

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE BY THE LABOR & COMMERCE COMMITTEE  
2 CS FOR HOUSE BILL NO. 429 (L&C)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to subrogation provisions in insur-  
7 ance policies and to uninsured and underinsured motor  
8 vehicle insurance."

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

10 \* Section 1. AS 21.36 is amended by adding a new section to read:

11 Sec. 21.36.155. LIMITATIONS ON SUBROGATED RIGHTS. (a) An  
12 insurer who obtains a judgment or settles a claim under a right of  
13 subrogation from an insured may not offset costs or attorney fees  
14 incurred in obtaining the judgment or settlement from an amount due  
15 the insured except as follows:

16 (1) costs or attorney fees shall be offset on a pro rata  
17 basis;

18 (2) expert witness or attorney fees paid to witnesses or  
19 attorneys who are not employees of the insurer may be offset;

20 (3) costs or attorney fees that are included in the judg-  
21 ment or settlement shall be deducted from the amount of the costs and  
22 attorney fees incurred by the insurer before determining the pro rata  
23 offset required under (1) of this subsection.

24 (b) An insured who obtains a judgment or who settles a claim  
25 against a person shall offset against the judgment or settlement an  
26 amount due an insurer under a right of subrogation as follows:

27 (1) costs or attorney fees shall be offset on a pro rata  
28 basis;

29 (2) costs or attorney fees that are included in the

1 judgment or settlement shall be deducted from the amount of costs and  
2 attorney fees incurred by the insured before determining the pro rata  
3 offset required under (1) of this subsection.

4 (c) Costs or attorney fees resulting from a portion of a judgment  
5 or settlement, in which portion the insurer is not entitled to  
6 share under a right of subrogation, may not be offset against another  
7 amount recovered in the same judgment or settlement that the insurer  
8 is entitled to receive under a right of subrogation.

9 (d) If the insurer or the insured recovers prejudgment or post-  
10 judgment interest and the insurer has a right of subrogation, the  
11 interest must be shared on a pro rata basis for the subrogated claim.

12 \* Sec. 2. AS 21.89.020(c) is amended to read:

13 (c) An insurance company offering automobile liability insur-  
14 ance, or offering an excess policy of insurance that extends coverage  
15 for automobile liability, in this state for bodily injury or death  
16 shall offer coverage prescribed in AS 28.20.440 and 28.20.445 or  
17 AS 28.22, with limits equal to at least the limit purchased voluntar-  
18 ily to cover the insured person's liability for bodily injury or  
19 death, for the protection of the persons insured under the policy who  
20 are legally entitled to recover damages for bodily injury or death  
21 from owners or operators of uninsured or underinsured motor vehicles.  
22 The limit written may not be less than the limit in AS 28.20.440.

23 \* Sec. 3. AS 28.20.445(a) is repealed and reenacted to read:

24 (a) The maximum liability of the insurance carrier under the (1)  
25 uninsured motorists coverage required to be offered under AS 28.20.440  
26 shall be the coverage limit of liability; and (2) under insured  
27 motorists coverage required to be offered under AS 28.20.440 shall be  
28 the coverage limit of liability and shall be applied and paid as  
29 excess to the amount insured by or paid on behalf of the underinsured

1 motorist. Recovery by the insured is limited to the actual damages  
2 incurred by the insured unless there is bad faith on the part of the  
3 insurer.

4 \* Sec. 4. AS 28.20.445(b) is amended to read:

5 (b) Amounts payable under the uninsured motorists and under-  
6 insured motorists coverage may be reduced by

7 [(1)] amounts paid or to be paid under any workers' compen-  
8 sation law [;

9 (2) AMOUNTS PAID OR PAYABLE UNDER VALID AND COLLECTIBLE  
10 AUTOMOBILE MEDICAL PAYMENTS INSURANCE OR BODILY INJURY OR DEATH LIA-  
11 BILITY INSURANCE; AND

12 (3) AMOUNTS PAID BY OR ON BEHALF OF THE UNINSURED OR UNDER-  
13 INSURED MOTORIST].

14 \* Sec. 5. AS 28.20.445(c) is amended to read:

15 (c) If an insured is entitled to uninsured or underinsured  
16 motorists coverage under more than one primary policy of motor vehicle  
17 liability insurance, or under more than one primary coverage if two or  
18 more vehicles are insured under one policy, the maximum amount an  
19 insured may recover may not exceed the highest limit of any one pri-  
20 mary policy or coverage. The limits imposed under this section do not  
21 apply to an excess policy of insurance that extends coverage for  
22 uninsured or underinsured motorists coverage. When multiple policies  
23 or coverages apply, payment may be made in the following order of  
24 priority, subject to the limit of liability for each applicable policy  
25 or coverage:

26 (1) a policy or coverage covering a motor vehicle occupied  
27 by the injured person at the time of the accident;

28 (2) a policy or coverage covering a motor vehicle that came  
29 into direct contact with the insured while a pedestrian; and

1           (3) a policy or coverage covering a motor vehicle not  
2 involved in the accident under which the injured person is an insured  
3 or a named insured.

4 \* Sec. 6. AS 28.22.221 is amended to read:

5           Sec. 28.22.221. POLICY COVERAGE AND PRIORITIES. If an insured  
6 is entitled to uninsured or underinsured motorists coverage under more  
7 than one primary motor vehicle liability insurance policy, or under  
8 more than one primary coverage if two or more vehicles are insured  
9 under one policy, the maximum amount an insured may recover may not  
10 exceed the highest limit of any one primary policy or coverage. The  
11 limits imposed by this section do not apply to an excess policy of  
12 insurance that extends coverage for uninsured or underinsured motor  
13 vehicle coverage. Recovery by the insured is limited to the actual  
14 damages incurred by the insured. Where multiple policies or coverages  
15 apply, payment shall be made in the following order of priority,  
16 subject to the limit of liability for each applicable policy or cover-  
17 age:

18           (1) a policy or coverage covering a motor vehicle occupied  
19 by the injured person at the time of the accident;

20           (2) a policy or coverage covering a motor vehicle that came  
21 into contact with the insured while a pedestrian; and

22           (3) a policy or coverage covering a motor vehicle not  
23 involved in the accident with respect to which the injured person is  
24 an insured or a named insured.

25 \* Sec. 7. APPLICABILITY. This Act applies to contracts of insurance  
26 entered into on or after the effective date of this Act.