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22-LS1460\C.2
Ford
3/15/02

Donley
3/15/02

AMENDMENT

OFFERED IN THE SENATE
TO: SB 327

BY SENATOR DONLEY

1 Page 1, line 1, following "to":

2 Insert "**confidentiality of insurance records and hearings and to**"

3

4 Page 1, following line 2:

5 Insert new bill sections to read:

6 *** Section 1.** AS 21.06.060 is amended to read:

7 **Sec. 21.06.060. Records.** The director shall enter in permanent form records
8 of official transactions, examinations, investigations, and proceedings and keep those
9 records in the office of the director. The records and insurance filings in the office of
10 the director are open to public inspection, except as otherwise provided in (b) - (g) of
11 this section or other provisions of this title with respect to particular records or
12 filings.

13 *** Sec. 2.** AS 21.06.060 is amended by adding new subsections to read:

14 (b) Information and records, including written documents and electronic data,
15 designated as confidential or not available for public inspection under this section or
16 other provisions of this title

17 (1) are not subject to inspection and copying under AS 40.25.110 -
18 40.25.220;

19 (2) may not be obtained from the director by subpoena, except for a
20 subpoena issued by a state or federal law enforcement agency or grand jury;

21 (3) may be used by the director in a regulatory or legal proceeding; and

22 (4) may be released for public inspection if the person who provided
23 the information or records to the director consents or releases incomplete or
24 misleading information on the same topic to the public.

1 (c) The director or a person acting under the authority of the director who
2 receives information or records designated in this title as confidential or not available
3 for public inspection may not be permitted or required to testify about the information
4 or records in a civil action not involving the state or a state agency, officer, or
5 employee.

6 (d) A person required or requested to provide information or records to the
7 director under this title does not waive a claim of privilege that the person may have
8 by providing the information or records to the director.

9 (e) In the performance of duties under this title, the director may

10 (1) disclose confidential information or records to the legislature, state,
11 federal, and international regulatory or law enforcement agencies, or the National
12 Association of Insurance Commissioners if the recipient will maintain the
13 confidentiality of the information or records;

14 (2) receive information or records from state, federal, and international
15 regulatory or law enforcement authorities or the National Association of Insurance
16 Commissioners and maintain the confidentiality of the information or records if
17 requested to do so or given notice that the information or records are confidential
18 under the law of the jurisdiction supplying them; and

19 (3) enter into agreements consistent with this section governing the
20 sharing of information or records that are confidential under this title with other state,
21 federal, and international regulatory or law enforcement agencies or the National
22 Association of Insurance Commissioners for the purpose of furthering any regulatory
23 or legal action that may be taken as part of the recipient's official duties.

24 (f) The following information or records submitted to or obtained by the
25 director are confidential:

26 (1) personally identifiable consumer information; however, the director
27 may disclose the information or records for the purpose of attempting to resolve a
28 consumer complaint;

29 (2) information or records established by a showing satisfactory to the
30 director to be a trade secret or proprietary business information, including

31 (A) detailed health insurance claim cost data; and

1 (B) justification for usual, customary, and reasonable charge
2 determinations; and

3 (3) information or records provided by a person not subject to this title
4 at the request of the director if the information or records are identified as confidential
5 by the director; and

6 (4) financial analysis ratios and examination synopses concerning
7 insurance companies that are submitted to the director by the National Association of
8 Insurance Commissioners.

9 (g) The director may withhold information or records from public inspection
10 for as long as the director finds the withholding is

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13 * **Sec. 3.** AS 21.06.150(g) is repealed and reenacted to read:

14 (g) Information or records obtained by the director under AS 21.06.120 or
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19 * **Sec. 4.** AS 21.06.210 is amended by adding a new subsection to read:

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21 closure is necessary to protect a person against unwarranted injury or is in the public
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23 * **Sec. 5.** AS 21.87.190(b) is amended to read:

24 (b) The service corporation shall, before use, file with the director (1) a
25 schedule of subscription rates, fees, or payments of any kind to be charged
26 subscribers; (2) every rating manual, schedule, plan, rule, or formula; and (3)
27 [BEFORE USE,] any modification to the rating manual, schedule, plan, rule, or
28 formula. Each filing must state the effective date and must provide a comprehensive
29 description of the coverage. Detailed rate justification, including rate formulas, is
30 confidential [THE DIRECTOR MAY WITHHOLD THE RATING FORMULA
31 FROM PUBLIC INSPECTION FOR AS LONG AS THE DIRECTOR

1 DETERMINES THAT WITHHOLDING THE RATING FORMULA IS
2 NECESSARY TO PROTECT THE SERVICE CORPORATION AGAINST
3 UNWARRANTED INJURY OR IS IN THE PUBLIC INTEREST]."
4

5 Page 1, line 3:

6 Delete "Section 1."

7 Insert "Sec. 6."
8

9 Renumber the following bill sections accordingly.

LESSMEIER & WINTERS

LAWYERS - LLC

VINTAGE BUSINESS PARK
3000 VINTAGE BOULEVARD
SUITE 100
JUNEAU, ALASKA 99801

MICHAEL L. LESSMEIER
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January 29, 2002

Senator Dave Donley
State Capital, Room 506
Juneau, Alaska 99801-1182

Re: *Holderness - UM/UIM*

Dear Senator Donley:

Pursuant to our recent conversation I am writing you on behalf of State Farm to request your assistance in resolving several problems in the UM/UIM law created by two recent Alaska Supreme Court decisions. In Holderness v State Farm Fire and Casualty Company, the Court held that any liability policy that provides coverage for automobile liability, even if only on an incidental or excess basis, triggers the mandated offers of UM/UIM required by AS 21.89.020 (c). As a result of this ruling, coverages which were never intended or priced to include UM/UIM are mandated to include this coverage, sometimes at high levels. In each such situation where a policy is judicially rewritten to include this coverage, the insured should have already received on his or her primary automobile policy the mandated offers of 21.89.020(c) and should have selected the limits desired. It is thus difficult for us to understand any sound policy justification for judicially rewriting policies that provide automobile liability coverage only as incidental to some other basic coverage.

Because of the impact of this ruling, we understand that at least one major carrier has stopped offering excess policies in Alaska. It would not surprise us if other carriers have left these markets, as the ruling substantially and unnecessarily expands coverages that were written for other purposes. As a result of this ruling, a carrier is now required to make multiple offers of UM/UIM coverage, first on the insured's primary automobile policy, and then on each and every policy that may provide incidental automobile liability coverage. So long as an insured has the opportunity to select appropriate limits on his primary automobile policy, it is hard to see why such offers should be required on policies which may provide automobile liability coverage only on an incidental basis.

Senator Dave Donley
January 29, 2002
Page 2

LESSMEIER & WINTERS
LAWYERS - LLC

One way to fix this problem is to amend AS 28.89.020 to provide that the mandated offers are not required for excess or umbrella policies or policies that provide only incidental automobile coverage. The California statute accomplishes this by providing:

A policy shall be excluded from the application of this section if the automobile liability coverage is provided only on an excess or umbrella basis. Nothing in this section shall require that uninsured motorist coverage be offered or provided in an homeowner policy, personal and residents' liability policy, comprehensive personal liability policy, manufacturers' and contractors' policy, premises liability policy, special multiperil policy, or any other policy or endorsement where automobile liability coverage is offered as incidental to some other basic coverage . . .

It is difficult, if not impossible, to predict when a court may judicially create automobile liability coverage when interpreting a liability policy. It is hard to imagine being in the position of having to offer UM/UIM coverage on every policy that a court may somehow construe to create automobile liability coverage. Yet that is exactly the position the industry is in, for if the coverage is not offered but the policy is later construed to create automobile liability coverage, UM/UIM is then included by implication. We do not believe this situation was ever intended and hope you are willing to help us find a legislative solution.

The second problem is created by the case of State Farm Mutual Automobile Insurance Company v Lawrence. The Court there held that UM/UIM coverage includes coverage for punitive damages if coverage for punitive damages is not excluded under the insured's liability policy. We think it one thing for an insured to desire protection from liability associated with the risk of punitive damages, but quite another to then mandate the inclusion of the right to recover punitive damages under UM/UIM coverage. We do not believe the basic purpose of UM/UIM was ever to mandate protection for punitive damages. Nor do we believe an insured should be forced to pay for such coverage.

A simple solution to this problem is to exclude punitive damages from the mandated coverage sections of Title 21 and Title 28. For example, AS 21.89.020 (c) could be amended to state:

An insurance company offering automobile liability insurance in this state for bodily injury or death shall initially and at each renewal, offer coverage prescribed in AS 28.20.440 and 28.20.445 or AS 28.22 for the protection of the persons insured under the policy who are legally entitled to recover

Senator Dave Donley
January 29, 2002
Page 3

LESSMEIER & WINTERS
LAWYERS - LLC

damages, except punitive damages, for bodily injury or death from owners or operators of uninsured or underinsured motor vehicles.

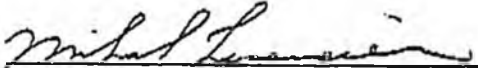
The same change would need to be made to AS 28.20.440, AS 28.20.445 and AS 28.22.101.

Another alternative would be to amend the statutory scheme to allow an insurer to exclude punitive damages without violating the offering requirements of AS 21.89.020, AS 28.20 and AS 28.22.

I thank you for your continued interest in this subject. If you have any questions, please let me know.

Sincerely,

LESSMEIER & WINTERS

By: 
Michael L. Lessmeier

MLL/tcw
0015-006/Donley.wpd

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 5, 2002

SUBJECT: Motor vehicle insurance - SB 327

TO: Senator Dave Donley

FROM: Michael F. Ford
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

I have also enclosed a letter from Mike Lessmier that provides background information on two issues raised in the bill, regarding coverage for punitive damages and coverage provided on an excess or umbrella basis.

Section 1. Specifies that motor vehicle insurance coverage for uninsured or underinsured owners or operators is not required to cover punitive damages awarded against an uninsured or underinsured person.

Section 2. Adds several new provisions of law relating to motor vehicle insurance, including requiring that insurers offer coverage for medical expenses, requiring coverage for at least 50 percent of the cost of replacing a safety belt, if comprehensive coverage is provided, and adding a definition of "automobile liability insurance" that excludes coverage provided only on an excess or umbrella basis.

Section 3. Specifies that motor vehicle insurance coverage for uninsured or underinsured owners or operators for a person subject to AS 28.20 is not required to cover liability for punitive damages.

Section 4. Specifies that motor vehicle insurance coverage for uninsured or underinsured owners or operators under the mandatory insurance provisions of AS 28.22 do not require coverage for punitive damages awarded against an uninsured or underinsured person.

Section 5. Effective date.

MFF:med
02-251.med

Subject: [Fwd: SB 327]

Date: Tue, 16 Apr 2002 08:09:38 -0800

From: Senator Dave Donley <Senator_Dave_Donley@legis.state.ak.us>

Organization: Alaska State Legislature

To: Jos Govaars <Jos_Govaars@legis.state.ak.us>

Subject: SB 327

Date: Mon, 15 Apr 2002 12:45:29 -0800

From: bob_lohr@dced.state.ak.us

To: David A Donley <Senator_Dave_Donley@legis.state.ak.us>

Attached in the Division of Insurance's letter of support for your bill, along with a suggest technical amendment.

You had agreed to consider including in your bill language to protect the confidentiality of investigative insurance records held by the division. Talking points in support of confidentiality are attached.

Confidentiality provisions:

Would require the Alaska Division of Insurance to protect the confidentiality of insurance investigative documents. Would increase the willingness of insurers to share confidential information with the division. Would make it possible for the Alaska division to receive investigative files from other insurance regulators with tighter confidentiality laws that Alaska's current law.

Please let me know if you have any questions.

<u>I_Donley SB 327 .doc</u>	Name: I_Donley SB 327_.doc Type: WINWORD File (application/msword) Encoding: base64 Download Status: Not downloaded with message
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April 15, 2002

The Honorable Dave Donley
Alaska State Senate
State Capitol Building, Room 506
Juneau, Alaska 99811

RE: SB 327

Dear Senator Donley:

Thank you for introducing legislation to address some of the issues raised in recent court cases that have resulted in a tightening of the personal umbrella market and for clarifying whether punitive damages are covered under uninsured and underinsured motorists coverage.

The Alaska Division of Insurance supports the proposed new section in AS 21.89.020 clarifying that automobile liability insurance does not include coverage provided on an excess or umbrella basis. We also support the exclusion of punitive damages from uninsured and underinsured motorists (UM/UIM) coverage. Without this revision, the policyholder is paying for punitive damages that the uninsured person should be paying. Including punitive damages in UM/UIM coverage increases the cost of insurance for the policyholder while having no effect on the uninsured tortfeasor.

Most insurers offer medical expense coverage. However, currently there is no requirement that the insured sign a waiver if the insured declines the offer. Requiring that the insured sign a waiver at each renewal may complicate the renewal process. An easier alternative would be to follow the UM/UIM coverage procedure in which the insurer initially offers the medical expense coverage. If the insured elects not to purchase the medical expense coverage, the insured would sign a waiver. The insured may, at any future time, make a change to the medical expense coverage option initially selected, but would not be required to sign a waiver at each renewal.

Comprehensive coverage usually covers direct and accidental loss to the insured's own vehicle. If a safety belt is damaged due to a covered cause of loss, then it would be repaired up to the comprehensive coverage limits, less any deductible. Limiting

the coverage to at least 50% of the cost of replacing the safety belt may result in less coverage than is currently offered under comprehensive coverage.

Comprehensive coverage does not cover repair to a malfunctioning safety belt due to wear and tear. If the intent of new subsection AS 21.89.020(j) is to require repair or replacement of a malfunctioning safety belt, when the reason for the damage is not a covered cause of loss, then the statutory language needs to be clarified to describe the situations under which the additional coverage should apply.

The Division offers these technical suggestions to clarify the provisions of SB 327.

Sincerely,

Robert A. Lohr
Director

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 327
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title An Act relating to motor vehicle insurance; and BRU Insurance (116)
providing for an effective date Component Insurance Operations
 Sponsor Senator Donley
 Requester Senate Transportation Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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						
1156 GF Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

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, Director
 Division: Insurance
 Approved by: Deborah B. Sedwick, Commissioner
 Agency: Department of Community & Economic Development

Phone 907-269-7900
 Date/Time 4/17/02 11:52 AM
 Date 4/17/2002



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

**SPONSOR STATEMENT
FOR SENATE BILL 327
"AN ACT RELATING TO MOTOR VEHICLES INSURANCE."
4/16/02**

Senate Bill 327 allows insurance companies to specifically exclude punitive damages from coverage provided by Uninsured and Under Insured Motorists.

As first party insurance, no public policy (absent successful subrogation) is served by requiring UM / UIM to pay punitive damages.

In the case of State Farm Mutual Automobile Insurance Company v Lawrence, the court held that Uninsured Motorist / Under Insured Motorist coverage includes coverage for punitive damages if coverage for punitive damages is not excluded under the insured's liability policy. In a sense the courts mandated the inclusion of the right to recover punitive damages under UM / UIM coverage, SB 327 will reverse this decision.

Senate Bill 327 will also require insurance companies to offer in writing initially, and at each renewal of automobile insurance, coverage for medical expenses as a result of bodily injury or death resulting from the operation of a motor vehicle. This ensures Alaskan insurance consumers the opportunity to better protect themselves and their families.

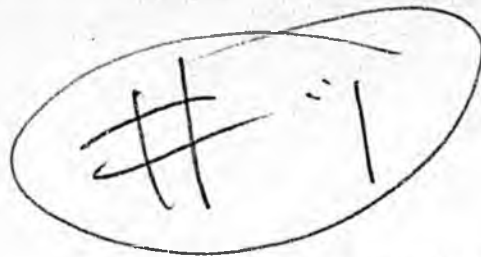
Senate Bill 327 also requires comprehensive coverage to include a provision providing for at least 50 percent of the cost of replacing a worn or defective seatbelt in a covered motor vehicle. This provision would encourage the replacement of possible malfunctioning seatbelts, and hopefully save lives and reduce injuries.

DD/jg

Co-Chair: Senate Finance Committee

Vice-Chair: Senate Judiciary Committee

Member: Legislative Budget and Audit Committee • Legislative Council



22-LS1460\C.1
Ford
3/6/02

Donley
3.6.02

AMENDMENT

OFFERED IN THE SENATE
TO: SB 327

BY SENATOR DONLEY

1 Page 3, following line 13:

2 Insert a new bill section to read:

3 **** Sec. 4.** AS 28.20.445(f) is amended to read:

4 (f) If both the owner and operator of the uninsured vehicle are unknown,
5 payment under the uninsured and underinsured motorists coverage shall be made only
6 where direct physical contact between the insured and uninsured or underinsured
7 motor vehicles has occurred, or where a person other than the insured attests that
8 a motor vehicle involved in the accident left the scene without being identified. A
9 vehicle that has left the scene of the accident with an insured vehicle is presumed to be
10 uninsured if the person insured reports the accident to the appropriate authorities
11 within 24 hours."

12
13 Renumber the following bill sections accordingly.

14
15 Page 3, following line 22:

16 Insert a new bill section to read:

17 **** Sec. 6.** AS 28.22.201(b) is amended to read:

18 (b) If both the owner and operator of a vehicle are unknown, payment under
19 the uninsured and underinsured motorists coverage may be made only where direct
20 contact between the motor vehicles has occurred, or where a person other than the
21 insured attests that a motor vehicle involved in the accident left the scene without
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POSITIONS

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ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr, Director Phone 907-269-7900
 Division Insurance Date/Time 4/17/02 11:52 AM
 Approved by: Deborah B. Sedwick, Commissioner Date 4/17/2002
 Agency Department of Community & Economic Development

AMENDMENT

Donley
3-6-02

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BY SENATOR DONLEY

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Donley
3/15/02

A M E N D M E N T

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TO: SB 327

BY SENATOR DONLEY

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11 this section or other provisions of this title with respect to particular records or
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15 designated as confidential or not available for public inspection under this section or
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17 (1) are not subject to inspection and copying under AS 40.25.110 -
18 40.25.220;

19 (2) may not be obtained from the director by subpoena, except for a
20 subpoena issued by a state or federal law enforcement agency or grand jury;

21 (3) may be used by the director in a regulatory or legal proceeding; and

22 (4) may be released for public inspection if the person who provided
23 the information or records to the director consents or releases incomplete or
24 misleading information on the same topic to the public.

1 (c) The director or a person acting under the authority of the director who
2 receives information or records designated in this title as confidential or not available
3 for public inspection may not be permitted or required to testify about the information
4 or records in a civil action not involving the state or a state agency, officer, or
5 employee.

6 (d) A person required or requested to provide information or records to the
7 director under this title does not waive a claim of privilege that the person may have
8 by providing the information or records to the director.

9 (e) In the performance of duties under this title, the director may

10 (1) disclose confidential information or records to the legislature, state,
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12 Association of Insurance Commissioners if the recipient will maintain the
13 confidentiality of the information or records;

14 (2) receive information or records from state, federal, and international
15 regulatory or law enforcement authorities or the National Association of Insurance
16 Commissioners and maintain the confidentiality of the information or records if
17 requested to do so or given notice that the information or records are confidential
18 under the law of the jurisdiction supplying them; and

19 (3) enter into agreements consistent with this section governing the
20 sharing of information or records that are confidential under this title with other state,
21 federal, and international regulatory or law enforcement agencies or the National
22 Association of Insurance Commissioners for the purpose of furthering any regulatory
23 or legal action that may be taken as part of the recipient's official duties.

24 (f) The following information or records submitted to or obtained by the
25 director are confidential:

26 (1) personally identifiable consumer information; however, the director
27 may disclose the information or records for the purpose of attempting to resolve a
28 consumer complaint;

29 (2) information or records established by a showing satisfactory to the
30 director to be a trade secret or proprietary business information, including

31 (A) detailed health insurance claim cost data; and

1 (B) justification for usual, customary, and reasonable charge
2 determinations; and

3 (3) information or records provided by a person not subject to this title
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5 Page 1, line 3:

6 Delete "Section 1."

7 Insert "Sec. 6."
8

9 Renumber the following bill sections accordingly.

LESSMEIER & WINTERS

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JUNEAU, ALASKA 99801MICHAEL L. LESSMEIER
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January 29, 2002

Senator Dave Donley
State Capital, Room 506
Juneau, Alaska 99801-1182Re: *Holderness - UM/UIM*

Dear Senator Donley:

Pursuant to our recent conversation I am writing you on behalf of State Farm to request your assistance in resolving several problems in the UM/UIM law created by two recent Alaska Supreme Court decisions. In Holderness v State Farm Fire and Casualty Company, the Court held that any liability policy that provides coverage for automobile liability, even if only on an incidental or excess basis, triggers the mandated offers of UM/UIM required by AS 21.89.020 (c). As a result of this ruling, coverages which were never intended or priced to include UM/UIM are mandated to include this coverage, sometimes at high levels. In each such situation where a policy is judicially rewritten to include this coverage, the insured should have already received on his or her primary automobile policy the mandated offers of 21.89.020(c) and should have selected the limits desired. It is thus difficult for us to understand any sound policy justification for judicially rewriting policies that provide automobile liability coverage only as incidental to some other basic coverage.

Because of the impact of this ruling, we understand that at least one major carrier has stopped offering excess policies in Alaska. It would not surprise us if other carriers have left these markets, as the ruling substantially and unnecessarily expands coverages that were written for other purposes. As a result of this ruling, a carrier is now required to make multiple offers of UM/UIM coverage, first on the insured's primary automobile policy, and then on each and every policy that may provide incidental automobile liability coverage. So long as an insured has the opportunity to select appropriate limits on his primary automobile policy, it is hard to see why such offers should be required on policies which may provide automobile liability coverage only on an incidental basis.

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One way to fix this problem is to amend AS 28.89.020 to provide that the mandated offers are not required for excess or umbrella policies or policies that provide only incidental automobile coverage. The California statute accomplishes this by providing:

A policy shall be excluded from the application of this section if the automobile liability coverage is provided only on an excess or umbrella basis. Nothing in this section shall require that uninsured motorist coverage be offered or provided in an homeowner policy, personal and residents' liability policy, comprehensive personal liability policy, manufacturers' and contractors' policy, premises liability policy, special multiperil policy, or any other policy or endorsement where automobile liability coverage is offered as incidental to some other basic coverage . . .

It is difficult, if not impossible, to predict when a court may judicially create automobile liability coverage when interpreting a liability policy. It is hard to imagine being in the position of having to offer UM/UIM coverage on every policy that a court may somehow construe to create automobile liability coverage. Yet that is exactly the position the industry is in, for if the coverage is not offered but the policy is later construed to create automobile liability coverage, UM/UIM is then included by implication. We do not believe this situation was ever intended and hope you are willing to help us find a legislative solution.

The second problem is created by the case of State Farm Mutual Automobile Insurance Company v Lawrence. The Court there held that UM/UIM coverage includes coverage for punitive damages if coverage for punitive damages is not excluded under the insured's liability policy. We think it one thing for an insured to desire protection from liability associated with the risk of punitive damages, but quite another to then mandate the inclusion of the right to recover punitive damages under UM/UIM coverage. We do not believe the basic purpose of UM/UIM was ever to mandate protection for punitive damages. Nor do we believe an insured should be forced to pay for such coverage.

A simple solution to this problem is to exclude punitive damages from the mandated coverage sections of Title 21 and Title 28. For example, AS 21.89.020 (c) could be amended to state:

An insurance company offering automobile liability insurance in this state for bodily injury or death shall initially and at each renewal, offer coverage prescribed in AS 28.20.440 and 28.20.445 or AS 28.22 for the protection of the persons insured under the policy who are legally entitled to recover

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damages, except punitive damages, for bodily injury or death from owners or operators of uninsured or underinsured motor vehicles.

The same change would need to be made to AS 28.20.440, AS 28.20.445 and AS 28.22.101.

Another alternative would be to amend the statutory scheme to allow an insurer to exclude punitive damages without violating the offering requirements of AS 21.89.020, AS 28.20 and AS 28.22.

I thank you for your continued interest in this subject. If you have any questions, please let me know.

Sincerely,

LESSMEIER & WINTERS

By:


Michael L. Lessmeier

MLL/tcw
0015-006/Donley.wpd

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MEMORANDUM

March 5, 2002

SUBJECT: Motor vehicle insurance - SB 327

TO: Senator Dave Donley

FROM: Michael F. Ford
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

I have also enclosed a letter from Mike Lessmier that provides background information on two issues raised in the bill, regarding coverage for punitive damages and coverage provided on an excess or umbrella basis.

Section 1. Specifies that motor vehicle insurance coverage for uninsured or underinsured owners or operators is not required to cover punitive damages awarded against an uninsured or underinsured person.

Section 2. Adds several new provisions of law relating to motor vehicle insurance, including requiring that insurers offer coverage for medical expenses, requiring coverage for at least 50 percent of the cost of replacing a safety belt, if comprehensive coverage is provided, and adding a definition of "automobile liability insurance" that excludes coverage provided only on an excess or umbrella basis.

Section 3. Specifies that motor vehicle insurance coverage for uninsured or underinsured owners or operators for a person subject to AS 28.20 is not required to cover liability for punitive damages.

Section 4. Specifies that motor vehicle insurance coverage for uninsured or underinsured owners or operators under the mandatory insurance provisions of AS 28.22 do not require coverage for punitive damages awarded against an uninsured or underinsured person.

Section 5. Effective date.

MFF:med
02-251.med

Subject: [Fwd: SB 327]

Date: Tue, 16 Apr 2002 08:09:38 -0800

From: Senator Dave Donley <Senator_Dave_Donley@legis.state.ak.us>

Organization: Alaska State Legislature

To: Jos Govaars <Jos_Govaars@legis.state.ak.us>

Subject: SB 327

Date: Mon, 15 Apr 2002 12:45:29 -0800

From: bob_lohr@dced.state.ak.us

To: David A Donley <Senator_Dave_Donley@legis.state.ak.us>

Attached in the Division of Insurance's letter of support for your bill, along with a suggested technical amendment.

You had agreed to consider including in your bill language to protect the confidentiality of investigative insurance records held by the division. Talking points in support of confidentiality are attached.

Confidentiality provisions:

Would require the Alaska Division of Insurance to protect the confidentiality of insurance investigative documents. Would increase the willingness of insurers to share confidential information with the division. Would make it possible for the Alaska division to receive investigative files from other insurance regulators with tighter confidentiality laws that Alaska's current law.

Please let me know if you have any questions.

<u>1_Donley SB 327 .doc</u>	Name: 1_Donley SB 327_.doc Type: WINWORD File (application/msword) Encoding: base64 Download Status: Not downloaded with message
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April 15, 2002

The Honorable Dave Donley
Alaska State Senate
State Capitol Building, Room 506
Juneau, Alaska 99811

RE: SB 327

Dear Senator Donley:

Thank you for introducing legislation to address some of the issues raised in recent court cases that have resulted in a tightening of the personal umbrella market and for clarifying whether punitive damages are covered under uninsured and underinsured motorists coverage.

The Alaska Division of Insurance supports the proposed new section in AS 21.89.020 clarifying that automobile liability insurance does not include coverage provided on an excess or umbrella basis. We also support the exclusion of punitive damages from uninsured and underinsured motorists (UM/UIM) coverage. Without this revision, the policyholder is paying for punitive damages that the uninsured person should be paying. Including punitive damages in UM/UIM coverage increases the cost of insurance for the policyholder while having no effect on the uninsured tortfeasor.

Most insurers offer medical expense coverage. However, currently there is no requirement that the insured sign a waiver if the insured declines the offer. Requiring that the insured sign a waiver at each renewal may complicate the renewal process. An easier alternative would be to follow the UM/UIM coverage procedure in which the insurer initially offers the medical expense coverage. If the insured elects not to purchase the medical expense coverage, the insured would sign a waiver. The insured may, at any future time, make a change to the medical expense coverage option initially selected, but would not be required to sign a waiver at each renewal.

Comprehensive coverage usually covers direct and accidental loss to the insured's own vehicle. If a safety belt is damaged due to a covered cause of loss, then it would be repaired up to the comprehensive coverage limits, less any deductible. Limiting

the coverage to at least 50% of the cost of replacing the safety belt may result in less coverage than is currently offered under comprehensive coverage.

Comprehensive coverage does not cover repair to a malfunctioning safety belt due to wear and tear. If the intent of new subsection AS 21.89.020(j) is to require repair or replacement of a malfunctioning safety belt, when the reason for the damage is not a covered cause of loss, then the statutory language needs to be clarified to describe the situations under which the additional coverage should apply.

The Division offers these technical suggestions to clarify the provisions of SB 327.

Sincerely,

Robert A. Lohr
Director