ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672 385
8894 SENATE JUDICIARY

or medical payments coverage, or as workers' compensation benefits and may not duplicate amounts paid or payable under valid and collectible automobile bodily injury, death, or medical payments coverage, or as workers' compensation benefits. **For purposes of this subsection, uninsured and underinsured motorist coverage is excess and payable if the insured has bodily injury or property damage and the damages exceed amounts payable under other valid and collectible automobile liability insurance coverage.**

* **Sec. 4.** AS 28.20.445(h) and AS 28.40.100(a)(22) are repealed.

* **Sec. 5.** APPLICABILITY. Except as required by the application of sec. 6 of this Act, this Act applies to a motor vehicle liability insurance policy entered into or renewed on or after the effective date of this Act.

* **Sec. 6.** Section 4 of this Act is retroactive to September 2, 1990.

* **Sec. 7.** Sections 4 - 6 of this Act take effect immediately under AS 01.10.070(c).

* **Sec. 8.** Sections 1 - 3 of this Act take effect July 1, 1995.

9-LS0737\M
Ford
4/10/95

CS FOR SENATE BILL NO. 95(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to automobile liability insurance coverage for uninsured or underinsured motor vehicles; and providing for an effective date."

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

* Section 1. INTENT. It is the intent of the legislature that this Act reverse the decision of the United States District Court for the District of Alaska, in Colonial Insurance Company of California v. Tumbleson, Civil No. A94-184CV (January 20, 1995), in which the court determined that in some cases underinsured motor vehicle insurance was not coverage excess to liability insurance coverage. It is also the intent of the legislature that underinsured motor vehicle insurance should be available whenever the damages of an insured are greater than amounts payable under other motor vehicle insurance coverage.

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

(c) 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 damages for bodily injury or death

from owners or operators of uninsured or underinsured motor vehicles. The limit written may not be less than the limit in AS 28.20.440 or AS 28.22.101. Coverage required to be offered under this section must include the following options:

(1) policy limits equal to the limits voluntarily purchased to cover the liability of the person insured for bodily injury or death;

(2) except when the coverage consists of motorcycle liability insurance, and except for a named insured required to file proof of financial responsibility under AS 28.20 or an applicant required to file proof of financial responsibility under AS 28.20, policy limits in the following amounts when these limits are greater than those offered under (1) of this subsection:

(A) $100,000 because of bodily injury to or death of one person in one accident, and, subject to the same limit for one person, $300,000 because of bodily injury to or death of two or more persons in one accident;

(B) $300,000 because of bodily injury to or death of one person in one accident, and, subject to the same limit for one person, $500,000 because of bodily injury to or death of two or more persons in one accident;

(C) $500,000 because of bodily injury to or death of one or more persons [PERSON] in one accident [, AND, SUBJECT TO THE SAME LIMIT FOR ONE PERSON, $500,000 BECAUSE OF BODILY INJURY TO OR DEATH OF TWO OR MORE PERSONS IN ONE ACCIDENT];

(D) $500,000 because of bodily injury to or death of one person in one accident, and, subject to the same limit for one person, $1,000,000 because of bodily injury to or death of two or more persons in one accident;

(E) $1,000,000 because of bodily injury to or death of one or more persons [PERSON] in one accident [, AND, SUBJECT TO THE SAME LIMIT FOR ONE PERSON, $2,000,000 BECAUSE OF BODILY INJURY TO OR DEATH OF TWO OR MORE PERSONS IN ONE ACCIDENT];

(3) other policy limits at the option of the insurer.

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

(b) An amount payable under the uninsured and underinsured motorist coverage shall be excess to an amount payable under automobile bodily injury, death,

or medical payments coverage, or as workers' compensation benefits and may not duplicate amounts paid or payable under valid and collectible automobile bodily injury, death, or medical payments coverage, or as workers' compensation benefits. **For purposes of this subsection, uninsured and underinsured motorist coverage is excess and payable if the insured has bodily injury or property damage and the damages exceed amounts payable under other valid and collectible automobile liability insurance coverage.**

* **Sec. 4.** AS 28.20.445(h) and AS 28.40.100(a)(22) are repealed.

* **Sec. 5.** APPLICABILITY. This Act applies to a motor vehicle liability insurance policy entered into or renewed on or after the effective date of this Act.

* **Sec. 6.** This Act takes effect July 1, 1995.

LESSMEIER & WINTERS
ATTORNEYS AT LAW

MICHAEL L. LESSMEIER
GREGORY W. LESSMEIER
SHELDON E. WINTERS

ONE SEALASKA PLAZA
SUITE 303
JUNEAU, ALASKA 99801-1249

TELEPHONE: (907) 586-6913
FACSIMILE: (907) 463-3080

March 28, 1995

Senator Tim Kelly
Alaska Senate
State Capitol
Juneau, Alaska 99801-1182

Re Committee Substitute for Senate Bill 95

Dear Senator Kelly:

I am writing to you on behalf of State Farm regarding CSSB 95. State Farm has approximately 32% of the automobile insurance market in Alaska. We have been involved in the legislative structuring of the mandatory automobile insurance program here in Alaska from the outset. We originally proposed the mandated offer of UM/UIM as a means of allowing Alaskans a way of guaranteeing for themselves protection from the uninsured and/or underinsured driver. Sadly, we have seen what started out to be a simple, affordable and easy to administer concept become something that is complicated, expensive and subject to differing opinions by many, including two of our three federal judges. Your committee has the ability to begin the process of correcting this problem, and we hope that it does so.

At the outset, we wish to state that we do not believe the answer to this problem is set forth in the original version of SB 95, nor in CSS 95, which we have reviewed as quickly as we have been able. Neither solves the excess problem created by the 1990 amendment. The CS vividly demonstrates the complexity that is created by mandating so many different kinds of offers. Neither of these solutions will stop the dramatically increasing cost of this coverage. Neither will create a coverage that is easily explained to and understood by our policyholders.

There is a much simpler, more effective solution to this problem. That is to return to where we began with this coverage. We recommend that you eliminate the mandated reoffer of this coverage at the time of every renewal. It is one thing to educate by notices sent at the time of renewal, but it is quite another to require the offer of a number of complicated, different coverages at every renewal. Second, we recommend you link the amount of UM/UIM coverage one may purchase to the amount of liability coverage one chooses to purchase. We do not believe it makes any sense at all for someone to be allowed to buy more protection for themselves than they are willing to provide for someone else. Finally, we strongly recommend that you eliminate this coverage as excess. This change, made in 1990, in our view is totally unnecessary, and has proven to be expensive. The adoption of these three simple recommendations would again create in Alaska a system providing for

a mandated offer of UM/UIM that is simple, easy to administer, easy for our policyholders to understand and finally as affordable as such a system can be.

To see this is so, we would like to briefly explain the evolution of this coverage in Alaska. We would then like to explain the history of rate changes and set forth the effect we believe our recommended changes would have, as well as the effect we believe the other changes would have.

Finally we would like to explain why (aside from the issue of expense) we believe the idea of making this coverage excess is a bad one.

Evolution of UM/UIM Coverage In Alaska

In 1983, mandatory automobile insurance was an issue that was hotly debated in this legislature. We opposed the adoption of mandatory automobile insurance in short because we believed the approach advocated through the legislation then pending would be both costly and ineffective. We instead argued the only real way one could guarantee protection from uninsured or underinsured drivers was to purchase uninsured and underinsured coverage. I enclose herewith a copy of testimony I gave before this very committee in May of 1983, and as you can see on pages 7 and 8 of that testimony, we argued for mandated offers of UM/UIM to guarantee compensation to victims of financially irresponsible motorists.

Ultimately, legislation was approved which adopted a form of compulsory insurance without the administrative burdens of the legislation initially proposed, coupled with a mandated offer of UP/UNM coverage equal to the amounts the insured chose to purchase voluntarily. The original intent of this coverage was to guarantee that regardless of whether an insured was struck by an uninsured or an underinsured driver, the insured would at least be able to collect an amount equal to the limits of UM/UIM they chose to purchase themselves.

In a sense, this coverage was replacement coverage, filling in the gap between the limits of the at fault party and the UM/UIM limits the insured chose to purchase. The purpose of this coverage was to guarantee that the insured would always be at least in the same position he or she would have been in had the at fault party purchased liability limits equal to the UM/UIM limits the insured chose to purchase. In other words, if an insured chose to purchase $100,000 of UM/UIM coverage, the insured would know that regardless of the resources of the at fault party, the insured would have $100,000 of protection. If the insured was hit by someone with no insurance, the insured would have available the entire $100,000 of UM/UIM coverage. If the insured was hit by someone with $50,000 of coverage, the insured would have available $50,000 of coverage from their UM/UIM so again, they would recover a total of $100,000, the limit of their UM/UIM coverage.

This coverage was affordable for a number of reasons. First, it was triggered only if the UM/UIM limits were greater than the limits of the at fault third party. The reasoning is obvious. If the third party is insured, they cannot be said to be uninsured. If the liability limits of the third party

are greater than the insured's UM/UIM limits, the third party cannot be said to be underinsured.

Second, the coverage was also affordable because it was not excess. There was no reason for it to be, for the purpose was to guarantee a certain level of protection from all available sources. Thus, it was reduced dollar for dollar by the limits of the third party. This kept the cost of the coverage down.

Third, UM/UIM coverage could be purchased only in an amount equal to the limits of liability coverage the insured chose to purchase. In order to guarantee a level of protection for himself, an insured had to provide that same level of protection to a third party. By purchasing higher liability limits, one is less likely to be someone else's underinsured.

Finally, the mandated offer was easy to administer. It was a one time offer. It did not need to be made repeatedly, as is the case under the present law. All of these things combined to make this coverage affordable

This very simple concept has been modified over the years so that now the coverage once triggered is excess. There is debate about the elimination of the coverage trigger, and indeed, one federal judge has ruled that the trigger has already been eliminated. The linkage of the amount of UP/UNM to liability limits has been eliminated, as has the single mandated offer. It is no longer enough to offer the coverage just once, but it must be offered at the time of every renewal.

Rates

As you probably know, rates are driven primarily by the frequency of loss and the severity of loss. Rates are also affected by increasing administrative costs. It should come as no surprise that the changes set forth above have had a dramatic affect on rates. If you make this coverage excess the inevitable result is that our loss experience will deteriorate. If you change the trigger point our loss experience will deteriorate even more.

Our UM/UIM loss experience in Alaska has been very unfavorable. We increased our UM/UIM rate by 28% on January 1, 1991 and again by 13% on March 1, 1994. Assuming no changes are made in the law, our current experience indicates an increase of 47% will be necessary.

If the trigger point is changed, as advocated by Senator Donnely, we would anticipate an additional increase of 80% for a total rate increase of 127%. On the other hand, were you to repeal the excess provisions enacted in 1990 so we went back to a pure difference in limits concept, we would anticipate a rate increase of only 15%.

In other words, our UM/UIM loss experience has and continues to be poor. Regardless of what changes are going to be made a rate increase is going to be necessary. If we go back to difference in limits, a 15% increase will be necessary. If the trigger point is not changed, but once the coverage is triggered it is excess, we anticipate a 47% increase. If the trigger point is changed

and the coverage is excess, we anticipate an increase of 127%.

To give a practical example, the average indicated rate under the current law (semi-annual premium) for $50,000/$100,000 is $16.78. If the law were changed to pure difference in limits, this coverage would cost $11.36. If the trigger point is changed and this is excess, this coverage would cost $30.28. Please keep in mind that the rate indication under current law is for a 47% increase.

Why Should This Coverage Be Excess?

The argument that this coverage should be excess is that an insured thinks (regardless of what the law provides) that when he has purchased UM/UIM of $50,000 he understands his insurer will pay $50,000 in addition to the limits of the at fault third party. We frankly think this is simply a question of education and understanding. The concept that under a combined coverage of UM/UIM you are guaranteeing you will have the limit you choose available and no more is an easy concept to explain and an easy concept to understand. The concept of excess coverage is more difficult to explain, and multiple coverages even more so.

The second argument that seems to be made in support of excess provisions is that the general public is better off if UM/UIM is excess. We think not. As we have seen in Alaska, to make this coverage excess is to make it more expensive. As the cost of this coverage continues to escalate, those who might have purchased it if it were more affordable, may well choose to decline it. In other words, by making this coverage excess, you take away the option of more affordable coverage. This should be apparent by looking at the rate example we have set forth above.

Just as important, even if this coverage is not excess, an insured still has available the ability to purchase significant amounts of coverage that provide guaranteed protection to whatever level the insured chooses. We seriously doubt if when purchasing this coverage, an insured chooses her level of UM/UIM limits by making estimates of what level of insurance the third party that negligently hits them is going to have in the event an accident occurs. It is simply not possible to predict whether the person that hits you is going to be insured, and if so to what level. Rather than choosing a level of UM/UIM based on the coverage a third party might have, we think most people by purchasing this coverage intend to guarantee the level of compensation of their limits. It is just not possible or practical to assume anything else.

We strongly believe our policy holders would be better off if we went back to the system of UM/UIM we originally had in Alaska. That coverage was easy to understand, easy to administer and was affordable. The changes that have been made to improve this system have had just the opposite effect. We believe it is time they be undone.

Although we have only had the CS available since Friday afternoon, we have a number of initial concerns. First of all, it appears to contemplate separate offers of UM and UIM. Frankly, we do not understand why someone would purchase UIM, but not UM. Second, the CS does not appear to have a provision for declining the UIM offer. Perhaps we are mistaken, but we could not find

find it. Finally, the CS demonstrates the difficulty of understanding and then explaining in writing all of these different coverages at different levels at the outset and then again at each renewal. You could accomplish the same thing by requiring the offer at the outset, but then requiring the insurer to simply notify the insured in writing at each renewal of the availability of these coverages. This would not pose near the administrative difficulty or legal exposure as does the mandated offers at the time of each renewal. Even with these changes you end up creating a complex area of the law to deal with what was originally a simple concept.

Thank you for the opportunity to comment on this legislation. If you have any questions or if we might be of additional assistance, please let me know.

Sincerely,

LESSMEIER & WINTERS

By: _____
Michael L. Lessmeier

MLL/jn

P.S. We previously delivered a copy of the testimony referred to on page two.

STATEMENT IN OPPOSITION TO

THE ENACTMENT OF A COMPULSORY AUTOMOBILE LIABILITY

INSURANCE STATUTE IN ALASKA

HEARING BEFORE THE

SENATE LABOR AND COMMERCE COMMITTEE

MAY 31, 1983

Mr. Chairman, members of the Labor and Commerce Committee, my name is Michael Lessmeier. I am a lawyer from Juneau and I am here on behalf of Allstate Insurance Company and State Farm Insurance Company. Both Allstate and State Farm have had a long and generally negative experience with compulsory insurance. We believe compulsory insurance laws, such as the bill before you, aren't needed, create more problems than they solve, don't benefit the general public or our policyholders, will unnecessarily raise premium rates and in the final analysis, don't work.

The real question is whether the cost of compulsory insurance justifies the realistic benefit we can hope to achieve from it. We believe the answer to this question is no and we want to explain why.

The theoretical goal of compulsory insurance is to guarantee that innocent victims of automobile accidents are compensated for their injuries. But we know that the enactment of compulsory insurance

does not guarantee that these people will be so compensated. Compulsory insurance has never in any state reached the objectives sought by its sponsors.

One of the reasons compulsory insurance has not been effective, is that uninsured drivers are generally made up of those who can't afford insurance, have no drivers license, do not register their vehicles, are driving stolen vehicles or vehicles involved in hit-and-run accidents. Many of these people will not purchase liability insurance regardless of whether there is a compulsory law. Others in this category include out-of-state drivers and new residents with vehicles registered elsewhere. Most of these people will continue to remain uninsured even after passing a compulsory law and this is shown by experience in other states.

For example, California spent $2.32 million to increase the percentage of its insured drivers by five (5) percent. Maryland spent $1.5 million to increase its percentage of insured drivers by the same five (5) percent. South Carolina paid $1.3 million for an eight (8) percent increase. Massachusetts, which has had a compulsory insurance law longer than any other state, still has an estimated 10 -15 percent level of uninsured drivers. Current estimates of uninsured drivers in compulsory states still range from five (5) percent to 15 percent, depending upon the level of enforcement.

Nor is the concept of compulsory insurance related to safety. The enactment of a compulsory insurance law won't reduce the number of accidents. By its very nature, compulsory insurance relates to what happens after an accident. Compulsory insurance laws simply require insurance, they do not provide a means to remove high-risk drivers from the road.

We do not believe that uncompensated injuries are reduced by the enactment of a compulsory law. We believe that on the average, insured car occupants will receive injuries from uninsured motorists at about the same rate after enactment of compulsory legislation as they do before passage of these laws. Although compulsory legislation may increase the insured population by a small percentage, we do not believe it will result in a measurable reduction in the number of bodily injuries caused by financially irresponsible drivers.

Even if we were to assume there would be a decrease in the number of bodily injuries caused by financially irresponsible drivers, the question still is whether the benefit we can realistically expect from compulsory insurance is worth the cost and we believe the cost will be significant. For example, we know there will be a significant administrative cost to the State of Alaska simply to implement and enforce the compulsory insurance legislation before you. In effect, in a time of declining state revenues, virtually a whole new

bureaucracy will have to be created to implement and enforce this legislation. The administrative cost to the public is an important concern, particularly when there are other pressing needs in this state.

The second cost aspect of this legislation that must be considered is the effect on premium rates of policyholders. We believe premium rates of everyone will increase significantly because administrative costs of the industry will increase, companies in effect will be forced to take almost all applicants, the bill does away with policy defenses in certain situations, the pure premium cost in a compulsory state has been shown to increase much more rapidly than the pure premium cost in a non-compulsory state, and finally, the cost of compulsory insurance will probably lead to more claims and more litigation.

Other costs which are impossible to quantify, include the social cost to people who can't afford insurance, and the inconvenience of adding another layer of intrusion by government into people's lives. Most people currently buy insurance because they feel they need it. Liability insurance has traditionally been purchased by people who have assets to protect, not to protect others. In other words, people who, in the past, had few assets, had very little incentive to purchase liability insurance. A report, Profile of Uninsured Motorists in California showed that geographic areas with high

rates of uninsureds had significantly lower median incomes, and a higher incidence of poverty level than areas with low rates of uninsured drivers. A 1981 study by the All-Industry Research Advisory Council asked households with one or more uninsured vehicles why the vehicles were uninsured. Forty percent of the people surveyed listed cost as the reason. The next major reason, "car not currently in use", was only 16 percent of the total response. In short, requiring insurance of low-income households will not compel them to purchase something they simply cannot afford. Dr. John Hall of Georgia State University testified before South Carolina's Joint-Legislative Automobile Liability Insurance Study Committee in December of 1979. Dr. Hall said:

> As a practical matter, the economically disadvantaged have less real need for liability insurance to protect their own interests. As a practical matter, these persons tend to be judgment proof. In any event, they tend to be unaware of the benefits which a liability policy provides. They perceive the liability insurance policy as taking care of other people. They must pay a high premium for insurance which provides benefits for others as a condition precedent to having the right to drive. Because of their economic status, most often they are unable to purchase insurance to provide for their own injuries, and those of their families, in accidents where they are at fault. The compulsory liability insurance system forces these people to pay high premiums relative to their income for benefits for others when they cannot themselves afford adequate benefits to cover their own losses.

Dr. Hall concluded:

> For these reasons, it appears morally and socially wrong to require liability insurance on a compulsory basis as a condition precedent to enjoying the privilege of automobile driving and ownership.

Not only does compulsory legislation extract a disproportionate cost from low-income groups, but it raises the price level of everyone's insurance. Compulsory insurance thus imposes the additional higher premium and administrative costs on those currently insured, which in any event is the vast majority of the driving public, to get at the remaining minority, those currently uninsured.

So the question remains, is the cost to everyone worth the realistic benefit we can hope to achieve. Bodies investigating compulsory insurance in other states have said no primarily for the same reasons. In 1981 a Tennessee Subcommittee studying automobile compulsory insurance laws made the following recommendation:

> Our findings reveal that despite considerable and varied enforcement efforts in other states, including the adoption of no-fault, no state has devised a workable or cost-effective enforcement system. In addition, experience in other states indicate the adoption of compulsory insurance in Tennessee would only increase the percentage of insured drivers from the current 80 percent to 85 percent. More importantly, the cost of liability insurance plus uninsured motorist coverage in Tennessee is less than the same coverage in any compulsory state, and considerably less than the same coverage in any compulsory no-fault state. The responsible motorist should

> not pay more for insurance coverage nor be subjected to harrassment in a futile effort to enforce a compulsory insurance law.

November 19, 1981 letter from the Tennessee Subcommittee Studying Automobile Compulsory Insurance Laws.

A similar conclusion was reached by the State Auditor of Wisconsin on March 10, 1981:

> Experience in other states indicates that mandatory insurance programs do not substantially reduce the number of uninsured motorists and the cost of administering such a program is more than double the cost of the safety responsibility program.

March 10, 1981 letter from the State Auditor of Wisconsin.

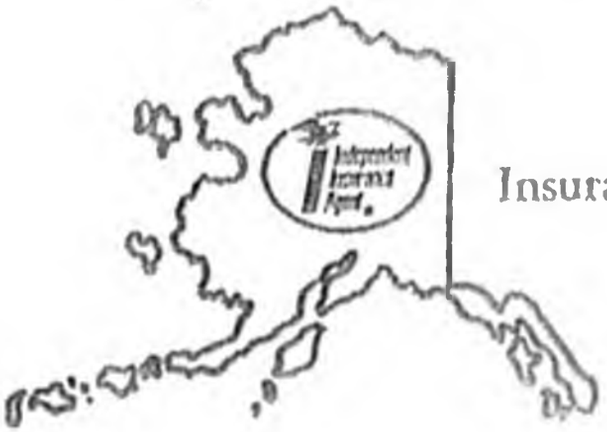
If our goal is to guarantee compensation for victims of financially irresponsible motorists, we can achieve that goal more efficiently and effectively thr ugh compulsory uninsured and under-insured legislation. If every person who bought insurance included this coverage, careful drivers would be protected regardless of whether the at-fault other party had liability insurance. Only those who chose not to purchase this coverage would be without protection.

Uninsured motorist coverage is provided by companies to pay for bodily injury damages to the policyholder caused by an uninsured motorist. Virtually every state with a compulsory liability insurance law also requires insurers to offer uninsured motorist coverage, which in effect indicates a lack of faith in

the effectiveness of compulsory insurance legislation. By purchasing uninsured motorist coverage, a vehicle owner is assuring that all drivers and passengers in the insured automobile will have protection against losses caused by an uninsured motorist. Compulsory automobile insurance cannot make this promise.

Compared to the cost of liability insurance, uninsured motorist coverage is very inexpensive. We urge each of you to look at your own policies to gain an idea of its cost. Furthermore, a compulsory uninsured and under-insured requirement does not impose the administrative cost to either the public or private sector that compulsory liability insurance legislation would impose.

In sum, we believe compulsory liability insurance, if enacted, will prove to be both costly and burdensome to the State of Alaska, and the insurance industry. Ultimately it will prove to be both costly and burdensome to our policyholders and to members of the general public. We urge this committee to seriously consider the cost and effectiveness of compulsory insurance before recommending such a program. We believe there are other alternatives available which cost much less and achieve much more.



# Alaska Independent Insurance Agents & Brokers, Inc.

April 12, 1995

Via Fax 907/465-3922

Senator Robin Taylor
Alaska Senate
State Capitol Room 30
Juneau, AK 99801

Re: Committee Substitute for SB 95

Dear Senator Taylor:

The Alaska Independent Insurance Agents & Brokers, Inc. is a trade association representing 53 independent insurance agencies which employ approximately 500 people throughout the state of Alaska.

We would like to express strong opposition to the committee substitute for SB 95 dealing with uninsured and underinsured motorist coverage.

We feel this bill could have serious effects on automobile insurance premiums in Alaska and could jeopardize the ability of the Alaskan consumer to purchase affordable protection.

We would appreciate your consideration of our position and your vote against this committee substitute.

Sincerely,

Dennis Brown

Dennis Brown, President

P.O. Box 203098 • Anchorage, Alaska 99520-3098 • Tel (907) 349-2500 • Fax (907) 349-1310

LESSMEIER & WINTERS
ATTORNEYS AT LAW

MICHAEL L. LESSMEIER
GREGORY W. LESSMEIER
SHELDON E. WINTERS

ONE SEALASKA PLAZA
SUITE 303
JUNEAU, ALASKA 99801-1249

TELEPHONE: (907) 586-9013
FACSIMILE: (907) 463-3030

April 20, 1995

Hand-Delivered

Senator Robin Taylor
Alaska Senate
State Capitol
Juneau, Alaska 99801-1183

Re: Senate Bill 95

Dear Senator Taylor:

To respond to several of the concerns you raised following our testimony on Senate Bill 95, let me set forth the following:

1. Prior to Tumbleson, as best we have been able to determine we did give our insureds the benefit of the doubt on the trigger issue. We did so because there was ambiguity in the law, and no clear court decision. However, because the law was unclear, and we did not feel we could charge for a change we did not know would in fact occur, our premiums were not adjusted to reflect that practice. Our intent was to adjust our premiums if and when there was a judicial decision clarifying the ambiguity created by the 1990 amendment. After Tumbleson became the law, we followed it until the subsequent decision was issued.

2. The speaker from the Trial Lawyers' Association stated that this coverage in effect is meaningless at the lower levels of liability if it is different in limits coverage. That is not the case. This comment ignores the fact that UM/UIM is a single, combined coverage. While it is true that at the most basic level of coverage, i.e. $50/$100/$25, the vast majority of the premium goes to the uninsured motorist portion of the coverage, it is not true that all of it does. The underinsured aspects of this coverage would be applicable in the circumstances outlined in Tumbleson, i.e. the available liability coverage was reduced by payments to non-insureds. This of course is why this coverage is very affordable at this level.

I hope this responds to any concerns that were raised. If not, please let me know and we will be happy to discuss this again with you.

Sincerely,

LESSMEIER & WINTERS

By
Michael L. Lessmeier

MLL/jn

cc: All Members of the Senate Judiciary Committee

Department of Commerce & Economic Development / POSITION PAPER

SB 95: "An Act relating to insurance against uninsured drivers."

The existing law was adopted because the Legislature wished to allow purchasers of automobile liability insurance, which basically provides coverage for injured third parties, to consider purchase of insurance covering personal protection for the purchaser and family. It allows limits that exceed coverage for third party bodily injury liability.

The policy issue considered in this legislation is: Does the state wish to limit the coverage for a person buying automobile insurance for their own protection to the amount that person voluntarily purchases for the protection of a third party?

Alaska was the first state to determine, with the passage of the 1990 law, that an insured could seek and an insurer was required to offer greater coverage for self-protection than that for a third party. This bill would reverse that position and repeal the 1990 legislation.

Alaska has a financial responsibility and mandatory automobile insurance law that is typical of such laws under a tort system. The principal feature of such laws is that they focus on providing minimum coverage for the third party. Coverage for the purchaser is incidental. Also, typically, there is an uninsured motorist feature to allow the purchaser to protect against an uninsured at-fault third party.

Some states have adopted no-fault laws where the tort system is modified and the purchaser focuses on covering personal needs first and third party needs secondarily. The existing Alaska law creates a similar impact without modification to the tort system. In this, Alaska is unique.

The proponents of this legislation argue that the offer of high uninsured/ underinsured motorist limits acts as a deterrent to the entrance of new insurers into the Alaska marketplace. The division has no direct knowledge of such an impact nor would it necessarily know that an insurer has elected not to enter our marketplace for this reason. However, there has been at least one major entrant into this market since adoption of this law. To some extent, the charge may be true since the reinsurance needed for the exposure would not be inexpensive and would be needed on a standby basis whether the coverage were selected or not. It would appear that there should be some compromise considered before reversing the existing statute.

The existing statute presently requires a mandated offer of the following limits of uninsured/ underinsured motorist coverage per person/per accident:

- $100,000/$300,000
- $300,000/$500,000
- $500,000/$500,000
- $500,000/$1,000,000, and
- $1,000,000/$2,000,000

We recommend that the Legislature retain the existing statute, but consider a compromise in which the offer of $1,000,000/$2,000,000 is reduced to $1,000,000/$1,000,000. Language to accomplish this change is attached.

An issue that has an impact on this subject is another provision in Chapter 78, SLA 1990. The provision provides that a not-at-fault party's underinsured motorists coverage would be available as excess in cases where the at-fault party had insurance insufficient to meet the needs of the injured not-at-fault party in an automobile accident. The recent U. S. District Court case of Colonial Insurance Company of California v. Derek Tumbleson (Case # A94-184 CV (JKS)) has overturned this provision. The premise for this ruling is that the underinsured feature is only triggered if the at-fault third party is uninsured. This action, if it stands, further impacts the ability of the purchaser of insurance to protect personal interests to a greater extent than the state requires protection of the third party. We recommend that the Legislature also consider an amendment to this bill to repair the language that led to the court's decision. The department has not developed corrective language, but is willing to assist the committee in this effort.

Amendments Proposed

Amend Section 1 of the Bill to read:

Section 1. AS 21.89.020(c) is amended to read:

(c) 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 damages for bodily injury or death from owners or operators of uninsured or underinsured motor vehicles. The limit written may not be less than the limit in AS 28.20.440. Coverage required to be offered under this section shall include the following options:

(1) policy limits equal to the limits voluntarily purchased to cover the liability of the person insured for bodily injury or death;

(2) policy limits in the following amounts when these limits are greater than those offered under (1) of this subsection:

(A) $100,000 because of bodily injury to or death of one person in one accident, and, subject to the same limit for one person, $300,000 because of bodily injury to or death of two or more persons in one accident;

(B) $300,000 because of bodily injury to or death of one person in one accident, and, subject to the same limit for one person, $500,000 because of bodily injury to or death of two or more persons in one accident;

(C) $500,000 because of bodily injury to or death of one person in one accident, and, subject to the same limit for one person, $500,000 because of bodily injury to or death of two or more persons in one accident;

(D) $500,000 because of bodily injury to or death of one person in one accident, and, subject to the same limit for one person, $1,000,000 because of bodily injury to or death of two or more persons in one accident;

(E) $1,000,000 because of bodily injury to or death of one person in one accident, and, subject to the same limit for one person, $1,000,000 [$2,000,000] because of bodily injury to or death of two or more persons in one accident;

(3) other policy limits at the option of the insurer.

William L. Hensley, Commissioner

Date:

DK/dgl364pp dk2
030295c

# Alaska State Legislature

Senator Tim Kelly, Chair
Senator John Torgerson Vice Chair
Senator Mike Miller
Senator Jim Duncan
Senator Judy Salo

SENATE LABOR AND COMMERCE COMMITTEE

STATE CAPITOL SUITE 101
JUNEAU, ALASKA 99801-1182
PHONE (907) 465-3822
FAX (907) 465-3756

716 W 4TH SUITE 400
ANCHORAGE AK 99501-2133
PHONE (907) 258-8180
FAX (907) 258-4524

## Sponsor Statement
## SB 95:

## Automobile Liability

SB 95 is the reintroduction of HB 403 of the 18th Legislature. SB 95 seeks to remove the mandatory offer of uninsured and underinsured motorists coverage in excess of coverages voluntarily purchased by an insured.

Uninsured/Underinsured (UM/UIM) motorist coverage protects the vehicle owner against being injured in an accident with an at fault motorist who has no bodily injury liability insurance. UI motorist coverage applies only if the uninsured motorist is legally liable for the resulting injury. Uninsured motorist coverage puts the injured insured in the same position as he would be in if the motorist actually responsible for the accident had bodily injury liability insurance. Thus, if the injured driver cannot be compensated for an injury by the negligent party who has no insurance then the injured party can turn to his own insurance company for compensation. In effect, the injured driver's insurance company must take the place of the at fault motorist who was driving without liability insurance in contemplation of Alaskan law requiring liability insurance coverage.

Three years ago, the Alaska Legislature passed legislation which requires Alaskan insurers to offer uninsured or underinsured motorist coverage of between $1 million and $2 million dollars. This mandatory coverage has increased the cost of liability insurance for all policy holders. While these increases are due to the high limits of coverage required in Alaska, the premium for UI/UIM coverage is only a small part of the total insurance premium for vehicles.

SB 95 seeks to assure the Alaskan consumer competitive auto insurance premiums by encouraging a competitive marketplace. A greater number of insurance companies doing business in Alaska will, in the long run, ensure competitive premiums. SB 95 will encourage the growth of a competitive market for insurance by requiring insurance companies to provide only the requested amount of uninsured/underinsured coverage. Buyers of insurance will be able to choose their own individual level of protection.

Under current law, Alaska is the only state in the nation that requires insurers to offer UI/UIM coverage of up to two million dollars. SB 95 amends AS

21.89.020(c) to require coverage that includes policy limits equal to the limit voluntarily purchased to cover the insured's liability for bodily injury or death. The policy limit for this coverage may not be less than the policy limit set in AS 28.20.440.

SB 95 will encourage a competitive market for premiums as well as providing the consumer with the individual option to purchase her desired amount of coverage. The consumer is still protected by statutory limits for UM/UIM coverage but will not be forced to pay for coverage equal to approximately $2 million dollars.


# Alaska Independent Insurance Agents & Brokers, Inc.

February 9, 1995

Alaska State Legislators
State Capitol Building
Juneau, Alaska

Alaska Independent Insurance Agents and Brokers is a trade organization formed by 50 independently-owned insurance agencies residing and doing business in the State of Alaska.

Our members are the point of contact between the insurance-buying public and the insurance industry doing business in our state. Our members are the first to know the concerns of the insurance-buying public and the effect of legislative actions upon the insurance industry, and the resulting impact on the consumer.

In 1990 the Alaska State Legislature passed HB429 stating carriers in the state shall initially and at renewal offer uninsured and underinsured motorist coverage, and that coverage may not be less than the statutory required coverage described in AS 28.20.440. In addition, the carrier must offer its insured the following options:

1. UM/UIM policy limits equal to limits voluntarily purchased by the insured for liability coverage.

2. UM/UIM policy limits greater than the voluntarily-purchased limits in specified optional amounts ranging from $100/$300 to $1 million/$2 million

The problem which arises is with the mandatory offering. Many carriers within the state are unwilling or unable to offer these limits. Conversely, those carriers who may want to enter the state would not do so because of the mandatory offering of the higher limits.

To encourage competition in the auto insurance marketplace, it is our recom-mendation at the initial purchase of insurance that UM/UIM be offered up to the limits purchased for liability coverage but not less than the limits stated in AS 28.20.440.

We feel that with this change there will be an increase of insurance markets in our state and will benefit our citizens in securing a more competitive product.

Thank you for your consideration.

Sincerely,

Dennis N. Brown
President

progressive

11010 WHITE ROCK ROAD
P.O. BOX 2350
RANCHO CORDOVA, CALIFORNIA 95741-2350

December 13, 1993

Ms. Gina McBride
Alaska Independent Insurance Agents & Brokers, Inc.
P.O. Box 203088
Anchorage, AK 99520-3088

RE: Letter of Support
Changes to Alaska UM/UIM Statute (AS 21.89.020 (c) )

Dear Ms. McBride:

This letter is to confirm Progressive's support for the changes to the Alaska statute concerning Uninsured/Underinsured Motorists coverage being proposed by the Alaska Independent Agents & Brokers.

Your changes would replace the requirement for companies to offer $1,000,000/$2,000,000 UM/UIM limits with a requirement to offer UM/UIM limits equal to the Bodily Injury/Property Damage limits on the policy.

We believe that these limits will provide sufficient protection for Alaskans, while eliminating a potential source of litigation and/or un-reinsured catastrophic loss for companies.

Progressive provides both preferred and non-standard automobile insurance to over 10,000 drivers in Alaska.

Sincerely,

Mark D. Niehaus
Vice President

MN1213.01

Continental Insurance.

Seattle Territory Office
Two Union Square Suite 600
P.O. Box 1850
Seattle WA 98111-1850

January 31, 1994

Gina McBride
Alaska Independent Insurance Agency & Brokers, Inc.
P.O. Box 203088
ANCHORAGE, AK 99520-3088

RE: UM/UIM Support

Dear Gina:

We at Continental are very much in support of the revision you have offered. The effort being put forth to solve the UM/UIM problem is very much appreciated. We support your efforts and should we be able to assist you, please do not hesitate to call on us.

Sincerely,

Jim Harms

Jim Harms, CPCU, CIC
Branch Manager

# VENNEBERG INSURANCE, INC.

225 Harbor Drive
P.O. Box 199
Sitka, Alaska 99835
(907) 747-8625
FAX (907) 747-5065

February 27, 1995

Chairman Kelly
Senate Labor & Commerce Committee
State Capitol
Juneau, Alaska 99801

Re: SB 95

Senator Kelly,

I wish to voice my support for SB 95. This will modify the required offerings for uninsured/underinsured motorist coverage in our state.

In order to promote a desirable marketplace, which brings new carriers to our state and increased competition, we are in need of your assistance. SB 95 will modify a current requirement for offering maximum uninsured/underinsured motorist coverage to consumers. Consumers will still have the ability to purchase these high limits. In consultation with their insurance professional they will be able to choose the limits which they feel are appropriate.

I would urge the Labor & Commerce committee to support this legislation.

Sincerely,

Mike Venneberg

Ribelin Lowell & Company
INSURANCE BROKERS INC.

February 27, 1995

Chairman Kelly
Senate Labor & Commerce Committee
State Capitol
Juneau, Alaska 99801

RE: SB 95

Senator Kelly,

Uninsured/Underinsured Motorist coverage protects a vehicle owner against being injured in an accident with an at-fault motorist who does not have the bodily injury liability insurance that is mandated by Alaskan statute. This basically means that if the injured driver cannot be compensated for an injury by a negligent party who has no insurance, he can, in fact, turn to his own insurance company for compensation. The injured driver's insurance company must take the place of the motorist who, in violation of Alaska statute, did not carry liability insurance.

SB 95 will continue to require insurance companies to offer both uninsured and underinsured motorist coverage. The change in statute does not seek to change the type of coverage offered, but rather seeks to change the limits of coverage that are mandatory. The option to purchase the protection of uninsured motorist coverage would still be available for the Alaskan consumer. The change would correspond to other mandatory coverages in requiring a minimum limit of coverage, not a maximum limit. All other mandatory coverages are set at minimum limits, not maximum limits.

Currently Alaska requires higher mandatory limits of uninsured/ underinsured motorist coverage than any other state in the country. This creates an undesirable insurance climate. Alaskan consumers will benefit from a marketplace which encourages competition and the entry of new companies into the State.

I would strongly urge the Labor & Commerce committee to favorably recommend this legislation.

Sincerely,

Linda S. Hall

*A Report to the Alaska Legislature on...*

COMMENTS

# Uninsured/ Underinsured Motorists Coverage

EFFECTS

*containing information on a recommended change to the Uninsured/ Underinsured Motorist Coverage, Sec. 1 AS 21.89.020(c).*

## February 1995

SUMMARY


AIIAB, INC.

Alaska Independent Insurance Agents & Brokers, Inc.
P. O. Box 203088
Anchorage, Alaska 99520-3088
(907) 349-2500 • Fax 349-1300

## HISTORY

In 1990, the Alaska State Legislature passed HB 429 stating carriers in this state "shall, initially and at each renewal, offer" UM and UIM coverage, and that coverage may not be less than the statutorily required coverage described in AS 28.20.440. Additionally, and for the first time, the carrier shall offer its insured the following options:

1. UM/UIM policy limits equal to limits voluntarily purchased by the insured for liability coverage, and
2. UM/UIM policy limits greater than voluntarily purchased liability limits in specified optional amounts ranging from $100,000/$300,000 to $1,000,000/$2,000,000.

## PROBLEM

Many carriers writing automobile coverage in Alaska (prior to passage of HB 429) did not offer limits up to $1,000,000/$2,000,000, and prefer not to offer the higher limits. Carriers considering coming to Alaska, as well as carriers considering expanding their writings in our state, are hesitant because of this law. This has the effect of limiting automobile coverage availability in the State of Alaska, which is not in the best interest of the Alaskan consumer. One of the ongoing goals of the Alaska Independent Insurance Agents & Brokers, Inc. is to increase insurance availability to the consumer. This law is hampering our efforts.

## SOLUTION

**SEC. 1 AS 21.89.020(c) is repealed and reenacted to read:**

(c) An insurance company offering automobile liability insurance in this state for bodily injury or death shall offer at the time of initial purchase, coverage prescribed in AS 28.20.440 and 28.20.445 or AS 28.22, with limits equal to the limit purchased voluntarily to cover the insured's liability for bodily injury or death, for protection of the persons insured under the policy who are legally entitled to recover damages for bodily injury or death from owners or operators of uninsured or underinsured motor vehicles. The limit written may not be less than the limit in AS 28.20.440. The term "underinsured motor vehicle" shall not be construed to include an uninsured motor vehicle."

## COMMENTS

"...[confirm] Progressive's support for the changes to the Alaska statute...being proposed by the Alaska Independent Agents & Brokers. We believe that these limits will provide sufficient protection for Alaskans, while eliminating a potential source of litigation and/or uninsured catastrophic loss for companies."

*Mark D. Niehaus, Vice President*
*Progressive Insurance Company*

"We at Continental are very much in support of the revision you have offered."

*Jim Harms, CPCU, CIC*
*Branch Manager, Continental Insurance*

"In the largest personal department in an independent agency in Alaska, out of an estimated 5,000 policyholders, only one has elected to purchase the maximum limits of $1,000,000/$2,000,000 now mandated to be offered. Other agents indicate they have never had a client purchase the high limits. These high limits do not appear to be limits that Alaskan consumers desire."

*Linda Hall, CPCU, CIC*
*Rubelin Lowell & Company*

## EFFECTS

### DOES:

- ✓ Set minimum limits of coverage, with optional higher limits.
- ✓ Maintain a favorable legislative and judicial atmosphere for business in Alaska.
- ✓ Provide a healthy, stable market for consumers.
- ✓ Protect auto insurance rates for Alaskans.

### DOES NOT:

- ✓ Change the mandatory minimum limits requirement.
- ✓ Change the type of insurance coverages offered.

## SUMMARY

The basic theory underlying Uninsured/Underinsured Motorist Coverage was that an insured should have access to the same level of protection as the insured was providing to others.

As originally conceived this was to be a low cost coverage. The tendency of some courts to expand interpretation of policy language and the addition of higher limits of uninsured and underinsured protection has resulted in escalating costs which ultimately get passed on to the consumer.

Our focus is to protect the Alaskan insurance consumers by continuing to create an atmosphere that encourages competition and encourages new insurance companies to enter the Alaska market by providing a reasonably favorable legislative and judicial atmosphere in which to do business.

- ✓ Alaska has the highest mandatory limits offering for UM/UIM coverage in the Nation.

# Automobile Financial Responsibility Limits 1993-94
## Uninsured/Underinsured Motorist Coverage

| State | UM/UIM Liability | State | UM/UIM Liability |
|---|---|---|---|
| | | | |
| Alabama | No Limit | Missouri | No Limit |
| **Alaska** | **1 mil.-2 mil.** | Montana | No Limit |
| Arizona | 15/30/10 | Nebraska | No UM; 100/300k UIM |
| Arkansas | No Limit | Nevada | 15/30/10 |
| California | 30/60 or BI (UM/UIM) | New Hampshire | 25/50/25 |
| Colorado | Lessor of BI or 100/300k; No UIM | New Jersey | Lessor of BI or 150/500/100 UM/UIM |
| Connecticut | BI or (2 x BI) UM/UIM | New Mexico | 25/50/10 |
| Delaware | Lessor of BI or 100/300k; No UIM | New York | 100/300k UM/UIM |
| Dist. of Columbia | 100/300k UM, UIM = PD | N. Carolina | 1 Mil UM/UIM |
| Florida | 10/20/10 | N. Dakota | 100/300k UM; No UIM |
| Georgia | 15/30/10 | Ohio | 12.5/25/7.5 |
| Hawaii | 15/35/10 | Oklahoma | 10/20/10 UM; No UIM |
| Idaho | No Limit | Oregon | 25/50/10 |
| Illinois | 20/40/15 | Pennsylvania | Higher of BI or 100/300k UM/UIM |
| Indiana | 25/50/10 | Rhode Island | 25/50/25 UM; No UIM |
| Iowa | No Limit | S. Carolina | 15/30/5 |
| Kansas | 25/50/10 | S. Dakota | 25/50/25 |
| Kentucky | No Limit | Tennessee | 20/50/10 |
| Louisiana | 10/20/10 | Texas | 20/40/15 |
| Maine | No Limit | Utah | No Limit |
| Maryland | 20/40/10 UM; No UIM | Vermont | 20/40/10 |
| Massachusetts | 35/80k UM/UIM | Virginia | 25/50/20 |
| Michigan | No Limit | Washington | 25/50/10 UM; No UIM |

BI = Bodily Injury
PD = Property Damage

LESSMEIER & WINTERS
ATTORNEYS AT LAW

MICHAEL L. LESSMEIER
GREGORY W. LESSMEIER
SHELDON E. WINTERS

ONE SEALASKA PLAZA
SUITE 303
JUNEAU, ALASKA 99801-1249

TELEPHONE: (907) 586-5812
FACSIMILE: (907) 463-3020

March 28, 1995

Senator Tim Kelly
Alaska Senate
State Capitol
Juneau, Alaska 99801-1182

Re Committee Substitute for Senate Bill 95

Dear Senator Kelly

I am writing to you on behalf of State Farm regarding CSSB 95. State Farm has approximately 32% of the automobile insurance market in Alaska. We have been involved in the legislative structuring of the mandatory automobile insurance program here in Alaska from the outset. We originally proposed the mandated offer of UP/UNM as a means of allowing Alaskans a way of guaranteeing for themselves protection from the uninsured and/or underinsured driver. Sadly, we have seen what started out to be a simple, affordable and easy to administer concept become something that is complicated, expensive and subject to differing opinions by many, including two of our three federal judges. Your committee has the ability to begin the process of correcting this problem, and we hope that it does so.

At the outset, we wish to state that we do not believe the answer to this problem is set forth in the original version of SB 95, nor in CSS 95, which we have reviewed as quickly as we have been able. Neither solves the excess problem created by the 1990 amendment. The CS vividly demonstrates the complexity that is created by mandating so many different kinds of offers. Neither of these solutions will stop the dramatically increasing cost of this coverage. Neither will create a coverage that is easily explained to and understood by our policyholders.

There is a much simpler, more effective solution to this problem. That is to return to where we began with this coverage. We recommend that you eliminate the mandated reoffer of this coverage at the time of every renewal. It is one thing to educate by notices sent at the time of renewal, but it is quite another to require the offer of a number of complicated, different coverages at every renewal. Second, we recommend you link the amount of UP/UNM coverage one may purchase to the amount of liability coverage one chooses to purchase. We do not believe it makes any sense at all for someone to be allowed to buy more protection for themselves than they are willing to provide for someone else. Finally, we strongly recommend that you eliminate this coverage as excess. This change, made in 1990, in our view is totally unnecessary, and has proven to be expensive. The adoption of these three simple recommendations would again create in Alaska a system providing for

a mandated offer of UP/UNM that is simple, easy to administer, easy for our policyholders to understand and finally as affordable as such a system can be.

To see this is so, we would like to briefly explain the evolution of this coverage in Alaska. We would then like to explain the history of rate changes and set forth the effect we believe our recommended changes would have, as well as the effect we believe the other changes would have.

Finally we would like to explain why (aside from the issue of expense) we believe the idea of making this coverage excess is a bad one.

Evolution of UP/UNM Coverage In Alaska

In 1983, mandatory automobile insurance was an issue that was hotly debated in this legislature. We opposed the adoption of mandatory automobile insurance in short because we believed the approach advocated through the legislation then pending would be both costly and ineffective. We instead argued the only real way one could guarantee protection from uninsured or underinsured drivers was to purchase uninsured and underinsured coverage. I enclose herewith a copy of testimony I gave before this very committee in May of 1983, and as you can see on pages 7 and 8 of that testimony, we argued for mandated offers of UP/UNM, to guarantee compensation to victims of financially irresponsible motorists.

Ultimately, legislation was approved which adopted a form of compulsory insurance without the administrative burdens of the legislation initially proposed, coupled with a mandated offer of UP/UNM coverage equal to the amounts the insured chose to purchase voluntarily. The original intent of this coverage was to guarantee that regardless of whether an insured was struck by an uninsured or an underinsured driver, the insured would at least be able to collect an amount equal to the limits of UP/UNM they chose to purchase themselves.

In a sense, this coverage was replacement coverage, filling in the gap between the limits of the at fault party and the UP/UNM limits the insured chose to purchase. The purpose of this coverage was to guarantee that the insured would always be at least in the same position he or she would have been in had the at fault party purchased liability limits equal to the UP/UNM limits the insured chose to purchase. In other words, if an insured chose to purchase $100,000 of UP/UNM coverage, the insured would know that regardless of the resources of the at fault party, the insured would have $100,000 of protection. If the insured was hit by someone with no insurance, the insured would have available the entire $100,000 of UP/UNM coverage. If the insured was hit by someone with $50,000 of coverage, the insured would have available $50,000 of coverage from their UP/UNM, so again they would recover a total of $100,000, the limit of their UP/UNM coverage.

This coverage was affordable for a number of reasons. First, it was triggered only if the UP/UNM limits were greater than the limits of the at fault third party. The reasoning is obvious. If the third party is insured, they cannot be said to be uninsured. If the liability limits of the third party

are greater than the insured's UP/UNM limits, the third party cannot be said to be underinsured

Second, the coverage was also affordable because it was not excess. There was no reason for it to be, for the purpose was to guarantee a certain level of protection from all available sources. Thus, it was reduced dollar for dollar by the limits of the third party. This kept the cost of the coverage down.

Third, UP/UNM coverage could be purchased only in an amount equal to the limits of liability coverage the insured chose to purchase. In order to guarantee a level of protection for himself, an insured had to provide that same level of protection to a third party. By purchasing higher liability limits, one is less likely to be someone else's underinsured.

Finally, the mandated offer was easy to administer. It was a one time offer. It did not need to be made repeatedly, as is the case under the present law. All of these things combined to make this coverage affordable.

This very simple concept has been modified over the years so that now the coverage once triggered is excess. There is debate about the elimination of the coverage trigger, and indeed, one federal judge has ruled that the trigger has already been elimunated. The linkage of the amount of UP/UNM to liability limits has been eliminated, as has the single mandated offer. It is no longer enough to offer the coverage just once, but it must be offered at the time of every renewal.

Rates

As you probably know, rates are driven primarily by the frequency of loss and the severity of loss. Rates are also affected by increasing administrative costs. It should come as no surprise that the changes set forth above have had a dramatic affect on rates. If you make this coverage excess the inevitable result is that our loss experience will deteriorate. If you change the trigger point our loss experience will deteriorate even more.

Our UP/UNM loss experience in Alaska has been very unfavorable. We increased our UP/UNM rate by 28% on January 1, 1991 and again by 13% on March 1, 1994. Assuming no changes are made in the law, our current experience indicates an increase of 47% will be necessary.

If the trigger point is changed, as advocated by Senator Donnelly, we would anticipate an additional increase of 80% for a total rate increase of 127%. On the other hand, were you to repeal the excess provisions enacted in 1990 so we went back to a pure difference in limits concept, we would anticipate a rate increase of only 15%.

In other words, our UP/UNM loss experience has and continues to be poor. Regardless of what changes are going to be made a rate increase is going to be necessary. If we go back to difference in limits, a 15% increase will be necessary. If the trigger point is not changed, but once the coverage is triggered it is excess, we anticipate a 47% increase. If the trigger point is changed

and the coverage is excess, we anticipate an increase of 127%

To give a practical example, the average indicated rate under the current law (semi-annual premium) for $50,000/$100,000 is $16 78 If the law were changed to pure difference in limits, this coverage would cost $11 36 If the trigger point is changed and this is excess, this coverage would cost $30 28 Please keep in mind that the rate indication under current law is for a 47% increase

Why Should This Coverage Be Excess?

The argument that this coverage should be excess is that an insured thinks (regardless of what the law provides) that when he has purchased UP/UNM of $50,000 he understands his insurer will pay $50,000 in addition to the limits of the at fault third party We frankly think this is simply a question of education and understanding The concept that under a combined coverage of UP/UNM you are guaranteeing you will have the limit you choose available and no more is an easy concept to explain and an easy concept to understand The concept of excess coverage is more difficult to explain, and multiple coverages even more so

The second argument that seems to be made in support of excess provisions is that the general public is better off if UP/UNM is excess We think not As we have seen in Alaska, to make this coverage excess is to make it more expensive As the cost of this coverage continues to escalate, those who might have purchased it if it were more affordable, may well choose to decline it In other words, by making this coverage excess, you take away the option of more affordable coverage This should be apparent by looking at the rate example we have set forth above

Just as important, even if this coverage is not excess, an insured still has available the ability to purchase significant amounts of coverage that provide guaranteed protection to whatever level the insured chooses We seriously doubt if when purchasing this coverage, an insured chooses her level of UP/UNM limits by making estimates of what level of insurance the third party that negligently hits them is going to have in the event an accident occurs It is simply not possible to predict whether the person that hits you is going to be insured, and if so to what level Rather than choosing a level of UP/UNM based on the coverage a third party might have, we think most people by purchasing this coverage intend to guarantee the level of compensation of their limits It is just not possible or practical to assume anything else

We strongly believe our policyholders would be better off if we went back to the system of UP/UNM we originally had in Alaska That coverage was easy to understand, easy to administer and was affordable The changes that have been made to improve this system have had just the opposite effect We believe it is time they be undone

Although we have only had the CS available since Friday afternoon, we have a number of initial concerns First of all it appears to contemplate separate offers of UP and UNM Frankly, we do not understand why someone would purchase UNM, but not UP Second, the CS does not appear to have a provision for declining the UNM offer Perhaps we are mistaken, but we could not

find it Finally, the CS demonstrates the difficulty of understanding and then explaining in writing all of these different coverages at different levels at the outset and then again at each renewal. You could accomplish the same thing by requiring the offer at the outset, but then requiring the insurer to simply notify the insured in writing at each renewal of the availability of these coverages. This would not pose near the administrative difficulty or legal exposure as does the mandated offers at the time of each renewal Even with these changes you end up creating a complex area of the law to deal with what was originally a simple concept

Thank you for the opportunity to comment on this legislation If you have any questions or if we might be of additional assistance, please let me know

Sincerely,

LESSMEIER & WINTERS

By _____
Michael L. Lessmeier

MLL/jn

P S We previously delivered a copy of the testimony referred to on page two

LAW OFFICES
STEVE SIMS
821 "N" STREET, SUITE 206
ANCHORAGE, ALASKA 99501
FAX: (907) 279-3829
(907) 276-5858

February 9, 1995

Senator Dave Donley
State Capitol
Juneau, AK 99801-1182

Dear Dave:

Enclosed is a copy of Judge Singleton's decision in the United States District Court case of Colonial Insurance Company of California v. Derek Tumbleson, Case No. A94-184 CV (JKS), which in one stroke of a pen upset and undid what you so wonderfully accomplished in sections 3 to 5, Chapter 78 SLA 1990; i.e., Alaska Statute 28.20.445(b). You sponsored the law that made underinsured motorist coverage limits excess to liability coverage limits.

Unfortunately, when AS 28.20.445(b) was passed in 1990, effective January 1, 1991, it overlooked the almost unintelligible definitions of underinsured motor vehicle contained in AS 28.20.445(h) and AS 28.40.100(22). Those two definition sections apparently should have been repealed to avoid any confusion on the issue. Also AS 28.22.211 needs to be repealed or else we are presented with the same confusion.

I request that you introduce a bill that would repeal those two definitional sections and add section 28.20.445(b) to the companion sections in 28.22. This would most easily be done by repealing section 28.22.211 and inserting in there the current language of AS 28.20.445(b).

The letter of intent to go with the legislation might read along the following lines:

> "The legislature in 1990 passed a law requiring that uninsured and underinsured motorist coverage shall be excess to an amount payable under automobile bodily injury, death or medical payments coverage. The Federal Court, Anchorage District, on January 20, 1995 issued an opinion that contravened the intent of the legislature in 1990 and the major insurance carriers that have been calculating a premium on the 1990 law and paying claims based on the 1990 law are now no longer paying the benefits required by the 1990 legislature."

I really don't know what I am doing trying to write intent positions; and, frankly, I leave all of that up to you.

All I can tell you Dave, is that the practical effect of the law you sponsored in 1990 was that Allstate and State Farm made underinsured motorist coverage available to all claimants as excess insurance since January 1, 1991 until last week when they started denying all claims based on Judge Singleton's opinion, which they did not even file a case to obtain. Allstate and State Farm had a lobbyist at all of your earlier committee meetings and knew what the intent of the law was. This did not prevent Progressive Insurance Company later to be joined by Colonial Insurance Company from taking a position in the past year contrary to the intent of the 1990 Legislature when one of their attorneys found the definitional loop hole set forth in AS 28.20.445(h) and AS 28.40.100(22).

I know the Alaska Academy of Trial Lawyers would greatly appreciate anything that can be done to allow injured people to access their underinsured motorist coverage if liability limits are not sufficient to fully compensate them for their injury as has been the case from January 1, 1991 until recently. I do not know whether it is better to do this through separate legislation or possibly tack it on to the Tort Reform Bill if that has to pass the Legislature, which seems to me a fair possibility. I would suggest both approaches.

Anything that can be done, Dave, would be greatly appreciated to restore the status quo. The premiums and rates for this have already been incorporated in the current practice of the insurance companies.

Best regards,

STEVE M. SIMS

nls
MC/L4
Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

COLONIAL INSURANCE COMPANY OF CALIFORNIA,

Plaintiff,

vs.

DEREK TUMBLESON, et al.,

Defendants.

Case No. A94-184 CV (JKS)

ORDER FROM CHAMBERS

## I. INTRODUCTION

This is an action for declaratory judgment in which Colonial Insurance Company of California ("Colonial") seeks a declaration that it is not obligated to pay the claims of Derek Tumbleson and his family ("Tumblesons") under the uninsured/underinsured ("UM/UIM") coverage in the auto insurance policy which Colonial issued to the Tumblesons. Both parties have moved for summary judgment and each argues that there are no disputed issues of material fact. Docket Nos. 3 and 5. The parties also argue that the remaining issues are legal issues regarding the interpretation of insurance policies which incorporate mandatory statutory provisions. *Id.*

## II. PROCEDURAL HISTORY

On April 28, 1994, Colonial filed this action for declaratory relief, seeking to avoid making payments to the Tumblesons under a UM/UIM policy issued by Colonial. Docket No. 1. Colonial alleges jurisdiction under 28 U.S.C. § 1332 (diversity of citizenship) and 28 U.S.C.



24

§ 2201 (Declaratory Judgment Act). *Id.* The Tumblesons do not contest jurisdiction but the Court nonetheless must engage in a jurisdictional inquiry. Colonial is a corporation organized and existing under the laws of the State of California, having its principal place of business in Anaheim, California. Colonial has satisfied the statutory requisites for filing an action in the State of Alaska. Each of the Tumblesons are residents and domiciliaries of the State of Alaska. Accordingly, there exists complete diversity of citizenship between the parties. The Colonial UM/UIM insurance policy issued to the Tumblesons is the focus of this action, and the limits of such policy is $50,000/$100,000. Colonial seeks a declaration that the Tumblesons are not entitled to the $100,000 they seek under the UM/UIM policy. Accordingly, the amount in controversy is in excess of $50,000. Jurisdiction is thus proper under 28 U.S.C. § 1332. Because this Court has diversity jurisdiction, it sits as a trial court of the state of Alaska and will apply the substantive law of the State of Alaska. *See, e.g., Jesinger v. Nevada Fed. Credit Union*, 24 F.3d 1127, 1133 n.8 (9th Cir. 1994) (citing *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938)). In this case, the Court will look to decisions of the Alaska Supreme Court and AS § 28.20.445 (1994) (statute governing UM/UIM coverage in Alaska).

There are two pending motions in this case. Colonial filed a motion for summary judgment at Docket No. 3, and the Tumblesons filed a cross-motion for summary judgment at Docket No 5. Both parties contend that there exists no material issues of fact in dispute and therefore judgment should be entered as a matter of law. *Id.* After reviewing the briefs submitted by the parties and conducting its own independent research, the Court, in a prior order, determined that there exists no Alaska Supreme Court precedent on this issue. *See* Docket No. 21. In addition, it appeared that decisions from other state courts on this issue are in conflict. *Id.* As a result, the Court determined that it would certify this case to the Alaska

Supreme Court for resolution of the undecided issues. *Id.* A draft certification order was issued and the Court invited comments from the parties regarding the draft certification order. *Id.*

While preparing a final certification order, the Court had an opportunity to re-examine the precise issue for certification. Upon reconsideration, the Court now determines that certification is not proper because although the Alaska Supreme Court has not interpreted the specific provision of the statute at issue in this case, this Court can reasonably predict how the Alaska State Supreme will interpret such language. *See* ALASKA R. APP. P. 407 (1991) (Appellate Rule 407 is permissive). Moreover, contrary to what this Court originally determined, decisions from other jurisdictions with statutes similar to the one at issue are not in conflict. The state court decisions originally relied upon by the parties and the Court do not interpret statutes with language similar to the Alaska statute. Rather, those cases turned on different statutory schemes, not different interpretations of similar statutes. Accordingly, examination of those cases provides no guidance for this case.

There does exist, however, three states with statutes similar to AS § 28.20.445(h). These states are North Dakota, Colorado, and Nebraska. The high courts of Alaska and Nebraska have not yet determined the meaning of the AS § 28.20.445(h) language. The courts in North Dakota and Colorado, however, have interpreted the meaning of such language. In Colorado, the supreme court stated:

> While we realize that the insureds will never be fully compensated for their loss, we see no evidence that the legislature intended to award the insureds more than they would have received if the tortfeasor had been insured or uninsured.

*Union Ins. v. Houtz*, 883 P.2d 1057, 1065 (Colo. 1994); *see also Shelter Mut. Ins. Co. v. Thompson*, 852 P.2d 459, 462 (Colo. 1993); *Barnett v. Am. Family Mut. Ins. Co.*, 843 P.2d 1302, 1305 (Colo. 1993); *Terranova v. State Farm Mut. Auto. Ins. Co.*, 800 P.2d 58, 61 (Colo.

1990); *Kral v. Am. Hardware Mut. Ins. Co.*, 784 P.2d 759, 765 (Colo. 1989); and *Leetz v. Amica Mut. Ins. Co.*, 839 P.2d 511 (Colo. Ct. App. 1992). The North Dakota Supreme Court reached a different conclusion, but the reasoning appears similar. *See Gabriel v. Minn. Mut. Fire and Cas.*, 506 N.W.2d 73, 77-78 (N.D. 1993). The Colorado and North Dakota decisions are the only decisions in the country interpreting insurance statutes similar to AS § 28.20.445(h). Unfortunately, neither the North Dakota nor the Colorado Supreme Court cases address the precise issue of this case -- the applicability of section (h)(2) when the tortfeasor's liability coverage has been reduced by payments to **an insured.** To the contrary, each of these decisions address the applicability of the section when payments are made to persons **other than an insured.** The reasoning is helpful nonetheless. As a result, this case can be resolved by interpreting AS § 28.20.445 rather than certifying the case to the Alaska Supreme Court.

## III. BACKGROUND FACTS

On May 9, 1993, David Schram ("Schram") rear-ended Derek Tumbleson's 1990 Pontiac with his 1990 Chevrolet pickup truck. Injured in the accident were husband Derek Tumbleson, wife Laurie Tumbleson, and their children Andrew Tumbleson, Deanna Tumbleson, and Kristin Tumbleson. At the time of the accident, Schram's vehicle was insured by State Farm with liability coverage limits of $100,000/$300,000 (per person/per occurrence). The Tumblesons' vehicle was insured by Colonial. The Tumblesons' policy included UM/UIM coverage with limits of $50,000/$100,000. Docket No. 5 at 2, Exhibit 1, p. 1. For an additional premium, the Tumblesons also purchased UM/UIM coverage with limits of $50,000/$100,000. *Id.* at Exhibit 2, p.1. State Farm paid $300,000 (its policy limit), to the Tumblesons in the following manner:

$100,000 plus interest & Rule 82 attorneys fees to Andrew
$100,000 plus interest & Rule 82 attorneys fees to Deanna
$ 92,500 plus interest & Rule 82 attorneys fees to Derek & Laurie (combined)
$ 7,500 to Kristin

The amounts received by the Tumblesons are allegedly insufficient to fully compensate them for their injuries. Docket No. 5. Accordingly, each of the Tumblesons are making a claim on the Colonial policy for UIM coverage. Colonial seeks a declaration that the policy does not afford coverage to persons with UIM coverage limits less than the tortfeasor's liability coverage. The Colonial policy in effect at the time of the accident is very similar to Alaska's UIM statute. The differences are purely semantic. *See* AS § 28.20.445.

## IV. DISCUSSION

Coverage in this case turns on the definition of "underinsured motor vehicle" as set forth in the policy and in AS § 28.20.445. The Colonial policy provides coverage for an "underinsured motor vehicle," but Colonial argues that the facts are such that there does not exist an "underinsured motor vehicle." Docket No. 3. The parties rely on two separate sections of AS § 28.20.445 when determining UIM coverage. Colonial argues that AS § 28.20.445(h) ("section (h)") is the controlling, or triggering section, whereas the Tumblesons argue that AS § 28.20.445(b) ("section (b)") determines whether there exists UIM coverage. Section (b) provides, in pertinent part:

> (b) An amount payable under the uninsured and underinsured motorist coverage shall be excess to an amount payable under automobile bodily injury, death, or medical payments coverage, or as workers' compensation benefits and may not duplicate amounts paid or payable under valid and collectible automobile bodily injury, death, or medical payments coverage, or as workers' compensation benefits.

Section (h) provides, in pertinent part:

(h) "Underinsured motor vehicle" means a motor vehicle licensed for highway use with respect to the ownership, operation, maintenance, or use of which motor vehicle there is a bodily injury or property damage insurance policy or a bond applicable at the time of the accident and the amount of insurance or bond

(1) is less than the limit for uninsured and underinsured motorists coverage under the insured's policy; or

(2) has been reduced by payments to persons other than an insured, injured in an accident, to less than the limit for uninsured and underinsured motorists coverage under the insured's policy.

*A. Whether Section (b) or Section (h) determines UIM coverage*

The critical issue before the Court is whether the 1990 amendment to the insurance act repealed, by implication, sections (h)(1) and (2), although the amendment does not specifically reference sections (h)(1) and (2). The United States Supreme Court has outlined the types of implicit repeal:

> [There are] two well-settled categories of repeal by implication -- (1) where provisions in the two acts are in irreconcilable conflict, the latter act to the extent of the conflict constitutes an implied repeal of the earlier one; and (2) if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate similarly as a repeal of the earlier act.

*In re Glacier Bay*, 944 F.2d 577, 581 (9th Cir. 1991) (quoting *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 154 (1976) (quoting *Posadas v. Nat. City Bank*, 296 U.S. 497, 503 (1936))). The Alaska Supreme Court has expressly adopted the same categories. *Peter v. State*, 531 P.2d 1263, 1267 (1975) (citing *Posadas*, 296 U.S. at 503). The Tumblesons' argue both that section (b) and section (h) are irreconcilable and thus section (h) was impliedly repealed, and that section (b) is broad enough to cover the entire UM/UIM coverage issue, thus operating as a repeal of section (h). The arguments proffered by the Tumblesons are addressed below, but it is useful to first examine treatment of implicit repeal by the Ninth Circuit and the Supreme Court of Alaska.

The Ninth Circuit, citing United States Supreme Court decisions, stated that it does not favor repeal by implication. *In re Glacier Bay*, 944 F.2d at 581 (citing *Radzanower*, 426 U.S. at 154; *Posadas*, 296 U.S. at 503; and *Grindstone Butte Project v. Kleppe*, 638 F.2d 100, 102 (9th Cir. 1981)). Continuing, the Ninth Circuit Court stated that it will only find a statute implicitly repealed when "the new statute is clearly repugnant, in words or purpose, to the old statute . . . ." *Id.* (quoting *Grindstone*, 638 F.2d at 102) (citations omitted)). "[T]he intention of the legislature to repeal must be clear and manifest." *Id.* (quoting *Radzanower*, 426 U.S. at 154). Moreover, if two statutes are in partial conflict, "Repeal is to be regarded as implied only if necessary to make the [later enacted law] work, and even then only to the minimum extent necessary." *Id.* at 582 (quoting *Silver v. New York Stock Exchange*, 373 U.S. 341, 357 (1963)). The Alaska Supreme Court has adopted a similar unwillingness to repeal statutes by implication.

The rule for repeal by implication has long been established in the State of Alaska. *Peter v. State*, 531 P.2d 1263-68 (1975) (repeal by implication is not favored). Repeal by implication is limited, and it is established only when it is necessary to carry out the legislature's intent. *Id*; *see also Warren v. Thomas*, 568 P.2d 400, 402 (Alaska 1977). If there exists any reasonable interpretation that will give effect to both statutes, the court will not impliedly repeal the statute. *Id.* at 1267. Each section of a statute should be read together with every other section so as to produce a harmonious whole. *City of Anchorage v. Scavenius*, 539 P.2d 1169, 1174 (Alaska 1975). The Alaska Supreme Court does not mechanically apply the plain meaning of a statute, however, and disregard legislative intent. *Fairbanks N. Star School v. NEA-Alaska*, 817 P.2d 923 (Alaska 1991) (citing *Alaska Pub. Employees Ass'n v. City of Fairbanks*, 753 P.2d 725, 727 (Alaska 1988)). Instead, the court has adopted a sliding scale approach toward statutory interpretation. *Id.* Under the sliding scale approach, "[T]he plainer the language of the statute,

the more convincing any contrary legislative history must be." *Id.* (citing *State v. Alex*, 646 P.2d 203, 208 n.4 (Alaska 1982)). The arguments proffered by Colonial and the Tumblesons are subject to these standards.

Colonial contends that the two part definition of an underinsured motor vehicle set forth in section (h) determines whether there is UIM coverage available to an insured because it is the triggering mechanism for the coverage. *See* Docket No. 3. In Colonial's view, a determination under section (h) must first be made in order to determine whether there is "an amount payable under the uninsured and underinsured motorist coverage," because if there is no such "amount payable," section (b) never comes into play. Under an application of section (h), Colonial argues, Schram's vehicle was not an underinsured vehicle because: 1) his liability policy limits were higher than the Tumblesons' UIM coverage limits; and 2) because Schram's liability carrier made payments only to the Tumblesons, who are "insureds." *Id.*

The Tumblesons, on the other hand, argue that: 1) section (b) is a product of the 1990 amendment; 2) the purpose of the 1990 amendment is to provide greater UIM coverage to insureds ("excess" coverage); 3) section (b) is inconsistent with section (h) and therefore it must have been an oversight to leave section (h) in the statute; and 4) therefore the Court must determine that section (b) repeals section (h) by implication. In support of their claim, the Tumblesons rely on the specific language contained in section (b), and compare that language to certain comments made by legislators and lobbyists during the legislative process. The four-part argument proffered by the Tumblesons is addressed below.

The Tumblesons are correct in their first assertion; sections (a-c) were repealed and reenacted, thus section (b) is a product of the 1990 amendment. Docket No. 5 Exhibit 11 (1990 Alaska Sess. Laws ch. 78). The Tumblesons' second assertion is also true -- the 1990

amendment does provide greater UIM coverage and section (b) is properly characterized as "excess coverage." Under the old statute, once the UIM coverage was triggered, the amount of UIM coverage was reduced by the amount already paid out by the tortfeasor's policy. For example, if a UIM insured with a policy for $100,000 suffers $200,000 worth of injury from a tortfeasor with a $50,000 liability limit, the UIM insured would only recover $50,000 from his UIM carrier because the $100,000 UIM limit would be reduced by the $50,000 paid out by the tortfeasor's policy. Under the amended statute, however, there is no reduction of the UIM limit for payments made by the tortfeasor's policy. Under the same fact scenario, applying the new statute, the UIM insured will recover $50,000 from the tortfeasor and then $100,000 from his UIM policy. Thus, the coverage is in excess of the tortfeasor's policy. Accordingly, the Tumblesons' characterization of UIM coverage as excess coverage is correct.

The Tumblesons' third argument misperceives the relationship between sections (b) and (h). The Tumblesons interpret the "excess coverage" language of section (b) to mean that UIM coverage will always stack on top of the tortfeasor's policy, i.e., UIM insureds will recover from the tortfeasor's policy and then the UIM policy. Section (b) provides in pertinent part, "An amount payable under the uninsured and underinsured motorist coverage shall be excess to an amount payable under automobile . . . coverage . . ." The Tumblesons stress the importance of the word "excess." The Tumblesons' interpretation of "excess" is only partly correct. Once the UIM coverage is triggered, then the Tumbleson interpretation is correct. The key distinction is, however, when the UIM coverage is triggered. The triggering of UIM coverage is governed by section (h), which was not amended in 1990. If the UIM coverage is not triggered, i.e., there does not exist an "underinsured motorist," then the UIM carrier is not obligated to pay any UIM claims. In this case, the key to recovery is not the amount the UIM

carrier will pay -- which is governed by section (b) once it is determined that UIM coverage exists -- but rather, whether the UIM coverage was ever triggered -- which is governed by section (h). The 1990 amendment changed the law to afford greater recovery for UIM insureds. It did not, however, change the triggering criteria. Accordingly, sections (b) and (h) are not inconsistent.[1]

While the Court concludes that the plain meaning of AS § 28.20.445 is clear on its face, the Tumblesons argue that the statute should be interpreted in accordance with legislative intent. "Generally, the most reliable guide to the meaning of a statute is the words of the statute construed in accordance with their common usage." *Homer Elec. Ass'n v. Towsley*, 841 P.2d 1042, 1043-44 (Alaska 1992) (citing *Lagos v. City & Borough of Sitka*, 823 P.2d 641, 643

---

[1] As demonstrated in the paragraph above, the Tumblesons are correct that the 1990 amendment affords UIM insurers greater coverage. Indeed, once the UIM coverage is triggered, payments by the tortfeasor's policy does not reduce the amount of UIM coverage. The old law was coined by commentators as a "dollar-for-dollar" reduction in coverage because the UIM insured's coverage was automatically reduced by the amount of the tortfeasor's liability coverage. *See* Martin J. Huelsmann & William G. Knoebel, *Underinsured Motorist: An evolving Insurance Concern*: 17 N. Ky. L. Rev. 417 (1990) (discussing UIM coverage in detail). The new law actually eliminates the "dollar-for-dollar" reduction method. Instead, the UIM insured, once coverage is triggered, will receive up to the total UIM limit, subject to the amount of her damages. For example:

| Hypotheticals | Result prior to 1990 Amendment | Result after the 1990 Amendment |
|---|---|---|
| $ 50,000 liability cov.<br>$100,000 UIM coverage<br>$200,000 in damages | UIM insured will only receive $50,000 in UIM coverage because the UIM coverage is reduced by the $50,000 already paid by the liability policy. Thus, the UIM insured realizes a $100,000 net. | UIM insured will recover $50,000 from the liability carrier and then an additional $100,000 from his UIM carrier because the UIM policy is an excess coverage (once UIM coverage is triggered). |
| $300,000 liability coverage<br>$100,000 UIM coverage<br>$500,000 in damages | Same as above, UIM insured will only receive $300,000 because for every dollar paid out by the liability carrier, the UIM coverage will be reduced by a dollar. The UIM coverage is never triggered. | UIM coverage is not triggered. As opposed to the above hypothetical, there does not exist the circumstances necessary to trigger UIM coverage in this hypothetical. Accordingly, the UIM insured will be limited to the liability coverage: $300,000. |

The key to recovery is not the amount the UIM coverage will pay, but rather, whether there exists UIM coverage. As demonstrated in the first hypothetical, if the coverage is triggered, the coverage is much better under the 1990 amendment. If the UIM coverage is not triggered, the amount of recovery is the same under both pre and post 1990 amendment. The 1990 amendment changed it so that the UIM coverage will not "disappear dollar-for-dollar" when triggered. It did not change the triggering criteria. Accordingly, section (b) (excess recovery), and section (h) (triggering requirements), are not inconsistent.

(Alaska 1991)). However, even when statutory language appears clear in the abstract, the Court may consult legislative history and the rules of statutory construction when the otherwise clear language takes on another meaning when viewed in context. *Id.* In *Homer*, the controversy arose when a machine equipped with a vertical and lateral swinging lift line hit an overhead electrical line and electrocuted a worker. *Id.* There existed at the time of the accident a statute declaring it unlawful to place machinery within ten feet of high voltage overhead electrical lines. *Id.* at 1043. The issue in the case involved interpretation of the ten foot requirement. It appears that the machinery was positioned so that it was more than ten feet from the electrical line, but the moving parts of the machine could extend to within ten foot feet of the electrical line. *Id.* One party interpreted the statute to require that machinery be placed far enough away so that the extensions cannot reach to within the ten foot zone, whereas the other party interpreted the statute literally, requiring only that the machine be placed ten feet away. *Id.* at 1043, 1044. The Supreme Court of Alaska determined that the language of the statute was clear and unambiguous, but also determined that the interpretations by both parties were reasonable. The court thus concluded that it was proper to examine legislative history and ascertain its intent. *Id.*

Although the supreme court determined that it could examine the intent of the legislature, it nonetheless established a heavy burden for the party seeking to overcome the plain meaning. *Id.* at 1044. The court stated that legislative history and rules of construction must present a compelling case that the literal meaning of the language of the statute is not what the legislature intended. *Id.* (citing *University of Alaska v. Geistauts*, 666 P.2d 424, 428 n.5 (Alaska 1983) ("[w]here a statute's meaning appears clear and unambiguous, . . . the party asserting a different meaning has a correspondingly heavy burden of demonstrating contrary legislative intent."); and *State v. Alex*, 646 P.2d 203, 208 n.4 (Alaska 1982) (under Alaska's sliding-scale approach to

statutory interpretation, the more plain the language of the statute the more convincing the evidence of contrary legislative intent must be)). The legislative record provided support for the position contrary to the plain meaning but also provided some support for the plain meaning of the statute. *Id.* at 1044-46. The supreme court ultimately determined that the implicit evidence proffered was insufficient because it did not present a compelling case that the legislature intended for something other than a literal interpretation. *Id.* at 1044. Accordingly, the court applied the literal meaning of the statute.

In an attempt to rebut Colonial's interpretation of sections (b) and (h), and in support of the proposition that the failure to repeal section (h) was an oversight, the Tumblesons cite comments made in the Alaska legislature regarding the proposed changes to AS § 28.20.445. Representative Dave Donley ("Donley") sponsored the bill which eventually became law. In citations provided by the Tumblesons, Donley refers to UIM coverage under the amendment as excess coverage." *See generally* Docket No. 5 Exhibit 12 (comments made to and from the legislative committee prior to passage of the bill amending AS § 28.20.445). Donley further states that he "would like to maximize the potential coverage of the insured up to the amount of their damages." *Id.* He does not, however, address the crucial issue, when UIM coverage is triggered. Rather, he only characterizes "excess coverage" as "anything beyond primary coverage." *Id.* In an article printed in the *Bar Rag*, the Alaska Bar Association's newspaper, Donley urges Alaskans to buy as much UIM coverage as practicable, in order "to better protect themselves and their families." *See* Docket No. 5 Exhibit 13 (Vol. 18, No. 3 May/June 1994). Donley continued, "Many such consumers who are later involved in serious accidents greatly regret this failure to protect themselves." *Id.*

There are two problems with the Tumblesons' reliance on Donley's article in the *Bar Rag*. First, the article does not pertain to the amendment to AS § 28.20.445 that is at issue in this case. Donley's article pertains to a bill proposing that insurance companies should not have to offer UM/UIM coverage with high limits. Donley attempted, in his article, to convey a message that automobile owners should evaluate their UM/UIM coverage and consider purchasing additional UM/UIM coverage if the current amount is inadequate. Second, Donley's article was published in the May/June 1994 issue of the *Bar Rag* -- several years after passage of the AS § 28.20.445 amendments. The Ninth Circuit and the United State Supreme Court have found that "statements made by a legislator after enactment of a statute and not a part of the records of the legislative body are entitled to little or no weight at all." *Montana Power Co. v. Envtl. Protection Agency*, 608 F.2d 334, 353 n.36 (9th Cir. 1979) (quoting *Epstein v. Resor*, 296 F.Supp. 214 (N.D. Cal. 1969), *aff'd*, 421 F.2d 930 (9th Cir.), *cert. denied*, 398 U.S. 965 (1970)). The Alaska Supreme Court has adopted a similar rule. In *Hillman v. Nationwide Mutual Fire Ins. Co.*, the supreme court stated, "While the legislature is fully empowered to declare present law by legislation, it is not institutionally competent to issue opinions as to what a statute passed by an earlier legislature meant." 758 P.2d 1248 (Alaska 1988); *see also Frontier Co. v. Jack White Co.*, 818 P.2d 640, 645 (Alaska 1991) (quoting *Hillman*). In light of the authority cited and the fact that Donley's article is not on point, the Court concludes that Donley's *Bar Rag* article is insufficient to establish legislative intent.

It is clear from Donley's comments in committee that section (b) was re-written to eliminate the dollar-for-dollar reduction of UIM coverage by the tortfeasor's policy and therefore UIM coverage is coverage in excess of the tortfeasor's policy. Equally as clear is the fact that Donley intended to afford greater protection to UIM insureds by making significant changes to

Alaska's insurance law. It is not clear, however, that Donley intended to change the triggering component of the statute located in section (h). Without section (h), it would be unclear as to when an insured is entitled to UIM coverage. Arguably, it is true that section (b), if section (h) was deleted, could be interpreted to address not only the issue of the amount of coverage, but also the question of when coverage is applicable. However, this would require the absence of section (h) and a very broad interpretation of section (b). As the statute currently reads, however, the issue of when UIM coverage is triggered is addressed in section (h). Accordingly, it is the opinion of the Court that Representative Donley's comments support the language contained in section (b) but do not contradict the plain language contained in section (h), fail to establish any inconsistency between the two sections, and therefore are insufficient to convince the Court that the legislature inadvertently forgot to remove section (h) after adding section (b) or that section (h) should somehow defer to section (b).

In further support of their position that the intent of the legislature was to provide coverage in a situation such as the present case, the Tumblesons present a comment made by Don Koch ("Koch") from the Division of Insurance. Koch assisted in the drafting of the bill which later became the 1990 amendment. Docket No. 5 Exhibit 12 at 1. In his summary of the proposed bill, Koch focused on a particular flaw of the old law; specifically, the fact that the covered losses are "reduced by a variety of payments such as worker's compensation, medical payment coverage, and payments made by the [UM] or [UIM] motorist." Docket No. 5 Exhibit 12 at 1 (comments made by Koch to the legislative committee prior to passage of the bill). Koch's summary of the bill supports the Court's conclusion. But, in a later comment, Koch stated, "[The bill] would assure that if an individual bought $100,000 of uninsured or underinsured protection, and the other party has $200,000 coverage available, the first

individual's $100,000 coverage would come in after the $200,000 is utilized." Docket No. 5 Exhibit 12 at 3.

Koch did not elaborate on what he meant by "after the $200,000 is utilized." Koch could have meant that the $100,000 comes in after the $200,000 is utilized by persons other than the insured. But, he also could have meant that the UIM coverage will be triggered automatically, without satisfying the requirements of section (h). Assuming that the latter is a more reasonable interpretation of his comment, the Court nonetheless finds that Koch's comment is insufficient to overcome the clear, unambiguous statutory language contained in section (h). As the Supreme Court of Alaska has stated, "the plainer the language of the statute, the more convincing any contrary legislative history must be." *Id.* (citing *State v. Alex*, 646 P.2d 203, 208 n.4 (Alaska 1982)). Furthermore, each section of AS § 28.20.445 should be read together so as to produce a harmonious whole. *City of Anchorage v. Scavenius*, 539 P.2d 1169, 1174 (Alaska 1975). The language contained in section (h) is plain. The legislative history proffered by the Tumblesons does not "present a compelling case that the literal meaning of the language of the statute is not what the legislature intended." *Id.* at 1044 (citing *University of Alaska v. Geistauts*, 666 P.2d 424, 428 n.5 (Alaska 1983)); *see also Homer*, 841 P.2d at 1043-44 ("The most reliable guide to the meaning of a statute is the words of the statute construed in accordance with their common usage"). Moreover, the interpretation suggested by the Tumblesons ignores or eliminates section (h) entirely, whereas it is reasonable to read both section (b) and section (h) together without contradiction. As the Tumblesons correctly note, "[T]he 1990 amendment to AS § 28.20.450 rewrote sections (a) - (c) of the Uninsured and Underinsured Motorists Coverage statute but carried forward this old definition." Docket No. 5 at 8 (referring to the definition of when UIM

coverage is triggered -- section (h)).[3] The Court thus determines that sections (b) and (h) are thus not inconsistent and the literal meaning will be adopted by the Court.

The Tumblesons fourth argument is that section (b) must be controlling over section (h) because application of section (h) makes UIM coverage illusory. Docket No. 5 at 9. The minimum liability insurance required in Alaska is $50,000/$100,000. The statute also requires insurance companies to offer UM/UIM coverage to the minimum of the liability coverage purchased -- a minimum of $50,000/$100,000. It is true that under the statute, a person who purchases the minimum liability coverage and the minimum UM/UIM coverage has, in essence, purchased no UIM coverage when the situation is such that only the UIM insured makes a claim against the liability policy. It is not possible for the tortfeasor to be underinsured because if insured, the tortfeasor must have at least the statutory minimum $50,000/$100,000 coverage. Under section (h), the UIM coverage will not be triggered. The UM/UIM purchaser has, however, purchased UM coverage because it is possible that the tortfeasor is uninsured. If the tortfeasor is uninsured, the UM/UIM insured will recover up to her UM/UIM limit of $50,000.

Although there is a possibility that the UM/UIM coverage is useless in a two car collision with only the UIM insured making a liability claim against the tortfeasor who has the statutory minimum coverage amounts, the UM/UIM coverage is available under other situations. The first example was stated above, the uninsured tortfeasor situation. In addition, if more than just the UIM insured makes a claim against the tortfeasor's $50,000/$100,000 policy, then the $50,000/$100,000 UM/UIM policy that the Tumblesons label illusory is triggered. Pursuant to section (h)(2), if the tortfeasor's liability policy is the same or more than the UM/UIM policy,

---

[3] If the legislature intended to remove section (h), then the legislature now has the opportunity to remove section (h) following resolution of this decision. It is not within the powers of the judiciary to legislate.

the UM/UIM insured may nonetheless recover if payments from this policy are made to persons other than the insured. AS § 28.20.445(h)(2). Accordingly, there exist situations under AS § 28.20.445(h) where UIM coverage will be triggered and situations where it will not be triggered. The Court finds the Tumblesons' illusory argument unconvincing.[3] The final inquiry for the Court is to analyze section (h) and determine whether UIM coverage is triggered in this case.

*B. Section (h) application*

Now that it is determined that section (h) is the triggering component of AS § 28.20.445, section (h) must be applied to the facts of this case.[4] Section (h) is not ambiguous. Section (h) provides that the UIM insured will not receive UIM coverage if their UIM coverage is less than the tortfeasor's liability coverage [*see* section (h)(1)], unless the tortfeasor's liability coverage has been reduced by payments to persons **other than an insured**, to the point where the available limit of the tortfeasor's policy is less than the UIM limit of the UIM insured [*see* section (h)(2)].

Section (h)(1) precludes UIM coverage if the UIM policy limit is less than the tortfeasor's policy limit; notwithstanding the section (h)(2) exception. In this case, the tortfeasor's policy

---

[3] It is also important to note that as a general rule, "[A] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Id.* (quoting *Alascom, Inc. v. North Slope Borough Bd. of Equalization*, 658 P.2d 1178, 1178 n.5 (Alaska 1983) which quotes 2A J. Sutherland, Statutes & Statutory Const. § 46.06 (4th ed. 1973)). The Tumblesons' interpretation of AS § 28.20.445 requires the Court to deem section (h) inoperative. The Tumblesons' provide no other explanation for the existence of section (h) except that it was inadvertently left in place during the amendment five years ago.

[4] There exist only four states that have a statute with a section similar to section (h)(2). These states are: Alaska, North Dakota, Colorado, and Nebraska. The high courts of Alaska and Nebraska have not yet determined the meaning of this section. The courts in North Dakota and Colorado have reached contrary conclusions, but the reasoning appears similar. Neither the North Dakota nor the Colorado Supreme Court cases, however, address the precise issue of this case, i.e., the applicability of section (h)(2) when the tortfeasor's liability coverage has been reduced by payments to an insured. *See Union Ins. v. Houtz*, 883 P.2d 1057, 1065 (Colo. 1994); *Gabriel v. Minn. Mut. Fire and Cas.*, 506 N.W.2d 73, 77-78 (N.D. 1993).

limit is $100,000/$300,000 and the UIM limit is $50,000/$100,000. A total of $300,000 was paid to the five Tumblesons, but three of the Tumblesons received less than $50,000 each. On one hand, a section (h)(1) application appears simple -- the tortfeasor's policy is larger than the UIM policy and thus section (h)(1) precludes UIM coverage. On the other hand, the amount actually received by Derek, Laurie, and Kristin Tumbleson was less than the $50,000 individual limits. Thus, an argument can be made that Derek, Laurie, and Kristin did not realize the benefit of the $50,000 individual UIM coverage. In rebuttal, however, the Tumblesons together received $300,000, which is certainly more than the $100,000 afforded under the UIM policy -- thus Derek, Laurie, and Kristin adequately received their UIM coverage by virtue of the fact that they received their proportionate share of $300,000, the tortfeasor's liability limit. After all, they received more, by virtue of the larger tortfeasor policy, than they would have under the UIM policy alone, i.e., if the tortfeasor would have been uninsured, the $100,000 UIM policy would have been split between all five Tumblesons. Derek, Laurie, and Kristin would have probably received a small proportionate share under the latter hypothetical. Moreover, even if the tortfeasor's policy was $99,999, Derek, Laurie, and Kristin would have received a proportionate share of $199,999 (tortfeasor's liability limit plus UIM limit), which is likely to be less than their proportionate share of $300,000. Accordingly, it seems reasonable to conclude that proper application of § 28.20.445(h)(1) denies the triggering of UIM coverage in this case.[3]

[3] In addition, the Alaska Supreme Court has determined that insurance policies should be interpreted as to provide the coverage an ordinary layperson would expect to have through her interpretation of the policy. *Starry v. Horace Mann Ins. Co.*, 649 P.2d 937 (Alaska 1982). A reasonable layperson would interpret the language of section (h)(1) to deny coverage because $300,000 is greater than $100,000 and $300,000 was paid to the Tumblesons. The Court is also of the opinion that a layperson would interpret section (h)(2) to deny coverage because the insureds, the Tumblesons, were the only persons who received payments from the tortfeasor's policy. Section (h)(2) is discussed in the following paragraph.

Section (h)(2) may be the most critical section in regard to the triggering of UIM coverage in this case. Section (h)(2) is clear and unambiguous. UIM coverage is triggered by section (h)(2) when, although the UIM limit is less than the tortfeasor's liability limit, the resources available from the tortfeasor's policy have been reduced to below the amount of the UIM limit by payments made to persons other than the insured. For purposes of insurance law, the Tumblesons are insureds. The tortfeasor, Schram, was insured by State Farm with liability limits at $100,000/$300,000. State Farm paid $300,000 to the Tumblesons. Docket No. 5 at 2. Since the payments were made to insureds, the section (h)(2) exception is inapplicable. Accordingly, section (h)(2) does not trigger UIM coverage.

## IV. CONCLUSION

The Court has reviewed the arguments presented by the Tumblesons and concludes that while the Tumblesons' raise serious public policy concerns, the statute clearly mandates that coverage does not exist. Although the Alaska legislature amended AS § 28.20.445 to provide broader UM/UIM protection, the amended section (b) is not inconsistent with the unchanged section (h) and thus section (h) is applicable to the present litigation. Section (h) determines when UIM coverage is available and section (b) determines how much compensation the UIM insured will receive. Moreover, the intent of Alaska's legislature does not conclusively demonstrate that it intended to remove section (h) or somehow make it inapplicable to this situation. Accordingly, Colonial's motion for summary judgment at **DOCKET NO. 3** is **GRANTED**, and judgment shall be entered in favor of Colonial Insurance Company in its declaratory action. In addition, the Tumblesons' cross motion for summary judgment at **DOCKET NO. 5** is **DENIED**.

IT IS THEREFORE ORDERED:

Plaintiff's motion at **Docket No. 3** for summary judgment is hereby **GRANTED** and **JUDGMENT ENTERED FOR THE PLAINTIFF.** In addition, Defendants' cross motion for summary judgment at **DOCKET NO. 5** is **DENIED.**

DATED at Anchorage, Alaska this 20th day of January, 1995.

**HONORABLE JAMES K. SINGLETON, JR.**
United States District Court Judge

A96-0186--CIV (JKS)

G. KATOLCHOK
E. GILLETT

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

P O BOX 110805
JUNEAU, ALASKA 99811-0805
PHONE (907) 465-2515

April 26, 1995

The Honorable Lyda Green
Alaska State Senator
Room 423 State Capitol Bldg.
Juneau, Alaska 99801-1182

Dear Senator Green:

Re: SB 95, Uninsured/Underinsured Motorist Coverage (UM/UIM)

During the hearing on SB 95 before Senate Judiciary on 4/24/95, Senator Taylor, Chairman of the Committee asked that I respond to you concerning your questions on the bill.

Higher Limits Offer

As you may know, the bill started out as a repeal of the higher limits offer of UM/UIM found in AS 21.89 020(c). In Senate Labor & Commerce, we suggested that it might be more appropriate to devise a compromise position for that section and noted that a reduction of the $1,000,000/$2,000,000 offer to $1,000,000/$1,000,000 might be a good start. We pointed out that there has been a shift away from the old requirement that the purchaser of insurance could only protect self and family to the extent that the insured provided protection for a third party. A number of states have adopted this view in one form or another. There are now 18 states that have some form of higher limits offering. The move to no fault laws in the 70's with its inherent focus on protecting self, has fostered this movement to a method whereby persons under a tort system might also avail themselves of greater choices of self coverage.

The existing law was adopted because the legislature wished to allow purchasers of automobile liability insurance, which basically provides coverage for injured third parties, to consider purchase of insurance covering personal protection for the purchaser and family. It allows for limits that exceed coverage for third party bodily injury liability. Prior to the changes in 1990 (Ch 78 SLA 1990), insurers did not voluntarily offer higher limits of UM/UIM or offer other means of substantive protection.

The policy issue considered in this legislation is, does the state wish to limit the coverage for a person buying automobile insurance for their own protection to the amount that person voluntarily purchases for the protection of a third party.

The Tumbleson Case

An issue that has an impact on the subject of UM/UIM is the feature in Ch 78 SLA 1990 which provides that a not-at-fault party's underinsured motorists coverage would be available as excess in cases where the at-fault party had insurance insufficient to meet the needs of the injured not-at-fault party in an automobile accident. The recent U. S. District Court case of Colonial Insurance Company of California v. Derek Tumbleson (Case # A94-184 CV (JKS)) has placed this provision into question. The premise for this ruling is that the underinsured feature is only triggered if the at-fault third party is uninsured. This action, if it stands, further impacts the

ability of the purchaser of insurance to protect personal interests to a greater extent than the state requires protection of the third party. To add to the confusion, there is another case in state court addressing a similar fact situation which arrives at a different conclusion, so we have conflicting court cases.

Pricing

Ch 78 SLA 1990 did contain a section that indicated the coverage was excess. Testimony has been tendered that the rates would go up substantially if this legislation were adopted. For example, the lobbyist for State Farm indicated the rates for this coverage would increase by as much as 80% if the coverage were made excess by this legislation. That is somewhat puzzling since State Farm made a filing following passage of Ch 78 SLA 1990 which acknowledged that the coverage was intended on an excess basis instead of the difference-in-limits approach. Presumably, they have been settling losses on the basis of their filing.

The rate filings received from other insurers following the passage of that law reflect a similar view. In any event, rates must be supported on the basis of experience or a sound evaluation of a change which results in increased claims. Further, the charges for UM/UIM are borne by the purchasers of the coverage and not by those who do not purchase it. Since insurers do best when there is a legitimate spreading of the risk, it is to their advantage to encourage purchase of the coverage.

Proposed Committee Substitute

Proposed committee substitute for SB95 version "O" is identical to version "M" for sections 1 - 4. The remaining sections deal with the timing and application of the legislation.

Section 5. This applicability provision notes that the addition of intent language (Section 1) and the change to AS 21.89.020(c) apply to new and renewal policies after the effective date of this Section, which is July 1, 1995 (per Section 8).

Section 6. The resolution of the Tumbleson case is clarified with the language in AS 28.20.445(b) which is in Section 3 of the bill, and the repeal of AS 28.20.445(h) and AS 28.40.100(a)(22) which is in Section 4 of the bill. These two items are made retroactive to September 2, 1990, the effective date of Ch 78 SLA 1990 by this Section. AS 28.20.445(h) and AS 28.40.100(a)(22) are near identical definitions of "underinsured motor vehicle" which were inadvertently not repealed with passage of Ch 78 SLA 1990.

Section 7. This Section makes the retroactivity of Section 6 immediate.

Section 8. See Section 5 discussion

If you have any questions on any of this, I would be happy to respond. My direct line is 465-2577. Thank you.

Very truly yours,

Donald P. Koch
Chief of Market Surveillance

cc: Senator Taylor

Alaska Action Trust
P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501
(907) 258-4040 • FAX (907) 276-7185

Juneau Office: 300 Hermit Street, Suite #1
Juneau, Alaska 99801
phone and fax (907) 586-1033

FAX TRANSMITTAL

TO: Laura Glaiser, Senator Taylor's Office
Senate Judiciary
FAX #465-3922

FROM: Debra C. Gravo
Executive Director

DATE: April 10, 1995

RE: SB 95, "An Act relating to automobile liability insurance coverage for uninsured or underinsured motor vehicles; and providing for an effective date."

**********;*******

Laura: This is to confirm in writing the change to CS for Senate Bill 95 ( ) work draft version 9-LS073\F we talked about earlier this morning:

Section 4 should read: AS 28.20.445(h) and AS 28.40.100(a)(22) are repealed.

Both statutes, AS 28.20.445(h) and AS 28.40.100(a)(22) are identical definitions of UIM coverage and both must be deleted to fix the problem.

# State Farm Mutual Automobile Insurance Company

One State Farm Plaza
Bloomington IL 61710

Greg Hayward
Actuary
Phone 309/766-2325

RECEIVED
OCT 26 1990
Department of Commerce
& Economic Development
Division of Insurance

The Honorable David Walsh
Director of Insurance
State of Alaska
Department of Commerce & Economic Development
Division of Insurance
P.O. Box "D"
Juneau, Alaska 99811

10/26/90
TO 808

October 24, 1990

Dear Director Walsh:

RE: INDEPENDENT FILING
State Farm Mutual Automobile Insurance Company
NAIC #: 17625178
Revised Uninsured and Underinsured Motor Vehicle
Coverage Rate Schedules and Rule Pages

Enclosed for filing on behalf of the State Farm Mutual Automobile Insurance Company of Bloomington, Illinois are revised uninsured and underinsured motor vehicle coverage rate schedules and rule pages pursuant to recent legislation in the state of Alaska.

Alaska House Bill No. 429 broadens the extent of coverage provided by the uninsured and underinsured motor vehicle coverage by mandating coverage in an excess form rather than a difference-in-limits form and also by allowing stacking in certain instances. Enclosed Exhibit I contains the present, indicated, and proposed uninsured and underinsured motor vehicle coverage rates. No changes to the additional premium charges for Uninsured Property Damage are being submitted with this filing. The income effect of the change in rates due to Alaska House Bill No. 429 is revenue neutral, the rates merely being adjusted for the change in benefits.

We respectfully request that this filing be approved, effective immediately, for both new and renewal policies dated January 1, 1991 and later. Please return the enclosed duplicate of this letter and the rate and rule pages, appropriately stamped, for completion of our files. A self-addressed, stamped envelope is enclosed for your convenience. If you should have any questions regarding this filing, please telephone me collect at 309/766-2325.

Cordially,

Greg Hayward
Actuary and
Assistant Secretary/Treasurer

GH:kdb
Enclosures

# SB

# 125

# Anti-Crime Legislation Needs Your Support

by Sen. Dave Donley (D)

Senate District J

During the last legislative session, I sponsored several anti-crime bills, including Senate Bill 26, waiving juveniles to adult court when they commit certain felonies or arson, Senate Bill 175, the "No Frills Prisons Act," and Senate Joint Resolution 25, limiting the rights of imprisoned criminals, all of which are moving through the committee process.

I also sponsored three anti-crime and pro-victim bills which have not yet had a hearing and are in the Senate Judiciary Committee, chaired by Senator Robin Taylor. SB 125, increasing the dollar amount of the maximum fines allowed in criminal cases, SB 126, making certain repeat criminal offenders ineligible to receive Permanent Fund Dividends, and SB 127, extending the time period victims of certain criminal acts have to bring civil damages action against their offenders, have not yet been scheduled for hearings in the Senate Judiciary Committee. I would appreciate your support for hearings on these bills.

Specifically, SB 125 increases the dollar amount of the maximum fines allowed in criminal cases from $75,000 to $500,000 for murder and sexual assault offenses, and from $500,000 to $1,000,000 for a felony offense or for a misdemeanor offense that results in death. SB 125 creates a successively higher schedule for maximum fines, according to the class of felony. Currently, there is a $50,000 maximum fine for all felonies, and someone convicted of a misdemeanor or felony is sentenced to pay fines according to the schedule set out in Alaska Statute. In determining the fine, the court takes into account the financial resources of the defendant, the burden its payment will impose, and the seriousness of the crime. Maximum fines are only given for the most serious possible types of criminal behavior within that class of crime.

SB 126 makes first-time violent felons, convicted of felonies such as homicide, assault, and reckless endangerment, kidnapping, sexual offenses, robbery, extortion or coercion, second-time felons, or third-time misdemeanants ineligible for Permanent Fund Dividends. SB 126 makes individuals who are on probation or parole for a felony ineligible for Permanent Fund Dividends and allows the Department of Public Safety to assess services to crime victims from the Permanent Fund Dividends of their convicted assailants. Currently, only individuals who are incarcerated for felonies are ineligible for Permanent Fund Dividends.

SB 127, the Crime Victims' Civil Justice Act, would extend the time period victims of certain criminal acts have to bring a civil damages action against their offender from two to ten years. SB 127 would give these victims the needed time to heal both emotionally and physically and pursue action against their offenders if so desired.

I look forward to the consideration and passage of these anti-crime and pro-victim bills from the Senate Judiciary Committee. Mail letters of support and requests for hearing Senate Bills 125, 126 and 127 to Senator Robin Taylor, 352 Front Street, Ketchikan, Alaska 99901 or call his office at (907) 225-8088.

243-6404

# FISCAL NOTE

STATE OF ALASKA

1995 LEGISLATIVE SESSION

BILL NO. SB 125

Revision Date:

Dept. Affected: Department of Revenue

Title: Increase Fines for Certain Crimes

BRU: Permanent Fund Dividend Division

Component: Permanent Fund Dividend Division

Sponsor: SENATOR DONLEY

Requester: SENATOR DONLEY (S) JUD

COMPONENT SERIAL NO. 981

**Expenditures/Revenues** (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 |
|---|---|---|---|---|---|---|
| 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 | | | | | | |
| CHANGE IN REVENUES ( ) | | | | | | |
| FUND SOURCE | | | | | | |
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other: DIVIDEND FUND 1050 | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY95) cost: $

| POSITIONS | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

**ANALYSIS:** (Attach a separate page if necessary)

No impact on Permanent Fund Dividend Division.

Prepared by: Nanci A. Jones, Director

Phone: 465-2323

Division: Permanent Fund Dividend Division

Date: 3/20/95

Approved by Commissioner: Deborah Vogt

Date: 3/20/95

Agency: Department of Revenue

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information, call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO: SB 125

Revision Date: _____ Dept. Affected: Public Safety

Title: Increase fines for certain crimes DPS Statewide Support

Component: Commissioner's Office

Sponsor: Senator Donley

Requestor: (S) Judiciary COMPONENT SERIAL NO. 0523

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

| OPERATING | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL EXPENDITURES | 0 | 0 | 0 | 0 | 0 | 0 |
| CHANGE IN REVENUES ( ) Revenue Code | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

Estimate of current year (FY 95) impact: $ _____

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary.)
No fiscal impact is anticipated to the Department of Public Safety

Prepared By: Lee Ann Lucas, Special Assistant to the Commissioner Phone: 465-4322

Division: Commissioner's Office Date: 3/30/95

Approved by Commissioner: _____ Date: 3/30/95

Agency: Ronald L. Otte, Dept. of Public Safety

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information call the Governor's Legislative Office

Rev 11/94

# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE


## Memorandum

Date: November 6, 1995

To: Senator Robin Taylor
Chairman, Senate Judiciary Committee

From: Senator Dave Donley

Re: **Request for Hearing**
SB125 - Increasing the dollar amount of the maximum fines allowed in criminal cases,
SB126 - Making first-time violent felons, second-time felons, or third time misdemeanants ineligible for permanent fund dividends and making individuals who are on probation or parole for a felony ineligible for permanent fund dividends, and
SB127 - Extending the time period victims have to bring civil damages against their offender from 2 to 10 years.

I request you schedule SB125, SB126, and SB127 for interim hearings or hearings in January of 1996.

SB 125 increases the dollar amount of the maximum fines allowed in criminal cases. Currently, someone convicted of a misdemeanor or felony is sentenced to pay fines according to the schedule set out in AS 12.55.035. In determining the fine, the court takes into account the financial resources of the defendant, the burden its payment will impose, and the seriousness of the crime. Maximum fines are only given for the most serious possible type of criminal behavior within that class of crime. There are no minimum fine levels.

SB 125 increases the maximum fine to a defendant from $75,000 to $500,000 for murder and sexual assault offenses outlined in AS 12.55.035(b)(1). Currently, there is a $50,000 maximum fine for all felonies, (Class A, B and C). SB 125 creates a successively higher schedule of maximum fines, according to the type of felony. The maximum fine for a felony offense or for a misdemeanor offense that results in death to a defendant that is an organization, such as a business, is increased from $500,000 to $1,000,000.


January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648


MEMBER: Senate Finance Committee • Senate State Affairs Committee

Further, SB 125 increases the fine for pecuniary gain realized by the defendant as a result of the offense and the fine for damages or loss caused by the defendant to another, or to the property of another from two to three times the actual amount.

SB 126 makes first-time violent felons (convicted of felonies described in AS 11.41 as homicide, assault, and reckless endangerment, kidnapping and custodial interference, sexual offenses, robbery, extortion and coercion), second-time felons, or third-time misdemeanants ineligible for permanent fund dividends.

SB 126 also makes an individual convicted of a felony who is on probation or on parole ineligible for permanent fund dividends. Currently, only individuals who are incarcerated for felonies are ineligible for permanent fund dividends. SB 126 adds Services to Crime Victims provided by the Department of Public Safety to the list of purposes outlined in AS 43.23.028(b) for which legislative appropriations can be made from the permanent dividend program.

SB 127, the Crime Victims' Civil Justice Act, would extend the time period victims of certain criminal acts have to bring a civil damages action against their offender from 2 to 10 years. SB 127 would give these victims the needed time to heal both emotionally and physically and pursue action against their offenders if so desired.

If you have any questions regarding these bills, contact Karen Brand of my staff at 258-8181.

Prior requests for hearing SB125: 3/20, 5/1 and 8/30/95. Prior requests for hearing SB126: 3/23, 5/1 and 8/30/95. Prior request for hearing SB127: 3/20 and 8/30/95.

DD/kb

# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

**Memorandum**

Date: May 1, 1995

To: Senator Robin Taylor
Chairman, Senate Judiciary Committee

From: Senator Dave Donley DD

Re: **Request for Hearing - SB125 - Increasing the dollar amount of the maximum fines allowed in criminal cases**

I request a committee hearing for SB 125 at your earliest convenience. SB 125 increases the dollar amount of the maximum fines allowed in criminal cases. Currently, someone convicted of a misdemeanor or felony is sentenced to pay fines according to the schedule set out in AS 12.55.035. In determining the fine, the court takes into account the financial resources of the defendant, the burden its payment will impose, and the seriousness of the crime. Maximum fines are only given for the most serious possible type of criminal behavior within that class of crime. There are no minimum fine levels.

SB 125 increases the maximum fine from $75,000 to $500,000 for murder and sexual assault offenses outlined in AS 12.55.035(b)(1).

Currently, there is a $50,000 maximum fine for all felonies, (Class A, B and C). SB 125 creates a successively higher schedule of maximum fines, according to the type of felony. The maximum fine for a felony offense or for a misdemeanor offense that results in death is also increased from $500,000 to $1,000,000.

Further, SB 125 increases the fine for pecuniary gain realized by the defendant as a result of the offense and the fine for damages or loss caused by the defendant to another, or to the property of another from two to three times the actual amount.

If you have any questions, contact Karen Brand of my staff at 2705.

Prior Requests for Hearing: 3/20/95 DD/kb

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-5571

MEMBER: Senate Finance Committee • Senate State Affairs Committee

Printed in House

SB

126

# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE


**Memorandum**

Date: May 1, 1995

To: Senator Robin Taylor
Chairman, Senate Judiciary Committee

From: Senator Dave Donley DD

Re: **Request for Hearing SB126** - An Act making first-time violent felons, second-time felons, or third time misdemeanants ineligible for permanent fund dividends and making individuals who are on parobation or parole for a felony incligible for permanent fund dividends

I request a committee hearing for SB 126 at your earliest convenience. SB 126 makes first-time violent felons (convicted of felonies described in AS 11.41 as homicide, assault, and reckless endangerment, kidnapping and custodial interference, sexual offenses, robbery, extortion and coercion), second-time felons, or third-time misdemeanants ineligible for permanent fund dividends.

SB 126 also makes an individual convicted of a felony who is on probation or on parole ineligible for permanent fund dividends. Currently, only individuals who are incarcerated for felonies are ineligible for permanent fund dividends.

SB 126 also adds Services to Crime Victims provided by the Department of Public Safety to the list of purposes outlined in AS 43.23.028(b) for which legislative appropriations can be made from the permanent dividend program.

If you have any questions, contact Karen Brand of my staff at 2705.

Prior Request for Hearing: 3/23/95

DD/kb


January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-5571

*MEMBER:* Senate Finance Committee • Senate State Affairs Committee

1113 W. Fireweed #702
Anchorage, AK 99503
22 Jan 1996

RECEIVED
JAN 26 1996
Ans'd.....

Senator Robin Taylor
352 Front Street
Ketchikan, AK 99901

Dear Senator Taylor:

I strongly support Senate Bills 125, 126, and 127, especially SB 126 which would <u>permanently</u> take away Permanent Fund dividends from violent or repeat offenders. Crime, especially violent crime, is becoming a serious problem in Alaska and in Anchorage, and we need all the help we can get in discouraging and punishing criminal activity and aiding and compensating victims.

The last information I had was that neither of these three bills had yet been scheduled for a Senate Judiciary Committee hearing. I urge you to schedule all of them for an early hearing, to support them in committee, and to do your utmost to see that they are enacted into law.

Sincerely,
Roni Cornett
Cornett

January 23, 1996

Letters to Editor
Anchorage Daily News
P.O. Box 149001
Anchorage, Alaska 99514

RE: Letter Appearing in
Daily News 12/21/95
from Juliette Danquilan

Dear Editor,

As a member of the affected class (incarcerated felon, soon to be released), I feel compelled to respond to a letter which appeared 12/21/95 in your paper entitled, "Request hearings on crime bills", i.e., SB 125, SB 126 and SB 127 being sponsored by Sen. Dave Donley. Shame on you Ms. Danquilan!

I find it hard to believe that our legislators would waste their precious time in Juneau, under the guise of crime prevention, when there are more pressing issues at hand, such as prison overcrowding due to the "War on Drugs" (sic), of which I am a casualty, to promote such an asinine piece of legislation. Instead, they should be focusing on Alaska's serious challenges. Over 30% of state prisoners and 70% of federal prisoners are incarcerated for victimless, non-violent drug crimes and prisons all over the country are literally bulging at the seams, with no relief in sight. The blame for the rising crime rate can be squarely placed on the shoulders of Pres. Ronnie Reagan for starting the war, on Pres. George Bush for escalating it and Pres. Wm. Clinton for continuing it. The "New Prohibition" is not working and neither did the "Volstead Act", the prohibition of alcohol in the 1920's.

SB 126 which would deny first-time violent felons, second-time felons or third-time misdemeanants a PFD check is the cruelest measure I have heard since Rep. Ramona Barnes was instrumental in having PFD checks denied to incarcerated felons. That was just an added kick in the teeth, besides the stigma of being an ex-felon for the rest of your life, after the courts were through running a defendant through the judicial wringer. A PFD check in the pocket of a released prisoner could very well determine whether or not he or she is going to re-offend and make it on the outside. A PFD check could help the person obtain housing, perhaps a second-hand car and food to eat until they were able to secure employment without resorting to crime. The $250 gate money (which you earn at your prison job and saved for you) that you are released with does not go very far in this day and age.

SB 125 which increases maximum fines for violent crimes is so ludicrous on it's face, I can't believe it. How in the world is one convicted of murder and serving a 99 year sentence supposed to pay a $500,000 fine on average prison wages of $.60 per hour when they can't pay a $75,000 fine even if they served the entire sentence (66 years), without spending the money on anything but the fine? That would mean no coffee, cigarettes, shampoo, candy or any

of the other items available on the prison commissary list, which is just unrealistic.

With regard to SB 127 which would extend the time period victims of crime have to bring civil action against the defendant from two to ten years, this measure should be opposed as well.This is just a feeble attempt to extract money from the poor ex-felon, who is trying to get his life back together after serving a bitter prison sentence, futher down the road. Clearly, two years is more than enough time to heal any wounds and decide if they want to sue.

I urge everyone to oppose the above mentioned Senate Bills by communicating with their state senator or representative or by calling or writing to:

Sen. Robin L. Taylor, Chairman
Senate Judiciary Committee
Room 30 - Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182
Ph. 465-3873 - FAX 466-3922

Sen. Dave Donley
Room 11 - Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182
Ph. 465-3892 - FAX 465-6595
Ph. 258-8181 - " 258-1648

Thank you very much for your attention and consideration of this letter.

I am,

Very Truly Yours,

Dennis H. Brown

Dennis H. Brown #05217
Lemon Creek Corr. Center
2000 Lemon Creek Road
Juneau, Alaska 99801
Ph. 465-6200

xc: Gov. Tony Knowles
Sen. Robin L. Taylor
Sen. Dave Donley
Sen. Jim Duncan
Rep. Ramona Barnes
Juneau Empire

# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

**Memorandum**

Date: March 23, 1995

To: Senator Robin Taylor
Chairman, Senate Judiciary Committee

From: Senator Dave Donley DD

Re: **Request for Hearing SB126** - An Act making first-time violent felons, second-time felons, or third time misdemeanants ineligible for permanent fund dividends and making individuals who are on parobation or parole for a felony ineligible for permanent fund dividends

I request a committee hearing for SB 126 at your earliest convenience. SB 126 makes first-time violent felons (convicted of felonies described in AS 11.41 as homicide, assault, and reckless endangerment, kidnapping and custodial interference, sexual offenses, robbery, extortion and coercion), second-time felons, or third-time misdemeanants ineligible for permanent fund dividends.

SB 126 also makes an individual convicted of a felony who is on probation or on parole ineligible for permanent fund dividends. Currently, only individuals who are incarcerated for felonies are ineligible for permanent fund dividends.

SB 126 also adds Services to Crime Victims provided by the Department of Public Safety to the list of purposes outlined in AS 43.23.028(b) for which legislative appropriations can be made from the permanent dividend program.

If you have any questions, contact Karen Brand of my staff at 2705.

DD/kb

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-5571

*MEMBER:* Senate Finance Committee • Senate State Affairs Committee

# FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB 126

Revision Date:
Title: PFD Eligibility: Money for Crime Victims
Sponsor: SENATOR DONLEY
Requester: SENATOR DONLEY (5) JUD

Dept. Affected: Department of Revenue
BRU: Permanent Fund Dividend Division
Component: Permanent Fund Dividend Division
COMPONENT SERIAL NO. 981

**Expenditures/Revenues** (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | 31.7 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 |
| TRAVEL | | | | | | |
| CONTRACTUAL | 7.5 | 7.5 | 7.5 | 7.5 | 7.5 | 7.5 |
| SUPPLIES | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 39.7 | 67.5 | 67.5 | 67.5 | 67.5 | 67.5 |
| CAPITAL EXPENDITURES | | | | | | |
| CHANGE IN REVENUES ( ) | | | | | | |

**FUND SOURCE** (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other: DIVIDEND FUND 1050 | 39.7 | 67.5 | 67.5 | 67.5 | 67.5 | 67.5 |
| TOTAL | 39.7 | 67.5 | 67.5 | 67.5 | 67.5 | 67.5 |

Estimate of any current year (FY95) cost: $ 0.0

**POSITIONS**

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | 2 | 2 | 2 | 2 | 2 | 2 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

**ANALYSIS:** (Attach a separate page if necessary)

See pages 2, 3

Prepared by: Nanci A. Jones, Director
Division: Permanent Fund Dividend Division
Phone: 465-2323
Date: 3/20/95

Approved by Commissioner: Deborah Vogt
Agency: Department of Revenue
Date: 3/20/95

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**
For further distribution information, call the Governor's Legislative Office

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION

# ***ANALYSIS OF SENATE BILL 126***

As of March 20, 1995

Section 1 of this legislation would add five additional conditions that would make individuals ineligible for the 1996 and subsequent dividends.

**Assumptions:**

1. The Department of Corrections, the Court System and/or the Department of Law will annually provide the Department of Revenue with a computer tape file of all incarcerated felons, felons on probation, felons on parole, felons convicted under AS 11.41, second time felons, and third time misdemeanants.

2. Programming changes will be a one-time cost. Ongoing maintenance of new programs would be accomplished by existing staff. The computer system will need to be changed to account for the change in the program, to establish new classes of ineligibles, and add computer generated denial letters for each class of ineligibles.

3. The cost of data processing chargebacks for mainframe will be continuing. This will cover the cost associated with processing the computer tape with the PFD Masterfile, provide necessary printouts, and generate denial letters.

4. The cost of working an estimated 3,000 additional appeals. This is based on our history of appeals on presently incarcerated felons. Two full-time Permanent Fund Dividend Specialist I's will be required to work these additional appeals.

**Cost Summary:**

| 1. *Personal Services* | *FY 96* | *FY 97* | *FY 98* | *FY 99* | *FY 00* | *FY 01* |
|---|---|---|---|---|---|---|
| a. 1 non-permanent Analyst Programmer IV, Range 19A, at $3,748/mo. including salary and benefits, for two weeks. | 1.9 | | | | | |
| b. 2 PFT PFD Specialist I's, Range 13A, at $2,478/mo., including salary and benefits, for 6 months. | 29.8 | | | | | |
| c. 2 PFT PFD Specialist I's, Range 13A, at $2,478/mo., including salary and benefits, for 12 months. | | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 |
| **Total Personal Services** | 31.7 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 |

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
***ANALYSIS OF SENATE BILL 126***
As of March 20, 1995

| | | | | | | |
|---|---|---|---|---|---|---|
| 2. **Contractual Services** | | | | | | |
| a. Data Processing Charge-back | .5 | .5 | .5 | .5 | .5 | .5 |
| b. Additional postage required for denial letters and appeal | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 |
| **Total Contractual Services** | 7.5 | 7.5 | 7.5 | 7.5 | 7.5 | 7.5 |
| 3. **Supplies** | | | | | | |
| a. Forms and envelopes | .5 | .5 | .5 | .5 | .5 | .5 |
| **Total Cost** | $39.7 | $67.5 | $67.5 | $67.5 | $67.5 | $67.5 |