

Introduced: 2/29/72
Referred: Commerce

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 356

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to motor vehicle insurance."

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

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

9 CHAPTER 21. MOTOR VEHICLE BASIC LOSS INSURANCE ACT.

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

15 Sec. 28.21.020. SECURITY REQUIRED FOR THE OPERATION OF A MOTOR
16 VEHICLE. (a) The owner of a motor vehicle registered or operated
17 in this state shall maintain security pursuant to either subsection
18 (b) or subsection (c) of this section for payment of tort judgments
19 and basic loss benefits in accordance with this chapter arising from
20 ownership, maintenance or use of the vehicle.

21 (b) Security for the payment of basic loss benefits and tort
22 judgments required by this chapter may be provided by a policy of
23 insurance complying with this chapter issued by or on behalf of an
24 insurer authorized to transact business in this state or in the
25 state in which the vehicle is registered.

26 (c) Security for the payment of basic loss benefits and tort
27 judgments may be provided with respect to a motor vehicle by any other
28 method approved by the department as affording security equivalent to
29 that afforded by a policy of insurance; however, proof of the security

1 must be filed and continuously maintained with the department through-
2 out the registration period. The person filing the security must have
3 all of the obligations and rights of an insurer under this chapter.

4 (d) A nonresident owner or registrant of a motor vehicle not
5 registered in this state may not operate or permit the vehicle to be
6 operated in this state for an aggregate of more than 30 days in any
7 calendar year unless he continuously maintains security for the payment
8 of basic loss benefits and tort judgments under this chapter.

9 (e) A motor vehicle may not be registered in this state unless
10 satisfactory proof is furnished to the department that security has
11 been provided as required by this chapter.

12 Sec. 28.21.030. TERMINATION OF SECURITY. (a) An owner of a
13 motor vehicle registered in this state who ceases to maintain security
14 continuously in effect as required by sec. 20 of this chapter shall
15 immediately surrender the registration certificate and license plates
16 for the vehicle to the department and may not operate or permit
17 operation of the vehicle in this state until security has again been
18 provided and proof of security furnished as required by this chapter.

19 (b) Unless this requirement is modified or waived by rules
20 adopted by the department, an insurer having issued a policy of
21 insurance and knowing or having reason to believe the policy is for
22 the purpose of providing security required by this chapter shall
23 immediately give notice to the department of the termination of the
24 insurance.

25 Sec. 28.21.040. BASIC LOSS INSURANCE. Basic loss insurance is
26 applicable to accidental bodily injuries arising out of the ownership,
27 maintenance, or use of a motor vehicle. Use of a motor vehicle
28 includes loading and unloading, but does not include conduct within
29 the course of a business of repairing, servicing or otherwise

1 maintaining vehicles, unless the conduct occurs outside the business
2 premises.

3 Sec. 28.21.050. BENEFITS PAYABLE WITHOUT REGARD TO FAULT. Basic
4 loss benefits due under the provisions of this chapter shall be paid
5 by basic loss insurers and self-insurers without regard to fault.

6 Sec. 28.21.060. BASIC LOSS BENEFITS. (a) Basic loss insurance
7 benefits are payable for allowable expenses, work loss, funeral and
8 burial expenses, pain and suffering, replacement services, and
9 survivor's benefits.

10 (b) Allowable expense consists of reasonable charges incurred
11 for reasonably needed products, services, and accommodations for an
12 injured person's diagnosis, cure, recovery or rehabilitation.
13 Allowable expenses within basic loss insurance coverage do not include
14 charges for a hospital room in excess of a reasonable and customary
15 charge for semi-private accommodations, except when the injured person
16 requires special or intensive care.

17 (c) Work loss consists of loss of income from work the injured
18 person would have performed had he not been injured, and expenses
19 reasonably incurred by the injured person in obtaining services in
20 place of those that he would have performed for income, reduced by any
21 income from substitute work actually performed by the injured person
22 or by income the injured person would have earned in available
23 appropriate substitute work which he was capable of performing but
24 unreasonably failed to undertake. Loss of pension and social security
25 benefit entitlements and reduction in earning capacity shall also be
26 considered part of work loss. However, work loss does not include
27 any loss after the date on which the injured person dies. Because
28 the benefits received from basic loss insurance for loss of income
29 are not taxable income, the benefits payable for loss of income will

1 be reduced 15 per cent unless the claimant presents to the insurer, in
2 support of his claim, reasonable proof of a lower value of the income
3 tax advantage in his case, in which event the lower value shall apply.
4 The benefits payable for work loss in any 30 day period and the
5 income earned by an injured person for work during the same period,
6 reduced by the income tax advantage provided in this section may not
7 exceed 85 per cent of the injured person's average monthly salary
8 for the preceding 12 months or \$750, whichever amount is less. The
9 maximum established by this subsection applies pro-rata to a lesser
10 period of work loss.

11 (d) Funeral and burial expenses consist of all expenses
12 related to funeral and burial not to exceed \$2,000.

13 (e) Pain and suffering payments shall be made in accordance with
14 sec. 70 of this chapter.

15 (f) Replacement services loss consists of those expenses reason-
16 ably incurred in obtaining ordinary and necessary services in place of
17 those that the injured person would have performed, not for income but
18 for the benefit of himself or his family.

19 (g) Survivor's benefits consist of expenses, after the date on
20 which the deceased died, of contribution of tangible things of
21 economic value, including wages or salary limited as provided in
22 subsection (c) of this chapter, including services that survivors
23 would have received from the deceased had he not suffered the injury
24 causing death, and expenses reasonably incurred by the survivors
25 after the date on which the deceased died in obtaining ordinary and
26 necessary services in place of those that he, had he not suffered the
27 injury causing death, would have performed for the benefit of himself
28 or the members of his household.

29 Sec. 28.21.070. PAIN AND SUFFERING. Pain and suffering

1 resulting from accidents involving motor vehicles shall be compensated
2 as a part of basic loss benefits. Benefits under this section are
3 limited to 50 per cent of the first \$500 in reasonable medical
4 expenses and to 70 per cent of reasonable medical expenses in excess
5 of \$500.

6 Sec. 28.21.080. SUBTRACTABLE BENEFITS. (a) In calculating
7 basic loss benefits, all benefits or advantages a person receives or is
8 entitled to receive because of the injury from social security and
9 workmen's compensation are subtracted.

10 (b) An insurer, and every organization providing pre-paid health
11 care, authorized to transact, or transacting, business in this state,
12 which issues a policy of insurance or contract paying benefits, or
13 which provides health care services as the result of injury, except
14 life insurance benefits and basic or added loss benefits, shall
15 offer, at an appropriately reduced premium or charge, an option to
16 exclude benefits to the extent benefits are payable under basic or
17 added loss insurance. An insurer or organization providing pre-paid
18 health care which issues a group policy of insurance or contract,
19 paying benefits or providing health care services as the result of
20 injury, except life insurance benefits and basic or added loss benefits,
21 may not include within the benefits payable for health care services
22 provided any benefits or services which duplicate benefits payable
23 under basic or added loss insurance. This subsection does not
24 preclude the issuance of a group policy of insurance or contract
25 providing basic loss benefits, or basic and added loss benefits,
26 combined with additional benefits of insurance coverages.

27 Sec. 28.21.090. PROPERTY EXCLUSION. Damage to property is
28 excluded from basic loss benefits.

29 Sec. 28.21.100. PARTIAL ABOLITION OF TORT LIABILITY. (a) Tort

1 liability arising from the ownership, maintenance or use of a motor
2 vehicle in this state is abolished except as to

3 (1) damages to property other than a motor vehicle and
4 its contents;

5 (2) intentionally caused harm to person or property;

6 (3) traditional tort damages so far as they exceed the
7 limitation established in sec. 110 and sec. 170 of this chapter;

8 (4) injury arising from maintenance of a vehicle within the
9 course of a business of repairing, servicing or otherwise maintaining
10 motor vehicles.

11 (b) For purposes of subsection (a) of this section, harm is not
12 caused intentionally merely because an act or omission is intentional,
13 or done with the realization that it creates a grave risk of causing
14 harm.

15 Sec. 28.21.110. LIMITATION OF BASIC LOSS BENEFITS. Subject to
16 the limitations of this chapter, recovery for all basic loss benefits
17 may not exceed \$10,000 per person per accident.

18 Sec. 28.21.120. COMPULSORY LIABILITY LIMITS. The security for
19 liability in tort required by sec. 20 of this chapter shall be at
20 least in amounts and limits as follows:

21 (1) a limit of liability of not less than \$50,000 for all
22 damages arising out of bodily injury sustained by any one person as a
23 result of one accident applicable to each person sustaining injury
24 caused by accident arising out of the ownership, maintenance or use
25 of the insured motor vehicle;

26 (2) a limit of liability of not less than \$10,000 for all
27 damages for injury to or destruction of property, other than the
28 automobiles, including the loss of use of the property, resulting from
29 any one accident arising out of the ownership, maintenance, or use of

1 the insured motor vehicle.

2 Sec. 28.21.130. MINIMUM COVERAGE. An insurance policy purporting
3 to provide coverage for basic loss benefits, or sold with representa-
4 tions that the policy meets the requirements of sec. 20 of this chapter
5 shall be considered to provide all coverages required by this chapter.
6 Every policy or contract of liability insurance covering the main-
7 tenance or use of a motor vehicle shall include basic loss benefits in
8 accordance with this chapter while the vehicle is maintained or used
9 in this state regardless of any provision to the contrary in the
10 policy. An insurer authorized to transact business in this state, or
11 transacting business in this state, may not exclude coverage of basic
12 loss benefits in accordance with this chapter in any policy or contract
13 of liability insurance covering the maintenance or use of a motor
14 vehicle when the vehicle is maintained or used in this state.

15 Sec. 28.21.140. TERRITORIAL COVERAGE. Basic and added loss
16 insurance shall provide coverage, as required by this chapter for
17 injury arising from accidents which occur in this state, to persons
18 who are not occupants of the insured vehicle and for injury, without
19 regard to where it is suffered, to a basic loss insured and to an
20 occupant, including the operator of the insured vehicle.

21 Sec. 28.21.150. CONVERTED VEHICLES. Except as provided in sec.
22 220 of this chapter, a person who converts a motor vehicle is dis-
23 qualified from basic or added loss benefits, including benefits other-
24 wise due him as a survivor, from any source other than an insurance
25 policy under which the converter is a basic loss insured, for injuries
26 arising from the maintenance or use of the converted vehicle. In the
27 case of the converter's death, his survivors are not entitled to
28 benefits from any source other than an insurance policy under which
29 the converter is a basic loss insured. For the purpose of this section,

1 a person is not a converter if he uses the motor vehicle with a good
2 faith belief that he is legally entitled to use it.

3 Sec. 28.21.160. INTENTIONAL INJURIES. A person intentionally
4 causing or attempting to cause injury to himself or another is dis-
5 qualified from basic or added loss benefits for injury arising from
6 his acts, including benefits otherwise due him as a survivor. In the
7 case of the death of a person intentionally causing or attempting
8 to cause injury to himself, his survivors are not entitled to benefits
9 for survivor's work loss or survivor's replacement services loss. A
10 person intentionally causes or attempts to cause injury if he acts or
11 fails to act for the purpose of causing injury or with knowledge that
12 injury is substantially certain to follow. A person does not
13 intentionally cause or attempt to cause injury merely because his act
14 or failure to act is intentional, or done with his realization that it
15 creates a grave risk of causing injury, or if the act or omission
16 causing the injury is for the purpose of averting bodily harm to
17 himself or another person.

18 Sec. 28.21.170. ADDED REPARATION COVERAGE. (a) Basic loss
19 insurers may offer optional added loss coverages providing other
20 benefits arising from the ownership, maintenance or use of a motor
21 vehicle, including loss excluded by limits on allowable expenses, work
22 loss, replacement services loss, survivor's benefits, pain and
23 suffering loss and funeral and burial expenses. The director of the
24 division of insurance, Department of Commerce, shall adopt rules
25 requiring that particular added loss coverages be offered by insurers
26 writing basic loss insurance.

27 (b) Basic loss insurers shall offer optional coverage for damage
28 to motor vehicles and their contents with deductibles approved by
29 the director of the division of insurance.

1 Sec. 28.21.180. APPROVAL OF TERMS AND FORMS. Terms and conditions
2 of basic and added loss insurance and of policy forms used by insurers
3 in offering coverages are subject to approval and regulation by the
4 director of the division of insurance, Department of Commerce. The
5 director may approve only terms and conditions which are consistent
6 with the purposes of this chapter, are fair and equitable to all
7 persons whose interests may be affected, and which limit the variety
8 of coverages available to give insurance purchasers reasonable
9 opportunity to compare the cost of insuring with various insurers.

10 Sec. 28.21.190. PRIORITY OF APPLICABILITY OF BASIC REPARATION
11 INSURANCE POLICIES. (a) Except as otherwise provided in this chapter,
12 the basic loss insurance applicable to injury to a basic loss insured
13 is the policy under which the injured person is a basic loss insured.
14 If the injured person is not a basic loss insured, the basic loss
15 insurance applicable to injury to an occupant of a motor vehicle
16 involved in an accident, including the operator, is the insurance
17 covering that vehicle.

18 (b) In case of injury to an occupant, including the operator, of
19 a motor vehicle while it is being used in the business of transporting
20 persons or property, the basic loss insurance applicable is the
21 insurance covering the vehicle.

22 (c) In case of injury to an employee driving or occupying a
23 motor vehicle furnished by his employer, the basic loss insurance
24 applicable is the insurance covering the vehicle.

25 (d) A claim for basic loss benefits based upon injury to a person
26 not otherwise covered who is not an occupant of a motor vehicle
27 involved in an accident may be made against the insurer of any
28 involved vehicle. If an injury is caused by collision, an unoccupied
29 parked vehicle may not be found to be a vehicle involved in the

1 accident unless it was parked so as to cause unreasonable risk of
2 injury. The insurer against whom the claim is asserted under this
3 subsection shall process and pay the claim as if wholly responsible,
4 but is entitled to recover from the basic loss insurers of other in-
5 volved motor vehicles pro-rata contribution for the basic loss benefits
6 paid and the costs of processing the claim.

7 Sec. 28.21.200. INSURERS' RIGHTS OF REIMBURSEMENT AND
8 SUBROGATION. (a) Whenever a person who receives or is entitled to
9 receive basic or added loss benefits for an injury or for damage to
10 property has a cause of action against any other person for breach of
11 an obligation or duty causing the injury or damage, the basic loss
12 insurer or self-insurer is subrogated to and is the real party in
13 interest in the cause of action to the extent that elements of damage
14 compensated for by basic or added loss insurance are recoverable and
15 it has paid or become obligated to pay accrued and future basic and
16 added loss benefits and the person suffering the injury or damage is
17 the real party in interest as to all other elements of recoverable
18 damage.

19 (b) In cases where both a basic loss insurer or self-insurer
20 and the person suffering the injury or damage are real parties in
21 interest:

22 (1) either is a necessary party in an action commenced by
23 the other;

24 (2) the insurer may not commence an action before six
25 months after the cause of action has accrued except when the insurer
26 is a party in an action commenced by the injured or damaged person;

27 (3) the claims of both shall be asserted in their own names
28 to the extent of their respective interests;

29 (4) neither is bound by the determination of any issue of

1 fact or law in a proceeding to which it is not a party;

2 (5) if either commences an action to assert its interest in
3 the cause of action apart from the other or without joining the other,
4 it shall set forth the existence of the interest of the other.

5 Sec. 28.21.220. ASSIGNED CLAIMS. (a) A person entitled to basic
6 loss benefits because of injury covered by this chapter may obtain
7 basic loss benefits through the assigned claims plan established
8 pursuant to the provisions of sec. 350 of this chapter whenever:

9 (1) basic reparation insurance or self-insurance is not
10 applicable to the injury;

11 (2) basic reparation insurance or self-insurance is not
12 applicable to the injury because the injured person has converted a
13 motor vehicle and the injured person is under 14 years of age;

14 (3) basic reparation insurance or self-insurance applicable
15 to the injury cannot be identified;

16 (4) basic reparation insurance or self-insurance applicable
17 to the injury, because of financial inability of an insurer or self-
18 insurer to fulfill its obligation, is inadequate to provide the
19 contracted-for benefits; or

20 (5) a claim for basic reparation benefits is rejected by an
21 insurer or self-insurer on the ground that another insurer, self-
22 insurer, or the assigned claims plan affords the applicable coverage.

23 (b) If a claim qualifies for assignment under sec. (a)(5) of
24 this section, the insurer, self-insurer or the assigned claims bureau
25 to whom the claim is assigned have the right to seek reimbursement
26 for benefits paid, plus costs and expenses incurred in processing the
27 loss claims and in enforcing this right, from any insurer or self-
28 insurer legally obligated to pay the claim, and any disputes arising
29 from the claim shall be resolved by agreement between the involved

1 parties, or, if they fail to agree, by arbitration.

2 (c) An assigned claim of a person required by this chapter to
3 maintain security for the payment of basic loss benefits who fails
4 to do so may consist of only allowable expenses subject to a
5 deduction of \$500 for each year or part of a year comprising a period
6 of continuous noncompliance.

7 Sec. 28.21.230. PAYMENT OF BENEFITS. (a) Basic or added loss
8 benefits are payable monthly as loss accrues. Loss accrues not when
9 injury occurs, but as work loss, replacement services loss, survivor's
10 loss, or allowable expense is incurred. Benefits are overdue if not
11 paid within 30 days after the insurer receives reasonable proof of
12 the fact and amount of loss realized, except that an insurer may
13 accumulate claims for periods not exceeding one month, and benefits
14 are not overdue if paid within 15 days after the period of accumula-
15 tion. If reasonable proof is supplied as to only part of a claim, and
16 the part totals \$100 or more, the part is overdue if not paid within
17 the time provided by this section. Allowable expenses may be paid by
18 the insurer directly to persons supplying products, services, or
19 accommodations to the claimant.

20 (b) A claim for work loss or survivor's benefits shall be paid
21 as provided by this section without deduction for subtractable
22 benefits if the subtractable benefits have not been paid to the
23 claimant before benefits are overdue. The insurer is entitled to
24 reimbursement from the person obligated to make the payments, or from
25 the claimant who actually receives the payments.

26 (c) Overdue payments bear interest at the rate of 18 per cent
27 per annum.

28 Sec. 28.21.240. FEES OF CLAIMANT'S ATTORNEY. (a) If overdue
29 benefits are recovered in an action against the insurer or paid by the

1 insurer after receipt of notice of the attorney's representation, in
2 addition to other benefits, a reasonable attorney's fee for advising
3 and representing a claimant on a claim or action for basic reparation
4 benefits shall be paid by the insurer. No part of the fee for
5 representing the claimant in connection with these benefits is a charge
6 against benefits otherwise due the claimant, but part or all of the
7 fee shall be charged against the benefits otherwise due the claimant
8 if his claim was in any way fraudulent or so excessive as to have no
9 reasonable foundation.

10 (b) In any action brought against the insured by the insurer,
11 the court, in its discretion, may award the insured a reasonable
12 attorney's fee for defending the action.

13 Sec. 28.21.250. FEES OF INSURER'S ATTORNEY. An insurer shall be
14 allowed a reasonable attorney's fee for defending a claim that is
15 fraudulent or so excessive as to have no reasonable foundation. This
16 fee may be treated as an offset to the benefits due or which may
17 accrue, and judgment may be entered against the claimant for any part
18 of the fee not offset or otherwise paid.

19 Sec. 28.21.260. LUMP SUM AND INSTALLMENT SETTLEMENTS. (a)
20 Rights and obligations of a single individual arising under basic or
21 added loss insurance as to a claim arising from an injury or death,
22 including a claim for future loss other than allowable expense, may be
23 discharged by a settlement for an agreed amount payable in installments,
24 or in a lump sum if the whole amount of the reasonably anticipated net
25 loss which is subject to the settlement does not exceed \$2,500. If
26 the reasonably anticipated net loss which is subject to the settlement
27 exceeds \$2,500, the settlement may be made with approval of the
28 court upon a finding by the judge that the settlement is in
29 the best interest of the claimant. Upon approval of the settlement,

1 the court may make appropriate orders concerning the safeguarding and
2 disposition of the proceeds of the settlement. A settlement agreement
3 may also provide that the insurer will pay the reasonable costs of a
4 specified medical treatment or procedure to be performed in the
5 future.

6 (b) A settlement agreement for an amount payable in installments
7 may be modified as to amounts to be paid in the future if it is shown
8 that a material and substantial change of circumstances has occurred,
9 or significant facts or conditions, affecting the claimant's physical
10 condition, economic loss, or rehabilitation, have been newly discovered
11 that could not have been known previously with the exercise of reason-
12 able diligence.

13 (c) A settlement agreement may be set aside at any time if it
14 was procured by fraud or its terms are unconscionable.

15 Sec. 28.21.270. JUDGMENTS FOR FUTURE BENEFITS. (a) If an action
16 for basic or added reparation benefits is commenced, a lump sum or
17 installment judgment may be entered for benefits other than allowable
18 expense that would accrue after the date of the award. A judgment for
19 benefits for allowable expense that would accrue after the date of
20 the award may not be entered. In an action for basic loss benefits,
21 however, the court may enter a judgment declaring that the insurer is
22 liable for the reasonable costs of appropriate medical treatment or
23 procedure, with reference to a specified condition, to be performed
24 in the future where, based on reasonable medical certainty, it is
25 ascertainable or foreseeable that the procedure or treatment will be
26 required as a result of the injury upon which the claim is made.

27 (b) An award that commutes future losses other than allowable
28 expense to a fixed sum may be made only upon a finding that the award
29 will contribute to the health and rehabilitation of the injured person

1 or upon a finding that the present value of all benefits other than
2 allowable expense to accrue thereafter does not exceed \$1,000.

3 (c) An installment judgment for benefits other than allowable
4 expense to accrue thereafter may be entered only for a period as to
5 which the court can reasonably determine future net loss. An install-
6 ment judgment may be modified as to amounts to be paid in the future
7 whenever it is shown that a material and substantial change of cir-
8 cumstances has occurred, or significant facts or conditions, affecting
9 the claimant's physical condition, net economic loss, or rehabilitation
10 have been newly discovered that could not have been known previously
11 with the exercise of reasonable diligence.

12 (d) The court may make appropriate orders concerning the safe-
13 guard and disposition of funds collected under the judgment.

14 Sec. 28.21.280. RIGHTS OF ACTION. Except as otherwise provided
15 in this chapter, any right or obligation provided by this chapter is
16 enforceable by civil action.

17 Sec. 28.21.290. LIMITATION OF ACTIONS. (a) If basic or added
18 basic loss benefits have not been paid for loss arising otherwise than
19 from death, an action for these benefits may not be commenced later
20 than two years after the injured person suffers loss and either knows,
21 or in the exercise of reasonable diligence should know that the loss
22 was caused by the accident, or within four years after the accident,
23 whichever is earlier. If basic or added loss benefits have been paid
24 for loss arising otherwise than from death, an action for recovery of
25 further benefits, other than survivor's benefits, by the same or
26 another claimant, may not be commenced later than two years after the
27 last payment of benefits.

28 (b) If basic or added loss benefits have not been paid to the
29 decedent or his survivors, an action for survivor's benefits may not

1 be commenced later than one year after the death or four years after
2 the accident from which death arises, whichever is earlier. If
3 survivor's benefits have been paid to any survivor, an action for
4 recovery of further survivor's benefits by the same or another claimant
5 may not be commenced later than two years after the last payment of
6 benefits. If basic or added loss benefits have been paid for loss
7 suffered by an injured person before his death arising from the
8 injury, an action for recovery of survivor's benefits may be commenced
9 not later than one year after the death or four years after the last
10 payment of benefits, whichever is earlier.

11 (c) If timely action for basic reparation benefits is commenced
12 against an insurer or self-insurer and benefits are denied because of
13 a determination that the insurer's or self-insurer's coverage is not
14 applicable to the claimant under the provisions on priority of
15 applicability of basic reparation insurance policies set out in sec.
16 190 of this chapter, an action against the next applicable insurer or
17 self-insurer or assigned claims plan may be commenced not later than
18 60 days after the determination becomes final or the last date on
19 which the action could otherwise have been commenced, whichever is
20 later.

21 Sec. 28.21.300. ASSIGNMENT OF BENEFITS. An assignment or
22 agreement to assign any right to benefits under this chapter for losses
23 accruing in the future is unenforceable except an assignment for the
24 purpose of securing payment of alimony or child support pursuant to
25 court order and except for an assignment to a person providing
26 products, services, or accommodations to the injured person of those
27 benefits which are for the cost of those products, services or
28 accommodations.

29 Sec. 28.21.310. EXEMPTION OF BENEFITS. Benefits for work loss,

1 replacement services loss, survivor's benefits payable under this
2 chapter are exempt from garnishment, attachment, execution and other
3 process or claims to the extent provided in any law exempting earnings
4 or wages from process or claims.

5 Sec. 28.21.320. MENTAL OR PHYSICAL EXAMINATION OF INJURED PERSON.

6 (a) If the mental or physical condition of a person is material to
7 any claim for past or future basic or added loss benefits, the basic
8 or added loss insurer may petition the court for an order
9 directing the person to submit to a mental or physical examination by
10 a physician. The order may be made only for good cause shown and upon
11 notice to the person to be examined and to all persons having an
12 interest. The order shall specify the time, place, manner, conditions,
13 and scope of the examination and the physician by whom it is to be
14 made.

15 (b) If requested by the person examined, the basic or added
16 loss insurer causing a mental or physical examination to be made shall
17 deliver to him a copy of a detailed written report of the examining
18 physician setting out his findings, including results of all tests
19 made, diagnoses, and conclusions, and reports of earlier examinations
20 of the same condition. By requesting and obtaining a report of the
21 examination ordered, or by taking the deposition of the physician, the
22 person examined waives any privilege he may have, in relation to the
23 claim for basic or added benefits, regarding the testimony of every
24 other person who has examined or may thereafter examine him respecting
25 the same condition. This subsection applies to examinations made by
26 agreement of the person examined and the insurer, unless the agreement
27 provides otherwise. This subsection does not preclude discovery of a
28 report of an examining physician or taking a deposition of the
29 physician in accordance with any rule of court or other provision of

1 law.

2 (c) If any person refuses to comply with an order entered
3 pursuant to this section the superior court may make any just order
4 as to the refusal.

5 Sec. 28.21.330. DISCOVERY OF FACTS ABOUT AN INJURED PERSON. (a)
6 Upon request of a basic or added reparation claimant or insurer,
7 information relevant to a claim for basic or added reparation benefits
8 shall be disclosed as set out in this subsection. An employer shall
9 furnish a statement of the work record and earnings of an employee
10 upon whose injury the claim is based. The statement shall cover the
11 period specified by the claimant or insurer making the request and
12 may include a reasonable period before, and the entire period after,
13 the injury. A person upon whose injury a claim is based shall deliver
14 to the insurer every written report available to him concerning any
15 medical treatment connected to the injury, the names and addresses of
16 physicians and medical care facilities rendering diagnoses or
17 treatment in regard to the injury or to a relevant past injury, and
18 shall authorize the insurer to inspect and copy records of physicians,
19 hospitals, clinics or other medical institutions connected with the
20 injury. A physician, hospital, clinic, or other medical institution
21 furnishing services or accommodations to an injured person in
22 connection with a condition alleged to be connected with an injury
23 upon which a claim is based, upon authorization of the injured person
24 shall furnish a written report of the history, condition, diagnoses,
25 medical tests, treatment, and dates and cost of treatment of the
26 injured person, and permit inspection and copying of records as to the
27 history, condition, treatment, and dates and cost of treatment.

28 (b) Any person other than the claimant providing information
29 under this section may charge the person requesting the information

1 a reasonable amount for the cost of providing it.

2 (c) In case of dispute as to the right of a claimant or insurer
3 to discover information required to be disclosed, the claimant or
4 insurer may petition the court for an order for discovery
5 including the right to take written or oral depositions. The order
6 may be made only for good cause shown and upon notice to all persons
7 having an interest, and it shall specify the time, place, manner,
8 conditions and scope of the discovery. The court, in order to protect
9 against annoyance, embarrassment, or oppression, may enter an order
10 refusing discovery or specifying conditions of discovery and order
11 payment of costs and expenses of the proceeding, including reasonable
12 attorney's fees.

13 Sec. 28.21.340. REHABILITATION TREATMENT AND OCCUPATIONAL
14 TRAINING. (a) A basic loss insurer is responsible for the cost
15 of a procedure or treatment for rehabilitation or a course of
16 rehabilitative occupational training if the procedure, treatment, or
17 course of training is reasonable and appropriate for the particular
18 case, its cost is reasonable in relation to its probable rehabilitative
19 effects, and it will likely contribute substantially to rehabilitation,
20 even though it will not enhance the injured person's earning capacity.

21 (b) An injured person who has undertaken a procedure or treat-
22 ment for rehabilitation or a course of rehabilitative occupational
23 training other than medical rehabilitation procedure or treatment,
24 shall notify the insurer that he has undertaken the procedure, treatment
25 or course of training within 60 days after the procedure, treatment or
26 course of training involves expense exceeding \$1,000, unless the
27 insurer has knowledge of the undertaking. If the injured person does
28 not give the required notice within the prescribed time, the insurer
29 is responsible only for \$1,000, or the expense incurred after the

1 notice is given and within the 60 days prior to the notice, whichever
2 is greater, unless failure to give timely notice is the result of
3 excusable neglect.

4 (c) If the injured person notifies the basic loss insurer of a
5 proposed specified procedure or treatment for rehabilitation or a
6 specified course of rehabilitative occupational training, and the
7 insurer does not accept responsibility for its cost, the injured
8 person may move the court, in an action to adjudicate his claim, or,
9 if no action is pending, may bring an action in the superior court for
10 a determination that the insurer is responsible for its cost. An
11 insurer may move the court in an action to adjudicate the injured
12 person's claim, or, if no action is pending, may bring an action in the
13 superior court for a determination that it is not responsible for the
14 cost of a procedure or treatment for rehabilitation or a course of
15 rehabilitative occupational training which the injured person has
16 undertaken or proposes to undertake. A determination by the court that
17 the insurer is not responsible for the procedure, treatment or course
18 of training is not res judicata with respect to the propriety of any
19 other proposal or to the injured person's right to other benefits.
20 This provision does not preclude an action by the insurer or insured
21 for declaratory relief under other provisions of the laws of this
22 state, nor an action by the insured to recover basic loss benefits.

23 (d) If an injured person unreasonably refuses to accept
24 rehabilitative treatment or occupational training, an insurer may move
25 the court, in an action to adjudicate the injured person's claim, or if
26 no action is pending, may bring an action in the court for
27 a determination that future benefits will be reduced or terminated so
28 as to limit recovery of benefits to an amount equal to benefits that
29 in reasonable probability would be due if the injured person had

1 submitted to the rehabilitative treatment or occupational training, and
2 other reasonable orders. In determining whether an injured person has
3 reasonable ground for refusal to submit, the court shall taken into
4 account all relevant factors, including the extent of the probable
5 benefit, the place where the treatment or training is offered, the
6 extent to which the procedure, treatment, or training is recognized as
7 standard and customary, and whether the imposition of sanctions because
8 of the person's refusal would abridge his right to the free exercise of
9 his religion.

10 Sec. 28.21.350. ASSIGNED CLAIMS PLAN. (a) Self-insurers and
11 insurers writing basic loss insurance in this state must organize and
12 maintain, subject to approval and regulation by the director of the
13 division of insurance, Department of Commerce, an assigned claims
14 bureau and an assigned claims plan and adopt rules for their operation
15 and for the assessment of costs on a fair and equitable basis
16 consistent with this chapter.

17 (b) Each self-insurer and insurer writing basic loss insurance
18 in this state shall participate in the assigned claims bureau and the
19 assigned claims plan. Claims shall be assigned and incurred costs
20 shall be allocated fairly among insurers and self-insurers.

21 (c) For purposes of this section, all insurers and self-insurers
22 shall disclose all information requested by the department and by the
23 director of the division of insurance, Department of Commerce.

24 Sec. 28.21.360. TIME FOR MAKING ASSIGNED CLAIMS. A person
25 authorized to obtain basic loss benefits through the assigned claims
26 plan shall notify the bureau of his claim within the time that would
27 have been allowed for filing an action for basic loss benefits had
28 there been in effect identifiable coverage applicable to the claim.
29 If timely action for basic loss benefits is commenced against an

1 insurer or self-insurer which because of financial inability is unable
2 to fulfill its obligations, a claim through the assigned claims plan
3 may be made within a reasonable time after discovery of the financial
4 inability. An action by the claimant on an assigned claim may not be
5 commenced later than 60 days after receipt of notice of the assignment
6 or the last date on which the action could otherwise have been
7 commenced, whichever is later.

8 Sec. 28.21.370. DISPOSITION OF ASSIGNED CLAIMS. The assigned
9 claims bureau shall promptly assign the claim and notify the claimant
10 of the identity and address of the person to whom the claim is assigned.
11 All claims arising from injury to one person sustained in one accident
12 shall be assigned to one insurer, self-insurer, or the bureau, which
13 thereafter has the rights and obligations as if it had issued a policy
14 of basic loss insurance complying with this chapter applicable to the
15 injury or, in case of financial inability of an insurer or self-
16 insurer to perform its obligations, as if it had issued the policy
17 or had undertaken the self-insurance.

18 Sec. 28.21.380. AVAILABILITY OF INSURANCE. (a) The director of
19 the division of insurance, Department of Commerce, shall adopt and
20 implement or approve and supervise a plan assuring that motor vehicle
21 liability and basic and added loss insurance will be conveniently and
22 expeditiously afforded, subject only to payment or provision for
23 payment of the premium, to all applicants for insurance who are
24 required by this chapter to provide security for payment of tort
25 judgments and basic reparation benefits and who are unable con-
26 veniently to obtain the insurance through ordinary methods at reason-
27 able rates not in excess of any rates which may be applicable to the
28 applicant under the plan. The plan may be by assignment of applicants
29 among insurers, by pooling or other joint insuring or reinsuring

1 arrangement, or by any other method that will reasonably accomplish
2 the purposes of this section, including any arrangement or undertaking
3 by insurers that results in all applicants being conveniently afforded
4 the insurance coverages on reasonable and not unfairly discriminatory
5 terms through ordinary markets.

6 (b) All insurers authorized to transact motor vehicle liability
7 or basic loss insurance in this state shall participate in the plan.
8 The plan shall provide for equitable apportionment among all insurers
9 of the insurance coverage, or financial burdens thereof, provided to
10 applicants under the plan and of the costs of operation of the plan.

11 (c) The plan shall make available the added and optional
12 coverages the director of the division of insurance determines are
13 reasonably needed by applicants and are commonly afforded in
14 voluntary markets. The plan shall provide for the availability of
15 financing or installment payments of premiums on reasonable and
16 customary terms and conditions.

17 (d) Subject to supervision and approval of the director of the
18 division of insurance, insurers may consult and agree with each other
19 and with other appropriate persons as to the organization,
20 administration, and operation of the plan and as to rates and rate
21 modifications for insurance coverages provided under the plan. The
22 rates and rate modifications specially adopted or charged for insurance
23 coverages provided under the plan shall be first adopted or approved by
24 the director of the division of insurance and be reasonable and not
25 unfairly discriminatory among applicants for insurance through the
26 plan.

27 (e) To carry out the objectives of this section the director of
28 the division of insurance may adopt rules, make orders, enter into
29 agreement with other governmental and private entities and persons,

1 and form and operate or authorize the formation and operation of
2 bureaus and other legal entities.

3 Sec. 28.21.390. RATES. Rate making and regulation of rates for
4 basic and added loss insurance are governed by AS 21.

5 Sec. 28.21.400. RULES. The director of the division of
6 insurance may adopt reasonable regulations to provide effective
7 administration of this chapter. The regulations shall be adopted in
8 accordance with AS 44.62.

9 Sec. 28.21.410. PENALTIES. Any owner of a motor vehicle for
10 which security for payment of claims is a prerequisite to its legal
11 operations within this state who operates the motor vehicle or permits
12 it to be operated in this state without having in full force and effect
13 security complying with the terms of this chapter is guilty of a
14 misdemeanor and upon conviction may be fined \$500 or be imprisoned
15 for 90 days, or both.

16 Sec. 28.21.420. DEFINITIONS. In this chapter unless the context
17 otherwise requires

18 (1) "added loss benefits" are benefits payable as a result
19 of coverage as allowed under sec. 170 of this chapter;

20 (2) "basic loss benefits" are benefits payable under basic
21 loss insurance;

22 (3) "basic loss insurance" is required insurance with terms
23 and conditions consistent with this chapter;

24 (4) "basic loss insured" means the named insured and any
25 relative of any degree by blood or marriage who resides in the same
26 household;

27 (5) "benefits" include benefits to be paid under basic loss
28 insurance and under compulsory liability insurance;

29 (6) "department" means the Department of Revenue;

1 (7) "injured person" means a natural person suffering
2 accidental bodily injury;

3 (8) "motor vehicle" means a self-propelled vehicle
4 required to be registered under AS 28.10 and designed for operation
5 on a highway by other than muscular power, except a vehicle used
6 exclusively upon stationary rails or tracks;

7 (9) "nonresident" means a person who is not a resident of
8 the state;

9 (10) "operator" means a person who drives or is in physical
10 control of a motor vehicle;

11 (11) "owner" means a person who holds legal title to a motor
12 vehicle, or, in the event the motor vehicle is subject to a security
13 interest or lease with option to purchase with the debtor or lessee
14 having the right to possession, the debtor or lessee is considered
15 the owner for purposes of this chapter;

16 (12) "survivor" means a person identified by AS 13.20.340
17 as one entitled to receive benefits by reason of the death of another
18 person;

19 (13) "uninsured motor vehicle" means a motor vehicle with
20 respect to which no security is required by sec. 20 of this chapter
21 is in effect at the time of an accident.

22 Sec. 28.21.430. SHORT TITLE. This chapter shall be known and
23 may be cited as Motor Vehicle Basic Loss Insurance Act.

24 * Sec. 2. AS 28.20 is repealed.

25 * Sec. 3. AS 21.12.070(a) is amended by adding a new paragraph to read:

26 (15) basic and added loss motor vehicle insurance required
27 under AS 28.21 for securing benefits under that chapter.
28
29