

Introduced: 1/21/75
Referred: Commerce and
Judiciary

IN THE HOUSE

BY URION

HOUSE BILL NO. 38

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

CHAPTER 21. MOTOR VEHICLE BASIC LOSS INSURANCE ACT.

Sec. 28.21.010. DECLARATION OF PURPOSE. The purpose of this chapter is to provide a means of prompt and equitable compensation to persons for loss from injury arising out of the ownership, maintenance or use of a motor vehicle in place of tort liability to a limited extent.

Sec. 28.21.020. SECURITY REQUIRED FOR THE OPERATION OF A MOTOR VEHICLE. (a) Except for entities described in (b) and (c) of this section, every owner of a motor vehicle registered in this state or operated in this state by him or with his permission for more than 45 days, shall maintain with respect to the motor vehicle while it is either present or registered in this state security for the payment of basic loss benefits and tort liabilities in accordance with this chapter for injury arising out of the maintenance or use of the motor vehicle. Any other person may maintain security for a motor vehicle.

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

1 (c) The United States and its public agencies, other states and
2 their political subdivisions, and public agencies may maintain pursuant
3 to (d) of this section security for the payment of basic loss benefits
4 and tort liabilities in accordance with this chapter for injury arising
5 out of the maintenance or use of motor vehicles owned by these entities
6 and 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 with the department
14 pursuant to regulations promulgated by the director of insurance and
15 in satisfactory 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) of (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 is 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 at all times shall 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 in effect as required by sec. 20 of this chapter shall immediately
16 surrender the registration certificate, license plates and certificate
17 of financial responsibility for the vehicle to the department and may
18 not operate or permit operation of the vehicle in this state until
19 security has again been provided and proof of security furnished as
20 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 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 unless another policy of insurance conforming to the requirements of this
2 chapter is currently in effect as required by sec. 20 of this chaoter or
3 the insured no longer owns or operates the motor vehicle for which
4 security has been provided.

5 (d) The requieements of (b) and (c) of this section may be waived
6 or modified in whole or in part by the commissioner of revenue.

7 Sec. 28.21.040. BASIC LOSS INSURANCE. (a) Basic loss insurance
8 includes a contract, self-insurance or other legal means under which the
9 obligation to pay basic loss benefits arises, which applies to loss
10 from injury arising out of the maintenance or use of a motor vehicle.

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

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

15 (1) conduct within the course of a business or repairing, ser-
16 vicing or otherwise maintaining motor vehicles unless the conduct occurs
17 outside the business premises or while occupying, entering into, or
18 alighting from a motor vehicle; or

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

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

25 (b) Basic loss obligors and the assigned claims plan shall pay ba-
26 sic loss benefits under the terms and conditions of this chapter for
27 net loss from injury arising out of the maintenance or use of a motor
28 vehicle. This obligation exists without regard to immunity from
29 liability or suit which might otherwise be applicable.

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

6 (b) "Net loss" is determined by subtracting those benefits or advan-
7 tages from sources other than basic loss insurance and added loss insur-
8 ance, required to be subtracted under sec. 70 of this chapter, from basic
9 loss.

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

14 (1) "Allowable expense" consists of the reasonable value of
15 reasonably needed products, services and accommodations, including those
16 for diagnosis, medical care, rehabilitation, rehabilitative occupational
17 training and other remedial care and treatment. It does not include
18 that portion of a charge for a room in a hospital, clinic, a convalescent
19 or nursing home or other institution engaged in providing nursing care
20 and related services in excess of a reasonable and customary charge for
21 semi-private accommodations, unless special or intensive care is
22 medically required.

23 (2) "Work loss" consists of loss of income from work the
24 injured person would have performed if he had not been injured, and
25 expenses reasonably incurred by him in obtaining services in place of
26 those that he would have performed for income, reduced by any income
27 from substitute work actually performed by him or by income he would
28 have earned in available appropriate substitute work which he was
29 capable of performing but unreasonably failed to undertake. Loss of

1 pension and social security benefit entitlements and reduction in
2 earning capacity shall also be considered part of work loss.

3 (3) "Replacement services loss" consists of those expenses
4 reasonably incurred in obtaining ordinary and necessary services in
5 place of those that the injured person would have performed, not for
6 income but for the benefit of himself or his family, if he had not
7 been injured.

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

10 (5) "Survivor's economic loss" consists of contributions of
11 tangible things of economic value to the injured person's survivors,
12 including wage loss, but not including services they would have received
13 from the decedent if he had not suffered the fatal injury, less expenses
14 of the survivors avoided by reason of the decedent's death.

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

22 (d) Noneconomic detriment is not loss and not reimbursable
23 under basic loss insurance. However, economic detriment caused by
24 pain and suffering or physical or mental impairment is loss and is
25 compensable under basic loss insurance.

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

1 (b) If a benefit or advantage received to compensate for loss
2 of income because of injury, whether from basic loss benefits or from
3 any source of benefits or advantages subtracted under (a) of this
4 section, is not taxable income, the income tax saving that is attri-
5 butable to his loss of income because of injury is subtracted in
6 calculating net loss. However, subtraction may not exceed 15 per
7 cent of the loss of income and shall be in a lesser amount if the
8 claimant furnishes to the insurer reasonable proof of a lower value
9 of the income tax advantage, in which event the lower value shall
10 apply.

11 Sec. 28.21.080. WORK LOSS AND REPLACEMENT SERVICES LOSS
12 EXCLUSION. All work loss and replacement services loss sustained on
13 the date of injury and seven days after the date of injury are
14 excluded in calculating basic loss benefits.

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

23 Sec. 28.21.095. FUNERAL, CREMATION AND BURIAL EXPENSES. Funeral,
24 cremation and burial expenses may not exceed \$1,500 per person, which
25 are payable under basic loss insurance as basic loss benefits.

26 Sec. 28.21.100. AGGREGATE LIMITATION ON BASIC LOSS BENEFITS.
27 Subject to the limitations contained in this chapter, recovery for
28 basic loss benefits through basic loss insurance may not exceed an
29 aggregate total of \$10,000 per person per accident.

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

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

8 (2) the liability of a person in the business of repairing,
9 servicing or otherwise maintaining motor vehicles arising from a defect
10 in a motor vehicle caused or not corrected by an act or omission in
11 repair, servicing or other maintenance of a vehicle in the course of
12 his business;

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

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

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

21 (6) liability for intentionally caused harm to person or
22 property;

23 (7) liability for harm to property;

24 (8) liability for general damages for noneconomic detriment
25 when allowable expense exceeds \$1,000, or if the accident results in
26 death, significant permanent injury, serious permanent disfigurement
27 or more than six months of complete inability to work in an occupation;
28 and

29 (9) liability for damages for economic detriment not recover-

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able through basic loss insurance other than work loss, replacement services loss, and if injury causes death, funeral, cremation and burial expenses, survivor's economic loss and survivor's replacement services loss not recoverable as basic loss benefits because of the limitations contained in secs. 90 and 95 of this chapter, and for work loss, replacement services loss, survivor's economic loss and survivor's replacement services loss not recoverable as basic loss benefits because of the limitation contained in sec. 90 of this chapter that accrue after the injured person is disabled by the injury for more than six months or after his death as a result of the accident.

(b) For purposes of this section

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

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

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

(1) liability coverage of not less than \$25,000 for all damages arising out of bodily injury to or death of one person as a result of any one accident arising out of the ownership, maintenance, use, loading or unloading of the secured vehicle;

(2) liability coverage of not less than \$50,000 for all damages arising out of bodily injury to or death of two or more persons as a result of any one accident arising out of the ownership, maintenance,

1 use, loading or unloading of the secured vehicle; and

2 (3) liability coverage of not less than \$10,000 for all
3 damages arising out of injury to or destruction of property, including
4 the loss of use thereof, as a result of any one accident arising out of
5 the ownership, maintenance, use, loading or unloading of the secured
6 vehicle.

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

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

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

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

29 (c) No insurer authorized to transact or transacting business in

1 this state may exclude, in any contract of liability insurance for in-
2 jury arising out of the ownership, maintenance or use of a motor vehicle,
3 wherever issued, the basic loss coverages and the minimum tort liability
4 coverages required by this chapter, while the vehicle is in this state.

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

8 Sec. 28.21.140. NONRESIDENT OWNERS OR REGISTRANTS. Notwithstanding
9 the provisions of sec. 130 of this chapter, a nonresident owner or
10 registrant of a motor vehicle not registered in this state may not operate
11 or permit the vehicle to be operated in this state for more than 45 days
12 unless he continuously maintains the security for payment of basic loss
13 benefits and tort liabilities required under this chapter.

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

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

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

1 (d) When a certification has been filed under (a) or (b) of this
2 section, a nonresident owner or registrant of a motor vehicle covered by
3 a contract of insurance to which the certification applies is relieved
4 from the requirements of secs. 20 and 140 of this chapter until such time
5 as the laws of this state require that the vehicle be registered in this
6 state.

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

11 (b) If the accident causing injury occurs outside this state, the
12 following persons and their survivors suffering net loss from injury
13 arising out of maintenance or use of a motor vehicle have a right to
14 basic loss benefits, unless it is otherwise provided in this 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 and \$300
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, basic
23 loss insurers may offer the following additional exclusions applicable
24 only to claims of some or all basic loss insureds and, in case of the
25 death of a basic loss insured, of his survivors:

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

28 (2) exclusions, in calculation of net loss, of any of those
29 amounts and kinds of loss otherwise compensated by benefits or ad-

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

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

27 Sec. 28.21.230. OPTIONAL ADDED LOSS INSURANCE. (a) Basic loss
28 insurers may offer optional added loss coverages providing additional
29 benefits as compensation for injury or harm arising out of the ownership,

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

11 (b) Basic loss insurers shall offer optional added loss coverages
12 providing additional benefits for basic loss excluded by reason of the
13 limitations contained in secs. 80, 90, 95 and 100 of this chapter up to
14 an aggregate total of \$50,000 per person per accident.

15 (c) An insurer of the insured's choice may write separate cover-
16 ages for harm to motor vehicles or their contents, or both.

17 (d) All added loss coverages offered apply to injuries or harm
18 arising out of accidents and occurrences during the contract period
19 in a territorial area not less than the United States, its territories
20 and possessions, and Canada.

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

27 (b) The director of insurance shall approve only terms, conditions
28 and forms that are consistent with the purposes and requirements of
29 this chapter, and which are fair and equitable to all persons whose

1 interests may be affected.

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

5 (d) The director of insurance shall provide through an appropriate
6 publication the means to inform consumers about the provisions of this
7 chapter, including the limits, deductibles, exclusions, disqualifications
8 and other conditions provided for, and about rates being charged by in-
9 surers in a manner adequate to permit consumers to compare the cost of
10 insuring.

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

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

17 (2) basic loss insurance is not applicable to the injury
18 because the injured person converted a motor vehicle while he was under
19 14 years of age;

20 (3) basic loss insurance applicable to the injury cannot be
21 indentified;

22 (4) basic loss insurance applicable to the injury is inade-
23 quate to provide the contracted-for benefits because of financial
24 inability of a basic loss insurer to fulfill its obligation; or

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

28 (b) If a claim qualifies for assignment under (a)(3), (4) or
29 (5) of this section the assigned claims bureau or the insurer to

1 whom the claim is assigned is subrogated to all rights of the claimant
2 against any basic loss insurer, its successor in interest or substitute
3 legally obligated to pay basic loss benefits to the claimant for basic
4 loss benefits paid by the assignee, for the cost of processing the
5 claim for those benefits, for reasonable attorney's fees and other
6 expenses incurred in enforcing this right of subrogation.

7 (c) Except for a claim assigned under (a)(4) or (5) of this
8 section if a person receives basic loss benefits through the assigned
9 claims plan all benefits or advantages he receives or is entitled
10 to receive as a result of the injury, other than by way of succession
11 at death, death benefits from life insurance or in discharge of
12 familial obligations of support, are subtracted in calculating net
13 loss.

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

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

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

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

1 (b) If insurers providing basic loss insurance do not organize
2 and continuously maintain an assigned claims bureau and an assigned
3 claims plan as required by (a) of this section or in a manner con-
4 sidered consistent with this chapter by the director of insurance,
5 the director of insurance shall establish and maintain by regulation
6 an assigned claims bureau and an assigned claims plan.

7 (c) Each insurer providing basic loss insurance in this state
8 shall participate in the assigned claims bureau and the assigned
9 claims plan.

10 (d) Costs incurred including basic loss benefits paid and
11 other expenses of operation shall be allocated fairly and equitably
12 among basic loss insurers.

13 (e) For purposes of implementing the requirements of this
14 section, every insurer providing basic loss insurance in this state
15 shall fully and promptly disclose all information requested by the
16 director of insurance.

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

23 (b) If timely action for basic loss benefits is commenced
24 against an insurer who is unable to fulfill his obligations because
25 of financial inability, a person authorized to obtain basic loss
26 benefits through the assigned claims plan shall notify the assigned
27 claims bureau of his claim within six months after discovery of the
28 financial inability of his basic loss insurer.

29 Sec. 28.21.280. DISPOSITION OF ASSIGNED CLAIMS. (a) The

1 assigned claims bureau shall promptly assign each claim of which it is
2 notified and notify the claimant of the identity and address of the
3 assignee of the claim.

4 (b) Claims shall be assigned so as to minimize inconvenience to
5 claimants.

6 (c) All claims arising from injury to one person sustained in one
7 accident shall be assigned to one assignee, who thereafter has rights
8 and obligations as if it had issued a policy of basic loss insurance
9 complying with this chapter applicable to the injury or, in case of
10 financial inability of a basic loss insurer to perform its obligations,
11 as if the assignee had issued the basic loss insurance, undertaken the
12 self-insurance, or lawfully obligated itself to pay basic loss
13 benefits.

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

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

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

10 (d) A basic or added loss insurer may bring an action to re-
11 cover benefits which are not payable but are in fact paid, because
12 of an intentional misrepresentation of a material fact upon which
13 the insurer relies by the insured or by a person providing an item
14 of allowable expense, in which event the action may be brought only
15 against the person providing the item of allowable expense unless
16 the insured has intentionally misrepresented the facts or knew of the
17 misrepresentation.

18 (e) A basic or added loss insurer who rejects a claim for
19 basic or added loss benefits shall furnish the claimant prompt written
20 notice of the rejection specifying the reason. If a claim for basic
21 loss benefits is rejected for a reason other than that the person is
22 not entitled to the basic loss benefits claimed, the written notice
23 shall inform the claimant that he may file his claim with the assigned
24 claims bureau and shall include the name and address of the bureau.

25 Sec. 28.21.300. FEES OF CLAIMANT'S ATTORNEY. (a) If overdue
26 benefits are recovered in an action against the basic or added loss
27 insurer or paid by the insurer after receipt of notice of the attorney's
28 representation, a reasonable attorney's fee for advising and repre-
29 senting a claimant on a claim or action for basic or added loss benefits

1 shall be paid by the insurer to the attorney. No part of the fee for
2 representing the claimant in connection with these benefits is a charge
3 against benefits otherwise due the claimant. However, all or part of
4 the fee may be deducted from the benefits otherwise due the claimant if
5 a significant part of his claim for benefits was in any way fraudulent
6 or so excessive as to have no reasonable foundation.

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

10 Sec. 28.21.310. FEES OF INSURER'S ATTORNEY. An insurer shall be
11 allowed a reasonable attorney's fee for defending a claim for basic or
12 added loss benefits that is fraudulent or so excessive as to have no
13 reasonable foundation. This fee may be treated as an offset to the
14 benefits due or which thereafter accrue. The insurer may recover from
15 the claimant any part of the fee not offset or otherwise paid.

16 Sec. 28.21.320. LUMP SUM AND INSTALLMENT SETTLEMENTS. (a) The
17 rights and obligations of a single individual arising under basic or
18 added loss insurance with respect to a claim arising from injury, in-
19 cluding a claim for future loss other than allowable expense, may be
20 discharged by a settlement for an agreed amount payable in installments
21 or in a lump sum, if the whole amount of the reasonably anticipated net
22 loss which is subject to the settlement does not exceed \$1,000. If
23 the reasonably anticipated net loss which is subject to the settlement
24 exceeds \$1,000, the settlement may be made with approval of the court
25 upon a finding that the settlement is in the best interest of the
26 claimant. Upon approval of the settlement, the court may make appro-
27 priate orders concerning the safeguarding and disposition of the
28 proceeds of the settlement. A settlement agreement may also provide
29 that the basic or added loss insurer will pay the reasonable costs of

1 a specified medical treatment or procedure, with reference to a
2 specified condition, to be performed in the future.

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

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

12 Sec. 28.21.330. JUDGMENTS FOR FUTURE BENEFITS. (a) In an
13 action by a claimant for basic or added loss benefits, a lump sum or
14 installment judgment may be entered for benefits other than allowable
15 expense that would accrue after the date of the award. A judgment for
16 benefits for allowable expense that would accrue after the date of
17 the award may not be entered. In an action for basic or added loss
18 benefits or to enforce rights under this chapter, however, the court
19 may enter a judgment declaring that the basic or added loss insurer
20 is liable for the reasonable cost of appropriate medical treatment or
21 procedures, with reference to a specified condition, to be performed
22 in the future if it is ascertainable or foreseeable that the treatment
23 or procedure will be required as a result of the injury for which
24 claim is made.

25 (b) An award that commutes future losses, other than allowable
26 expense, to a fixed sum may be entered only upon a finding of one or
27 more of the following:

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

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

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

6 (c) An installment judgment for benefits, other than allowable
7 expense, that will accrue thereafter may be entered only for a period
8 as to which the court can reasonably determine future net loss. An
9 installment judgment may be modified as to amounts to be paid in the
10 future upon a finding that a material and substantial change of cir-
11 cumstances has occurred, or that there is newly-discovered evidence
12 concerning the claimant's physical condition, economic loss or reha-
13 bilitation, which could not have been known previously or discovered in
14 the exercise of reasonable diligence.

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

17 Sec. 28.21.340. RIGHTS OF ACTION. Except as otherwise provided
18 in this chapter, any right or obligation provided by this chapter is
19 enforceable by civil action.

20 Sec. 28.21.350. LIMITATION OF ACTIONS. (a) If basic or added
21 loss benefits have not been paid for loss arising otherwise than from
22 death, an action for these benefits may not be commenced later than
23 two years after the injured person suffers loss and either knows, or
24 in the exercise of reasonable diligence should know that the loss was
25 caused by the accident, or not later than four years after the accident,
26 whichever is earlier. If basic or added loss benefits have been paid
27 for loss arising otherwise than from death, an action for recovery of
28 further benefits, other than survivor's benefits, by either the same
29 or another claimant, may not be commenced later than two years after

1 the last payment of benefits.

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

14 (c) If timely action for basic loss benefits is commenced against
15 a basic loss insurer and benefits are denied because of a determination
16 that the insurer's coverage is not applicable to the claimant under
17 the provision on priority of applicability of basic loss security,
18 set out in sec. 200 of this chapter, an action against the next
19 applicable insurer or assigned claims plan may be commenced not later
20 than 60 days after the determination becomes final, or the last date
21 on which the action could otherwise have been commenced, whichever is
22 later.

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

28 (e) A calendar month during which a person does not suffer loss
29 for which he is entitled to basic or added loss benefits is not a

1 part of the time limit for commencing an action, except that the
2 months excluded for this reason may not exceed 120.

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

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

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

12 (2) allowable expense to the extent the benefits are for
13 the cost of products, services, or accommodations provided or to be
14 provided by the assignee.

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

18 Sec. 28.21.380. EXEMPTION OF BENEFITS. (a) Basic or added
19 loss benefits for allowable expense are exempt from garnishment,
20 attachment, execution and other process or claim, except a claim
21 of a creditor who has provided products, services or accommodations to
22 the extent benefits due are for allowable expense for those products,
23 services or accommodations.

24 (b) Basic or added loss benefits other than those for allowable
25 expense are exempt from garnishment, attachment, execution and
26 other process or claim to the extent that wages or earnings are exempt
27 under any applicable law exempting wages or earnings from process or
28 claims.

29 Sec. 28.21.390. MENTAL OR PHYSICAL EXAMINATION OF INJURED

1 PERSON. (a) If the mental or physical condition of a person is
2 material to a claim for past or future basic or added loss benefits,
3 the basic or added loss insurer may petition the superior court for
4 an order directing the person to submit to a mental or physical
5 examination by a physician. Upon notice to the person to be examined
6 and to all persons having an interest, the court may enter the order
7 for good cause shown. The order shall specify the time, place, manner,
8 conditions and scope of the examination, and the physician by whom it
9 is to be made.

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

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

29 Sec. 28.21.400. DISCOVERY OF FACTS ABOUT AN INJURED PERSON. (a)

1 Upon request of a basic or added loss claimant or insurer, information
2 relevant to a claim for basic or added loss benefits shall be disclosed
3 as follows:

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

9 (2) The claimant shall deliver to the insurer a copy of
10 every written report, whenever made, relevant to the claim and available
11 to him, concerning any medical treatment or examination of a person upon
12 whose injury the claim is based and the names and addresses of physicians
13 and medical care facilities rendering diagnoses or treatment in regard
14 to the injury or to a relevant past injury, and shall authorize the
15 insurer to inspect and copy relevant records of physicians, hospitals,
16 clinics, and other medical facilities.

17 (3) A physician, hospital, clinic or other medical
18 facility furnishing examinations, services or accommodations to an
19 injured person in connection with a condition alleged to be connected
20 with an injury upon which a claim is based, upon authorization of the
21 claimant shall furnish a written report of the history, condition,
22 diagnoses, medical tests, treatment, dates and cost of treatment
23 of the injured person, and permit inspection and copying of all records
24 and reports as to the history, condition, treatment, dates and
25 cost of treatment.

26 (b) A person other than the claimant providing information
27 under this section may charge the person requesting the information
28 for the reasonable cost of providing it.

29 (c) In case of dispute as to the right of a claimant or insurer

1 to discover information required to be disclosed, the claimant or
2 insurer may petition the superior court for an order for discovery
3 including the right to take written or oral depositions. Upon notice
4 to all persons having an interest the order may be made for good
5 cause shown. It shall specify the time, place, manner, conditions and
6 scope of the discovery. To protect against annoyance, embarrassment
7 or oppression, the court may enter an order refusing discovery or
8 specifying conditions of discovery and directing payment of costs and
9 expenses of the proceeding, including reasonable attorney's fees.

10 Sec. 28.21.410. REHABILITATION TREATMENT AND OCCUPATIONAL
11 TRAINING. (a) A basic loss insurer is responsible for the cost of
12 a procedure or treatment for rehabilitation or a course of reha-
13 bilitative occupational training if the procedure, treatment or
14 training is reasonable and appropriate for the particular case, its
15 cost is reasonable in relation to its probable rehabilitative effects
16 and it is likely to contribute substantially to rehabilitation, even
17 though it will not enhance the injured person's earning capacity.

18 (b) An injured person who has undertaken a procedure or treat-
19 ment for rehabilitation or a course of rehabilitative occupational
20 training, other than medical rehabilitation procedure or treatment,
21 shall notify the basic loss insurer that he has undertaken the pro-
22 cedure, treatment or training within 60 days after an allowable expense
23 exceeding \$1,000 has been incurred for the procedure, treatment or
24 training, unless the insurer knows or has reason to know of the under-
25 taking. If the injured person does not give the required notice within
26 the prescribed time, the insurer is responsible only for \$1,000, or
27 the expense incurred after the notice is given and within the 60 days
28 prior to the notice, whichever is greater, unless failure to give
29 timely notice is the result of excusable neglect.

1 (c) If the injured person notifies the basic loss insurer of a
2 proposed procedure or treatment for rehabilitation or a course of
3 rehabilitative occupational training and the insurer does not promptly
4 thereafter accept responsibility for its cost, the injured person
5 may move the court, in an action to adjudicate his claim, or if no
6 action is pending, may bring an action in the superior court for a
7 determination whether the insurer is responsible for its cost. An
8 insurer may move the court in an action to adjudicate the injured
9 person's claim, or if no action is pending may bring an action in
10 the superior court for a determination that it is not responsible for
11 the cost of a procedure or treatment for rehabilitation or a course
12 of rehabilitative occupational training which the injured person has
13 undertaken or proposes to undertake. A determination by the court
14 that the insurer is not responsible for the cost of a procedure,
15 treatment or course of training is not res judicata with respect to
16 the propriety of any other proposal or to the injured person's right
17 to other benefits. This subsection does not preclude an action by
18 the basic loss insurer or insured for declaratory relief under
19 other provisions of the laws of this state or an action by the
20 insured to recover basic loss benefits.

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

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

9 Sec. 28.21.420. AVAILABILITY OF INSURANCE. (a) The director
10 of insurance shall establish and implement or approve and supervise
11 a plan assuring that motor vehicle liability and basic and added loss
12 insurance will be conveniently and expeditiously afforded, subject
13 only to payment or provision for payment of the premium, to all
14 applicants for insurance who are required by this chapter to provide
15 security for payment of tort liabilities and basic loss benefits and
16 who cannot conveniently obtain insurance through ordinary methods at
17 reasonable rates not in excess of those applicable to applicants under
18 the plan. The plan may be by assignment of applicants among insurers,
19 by pooling or other joint insuring or reinsuring arrangement, or by any
20 other method that will reasonably accomplish the purposes of this sec-
21 tion, including an arrangement or undertaking by insurers that results
22 in all applicants being conveniently afforded the insurance coverages
23 on reasonable and not unfairly discriminatory terms through ordinary
24 markets.

25 (b) All insurers authorized to issue motor vehicle liability,
26 basic loss or optional added loss insurance in this state shall par-
27 ticipate in the plan. The plan shall provide for equitable apportion-
28 ment among all insurers of the insurance coverage or financial burdens
29 thereof provided to applicants under the plan and of the costs of

1 operation of the plan.

2 (c) The plan shall make available optional added coverages and
3 other contract provisions the director of insurance determines are
4 reasonably needed by applicants and are commonly afforded in voluntary
5 markets. The plan shall provide for the availability of financing or
6 installment payments of premiums on reasonable and customary terms and
7 conditions.

8 (d) Subject to supervision and approval of the director of
9 insurance, insurers may consult and agree with each other and with
10 other appropriate persons as to the organization, administration and
11 operation of the plan and as to rates and rate modifications for
12 insurance coverages provided under the plan. Rates and rate modifica-
13 tions adopted or charged for insurance coverages provided under the
14 plan shall be first adopted or approved by the director of insurance
15 and be reasonable and not unfairly discriminatory among applicants for
16 insurance under the plan.

17 (e) To carry out the objectives of this section the director of
18 insurance may adopt rules, make orders, enter into agreements with
19 other governmental and private entities and persons, and form and
20 operate or authorize the formation and operation of bureaus and other
21 legal entities.

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

28 (b) Except as permitted under (c) of this section, termination
29 of insurance by an insurer, including a refusal by the insurer

1 to renew the insurance at the expiration of its term and modifica-
2 tion by the insurer of the terms and conditions of the insurance
3 unfavorable to the insured, is ineffective, unless

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

8 (2) the insurer has expressly stipulated in the insuring
9 agreement either that

10 (A) the insurance is for a stated term of at least one
11 year after the inception of coverage and may not be modified or
12 terminated during the term; or

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

18 (c) If otherwise lawfully entitled to do so and written notice
19 of termination is mailed or delivered to the insured at least 15 days
20 before the effective date of the termination, an insurer may terminate
21 insurance as follows:

22 (1) by cancellation or refusal to renew at any time within
23 75 days after the inception or renewal of coverage;

24 (2) for nonpayment of premium when due; or

25 (3) when the operator's license of the insured is revoked by
26 operation of law or voluntarily surrendered by the insured.

27 (d) An insurer who has canceled, refused to renew or otherwise
28 terminated insurance shall mail or deliver to the insured, within 10
29 days after receipt of a written request, a statement of the reasons for

1 the cancellation, refusal to renew or other termination of the insurance
2 coverage.

3 (e) For purposes of this section

4 (1) "nonpayment of premium when due" includes the nonpayment
5 when due of an installment of premium or of a financial obligation to
6 a person who has financed the payment of the premium under a premium
7 finance plan, agreement or arrangement; and

8 (2) a cancellation or refusal to renew by or at the direction
9 of a person acting pursuant to a power or authority under a premium
10 finance plan, agreement or arrangement, whether or not with power of
11 attorney or assignment from the insured, constitutes a cancellation or
12 refusal to renew by the insurer.

13 (f) Except as otherwise provided by (e) of this section, this
14 section does not limit or apply to a termination, modification or
15 cancellation of insurance, or to a suspension of insurance coverage by
16 or at the request of the insured.

17 (g) This section does not affect any right an insurer has under
18 other law to rescind or otherwise terminate insurance because of fraud
19 or other wilful misconduct of the insured at the inception of the in-
20 suring transaction or the right of either party to reform the contract
21 on the basis of mutual mistake of fact.

22 (h) An insurer, his authorized agents and employees, and any person
23 furnishing information upon which he has relied are not liable in any
24 action or proceeding brought because of any statement made in good faith
25 pursuant to (d) of this section.

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

27 (a) Basic or added loss insurers paying basic or added loss benefits
28 and owners of motor vehicles suffering uninsured physical damage to
29 vehicles are entitled to proportionate reimbursement from other basic or

1 added loss insurers to assure that the allocation of the financial
2 burden of losses will be reasonably consistent with the propensities of
3 different vehicles to affect probability and severity of injury to per-
4 sons or physical damage to vehicles, because the vehicles are of differ-
5 ent weight or have different devices for the protection of occupants,
6 other different characteristics or different regular uses. Basic or
7 added loss insurers paying basic or added loss benefits for loss arising
8 from injury to persons, and self-insurers who are natural persons bearing
9 equivalent losses arising from their own injuries, are entitled to pro-
10 portionate reimbursement from basic or added loss insurers of other
11 involved vehicles. Insurers paying added loss benefits for physical
12 damage to motor vehicles and owners of motor vehicles suffering un-
13 insured physical damage to vehicles are entitled to proportionate re-
14 imbursement from added loss insurers who provide property damage
15 liability coverage on other involved vehicles.

16 (b) Basic or added loss insurers shall maintain, in accordance
17 with regulations promulgated by the director of insurance, statistical
18 records from which can be determined the propensities of different
19 motor vehicles to affect probability and severity of injury to persons
20 and physical damage to vehicles.

21 (c) When the director of insurance determines that adequate
22 supporting information is available he may establish and maintain by
23 regulation a system under which rights of reimbursement created by this
24 section are determined through pooling, reinsurance or other form of
25 reallocation procedure in place of case-by-case reimbursement. With the
26 approval of the director of insurance, two or more basic or added loss
27 insurers may enter into an agreement for settlement of their rights of
28 proportionate reimbursement through a system of pooling, reinsurance or
29 reallocation procedure in place of case-by-case reimbursement.

1 (d) The director of insurance shall promulgate regulations
2 under which the burden of obligations imposed upon all insurers of
3 each class of policies issued in the state is not unfairly discrimina-
4 tory compared with the burden of obligations imposed upon all insurers
5 of other classes of policies issued in the state and in the light of
6 the respective premium charges for the different classes of policies.
7 Since this chapter in some instances serves other public interests,
8 including prompt and efficient payment of claims, and allocates respon-
9 sibility for payment of benefits in ways that may cause the initial
10 burden of obligations to be unfairly discriminatory, the director of
11 insurance shall establish a system of distribution which shall
12 identify instances of unfairly discriminatory burdens and redistribute
13 burdens among insurers of different classes of policies in order that
14 the final distribution of burdens is not unfairly discriminatory.

15 (e) For the purposes of this section

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

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

24 Sec. 28.21.450. ALLOCATION OF BURDENS AMONG INSURERS UNTIL
25 SYSTEM IS ESTABLISHED. If in a particular case there is no appli-
26 cable system of proportionate reimbursement as authorized under sec. 440
27 of this chapter and the director of insurance has not adopted by
28 regulation other criteria for proportionate reimbursement consistent
29 with the provisions of that section, the following standards for case-

1 by-case proportionate reimbursement apply:

2 (1) In accidents involving motor 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 loss benefits and to costs of physical damage to
6 vehicles.

7 (2) The director of insurance shall promulgate regulations
8 classifying motor vehicles into a number of classes according to weight,
9 including cargo capacity. All passenger vehicles weighing less than
10 5,000 pounds and other vehicles weighing less than 4,000 pounds apart
11 from cargo capacity shall be included in a single class. For the
12 purposes of this section, a vehicle in this class is a "low-weight
13 vehicle". The director shall assign by rule to each class, except
14 the low-weight class, a number of percentages determined as provided in
15 this section. The highest percentage for a class applies to accidents
16 between vehicles in that class and low-weight vehicles. Other per-
17 centages apply to accidents between vehicles of each lighter weight
18 class and vehicles of the class to which the percentage is assigned.

19 (3) In an accident involving a vehicle of a lighter class
20 and a vehicle of a heavier class a proportion of costs which would
21 otherwise fall on the basic or added loss insurer or owner of the
22 lighter vehicle is imposed upon the insurer of the heavier vehicle.
23 The proportion of cost to be transferred is the percentage assigned
24 under paragraph (2) of this section.

25 (4) Percentages assigned under paragraph (2) of this section
26 shall be based on statistical evidence of the average increase in sever-
27 ity of occupant injury and vehicle damage sustained by vehicles of the
28 various lighter classes in accidents involving the class of heavier
29 vehicles to which the percentage is being assigned. Percentages shall

1 be set to provide that, on the average, basic and added loss insurers
2 and owners of vehicles shall bear the cost which would result from
3 accidents involving other vehicles of the same or a lighter class and
4 that insurers and owners of vehicles in each heavier class shall have
5 transferred to them the percentages of costs which on the average
6 arise from the greater weight of vehicles of their class.

7 (5) Until the director of insurance promulgates regulations
8 classifying motor vehicles into classes according to weight and assign-
9 ing percentages to each class, the percentage presumptively applying
10 between a low-weight vehicle and a vehicle not a low-weight vehicle,
11 or between two vehicles not low-weight vehicles shall be determined by
12 subtracting the weight of the lighter vehicle from the weight of the
13 heavier vehicle, including cargo capacity, dividing the difference by
14 the combined weight of the vehicles, and multiplying by 100 to convert
15 to percentage. However, another percentage applies if a party claiming
16 or defending against a claim for reimbursement under this paragraph
17 proves that the other percentage is more consistent with allocating the
18 financial burden of losses according to the propensities of vehicles
19 of the different classes to affect probability and severity of injury
20 to persons or physical damage to vehicles.

21 (6) In multi-vehicle accidents each lighter vehicle shall
22 have transferred from it to basic or added loss insurers of the
23 heavier vehicles involved the percentage of cost designated for
24 transfer to the heaviest of those vehicles. Insurers of the heavier
25 vehicles shall contribute to the transferred cost in proportion to
26 the respective percentages designated for them in accidents with
27 vehicles of the class of the lighter vehicle for which the cost is
28 transferred.

29 Sec. 28.21.460. RATES. Rate making and regulation of rates for

1 basic and added loss insurance are governed by AS 21.39.

2 Sec. 28.21.470. REGULATIONS. (a) The director of insurance
3 may adopt regulations to provide effective administration of this
4 chapter which are consistent with the purposes of this chapter and
5 which are fair and equitable to all persons whose interest may be
6 affected.

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

9 (c) Regulations promulgated under authority of this chapter
10 shall be adopted in accordance with the Administrative Procedure Act
11 (AS 44.62).

12 Sec. 28.21.480. PENALTIES. An owner of a motor vehicle who
13 operates the vehicle or permits it to be operated in this state when
14 he knows or should know that he has failed to provide the security
15 covering the vehicle required by this chapter is guilty of a mis-
16 demeanor, and upon conviction is punishable by a fine of not more
17 than \$500 or by imprisonment for not more than 90 days, or by both.

18 Sec. 28.21.490. DEFINITIONS. In this chapter unless the context
19 otherwise requires

20 (1) "added loss benefits" means benefits provided by optional
21 added loss insurance under sec. 230 of this chapter;

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

24 (3) "basic loss benefits" mean benefits providing reimbursement
25 for net loss suffered through injury arising out of the maintenance or
26 use of a motor vehicle which are payable as a result of basic loss
27 insurance;

28 (4) "basic loss insurance" means a contract of insurance,
29 self-insurance, or other legal means under which the obligation to pay

1 basic loss benefits arises;

2 (5) "basic loss insured" means:

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

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

10 (i) a spouse or other relative of a named insured;
11 and

12 (ii) a minor in the custody of a named insured or
13 of a relative residing in the same household with a named insured;

14 (6) "basic or added loss insurer" means an insurer, self-
15 insurer or obligated government providing basic or added loss benefits,
16 or both, under this chapter;

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

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

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

22 (10) "motor vehicle" means a self-propelled vehicle required
23 to be registered under AS 28.10 and designed for operation on a highway
24 by other than muscular power, except a vehicle used exclusively upon
25 stationary rails or tracks;

26 (11) "noneconomic detriment" means pain, suffering, inconven-
27 ience, physical impairment and other nonpecuniary damage deemed inherent
28 in an injury and recoverable under the tort law of this state;

29 (12) "nonresident" means a person who is not a resident of

1 this state;

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

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

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

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

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

18 Sec. 28.21.500. SEVERABILITY. (a) Except as provided in (b)
19 of this section, if any provision of this chapter or application
20 thereof to any person or circumstance is held invalid, the remainder
21 of this chapter and the application to other persons or circumstances
22 shall not be affected thereby, to the extent that other provisions
23 or applications of this chapter can be given effect without the pro-
24 vision or application held invalid.

25 (b) If a restriction or limitation on the retained tort liability
26 in sec. 110(a)(8) or (9) of this chapter or application thereof to
27 any person or circumstance, is held invalid, this chapter shall be
28 interpreted as if sec. 110(a)(8) or (9) of this chapter had not
29 been enacted.

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

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

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

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

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

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

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

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

13 Sec. 28.15.155. DEPARTMENT TO FURNISH OPERATING RECORD. Upon
14 request of an interested state department or agency or an insurance
15 carrier authorized to transact business in this state, the department
16 shall furnish a certified abstract of the operating record of a person
17 who is the driver or owner of a motor vehicle subject to registration
18 under ch. 10 of this title. The abstract shall include a list of
19 convictions for violation of the motor vehicle laws of this state as
20 reported to the department, a list of motor vehicles in which the
21 person was involved which resulted in a conviction for violation
22 of the motor vehicle laws of this state and a record of motor vehicles
23 registered in his name. The fee for each abstract is \$1.

24 * Sec. 6. AS 28.15.030(11) is repealed.

25 * Sec. 7. AS 28.20 is repealed.

26 * Sec. 8. Accidents occurring before the effective date of this Act are
27 not covered by, or subject to, the provisions of this Act. The director of
28 the division of insurance, Department of Commerce, and the commissioner of
29 revenue shall exercise, prior to the effective date of this Act, the authority

1 vested in them under this Act to do all things necessary to implement this
2 Act on its effective date.

3 * Sec. 9. This Act takes effect April 1, 1976.
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