**  
18 **AS 28.22.150.**

19 \* **Sec. 6.** AS 21.89.020 is amended by adding a new subsection to read:

20 (i) The premium charged for an automobile liability insurance policy with a  
21 term of less than 30 days may not exceed 200 percent of the pro rata premium charged  
22 for longer term policies.

23 \* **Sec. 7.** AS 28.20 is amended by adding a new section to read:

24 **Sec. 28.20.447. Medical payments coverage requirements.** An insurance  
25 company offering automobile liability insurance in this state shall also offer coverage  
26 for medical payments when the policy is initially offered.

27 \* **Sec. 8.** AS 28.22 is amended by adding a new section to article 2 to read:

28 **Sec. 28.22.150. Medical payments coverage requirements.** An insurance  
29 company offering automobile liability insurance in this state shall also offer coverage  
30 for medical payments when the policy is initially offered.

31 \* **Sec. 9.** AS 21.36.214(d), enacted by sec. 4 of this Act, amends Rule 79, Alaska Rules

1 of Civil Procedure, by providing for an award of costs that differs from an award under  
2 Rule 79.

3 \* **Sec. 10.** AS 21.36.214(d), enacted by sec. 4 of this Act, amends 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. 11.** 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. 12.** This Act takes effect January 1, 1999.