

HB

284

Amendment

OFFERED IN THE HOUSE BY REPRESENTATIVE ERIC CROFT
TO: CSHB 284

1. Page 1, line 7, Delete "disinterested"
2. Page 2 line 2, Delete "disinterested"

Subject: [Fwd: Re:]HB284

Date: Fri, 03 Mar 2000 12:48:06 -0900

From: Sarah McNair <Sarah_Mcnair@dced.state.ak.us>

To: "Harman, Patrick" <Pat_Harman@legis.state.ak.us>

No delayed effective date would be needed with the approach outlined here because no new policy or notice is required since the coverage is being broadened.

----- Original Message -----

Subject: Re:

Date: Fri, 03 Mar 2000 12:03:29 -0900

From: Sarah McNair <Sarah_Mcnair@dced.state.ak.us>

To: Bob Lohr <bob_lohr@dced.state.ak.us>

References: <77360A6C1217.AAA42AF@ancmail1.state.ak.us>

There is no requirement for notice when coverage is being increased, only when it is decreased. However, the policy language governs the coverage and until a new policy or endorsement is issued the old language would apply.

I checked a couple of other provisions. AS 21.42.220 says a policy that does not comply with the requirements of this title are construed and applied as if they were in compliance with this title. Since the changes are in Title 28, not Title 21, this didn't help. AS 21.42.265, says that unless otherwise provided by law, changes to this title take effect on the date a new policy is issued or on the renewal date. Again, since the changes are in Title 28, this doesn't apply.

I also looked at a couple of policies, State Farm, GEICO and ISO. They all have language to the effect that the terms of the policy may be changed only by endorsement or by "the revision of this policy to give broader coverage without an extra charge. If any coverage you carry is changed to give broader coverage, we will give you the broader coverage without the issuance of a new policy as of the date we make the change effective." This is the State Farm language. It would seem that any policy that has this language could make the change when the law becomes effective and the renewal policy would then be updated with the correct language. The only drawback is that the insured doesn't know of the change in coverage.

I tried calling, but your phone was busy and I wanted to be sure you got this.

I'll try calling again.

Bob Lohr wrote:

> Sarah, would you please talk to Pat Harmor on Rep. Pete Kott's staff to see
> what kind of compromise language they may have come up with for

- > which witnesses are acceptable in the case of the "disappearing car"
- > involving uninsured motorist coverage? The bill is up for hearing this
- > afternoon and we should look at and discuss the language before then.
- >
- > Thanks. Please call if you have questions.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 294

Revision Date/Time (Note if correction) _____ Dept. Affected Community & Economic Development
 Title An Act relating to uninsured and underinsured BRU Insurance
motor vehicle insurance Component Insurance
 Sponsor Representative Kott
 Requester H L & C Component No. 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

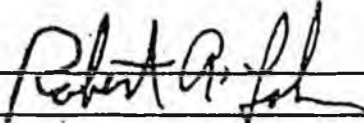
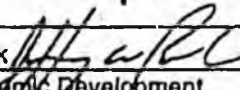
Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr  Phone 269-7900
 Division Insurance Date/Time 2-11-00 2:45 PM
 Approved by Commissioner Deborah B. Sedwick  Date 2-11-00
 Agency Community & Economic Development

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Sponsor Statement HB 284

HB 284 "An Act relating to uninsured and underinsured motor vehicle insurance" is a bill that closes a loophole in our existing statutes that in certain circumstances citizens are denied payment under their uninsured motorist insurance policy. Our current laws require direct physical contact between the victim and the uninsured vehicle.

In situations where direct physical contact does not occur, and the uninsured vehicle leaves the scene of the accident; our statutes allow the insurance company to deny coverage. HB 284 would allow the victim to make a claim against his uninsured motorist policy.

HB 284 requires a disinterested person not occupying the insured vehicle to attest to the facts of the accident and that a vehicle left the accident scene. This provision protects insurance companies against false claims being made against insurance companies allows citizens to collect under their uninsured motorist insurance when no direct contact has been made between the vehicle that left the scene. The insurance industry and Mike Ford from Legislative Legal Services have agreed the version before you today.

A letter from Michael Cohn gives a clear example of the loophole that the sponsor wants to close.

LAW OFFICES
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JUSTICE

907/276-1200
FAX 907/278-6571

September 21, 1999

The Honorable Pete Kott
10928 Eagle River Road, Suite 141
Eagle River, Alaska 99577

Dear Mr. Kott:

I am writing this letter to bring to your attention what appears to be an unintended result of AS 28.20.445(f) which states:

If both the owner and operator of the uninsured vehicle are unknown, payment under the uninsured and underinsured motorist coverage shall be made only where direct physical contact between the insured and uninsured or underinsured motor vehicle has occurred. A vehicle that has left the scene of the accident with an insured vehicle is presumed to be uninsured if the person insured reports the accident to the appropriate authorities within 24 hours.

In a case this law firm handled, the insurance company was unwilling to pay under the uninsured motorist provision of its policy as a result of an accident in which its insured, an innocent victim of an automobile accident, received injuries, utilizing AS 28.20.445(f) as its defense. In said case, the victim was proceeding east on O'Malley Road in Anchorage when she was struck by a second individual who crossed the center line heading west on O'Malley. The insurance company has claimed that the second individual crossed into the oncoming lane of traffic to avoid a collision with a third vehicle that had come out of a side street, Commodore Drive, into his lane of traffic. The third vehicle vanished during the accident. Since the vanishing vehicle did not directly strike the victim, and despite the fact that there are apparently witnesses who saw that vehicle, the insurance company took the position that under AS 28.20.445(f) it is not responsible for the actions of the third vehicle (the vehicle which had blocked the road), which allegedly caused the second driver to swerve into oncoming traffic.

As written, the statute would even preclude recovery to a victim of an uninsured vehicle in cases where the victim is at a stop light and is struck by a second vehicle which collided with the victim as a result of the actions of a third vehicle which struck the second vehicle, the third vehicle subsequently leaving the scene and not being located. In such cases, there would be no "direct"

The Honorable Pete Kott
September 21, 1999
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contact between the vehicle that left the scene and the victim. Under those circumstances, an insurance company could claim the uninsured or underinsured motorist provision would not apply because of AS 28.20.445(f).

Clearly, it appears that AS 28.20.445(f) was intended to prevent claims brought by individuals who are injured in one-car collisions with objects, or have an accident such as going off the road or striking a tree, and then claim that a phantom vehicle caused them to have the accident. It was not intended, or should not have been intended, to apply to a situation where there is no question but that an accident occurred, where there were witnesses who may have observed the vehicle which left the scene, and where it is undisputed that the victim was struck by another vehicle, whether the striking of the victim occurred "directly" by the vehicle that left the scene, or "indirectly" by the vehicle that created the traffic conditions which resulted in the accident and then left the scene. At a minimum, the statute should be amended to allow the insured an opportunity to prove that he or she was injured as a result of another vehicle, even if that other vehicle did not directly strike the insured, and where there is independent evidence to prove same.

Accordingly, I would request that you take steps to remedy or rectify what appears to be an unintended result of AS 28.20.445(f) before other innocent people are victimized by an unintended result of the statute.

Thanking you in advance for your attention to this matter, I remain,

Sincerely yours,

WEIDNER & ASSOCIATES, INC.
A Professional Corporation

Michael Cohn
Attorney at Law

MC/mm

cc: Governor Tony Knowles
Alaska State Senate
Alaska State House
Robert Lohr, Director, Division of Insurance