

Introduced: 4/28/79  
Referred: Commerce and  
Judiciary

1 IN THE HOUSE

BY McKINNON

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 402  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to motor vehicle insurance; and pro-  
7 viding 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. INSURANCE REQUIRED FOR OPERATION OF MOTOR VEHICLE.

12 (a) The owner or registrant of a motor vehicle required to be regis-  
13 tered in this state shall maintain personal protection insurance for the  
14 payment of minimum benefits under AS 28.21.040.

15 (b) Personal protection insurance shall be in effect continuously  
16 during the period of registration of the motor vehicle for a motor  
17 vehicle not used for commercial purposes that is registered in this  
18 state.

19 (c) The owner or registrant of a motor vehicle operated for com-  
20 mercial purposes and registered in this state is not required to main-  
21 tain personal protection insurance during a period when the vehicle is  
22 not in use.

23 Sec. 28.21.020. PENALTIES. An owner or registrant of a motor  
24 vehicle required to maintain personal protection insurance under AS 28.-  
25 21.010 who operates the motor vehicle or permits it to be operated in  
26 this state without complying with AS 28.21.010 is guilty of a class B  
27 misdemeanor. Any other person who operates a motor vehicle in this  
28 state with the knowledge that the owner or registrant of the motor  
29 vehicle does not maintain personal protection insurance under AS 28.21.-

1 010 is guilty of a class B misdemeanor unless the operator maintains  
2 personal protection insurance on another vehicle.

3 Sec. 28.21.030. BENEFITS FOR ACCIDENTAL BODILY INJURY. (a) Under  
4 personal protection insurance an insurer shall pay as a minimum the  
5 benefits under AS 28.21.040 for accidental bodily injury arising out of  
6 the ownership, operation, maintenance or use of a motor vehicle subject  
7 to the provisions of this chapter.

8 (b) Accidental bodily injury includes injury and damage to or loss  
9 of a person's prosthetic devices in connection with the injury.

10 (c) Bodily injury is accidental as to a person claiming personal  
11 protection insurance benefits under AS 28.21.040 unless suffered inten-  
12 tionally by the injured person or caused intentionally by the claimant.  
13 Accidental bodily injury is not suffered or caused intentionally if the  
14 driver of a motor vehicle acts or refrains from acting for the purpose  
15 of averting damage to property or injury to any person including him-  
16 self.

17 Sec. 28.21.040. PERSONAL PROTECTION INSURANCE BENEFITS. (a)  
18 Personal protection insurance benefits are payable as a minimum for the  
19 following:

20 (1) medical expenses consisting of all reasonable charges  
21 incurred not in excess of \$150,000 for reasonable and necessary medical,  
22 surgical, x-ray, dental, ambulance, hospital and professional nursing  
23 services for an injured person's care, recovery and physical and occu-  
24 pational rehabilitation; medical expenses do not include that portion of  
25 the charge for a room in a health care facility in excess of the reason-  
26 able and customary charge for semi-private accommodations unless inten-  
27 sive care is medically required; medical expenses include non-medical  
28 remedial treatment in accordance with a recognized religious method of  
29 healing;

1 (2) funeral and burial expenses not in excess of \$2,000;  
2 (3) work loss consisting of 75 per cent of the average weekly  
3 wage under AS 23.30.220(2) of the injured person from work the injured  
4 person would have performed during the first year after the date of the  
5 accident if he had not been injured, reduced by any income from substi-  
6 tute work actually performed by the injured person; work loss does not  
7 include any loss after the date on which the injured person dies; the  
8 minimum benefits payable for work loss sustained in a single 30-day  
9 period and the income earned by an injured person for work during the  
10 same period together may not exceed the state average weekly wage under  
11 AS 23.30.175(b);

12 (4) substitute service expenses not in excess of \$30 per day  
13 if the injured person is not entitled to work loss benefits; substitute  
14 service expense benefits are payable for reasonable expenses incurred in  
15 obtaining ordinary and necessary services in place of services the in-  
16 jured person would have performed during the first year after the date  
17 of the accident; substitute service expense benefits are not payable for  
18 any loss after the date on which the injured person dies, or for ser-  
19 vices provided by other members of the injured person's household, or  
20 for loss of income.

21 (b) This chapter does not limit an insurer from offering benefits  
22 in excess of the minimum benefits payable for accidental bodily injury  
23 under this section. This chapter does not limit an insured from pur-  
24 chasing and recovering benefits in excess of the minimum benefits pay-  
25 able for accidental bodily injury under this section.

26 (c) Personal protection insurance benefits are payable without  
27 regard to fault.

28 Sec. 28.21.050. WORK LOSS BASIS FOR SEASONAL AND UNEMPLOYED  
29 WORKERS. Subject to the provisions of AS 28.21.040(3),

1 (1) for an injured person who has been employed in the same  
2 or similar employment for less than 27 weeks immediately before the  
3 injury, work loss shall be the average weekly wage most favorable to the  
4 person, calculated by dividing 52 into the total wages earned, including  
5 self-employment, in any one of the three calendar years immediately  
6 preceding the injury;

7 (2) if the injured person was receiving unemployment compen-  
8 sation benefits at the time of the accident and those benefits were  
9 suspended due to the inability of the injured person to work, work loss  
10 shall be based on the greater of

11 (A) the amounts which would have been payable in unem-  
12 ployment compensation benefits had the injured person remained  
13 eligible for unemployment compensation benefits, or

14 (B) the amount computed under (1) of this section.

15 Sec. 28.21.060. DEDUCTIBLE COVERAGE PROVISIONS. (a) An insurer  
16 providing minimum benefits under AS 28.21.040 shall offer, at appro-  
17 priately reduced premium rates, the following deductibles: (1) \$300  
18 deductible on medical payments; (2) two week deductible provision for  
19 work loss; (3) two week deductible for substitute service expenses; (4)  
20 a deductible in the amount of \$2,000 per accident from minimum benefits  
21 under AS 28.21.040 for an owner or registrant of a vehicle with less  
22 than four wheels;

23 (5) additional deductibles because of other health and acci-  
24 dent insurance not required by this chapter which is carried by the  
25 insured.

26 (b) The deductibles offered under this section are subject to  
27 prior approval by the director of the division of insurance and apply  
28 only to benefits payable to the person named in the policy, to the  
29 spouse of the person named in the policy, and to any relative of either

1 domiciled in the same household.

2 Sec. 28.21.070. AVOIDANCE OF DUPLICATION. All benefits (less  
3 reasonably incurred collection costs) that an injured person receives or  
4 is entitled to receive with respect to accidental bodily injury from (1)  
5 social security (except benefits under Title XIX of the Social Security  
6 Act); (2) workmen's compensation; and (3) any government insurance plan  
7 (except the proceeds of government life insurance or pension plans),  
8 shall be subtracted in calculating personal protection insurance bene-  
9 fits under AS 28.21.040. An insurer providing the primary benefits  
10 listed in this section is not entitled to recoupment from another in-  
11 surer for payment of those benefits.

12 Sec. 28.21.080. ACCIDENTS OCCURRING OUT OF STATE. Minimum per-  
13 sonal protection insurance benefits payable under AS 28.21.040 must  
14 include coverage for accidental bodily injury suffered in an accident  
15 occurring outside this state if the person injured was at the time of  
16 the accident a named insured under a policy required by AS 28.21.010,  
17 the spouse of the named insured, a relative of either domiciled in the  
18 same household, or an occupant of a vehicle involved in the accident  
19 whose owner or registrant was insured for minimum benefits under AS 28.-  
20 21.040.

21 Sec. 28.21.090. DEPENDENCY. (a) The following persons are con-  
22 clusively presumed to be dependents of a deceased person:

23 (1) a wife is dependent on a husband with whom she lives at  
24 the time of his death;

25 (2) a husband is dependent on a wife with whom he lives at  
26 the time of her death;

27 (3) a child under the age of 18 years or over that age but  
28 physically or mentally incapacitated from earning is dependent on the  
29 parent with whom he lives or from whom he receives support regularly at

1 the time of the death of the parent.

2 (b) In all cases except those listed in (a) of this section,  
3 questions of dependency shall be determined in accordance with the facts  
4 as they exist at the time of death.

5 (c) The dependency of a person terminates upon the death of that  
6 person. The dependency of a surviving spouse terminates upon remar-  
7 riage. The dependency of any other person continues only so long as the  
8 person is under 18 years of age or is physically or mentally incapaci-  
9 tated from earning. However, the dependency continues until a person is  
10 25 years of age if the person is engaged full time in a formal program  
11 of academic or vocational education or training.

12 Sec. 28.21.100. PAYEES OF PERSONAL PROTECTION BENEFITS. Personal  
13 protection insurance benefits are payable to or for the benefit of an  
14 injured person or, in case of his death, to or for the benefit of his  
15 dependents. Payment in good faith by an insurer of personal protection  
16 insurance benefits to or for the benefit of a person who it reasonably  
17 believes is entitled to the benefits discharges the insurer's liability  
18 to the extent of the payments unless the insurer has been notified in  
19 writing of the claim of some other person. If the insurer is in doubt  
20 about the proper person to receive the benefits or the proper apportion-  
21 ment among the persons entitled to the benefits, the insurer, the  
22 claimant or any other interested person may apply to the superior court  
23 for an appropriate order. The court may designate the payees and make  
24 an equitable apportionment, taking into account the relationship of the  
25 payees to the injured person and other factors the court considers  
26 appropriate. In the absence of a court order directing otherwise the  
27 insurer may pay

28 (1) to the dependents of the injured person the personal  
29 protection insurance benefits accrued before his death; or

1 (2) to the surviving spouse the personal protection insurance  
2 benefits due any dependent children living with the spouse.

3 Sec. 28.21.110. PERSONS NOT ENTITLED TO PERSONAL PROTECTION BENE-  
4 FITS. A person is not entitled to personal protection insurance bene-  
5 fits for accidental bodily injury if at the time of the accident

6 (1) the person was using a motor vehicle which he had taken  
7 unlawfully unless he reasonably believed that he was entitled to take  
8 and use the vehicle;

9 (2) the person was the owner or registrant of a motor vehicle  
10 involved in the accident for which the security required by AS 28.21.010  
11 was not in effect.

12 Sec. 28.21.120. EXTENSION OF BENEFITS. (a) A policy of automo-  
13 bile insurance issued by an insurer authorized to transact business in  
14 the state which is not required to provide minimum personal protection  
15 insurance benefits under AS 28.21.010 but which covers a driver in the  
16 state or a vehicle operated in the state shall be considered to provide  
17 the driver, the spouse of the driver, a relative of either domiciled in  
18 the same household, occupants of the vehicle, and pedestrians with  
19 minimum benefits under AS 28.21.040.

20 (b) A policy of automobile insurance issued by an insurer not  
21 authorized to transact business in the state which issues a policy of  
22 automobile insurance which covers a driver in the state or a vehicle  
23 operated in the state is subject to AS 21.33.

24 Sec. 28.21.130. PRIORITY OF POLICIES. (a) A person suffering  
25 accidental bodily injury while an occupant of a motor vehicle shall  
26 claim personal protection insurance benefits from insurers in the fol-  
27 lowing order of priority:

28 (1) the insurer of the owner or registrant of the vehicle  
29 occupied;

- 1 (2) the insurer of the operator of the vehicle occupied;  
2 (3) his own insurer, if any.

3 (b) A person suffering accidental bodily injury while not an occu-  
4 pant of a motor vehicle shall claim minimum benefits under AS 28.21.040  
5 from insurers in the following order of priority:

6 (1) insurers of owners or registrants of motor vehicles in-  
7 volved in the accident;

8 (2) insurers of operators of motor vehicles involved in the  
9 accident;

10 (3) his own insurer, if any.

11 Sec. 28.21.140. DISTRIBUTION OF LOSS AMONG PERSONAL PROTECTION  
12 INSURERS. (a) When personal protection insurance benefits are payable  
13 to or for the benefit of an injured person under his own policy and are  
14 also payable under the policy of his spouse, relative, or relative's  
15 spouse, the injured person's insurer shall pay all of the benefits and  
16 is not entitled to recoupment from another insurer.

17 (b) When two or more insurers are equally obligated to provide  
18 personal protection insurance benefits to a person not an occupant of a  
19 motor vehicle, an insurer paying the benefits is entitled to an equi-  
20 table recoupment from other insurers in the same order of priority under  
21 AS 28.21.130, together with an equitable recoupment of the expense of  
22 processing the claim.

23 (c) The amount of personal protection insurance benefits available  
24 because of accidental bodily injury to one person arising from one  
25 accident involving motor vehicles shall be determined without regard to  
26 the number of policies applicable to the accident.

27 Sec. 28.21.150. REIMBURSEMENT AND INDEMNIFICATION AMONG PERSONAL  
28 PROTECTION INSURERS. Except as provided in this section and in AS 28.-  
29 21.140 and 28.21.320, an insurer of an owner or registrant of a motor

1 vehicle has no right of reimbursement or recovery for personal protec-  
2 tion insurance benefits paid or obligated to be paid by that insurer  
3 with respect to an injury resulting from an accident involving one or  
4 more private passenger vehicles. An insurer of an owner or registrant  
5 of a motor vehicle with a manufacturer's gross vehicle weight rating of  
6 less than 10,000 pounds may exercise right of reimbursement from any  
7 other insurer of an owner or registrant of a motor vehicle with a manu-  
8 facturer's gross vehicle weight rating of 10,000 pounds or more for any  
9 personal protection insurance benefits paid or obligated to be paid by  
10 that insurer as a result of an accident that involved two or more motor  
11 vehicles if there has been a determination that the heavier vehicle was  
12 at fault.

13 Sec. 28.21.160. COLLATERAL SOURCES. In an action for damages  
14 arising out of the ownership, operation, maintenance, or use of a motor  
15 vehicle, evidence is admissible to show benefits to which the claimant  
16 is entitled at the time of trial or to which he may become entitled at  
17 any time after trial, except for benefits from privately procured indi-  
18 vidual life or annuity insurance or pension plans.

19 Sec. 28.21.170. TORT LIABILITY. There shall be no right of action  
20 for damages arising out of ownership, operation, maintenance or use of a  
21 motor vehicle in this state except for

22 (1) noneconomic loss if the injured person has suffered death  
23 or irreparable, permanent, serious impairment of a significant body  
24 function, or irreparable, permanent, serious disfigurement; an impair-  
25 ment is serious if it significantly affects the ability of the injured  
26 person to resume his usual and customary daily activities;

27 (2) intentionally caused harm to persons or property; harm to  
28 persons or property is not caused intentionally if the driver of a motor  
29 vehicle acts or refrains from acting for the purpose of averting damage

1 to property or injury to any person including himself;

2 (3) out-of-pocket expenditures for medical and rehabilitation  
3 expense and work loss in excess of the total benefits received from any  
4 source because of the injury; the party liable for damages is entitled  
5 to a reduction in his liability by the amount of taxes that would have  
6 been payable on account of income the injured person would have received  
7 if he had not been injured;

8 (4) actions based upon defects in manufacturing, distribu-  
9 tion, or upon negligent repair of a vehicle;

10 (5) damage to property.

11 Sec. 28.21.180. NOTICE OF ACCIDENT. An insurer may require writ-  
12 ten notice to be given as soon as practicable after an accident involv-  
13 ing a motor vehicle for which a policy affords the security required by  
14 AS 28.21.010.

15 Sec. 28.21.190. PAYMENT OF PERSONAL PROTECTION BENEFITS. (a)  
16 Personal protection insurance benefits payable for accidental bodily  
17 injury do not accrue when the injury occurs but accrue as expenses and  
18 losses are incurred.

19 (b) Personal protection insurance benefits are overdue if not paid  
20 within 30 days after an insurer receives reasonable proof of the fact  
21 and the amount of loss sustained. If reasonable proof is not supplied  
22 as to the entire claim, the amount supported by reasonable proof is  
23 overdue if not paid within 30 days after the proof is received by the  
24 insurer. Any part of the remainder of the claim that is later supported  
25 by reasonable proof is overdue if not paid within 30 days after the  
26 proof is received by the insurer. For the purpose of calculating the  
27 extent to which benefits are overdue, payment shall be treated as made  
28 on the date a draft or other valid instrument was placed in the United  
29 States mail in a properly addressed, postpaid envelope, or, if not so

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posted, on the date of delivery.

(c) An overdue payment bears simple interest at the rate of 12 per cent a year.

Sec. 28.21.200. AGREEMENTS FOR ASSIGNMENT OF FUTURE BENEFITS. An agreement for assignment of a right to personal protection insurance benefits payable in the future is void.

Sec. 28.21.210. LIMITATION OF ACTION FOR PERSONAL PROTECTION INSURANCE BENEFITS. (a) A person having a claim for personal protection insurance benefits shall notify the insurer of the injury within one year of the date of the accident and shall present claims promptly.

(b) A person may not bring an action for personal protection insurance benefits unless the action is commenced within one year of the date of a denial of liability or a denial of benefits by the insurer which was notified of the injury under (a) of this section.

(c) A person may not recover benefits in an action filed under (b) of this section for any portion of a loss that was incurred more than one year before the action was commenced.

Sec. 28.21.220. MEDICAL CONDITIONS MATERIAL TO CLAIM. When the medical condition of a person is material to a claim that has been made for personal protection insurance benefits, the person shall submit to medical examination by physicians. An insurer providing minimum personal protection insurance benefits under AS 28.21.040 may include reasonable provisions in a personal protection insurance policy requiring medical examination of persons claiming personal protection insurance benefits.

Sec. 28.21.230. CHARGES IN TREATING INJURED PERSONS. A physician and a medical care facility rendering treatment for an accidental bodily injury and a person or institution providing rehabilitative occupational training necessitated by an accidental bodily injury covered by personal

1 protection insurance may charge an amount not exceeding the amount the  
2 physician, medical care facility, person, or institution customarily  
3 charges for the professional services rendered in cases not involving  
4 insurance.

5 Sec. 28.21.240. WAIVER. (a) A person filing a claim for personal  
6 protection insurance benefits waives his claim to privacy for any ser-  
7 vice or accommodation received from a physician or health care facility  
8 arising directly or indirectly out of the injury on which the claim is  
9 based. If the insurer requests access to reports and records reflecting  
10 the history of the injury and the dates and costs of treatment of the  
11 injury, the person filing a claim shall make the information available  
12 and authorize the insurer to have access to the reports and records.

13 (b) A person filing a claim for personal protection insurance  
14 benefits waives his claim for privacy for his earnings. If the insurer  
15 requests access to the earnings of the claimant, the employer shall  
16 furnish information on a form approved by the director of the division  
17 of insurance concerning the earnings since the time of the accidental  
18 bodily injury and for the six-month period preceding the injury. A  
19 self-employed person will provide the information required under this  
20 subsection himself.

21 Sec. 28.21.250. ASSIGNED CLAIMS PLAN. (a) The director may  
22 require insurers as a condition of writing a line of insurance dealing  
23 with benefits under AS 28.21.040 to participate in an assigned claims  
24 plan if the director finds that mandatory insurer participation is in  
25 the public interest.

26 (b) The assigned claims plan and the procedures to be followed in  
27 administering the plan shall be established by regulation.

28 Sec. 28.21.260. PERSONAL PROTECTION INSURANCE BENEFITS UNDER  
29 ASSIGNED CLAIMS PLAN. (a) A person entitled to make a claim because of

1 accidental bodily injury arising out of the ownership, operation, main-  
2 tenance or use of a motor vehicle in this state may obtain minimum  
3 personal protection insurance benefits under AS 28.21.040 through an  
4 assigned claims plan if

5 (1) no personal protection insurance is applicable to the  
6 injury,

7 (2) no personal protection insurance applicable to the injury  
8 can be identified, or

9 (3) the only identifiable personal protection insurance  
10 applicable to the injury is, because of the financial inability of one  
11 or more insurers to fulfill their obligations, inadequate to provide  
12 minimum benefits under AS 28.21.040.

13 (b) In a case qualifying under (a) of this section, unpaid bene-  
14 fits due or coming due shall be paid under the assigned claims plan and  
15 the insurer to which the claim is assigned is entitled to reimbursement  
16 from the defaulting insurers to the extent of their financial responsi-  
17 bility.

18 Sec. 28.21.270. LIMITATIONS FOR ASSIGNED CLAIMS PLANS. A person  
19 who is disqualified under AS 28.21.110 from receiving personal protec-  
20 tion insurance benefits under a policy otherwise applying to his acci-  
21 dental bodily injury is also disqualified from receiving benefits under  
22 the assigned claims plan.

23 Sec. 28.21.280. RECOVERY OF PERSONAL PROTECTION BENEFITS WHEN  
24 UNINSURED VEHICLE IS INVOLVED. An insurer obligated to pay minimum  
25 personal protection insurance benefits under AS 28.21.040 for accidental  
26 bodily injury to a person occupying an uninsured motor vehicle, or to  
27 the spouse or relative resident in the household of the owner or regis-  
28 trant of an uninsured motor vehicle, or to a pedestrian injured by an  
29 uninsured motor vehicle, may recover those benefits paid and appropriate

1 loss adjustment costs incurred from the owner or registrant of the  
2 uninsured motor vehicle or from his estate. Failure of the owner or  
3 registrant to make payment within 30 days is a ground for suspension or  
4 revocation of his motor vehicle registration and his motor vehicle  
5 operator's license so long as the failure continues. "Uninsured motor  
6 vehicle" for the purpose of this section is a motor vehicle for which  
7 minimum personal protection insurance required by AS 28.21.010 is not in  
8 effect at the time of the accident.

9 Sec. 28.21.290. CANCELLATION AND REFUSAL OF PERSONAL PROTECTION  
10 INSURANCE. (a) A personal protection insurance policy which has been  
11 in force for more than 60 days may not be canceled by an insurer except  
12 for the following reasons:

13 (1) suspension or revocation of the license of the principal  
14 operator to operate a motor vehicle; or

15 (2) failure to pay the premium for that policy after reason-  
16 able demand and written notice of cancellation.

17 (b) A person who knowingly violates or conspires to violate the  
18 provisions of this section shall be assessed a civil penalty of not more  
19 than \$1,000 for each separate violation. Each violation of this section  
20 with respect to a policyholder or applicant for insurance constitutes a  
21 separate violation.

22 Sec. 28.21.300. DEFINITIONS. As used in this chapter, "main-  
23 tenance or use of a motor vehicle" means maintenance or use of a motor  
24 vehicle as a vehicle, including the occupying, entering into, and  
25 alighting from a vehicle, and the parking of a vehicle in such a way as  
26 to cause unreasonable risk of the bodily injury which occurred. Mainte-  
27 nance or use of a motor vehicle does not include

28 (1) conduct within the course of a business of repairing,  
29 servicing, or otherwise maintaining motor vehicles unless the conduct

1 occurs off the business premises; or

2 (2) conduct in the course of loading and unloading the  
3 vehicle unless the conduct occurs while occupying, entering into, or  
4 alighting from it.

5 \* Sec. 2. If a court of competent jurisdiction invalidates AS 28.21.170,  
6 as enacted in this Act, then this entire Act shall be void and of no effect.

7 \* Sec. 3. AS 28.20.060 is amended by adding a new subsection to read:

8 (b) An owner or operator of a motor vehicle required to maintain  
9 security under AS 28.21 is not required to maintain proof of financial  
10 responsibility for bodily injury under this chapter.

11 \* Sec. 4. This Act takes effect January 1, 1980.