

Introduced: 5/7/71
Referred: Commerce and
Judiciary

BY THE COMMERCE COMMITTEE
BY REQUEST

1 IN THE HOUSE

2 CS HOUSE BILL NO. 464
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to automobile liability insurance;
7 and providing for an effective date."

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

9 * Section 1. AS 21 is amended by adding a new chapter to read:

10 CHAPTER 50. AUTOMOBILE LIABILITY ECONOMIC LOSS COVERAGE.

11 Sec. 21.50.010. BASIC ECONOMIC LOSS COVERAGE. (a) No policy
12 insuring a person against loss resulting from liability for accidental
13 bodily injury or death arising out of the ownership, maintenance or use
14 of an automobile registered or principally garaged in the state may be
15 delivered or issued for delivery in the state after the effective date
16 of this Act unless coverage is provided in it or supplemental to it
17 affording the minimum medical, hospital and disability benefits speci-
18 fied in this section. The coverage shall be provided to the named
19 insured and members of his family residing in his household when
20 injured in a motor vehicle accident, to other persons injured while
21 occupying the automobile as guest passengers or while using it with the
22 permission, expressed or implied, of the named insured, and to pedes-
23 trians struck by the automobile in accidents in the state. For the
24 purposes of this subsection, minimum coverage is as follows:

25 (1) For medical and hospital benefits, the payment of all
26 reasonable expenses arising from the accident for necessary medical,
27 surgical, x-ray and dental services, prosthetic devices, and necessary
28 ambulance, hospital, professional nursing and funeral services, incurred
29 within one year from the date of the accident and up to an aggregate

1 limit of \$2,000 per person. Hospital room and board benefits may be
2 limited to the regular daily semi-private room rates customarily
3 charged by the institution in which the recipient of benefits is con-
4 fined.

5 (2) For disability benefits in the case of an income pro-
6 ducer, payment of benefits equal to 85 per cent of loss of income as a
7 result of total disability, subject to a maximum of \$750 per month.
8 These benefits shall commence not more than two weeks after the date
9 of the accident, and be payable without regard to eligibility for any
10 other form of wage continuation benefits. If the injured person was
11 not an income producer at the time of the accident, but performed
12 essential services, payment of benefits not exceeding \$12 per day shall
13 be made in reimbursement of expenses reasonably incurred for substitute
14 services, commencing not more than two weeks after the date of the acci-
15 dent. Disability benefits are payable during the life of the injured
16 person, subject to an aggregate limit of (A) \$6,000 per accident,
17 payable to any income producer for loss of income, and (B) \$4,500
18 payable to any one person who is not an income producer for expenses
19 for essential substitute services. The insurer providing disability
20 benefits may require, as a condition for receiving the benefits, that
21 the injured person furnish the insurer reasonable medical proof of the
22 disability.

23 (b) The existence of a cause of action in tort by a recipient of
24 benefits under this section does not eliminate the insurer's obligation
25 to pay the benefits; however, if before timely payment by the insurer
26 of the benefits, payment in whole or in part of his loss is received
27 by the recipient from a third person who is or may be liable in tort
28 for the loss, or from the agent or insurer of a third person, either by
29 way of advance payment or settlement of the potential liability of the

1 third person, the recipient shall disclose the fact, and may not
2 collect benefits under this section to the extent that the benefits
3 would result in a duplication of payment or reimbursement of the same
4 loss.

5 (c) An insurer licensed to write automobile liability insurance
6 in the state is considered to have agreed as a condition to maintaining
7 his license that (1) if its insured is or would be liable for damages
8 for injuries sustained by a person to whom the minimum benefits pro-
9 vided in this section have been paid by another insurer, it will
10 reimburse the other insurer to the extent of the benefits, but not in
11 excess of the amount of damages recoverable for the types of loss
12 covered by the benefits or in excess of the limits of its liability
13 under its policy, and (2) that the issue of liability for the reim-
14 bursement and the amount of it shall be decided by mandatory, binding
15 intercompany arbitration procedures. If the insurer providing the
16 benefits also has provided coverage to the same policyholder for
17 collision arising out of the same occurrence, the insurer shall submit
18 the issue of recovery of collision payments to the same mandatory and
19 binding arbitration proceedings as the liability amounts were submitted
20 to under this subsection. Evidence submitted or a decision rendered
21 in arbitration proceedings is privileged and not admissible in an
22 action at law or in equity.

23 (d) If an insurer has paid benefits within the minimum limits
24 under this section to an injured party for whose injuries legal liabili-
25 ty exists or may exist on the part of a third person who is not an
26 insured under a policy of automobile liability insurance issued by an
27 insurer licensed to write automobile liability insurance in the state,
28 the insurer paying the benefits is, to the extent of the payments, sub-
29 rogated to any right of action for damages by the injured party against

1 the third person.

2 Sec. 21.50.020. SUPPLEMENTAL CATASTROPHE ECONOMIC LOSS COVERAGE.

3 (a) An insurer who provides benefits under sec. 10 of this chapter
4 shall also make available, at the option of the person named in the
5 policy as insured, catastrophe economic loss coverage providing for
6 payment of benefits to the named insured and members of his family
7 residing in his household, in excess of the minimum benefits prescribed
8 in sec. 10 of this chapter, commencing on the exhaustion of the minimum
9 medical and hospital benefits or minimum disability benefits or both,
10 as follows:

11 (1) For medical and hospital benefits, the payment of all
12 reasonable expenses arising from the accident for necessary medical,
13 surgical, x-ray and dental services, including prosthetic devices,
14 and necessary ambulance, hospital, professional nursing and funeral
15 services; however, the benefits payable for funeral services shall not
16 exceed \$2,000. Hospital room and board benefits may be limited to the
17 regular daily semiprivate room rates customarily charged by the insti-
18 tution in which the recipient of benefits is confined.

19 (2) For disability benefits, in the case of an income pro-
20 ducer, payment of benefits during his lifetime equal to 85 per cent of
21 loss of income as a result of total disability, subject to a maximum
22 limit of \$750 per month. If the injured person is not an income pro-
23 ducer at the time of accident, but performed essential services, payment
24 of benefits not exceeding \$12 a day during his lifetime shall be made
25 in reimbursement of expenses reasonably incurred for substitute help
26 to perform the services.

27 (3) If death occurs within one year from the date of the
28 accident, a survivor's benefit shall be paid to a surviving spouse or
29 children of the deceased, as follows:

1 (A) if the survivors were dependent upon the deceased
2 for income then

3 (i) if there is one surviving dependent, the bene-
4 fit shall be 50 per cent of the average monthly income the
5 deceased would have earned had he survived;

6 (ii) if there are two or more dependents, the
7 benefit shall be 75 per cent of the average monthly income;

8 (B) if a minor or incompetent child or children are not
9 dependent upon the deceased parent for financial support, sur-
10 vivor's benefits are payable to compensate for ordinary or neces-
11 sary services obtained in lieu of those the decedent would have
12 performed for the minor or incompetent child or children;

13 (C) benefits provided for in (A) and (B) of this para-
14 graph are subject to a maximum limit of \$750 a month and an
15 aggregate maximum limit of \$25,000 for any one accident; payments
16 to the surviving spouse may be terminated in the event the surviv-
17 ing spouse remarries or dies; and payments to a dependent child
18 may be terminated when he attains majority, marries, or becomes
19 otherwise emancipated, or dies.

20 (4) For death benefits, due to the death of the insured
21 named in the policy as a result of the accident, a minimum of \$5,000
22 payable to a named beneficiary.

23 (b) Benefits under this section may be made subject to an aggre-
24 gate limit payable on behalf of any one person as a result of any one
25 accident of not less than \$100,000.

26 Sec. 21.50.030. PAYMENT OF BENEFITS. (a) The benefits prescribed
27 in sec. 20 of this chapter are payable as follows:

28 (1) A person injured in an accident while occupying an
29 insured automobile, or injured as a pedestrian by the automobile, the

1 benefits are payable by the insurer of the automobile.

2 (2) For a person insured under a policy who is injured in
3 an automobile accident while occupying or being struck by an automobile
4 not insured for the benefits under another policy, the benefits are
5 payable by the insurer affording the benefits. However, the benefits
6 shall be reduced to the extent of any automobile medical or disability
7 benefits coverage applicable to the automobile under the other policy.

8 (b) No person may recover benefits under the minimum coverage
9 prescribed in sec. 10 of this chapter from more than one policy or
10 insurer on either a duplicative or supplemental basis.

11 (c) The benefits payable under sec. 20 of this chapter may be
12 made in excess of any other collateral source benefits paid or payable
13 to the persons covered except that this provision does not in any way
14 limit the right of a person to recovery in tort.

15 Sec. 21.50.035. CORRELATION WITH UNINSURED MOTORIST COVERAGE AND
16 WORKMEN'S COMPENSATION BENEFITS. (a) Benefits received under secs.
17 10 - 20 of this chapter shall be deducted from any recovery received
18 by the injured person or on behalf of the deceased person under unin-
19 sured motorist coverage.

20 (b) Benefits recoverable under the workmen's compensation laws
21 of any state or the federal government shall be deducted from the
22 benefits afforded under secs. 20 - 30 of this chapter.

23 Sec. 21.50.040. PERIODIC PAYMENT OF BENEFITS. All payments of
24 benefits prescribed under secs. 10 - 20 of this chapter shall be made
25 periodically as the claims for them arise and as promptly as satisfac-
26 tory proof of their validity is received by the insurance company,
27 subject to the time limitation on original proof of loss and recur-
28 rences contained in sec. 70 of this chapter.

29 Sec. 21.50.050. EXCLUSIONS. The coverages provided under

1 secs. 10 - 20 of this chapter may exclude any person otherwise insured
2 under the policy who

3 (1) intentionally causes the accident resulting in the
4 injury,

5 (2) is injured while operating or riding in a vehicle known
6 by him to be stolen, or

7 (3) is injured in the commission of a felony or while seek-
8 ing to elude lawful apprehension or arrest by a police officer.

9 Sec. 21.50.060. BROADENED BENEFITS. (a) Nothing in sec. 10 of
10 this chapter prevents insurers from offering similar coverages or
11 benefits on an optional basis in connection with policies on motor
12 vehicles other than automobiles as defined in sec. 170 of this chapter.

13 (b) Nothing prevents an insurer from offering broader benefits
14 or higher limits than those prescribed in secs. 10 - 20 of this
15 chapter.

16 Sec. 21.50.070. ADDITIONAL LIMITATIONS. (a) The coverages
17 specified in secs. 10 - 20 of this chapter may prescribe a period of
18 not less than six months after the date of accident within which the
19 original proof of loss with respect to a claim for benefits under
20 sec. 10 of this chapter must be presented to the insurer as a condition
21 to eligibility for basic economic loss benefits or catastrophe economic
22 loss benefits.

23 (b) The coverages described in secs. 10 - 20 may

24 (1) provide that if a lapse occurs in the period of total
25 disability or in the medical treatment of an injured person who has
26 received benefits under the coverage and the person subsequently
27 claims additional benefits based upon an alleged recurrence of the
28 injury for which the original claim for benefits was made, the insurer
29 may require reasonable medical proof of the alleged recurrence; however,

1 in no event may the aggregate benefits payable to any person exceed the
2 maximum limits provided for by law; and

3 (2) contain a provision terminating eligibility for benefits
4 after a prescribed period of lapse of disability and medical treatment;
5 however, in no case may the period be less than one year.

6 (c) Additional reasonable inside limits applicable to specific
7 benefits may be included in secs. 10 - 20 of this chapter subject to the
8 approval of the commissioner of commerce.

9 (d) The obligation to pay benefits under secs. 10 - 20 of this
10 chapter does not apply to any direct or indirect loss or interest of,
11 or for services or benefits provided or furnished by, the federal
12 government or any of its agencies under a contract of employment or
13 military enlistment, duty or service.

14 Sec. 21.50.080. DISCLOSURE OF BENEFITS. If a person entitled to
15 benefits under the minimum coverage specified in sec. 10 of this
16 chapter files an action in the state for damages for bodily injury or
17 death arising out of the same accident, the amount of the benefits
18 recoverable, up to the minimum limits prescribed by law, shall be
19 deducted from any amount awarded to the person in the proceedings.
20 Nothing in this section shall be construed to be in derogation of the
21 right of an insurer to recover by way of subrogation, the amounts paid
22 to an insured under a policy providing the minimum coverage under
23 sec. 10 of this chapter. The amount of the benefits by which any
24 verdict or judgment is reduced shall not be included in computing
25 attorney fees, as provided in sec. 120 of this chapter.

26 Sec. 21.50.090. COOPERATION OF BENEFICIARIES. A person receiving
27 benefits under secs. 10 - 20 of this chapter shall participate and
28 cooperate under the coverage in all actions instituted by or on behalf
29 of the insurer paying the benefits and the insurer may require in

1 furnishing proof of loss that the person participate and cooperate
2 as consideration for the payment of the benefits.

3 Sec. 21.50.100. AUTHORITY OF COMMISSIONER. The commissioner of
4 commerce may promulgate necessary regulations to carry out the provi-
5 sions of secs. 10 - 170 of this chapter. The commissioner may, after
6 adequate notice is given and a hearing is held, approve schedules
7 of reasonable maximum benefit payments for specified medical services
8 which insurers may incorporate into their policies of basic or supple-
9 mental coverages.

10 Sec. 21.50.110. DAMAGES. (a) In an action in tort for bodily
11 injury or sickness caused by an accident arising out of the operation,
12 ownership, maintenance or use of a motor vehicle in the state against
13 a person who is an insured under an automobile liability insurance
14 policy which contains the basic economic loss coverage described in
15 sec. 10 of this chapter, the damages recoverable for pain, suffering,
16 mental anguish and inconvenience may not exceed the total of a sum
17 equal to 50 per cent of the reasonable medical treatment expenses of
18 the claimant if the total of the reasonable expenses is \$500 or less,
19 and a sum equal to the total amount of the reasonable expenses in
20 excess of \$500. Medical treatment expenses means the reasonable value
21 of services rendered for necessary medical, hospital, dental, surgical,
22 ambulance and professional nursing services and prosthetic devices,
23 but excluding diagnostic x-ray services.

24 (b) The limitations prescribed in (a) of this section do not
25 apply in cases of death, dismemberment, permanent total or partial
26 disability, permanent serious disfigurement, or in other cases where
27 the jury or court makes a special finding based on medical testimony,
28 that the pain and suffering actually experienced by the claimant is of
29 such unusual character and proportions that imposition of the

1 limitations would shock the conscience of reasonable men. The court
2 on its own motion or the motion of either party may designate an
3 impartial medical panel of not more than three licensed physicians to
4 examine the claimant and testify on the issue of the reasonable value
5 of medical treatment services, the issue of the nature and extent of
6 the pain and suffering for which a special award in excess of the
7 limitations herein is sought, or any other issue for which expert
8 testimony is relevant.

9 (c) In an action in tort brought as a result of bodily injury,
10 sickness, or disease, caused by an accident arising out of the operation,
11 ownership, maintenance or use of a motor vehicle in the state, damages
12 awarded for loss of past earnings and reasonably anticipated future
13 earnings due to disability sustained by the plaintiff as a result of
14 the injuries shall be computed net of any income taxes which would
15 have been payable on the past earnings and net of a reasonable set-off
16 for income taxes prospectively payable on the future earnings. In the
17 absence of proof supporting a smaller set-off for the income taxes,
18 the set-off shall equal 15 per cent of the total amount of the lost
19 earnings.

20 Sec. 21.50.120. CONTINGENT FEES. (a) In an action in tort for
21 personal injury or wrongful death caused by an accident arising out
22 of the operation, ownership, maintenance or use of a motor vehicle in
23 the state in which the compensation of the plaintiff's attorney is
24 contingent, the attorney's compensation shall be reasonable.

25 (b) The supreme court may adopt by rule, a maximum
26 contingent fee schedule constituting reasonable limits on attorney
27 fees.

28 (c) If an attorney believes that the maximum fee prescribed
29 does not provide fair and reasonable compensation for his services, he

1 may apply for greater compensation upon affidavit, after giving
2 written notice and an opportunity to be heard to the client and other
3 interested parties. The application shall be made to the court in
4 which the action is filed, or if no action is filed then to a court of
5 competent jurisdiction in the state. The court may, after hearing,
6 approve the compensation for legal services determined to be reasonable
7 under the circumstances, without regard to the limitations prescribed
8 under this section.

9 Sec. 21.50.130. FRAUDULENT CLAIMS.(a)A person who, in connection
10 with a claim arising out of an automobile accident

11 (1) obtains or attempts to obtain, from another person
12 or an insurance company in the state, money or other thing of value
13 by false or fraudulent representation;

14 (2) makes a statement, produces a document or writing or in
15 any other way presents false and fraudulent evidence representing an
16 injury, or property damage, or exaggerates the nature and extent of
17 the injury or damage; or

18 (3) cooperates, conspires or otherwise acts in concert
19 with another person seeking to falsely and fraudulently represent an
20 injury or damage to property, or to exaggerate the nature and extent
21 of the injury or damage, if the sum is less than \$100, is punishable
22 by a fine of not more than \$500, or by imprisonment for not more than
23 one year, or by both; and if the sum obtained or attempted to be
24 obtained is more than \$100, or, in the event of a second or successive
25 conviction under this section regardless of the sum obtained or
26 attempted to be obtained, is punishable by a fine of not less than \$500
27 or by imprisonment for not more than 10 years, or by both.

28 (b) To establish an intent to falsely and fraudulently represent
29 an injury or damage to property, a history of similar false or

1 fraudulent representations by the accused person is admissible as
2 evidence in the case.

3 Sec. 21.50.140. DISCLOSURE OF MEDICAL EVIDENCE. A person injured
4 in an automobile accident who claims damages from another person or
5 benefits under an insurance policy shall, upon request of the person
6 or insurer from whom recovery is sought, submit to a physical examina-
7 tion by a physician and do all things reasonably necessary to enable
8 the person or insurer to obtain medical reports and other needed
9 information to assist in determining the nature and extent of the
10 claimant's injuries and the medical treatment received by him. If
11 the claimant refuses to respond to requests for examination and infor-
12 mation as authorized by this section, evidence of the noncooperation
13 is admissible in a suit filed by the claimant for damages for personal
14 injuries or for benefits under an insurance policy.

15 Sec. 21.50.150. ADVANCE PAYMENTS. (a) In an action in which a
16 person, or an insurance company on behalf of its insured, has made
17 payments to or on behalf of a plaintiff before trial, the payments
18 shall not be construed as an admission of liability by the person,
19 or the insurance company or its insured, in any action brought to
20 recover for personal injuries to the plaintiff, or for the
21 wrongful death of another, or for property damage or destruction.
22 If, however, a judgment is rendered for the plaintiff, the defendant
23 may introduce evidence of the payments made before trial and the
24 court shall reduce the amount awarded to the plaintiff by the amount
25 of payments made before trial.

26 (b) No payment made under secs. 10 - 170 of this chapter by an
27 insurance company on behalf of an insured may be construed to be in
28 lieu of or in addition to the limits of liability of the insurance
29 company under any existing policy of insurance, but the sums paid in

1 advance are considered to have been made according to the limits of the
2 policy and shall be credited to the insurer's obligation to the insured
3 arising from the policy and be deducted from it.

4 Sec. 21.50.160. SMALL CLAIMS ARBITRATION. (a) The district
5 court may require that a case filed in which the amount in contro-
6 versy is \$3,000 or less, except those involving title to real estate,
7 shall first be submitted for arbitration to a panel of three members
8 of the state bar association.

9 (b) The manner in which arbitrators are selected and the procedure
10 to be followed in the arbitration proceedings shall be fixed by the
11 supreme court.

12 (c) Either party may appeal from an award of arbitrators to the
13 court in which the action was pending under the following rules:

14 (1) The party appellant, his agent or attorney, shall make
15 an oath or affirmation that "it is not for the purpose of delay that
16 the appeal is entered, but because he believes injustice has been done."

17 (2) The party, his agent or attorney, shall pay all costs
18 that have accrued in the action.

19 (3) The appeal shall be entered, and the costs paid, within
20 20 days after the entry of the award of the arbitrators on the docket.

21 Sec. 21.50.170. DEFINITIONS. In secs. 10 - 170 of this chapter

22 (1) "automobile" means (A) a private passenger automobile,
23 including a sedan, station wagon or jeep-type automobile not used as a
24 public livery conveyance for passengers, or rented to others, or
25 (B) a utility automobile, including a pickup, sedan delivery or panel
26 truck not primarily used in the occupation, profession or business of
27 the insured; however, a motorcycle or a motorcycle with a side car
28 attached is not considered to be an automobile;

29 (2) "income" includes, but is not limited to, salary, wages,

1 tips, commissions, professional fees, and other earnings from work or
2 tangible things of economic value produced in individually owned
3 businesses or farms or other work, or the reasonable value of the
4 services necessary to produce them;

5 (3) "income producer" means a person who at the time of the
6 accident causing injury or death is in an occupational status, earning
7 or producing income.

8 * Sec. 2. This Act takes effect one year from the date of its passage
9 and approval, or one year from the date it becomes law without approval.

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