

Introduced: 4/7/70
Referred: Commerce and
Judiciary

BY THE STATE AFFAIRS
COMMITTEE BY REQUEST
OF THE SPECIAL COMMIT-
TEE ON INSURANCE.

1 IN THE HOUSE

2 HOUSE BILL NO. 809

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to personal and property protection
7 motor vehicle insurance."

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

9 * Section 1. AS 28 is amended by adding a new chapter to read:

10 CHAPTER 21. PERSONAL AND PROPERTY PROTECTION

11 MOTOR VEHICLE INSURANCE ACT.

12 Sec. 28.21.010. DECLARATION OF PURPOSE. The purpose of this
13 chapter is to provide a means of prompt and equitable compensation to
14 persons for accidental bodily injury and property damage arising from
15 the ownership, operation, maintenance or use of motor vehicles, in lieu
16 of tort liability.

17 Sec. 28.21.020. SECURITY REQUIRED FOR REGISTERED MOTOR VEHICLES.

18 (a) The owner or registrant of a motor vehicle required to be registered
19 in the state shall maintain security under this chapter in effect con-
20 tinuously throughout the registration period.

21 (b) Security is required for payment of benefits under personal
22 protection insurance, property protection insurance and residual
23 liability insurance under this chapter.

24 (c) Security for the payment of the benefits required by this
25 chapter may be provided with respect to any motor vehicle under a policy
26 issued by an insurer authorized to transact business in the state which
27 affords insurance for payment of the benefits. A policy of insurance
28 represented or sold as providing the security required for registered
29 motor vehicles under this chapter shall be considered as providing

1 insurance for the payment of the benefits under this chapter.

2 (d) Security for the payment of benefits may be provided with
3 respect to a motor vehicle by any other method approved by the depart-
4 ment as affording security equivalent to that afforded by a policy of
5 insurance; however, proof of the security shall be filed and continuously
6 maintained with the department throughout the registration period.
7 The person filing the security shall have all of the obligations and
8 rights of an insurer under this chapter.

9 (e) A nonresident owner or registrant of a motor vehicle not
10 registered in this state may not operate or permit the vehicle to be
11 operated in this state for an aggregate of more than 30 days in any
12 calendar year unless he continuously maintains security for the payment
13 of benefits under this chapter.

14 Sec. 28.21.030. LIABILITY FOR PERSONAL PROTECTION INSURANCE
15 BENEFITS. (a) Under personal protection insurance the insurer is liable
16 to pay benefits for accidental bodily injury arising out of the owner-
17 ship, operation, maintenance or use of a motor vehicle as a motor
18 vehicle, subject to the provisions of this chapter.

19 (b) Personal protection insurance benefits are due under the
20 provisions of this chapter without regard to fault.

21 Sec. 28.21.040. ACCIDENTAL BODILY INJURY. (a) Bodily injury
22 includes death resulting from an injury and damage to or loss of a
23 person's prosthetic devices in connection with the injury.

24 (b) Bodily injury is accidental as to one claiming personal
25 protection insurance benefits unless suffered intentionally by the
26 injured person or caused intentionally by the claimant. Even though a
27 person knows that bodily injury is substantially certain to be caused
28 by his act or omission, he does not cause or suffer injury intentionally
29 if he acts or refrains from acting for the purpose of averting injury

1 to any person or persons including himself.

2 (c) Accidental bodily injury does not arise out of the ownership,
3 operation, maintenance or use of a parked vehicle as a motor vehicle
4 unless

5 (1) the vehicle was parked in such a way as to cause
6 unreasonable risk of the bodily injury which occurred;

7 (2) the injury was a direct result of physical contact with

8 (A) equipment permanently mounted on the vehicle,
9 while the equipment was being operated or used, or

10 (B) property being lifted onto or lowered from the
11 vehicle in the loading or unloading process; or

12 (3) the injury was sustained by a person while occupying,
13 entering into or leaving the vehicle.

14 Sec. 28.21.050. PERSONAL PROTECTION INSURANCE BENEFITS. (a)
15 Personal protection insurance benefits are payable for allowable
16 expenses, work loss, and survivor's loss.

17 (b) Allowable expenses consist of all reasonable charges incurred
18 for reasonably necessary products, services and accommodations for an
19 injured person's care, recovery or rehabilitation. Allowable expenses
20 within personal protection insurance coverage shall not include

21 (1) charges for a hospital room in excess of a reasonable
22 and customary charge for semi-private accommodations except when the
23 injured person requires special or intensive care, or

24 (2) charges for funeral and burial expenses in excess of
25 \$1,000.

26 (c) Work loss consists of (1) loss of income from work an
27 injured person would have performed had he not been injured, including
28 loss of pension and social security benefit entitlements, and (2)
29 expenses reasonably incurred in obtaining ordinary and necessary

1 services in place of those that, had he not been injured, the injured
2 person would have performed, not for income but for the benefit of
3 himself or of any dependent of his; however, work loss does not include
4 any loss after the date on which the injured person dies. Because the
5 benefits received from personal protection insurance for loss of
6 income are not taxable income, the benefits payable for loss of income
7 will be reduced 15 per cent unless the claimant presents to the insurer,
8 in support of his claim, reasonable proof of a lower value of the
9 income tax advantage in his case, in which event the lower value shall
10 apply. The benefits payable for work loss sustained in any 30 day
11 period and the income earned by an injured person for work during the
12 same period, reduced by 15 per cent, shall together not exceed \$750,
13 this maximum to apply pro rata to any lesser period of work loss.

14 (d) Survivors' loss consists of (1) loss, after the date on
15 which the deceased died, of contributions of tangible things of
16 economic value, excluding services, that persons who are dependents
17 of the deceased at the time of his death would have received for support
18 during their dependency from the deceased had he not suffered the
19 accidental bodily injury causing death, and (2) expenses reasonably
20 incurred by the dependents, during their dependency and after the
21 date on which the deceased died, in obtaining ordinary and necessary
22 services in place of those that the deceased would have performed for
23 their benefit had he not suffered the injury causing death. The
24 benefits payable for survivors' loss in connection with the death
25 of a person in any 30 day period shall not exceed \$750 and shall not
26 be payable beyond the normal life expectancy of the deceased, as
27 determined by reference to the mortality tables designated by the
28 Department of Commerce for this purpose.

29 (e) Personal protection insurance benefits payable for accidental

1 bodily injury accrue not when the injury occurs but rather as the
2 allowable expense, work loss or survivors' loss is incurred.

3 Sec. 28.21.060. SOCIAL SECURITY BENEFITS. The amount of all
4 disability and survivor benefits a claimant recovers or is entitled
5 to recover under the Social Security Act, U. S. Code, Title 42,
6 Sections 301 et seq., because of accidental bodily injury shall be
7 subtracted from the personal protection insurance benefits otherwise
8 payable for the injury.

9 Sec. 28.21.070. DEPENDENTS. (a) The following persons shall
10 be conclusively presumed to be dependents of a deceased person: (1)
11 a wife is dependent on a husband with whom she lives at the time of
12 his death; (2) a husband is dependent on a wife with whom he lives
13 at the time of her death; (3) any child under the age of 18 years,
14 or over 18 years but physically or mentally incapacitated from earning,
15 is dependent on the parent with whom he is living or from whom he
16 is receiving regular support at the time of the death of the parent.
17 In all other cases, questions of dependency and the extent of dependency
18 shall be determined in accordance with the facts at the time of the
19 death.

20 (b) The dependency of a surviving spouse shall terminate upon
21 death or remarriage. The dependency of any other person shall terminate
22 upon the death of that person and shall continue only so long as the
23 person is

- 24 (1) under the age of 18 years,
25 (2) physically or mentally incapacitated from earning, or
26 (3) engaged full time in a formal program of academic or
27 vocational education or training.

28 Sec. 28.21.080. OUT-OF-STATE INJURIES. Personal protection
29 insurance benefits are payable for accidental bodily injury suffered

1 in an accident occurring out of the state, if the accident occurs within
2 the United States, its territories and possessions or in Canada, and
3 the person whose injury is the basis of the claim was at the time of
4 the accident

5 (1) a named insured under a personal protection insurance
6 policy,

7 (2) his spouse,

8 (3) a relative of either who is domiciled in the same
9 household, or

10 (4) an occupant of a vehicle involved in the accident the
11 owner or registrant of which is insured under a personal protection
12 insurance policy or has provided security approved by the department
13 under sec. 20(d) of this chapter.

14 Sec. 28.21.090. PAYMENT OF PERSONAL PROTECTION INSURANCE BENEFITS

15 (a) Personal protection insurance benefits are payable to or for the
16 benefit of the injured person or, in the event of his death, to or
17 for the benefit of his dependents.

18 (b) If an insurer in good faith pays the personal protection
19 insurance benefits required by this chapter to or for the benefit
20 of a person who it believes is entitled to those benefits, the payment
21 shall discharge the insurer's liability to the extent of the payments
22 unless the insurer has been notified in writing of the claim of
23 another person.

24 (c) If there is doubt as to the proper person to receive the
25 benefits or the proper apportionment among the persons entitled to
26 them, the insurer, the claimant or any other interested person may apply
27 to the superior court for an appropriate order. The superior court
28 may designate the payees and make an equitable apportionment, taking
29 into account the relationship of the payees to the injured person and

1 other factors the court considers appropriate.

2 (d) In the absence of a court order directing otherwise the
3 insurer may pay

4 (1) to the dependents of the injured person, the personal
5 protection insurance benefits accrued before his death without the
6 appointment of an administrator or executor;

7 (2) to the surviving spouse, the personal protection
8 insurance benefits due any dependent children living with the spouse.

9 Sec. 28.21.100. PERSONS NOT ENTITLED TO PERSONAL PROTECTION
10 INSURANCE BENEFITS. A person is not entitled to be paid personal
11 protection insurance benefits for accidental bodily injury if at the
12 time of the accident

13 (1) the person was using a motor vehicle which he had
14 converted, unless his use was in the good faith belief that he was
15 entitled to take and use the vehicle, or

16 (2) the person was the owner or registrant of a motor
17 vehicle involved in the accident with respect to which the security
18 required under this chapter was not in effect, or

19 (3) the person was not a resident of the state, and was an
20 occupant of a motor vehicle not registered in the state, and was not
21 insured by an insurer which has filed a certification in compliance
22 with sec. 340 of this chapter.

23 Sec. 28.21.110. POLICIES APPLICABLE TO AN ACCIDENT. (a) Except
24 as provided in (b) and (c) of this section, each personal protection
25 insurance policy shall apply to accidental bodily injury to the person
26 named in the policy, his spouse, and any relative of either domiciled
27 in the same household. When personal protection insurance benefits
28 are payable to or for the benefit of an injured person under his own
29 policy and would also be payable under the policy of his spouse,

1 relative or relative's spouse, the injured person's insurer shall pay
2 all of the benefits and is not entitled to recoupment from the other
3 insurer.

4 (b) A person suffering accidental bodily injury while he is an
5 operator or a passenger of a motor vehicle operated in the business
6 of transporting passengers shall receive the personal protection
7 insurance benefits to which he is entitled from the insurer of that
8 motor vehicle.

9 (c) An employee, his spouse or any relative of either domiciled
10 in the same household who suffers accidental bodily injury while an
11 occupant of a motor vehicle owned or registered by the employer of the
12 employee shall receive personal protection insurance benefits to which
13 he is entitled from the insurer of the furnished vehicle.

14 (d) Except as provided in (a), (b) and (c) of this section,
15 a person suffering accidental bodily injury while an occupant of a
16 motor vehicle shall claim personal protection insurance benefits from
17 insurers in the following order of priority:

18 (1) the insurer of the owner or registrant of the vehicle
19 occupied,

20 (2) the insurer of the operator of the vehicle occupied.

21 (e) The following apply to persons not occupying any vehicle:

22 (1) except as provided in (a) of this section, a person
23 suffering accidental bodily injury while not an occupant of a motor
24 vehicle shall claim personal protection insurance benefits from insurers
25 in the following order of priority:

26 (A) insurers of owners or registrants of motor vehicles
27 involved in the accident,

28 (B) insurers of operators of motor vehicles involved
29 in the accident;

1 (2) when two or more insurers are in the same order of
2 priority to provide personal protection insurance benefits, an insurer
3 paying benefits due is entitled to partial recoupment from the other
4 insurer or insurers in the same order of priority, together with a
5 reasonable amount of partial recoupment of the expense of processing
6 the claim, in order to accomplish equitable distribution of the loss
7 among the insurers.

8 (f) Any limitation upon the amount of personal protection
9 insurance benefits available because of accidental bodily injury to
10 one person arising from one motor vehicle accident shall be determined
11 without regard to the number of policies applicable to the accident.

12 Sec. 28.21.120. INSURER'S RIGHT OF REIMBURSEMENT AND INDEMNITY.

13 (a) No subtraction from personal protection insurance benefits may
14 be made because of the value of a claim in tort based on the same
15 accidental bodily injury; however, after recovery is realized upon
16 a tort claim, a subtraction will be made to the extent of the recovery,
17 exclusive of reasonable attorneys' fees and other reasonable expenses
18 incurred in effecting the recovery. If personal protection insurance
19 benefits have already been received, the claimant shall repay to the
20 insurer or insurers out of the recovery a sum equal to the benefits
21 received, but not more than the recovery exclusive of reasonable
22 attorney fees and other reasonable expenses incurred in effecting the
23 recovery. The insurer or insurers shall have a lien on the recovery
24 to this extent. No recovery by an injured person or his estate for
25 loss suffered by him may be subtracted in calculating benefits due
26 a dependent after the injured person's death, and no recovery by a
27 dependent for loss suffered by the dependent after the death will be
28 subtracted in calculating benefits due the injured person.

29 (b) A personal protection insurer with a right of reimbursement

1 under (a) of this section, if suffering loss from inability to collect
2 the reimbursement out of a payment received by a claimant on a tort
3 claim, is entitled to indemnity from one who, with notice of the
4 insurer's interest, made a payment to the claimant without making
5 the claimant and the insurer joint payees as their interests may
6 appear, or without obtaining the insurer's consent to a different
7 method of payment.

8 (c) The following provisions apply to accidents involving
9 commercial vehicles:

10 (1) An insurer, other than the insurer of a motor vehicle
11 operated in the business of transporting passengers, which pays
12 personal protection insurance benefits with respect to a person suffer-
13 ing accidental bodily injury in an accident involving a vehicle
14 designed or primarily used to transport property or equipment over a
15 public highway shall have a right of reimbursement from the personal
16 protection insurer of the vehicle for 75 per cent of the benefits
17 paid; however, the total reimbursement obligation of the insurer of
18 the vehicle shall not exceed \$1,000,000 for all accidental bodily
19 injury resulting from the accident. When two or more personal protec-
20 tion insurers have an obligation to make reimbursements under this
21 paragraph for the same accident, they shall share the obligation
22 equally, but the limitation of the total reimbursement obligation
23 under this section applies separately to each.

24 (2) For purposes of this paragraph, a vehicle shall be
25 considered to be involved in an accident only if

26 (A) there is physical contact of the vehicle with the
27 person injured or the vehicle which he is occupying, or with
28 another vehicle or object involved in the accident, or

29 (B) the operator of the vehicle is convicted of a

1 traffic violation which contributed to the accident.

2 Sec. 28.21.130. PRIMARY AND COLLATERAL SOURCES OF INDEMNITY. (a)

3 The personal protection insurer shall have the primary obligation to
4 indemnify for the elements of loss under sec. 50 of this chapter
5 because of accidental bodily injury arising out of the ownership,
6 operation, maintenance or use of a motor vehicle as a motor vehicle.
7 Payment by the insurer of personal protection insurance benefits with
8 respect to the injury shall operate to discharge, to the extent of the
9 payment, the obligations of any person, organization, insurer or
10 governmental agency to indemnify against loss under any workmen's
11 compensation, unemployment compensation or disability benefits law
12 or any similar law. If the personal protection insurer fails to pay
13 any of the benefits due under this chapter with respect to an injury,
14 then the person, organization, insurer or governmental agency shall
15 have, with respect to any payment it may be obligated to make, a lien
16 on the obligation of the personal protection insurer, by giving prior
17 written notice of its intention to make payment for the injury.

18 (b) A person, organization or insurer may include in any contract
19 or benefit plan which it offers or sells, a provision excluding bene-
20 fits for accidental bodily injury which are payable under personal
21 protection insurance; however, this exclusion shall not be available
22 with respect to any indemnity

23 (1) vested by contract or funded prior to the effective
24 date of this Act, or

25 (2) under any contract or obligation which may be continued
26 at the option of the purchaser, insured or irrevocable beneficiary by
27 payment of a previously established fixed premium or other fixed con-
28 tract charge or fee.

29 Sec. 28.21.140. LIABILITY FOR PROPERTY PROTECTION INSURANCE

1 BENEFITS. (a) Under property protection insurance the insurer is
2 liable to pay benefits for accidental damage to tangible property
3 arising out of the ownership, operation, maintenance or use of a motor
4 vehicle as a motor vehicle subject to the provisions of this section.

5 (b) Property protection insurance benefits are due under this
6 chapter without regard to fault.

7 (c) Damage to tangible property consists of physical injury to
8 or destruction of the property and loss of use of the property so
9 injured or destroyed. Damage to tangible property is accidental, as
10 to one claiming property protection insurance benefits, unless it is
11 suffered or caused intentionally by the claimant. Even though a person
12 knows that damage to tangible property is substantially certain to be
13 caused by his act or omission, he does not cause or suffer the damage
14 intentionally if he acts or refrains from acting for the purpose of
15 averting injury to any person or persons, including himself, or for
16 the purpose of averting damage to tangible property.

17 (d) Property protection insurance benefits consist of the lesser
18 of reasonable repair costs or replacement costs less depreciation and,
19 where applicable, the value of loss of use; however, the property
20 protection insurance benefits paid under one policy for damage to all
21 tangible property arising from one accident shall not exceed \$1,000,000

22 Sec. 28.21.150. EXCLUSIONS. (a) Damage to the following kinds
23 of property is excluded from property protection insurance benefits:

24 (1) motor vehicles and their contents;

25 (2) property owned by a person named in a property protection
26 insurance policy, his spouse or a relative of either domiciled in the
27 same household, if the person named, his spouse or a relative was the
28 owner, registrant or operator of a vehicle involved in the motor
29 vehicle accident out of which the property damage arose.

1 (b) Property protection insurance benefits are not payable for
2 property damage arising from motor vehicle accidents occurring out of
3 the state.

4 Sec. 28.21.160. PROPERTY PROTECTION CLAIMS. Persons suffering
5 accidental property damage shall claim property protection insurance
6 benefits from insurers in the following order of priority:

7 (1) insurers of vehicles designed and primarily used to
8 transport property or equipment over a public highway, which are involved
9 in the accident out of which the property damage arose;

10 (2) insurers of owners or registrants of other type vehicles
11 involved in the accident;

12 (3) insurers of operators of other type vehicles involved
13 in the accident.

14 Sec. 28.21.170. DISTRIBUTION, REIMBURSEMENT AND INDEMNITY. The
15 provisions for distribution of loss and for reimbursement and indemnifi-
16 cation among personal protection insurers under secs. 110(e)(2) and
17 120(a) and (b) of this chapter also apply to property protection insurers.

18 Sec. 28.21.180. RESIDUAL LIABILITY INSURANCE. Residual liability
19 insurance shall cover bodily injury and property damage which occurs
20 outside the state and within the United States, its territories and
21 possessions or in Canada. Residual liability insurance shall afford
22 coverage equivalent to that required as evidence of automobile liability
23 insurance under the financial responsibility laws of the place in which
24 the injury or damage occurs.

25 Sec. 28.21.190. TORT EXEMPTION. When accidental bodily injury
26 or accidental damage to tangible property arises out of the ownership,
27 operation, maintenance or use of a motor vehicle as a motor vehicle,
28 an owner, registrant, operator or occupant of a motor vehicle involved
29 in the accident and persons or organizations legally responsible for

1 his acts or omissions are exempt from tort liability for the bodily
2 injury or property damage; however, an owner, registrant, operator or
3 occupant shall not be exempt if he is excluded under sec. 100 of this
4 chapter from personal protection insurance benefits for accidental
5 bodily injury arising from the same motor vehicle accident. This
6 exemption shall apply when the law of this state is controlling in
7 determining tort liability.

8 Sec. 28.21.100. DUTY TO GIVE NOTICE OF ACCIDENT. An insurer may
9 require its policyholders to give written notice as soon as practicable
10 after an accident involving a motor vehicle with respect to which the
11 policy affords the security required by this chapter.

12 Sec. 28.21.210. PERSONAL PROTECTION INSURANCE BENEFITS PAYABLE
13 PERIODICALLY. (a) Personal protection insurance benefits are payable
14 as loss accrues.

15 (b) Personal protection insurance benefits are overdue if not
16 paid within 30 days after the insurer receives reasonable proof of the
17 fact and of the amount of loss sustained. If reasonable proof is not
18 supplied as to the entire claim, the amount supported by reasonable
19 proof is overdue if not paid within 30 days after the proof is received
20 by the insurer. Any part or all of the remainder of the claim that is
21 later supported by reasonable proof is overdue if not paid within 30
22 days after the proof is received by the insurer. For the purpose of
23 calculating the extent to which any benefits are overdue, payment shall
24 be treated as made on the date a draft or other valid instrument was
25 placed in the United States mail in a properly addressed, postpaid
26 envelope, or, if not so posted, on the date of delivery.

27 (c) All overdue payments bear simple interest at the rate of six
28 per cent a year.

29 Sec. 28.21.220. BENEFITS NOT ASSIGNABLE. An agreement for assign-

1 ment of any rights to benefits payable in the future is unenforceable.

2 Sec. 28.21.230. LUMP-SUM SETTLEMENTS. Rights and obligations
3 arising under personal protection insurance, either with respect to a
4 claim for a limited period of time or with respect to all future loss
5 arising from an accidental bodily injury, may be discharged by

6 (1) lump-sum settlement for an amount not exceeding \$1,000,

7 or

8 (2) settlement for a larger lump-sum with judicial approval
9 on a finding that the settlement will contribute substantially to the
10 welfare or rehabilitation of the injured person or his dependents.

11 Sec. 28.21.240. LIMITATION OF ACTIONS. (a) No action for the
12 recovery of personal protection insurance benefits payable under this
13 chapter for accidental bodily injury may be commenced later than one
14 year after the date of the accident causing the injury unless written
15 notice of injury as provided in this chapter has been given to the
16 insurer within one year after the accident or unless the insurer has
17 previously made a payment of personal protection insurance benefits
18 for such injury. If notice has been given or a payment has been made,
19 the action may be commenced at any time within a period of one year
20 after the most recent allowable expense, work loss or survivor's loss
21 has been incurred; however, the claimant may not recover benefits for
22 any portion of the loss incurred more than one year before the date
23 on which the action was commenced. The notice of injury required by
24 this subsection may be given to the insurer or any of its authorized
25 agents by any person claiming to be entitled to benefits, or by someone
26 on his behalf. The notice shall give the name and address of the
27 claimant and indicate in ordinary language the name of the person
28 injured and the time, place and nature of his injury.

29 (b) No action for the recovery of property protection insurance

1 benefits may be commenced later than one year after the accident.

2 (c) No action by an insurer to enforce its rights of recovery or
3 indemnity under sec. 120 of this chapter may be commenced later than
4 one year after

5 (1) the payment has been received by a claimant on a tort
6 claim with respect to which the insurer has a right of reimbursement
7 or recovery under sec. 120(a) or (b) of this chapter, or

8 (2) the payment has been made by the insurer with respect
9 to which the insurer has a right of reimbursement under sec. 120(c)
10 of this chapter.

11 Sec. 28.21.250. PERIODS AS TO WHICH JUDGMENTS ARE BINDING. (a)
12 Upon trial of an action for personal protection insurance benefits, or
13 upon retrial under an application filed under the terms of this section,
14 judgment shall be entered as to all benefits to come due thereafter
15 during those periods as to which the court finds that a reasonably
16 certain determination of future loss can be made under the evidence.

17 (b) A judgment awarding personal protection insurance benefits
18 to come due more than five years after the date of the judgment may be
19 set aside on application of an interested party presented for hearing
20 not sooner than five years after the date of judgment. Upon application,
21 the only issue to be tried is the amount of unpaid benefits coming due
22 not less than five years after the date of the judgment and not more
23 than one year before the date of the application, and that issue shall
24 be the subject of a new trial.

25 Sec. 28.21.260. ATTORNEY FEES. (a) An attorney is entitled to
26 a reasonable fee for advising and representing a claimant in an action
27 for personal or property protection insurance benefits which are over-
28 due. The attorney fee shall be a charge against the insurer in addition
29 to the benefits recovered, if the court finds that the insurer

1 unreasonably refused to pay the claim or unreasonably delayed in making
2 proper payment.

3 (b) Within the discretion of a court, an insurer may be allowed
4 an award of a reasonable sum against a claimant as an attorney fee for
5 the insurer's attorney in defense against a claim that was in some
6 respect fraudulent or so excessive as to have no reasonable foundation.
7 To the extent that any personal or property protection insurance
8 benefits are then due or will come due to the claimant because of loss
9 resulting from the injury on which the claim is based, the attorney
10 fee may be treated as an offset against the benefits; also, judgment
11 may be entered against the claimant for any amount of a fee awarded
12 against him and not offset in this way or otherwise paid.

13 Sec. 28.21.270. MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON.

14 (a) Whenever the mental or physical condition of a person is material
15 to a claim that has been or may be made for past or future personal
16 protection insurance benefits, the person shall submit to mental or
17 physical examination by a physician or physicians. Personal protection
18 insurers are authorized to include reasonable provisions in personal
19 protection insurance policies for mental and physical examination of
20 those claiming personal protection insurance benefits.

21 (b) If requested by the person examined, a party causing an
22 examination to be made shall deliver to him a copy of every written
23 report concerning the examination rendered by an examining physician,
24 at least one of which must set out his findings and conclusions in
25 detail. After a request for and delivery of the reports, the party
26 causing the examination to be made is entitled upon request to receive
27 from the person examined every written report available to him or his
28 representative concerning any examination, previously or thereafter
29 made, of that mental or physical condition. By requesting and obtaining

1 a report of the examination ordered or by taking the deposition of the
2 examiner, the person examined waives any privilege he may have, in
3 relation to the claim for benefits, regarding the testimony of every
4 other person who has examined or may examine him regarding that mental
5 or physical condition.

6 (c) A court may make any orders in regard to the refusal to
7 comply with (a) and (b) of this section as are just; however, no order
8 may be entered directing the arrest of a person for disobeying an order
9 to submit to a physical or mental examination. The orders that may
10 be made in regard to a refusal to submit to examination include, but
11 are not limited to, the following:

12 (1) an order that the mental or physical condition of the
13 disobedient person shall be taken to be established for the purposes
14 of the claim in accordance with the contention of the party obtaining
15 the order;

16 (2) an order refusing to allow the disobedient person to
17 support or oppose designated claims or defenses, or prohibiting him
18 from introducing evidence of his mental or physical condition;

19 (3) an order rendering judgment by default against the
20 disobedient person as to his entire claim or a designated part of it;

21 (4) an order requiring the disobedient person to reimburse
22 the insurer for reasonable attorney fees and expenses incurred in
23 defense against the claim;

24 (5) an order requiring delivery of a report, in conformity
25 with (b) of this section, on those terms that are just, and if a
26 physician fails or refuses to make the report a court may exclude his
27 testimony if offered at trial.

28 Sec. 28.21.280. AUTHORIZATION FOR REHABILITATIVE TREATMENT OR
29 OCCUPATIONAL TRAINING. The insurer, whose policy is applicable to the

1 accidental bodily injury, may propose and is responsible for rehabilita-
2 tion procedures or treatment, and rehabilitative occupational training
3 for the injured person. Any procedures, treatment or course of
4 rehabilitation must meet the following standards:

5 (1) a specified procedure or treatment, whether or not
6 involving surgery, must be recognized and medically accepted;

7 (2) a specified course of occupational training must be a
8 recognized form of training and be reasonable and appropriate for the
9 particular case;

10 (3) a specified procedure, treatment or training must contri-
11 bute substantially to rehabilitation;

12 (4) the cost of the procedure, treatment or training must
13 be reasonable in relation to his probable rehabilitative effects.

14 Sec. 28.21.290. ORDER CONCERNING INJURED PERSON'S REFUSAL OF
15 REHABILITATIVE TREATMENT OR OCCUPATIONAL TRAINING. (a) After a hearing
16 upon application by an interested person and reasonable notice to all
17 other interested persons, and upon findings, supported by evidence, as
18 stated in (d) of this section and further findings (1) that the injured
19 person has refused or has by his conduct caused the insurer reasonably
20 to believe that he may refuse to submit to a procedure, treatment, or
21 training, and (2) that the injured person does not have reasonable
22 grounds to continue the refusal, a court may enter an order invoking
23 reasonable sanctions against the injured person and others whose claims
24 are based on his accidental bodily injury.

25 (b) In determining whether an injured person has reasonable grounds
26 for continuing refusal to submit to the specified procedure, treatment,
27 or training, the court shall take into account, among all other relevant
28 factors, the extent of the probable benefit, the attendant risks, the
29 extent to which the procedure, treatment, or training is or is not

1 recognized as standard and customary, and whether the imposition of
2 sanctions, because of the injured person's refusal, would abridge his
3 right to the free exercise of his religion.

4 (c) The sanctions that may be invoked in an order include, but
5 are not limited to, the following:

6 (1) an order that personal protection insurance benefits
7 be reduced or terminated at a time necessary to limit recovery of
8 benefits to an amount equal to the benefits that in reasonable probabili-
9 ty would have been due had the injured person submitted to the
10 rehabilitative procedure, treatment, or training;

11 (2) an order that the physical or mental condition of the
12 injured person shall be taken to be established for the purposes of
13 the claim in accordance with the contention of the insurer;

14 (3) an order that, if the insurer elects to pay a specified
15 lump sum which is found to be fair and reasonable compensation in lieu
16 of benefits that in reasonable probability would be due if the injured
17 person submitted to the specified procedure, treatment, or training,
18 it shall be fully discharged from all liability arising from the
19 accidental bodily injury.

20 Sec. 28.21.300. CHARGES FOR TREATMENT OF INJURED PERSONS. A
21 physician, hospital, clinic, or other person lawfully rendering treatment
22 to an injured person for an accidental bodily injury covered by personal
23 protection insurance, and any person providing rehabilitative occupa-
24 tional training following the injury, may charge a reasonable amount
25 for the products, services, and accommodations rendered. In no case,
26 however, may a charge be in excess of the amount the person or institu-
27 tion customarily charges for like products, services, and accommodations
28 in cases involving no insurance.

29 Sec. 28.21.310. DISCOVERY OF FACTS ABOUT AN INJURED PERSON. (a)

1 Every employer shall, if a request is made by a personal protection
2 insurer against whom a claim has been made, furnish, on a form approved
3 by the department, a sworn statement of the earnings since the time of
4 the accidental bodily injury and for a reasonable period before the
5 injury, of the person upon whose injury the claim is based.

6 (b) A physician, hospital, clinic, or other person providing,
7 before or after an accidental bodily injury upon which a claim for
8 personal protection insurance benefits is based, any products, services,
9 or accommodations in relation to that or any other injury, or in
10 relation to a condition claimed to be connected with that or any other
11 injury, shall, if requested to do so by the insurer against whom the
12 claim has been made,

13 (1) furnish a written report of the history, condition,
14 treatment, and dates and costs of treatment of the injured person, and

15 (2) produce and permit the inspection and copying of the
16 records regarding the history, condition, treatment, and dates and
17 costs of treatment.

18 (c) In a dispute regarding an insurer's right to discovery of
19 facts about an injured person's earnings or about his history, condition,
20 treatment, and dates and costs of treatment, a court may enter an
21 order for discovery. The order may be made only on motion for good
22 cause shown and upon notice to all persons having an interest; and it
23 shall specify the time, place, manner, conditions, and scope of the
24 discovery. A court may, in order to protect against annoyance, embar-
25 rassment, or oppression, as justice requires, enter an order refusing
26 discovery or specifying conditions of discovery and may order payments
27 of costs and expenses of the proceeding, including reasonable fees for
28 the appearance of attorneys at the proceedings, as justice requires.

29 Sec. 28.21.320. AUTHORIZATION TO WRITE PERSONAL AND PROPERTY

1 PROTECTION AND RESIDUAL LIABILITY INSURANCE. An insurer licensed to
2 write motor vehicle liability insurance in this state is authorized to
3 offer personal and property protection insurance and residual liability
4 insurance under this chapter.

5 Sec. 28.21.330. ELECTIONS OF INSURED. (a) If an insured so
6 elects, the insurer writing personal and property protection insurance
7 shall also provide insurance for accidental loss of or damage to motor
8 vehicles owned by the insured, regardless of fault, subject to the
9 deductible stated on the face of the policy and to a limit not less
10 than the actual cash value of the vehicle, and subject to any exclusion
11 as to damage caused otherwise than by collision or upset.

12 (b) If an insured so elects, the insurer writing personal and
13 property protection insurance shall also provide added protection
14 insurance which shall

15 (1) insure against all or part of any amount of loss that
16 would be excluded by the limits on hospital charges, funeral and burial
17 expenses and monthly work loss set forth in secs. 50 - 70 of this
18 chapter, or

19 (2) indemnify according to a reasonable schedule for a
20 permanent loss of 50 per cent or more of the functions of a vital part
21 of the body or a substantial and permanent disfigurement.

22 Sec. 28.21.340. INSURER'S CERTIFICATION REGARDING OUT-OF-STATE
23 POLICIES. (a) An insurer licensed to write motor vehicle liability
24 insurance and personal and property protection insurance in the state
25 is required to file and maintain a written certification that any
26 accidental bodily injury or property damage occurring in this state
27 arising from the ownership, operation, maintenance or use of a motor
28 vehicle as a motor vehicle by out-of-state residents who are insured
29 under its motor vehicle liability insurance policies, shall be subject

1 to the personal and property protection insurance system set under this
2 chapter.

3 (b) A nonadmitted insurer may voluntarily file the certification
4 under (a) of this section.

5 (c) When a certification filed under (a) and (b) of this section
6 applies to accidental bodily injury or property damage, the insurer
7 and its insureds, with respect to that injury or damage, have all the
8 rights and immunities under this chapter for personal and property
9 protection insureds, and claimants have all the rights and benefits of
10 personal and property protection insurance claimants, including the
11 right to receive benefits from the electing insurer as if it were an
12 insurer of personal and property protection insurance applicable to the
13 accidental bodily injury or property damage.

14 Sec. 28.21.3~~5~~0. RATES AND CLASSIFICATIONS. Rates and classifica-
15 tions for personal and property protection insurance, including added
16 protection coverage, are subject to the provisions of AS 21.39 regula-
17 ting casualty insurance rates in this state.

18 Sec. 28.21.3~~5~~0. ASSIGNED CLAIMS BUREAU AND PLAN. (a) Insurers
19 authorized to write personal protection insurance in the state are
20 authorized, subject to approval and regulation by the commissioner of
21 commerce, to organize and maintain an assigned claims bureau and an
22 assigned claims plan, and to formulate rules and regulations for their
23 operations and the assessment of costs on a fair and equitable basis
24 consistent with the provisions of this chapter. In default of the
25 organization and continued maintenance of an assigned claims bureau and
26 assigned claims plan, the commissioner of commerce shall organize and
27 maintain a bureau and plan.

28 (b) An insurer writing personal protection insurance in the state
29 is required to participate in the assigned claims bureau and the assigned

1 claims plan.

2 Sec. 28.21.370. PERSONS ENTITLED TO CLAIM THROUGH ASSIGNED CLAIMS
3 PLAN. (a) A person entitled to claim because of accidental bodily
4 injury arising out of the ownership, operation, maintenance or use of a
5 motor vehicle as a motor vehicle in the state may obtain personal
6 protection insurance benefits through the assigned claims plan estab-
7 lished under this chapter if (1) no personal protection insurance is
8 applicable to the injury, or (2) no personal protection insurance
9 applicable to the injury can be identified, or (3) the only identifi-
10 able personal protection insurance applicable to the injury is, because
11 of financial inability of one or more insurers to fulfill their
12 obligations, inadequate to provide benefits up to the maximum prescribed.
13 In the latter case all unpaid benefits due or coming due are subject
14 to being collected under the assigned claims plan, and the insurer to
15 which the claim is assigned, or the bureau of assigned claims if the
16 claim is assigned to it, is entitled to reimbursement from the
17 defaulting insurers to the extent of their financial responsibility.

18 (b) A person who because of a limitation or exclusion in secs. 30
19 130 of this chapter is disqualified from receiving personal protection
20 insurance benefits under a policy otherwise applying to his accidental
21 bodily injury is also disqualified from receiving benefits under the
22 assigned claims plan.

23 Sec. 28.21.380. CLAIMANT TO NOTIFY BUREAU FOR ASSIGNMENT OF
24 CLAIM. A person claiming through the assigned claims plan shall notify
25 the bureau of assigned claims of his claim within the time that would
26 have been allowed for filing an action for personal protection insurance
27 benefits had there been in effect identifiable coverage applicable to
28 the claim. The bureau shall promptly assign the claim in accordance
29 with the plan and notify the claimant of the identity and address of

1 the insurer to which the claim is assigned or of the bureau if the
2 claim is assigned to it. No action by the claimant may be commenced
3 later than 30 days after receipt of notice of the assignment or no later
4 than the last date on which the action could have been commenced against
5 an insurer of identifiable coverage applicable to the claim, whichever
6 is later.

7 Sec. 28.21.390. PRINCIPLE OF ASSIGNMENT. An assignment of claims
8 shall be made according to rules and regulations that assure fair
9 allocation of the burden of assigned claims among insurers doing
10 business in the state on a basis reasonably related to the volume of
11 personal protection insurance they write. Insurers to whom claims
12 have been assigned shall make prompt payment of loss in accordance with
13 the terms of this chapter and shall be entitled to reimbursement by the
14 bureau for the payments and the established loss adjustment cost. The
15 insurer to whom a claim is assigned shall preserve and enforce all
16 rights to indemnity or reimbursement against third parties and account
17 to the assigned claims bureau for receipts under those rights.

18 Sec. 28.21.400. OPERATING COSTS OF ASSIGNED CLAIMS BUREAU. (a)
19 Losses paid, the cost of adjusting losses, and costs incurred in the
20 operation of the bureau shall be assessed against insurers according
21 to rules and regulations that assure fair allocation among insurers
22 writing personal protection insurance in the state, on a basis reason-
23 ably related to the volume of personal protection insurance they write.

24 (b) All reasonable costs incurred in the handling and disposition
25 of assigned claims, including amounts paid under assessments under
26 (a) of this section, shall be taken into account in making and regulating
27 rates for personal protection insurance.

28 Sec. 28.21.410. RIGHTS AGAINST UNINSURED MOTOR VEHICLE OWNERS OR
29 REGISTRANTS. The insurer obligated to pay personal protection insurance

1 benefits for accidental bodily injury to a person occupying an uninsured
2 motor vehicle or to the spouse or relative resident in the household of
3 the owner or registrant of an uninsured motor vehicle shall be
4 entitled to recover all the benefits paid and appropriate loss adjust-
5 ment costs incurred from the owner or registrant of the uninsured motor
6 vehicle or from his estate. The failure of the person to make payment
7 within 30 days shall be grounds for suspension or revocation of his
8 motor vehicle registration and operator's license.

9 Sec. 28.21.420. CRIMINAL PENALTIES. An owner or registrant of
10 a motor vehicle for which security is required, who operates the motor
11 vehicle or permits it to be operated on a public highway in this state
12 without having in effect security complying with the terms of this
13 chapter is guilty of a misdemeanor. Any other person who operates a
14 motor vehicle upon a public highway in this state with the knowledge
15 that the owner or registrant does not have security in effect under
16 this chapter is guilty of a misdemeanor. A person convicted of a
17 misdemeanor under the terms of this section is punishable by a fine
18 of not less than \$100 nor more than \$500, or by imprisonment for not
19 more than one year, or by both.

20 Sec. 28.21.430. DEFINITIONS. In this chapter, unless the context
21 otherwise requires,

- 22 (1) "bureau" means assigned claims bureau;
23 (2) "department" means Department of Public Safety;
24 (3) "driver" means every person who drives or is in physical
25 control of a vehicle;
26 (4) "injured person" means a natural person suffering
27 accidental bodily injury;
28 (5) "motor vehicle" means any vehicle, including a trailer,
29 operated or designed for operation on a public highway by any power

1 other than muscle power;

2 (6) "nonresident" means a person who is not a resident of
3 the state;

4 (7) "uninsured motor vehicle" means a motor vehicle with
5 respect to which no security as required by sec. 20 of this chapter is
6 in effect at the time of an accident.

7 * Sec. 2. AS 28.20 is repealed.

8 * Sec. 3. AS 28.10.050(a) is amended by adding a new paragraph to read:

9 (6) proof of security required by ch. 21 of this title.

10 * Sec. 4. AS 28.10.100 is amended by adding a new paragraph to read:

11 (5) that the security required by ch. 21 of this title is
12 not in effect on the vehicle.

13 * Sec. 5. AS 21.12.070(a) is amended by adding a new paragraph to read:

14 (15) personal and property protection motor vehicle insurance:
15 insurance required under AS 28.21 for securing the benefits under that
16 chapter.
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