

Introduced: 2/6/73
Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

2 *CS CS* HOUSE BILL NO. 187 *Am Jud am S*

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 bodily injury arising out of the ownership,
14 maintenance or use of a motor vehicle, in place of tort liability.

15 Sec. 28.21.020. SECURITY REQUIRED FOR THE OPERATION OF A MOTOR
16 VEHICLE. (a) Except for entities described in (b) and (c) of this
17 section, every owner of a motor vehicle registered in this state, or
18 operated in this state by him or with his permission, shall contin-
19 uously maintain with respect to the motor vehicle while it is either
20 present or registered in this state, and any other person may maintain
21 with respect to any motor vehicle, security for the payment of basic
22 loss benefits and tort liabilities in accordance with this chapter for
23 injury arising from maintenance or use of the motor vehicle.

24 (b) This state, its political subdivisions, and public agencies
25 shall continuously maintain pursuant to (d) of this section security for
26 the payment of basic loss benefits and tort liabilities in accordance
27 with this chapter for injury arising out of the maintenance or use
28 of a motor vehicle owned by these entities and operated with their
29 permission. *am S*

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1 (c) The United States and its public agencies and another state,
2 its political subdivisions, and public agencies may maintain pursuant to
3 (d) of this section security for the payment of basic loss benefits and
4 tort liabilities in accordance with this chapter for injury arising out
5 of the maintenance or use of motor vehicles owned by these entities and
6 operated with their permission.

7 (d) Security for the payment of basic loss benefits and tort
8 liabilities may be provided by a contract of insurance complying with
9 this chapter issued by or on behalf of an insurer authorized to
10 transact business in this state or in the state in which the vehicle is
11 registered or by qualifying as either a self-insurer or obligated
12 government in accordance with this chapter.

13 (e) Self-insurance is effected by filing, pursuant to regulations
14 promulgated by the director of insurance, with the department in satis-
15 factory form

16 (1) a continuous undertaking by the owner or other
17 appropriate person to pay basic loss benefits or tort liabilities, or
18 both, and to perform all other obligations imposed by this chapter;

19 (2) evidence that appropriate provision exists for prompt
20 and efficient administration of claims, benefits and obligations
21 provided by this chapter; and

22 (3) evidence that reliable financial arrangements, deposits
23 or commitments exist providing assurance, substantially equivalent to
24 that afforded by a contract of insurance complying with this chapter,
25 for payment of basic loss benefits, tort liabilities and all other
26 obligations imposed by this chapter.

27 (f) An entity described in (b) or (c) of this section may provide
28 security by lawfully obligating itself to pay basic loss benefits and
29 tort liabilities in accordance with this chapter.

1 (g) For purposes of this section, a person providing security
2 pursuant to (e) of this section is a "self-insurer," and an entity
3 described in (b) or (c) of this section that has provided security
4 pursuant to (d) and (f) of this section is an "obligated government."

5 (h) A motor vehicle may not be registered in this state unless
6 satisfactory proof is furnished to the department that security has
7 been provided as required by this chapter.

8 (i) When satisfactory proof has been furnished that security has
9 been provided as required by this chapter, the department shall issue
10 a certificate of financial responsibility in accordance with regulations
11 promulgated by the department. This certificate shall at all times be
12 displayed on the motor vehicle for which security has been provided.

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

21 (b) An insurer who has issued a contract of insurance and knows
22 or has reason to believe the contract is for the purpose of providing
23 security required by sec. 20 of this chapter shall immediately furnish
24 notice to the department when it receives notification from its insured
25 of the termination of the insurance or when the insurance is otherwise
26 terminated.

27 (c) No policy of insurance purporting to conform with the re-
28 quirements of this chapter may expire in less than 20 days from the
29 time notice of termination is furnished the department by the insurer.

1 Sec. 28.21.040. BASIC LOSS INSURANCE. (a) Basic loss insurance
2 includes a contract, self-insurance or other legal means under which
3 the obligation to pay basic loss benefits arises, which is applicable
4 to loss from injury arising out of the maintenance or use of a motor
5 vehicle.

6 (b) "Maintenance or use of a motor vehicle" means maintenance or
7 use of a motor vehicle as a vehicle, including occupying, entering
8 into and alighting from it.

9 (c) "Maintenance or use of a motor vehicle" does not include:

10 (1) conduct within the course of a business of repairing,
11 servicing or otherwise maintaining motor vehicles, unless the conduct
12 occurs outside the business premises or while occupying, entering into,
13 or alighting from a motor vehicle; or

14 (2) conduct in the course of loading and unloading the
15 vehicle unless the conduct occurs while occupying, entering into or
16 alighting from the motor vehicle.

17 Sec. 28.21.050. OBLIGATION TO PAY BASIC LOSS BENEFITS. (a)
18 Basic loss benefits due under the provisions of this chapter
19 shall be paid by basic loss insurers without regard to fault.

20 (b) Basic loss obligors and the assigned claims plan shall pay
21 basic loss benefits, under the terms and conditions of this chapter, for
22 net loss from injury arising out of the maintenance or use of a motor
23 vehicle. This obligation exists without regard to immunity from liability
24 or suit which might otherwise be applicable.

25 Sec. 28.21.060. BASIC LOSS INSURANCE BENEFITS. (a) Basic loss
26 insurance benefits are payable as reimbursement for net loss suffered
27 through injury arising out of the maintenance or use of a motor vehicle,
28 subject where applicable, to the limits, deductibles, exclusions, dis-
29 qualifications and other conditions provided in this chapter.

1 (b) "Net loss" is determined by subtracting those benefits or
2 advantages from sources other than basic loss insurance and added loss
3 insurance, required to be subtracted under sec. 70 of this chapter,
4 from basic loss.

5 (c) "Basic loss" includes accrued economic detriment consisting
6 only of allowable expense, work loss, replacement services loss, and,
7 if injury causes death, funeral, cremation and burial expenses,
8 survivor's economic loss and survivor's replacement services loss.

9 (1) "Allowable expense" consists of reasonable charges in-
10 curred for reasonably needed products, services and accomodations,
11 including those for diagnosis, medical care, rehabilitation, rehabili-
12 tative occupational training and other remedical care and treatment.
13 It does not include that portion of a charge for a room in a hospital,
14 clinic, a convalescent or nursing home or other institution engaged in
15 providing nursing care and related services in excess of a reasonable
16 and customary charge for semi-private accomodations, unless special or
17 intensive care is medically required.

18 (2) "Work loss" consists of loss of income from work the
19 injured person would have performed if he had not been injured, and
20 expenses reasonably incurred by him in obtaining services in place of
21 those that he would have performed for income, reduced by any income
22 from substitute work actually performed by him or by income he would
23 have earned in available appropriate substitute work which he was
24 capable of performing but unreasonably failed to undertake. Loss of
25 pension and social security benefit entitlements and reduction in
26 earning capacity shall also be considered part of work loss.

27 (3) "Replacement services loss" consists of those expenses
28 reasonably incurred in obtaining ordinary and necessary services in
29 place of those that the injured person would have performed, not for

1 income but for the benefit of himself or his family, if he had not
2 been injured.

3 (4) "Funeral, cremation and burial expenses" consist of all
4 expenses related to funeral, cremation and burial.

5 (5) "Survivor's economic loss" consists of contributions
6 of tangible things of economic value to the injured person's survivors,
7 including wage loss, but not including services they would have re-
8 ceived from the decedent if he had not suffered the fatal injury,
9 less expenses of the survivors avoided by reason of the decedent's
10 death.

11 (6) "Survivor's replacement services loss" consists of
12 expenses reasonably incurred by survivors after the decedent's death
13 in obtaining ordinary and necessary services in place of those the
14 decedent would have performed for their benefit if he had not suffered
15 the fatal injury, less expenses of the survivors avoided by reason of
16 the decedent's death and not subtracted in calculating survivor's
17 economic loss.

18 (d) Noneconomic detriment is not loss and not reimburseable
19 under basic loss insurance. However, economic detriment caused by
20 pain and suffering or physical impairment is loss and is compensable
21 under basic loss insurance.

22 Sec. 28.21.070. CALCULATION OF NET LOSS. (a) In calculating
23 basic loss benefits, all benefits or advantages a person receives or
24 is entitled to receive because of the injury from social security and
25 workmen's compensation are subtracted.

26 (b) If a benefit or advantage received to compensate for loss
27 of income because of injury, whether from basic loss benefits or
28 from any source of benefits or advantages subtracted under (a) of
29 this section, is not taxable income, the income tax saving that is

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attributable to his loss of income because of injury is subtracted in calculating net loss. However, the benefits payable for loss of income may not be reduced by more than 15 percent of the loss of income and shall be reduced in a lesser amount if the claimant furnishes to the insurer reasonable proof of a lower value of the income tax advantage, in which event the lower value shall apply.

Sec. 28.21.080. REPLACEMENT SERVICES LOSS EXCLUSION. All replacement services loss sustained on the date of injury and during the first seven days thereafter is excluded in calculating basic loss benefits.

Sec. 28.21.090. WEEKLY LIMIT ON BENEFITS FOR CERTAIN LOSSES. Basic loss benefits payable for work loss, replacement services loss, survivor's economic loss and survivor's replacement services loss arising from injury to one person and attributable to the calendar week during which the accident causing injury occurs and to each calendar week thereafter may not exceed \$250. If the injured person's earnings or work are seasonal or irregular, the weekly limit shall be equitably adjusted or apportioned on an annual basis.

Sec. 28.21.100. ADDITIONAL LIMITATIONS ON BASIC LOSS BENEFITS. Subject to the limitations of this chapter, recovery under basic loss insurance for

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

(2) work loss, replacement services loss, survivor's economic loss and survivor's replacement services loss may not exceed a total in the aggregate of \$36,000; and

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

Sec. 28.21.110. PARTIAL ABOLITION OF TORT LIABILITY. (a) Tort liability with respect to accidents occurring in this state and arising from the ownership, maintenance or use of a motor vehicle is abolished

1 except as to

2 (1) the liability of an owner of a motor vehicle involved in
3 an accident if security covering the vehicle as required by this chapter
4 was not provided at the time of the accident;

5 (2) the liability of a person in the business of repairing,
6 servicing or otherwise maintaining motor vehicles arising from a defect
7 in a motor vehicle caused or not corrected by an act or omission in re-
8 pair, servicing or other maintenance of a vehicle in the course of his
9 business;

10 (3) the liability of a person for conduct in the course
11 of loading and unloading a motor vehicle unless the conduct occurs
12 while occupying, entering into or alighting from the vehicle;

13 (4) the liability of a person in the business of parking
14 or storing motor vehicles arising in the course of that business for
15 harm to a motor vehicle and its contents;

16 (5) liability for a defect in the design or manufacture
17 of a motor vehicle;

18 (6) liability for intentionally caused harm to person or
19 property;

20 (7) liability for harm to property other than a motor
21 vehicle and its contents;

22 (8) liability for general damages for noneconomic detriment
23 in excess of \$5,000, but only if the accident results in death, dis-
24 memberment, permanent total or permanent partial disability, significant
25 permanent injury, serious disfigurement, loss or impairment of a bodily
26 function, or more than six months of complete inability to work in an
27 occupation;

28 (9) liability for damages for allowable expense in excess
29 of \$50,000;

1 (10) liability for damages for work loss, replacement services
2 loss, survivor's economic loss and survivor's replacement services loss,
3 not recoverable as basic loss benefits because of the limitations in
4 secs. 90 and 100 of this chapter, that occur after the injured person is
5 disabled by the injury for more than six months or after his death as
6 a result of the accident; and

7 (11) liability for damages for funeral, cremation and burial
8 expenses in excess of \$1,500.

9 (b) For purposes of this section

10 (1) a person does not intentionally cause harm merely because
11 his act or failure to act is intentional or done with the realization
12 that it creates a grave risk of harm;

13 (2) "complete inability of an injured person to work in an
14 occupation" means inability to perform, on even a part-time basis,
15 even some of the duties required by his occupation or, if unemployed at
16 the time of injury, by any occupation for which the injured person was
17 qualified.

18 Sec. 28.21.120. REQUIRED MINIMUM TORT LIABILITY INSURANCE. (a)
19 Security for payment of tort liabilities required under sec. 20 of this
20 chapter shall be at least in amounts and limits as follows:

21 (1) liability coverage of not less than \$15,000 for all
22 damages arising out of bodily injury to or death of one person as a
23 result of any one accident arising out of the ownership, maintenance,
24 use, loading or unloading of the secured vehicle;

25 (2) liability coverage of not less than \$30,000 for all
26 damages arising out of bodily injury to or death of two or more
27 persons as a result of any one accident arising out of the ownership,
28 maintenance, use, loading or unloading of the secured vehicle; and

29 (3) liability coverage of not less than \$10,000 for all

1 damages arising out of injury to or destruction of property other than
2 a motor vehicle and its contents, including the loss of use thereof,
3 as a result of any one accident arising out of the ownership, main-
4 tenance, use, loading or unloading of the secured vehicle.

5 (b) The liability coverages required under (a) of this section
6 shall apply to accidents during the contract period in a territorial
7 area not less than the United States of America, its territories and
8 possessions and Canada.

9 (c) Subject to the provisions of sec. 240 of this chapter, security
10 for payment of tort liabilities may be provided by a contract of in-
11 surance the coverage of which is secondary or excess to other applicable
12 valid and collectible liability insurance. To the extent the secondary
13 or excess coverage applies to liability within the minimum security re-
14 quired by (a) of this section, it must be subject to conditions con-
15 sistent with the system of compulsory liability insurance established by
16 this chapter.

17 Sec. 28.21.130. INCLUDED COVERAGES. (a) An insurance contract
18 which purports to provide coverage for basic loss benefits or is sold
19 with representation that it provides security covering a motor vehicle
20 which meets the requirements of sec. 20 of this chapter shall be con-
21 sidered to include all of the coverages required by this chapter.

22 (b) Notwithstanding any contrary provision in it, every contract of
23 liability insurance for injury arising out of the ownership, maintenance
24 or use of a motor vehicle, wherever issued, shall be considered to in-
25 clude the basic loss benefit coverages and the minimum tort liability
26 coverages required by this chapter, while the vehicle is in this state.

27 (c) No insurer authorized to transact or transacting business in
28 this state may exclude, in any contract of liability insurance for injury
29 arising out of the ownership, maintenance or use of a motor vehicle,

1 wherever issued, the basic loss coverages and the minimum tort liability
2 coverages required by this chapter, while the vehicle is in this state.

3 (d) This section does not apply to contracts of liability in-
4 surance which provide coverage only for liability in excess of the mini-
5 mum tort liability coverages required under sec. 120 of this chapter.

6 Sec. 28.21.140. NONRESIDENT OWNERS OR REGISTRANTS. Notwith-
7 standing the provisions of sec. 130 of this chapter, a nonresident owner
8 or registrant of a motor vehicle not registered in this state may not
9 operate or permit the vehicle to be operated in this state for an
10 aggregate of more than 45 days in any calendar year unless he contin-
11 uously maintains the security for payment of basic loss benefits and
12 tort liabilities required under this chapter.

13 Sec. 28.21.150. INSURER'S CERTIFICATION REGARDING OUT-OF-STATE
14 POLICIES. (a) An insurer authorized to transact business in this
15 state is required to file and maintain a written certification with the
16 division of insurance, Department of Commerce, that any accident
17 occurring in this state arising from the ownership, maintenance, or
18 use of a motor vehicle by out-of-state residents who are insured
19 under its motor vehicle insurance policies shall be considered to
20 provide at least all the coverages required by this chapter.

21 (b) An insurer not authorized to transact business in this state
22 or not transacting business in this state may voluntarily file the
23 certification required under (a) of this section.

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

28 (d) When a certification has been filed under (a) or (b) of
29 this section, a nonresident owner or registrant of a motor vehicle

1 covered by a contract of insurance to which the certification applies
2 is relieved from the requirements of sec. 140 of this chapter until
3 such time as the laws of this state require that the vehicle be
4 registered in this state.

5 Sec. 28.21.160. TERRITORIAL COVERAGE. (a) If the accident
6 causing injury occurs in this state, every person suffering net loss
7 from injury arising out of the maintenance or use of a motor vehicle
8 has a right to basic loss benefits, unless it is otherwise provided
9 in this chapter.

10 (b) If the accident causing injury occurs outside this state,
11 the following persons and their survivors suffering net loss from
12 injury arising out of maintenance or use of a motor vehicle have a
13 right to basic loss benefits, unless it is otherwise provided in this
14 chapter:

15 (1) basic loss insureds; and

16 (2) the driver and other occupants of a secured vehicle,
17 other than

18 (A) a vehicle which is regularly used in the course
19 of the business of transporting persons or property and which is
20 one of five or more vehicles under common ownership; or

21 (B) a vehicle owned by an obligated government other
22 than this state, its political subdivisions or other public
23 agencies.

24 Sec. 28.21.170. PROPERTY DAMAGE EXCLUSION. Basic loss benefits
25 do not include benefits for harm to property.

26 Sec. 28.21.180. CONVERTED MOTOR VEHICLES. Except as provided in
27 sec. 250 of this chapter, a person who converts a motor vehicle is
28 disqualified from basic or added loss benefits, including benefits
29 otherwise due him as a survivor, from any source other than an in-

1 insurance policy under which the converter is a basic or added loss
2 insured, for injuries arising out of the maintenance or use of the con-
3 verted vehicle. If the converter dies from the injuries, his survivors
4 are not entitled to basic or added loss benefits from any source other
5 than an insurance contract under which the converter is a basic loss
6 insured. For the purpose of this section, a person is not a converter
7 if he uses the motor vehicle with a good faith belief that he is
8 legally entitled to use it.

9 Sec. 28.21.190. INTENTIONAL INJURIES. A person intentionally
10 causing or attempting to cause injury to himself or another is dis-
11 qualified from basic or added loss benefits for injury arising from
12 his acts, including benefits otherwise due him as a survivor. In the
13 case of the death of a person intentionally causing or attempting to
14 cause injury to himself, his survivors are not entitled to basic or
15 added loss benefits for loss arising from his death. A person in-
16 tentionally causes or attempts to cause injury if he acts or fails to
17 act for the purpose of causing injury or with knowledge that injury
18 is substantially certain to follow. A person does not intentionally
19 cause or attempt to cause injury merely because his act or failure
20 to act is intentional, or done with his realization that it creates a
21 grave risk of causing injury, or if the act or omission causing the
22 injury is for the purpose of averting bodily harm to himself or
23 another person.

24 Sec. 28.21.200. PRIORITY OF APPLICABILITY OF SECURITY FOR
25 PAYMENT OF BASIC LOSS BENEFITS. (a) Unless otherwise provided in
26 this section, the basic loss insurance applicable to injury to a
27 basic loss insured is the policy under which the injured person is a
28 basic loss insured. If the injured person is not a basic loss insured,
29 the basic loss insurance applicable to injury to an occupant of a

1 motor vehicle involved in an accident, including the operator, is the
2 insurance covering that vehicle.

3 (b) In case of injury to the driver or other occupant of a
4 motor vehicle while it is being used in the business of transporting
5 persons or property, the basic loss insurance applicable is the insur-
6 ance covering the vehicle, or, if none, the basic loss insurance under
7 which the injured person is a basic loss insured.

8 (c) In case of injury to an employee, or to his spouse or other
9 relative residing in the same household, if the accident causing the
10 injury occurs while the injured person is driving or occupying a motor
11 vehicle furnished by the employer, the basic loss insurance applicable
12 is the insurance covering the vehicle, or, if none, the basic loss
13 insurance under which the injured person is a basic loss insured.

14 (d) A claim for basic loss benefits based upon injury to a
15 person not otherwise covered who is not the driver or other occupant
16 of a motor vehicle involved in an accident may be made against the
17 insurer of any involved vehicle. An unoccupied parked vehicle is
18 not a motor vehicle involved in the accident unless it was parked so
19 as to cause unreasonable risk of injury.

20 (e) If two or more obligations to pay basic loss benefits are
21 applicable to an injury under the priorities set out in this section,
22 benefits are payable only once and the insurer against whom a claim
23 is asserted shall process and pay the claim as if wholly responsible,
24 but is thereafter entitled to recover pro-rata contribution for the
25 basic loss benefits paid and the costs of processing the claim. Where
26 contribution is sought among insurers responsible under (d) of this
27 section, proration shall be based on the number of involved motor
28 vehicles.

29 Sec. 28.21.210. INSURERS' RIGHTS OF REIMBURSEMENT AND SUBROGA-

1 TION. (a) Except as provided in (b) of this section, whenever a
2 person who receives or is entitled to receive basic or added loss
3 benefits for an injury or for damage to property has a claim or cause
4 of action against any other person for breach of an obligation or
5 duty causing the injury or damage, the basic loss insurer is subrogated
6 to the rights of the claimant and is the real party in interest in the
7 claim for relief or cause of action to the extent that elements of
8 damage compensated for by basic or added loss insurance are recover-
9 able and it has paid or become obligated to pay accrued or future
10 basic and added loss benefits.

11 (b) An insurer does not have and may not directly or indirectly
12 contract for a right of reimbursement from or subrogation to the
13 proceeds of a claim for relief or cause of action for noneconomic
14 detriment of a recipient of basic or added loss benefits.

15 (c) In cases where both a basic loss insurer and the person
16 suffering the injury or damage are real parties in interest

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

19 (2) the insurer may not commence an action before six
20 months after the claim for relief or cause of action has accrued
21 except when the insurer is a party in an action commenced by the
22 injured or damaged person;

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

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

27 (5) if either commences an action to assert its interest
28 in the claim for relief or cause of action apart from the other or
29 without joining the other, it shall set out the existence of the in-

1 terest of the other.

2 Sec. 28.21.220. OPTIONAL DEDUCTIBLES AND EXCLUSIONS. (a) At
3 appropriately reduced premium rates, basic loss insurers shall offer
4 each of the following deductibles and exclusions, applicable only
5 to claims of basic loss insureds and, in case of the death of a
6 basic loss insured, of his survivors:

7 (1) deductibles in the amounts of \$100, \$300, and \$500
8 from all basic loss benefits, otherwise payable, except that if two or
9 more basic loss insureds to whom the deductible is applicable under
10 the contract of insurance are injured in the same accident, the
11 aggregate amount of the deductible applicable to all of them shall
12 not exceed the specified deductible, which amount where necessary
13 shall be allocated equally among them;

14 (2) an exclusion, in calculation of net loss, of 10 per
15 cent of work loss and survivor's economic loss;

16 (3) an exclusion, in calculation of net loss, of all re-
17 placement services loss and survivor's replacement services loss; and

18 (4) a deductible, in the amount of \$1,000 per accident
19 from all basic loss benefits otherwise payable for injury to a person
20 which occurs while he is operating or is a passenger on a two-wheeled
21 motor vehicle.

22 (b) Subject to the provisions of sec. 240 of this chapter,
23 basic loss insurers may offer the following additional exclusions
24 applicable only to claims of some or all basic loss insureds and, in
25 case of the death of a basic loss insured, of his survivors:

26 (1) exclusions, in calculation of net loss, of a part of
27 replacement services loss and survivor's replacement services loss;
28 and

29 (2) exclusions, in calculation of net loss, of any of those

1 amounts and kinds of loss otherwise compensated by benefits or ad-
2 vantages a person receives or is unconditionally entitled to receive
3 from any other specified source, if the other source has been approved
4 specifically or as to type of source by the director of insurance by
5 regulations adopted upon a determination by the director that the
6 other source or type of source is reliable and that approval of it is
7 consonant with the purposes of this chapter, and, if the other source
8 is a contract of insurance, that it provides benefits for accidental
9 injuries generally and in amounts at least as great for other injuries
10 as for injuries resulting from motor vehicle accidents.

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

28 Sec. 28.21.230. OPTIONAL ADDED LOSS INSURANCE. (a) Basic loss
29 insurers may offer optional added loss coverages providing additional

1 benefits as compensation for injury or harm arising out of the owner-
2 ship, maintenance or use of a motor vehicle, including benefits for
3 loss excluded by limits on allowable expense, work loss, replacement
4 services loss, survivor's economic loss, survivor's replacement,
5 services loss, funeral, cremation and burial expenses, harm to
6 property, loss of use of motor vehicles, including temporary trans-
7 portation costs incurred during such reasonable time as necessary
8 for repair or replacement of an insured's motor vehicle, and non-
9 economic detriment. The director of insurance shall adopt regulations
10 requiring that specified optional added loss coverages be offered
11 by basic loss insurers.

12 (b) Basic loss insurers shall offer the following optional
13 added loss coverages for physical damage to motor vehicles:

14 (1) a coverage for all collision and upset damage;

15 (2) a coverage for all collision and upset damage, subject
16 to a deductible of \$100;

17 (3) a coverage for all collision and upset damage incurred
18 as the result of a single vehicle accident arising out of the owner-
19 ship, maintenance or use of the insured vehicle;

20 (4) a coverage for all collision and upset damage incurred
21 as the result of a single vehicle accident arising out of the owner-
22 ship, maintenance or use of the insured vehicle, subject to a deduct-
23 ible of \$100;

24 (5) a coverage for all collision and upset damage incurred
25 as the result of a multi-vehicle accident arising out of the owner-
26 ship, maintenance or use of two or more motor vehicles, one of which
27 is the insured vehicle; and

28 (6) a coverage for all collision and upset damage incurred
29 as the result of a multi-vehicle accident arising out of the owner-

1 ship, maintenance or use of two or more motor vehicles, one of which
2 is the insured vehicle, subject to a deductible of \$100.

3 (c) Subject to the provisions of sec. 240 of this chapter, basic
4 loss insurers may offer other optional added loss coverages for harm
5 to motor vehicles or their contents, or both, or other like coverages
6 subject to different deductibles or without deductibles.

7 (d) An insurer of the insured's choice may write separate
8 coverages for harm to motor vehicles, or their contents, or both.

9 (e) All added loss coverages offered apply to injuries or harm
10 arising out of accidents and occurrences during the contract period
11 in a territorial area not less than the United States, its territories
12 and possessions, and Canada.

13 Sec. 28.21.240. APPROVAL OF TERMS AND FORMS. (a) The terms
14 and conditions of contracts and certificates or other evidence of
15 insurance coverage sold or issued in this state providing motor
16 vehicle tort liability, basic loss and added loss insurance coverages,
17 and the forms used by insurers offering these coverages, are subject
18 to approval and regulation by the director of insurance.

19 (b) The director of insurance shall approve only terms, condi-
20 tions and forms that are consistent with the purposes and requirements
21 of this chapter, and which are fair and equitable to all persons whose
22 interests may be affected.

23 (c) The director of insurance may limit by regulation the variety
24 of coverages available in order to give insurance purchasers reasonable
25 opportunity to compare the cost of insuring with various insurers.

26 Sec. 28.21.250. ASSIGNED CLAIMS. (a) A person entitled to
27 basic loss benefits because of injury covered by this chapter may
28 obtain them through the assigned claims plan established pursuant to
29 the provisions of sec. 260 of this chapter whenever

1 (1) basic loss insurance is not applicable to the injury
2 for a reason other than those specified in secs. 180 and 190 of this
3 chapter;

4 (2) basic loss insurance is not applicable to the injury
5 because the injured person converted a motor vehicle while he was
6 under 14 years of age;

7 (3) basic loss insurance applicable to the injury cannot
8 be identified;

9 (4) basic loss insurance applicable to the injury is in-
10 adequate to provide the contracted-for benefits because of financial
11 inability of a basic loss insurer to fulfill its obligation; or

12 (5) a claim for basic loss benefits is rejected by a basic
13 loss insurer for a reason other than that the person is not entitled
14 to the basic loss benefits under this chapter.

15 (b) If a claim qualifies for assignment under (a) (3), (4)
16 or (5) of this section, the assigned claims bureau or the insurer to
17 whom the claim is assigned is subrogated to all rights of the claimant
18 against any basic loss insurer, its successor in interest or sub-
19 stitute, legally obligated to pay basic loss benefits to the claimant,
20 for basic loss benefits paid by the assignee, for the cost of
21 processing the claim for those benefits and for reasonable attorney's
22 fees and other expenses incurred in enforcing this right of subro-
23 gation.

24 (c) Except for a claim assigned under (a) (4) or (5) of this
25 section, if a person receives basic loss benefits through the
26 assigned claims plan, all benefits or advantages he receives or is
27 entitled to receive as a result of the injury, other than by way of
28 succession at death, death benefits from life insurance or in dis-
29 charge of familial obligations of support, are subtracted in cal-

1 culating net loss.

2 (d) An assigned claim of a person who has failed to comply
3 with the requirement of maintaining security under sec. 20 of this
4 chapter for the payment of basic loss benefits, or of a person as to
5 whom the security is invalidated because of his fraud or wilful mis-
6 conduct, is subject to:

7 (1) all the optional deductibles and exclusions to the
8 maximum required to be offered under sec. 220(a) of this chapter; and

9 (2) a deduction in the amount of \$500 for each year or
10 part thereof of the period of his continuous failure to provide
11 security, applicable to any benefits otherwise payable.

12 Sec. 28.21.260. ASSIGNED CLAIMS PLAN. (a) Insurers providing
13 basic loss insurance in this state must organize and continuously
14 maintain, subject to approval and regulation by the director of
15 insurance an assigned claims bureau and an assigned claims plan and
16 adopt rules for their operation and for the assessment of costs on
17 a fair and equitable basis consistent with this chapter.

18 (b) If insurers providing basic loss insurance do not organize
19 and continuously maintain an assigned claims bureau and an assigned
20 claims plan as required by (a) of this section, or in a manner con-
21 sidered consistent with this chapter by the director of insurance,
22 the director of insurance shall establish and maintain by regulation
23 an assigned claims bureau and an assigned claims plan.

24 (c) Each insurer providing basic loss insurance in this state
25 shall participate in the assigned claims bureau and the assigned
26 claims plan.

27 (d) Costs incurred, including basic loss benefits paid and
28 other expenses of operation, shall be allocated fairly and equitably
29 among basic loss insurers.

1 (e) For purposes of implementing the requirements of this
2 section, every insurer providing basic loss insurance in this state
3 shall fully and promptly disclose all information requested by the
4 director of insurance.

5 Sec. 28.21.270. TIME FOR MAKING ASSIGNED CLAIMS. (a) Except
6 as provided in (b) of this section, a person authorized to obtain
7 basic loss benefits through the assigned claims plan shall notify the
8 bureau of his claim within the time that would have been allowed for
9 commencing an action for those benefits if there had been in effect
10 identifiable coverage applicable to the claim.

11 (b) If timely action for basic loss benefits is commenced
12 against an insurer who is unable to fulfill his obligations because
13 of financial inability, a person authorized to obtain basic loss
14 benefits through the assigned claims plan shall notify the assigned
15 claims bureau of his claim within six months after discovery of the
16 financial inability of his basic loss insurer.

17 Sec. 28.21.280. DISPOSITION OF ASSIGNED CLAIMS. (a) The
18 assigned claims bureau shall promptly assign each claim of which it is
19 notified and notify the claimant of the identity and address of the
20 assignee of the claim.

21 (b) Claims shall be assigned so as to minimize inconvenience to
22 claimants.

23 (c) All claims arising from injury to one person sustained in one
24 accident shall be assigned to one assignee, who thereafter has rights
25 and obligations as if it had issued a policy of basic loss insurance
26 complying with this chapter applicable to the injury or, in case of
27 financial inability of a basic loss insurer to perform its obligations,
28 as if the assignee had issued the basic loss insurance, undertaken the
29 self-insurance, or lawfully obligated itself to pay basic loss

1 benefits.

2 Sec. 28.21.290. PAYMENT OF BENEFITS. (a) Basic or added loss
3 benefits are payable monthly as loss accrues. Loss accrues not when
4 injury occurs, but as work loss, replacement services loss, survivor's
5 economic loss, survivor's replacement services loss or allowable
6 expense is incurred. Benefits are overdue if not paid within 30 days
7 after the insurer receives reasonable proof of the fact and amount of
8 loss realized, unless an insurer elects to accumulate claims for
9 periods not exceeding 31 days, in which event benefits are not overdue
10 if paid within 15 days after the period of accumulation. If reasonable
11 proof is supplied as to only part of a claim, and the part totals \$100
12 or more, the part is overdue if not paid within the time provided by
13 this section. Allowable expense benefits may be paid by the insurer
14 directly to persons supplying products, services or accommodations to
15 the claimant.

16 (b) Overdue payments bear interest at the rate of 18 per cent
17 per year.

18 (c) A claim for basic or added loss benefits shall be paid
19 without deduction for the benefits which are to be subtracted pursuant
20 to the provisions on calculation of net loss in sec. 70 of this chapter
21 and without regard for the optional exclusions authorized under
22 sec. 220(b)(2) of this chapter, if these benefits have not been paid to
23 the claimant before they are overdue or before the claim is paid. The
24 basic or added loss insurer is entitled to reimbursement for these sub-
25 tractable benefits and optional exclusions from the person obligated to
26 make the payments or from the claimant who actually receives payment.

27 (d) A basic or added loss insurer may bring an action to re-
28 cover benefits which are not payable, but are in fact paid, because
29 of an intentional misrepresentation of a material fact, upon which

1 the insurer relies, by the insured or by a person providing an item
2 of allowable expense, in which event, the action may be brought only
3 against the person providing the item of allowable expense, unless
4 the insured has intentionally misrepresented the facts or knew of the
5 misrepresentation.

6 (e) A basic or added loss insurer who rejects a claim for
7 basic or added loss benefits shall furnish the claimant prompt written
8 notice of the rejection specifying the reason. If a claim for basic
9 loss benefits is rejected for a reason other than that the person is
10 not entitled to the basic loss benefits claimed, the written notice
11 shall inform the claimant that he may file his claim with the assigned
12 claims bureau and shall include the name and address of the bureau.

13 Sec. 28.21.300. FEES OF CLAIMANT'S ATTORNEY. (a) If overdue
14 benefits are recovered in an action against the basic or added loss
15 insurer or paid by the insurer after receipt of notice of the attorney's
16 representation, a reasonable attorney's fee for advising and repre-
17 senting a claimant on a claim or action for basic or added loss benefits
18 shall be paid by the insurer to the attorney. No part of the fee for
19 representing the claimant in connection with these benefits is a charge
20 against benefits otherwise due the claimant. However, all or part of
21 the fee may be deducted from the benefits otherwise due the claimant if
22 a significant part of his claim for benefits was in any way fraudulent
23 or so excessive as to have no reasonable foundation.

24 (b) In an action brought against the insured by the insurer,
25 the court, in its discretion, may award the insured a reasonable
26 attorney's fee for defending the action.

27 Sec. 28.21.310. FEES OF INSURER'S ATTORNEY. An insurer shall be
28 allowed a reasonable attorney's fee for defending a claim for basic or
29 added loss benefits that is fraudulent or so excessive as to have no

1 reasonable foundation. This fee may be treated as an offset to the
2 benefits due or which thereafter accrue. The insurer may recover from
3 the claimant any part of the fee not offset or otherwise paid.

4 Sec. 28.21.320. LUMP SUM AND INSTALLMENT SETTLEMENTS. (a) The
5 rights and obligations of a single individual arising under basic or
6 added loss insurance with respect to a claim arising from injury, in-
7 cluding a claim for future loss other than allowable expense, may be
8 discharged by a settlement for an agreed amount payable in installments
9 or in a lump sum, if the whole amount of the reasonably anticipated net
10 loss which is subject to the settlement does not exceed \$1,000. If
11 the reasonably anticipated net loss which is subject to the settlement
12 exceeds \$1,000, the settlement may be made with approval of the court
13 upon a finding that the settlement is in the best interest of the
14 claimant. Upon approval of the settlement, the court may make appro-
15 priate orders concerning the safeguarding and disposition of the
16 proceeds of the settlement. A settlement agreement may also provide
17 that the basic or added loss insurer will pay the reasonable costs of
18 a specified medical treatment or procedure, with reference to a
19 specified condition to be performed in the future.

20 (b) A settlement agreement for an amount payable in installments
21 may be modified as to amounts to be paid in the future, if it is shown
22 that a material and substantial change of circumstances has occurred,
23 or that there is newly-discovered evidence concerning the claimant's
24 physical condition, economic loss or rehabilitation, which could not
25 have been known previously or discovered in the exercise of reasonable
26 diligence.

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

29 Sec. 28.21.330. JUDGMENTS FOR FUTURE BENEFITS. (a) In an

1 action by a claimant for basic or added loss benefits, a lump sum or
2 installment judgment may be entered for benefits other than allowable
3 expense that would accrue after the date of the award. A judgment for
4 benefits for allowable expense that would accrue after the date of
5 the award may not be entered. In an action for basic or added loss
6 benefits or to enforce rights under this chapter, however, the court
7 may enter a judgement declaring that the basic or added loss insurer
8 is liable for the reasonable cost of appropriate medical treatment or
9 procedures, with reference to a specified condition, to be performed
10 in the future, if it is ascertainable or foreseeable that the treatment
11 or procedure will be required as a result of the injury for which
12 claim is made.

13 (b) An award that commutes future losses, other than allowable
14 expense, to a fixed sum may be entered only upon a funding of one or
15 more of the following:

16 (1) that the award will contribute to the health and reha-
17 bilitation of the injured person;

18 (2) that the present value of all benefits, other than
19 allowable expense, which are found to accrue in the future does not
20 exceed \$1,000; or

21 (3) that the parties consent and the award is in the best
22 interest of the claimant.

23 (c) An installment judgment for benefits, other than allowable
24 expense, that will accrue thereafter may be entered only for a period
25 as to which the court can reasonably determine future net loss. An
26 installment judgment may be modified as to amounts to be paid in the
27 future upon a finding that a material and substantial change of cir-
28 cumstances has occurred, or that there is newly-discovered evidence
29 concerning the claimant's physical condition, economic loss or reha-

1 bilitation, which could not have been known previously or discovered in
2 the exercise of reasonable diligence.

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

5 Sec. 28.21.340. RIGHTS OF ACTION. Except as otherwise provided
6 in this chapter, any right or obligation provided by this chapter is
7 enforceable by civil action.

8 Sec. 28.21.350. LIMITATION OF ACTIONS. (a) If basic or added
9 loss benefits have not been paid for loss arising otherwise than from
10 death, an action for these benefits may not be commenced later than
11 two years after the injured person suffers loss and either knows, or
12 in the exercise of reasonable diligence should know that the loss was
13 caused by the accident, or not later than four years after the accident,
14 whichever is earlier. If basic or added loss benefits have been paid
15 for loss arising otherwise than from death, an action for recovery of
16 further benefits, other than survivor's benefits, by either the same
17 or another claimant, may not be commenced later than two years after
18 the last payment of benefits.

19 (b) If basic or added loss benefits have not been paid to the
20 decedent or his survivors, an action for survivor's benefits may not
21 be commenced later than one year after death, or four years after the
22 accident from which death arises, whichever is earlier. If survivor's
23 benefits have been paid to a survivor, an action for recovery of
24 further survivor's benefits by either the same or another claimant
25 may not be commenced later than two years after the last payment of
26 benefits. If basic or added loss benefits have been paid for loss
27 suffered by an injured person before his death arising from the injury,
28 an action for recovery of survivor's benefits may not be commenced
29 later than one year after the death, or four years after the last

1 payment of benefits, whichever is earlier.

2 (c) If timely action for basic loss benefits is commenced against
3 a basic loss insurer and benefits are denied because of a determination
4 that the insurer's coverage is not applicable to the claimant under
5 the provision on priority of applicability of basic loss security,
6 set out in sec. 200 of this chapter, an action against the next
7 applicable insurer or assigned claims plan may be commenced not later
8 than 60 days after the determination becomes final, or the last date
9 on which the action could otherwise have been commenced, whichever is
10 later.

11 (d) Unless (a), (b) or (c) of this section prescribe a longer
12 period, an action by a claimant on an assigned claim which has been
13 timely presented may not be commenced later than 60 days after the
14 claimant receives written notice of rejection of the claim by the
15 insurer to which it was assigned.

16 (e) A calendar month during which a person does not suffer loss
17 for which he is entitled to basic or added loss benefits is not a
18 part of the time limited for commencing an action, except that the
19 months excluded for this reason may not exceed 120.

20 (f) If a person entitled to basic or added loss benefits is
21 under a legal disability when the right to bring an action for the
22 benefits first accrues, the period of his disability is not a part
23 of the time limited for commencement of the action.

24 Sec. 28.21.360. ASSIGNMENT OF BENEFITS. An assignment or agree-
25 ment to assign any right to benefits under this chapter for losses
26 accruing in the future is unenforceable except as to benefits for

27 (1) work loss in order to secure payment of alimony,
28 maintenance or child support; and

29 (2) allowable expense to the extent the benefits are for

1 the cost of products, services, or accomodations provided or to be
2 provided by the assignee.

3 Sec. 28.21.370. DEDUCTION AND SET-OFF. Unless otherwise pro-
4 vided in this chapter, basic loss benefits shall be paid without any
5 deduction or set-off.

6 Sec. 28.21.380. EXEMPTION OF BENEFITS. (a) Basic or added
7 loss benefits for allowable expense are exempt from garnishment,
8 attachment, execution and other process or claim, except a claim
9 of a creditor who has provided products, services or accomodations to
10 the extent benefits due are for allowable expense for those products,
11 services or accomodations.

12 (b) Basic or added loss benefits other than those for allowable
13 expense are exempt from garnishment, attachment, execution and
14 other process or claim to the extent that wages or earnings are exempt
15 under any applicable law exempting wages or earnings from process or
16 claims.

17 Sec. 28.21.390. MENTAL OR PHYSICAL EXAMINATION OF INJURED
18 PERSON. (a) If the mental or physical condition of a person is
19 material to a claim for past or future basic or added loss benefits,
20 the basic or added loss insurer may petition the superior court for
21 an order directing the person to submit to a mental or physical
22 examination by a physician. Upon notice to the person to be examined
23 and to all persons having an interest, the court may enter the order
24 for good cause shown. The order shall specify the time, place, manner,
25 conditions and scope of the examination, and the physician by whom it
26 is to be made.

27 (b) If requested by the person examined, the basic or added loss
28 insurer causing a mental or physical examination to be made shall
29 deliver to him a copy of a detailed written report of the examining

1 physician setting out his findings, including results of all tests
2 made, diagnoses, conclusions and reports of earlier examinations of
3 the same condition. By requesting and obtaining a report of the
4 examination ordered, or by taking the deposition of the physician, the
5 person examined waives any privilege he may have, in relation to the
6 claim for basic or added loss benefits, regarding the testimony of
7 every other person who has examined or may thereafter examine him
8 respecting the same condition. This subsection does not preclude
9 discovery of a report of an examining physician, taking a deposition
10 of the physician, or other discovery procedures in accordance with
11 a rule of court or other provision of law.

12 (c) If a person refuses to comply with an order entered under
13 this section, the court may enter any just order with respect to the
14 refusal, but may not find a person in contempt for failure to submit
15 to a mental or physical examination ordered under authority of this
16 section.

17 Sec. 28.21.400. DISCOVERY OF FACTS ABOUT AN INJURED PERSON. (a)
18 Upon request of a basic or added loss claimant or insurer, information
19 relevant to a claim for basic or added loss benefits shall be disclosed
20 as follows:

21 (1) An employer shall furnish a statement of the work record
22 and earnings of an employee upon whose injury the claim is based. The
23 statement shall cover the period specified by the claimant or insurer
24 making the request and may include a reasonable period before, and the
25 entire period after, the injury.

26 (2) The claimant shall deliver to the insurer a copy of
27 every written report, previously or thereafter made, relevant to the
28 claim, and available to him, concerning any medical treatment or examin-
29 ation of a person upon whose injury the claim is based and the names

1 and addresses of physicians and medical care facilities rendering
2 diagnoses or treatment in regard to the injury or to a relevant past
3 injury, and shall authorize the insurer to inspect and copy relevant
4 records of physicians and of hospitals, clinics, and other medical
5 facilities.

6 (3) A physician or hospital, clinic or other medical
7 facility furnishing examinations, services or accommodations to an
8 injured person in connection with a condition alleged to be connected
9 with an injury upon which a claim is based, upon authorization of the
10 claimant, shall furnish a written report of the history, condition,
11 diagnoses, medical tests, treatment, and dates and cost of treatment
12 of the injured person, and permit inspection and copying of all records
13 and reports as to the history, condition, treatment, and dates and
14 cost of treatment.

15 (b) A person other than the claimant providing information
16 under this section may charge the person requesting the information
17 for the reasonable cost of providing it.

18 (c) In case of dispute as to the right of a claimant or insurer
19 to discover information required to be disclosed, the claimant or
20 insurer may petition the superior court for an order for discovery
21 including the right to take written or oral depositions. Upon notice
22 to all persons having an interest, the order may be made for good
23 cause shown. It shall specify the time, place, manner, conditions and
24 scope of the discovery. To protect against annoyance, embarrassment
25 or oppression, the court may enter an order refusing discovery or
26 specifying conditions of discovery and directing payment of costs and
27 expenses of the proceeding, including reasonable attorney's fees.

28 Sec. 28.21.410. REHABILITATION TREATMENT AND OCCUPATIONAL
29 TRAINING. (a) A basic loss insurer is responsible for the cost of

1 a procedure or treatment for rehabilitation or a course of reha-
2 bilitative occupational training if the procedure, treatment or
3 training is reasonable and appropriate for the particular case, its
4 cost is reasonable in relation to its probable rehabilitative effects
5 and it is likely to contribute substantially to rehabilitation, even
6 though it will not enhance the injured person's earning capacity.

7 (b) An injured person who has undertaken a procedure or treat-
8 ment for rehabilitation or a course of rehabilitative occupational
9 training, other than medical rehabilitation procedure or treatment,
10 shall notify the basic loss insurer that he has undertaken the pro-
11 cedure, treatment or training within 60 days after an allowable expense
12 exceeding \$1,000 has been incurred for the procedure, treatment or
13 training, unless the insurer knows or has reason to know of the under-
14 taking. If the injured person does not give the required notice within
15 the prescribed time, the insurer is responsible only for \$1,000, or
16 the expense incurred after the notice is given and within the 60 days
17 prior to the notice, whichever is greater, unless failure to give
18 timely notice is the result of excusable neglect.

19 (c) If the injured person notifies the basic loss insurer of a
20 proposed specified procedure or treatment for rehabilitation, or a
21 specified course of rehabilitative occupational training, and the
22 insurer does not promptly thereafter accept responsibility for its
23 cost, the injured person may move the court, in an action to adjudicate
24 his claim, or, if no action is pending, may bring an action in the
25 superior court, for a determination that the insurer is responsible
26 for its cost. An insurer may move the court in an action to adju-
27 dicate the injured person's claim, or, if no action is pending, may
28 bring an action in the superior court, for a determination that it is
29 not responsible for the cost of a procedure or treatment for reha-

1 bilitation or a course of rehabilitative occupational training which
2 the injured person has undertaken or proposes to undertake. A deter-
3 mination by the court that the insurer is not responsible for the cost
4 of a procedure, treatment or course of training is not res judicata
5 with respect to the propriety of any other proposal or to the injured
6 person's right to other benefits. This subsection does not preclude
7 an action by the basic loss insurer or insured for declaratory relief
8 under other provisions of the laws of this state, nor an action by the
9 insured to recover basic loss benefits.

10 (d) If an injured person unreasonably refuses to accept a
11 rehabilitative procedure, treatment or course of occupational training,
12 a basic loss insurer may move the court, in an action to adjudicate
13 the injured person's claim, or if no action is pending, may bring an
14 action in the superior court, for a determination that future benefits
15 will be reduced or terminated so as to limit recovery of benefits to
16 an amount equal to benefits that in reasonable probability would be
17 due if the injured person had submitted to the rehabilitative pro-
18 cedure, treatment or course of occupational training, and for other
19 reasonable orders. In determining whether an injured person has
20 reasonable ground for refusal to undertake the procedure, treatment or
21 training, the court shall consider all relevant factors, including the
22 extent of the probable benefit, the place where the procedure, treatment
23 or training is offered, the extent to which the procedure, treatment or
24 training is recognized as standard and customary, and whether the
25 imposition of sanctions because of the person's refusal would abridge
26 his right to the free exercise of his religion.

27 Sec. 28.21.420. AVAILABILITY OF INSURANCE. (a) The director
28 of insurance shall establish and implement or approve and supervise
29 a plan assuring that motor vehicle liability and basic and added loss

1 insurance will be conveniently and expeditiously afforded, subject
2 only to payment or provision for payment of the premium, to all
3 applicants for insurance who are required by this chapter to provide
4 security for payment of tort liabilities and basic loss benefits and
5 who cannot conveniently obtain insurance through ordinary methods at
6 reasonable rates not in excess of those applicable to applicants under
7 the plan. The plan may be by assignment of applicants among insurers,
8 by pooling or other joint insuring or reinsuring arrangement, or by any
9 other method that will reasonably accomplish the purposes of this sec-
10 tion, including an arrangement or undertaking by insurers that results
11 in all applicants being conveniently afforded the insurance coverages
12 on reasonable and not unfairly discriminatory terms through ordinary
13 markets.

14 (b) All insurers authorized to issue motor vehicle liability,
15 basic loss or optional added loss insurance in this state shall par-
16 ticipate in the plan. The plan shall provide for equitable apportion-
17 ment among all insurers of the insurance coverage, or financial burdens
18 thereof, provided to applicants under the plan and of the costs of
19 operation of the plan.

20 (c) The plan shall make available optional added coverages and
21 other contract provisions the director of insurance determines are
22 reasonably needed by applicants and are commonly afforded in voluntary
23 markets. The plan shall provide for the availability of financing or
24 installment payments of premiums on reasonable and customary terms and
25 conditions.

26 (d) Subject to supervision and approval of the director of
27 insurance, insurers may consult and agree with each other and with
28 other appropriate persons as to the organization, administration and
29 operation of the plan and as to rates and rate modifications for

1 insurance coverages provided under the plan. Rates and rate modifica-
2 tions adopted or charged for insurance coverages provided under the
3 plan shall be first adopted or approved by the director of insurance
4 and be reasonable and not unfairly discriminatory among applicants for
5 insurance under the plan.

6 (e) To carry out the objectives of this section the director of
7 insurance may adopt rules, make orders, enter into agreements with
8 other governmental and private entities and persons, and form and
9 operate or authorize the formation and operation of bureaus and other
10 legal entities.

11 Sec. 28.21.430. TERMINATION OR MODIFICATION OF INSURANCE BY
12 INSURER. (a) This section applies only to contracts of insurance
13 providing security required under sec. 20 of this chapter for a motor
14 vehicle which is registered or operated in this state and which is
15 not one of five or more motor vehicles under common ownership insured
16 under a single insuring agreement.

17 (b) Except as permitted under (c) of this section, termination
18 of insurance by an insurer, including a refusal by the insurer
19 to renew the insurance at the expiration of its term and modifica-
20 tion by the insurer of the terms and conditions of the insurance
21 unfavorable to the insured, is ineffective, unless

22 (1) written notice of intention to modify, not to renew
23 or otherwise to terminate the insurance has been mailed or delivered
24 to the insured at least 20 days before the effective date of the
25 modification, expiration, or other termination of the insurance; and

26 (2) the insurer has expressly stipulated in the insuring
27 agreement either that

28 (A) the insurance is for a stated term of at least one
29 year after the inception of coverage and may not be modified or

1 terminated during the term; or

2 (B) if there is no stated term, or the insurance is for
3 a term of less than one year, the insurance may be modified, not
4 renewed or otherwise terminated by the insurer only at specified
5 dates or intervals which may not be less than one year after the
6 inception of coverage or thereafter less than one year apart.

7 (c) If otherwise lawfully entitled to do so and written notice
8 of termination is mailed or delivered to the insured at least 10 days
9 before the effective date of the termination, an insurer may terminate
10 insurance as follows:

11 (1) by cancellation or refusal to renew at any time within
12 75 days after the inception of coverage; or

13 (2) for nonpayment of premium when due.

14 (d) An insurer who has canceled, refused to renew or otherwise
15 terminated insurance shall mail or deliver to the insured, within 10
16 days after receipt of a written request, a statement of the reasons
17 for the cancellation, refusal to renew or other termination of the
18 insurance coverage.

19 (e) For purposes of this section

20 (1) "nonpayment of premium when due" includes the nonpayment
21 when due of an installment of premium or of a financial obligation
22 to a person who has financed the payment of the premium under a
23 premium finance plan, agreement or arrangement; and

24 (2) a cancellation or refusal to renew by or at the direction
25 of a person acting pursuant to a power or authority under a
26 premium finance plan, agreement or arrangement, whether or not with
27 power of attorney or assignment from the insured, constitutes a
28 cancellation or refusal to renew by the insurer.

29 (f) Except as otherwise provided by (e) of this section,

1 this section does not limit, or apply to, a termination, modification
2 or cancellation of insurance, or to a suspension of insurance
3 coverage by or at the request of the insured.

4 (g) This section does not affect any right an insurer has under
5 other law to rescind or otherwise terminate insurance because of
6 fraud or other willful misconduct of the insured at the inception
7 of the insuring transaction or the right of either party to reform
8 the contract on the basis of mutual mistake of fact.

9 Sec. 28.21.440. EQUITABLE ALLOCATION OF BURDENS AMONG INSURERS.

10 (a) Basic or added loss insurers paying basic or added loss
11 benefits and owners of motor vehicles suffering uninsured physical
12 damage to vehicles are entitled to proportionate reimbursement
13 from other basic or added loss insurers to assure that the allocation
14 of the financial burden of losses will be reasonably consistent with
15 the propensities of different vehicles to affect probability and
16 severity of injury to persons or physical damage to vehicles, because
17 the vehicles are of different weight or have different devices for
18 the protection of occupants, other different characteristics or
19 different regular uses. Basic or added loss insurers paying basic
20 or added loss benefits for loss arising from injury to persons, and
21 self-insurers who are natural persons bearing equivalent losses arising
22 from their own injuries, are entitled to proportionate reimbursement
23 from basic or added loss insurers of other involved vehicles. Insurers
24 paying added loss benefits for physical damage to motor vehicles and
25 owners of motor vehicles suffering uninsured physical damage to
26 vehicles are entitled to proportionate reimbursement from added loss
27 insurers who provide property damage liability coverage on other in-
28 volved vehicles.

29 (b) Basic or added loss insurers shall maintain, in accordance

1 with regulations promulgated by the director of insurance, statistical
2 records from which can be determined the propensities of different
3 motor vehicles to affect probability and severity of injury to persons
4 and physical damage to vehicles.

5 (c) When the director of insurance determines that adequate
6 supporting information is available he may establish and maintain
7 by regulation a system under which rights of reimbursement created
8 by this section are determined through pooling, reinsurance or other
9 form of reallocation procedure in place of case-by-case reimbursement.
10 With the approval of the director of insurance, two or more basic or
11 added loss insurers may enter into an agreement for settlement of their
12 rights of proportionate reimbursement through a system of pooling,
13 reinsurance or reallocation procedure in place of case-by-case reim-
14 bursement.

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

29 (e) For purposes of this section

1 (1) "class of policies" means all the basic or added loss
2 insurance policies in a given rating category established by the
3 director of insurance or otherwise permitted under AS 21.39;

4 (2) "burden of obligations" means the total amount of the
5 basic or added loss benefits that all insurers of a given class of
6 policies in the state are obligated to pay plus a proportionate share
7 of all other costs and allowances properly taken into account in
8 establishing or approving rates under AS 21.39.

9 Sec. 28.21.450. ALLOCATION OF BURDENS AMONG INSURERS UNTIL
10 SYSTEM IS ESTABLISHED. If, in a particular case, there is no appli-
11 cable system of proportionate reimbursement as authorized under sec. 440
12 of this chapter and the director of insurance has not adopted by
13 regulation other criteria for proportionate reimbursement consistent
14 with the provisions of that section, the following standards for case-
15 by-case proportionate reimbursement apply:

16 (1) In accidents involving motor vehicles of unequal weight,
17 costs shall be adjusted between insurers and owners of involved
18 vehicles in accordance with this section. Adjustments apply to costs
19 of basic and added loss benefits and to costs of physical damage to
20 vehicles.

21 (2) The director of insurance shall promulgate regulations
22 classifying motor vehicles into a number of classes according to weight,
23 including cargo capacity. All passenger vehicles weighing less than
24 5000 pounds and other vehicles weighing less than 4000 pounds apart
25 from cargo capacity shall be included in a single class. For the
26 purposes of this section, a vehicle in this class is a "low-weight
27 vehicle." The director shall assign by rule to each class, except
28 the low-weight class, a number of percentages determined as provided in
29 this section. The highest percentage for a class applies to accidents

1 between vehicles in that class and low-weight vehicles. Other per-
2 centages apply to accidents between vehicles of each lighter weight
3 class and vehicles of the class to which the percentage is assigned.

4 (3) In an accident involving a vehicle of a lighter class
5 and a vehicle of a heavier class a proportion of costs which would
6 otherwise fall on the basic or added loss insurer or owner of the
7 lighter vehicle is imposed upon the insurer of the heavier vehicle.
8 The proportion of cost to be transferred is the percentage assigned
9 under paragraphs (2) of this section.

10 (4) Percentages assigned under paragraphs (2) of this section
11 shall be based on statistical evidence of the average increase in sever-
12 ity of occupant injury and vehicle damage sustained by vehicles of the
13 various lighter classes in accidents involving the class of heavier
14 vehicles to which the percentage is being assigned. Percentages shall
15 be set to provide that, on the average, basic and added loss insurers
16 and owners of vehicles shall bear the costs which would result from
17 accidents involving other vehicles of the same or a lighter class and
18 that insurers and owners of vehicles in each heavier class shall have
19 transferred to them the percentages of costs which on the average
20 arise from the greater weight of vehicles of their class.

21 (5) Until the director of insurance promulgates regulations
22 classifying motor vehicles into classes according to weight, assigning
23 percentages to each class, the percentage presumptively applying
24 between a low-weight vehicle and a vehicle not a low-weight vehicle,
25 or between two vehicles not low-weight vehicles shall be determined by
26 subtracting the weight of the lighter vehicle from the weight of the
27 heavier vehicle, including cargo capacity, dividing the difference by
28 the combined weight of the vehicles, and multiplying by 100 to convert
29 to percentage. However, another percentage applies if a party claiming

1 or defending against a claim for reimbursement under this paragraph
2 proves that the other percentage is more consistent with allocating the
3 financial burden of losses according to the propensities of vehicles
4 of the different classes to affect probability and severity of injury
5 to persons or physical damage to vehicles.

6 (6) In multi-vehicle accidents each lighter vehicle shall
7 have transferred from it to basic or added loss insurers of the
8 heavier vehicles involved the percentage of cost designated for
9 transfer to the heaviest of those vehicles. Insurers of the heavier
10 vehicles shall contribute to the transferred cost in proportion to
11 the respective percentages designated for them in accidents with
12 vehicles of the class of the lighter vehicle for which the cost is
13 transferred.

14 Sec. 28.21.460 RATES. Rate making and regulation of rates for
15 basic and added loss insurance are governed by AS 21.39.

16 Sec. 28.21.470. REGULATIONS. (a) The director of insurance
17 may adopt regulations to provide effective administration of this
18 chapter which are consistent with the purposes of this chapter and
19 which are fair and equitable to all persons whose interest may be
20 affected.

21 (b) The commissioner of revenue may adopt regulations to implement
22 and provide effective administration of secs. 20 and 30 of this chapter.

23 (c) Regulations promulgated under authority of this chapter
24 shall be adopted in accordance with the Administrative Procedure Act
25 (AS 44.62).

26 Sec. 28.21.480. PENALTIES. An owner of a motor vehicle who
27 operates the vehicle or permits it to be operated in this state when
28 he knows or should know that he has failed to provide the security
29 covering the vehicle required by this chapter is guilty of a mis-

1 demeanor, and upon conviction is punishable by a fine of not more
2 than \$500 or by imprisonment for not more than 90 days, or by both.

3 Sec. 28.21.490. DEFINITIONS. In this chapter unless the context
4 otherwise requires

5 (1) "added loss benefits" mean benefits provided by optional
6 added loss insurance under sec. 230 of this chapter;

7 (2) "added loss insurance" means optional coverage provided
8 for in sec. 230 of this chapter;

9 (3) "basic loss benefits" mean benefits providing reim-
10 bursement for net loss suffered through injury arising out of the
11 maintenance or use of a motor vehicle which are payable as a result of
12 basic loss insurance;

13 (4) "basic loss insurance" means a contract of insurance,
14 self-insurance, or other legal means under which the obligation to pay
15 basic loss benefits arises;

16 (5) "basic loss insured" means:

17 (A) a person identified by name as an insured in a
18 contract of basic loss insurance complying with the requirements
19 of this chapter; and

20 (B) while residing in the same household with a named
21 insured, the following persons not identified by name as an
22 insured in any other contract of basic loss insurance complying
23 with the requirements of this chapter:

24 (i) a spouse or other relative of a named insured;

25 and

26 (ii) a minor in the custody of a named insured or
27 of a relative residing in the same household with a
28 named insured;

29 (6) "basic or added loss insurer" means an insurer, self-

1 insurer or obligated government providing basic or added loss benefits,
2 or both, under this chapter;

3 (7) "department" means the Department of Revenue;

4 (8) "director of insurance" means the director of the
5 division of insurance, Department of Commerce, created by AS 21.06;

6 (9) "injury" and "injury to person" mean bodily harm,
7 sickness, disease or death;

8 (10) "motor vehicle" means a self-propelled vehicle re-
9 quired to be registered under AS 28.10 and designed for operation
10 on a highway by other than muscular power, except a vehicle used
11 exclusively upon stationary rails or tracks;

12 (11) "noneconomic detriment" means pain, suffering,
13 inconvenience, physical impairment and other nonpecuniary damage
14 deemed inherent in an injury and recoverable under the tort law of this
15 state;

16 (12) "nonresident" means a person who is not a resident of
17 this state;

18 (13) "owner" means a person, other than a lienholder or se-
19 cured party, who owns or has legal title to a motor vehicle or is en-
20 titled to the use and possession of a motor vehicle subject to a secu-
21 rity interest held by another person other than a lessee under a
22 lease not intended as security;

23 (14) "residing in the same household" means making one's home
24 in the same family unit as a named insured, even though one may
25 temporarily live elsewhere;

26 (15) "secured vehicle" means a motor vehicle for which the
27 security required by this chapter has been provided;

28 (16) "survivor" means a person identified in AS 09.55.580
29 as one entitled to receive benefits by reason of the death of another

1 person;

2 (17) "uninsured motor vehicle" means a motor vehicle with
3 respect to which either no security is required by sec. 20 of this
4 chapter or the security provided is through self-insurance.

5 Sec. 28.21.500. SEVERABILITY. (a) Except as provided in (b)
6 of this section, if any provision of this chapter or application
7 thereof to any person or circumstance is held invalid, the remainder
8 of this chapter and the application to other persons or circumstances
9 shall not be effected thereby, to the extent that other provisions
10 or applications of this chapter can be given effect without the pro-
11 vision or application held invalid.

12 (b) If a restriction or limitation on the retained tort liability
13 in sec. 110(a)(8) or (10) of this chapter, or application thereof to
14 any person or circumstance, is held invalid, this chapter shall be
15 interpreted as if sec. 110(a)(8) or (10) of this chapter had not
16 been enacted.

17 Sec. 28.21.510. SHORT TITLE. This chapter shall be known
18 and may be cited as the Motor Vehicle Basic Loss Insurance Act.

19 * Sec. 2. AS 21.12.070(a) is amended by adding a new paragraph to read:

20 (15) basic and added loss motor vehicle insurance required
21 under AS 28.21 as security for the payment of basic and added loss
22 benefits provided for under that chapter.

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

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

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

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

28 * Sec. 5 AS 28.15 is amended by adding a new section to read:

29 Sec. 28.15.155. DEPARTMENT TO FURNISH OPERATING RECORD. Upon

1 request of an interested state department or agency or an insurance
2 carrier authorized to transact business in this state, the department
3 shall furnish a certified abstract of the operating record of a person
4 who is the driver or owner of a motor vehicle subject to registration
5 under ch. 10 of this title. The abstract shall include a list of
6 convictions for violation of the motor vehicle laws of this state as
7 reported to the department, a list of motor vehicle accidents in which
8 the person was involved which resulted in a conviction for violation
9 of the motor vehicle laws of this state and a record of motor vehicles
10 registered in his name. The fee for each abstract is \$5.

11 * Sec. 6. AS 28.20 is repealed.

12 * Sec. 7. Accidents occurring before the effective date of this Act
13 are not covered by, or subject to, the provisions of this Act. The director
14 of the division of insurance, Department of Commerce, and the commissioner
15 of revenue shall exercise, prior to the effective date of this Act, the
16 authority vested in them under this Act to do all things necessary to im-
17 plement this Act on its effective date.

18 * Sec. 8. This Act takes effect January 1, 1974.
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