

1 IN THE HOUSE

BY FRITZ

2 HOUSE BILL NO. 35

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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. MOTOR VEHICLE BASIC LOSS INSURANCE ACT.

11 Sec. 28.21.010. DECLARATION OF PURPOSE. The purpose of this
12 chapter is to provide a means of prompt and equitable compensation to
13 persons for losses from accidental bodily injury arising from the owner-
14 ship, operation or use of motor vehicles, in place of tort 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 in
17 this state shall maintain security under (b) of this section for payment
18 of tort judgments and basic loss benefits in accordance with this chapter
19 arising from ownership, maintenance or use of the vehicle.

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

25 (c) A nonresident owner or registrant of a motor vehicle not
26 registered in this state may not operate or permit the vehicle to be
27 operated in this state for an aggregate of more than 45 days in any
28 calendar year unless he continuously maintains security for the payment
29 of basic loss benefits and tort judgments under this chapter.

1 (d) A motor vehicle may not be registered in this state unless
2 satisfactory proof is furnished to the department that security has
3 been provided as required by this chapter.

4 Sec. 28.21.030. TERMINATION OF SECURITY. (a) An owner of a
5 motor vehicle registered in this state who ceases to maintain security
6 continuously in effect as required by sec. 20 of this chapter shall
7 immediately surrender the registration certificate and license plates
8 for the vehicle to the department and may not operate or permit opera-
9 tion of the vehicle in this state until security has again been provided
10 and proof of security furnished as required by this chapter.

11 (b) Unless this requirement is modified or waived by rules adopted
12 by the department, an insurer having issued a policy of insurance and
13 knowing or having reason to believe the policy is for the purpose of
14 providing security required by this chapter shall immediately give
15 notice to the department when it receives notification from its insured
16 of the termination of the insurance.

17 (c) No policy of insurance purporting to conform with the require-
18 ments of this chapter may expire in less than 20 days from the time
19 notice of termination is given to the department by the insurer.

20 Sec. 28.21.040. BASIC LOSS INSURANCE. Basic loss insurance is
21 applicable to accidental bodily injuries arising out of the ownership,
22 maintenance, or use of a motor vehicle. Use of a motor vehicle does not
23 include conduct within the course of a business of repairing, servicing
24 or otherwise maintaining vehicles, unless the conduct occurs outside the
25 business premises.

26 Sec. 28.21.050. BENEFITS PAYABLE WITHOUT REGARD TO FAULT. Basic
27 loss benefits due under the provisions of this chapter shall be paid by
basic loss insurers without regard to fault.

Sec. 28.21.060. BASIC LOSS BENEFITS. (a) Basic loss insurance

1 benefits are payable for allowable expenses, work loss, funeral and burial
2 expenses, replacement services, survivor's benefits, and property damage,
3 including temporary transportation costs incurred during such reasonable
4 time as necessary for repair or replacement of insured's automobile.

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

12 (c) Work loss consists of loss of income from work the injured
13 person would have performed had he not been injured, and expenses reason-
14 ably incurred by the injured person in obtaining services in place of
15 those that he would have performed for income, reduced by any income
16 from substitute work actually performed by the injured person or by in-
17 come the injured person would have earned in available appropriate sub-
18 stitute work which he was capable of performing but unreasonably failed
19 to undertake. Loss of pension and social security benefit entitlements
20 and reduction in earning capacity shall also be considered part of work
21 loss. However, work loss does not include any loss after the date on
22 which the injured person dies. Because the benefits received from basic
23 loss insurance for loss of income are not taxable income, the benefits
24 payable for loss of income will be reduced 15 per cent unless the claim-
25 ant presents to the insurer, in support of his claim, reasonable proof
26 of a lower value of the income tax advantage in his case, in which event
27 the lower value shall apply. The benefits payable for work loss in any
28 30-day period and the income earned by an injured person for work during
29 the same period, reduced by the income tax advantage provided in this

1 section may not exceed 85 per cent of the injured person's average
2 monthly salary for the preceding 12 months or \$1,000, whichever amount
3 is less. The maximum established by this subsection applies pro rata
4 to a lesser priod of work loss.

5 (d) Funeral and burial expenses consist of all expenses related
6 to funeral and burial not to exceed \$1,500.

7 (e) Replacement services loss consists of those expenses reason-
8 ably incurred in obtaining ordinary and necessary services in place of
9 those that the injured person would have performed, not for income but
10 for the benefit of himself or his family.

11 (f) Survivor's benefits consist of expenses, after the date on
12 which the deceased died, of contribution of tangible things of economic
13 value, including wages or salary limited as provided in (c) of this
14 section, including services that survivors would have received from the
15 deceased had he not suffered the injury causing death, and expenses
16 reasonably incurred by the survivors after the date on which the deceased
17 died in obtaining ordinary and necessary services in place of those that
18 he, had he not suffered the injury causing death, would have performed
19 for the benefit of himself or the members of his household.

20 Sec. 28.21.080. SUBTRACTABLE BENEFITS. (a) In calculating basic
21 loss benefits, all benefits or advantages a person receives or is en-
22 titled to receive because of the injury from social security and work-
23 men's compensation are subtracted.

24 (b) An insurer, and every organization providing prepaid health
25 care, authorized to transact, or transacting, business in this state,
26 which issues a policy of insurance or contract paying benefits, or which
27 provides health care services as the result of injury, except life insur-
28 ance benefits and basic or added loss benefits, shall offer, at an appro-
29 priately reduced premium or charge, an option to exclude benefits to the

1 extent benefits are payable under basic or added loss insurance.
2 An insurer or organization providing prepaid health care which issues
3 a group policy of insurance or contract, paying benefits or
4 providing health care services as the result of injury, except
5 life insurance benefits and basic or added loss benefits, may
6 not include within the benefits payable for health care services
7 provided any benefits or services which duplicate benefits payable
8 under basic or added loss insurance. This subsection does
9 not preclude the issuance of a group policy of insurance or
10 contract providing basic loss benefits, or basic and added
11 loss benefits, combined with additional benefits of insurance
12 coverages.

13 Sec. 28.21.100. PARTIAL ABOLITION OF TORT LIABILITY. (a)

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

- 16 (1) damages to property other than a motor vehicle and
17 its contents;
18 (2) intentionally caused harm to person or property;
19 (3) actions for pain and suffering when allowable expenses
20 exceeds \$5,000;
21 (4) actions for allowable expenses when amount
22 recoverable for allowable expenses exceeds \$50,000;
23 (5) actions for work loss and replacement services loss
24 when aggregate recoverable for work loss, replacement services
25 loss and \$1,500 funeral and burial expenses exceeds \$36,000;
26 (6) actions for survivor's benefits when survivor's
27 benefits recoverable and the aggregate of work loss, replacement
28 services loss and \$1,500 for funeral and burial expenses recoverable
29 exceeds \$36,000;

1 (7) injury arising from maintenance of a vehicle within the
2 course of a business or repairing, servicing or otherwise maintaining
3 motor vehicles.

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

7 Sec. 28.21.110. LIMITATION OF BASIC LOSS BENEFITS. Subject to the
8 limitations of this chapter, recovery for:

9 (1) allowable expense may not exceed \$50,000;

10 (2) work loss and replacement services may not exceed a total
11 of \$36,000;

12 (3) funeral and burial expenses may not exceed \$1,500.

13 Sec. 28.21.120. COMPULSORY LIABILITY LIMITS. The security for lia-
14 bility in tort required by sec. 20 of this chapter shall be at least in
15 amounts and limits as follows: a limit of liability of \$15,000 because
16 of bodily injury to or death of one person in any one accident and,
17 subject to the same limit for one person, \$30,000 because of bodily
18 injury to or death of two or more persons in any one accident, and
19 \$10,000 because of injury to or destruction of property to other than
20 automobiles and their contents in any one accident.

21 Sec. 28.21.130. MINIMUM COVERAGE. An insurance policy purporting
22 to provide coverage for basic loss benefits, or sold with representations
23 that the policy meets the requirements of sec. 20 of this chapter shall
24 be considered to provide all coverages required by this chapter.

25 Sec. 28.21.135. INSURER'S CERTIFICATION REGARDING OUT-OF-STATE
26 POLICIES. (a) An insurer authorized to transact business in this state
27 is required to file and maintain a written certification with the division
28 of insurance, Department of Commerce, that any accident occurring in this
29 state arising from the ownership, maintenance, or use of a motor vehicle

1 by out-of-state residents who are insured under its motor vehicle insur-
2 ance policies shall be considered to provide at least all the coverages
3 required by this chapter.

4 (b) An insurer not authorized to transact business in this state
5 or not transacting business in this state may voluntarily file the certi-
6 fication required under (a) of this section.

7 (c) When a certification filed under (a) or (b) of this section
8 applies to an accident, the insurer and his insured, as well as any
9 injured persons, have all the rights and immunities provided by this
10 chapter.

11 Sec. 28.21.137. PERSONS NOT ENTITLED TO BASIC LOSS BENEFIT. In
12 addition to the exclusions provided for in secs. 150 and 160 of this
13 chapter, a person is not entitled to basic loss benefits for bodily
14 injury if at the time of the accident

15 (1) he was the owner or registrant of a motor vehicle involved
16 in the accident with respect to which the security required by this
17 chapter was not in effect, or

18 (2) he was not a resident of the state, and was an occupant of
19 a motor vehicle not registered in the state and was not insured by an in-
20 surer which has filed a certification in compliance with sec. 135 of this
21 chapter.

22 Sec. 28.21.140. TERRITORIAL COVERAGE. Basic and added loss insur-
23 ance shall provide coverage, as required by this chapter for injury aris-
24 ing from accidents which occur in this state, to persons who are not
25 occupants of the insured vehicle and for injury, without regard to where
26 it is suffered, to a basic loss insured and to an occupant, including the
27 operator of the insured vehicle.

28 Sec. 28.21.150. CONVERTED VEHICLES. Except as provided in sec. 220
29 of this chapter, a person who converts a motor vehicle is disqualified

1 from basic or added loss benefits, including benefits otherwise due him
2 as a survivor, from any source other than an insurance policy under which
3 the converter is a basic loss insured, for injuries arising from the
4 maintenance or use of the converted vehicle. In the case of the converter's
5 death, his survivors are not entitled to benefits from any source other
6 than an insurance policy under which the converter is a basic loss
7 insured. For the purpose of this section, a person is not a converter if
8 he uses the motor vehicle with a good faith belief that he is legally
9 entitled to use it.

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

24 Sec. 28.21.170. ADDED REPARATION COVERAGE. (a) Basic loss insurers
25 shall offer optional added loss coverages providing other benefits arising
26 from the ownership, maintenance or use of a motor vehicle, including loss
27 excluded by limits on allowable expenses, work loss, replacement services
28 loss, survivor's benefits, pain and suffering loss and funeral and burial
29 expenses. The director of the division of insurance, Department of Com-

1 merce, shall adopt rules requiring that particular added loss coverages
2 be offered by insurers writing basic loss insurance.

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

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

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

23 (b) In case of injury to an occupant, including the operator, of
24 a motor vehicle while it is being used in the business of transporting
25 persons or property, the basic loss insurance applicable is the insur-
26 ance covering the vehicle.

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

1 (d) A claim for basic loss benefits based upon injury to a person
2 not otherwise covered who is not an occupant of a motor vehicle involved
3 in an accident may be made against the insurer of any involved vehicle.
4 If an injury is caused by collision, an unoccupied parked vehicle may
5 not be found to be a vehicle involved in the accident unless it was
6 parked so as to cause unreasonable risk of injury. The insurer against
7 whom the claim is asserted under this subsection shall process and
8 pay the claim as if wholly responsible, but is entitled to recover
9 from the basic loss insurers of other involved motor vehicles pro-rata
10 contribution for the basic loss benefits paid and the costs of process-
11 ing the claim.

12 Sec. 28.21.195. EQUITABLE ALLOCATION OF BURDENS AMONG INSURERS.

13 (a) The director of insurance shall establish provisions under which
14 the burden of obligations imposed upon all insurers of each class
15 of policies issued in the state is not unfairly discriminatory com-
16 pared with the burden of obligations imposed upon all insurers of
17 other classes of policies issued in the state and in light of the
18 respective premium charges for the different classes of policies.
19 Since this chapter in some instances serves other public interests,
20 including prompt and efficient payment of claims, and allocates respon-
21 sibility for payment of benefits in ways that may cause the initial
22 burdens of obligations to be unfairly discriminatory, the director of
23 insurance shall establish a system of distribution which shall identify
24 instances of unfairly discriminatory burdens and redistribute burdens
25 among insurers of different classes of policies so that the final
26 distribution of burdens is not unfairly discriminatory. The director
27 of insurance shall promulgate regulations for the operation of the
28 distribution system.

29 (b) The following system of redistribution shall be implemented

1 by the director of insurance:

2 (1) In accidents involving vehicles of unequal weight,
3 costs shall be adjusted between insurers and owners of involved
4 vehicles in accordance with this section. Adjustments apply to costs
5 of basic and added reparation benefits.

6 (2) The director of insurance shall promulgate regulations
7 classifying motor vehicles into a number of classes according to weight,
8 including cargo capacity. All passenger automobiles and other vehicles
9 lighter than 7,500 pounds shall be included in a single class. For
10 the purposes of this section, "auto" means a vehicle included in that
11 class. The director of insurance shall assign to each class, except
12 the auto class, a number of percentages. The highest percentage
13 applies to accidents between vehicles in the class and autos. Other
14 percentages apply to accidents between vehicles of each lighter class
15 and vehicles of the class to which the percentage is assigned.

16 (3) In an accident involving a vehicle of a lighter class
17 and a vehicle of a heavier class a proportion of costs which would
18 otherwise fall on the insurer and owner of the lighter vehicle is
19 imposed upon the insurer of the heavier vehicle. The proportion of
20 cost to be transferred is the percentage assigned under (b)(2) of
21 this section.

22 (4) Percentages assigned under (b)(2) of this section shall
23 be based on statistical evidence of the average increase in severity
24 of occupant injury and vehicle damage sustained by vehicles of the
25 various lighter classes in accidents involving the class of heavier
26 vehicles to which the percentage is being assigned. Percentages shall
27 be set to provide that on the average insurers and owners of vehicles
28 shall bear the costs which would result from accidents involving
29 other vehicles of the same or a lighter class and that insurers of

1 vehicles in each heavier class shall have transferred to them the
2 percentages of costs which on the average arise from the greater weight
3 of vehicles of their class.

4 (5) In multi-vehicle accidents each lighter vehicle shall
5 have transferred from it to insurers of the heavier vehicles with
6 which it comes in contact the percentage of cost designated for transfer
7 to those vehicles. Insurers of the heavier vehicles shall contribute
8 to the transferred cost in proportion to the respective percentages
9 designated for them in accidents with vehicles of the class of the
10 lighter vehicle for which the cost is transferred.

11 (c) In this section

12 (1) "class of policies" means all the basic or added repara-
13 tion insurance policies in a given rating category established by the
14 director of insurance or other ise permitted under AS 21.39;

15 (2) "burden of obligations" means the total amount of the
16 basic or added reparation benefits that all insurers of a given class
17 of policies in the state are obligated to pay plus a proportionate
18 share of all other costs and allowances properly taken into account
19 in establishing or approving rates under AS 21.39.

20 Sec. 28.21.200. INSURERS' RIGHTS OF REIMBURSEMENT AND SUBROGATION.

21 (a) Whenever a person who receives or is entitled to receive basic
22 or added loss benefits for an injury or for damage to property has a
23 cause of action against any other person for breach of an obligation
24 or duty causing the injury or damage, the basic loss insurer is
25 subrogated to and is the real party in interest in the cause of action
26 to the extent that elements of damage compensated for by basic or
27 added loss insurance are recoverable and it has paid or become
28 obligated to pay accrued and future basic and added loss benefits and
29 the person suffering the injury or damage is the real party in interest

1 as to all other elements of recoverable damage.

2 (b) In cases where both a basic loss insurer and the person
3 suffering the injury or damage are real parties in interest:

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

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

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

11 (4) neither is bound by the determination of any issue of
12 fact or law in a proceeding to which it is not a party;

13 (5) if either commences an action to assert its interest
14 in the cause of action apart from the other or without joining the
15 other, it shall set out the existence of the interest of the other.

16 Sec. 28.21.220. ASSIGNED CLAIMS. (a) A person entitled to
17 basic loss benefits because of injury covered by this chapter may
18 obtain basic loss benefits through the assigned claims plan established
19 pursuant to the provisions of sec. 350 of this chapter whenever

20 (1) basic reparation insurance is not applicable to the
21 injury;

22 (2) basic reparation insurance is not applicable to the
23 injury because the injured person has converted a motor vehicle and
24 the injured person is under 14 years of age;

25 (3) basic reparation insurance applicable to the injury
26 cannot be identified;

27 (4) basic reparation insurance applicable to the injury,
28 because of financial inability of an insurer to fulfill its obliga-
29 tion, is inadequate to provide the contracted-for benefits; or

1 (5) a claim for basic reparation benefits is rejected
2 by an insurer on the ground that another insurer or the assigned
3 claims plan affords the applicable coverage.

4 (b) If a claim qualifies for assignment under (a)(5) of this
5 section, the insurer or the assigned claims bureau to whom the claim is
6 assigned have the right to seek reimbursement for benefits paid, plus
7 costs and expenses incurred in processing the loss claims and in enforce-
8 ing this right, from any insurer legally obligated to pay the claim, and
9 any disputes arising from the claim shall be resolved by agreement
10 between the involved parties, or, if they fail to agree, by arbitration.

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

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

29 (c) Overdue payments bear interest at the rate of 18 per cent

1 per annum.

2 Sec. 28.21.240. FEES OF CLAIMANT'S ATTORNEY. (a) If overdue
3 benefits are recovered in an action against the insurer or paid by the
4 insurer after receipt of notice of the attorney's representation, in
5 addition to other benefits, a reasonable attorney's fee for advising and
6 representing a claimant on a claim or action for basic reparation
7 benefits shall be paid by the insurer. No part of the fee for
8 representing the claimant in connection with these benefits is a charge
9 against benefits otherwise due the claimant, but part or all of the
10 fee shall be charged against the benefits otherwise due the claimant
11 if his claim was in any way fraudulent or so excessive as to have no
12 reasonable foundation.

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

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

22 Sec. 28.21.260. LUMP SUM AND INSTALLMENT SETTLEMENTS. (a)
23 Rights and obligations of a single individual arising under basic or
24 added loss insurance as to a claim arising from an injury or death,
25 including a claim for future loss other than allowable expense, may be
26 discharged by a settlement for an agreed amount payable in installments,
27 or in a lump sum if the whole amount of the reasonably anticipated net
28 loss which is subject to the settlement does not exceed \$1,000. If
29 the reasonably anticipated net loss which is subject to the settlement

1 exceeds \$1,000, the settlement may be made with approval of the
2 court upon a finding by the judge that the settlement is in the best
3 interest of the claimant. Upon approval of the settlement, the court
4 may make appropriate orders concerning the safeguarding and disposition
5 of the proceeds of the settlement. A settlement agreement may also
6 provide that the insurer will pay the reasonable costs of a specified
7 medical treatment or procedure to be performed in the future.

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

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

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

29 (b) An award that commutes future losses other than allowable

1 expense to a fixed sum may be made only upon a finding that the award
2 will contribute to the health and rehabilitation of the injured person
3 or upon a finding that the present value of all benefits other than
4 allowable expense to accrue thereafter does not exceed \$1,000.

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

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

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

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

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

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

22 Sec. 28.21.300. ASSIGNMENT OF BENEFITS. An assignment or agree-
23 ment to assign any right to benefits under this chapter for losses
24 accruing in the future is unenforceable except an assignment for the
25 purpose of securing payment of alimony or child support pursuant to
26 court order and except for an assignment to a person providing products,
27 service, or accommodations to the injured person of those benefits which
28 are for the cost of those products, services or 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,
2 and other reasonable orders. In determining whether an injured person
3 has reasonable ground for refusal to submit, the court shall take
4 into 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
7 as standard and customary, and whether the imposition of sanctions
8 because of the person's refusal would abridge his right to the free
9 exercise of his religion.

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

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

21 (c) For purposes of this section, all insurers shall disclose
22 all information requested by the department and by the director
23 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 which because of financial inability is unable to fulfill
2 its obligations, a claim through the assigned claims plan may be
3 made within a reasonable time after discovery of the financial
4 inability. An action by the claimant on an assigned claim may not
5 be commenced later than 60 days after receipt of notice of the
6 assignment or the last date on which the action could otherwise
7 have been commenced, whichever is later.

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

18 Sec. 28.21.380. AVAILABILITY OF INSURANCE. (a) The director
19 of the division of insurance, Department of Commerce, shall adopt
20 and implement or approve and supervise a plan assuring that motor
21 vehicle liability and basic and added loss insurance will be conven-
22 iently and expeditiously afforded, subject only to payment or provision
23 for 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 conven-
26 iently 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 regulations, make orders, enter into
29 agreements 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. REGULATIONS. 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 which
10 security for payment of claims is a prerequisite to its legal operations
11 within this state who operates the motor vehicle or permits it to be
12 operated in this state without having in full force and effect security
13 complying with the terms of this chapter is guilty of a misdemeanor and
14 upon conviction is punishable by a fine of not more than \$500 or by im-
15 prisonment for not more than 90 days, or by 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 * Sec. 4. This Act takes effect January 1, 1974.
29