

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10709 SENATE TRANSPORTATION

554

Sponsor Statement  
Committee Substitute for Senate Bill 320 (TRA)

"An Act prohibiting discrimination in insurance rates based on credit rating or credit scoring; and providing for an effective date."

CSSB 320 (TRA) relates to insurers using credit scoring and or rating in determining insurance policy rates and premiums. What does your credit score have to do with how much you pay for automobile insurance? EVERYTHING!

Currently Alaska allows credit scoring to be part of insurance company rating plans, in which underwriting and rate setting is done. The Alaska Division of Insurance has a statutory mandate (AS 21.36.120) to protect the Alaska consumer against discrimination. Every car and home insurance company in Alaska, except one, uses credit scoring. Companies believe this method is a way to predict risk in determining potential insurance losses. Credit has nothing to do with risk. The practice of using this data discriminates against certain types of consumers.

First of all, credit scores and credit reports are many times inaccurate and contain errors. They are also very difficult and cumbersome to correct. Divorced women are often disadvantaged, especially when left with a high debt-to-income ratio. A sudden illness or employment loss may influence credit. Minorities may not use credit the same way as others and some religions don't even believe in the use of credit. Personal circumstances become unimportant when basing rates on credit scores. This method of calculating insurance rates favors the wealthy due to low debt-to-income ratios. You can have a spotless driving record, but maybe your business failed or you have a serious medical condition in your family, or even an error on your credit report; any of these situations would make you unavailable for preferred insurance, and you will pay a lot more in premiums. People without any credit history usually pay up to 25% more. Small business owners may pay up to 40% more because they operate on a line of credit.

There are about 25 states currently considering banning the use of credit history in determining insurance rates. Hawaii banned this insurance underwriting and rate setting practice 15 years ago. Not only does Hawaii ban credit scoring, but they have gone so far as to eliminate age, gender, marital status, and length of driving experience, as well. Their premiums remain some of the lowest in the United States.

The insurance industry wants to utilize this easy method to raise rates. Because of epidemic credit problems throughout our society, this is an easy way to target consumers and raise premiums. Why are we punishing the 40-year old woman with a clean driving record simply because a divorce changed her credit status? Why are we raising the premiums of a 70-year old man with a clean driving record whose medical bills affected his credit history? Your driving record alone should be the factor for rate increases.

The bottom line is common sense. We have mandatory insurance laws in this state. By using credit scores we are making it even more difficult and expensive for the consumer to obtain insurance. Simply, SB 320 prohibits insurance companies in Alaska from using credit scores in either underwriting or rate setting practices.

22-LS1462J  
Ford  
2/26/02

**CS FOR SENATE BILL NO. 320(TRA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY THE SENATE TRANSPORTATION COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATOR COWDERY**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act prohibiting discrimination in insurance rates based on credit rating or credit**  
2 **scoring; and providing for an effective date."**

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

4 **\* Section 1.** AS 21.39.030 is amended by adding a new subsection to read:

5 (d) An insurer or underwriter may not base a standard, rate, or rating plan for  
6 insurance, in whole or in part, directly or indirectly, upon a person's credit rating or  
7 credit scoring.

8 **\* Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).



## Illinois Wins Top Spot In Economic Ranking

Illinois has displaced Michigan as the top state in a coveted economic-development ranking, thanks to a rules change.

Previously Site Selection magazine's Governor's Cup was awarded to the state landing the most new or expanded corporate facilities. That prompted smaller states to complain that bigger states had an unfair edge. For the 2001 rankings, to be announced today, nine additional criteria—including several per-capita measures—were added to "level the playing field," says Mark Arend, editor of the trade magazine published by Conway Data Inc. of Norcross, Ga.

Pam McDonough, director of the Illinois Department of Commerce and Community Affairs, agrees the new rules are "much fairer." She also credits new tax incentives, including a package that lured Boeing Co.'s corporate headquarters to Chicago from Seattle.

Officials in Michigan, which won the Governor's Cup for the past four years and would have won again if the rules hadn't changed, weren't as pleased. Kathleen Blake, senior vice president of business development for the Michigan Economic Development Corp., objects that the change was announced in November for a yearlong contest that ended in December. "They changed the rules at the 11th hour," she says. "We were shocked." Michigan tied for fourth with Virginia, behind Illinois, Kentucky and New York.

—Ken Gepfert

## Aiming at Credit Scoring

Indiana and Washington are likely to pass legislation to restrict the use of credit history in determining insurance rates and eligibility, according to insurance-industry officials.

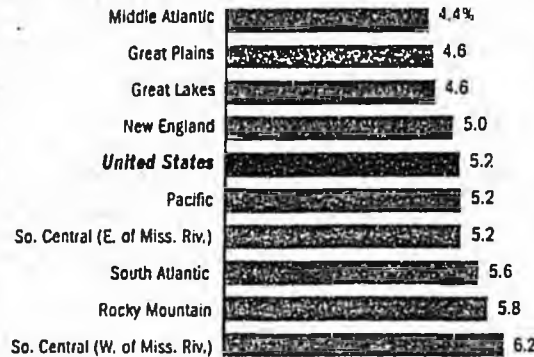
These states are among 25 that are considering or expected to consider bills to ban or limit the controversial practice, known as credit scoring, which has become widespread in auto and homeowners insurance in recent years. The reason insurers like credit scoring: They have established a correlation that shows people with bad credit are more likely to suffer an insured loss, such as a car accident, than people with good credit.

The insurance lobby, which insists credit scoring is fair, objective and accurate, is fighting proposals to curb the practice. Critics, however, say credit scoring smacks of redlining—in which banks used neighborhood boundaries in evaluating loan requests to discriminate against the minorities and the poor.

## Economic Focus / Retail Sales

Percentage change from year earlier in retail sales (4th Qtr. 2001 vs. 4th Qtr. 2000)

### The Regions



### Biggest Gains

Texas	6.56%
New Mexico	6.35
Utah	6.33
Arkansas	6.31
Nevada	6.29

### Smallest Gains

Washington	3.47%
Hawaii	3.57
New Jersey	3.58
South Dakota	3.63
Nebraska	3.68

Source: Economy.com

## Buyers Through and Through

Consumers remained resilient spenders in many states during fourth quarter last year. The 5.2% gain in U.S. retail sales, compared with a year earlier, was caused partly by 0% auto-financing and other discounts. A big drop in gasoline prices and a record number of mortgage refinancings also gave consumers money to spend and outweighed layoff worries. Texas led in retail sales, partly because it was still adding jobs in the quarter. In Utah, sales were buoyed by preparations

for the Winter Olympics. New Mexico was boosted by increased spending at its military installations after the terrorist attacks. But recovery from the attacks' effects was uneven. Nevada started regaining some jobs lost to air-travel cutbacks, but continuing attack-related disruptions damped residents' willingness to spend in New York and Washington, D.C. Another damper in areas ranging from Boston to Seattle: hot housing markets that once fueled retail sales started to cool.

In Indiana, different versions of bills that would, at a minimum, prohibit using credit scores as the sole reason for canceling or denying coverage have passed each house of the legislature. And in Washington, bills to impose several restrictions on credit scoring, such as preventing insurers from penalizing people with no credit histories, have cleared the Senate and a key House committee.

—Robert Gavin

## Drug Crackdowns

Prompted by a spate of overdose deaths tied to abuse of painkiller OxyContin, several states are seeking to crack down on illegal use of prescription drugs.

Lawmakers in Florida, Kentucky, Ohio and Pennsylvania are considering a range of measures, including proposals to tighten physicians' standards for prescribing addictive pills, set up prescription-tracking systems to catch fraudulent users and strengthen sentencing laws for offenders. Maine has adopted tougher penalties for illegally selling OxyContin and other prescription drugs, according to the National Conference of State Legislatures, while government studies were launched in Louisiana and Virginia to study possible legislative action.

Reports of widespread OxyContin abuse first surfaced in Appalachia, where users were crushing the pill, then

snorting or injecting it. The Drug Enforcement Agency noted the painkiller was a probable factor in about 300 overdose deaths since January 2000. OxyContin maker Purdue Pharma LP, Stamford, Conn., says it supports measures that would more closely track patients seeking multiple prescriptions, and says it is developing an abuse-resistant painkiller.

—Will Pinkston

## Massive Layoffs Toll

The Northeast had the largest increase in workers losing their jobs in extended mass layoffs in the fourth quarter of 2001: The 65,305 layoffs were 70% more than those in the year-earlier quarter, new data from the Bureau of Labor Statistics shows. The South had a 40% increase in such layoffs, with 83,769. The agency tracks so-called mass layoffs, in which 50 or more workers are laid off in a single job cut, and extended layoffs, in which workers are out of a job for more than 30 days.

In sheer numbers, though, the Northeast still had the fewest total extended mass layoffs of the four regions. The West had the largest amount of workers laid off in large scale job cuts, with 178,000 layoffs, driven by job cuts in agricultural companies. Heavy construction layoffs helped give the Midwest the second highest number of layoffs: 154,367.

—Andrew Caffrey

*The Impact of Personal Credit History on Loss  
Performance in Personal Lines*

James E. Monaghan, ACAS, MAAA

#### *Claims Consciousness*

An insurer's loss experience measures dollars of loss which are paid on claims that are filed. The number of claims filed is less than the number of accidents that actually occur. Consider two risks that are identical in all ways (from an insurer's perspective) except for the fact that one manages their financial affairs much better than the other does. The risk who has a troubled financial history and condition is much more likely to be in debt and to a larger degree; the need for capital to satisfy financial obligations has a bearing on decisions made in many areas of his/her life. Suppose for example, that these two risks are both involved in an auto accident, involving no injuries, but causing property damage to their own vehicles which is some nominal amount (say, \$100) more than the deductible. The risk whose financial condition is more sound has a disincentive to file the claim. It may impact his/her rates at the next renewal; the time and effort involved may not be even worth the compensation obtained. The risk with the poorer record of financial management has a greater incentive to file the claim and obtain the compensation, as it has greater value to that individual.

#### *Fraud: Increased Severities*

Continuing with these same two risks, consider now the situation in which the damage to property was much greater than the deductible; the vehicles each sustained damage measuring in the thousands of dollars. If an auto repair technician suggested a relatively easy way of recouping the deductible for the insured, or the benefits of padding the repair costs, the individual under the greater financial pressure would be more susceptible to acquiesce. This does *not*, however, imply that risks with poor bill-paying histories have any less integrity than other risks. Some people would never commit fraud on any level; others would do so with no need for provocation or encouragement; still others could be convinced to do so only under the proper conditions. This argument only implies that any individual who *could* be induced to participate in this level of fraud would be more likely to do so if they were under financial pressure from other sources.

#### *Fraud: Increased Frequencies*

The presence of severe financial pressure could also produce claims that would not have existed otherwise. There is some segment of the population that either does or could view the insurance mechanism as a financial opportunity. Fraudulent claims in the form of staged accidents, phantom claimants, phantom vehicles or arson are a way that an individual can extract funds from the insurance mechanism. Once again, this argument does not imply anything about the integrity of a risk with poor bill-paying history. What it does assert is that an individual with severe financial pressure could look to all possible sources of funds to alleviate that pressure. Therefore, any individual who was capable of committing this type of fraud is more likely to do so given the existence of that financial pressure compared to the absence of it.

#### *Stress*

The assumption is made here that individuals who are under financial pressure from debt exist under a greater level of stress than average. This stress could exist from the associated worries over future impact of financial condition. Individuals under such stress may be less focused on proper operation of a motor vehicle and make them more susceptible to accidents resulting from chance occurrences or distraction. It would be useful if there were some other condition which could produce this same level of stress, for which loss data was available, to strengthen the argument. A few currently coded customer characteristics could be considered candidates. One such variable is number of children under the age of 16. One must first make the assumption that risks with three or more children under the age of 16 have a higher level of stress than average. Whether or not one agrees with that probably depends on whether or not they are a parent! In any case, the loss ratio for such risks reviewed in a 1993 research study was over 20 points higher than average. Another possible variable candidate could be self-employed risks. The added responsibilities and worries of a small business owner could imply that their level of stress is higher than average. From that same 1993 study, self-employed risks had a loss ratio which was roughly 15% higher than average.

It is important to make note that this list is not suggested as a menu from which to select the one correct answer. It is likely that the impact on losses of financial management history is a cumulative impact of some or all of these situations, as well as others not listed here.



*James Monaghan*

## Monaghan Wins Ratmaking Prize

James E. Monaghan, ACAS, MAAA, won the 2000 Ratmaking Prize for his paper, "The Impact of Personal Credit History on Loss Performance in Personal Lines." Monaghan has worked for Metropolitan Property and Casualty Insurance Company in Warwick, Rhode Island since 1987. He has been responsible for pricing, reserving, strategic planning, research, and developing expert systems. CAS President Alice Gannon presented the Ratmaking Prize and a check for \$1,000 to Monaghan. Papers can be viewed on the CAS Web Site at [www.casact.org/aboutcas/rtmkpriz.htm](http://www.casact.org/aboutcas/rtmkpriz.htm).

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## How your credit history affects your auto and home insurance premiums

by *Brendan McKenna*  
insure.com

Does having bad credit make you a worse driver or a riskier homeowner?

Think you are paying too much?

Most people believe they are paying too much for their car insurance. To find out how your state ranks in comparison with others in your region and across the country, read [Best and worst states for auto insurance premiums](#).

No, but your premium bills might make you believe that your insurance company thinks so.

According to a study by Conning and Co., more than 90 percent of auto insurance companies, and an increasing number of home insurers, use your credit information, filtered through a formula to create an "insurance risk score," to determine how likely you are

to file a claim on an insurance policy. More than half of those insurers use that information to determine how much to charge you in premiums.

Insurance risk scores are similar to credit risk scores — used by lenders to determine whether or not to approve a loan or line of credit — because both look at your credit information, but the two are *not* the same thing, says Craig Watts, a spokesperson for Fair, Isaac, and Co., whose insurance risk scores are used by about 300 insurers nationwide.

"Consumers are becoming more familiar with credit risk scoring, but insurance risk scoring is still fairly arcane," says Watts.

While both insurance scores and credit scores look at the same five characteristics of a person's credit

### A peak inside the "black box"

While Fair, Isaac & Co. will not release the details of their insurance risk scoring model to the public, spokesperson Craig Watts says that your credit score can give you an idea of your insurance risk

Term

Largest Of Ins: Insurance Cov 250,000

Plan Year 20

Gender M

Birthdate

Height

Private No

Get (

characteristics of a person's credit report (see list at right), the data are weighted differently. This difference in weighting can swing 5 to 10 percent in each category.

"The biggest difference is that insurance risk scores look for stability, but credit risk scores look for a reliable pattern," says Watts. "Insurance scores are also more interested in how regularly you pay than in how much you already owe."

Insurers use these insurance scores to try to identify consumers who are consistent and reliable, as well as those who show a pattern of demonstrating common sense with money. Insurers say these people are less likely to file a claim on an insurance policy.

"We've studied millions of records and have found that there is a clear and reliable correlation between credit history and insurance risk," says Watts.

Allstate Insurance Co. and State Farm Mutual Auto Insurance Co., the nation's two largest auto and home insurers, have also noted this correlation and have developed their own insurance risk-scoring systems that incorporate credit information.

"We went in and looked at our data . . . to see if we could find differences between groups of people," says Mike Trevino, a spokesperson for Allstate. That analysis showed that people who have better credit — at least as reflected in their insurance scores — tend to file fewer claims, thus costing the insurer less money.

"Our feeling is that using credit information allows us to more fairly price our insurance," says Trevino. "Those that have better credit pay a lower rate."

#### Idea of your insurance risk score.

The five categories of your credit score are:

#### Past payment history (approx. 35%)

How you've paid your credit bills in the past, if your bills have been paid on time, items in collection, the number of "adverse public records" (bankruptcy, wage attachments, liens), and the number and length of delinquencies or items in collection.

#### Amount of credit owed (approx. 30%)

How many accounts, what kind of accounts, and how close you are to your credit limits.

#### Length of time credit established (approx. 15%)

How long you have had credit accounts and how long you have had specific accounts.

#### New credit (approx. 10%)

Number and proportion of recently opened accounts, the number of credit inquiries, and the reestablishment of positive credit history after payment problems.

#### Types of credit established (approx. 10%)

The number and activity of various types of credit accounts including credit cards, retail store accounts, installment loans, and mortgages.

Insurers place importance on the factors that show long-term stability, so by demonstrating responsible use of credit and keeping your balances low, you should be able to improve your insurance score. That could translate into lower insurance premiums, if you've been impacted by a negative credit history in the past.

You can purchase your credit score, credit report, and tips on how to improve your score from [myFICO](http://myFICO.com), a Web site from Fair, Isaac & Co.

Dick Luedke, a spokesperson for State Farm, which uses credit information only in deciding whether or not to issue an insurance policy, points out that in some cases use of credit information has allowed State Farm to cover people that wouldn't ordinarily have qualified.

"Study after study has shown that credit history can be correlated with the likelihood that someone will file a claim," says Luedke. "We don't claim to have the definitive answer as to why there is a correlation, but we believe one exists."

### Correlations can't explain *why* insurance scoring works

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"Study after study has shown that credit history can be correlated with the likelihood that someone will file a claim."

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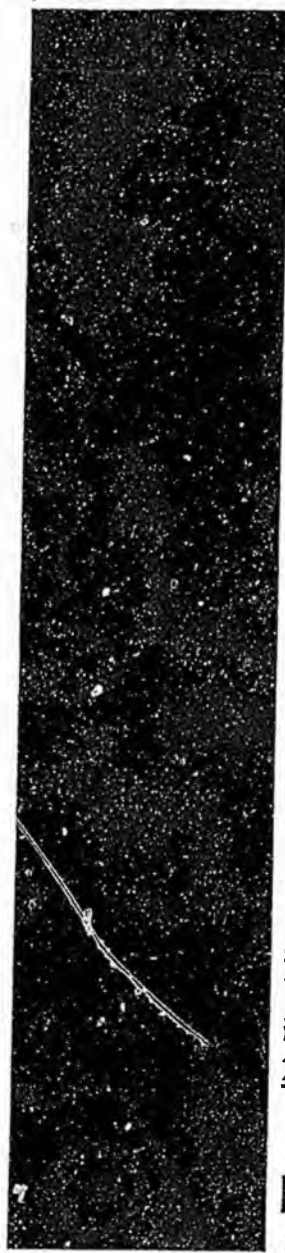
That reasoning for using insurance risk scoring infuriates Georgia Insurance Commissioner John Oxendine, who is also a member of the Consumer Protection Working Group of the National Association of Insurance Commissioners.

"I hear a lot of talk about correlation, but no talk about causation," says Oxendine. "Insurers don't have any reason for *why* scoring works, they just say 'correlation' over and over."

While Oxendine acknowledges that credit information — which has been used by some insurers for more than a decade — can be useful to insurance companies for avoiding insurance fraud-motivated arson and similar hazards, he places little faith in computer-modeled insurance scores and statistical relationships.

"If you punch enough numbers through a computer you can get anything," says Oxendine. "It's time we learn about how it works and make sure the criteria they use are in the best interest of the public."

So far Oxendine has had little success in getting insurers to divulge their methods for calculating insurance risk scores. "The information currently available to consumers seems designed to limit their understanding of [insurance] scores," says Oxendine. "If you don't know the rules of the game, you can't protect yourself."



It isn't quite that simple, says Dan Kummer, an expert on credit information issues and the director of auto insurance for the National Association of Independent Insurers, a property/casualty trade organization that has been an outspoken advocate for the use of credit-based insurance risk scores for selling and pricing insurance.

The computer models used to generate insurance scores from credit information represent a tremendous investment of time and money for insurers and they don't want that proprietary information to be leaked to other companies, says Kummer.

"This is very disturbing — it's like a black box," counters consumer advocate J. Robert Hunter, the director of insurance for the Consumer Federation of America (CFA) and a former Texas Insurance Commissioner. "They haven't verified that minorities, people with disabilities, and the poor aren't discriminated against by these systems."

According to Kummer and Watts, insurance risk-scoring models *do not* discriminate. "In the studies we've done, we looked specifically at the scoring of low- to moderate-income and high minority areas," says Watts. "People in those areas score the same as in areas of higher income. We didn't see a pattern of indirect discrimination." **Go to Page 2: Growing pains and growing regulation**

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"If you punch enough numbers through a computer you can get anything."  
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*Last updated Dec. 4, 2001*

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Wednesday, December 26, 2001, 12:00 a.m. Pacific



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## No credit history? It may raise your insurance

By Peter Lewis

Seattle Times consumer-affairs reporter

In the war of words over "credit scoring" — a contentious practice used by insurance companies to set rates for drivers and homeowners based on their credit history — there is at least one point of agreement among advocates and opponents:

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Those without credit histories cannot enjoy the system's "benefits," meaning they pay as much as 25 percent more for insurance.

Comparing the number of adult Americans counted in the 2000 Census with the number of active-credit files maintained by major credit-reporting agencies, there appear to be between 4 million and 19 million Americans who are 18 and older without credit histories.

Critics of the credit industry say most of those are immigrants, older people, those who are culturally uncomfortable or distrustful of credit, certain religious groups or those too poor to qualify.

At its core, credit scoring is based on the belief there is a strong, statistical correlation between personal financial responsibility and the likelihood that someone will get into an accident or otherwise file a claim to recover losses.

As a result, the system works against people who cannot prove through records kept by credit agencies that they have managed their money responsibly.

The consequences of an absence of credit came to light in Yakima, where many Hispanics live, at a public hearing in October hosted by Washington state insurance commissioner Mike Kreidler.

Testifying on the subject was an insurance-agency owner, David Hargreaves of Yakima-based Argus Insurance. In a subsequent interview, Hargreaves said some Hispanics were forced to spend more on expensive policies because they lacked credit histories.

It's happened about a dozen times in the past year, he said, mostly in the last quarter, indicating the credit-scoring trend is on the upswing. "The biggest problem we have relative to the Hispanic population is that, culturally, they by and large pay cash and do not have an established credit history," Hargreaves said.

"Even though their 'credit' may be perfectly good, they pay in cash. By virtue of that, when we order a credit score, we get a 'no hit' or it shows 'no credit.' And depending on the various insurance companies, if they solely use credit scoring, then it's a negative, and they get placed in a more 'surcharged' market," he said.

Depending on the particular insurance company's policy, the resulting difference will cost clients without credit histories from 10 to 25 percent more for auto insurance, Hargreaves said.

Kreidler, the insurance commissioner, recounted the impact on Hispanics, among other groups, in a presentation for state lawmakers in November. He used the occasion to announce his intent to introduce legislation in the upcoming legislative session to curb the practice, which has become widespread in the industry.

Kreidler, who fears credit scoring could increase the number of uninsured motorists, wants to ban it as the sole criterion to cancel, nonrenew or deny coverage. He also wants to cap at 20 percent the premium differential tied to credit scoring.

Kreidler acted after listening to scores of consumers at four public hearings last fall. Some consumers questioned the reliability of the underlying data in credit reports, and the potentially discriminating impact of credit scoring on divorced people, those with sudden, staggering medical expenses and victims of identity theft.

### Even agents are frustrated

Credit scoring is an evolving technology that assigns a point value to attributes such as payment history, outstanding debt and the number and types of accounts. No two models are alike, and different companies can give more or less weight to the overall value of credit history vs. more traditional measures, such as driving history, accident records and claims.

Representatives of the insurance industry maintain that credit scoring is an objective, effective tool to place consumers into the appropriate risk categories. They further assert it permits companies to write more policies and to charge lower premiums for many consumers.

But because the companies do not spell out how they arrive at scores (they consider it intellectual property), some insurance agents have become frustrated trying to explain to customers decisions that neither agent nor customer fully understands. Also worrisome, agents say, is the move by some companies to cut underwriting costs by downgrading or ignoring traditional yardsticks.

Even the system's advocates acknowledge that consumers with no credit history become instant losers. "We're not penalizing anybody. But they (people without credit history) won't get a reward for having good credit," said Michael Harrold, northwest regional manager of the National Association of Independent Insurers, an industry trade group with more than 690 members who write \$98 billion in premiums annually.

### Discrimination seen

Among those apparently not getting a reward are members of certain ethnic and religious groups, including Hispanics, Asians, strictly observant Muslims and older Americans who lived through the Depression and do not believe in credit.

"Most immigrant communities have some kind of mechanism where people pool their money with each other to have capital to begin whatever projects they need," said KaYing Yang, executive director of Searac, a Seattle-based advocacy group for the Southeast Asian community. "I believe the Korean name is 'kae.'

"The question about credit is a serious one," Yang said. "People don't want to have debt in the cultures I'm aware of. At the end of the year, before the new year, they pay off debt." This is particularly common in the Vietnamese-American community, she said, "to start the new year fresh."

Then there are observant Muslims. The Koran outlaws the paying of interest. "To make money on money without working for it is not allowed," said Jamil Abdul Razaak, spokesman for Seattle's Idriss Mosque. There are many Muslims who overlook the prohibition out of necessity, he said. But some strict followers of the Koran could interpret ownership of a credit card as a violation, even if they do not allow finance charges to accrue, Razaak said.

Others have an aversion to credit because of their life experience. Bruce Reeves, lobbyist for the Senior Citizens Lobby, an Olympia-based advocacy group, said that many older people who went through the Depression "have a pretty jaundiced feeling about who we trust to do business with, and how we handle our money. A number of people don't have credit cards."

Birny Birnbaum, a former assistant insurance commissioner in Texas who now works as a consultant, maintains that credit scoring discriminates against the poor, who generally have a harder time qualifying for credit.

Pete McCorkell, a former vice president for Fair, Isaac, a California-based company that has developed some of the most heavily used credit-scoring models, acknowledged that poor people and minorities are turned down for credit more often than others. But he maintained such outcomes are based on sound data and represent an accurate assessment of the risks they pose.

Mike Trevino, a spokesman for Allstate Insurance, said his company insures customers without credit histories, but they pay more. They are charged more because data show that such customers "perform worse" than the average Allstate customer. In other words their "loss costs" tend to be 12 percent to 25 percent more than average.

Still, Trevino acknowledged that, intuitively, it feels funny to charge customers more for the absence of certain characteristics rather than for things they actually did, like piling up debt or having too many accidents.

Andy Schoenholtz, a professor at Georgetown University who has studied international immigration, said many immigrant groups "have no idea what the U.S. credit system is." They often come from places with no formal financial structures or where such institutions were reserved for the wealthy or business interests.

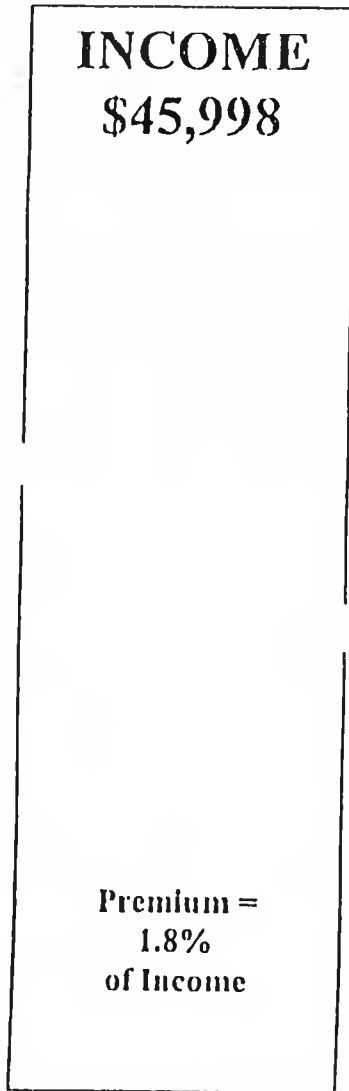
That does not mean that such people are not credit-worthy, Schoenholtz said. He says he believes that financial institutions need to figure out nontraditional ways of tracking the saving, spending and regular payments made by those in immigrant communities.

It's only smart business to do so, the professor added, because otherwise the financial institutions and insurance companies "are missing a market for themselves."

*Peter Lewis can be reached at 206-464-2217 or [plewis@seattletimes.com](mailto:plewis@seattletimes.com).*

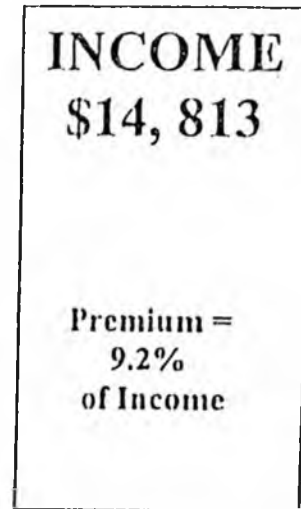
# Comparison of Premium by Household Income

Maryland Division of Insurance



Premium  
\$892

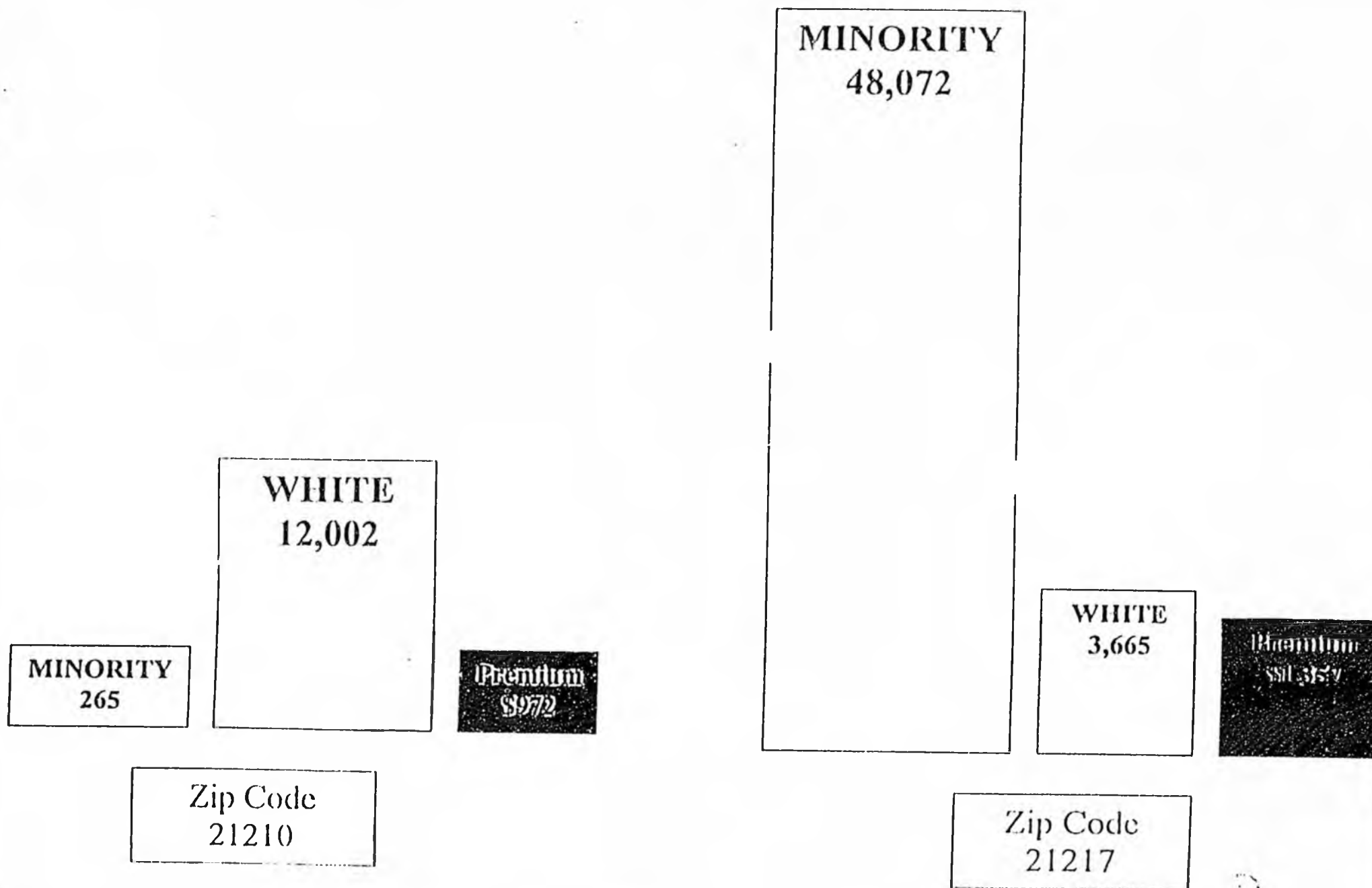
Zip Code  
21210



Premium  
\$1,357

Zip Code  
21217

# Comparison of Premium by Population Composition



**S B**

**3 2 7**

#2

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

Donley  
3/15/02

AMENDMENT

OFFERED IN THE SENATE  
TO: SB 327

BY SENATOR DONLEY

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

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

3

4 Page 1, following line 2:

5 Insert new bill sections to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (1) necessary to protect a person against unwarranted injury; or

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

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18 public interest.

19 \* **Sec. 4.** AS 21.06.210 is amended by adding a new subsection to read:

20 (h) The director may close a hearing to the public when the director finds the  
21 closure is necessary to protect a person against unwarranted injury or is in the public  
22 interest.

23 \* **Sec. 5.** AS 21.87.190(b) is amended to read:

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

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

5 Page 1, line 3:

6 Delete "Section 1."

7 Insert "Sec. 6."  
8

9 Renumber the following bill sections accordingly.

**LESSMEIER & WINTERS**

LAWYERS - LLC

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

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

TELEPHONE: (907) 796-4999  
FACSIMILE: (907) 796-4998  
E-MAIL: [lw@gcl.net](mailto:lw@gcl.net)

January 29, 2002

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

Re: *Holderness - UM/UIM*

Dear Senator Donley:

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

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

Senator Dave Donley  
January 29, 2002  
Page 2

LESSMEIER & WINTERS  
LAWYERS - LLC

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

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

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

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

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

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

Senator Dave Donley  
January 29, 2002  
Page 3

LESSMEIER & WINTERS  
LAWYERS - LLC

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

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

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

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

Sincerely,

LESSMEIER & WINTERS

By:



Michael L. Lessmeier

MLL/tcw  
0015-006/Donley.wpd

# LEGAL SERVICES

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

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

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

## MEMORANDUM

March 5, 2002

**SUBJECT:** Motor vehicle insurance - SB 327

**TO:** Senator Dave Donley

**FROM:** Michael F. Ford  
Legislative Counsel

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

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

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

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

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

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

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

**Section 5.** Effective date.

MFF:med  
02-251.med

**Subject:** [Fwd: SB 327]

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

**From:** Senator Dave Donley <Senator\_Dave\_Donley@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Jos Govaars <Jos\_Govaars@legis.state.ak.us>

**Subject:** SB 327

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

**From:** bob\_lohr@dced.state.ak.us

**To:** David A Donley <Senator\_Dave\_Donley@legis.state.ak.us>

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

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

Confidentiality provisions:

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

Please let me know if you have any questions.

---

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

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

RE: SB 327

Dear Senator Donley:

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

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

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

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

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

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

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

Sincerely,

Robert A. Lohr  
Director

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

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

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

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 GF Receipt Supported Services						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill has no fiscal impact on this component.

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



# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

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

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

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

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

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

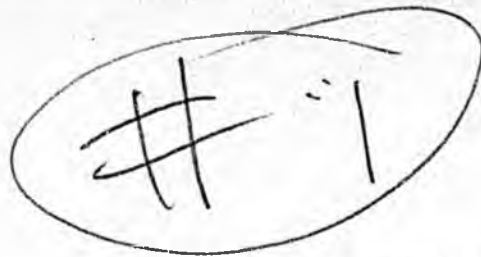
Senate Bill 327 also requires comprehensive coverage to include a provision providing for at least 50 percent of the cost of replacing a worn or defective seatbelt in a covered motor vehicle. This provision would encourage the replacement of possible malfunctioning seatbelts, and hopefully save lives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

DD/jg

**Co-Chair: Senate Finance Committee**

**Vice-Chair: Senate Judiciary Committee**

**Member: Legislative Budget and Audit Committee • Legislative Council**



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

Donley  
3.6.02

AMENDMENT

OFFERED IN THE SENATE  
TO: SB 327

BY SENATOR DONLEY

1 Page 3, following line 13:

2 Insert a new bill section to read:

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

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

12  
13 Renumber the following bill sections accordingly.

14  
15 Page 3, following line 22:

16 Insert a new bill section to read:

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

18 (b) If both the owner and operator of a vehicle are unknown, payment under  
19 the uninsured and underinsured motorists coverage may be made only where direct  
20 contact between the motor vehicles has occurred, or where a person other than the  
21 insured attests that a motor vehicle involved in the accident left the scene without  
22 being identified. A vehicle and operator that have left the scene of an accident with  
23 another vehicle are presumed to be uninsured if the insured person reports the accident  
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2 Renumber the following bill section accordingly.

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STATE OF ALASKA  
2002 LEGISLATIVE SESSION

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

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

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

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Miscellaneous						
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<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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Estimate of any current year (FY2002) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill has no fiscal impact on this component.

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

AMENDMENT

Donley  
3-6-02

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: SB 327

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23 another vehicle are presumed to be uninsured if the insured person reports the accident  
24 to the appropriate authorities within 24 hours."

1

2 Renumber the following bill section accordingly.

*Donley*  
*3/15/02*

A M E N D M E N T

OFFERED IN THE SENATE  
TO: SB 327

BY SENATOR DONLEY

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

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

3

4 Page 1, following line 2:

5 Insert new bill sections to read:

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

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

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

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

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

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

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

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

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

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

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16 Commissioners and maintain the confidentiality of the information or records if  
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18 under the law of the jurisdiction supplying them; and

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

24 (f) The following information or records submitted to or obtained by the  
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26 (1) personally identifiable consumer information; however, the director  
27 may disclose the information or records for the purpose of attempting to resolve a  
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31 (A) detailed health insurance claim cost data; and

1 (B) justification for usual, customary, and reasonable charge  
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3 (3) information or records provided by a person not subject to this title  
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9 (g) The director may withhold information or records from public inspection  
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28 formula. Each filing must state the effective date and must provide a comprehensive  
29 description of the coverage. Detailed rate justification, including rate formulas, is  
30 confidential [THE DIRECTOR MAY WITHHOLD THE RATING FORMULA  
31 FROM PUBLIC INSPECTION FOR AS LONG AS THE DIRECTOR

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

5 Page 1, line 3:

6 Delete "Section 1."

7 Insert "Sec. 6."  
8

9 Renumber the following bill sections accordingly.

**LESSMEIER & WINTERS**

LAWYERS - LLC

VINTAGE BUSINESS PARK  
3000 VINTAGE BOULEVARD  
SUITE 100  
JUNEAU, ALASKA 99801MICHAEL L. LESSMEIER  
GREGORY W. LESSMEIER  
SHELDON E. WINTERSTELEPHONE: (907) 796-4999  
FACSIMILE: (907) 796-4998  
E-MAIL: lw@pci.net

January 29, 2002

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

Dear Senator Donley:

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

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

Senator Dave Donley  
January 29, 2002  
Page 2

**LESSMEIER & WINTERS**  
LAWYERS - LLC

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

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

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

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

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

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

Senator Dave Donley  
January 29, 2002  
Page 3

LESSMEIER & WINTERS  
LAWYERS - LLC

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

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

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

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

Sincerely,

LESSMEIER & WINTERS

By:

  
Michael L. Lessmeier

MLL/tcw  
0015-006/Donley.wpd

# LEGAL SERVICES

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

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

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

## MEMORANDUM

March 5, 2002

**SUBJECT:** Motor vehicle insurance - SB 327

**TO:** Senator Dave Donley

**FROM:** Michael F. Ford  
Legislative Counsel

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

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

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

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

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

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

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

**Section 5.** Effective date.

MFF:med  
02-251.med

**Subject:** [Fwd: SB 327]

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

**From:** Senator Dave Donley <Senator\_Dave\_Donley@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Jos Govaars <Jos\_Govaars@legis.state.ak.us>

**Subject:** SB 327

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

**From:** bob\_lohr@dced.state.ak.us

**To:** David A Donley <Senator\_Dave\_Donley@legis.state.ak.us>

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

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

Confidentiality provisions:

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

Please let me know if you have any questions.

---

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

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

**Subject:** [Fwd: SB 327]  
**Date:** Tue, 16 Apr 2002 08:09:38 -0800  
**From:** Senator Dave Donley <Senator\_Dave\_Donley@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Jos Govaars <Jos\_Govaars@legis.state.ak.us>

**Subject:** SB 327  
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Please let me know if you have any questions.

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

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

RE: SB 327

Dear Senator Donley:

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

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

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

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

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

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

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

Sincerely,

Robert A. Lohr  
Director

**S B**

**3 4 8**

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 348  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title An Act relating to insurance for and work on certain BRU Insurance (116)  
motor vehicle repairs; and providing for an Component Insurance Operations  
 Sponsor Senate Transportation  
 Requester Senate Transportation Component No. 354

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill has no fiscal impact on this component.

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

Phone 269-7900  
 Date/Time 4/4/02 10:15 AM  
 Date 4/4/2002

Appendix II  
 State Legislation Governing Aftermarket  
 Crash Parts and Recycled Airbags

Figure 2: State Aftermarket Crash Parts Legislative Provisions as of November 2000

State	Disclosure statement required on consumer's estimate <sup>a</sup>	Consumer consent required <sup>b</sup>	Estimate must identify aftermarket parts <sup>c</sup>	Aftermarket parts must be "of like kind and quality" to OEM parts <sup>d</sup>	Manufacturer's warranty required <sup>e</sup>	Disclosure required about the effect of part's use on vehicle warranty <sup>f</sup>	Insurer cannot require use of aftermarket parts <sup>g</sup>	Manufacturer's identification required on part <sup>h</sup>	No regulation <sup>i</sup>
Ala.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Alaska									<input checked="" type="checkbox"/>
Ariz.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Ark.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Calif.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Colo.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Conn.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Del.									<input checked="" type="checkbox"/>
Fla.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Ga.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Hawaii	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Idaho	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Ill.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Ind.		<input checked="" type="checkbox"/>							
Iowa			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Kans.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				
Ky.			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					
La.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Maine									<input checked="" type="checkbox"/>
Md.	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>			
Mass.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				
Mich.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				
Minn.							<input checked="" type="checkbox"/>		
Miss.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Mo.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Mont.									<input checked="" type="checkbox"/>

*(Handwritten scribble)*

**Appendix II  
State Legislation Governing Aftermarket  
Crash Parts and Recycled Airbags**

State	Disclosure statement required on consumer's estimate <sup>a</sup>	Consumer consent required <sup>b</sup>	Estimate must identify aftermarket parts <sup>c</sup>	Aftermarket parts must be "of like kind and quality" to OEM parts <sup>d</sup>	Manufacturer's warranty required <sup>e</sup>	Disclosure required about the effect of part's use on vehicle warranty <sup>f</sup>	Insurer cannot require use of aftermarket parts <sup>g</sup>	Manufacturer's identification required on part <sup>h</sup>	No regulation <sup>i</sup>
Nebr.	■		■	■				■	
Nev.									■
N.H.	■		■	■				■	
N.J.	■		■	■	■			■	
N.Mex.									■
N.Y.			■	■	■				
N.C.	■		■	■					
N.Dak.									■
Ohio	■	■	■		■			■	
Okla.	■		■		■			■	
Oreg.		■	■		■	■		■	
Pa.									■
R.I.	■	■	■						■
S.C.									
S.Dak.	■		■		■			■	
Tenn.	■		■		■			■	
Tex.		■							
Utah	■		■		■			■	
Vt.									■
Va.	■		■			■			
Wash.	■		■						
W.Va.	■		■			■			
Wis.	■		■		■			■	
Wyo.	■	■	■	■				■	
<b>Total</b>	<b>33</b>	<b>8</b>	<b>36</b>	<b>10</b>	<b>27</b>	<b>4</b>	<b>1</b>	<b>23</b>	<b>10</b>

<sup>a</sup>Some states require that written repair estimates contain a disclosure statement notifying consumers that aftermarket crash parts will be used in the repair.

<sup>b</sup>Some states specify that aftermarket crash parts can only be used after the consumer has signed a written consent for their use.

SENATOR  
JOHN J. COWDERY  
Anchorage

Committees  
Chair: Transportation  
Chair: World Trade &  
State/Federal Relations  
Rules  
Legislative Council  
Judiciary



January - May:  
State Capitol, Suite 101  
Juneau, Alaska 99801-1182  
Tel: 907-465-3879  
Toll Free: 888-269-3879  
Fax: 907-465-2069

May - December:  
716 W. 4th Avenue  
Anchorage, Alaska 99501  
Tel: 907-269-0222  
Fax: 907-269-0223

Senator\_John\_Cowdery@legis.state.ak.us

## Sponsor Statement Senate Bill 348

"An Act relating to insurance for and work on certain motor vehicle repairs; and providing for an effective date."

In the case of motor vehicle repairs, there are many cases where consumers are not currently provided with full information on the many types of replacement crash parts, which are available to be used in the repair of their collision-damaged vehicles. Some types of replacement crash parts may be of inferior quality or may void the warranty for adjacent parts or other original vehicle equipment. Alternative parts also can create unnecessary safety risks due to improper fitting. Despite this, some insurers direct the use or installation of parts other than "original equipment manufactures" (OEM) replacement crash parts without advising consumers of these considerations. While some replacement crash parts are comparable to those manufactured or distributed by the carmaker, the professionals have found others to be inferior to OEM parts in terms of fit, finish, and quality.

What SB 348 does is protect consumers from their new vehicle warranty loss. It merely states that the insurance company must be responsible for maintaining the warranty on a vehicle for aftermarket crash parts when applicable and if used. It also reinforces the consumers' right to have a choice through the consent language to the use of non-OEM parts, during the year of the vehicle's manufacture or during 3 years following that year. The vehicle repair shop must also disclose on the invoice when aftermarket parts are used in making a repair.

My message is that consumers are being shortchanged every time an inferior fender, bumper, hood, radiator, wheel spindle or steering component is used to repair body damage to a new vehicle. I believe when you buy insurance you have a reasonable expectation your car will be repaired and restored to the condition it was before an accident, and without your original warranty being in jeopardy. Consumers are entitled to this.

A jury in the State of Illinois held State Farm in breach of contract with their policy holders. The policy holders contract was for State Farm to return the damaged cars to pre-accident condition. The lawsuit was a result of State Farm using non-OEM aftermarket parts. State Farm was liable for 1.18 billion in damages to their policy holders.

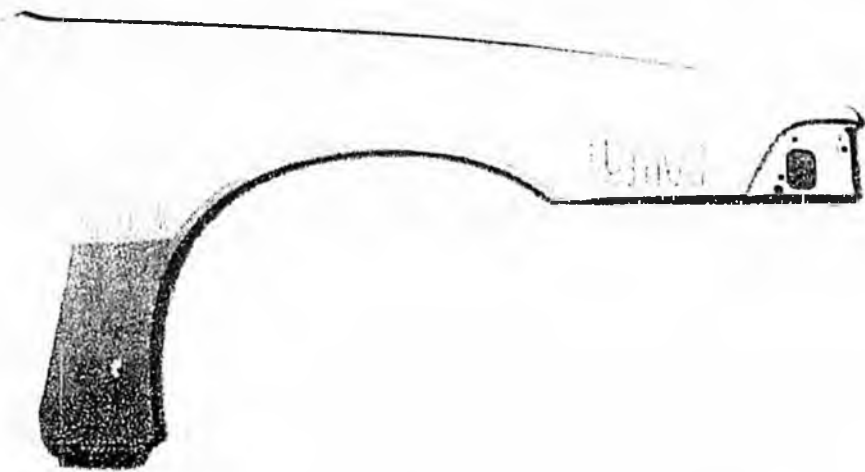
This bill will allow consumers to consider their options with regard to an insurer's policy on the use of replacement crash parts, especially in newer vehicles where a manufacturer's warranty is still in effect.

# Test Photos Tell the Story

These photos show graphic results of tests simulating three years of a vehicle fender's exposure to a controlled corrosive environment.

The fender on the left is a new genuine GM Replacement Part. The fender on the right is a foreign imitation fender.

The American Iron and Steel Institute's Corrosion Task Force has labeled this as one of the tests that best represents actual field use performance.



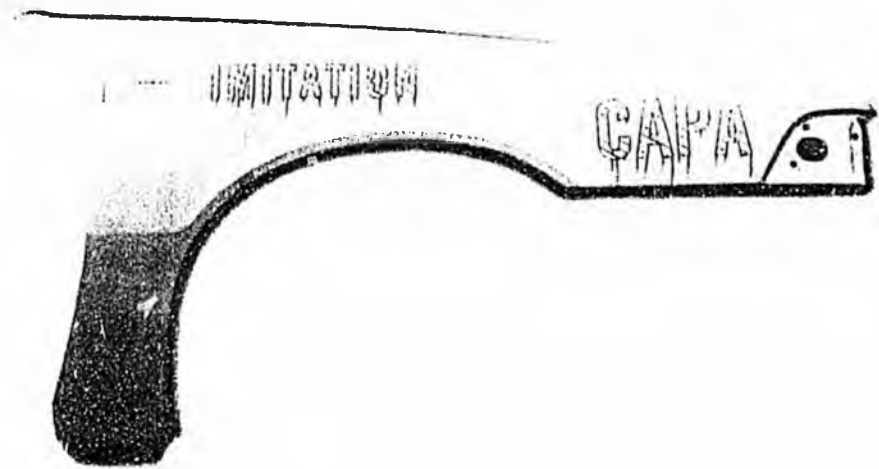
## DOUBLE-SIDED GALVANIZED GM FENDER

Metal Thickness	0.033 Inches	Provides Greater Strength and Integrity to the Part
Zinc Layer Placement	Outside of Sheet Metal	Resists Surface Rust
Zinc Layer Placement	Inside of Sheet Metal	Helps Prevent Holes
Zinc Layer Volume	60 Grams per Square Meter	Adds Durability
Primer Thickness	1.2 to 1.3 Mils	Extends Weather Protection and Adds to Corrosion Resistance
Total Weight	8.5 Pounds	Contributes to Overall Vehicle Strength

# Check It Out for Yourself

To get the full report on the results and fairness of Test GM9540P (Method B) shown here, write to:

General Motors-SPO  
P.O. Box 33115  
Detroit, MI 48232



## NON-GALVANIZED FOREIGN IMITATION FENDER

Metal Thickness	0.030 Inches	Diminishes Part's Strength and Integrity
Zinc Layer Placement	None Outside of Sheet Metal	Leaves Metal Vulnerable to Surface Rust
Zinc Layer Placement	None Inside of Sheet Metal	Provides No Protection from Holes, Which Typically Start on the Inside
Zinc Layer Volume	None	Makes Part Less Durable
Primer Thickness	0.5 to 0.9 Mils	Provides Substantially Less Weather Protection and Corrosion Resistance
Total Weight	8 Pounds	Lessens Overall Vehicle Strength

DO NOT BE FOOLED BY LESSER QUALITY IMITATIONS. RESIST DEGRADING NOW. GENUINE GM COLLISION PARTS.

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Add information to your favorites

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Med & Kit



## Are you entitled to brand-name repair parts? Know your OEM rights

By insure.com

Your insurance company promises to return your vehicle to its pre-accident condition after you're involved in a crash. Unfortunately, the definition of "pre-accident condition" is hazy at best, and the use of original equipment manufacturer (OEM) parts at repair time could develop into a tug of war involving many players.

You are certainly entitled to demand OEM parts after you crash your car, but your insurance company might not pay 100 percent of the repair bill if you do. What do you do if you're leasing a vehicle? And what do you do if you have to return it in the same condition as when you got it? Companies say non-OEM parts are just as safe and effective as original manufacturer parts. However, several class action lawsuits against major insurance companies call the safety of non-OEM parts into question.

OEM parts are manufactured by the maker of your vehicle. Non-OEM parts, often called aftermarket parts, are made by third-party vendors. Many insurance companies recommend cheaper non-OEM parts for the repair of damaged vehicles because it keeps insurance costs down. The industry sees non-OEM parts as quality replacements that are guaranteed and a perfectly reasonable alternative to OEM parts.

The use of original equipment manufacturer (OEM) parts at repair time could develop into a tug of war involving many players.

"We believe the existence and use of [non-OEM] parts save consumers

Term

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250,0

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20

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money and ultimately serve them well," says Sharon Frazier, a spokesperson for State Farm Insurance Co. "All non-OEM parts [we recommend] must be Certified Automotive Parts Association [CAPA] certified. CAPA ensures that quality standards are followed in making competitive crash parts and making sure parts bearing the CAPA quality seal are in compliance with these standards."

State Farm encourages its policyholders to go with the non-OEM parts at repair time, and although the company allows you to choose between OEM and non-OEM parts, it discourages OEM usage through its practice of making you pay for the difference in costs.

Progressive Auto Insurance spokesperson Donna Marquard says her company will generally recommend that nonstructural parts, such as fenders, be replaced with non-OEM parts because that allows the company to save money.

However, Progressive's reimbursement practices depend on your policy. "If our policyholder specifically requests that OEM parts be specified on the estimate for all replacement parts, they may do so," says Marquard. "But they may have to pay the cost difference between the OEM part they desire and the non-OEM part we may have specified on the estimate."

How much can this cost you? Insure.com sought quotes for both an OEM rear bumper for a '90 Honda Accord and a non-OEM bumper. The Honda bumper was priced at \$275 and the non-OEM bumper was \$210. If you are a State Farm or Progressive policyholder, you'd have to come up with the extra \$65 for the Honda bumper. An estimate for a 1996 Ford Contour OEM hood was \$585. The aftermarket hood was \$299. You'd have to come up with at least \$286 (not including the tax) to get your Contour fixed with an OEM hood as a Progressive or State Farm customer.

As another example, the Insurance Information Institute's March 1999 report, "Where the Auto Insurance Premium Dollar Goes," says that it would cost \$72,000 to totally repair a 1997 Ford Taurus GL with OEM parts. The Taurus retails for around \$19,000.

### **Pennies from heaven?**

Aftermarket parts are certainly cheaper, but why? In a friend-of-the-court brief, Public Citizen, a consumer-watchdog group founded by Ralph Nader, says, "Non-OEM parts can be sold at reduced rates because their manufacturers do not bear the cost of research, development, advertising, or special packaging . . . [and thus] the cost-savings made through the use of non-OEM parts runs into the hundreds of millions of dollars" for large insurance companies.

Interestingly, non-OEM parts are not encouraged across the board, and whether you'll be pressured to accept them depends on your insurer. At Chubb Insurance Group, for example, the use of OEM parts is *encouraged* whenever possible. According to Cristoph Ritterson, marketing manager for personal lines at Chubb, the company has found that its customers want protection from potential car depreciation, and that means installing OEM parts at the time of repair. "The customer doesn't even need to ask [for the use of OEM parts]. That's what we expect to do," says Ritterson.

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Whether you'll be pressured to accept non-OEM parts depends on your insurer.

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And unlike State Farm, Chubb doesn't require its policyholders to scrape together the difference between a non-OEM and an OEM repair. "We'll reimburse our customer for 100 percent of the repair bill, regardless," promises Ritterson. "If they want to go with non-OEM parts, they can, but we've found that our customers feel OEM parts are better than non-OEM parts."

Ritterson does note an important trade-off for his company's 100 percent reimbursement for OEM parts: Chubb's auto policies are more expensive than others on the market.

### Look before you lease

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Choosing not to use OEM parts might cost you a part of your security deposit at the end of the lease.

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Your lease company requires the vehicle to be in the same condition when you turn it in as when you began the lease. Both GE Capital Auto Leasing and Provident Auto Leasing Co. forbid their lessees to add any parts that would reduce the vehicle's value. In the case of a Provident lease, you can't replace any parts without Provident's permission. This means that if you're involved in an accident and have to make repairs, you'll likely have to use OEM parts. The question is, will your insurance company pay the full OEM amount?

The answer is not clear. "If we feel that the vehicle cannot be restored to pre-accident condition using non-OEM parts," says

Marquard of Progressive, "we write the estimate based on OEM parts." That means you'll be fully covered for repairs to your leased vehicle if you're a Progressive policyholder.

However, if you're a State Farm policyholder and the company feels it

can repair your leased vehicle to its pre-accident condition with non-OEM parts, you're probably going to be in a bind. Your lease might say explicitly that you have to use OEM parts at repair time, or it might imply that OEM parts must be used. If you choose OEM parts, you'll need to come up with the difference between State Farm's aftermarket part estimate and the OEM estimate.

Choosing not to use OEM parts might cost you a part of your security deposit at the end of the lease or you might be charged a disposition fee (typically between \$200 and \$500) when your lease runs out. The reason is that you're obligated to return the vehicle to your dealership in its pre-accident condition.

### Safety of aftermarket parts a litigious issue

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"Imitation parts may be a serious safety threat."

There are at least five lawsuits pending against insurance companies over the use of non-OEM parts for vehicle repair. State Farm, Allstate, GEICO, Nationwide, and USAA (five of the top 10 auto insurers nationwide) are being sued for, among other alleged no-nos, recommending the use of non-OEM parts.

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"Imitation parts may be a serious safety threat," says Steve Mitchell, an attorney with Hagens-Berman, a Seattle-based law firm that brought the lawsuits against Allstate, GEICO, Nationwide, and USAA. "Repair shops call these parts 'Taiwan trash' for a good reason — they have substandard fit, crash resistance, and mechanical operation. In a word, they are dangerous."

Mitchell bases his conclusions on a *Consumer Reports* study from February 1999 that shows non-OEM bumpers and fenders might cause *more* damage to vehicles in crashes than OEM parts.

However, the Insurance Institute for Highway Safety (IIHS), which conducts crash tests, says that non-OEM parts do not degrade the safety of a vehicle involved in a crash. In two separate advisories the IIHS published in 1987, it concluded that "the cosmetic parts used to repair cars are irrelevant to safety" and that "cars without any of these parts at all easily comply with the [frontal-]crash test requirements set" by the government. IIHS stands by its advisories today, saying the information is still "accurate" and "relevant."

The concern about non-OEM hoods is that they won't buckle properly in a crash due to inferior manufacture. Despite the aftermarket hoods' apparent shortcomings, the IIHS predicted that, based on its examinations, non-OEM hoods would buckle correctly during a crash.

GEICO spokesperson Greg Marsh says that his company uses non-OEM parts unless there is a safety issue involved. Marsh would not comment further on the issue because of the ongoing lawsuit.

### Choose your parts wisely

#### States that do not require non-OEM part disclosure

Alabama  
Alaska  
Arizona  
California  
Delaware  
Washington D.C.  
Hawaii  
Iowa  
Maine  
Montana  
New Mexico  
North Dakota  
Pennsylvania  
South Carolina  
Texas  
Vermont  
Washington

Source: National Association of Insurance Commissioners

Consider whether you're going to trade-in or sell your vehicle before making a decision on using OEM parts. "If you're buying a Mercedes, you're buying it, in part, for the craftsmanship," says Ritterson of Chubb. "Who's going to want to buy a Mercedes with non-Mercedes parts?" Dealers routinely check the crash history of a vehicle to see what kinds of parts were used in its repair, according to Ritterson. Your resale or trade-in value might be hurt if non-OEM parts are used.

By the same token, you don't want to buy a patch-work vehicle from a dealer, so the onus is on you to check the vehicle's crash history if you're suspicious of its condition. Web sites like Carfax.com and Vhronline.com will run the vehicle history for \$25. Although you won't be able to see whether or not the vehicle was repaired with OEM parts, you will be able to see if the vehicle has been damaged and repaired in the past.

Know, too, that you have the right to ask for OEM parts whenever you've been involved in a crash. Most auto policies say the insurance company will return your crashed vehicle to its pre-accident state

with parts of "like kind and quality." Policies generally don't exclude the use of OEM parts (although your insurance company might not repair vehicles with OEM parts as standard practice), so don't be shy about insisting. In addition, some states do not require insurers to disclose to policyholders their use of non-OEM parts. It's important to know that in these states, you *have* to ask.

Aftermarket parts do help to keep auto insurance costs down. So if you're not concerned about keeping your vehicle free of imitation parts, you're likely doing yourself and your neighbors a favor in the long run. "Increased use of [aftermarket] parts would trim billions off the cost of the nation's auto insurance bill," according to the Insurance Information Institute's 1999 report on where your auto insurance premium dollars go. The group says that around 72 percent of all repairs are done with OEM

**T**HE ARGUMENTS ARE AS PARTISAN AS PRESIDENTIAL POLITICS, WITH LITTLE or no middle ground being staked out by either side. From the perspective of the insurance industry and aftermarket (A/M) crash parts distributors, it's about choice and freedom from a monopoly, both easily recognized as consumer issues.

For the opposition, it, too, is about choice — a consumer's right to choose how his car is repaired and with which parts. It's about not being told what's in their best interest, but rather, being allowed to make an informed decision that takes safety, value and circumstances into consideration.

But didn't the landmark verdict in *Avery v. State Farm*, in which the insurance giant was found guilty of consumer fraud and breach of contract for its use of A/M crash parts, put an end to all this controversy? To put it simply, no. Though the stakes have been raised to billions of dollars, there are no clear winners at this point. As the case continues its rage on the Illinois court system — State Farm lost its appeal and has petitioned the Illinois Supreme Court for further review of the verdict — the A/M crash parts issue continues to plague the industry.

How this real-world-problem-turned-courtroom-drama plays out depends on market forces set in motion by consumers, cer-

# The Jury's Still Out

**Two years after the landmark \$1.2 billion State Farm class-action verdict, the debate about aftermarket crash parts still rages. What does the future hold for these OE counterparts? If you thought the controversy ended when the verdict came down, think again.**

BY CHARLIE BARONE

**"There's overwhelming evidence of State Farm's calculated deception of its policyholders in a deliberate and universally employed for the purpose of obtaining unearned, illegitimate monetary gain. This was an unfair treatment. There is an abundance of evidence to support the trial courts findings that the class members**

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tification agencies, repairers, industry associations and insurers alike. I don't have a crystal ball and can't predict exactly how these forces will affect the future of A/M crash parts, but I can tell you that insurance companies alone won't be calling the shots.

### Survival Strategy

WHEN ASKED ABOUT THE FUTURE OF A/M

parts, SCRS Chairman Don Keenan — who's also president of Philadelphia-based Keenan Auto Body, a collision repair business with six locations, and a Certified Automotive Parts Association (CAPA) board member — had encouraging words for CAPA.

"There will always be aftermarket crash parts," he says. "They were here before the insurance companies

started specifying them, and there will always be a market for them. Some people are driven by quality, others by price and still others by both. In the past, aftermarket parts manufacturers were led to believe it was all about price. Today, they're getting a strong signal that the driving force is quality. Quality repairers demand quality parts."

Keenan's pragmatic approach to the parts issue seems to be the controlling attitude among some major players in the business. And despite sound defeats in the courts, the insurers' advocacy of these generic parts appears as vigorous as ever, which includes some major public relations moves, such as getting Ralph Nader's Public Citizen on board.

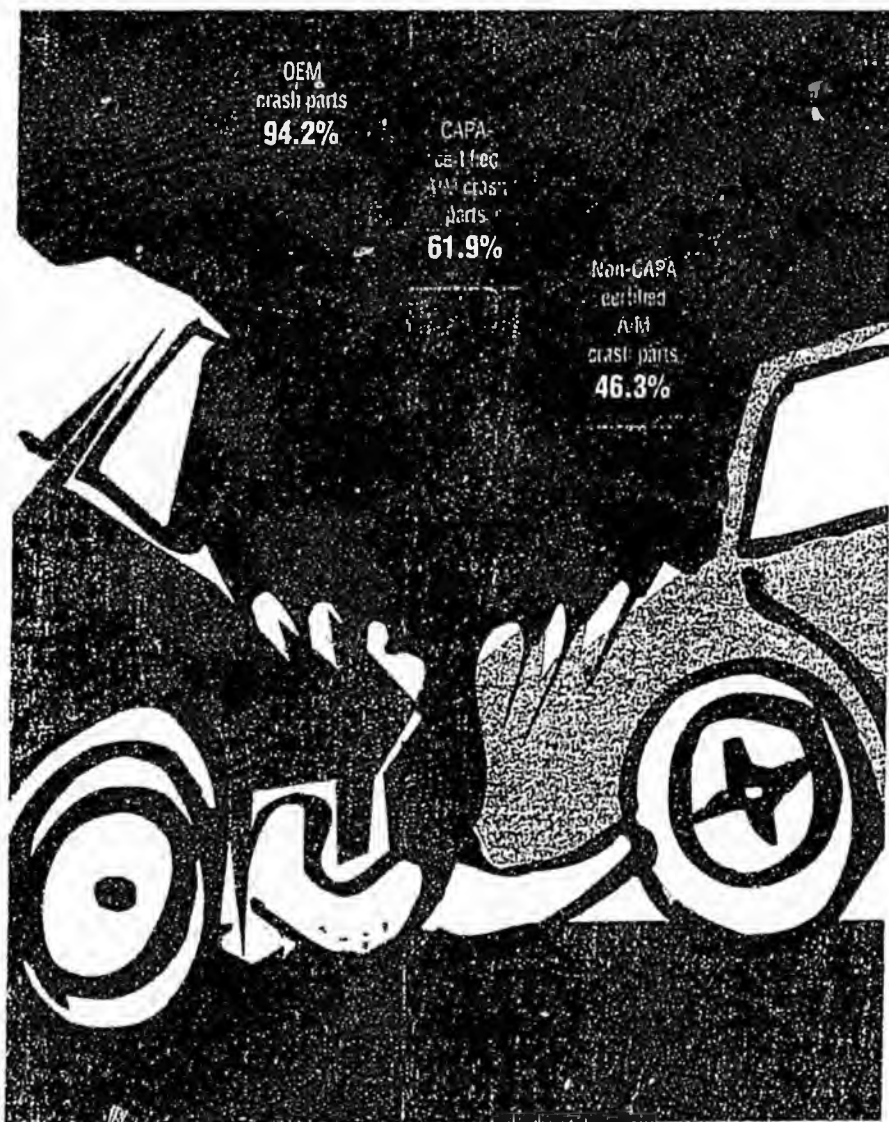
Still, the A/M parts issue has bled down to the consumer level, where A/M parts popularity rates about as well as big tobacco, HMOs and Firestone Tire. The term "aftermarket parts" has even been used with negative connotations in the prime-time Fox Network sitcom "Titus."

In the other camp, Mark Cobb — CCRE president and owner of Cobb's Collision Center in Windham, Maine — isn't nearly as optimistic as Keenan regarding the future of A/M parts.

"Consumer awareness and education will clearly define the viability of imitation parts in the future," says Cobb. "As consumers become more and more aware of how these parts affect the safety and function of their vehicles, the use of these inferior parts will be so greatly challenged that the value of their use will be nearly diminished."

With that said, Cobb adds that it's important to be completely clear on definitions. "Aftermarket parts encompass all types of parts — batteries, shocks, suspension components, muffler systems and so on," he says. "In a broad sense, sheet metal would

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DESPITE THE PERCENTAGE OF CAPA-CERTIFIED A/M CRASH PARTS REPORTED NOT TO PROVIDE AN ACCEPTABLE fit, respondents to the 2001 *BodyShop Business Industry Profile* aren't inclined to notify CAPA regarding such parts problems. Only 10 percent say they notify CAPA all the time; 15.5 percent say they notify CAPA 50 percent of the time; and 55.5 percent say they never notify CAPA. Source: 2001 *BodyShop Business Industry Profile*.

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disregard of its express written promises contained in the policies issued. The deceit was deliberate  
ill-gotten gain, acquired at the expense of persons that trusted and relied upon State Farm for honest  
injuries were proximately caused by State Farm's deceptive conduct."

— EXCERPT FROM THE APPELLATE COURT OPINION REGARDING STATE FARM'S APPEAL

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be included in that group, but sheet-metal parts are of a far different character and should be addressed without reaching out for support from parts that have been tried and tested in the marketplace."

### For the Record

WE LIVE IN A LITIGIOUS SOCIETY — A society in which lawyers are challenging big business, including the auto insurance industry and its use of A/M crash parts. Has this boldness forever changed the course of A/M crash parts or simply made a ripple in the waters?

Earlier this year, an aftershock trembled the A/M crash parts market when an Illinois appellate court upheld the landmark lower court ruling finding State Farm Insurance Company guilty of fraud and breach of contract. Even though State Farm hasn't shown any signs of cutting their losses and giving up the fight, it's clear that the more they struggle, the deeper they sink in the A/M quagmire.

Another less publicized but significant case was the class-action lawsuit against Country Companies Insurance, alleging — this should sound familiar — fraud and breach of contract for its practice of mandating the use of A/M crash parts in the repair of their insureds' vehicles. There were no allegations of a runaway jury in this case, or an admission of wrongdoing on the part of the defendant. The insurer simply settled.

While the monetary figure wasn't earthshaking (\$6.2 million), the court ordered the company to radically change their habits in terms of how they settled claims for collision damage with policyholders. Not only does Country Companies have to discontinue its practice of limiting claims settlements to the use of A/M crash parts, the insurer has been enjoined from participating in CAPA.

Examined at face value, this court order might appear unreasonable, such as a court telling a local business that it can't be involved in the chamber of commerce. However, this penalty goes to the heart of the consumer fraud question that was the foundation of the State Farm case. That is, it wasn't so much what the parts were as it was how the parts were represented to the policyholders — and CAPA certification was part and parcel of that representation.

But what long-term affect have these cases really had on the future of A/M crash parts?

Shortly after the State Farm verdict, almost all insurance companies (with the exception of some uncompromising carriers like USAA) quickly withdrew from the practice of mandating A/M crash parts in the repairs of policyholders' cars — as if they suddenly realized they were standing too close to an out-of-control fire. But no sooner had the smoke cleared when a number of companies, excluding State Farm, reverted to their old ways. Others claim that many shops are also reverting to their old ways.

According to Crash Fax, Brian Sullivan — of the Auto Insurance Report — spoke at a recent conference in Washington, D.C., and predicted that "non-OEM parts will start to creep back into the market. In fact, it's already happened. Some of them will come from insurers. But what's also happening is that the body shops are bringing these parts back." (Sullivan's referring to the fraudulent practice of shops substituting A/M crash parts for OEM parts and then pocketing the difference in cost.)

"One of the purposes of the \$600

million punitive damage award against State Farm was to deter other insurance companies from cheating their insureds the same way State Farm did," says attorney Tom Thrash, one of several lawyers representing the plaintiffs in the State Farm case. "I guess \$600 million wasn't large enough. We'll certainly bring this to the court's attention in the pending cases against these other ... insurance companies. You can't cheat people and get away with it."

Still, the now-legendary State Farm class action has had its effects on the marketplace, especially, some say, on A/M parts manufacturers. The behavior of a number of insurance companies [in changing] their policies regarding after-

market crash parts after the State Farm class-action verdict has devastated the aftermarket industry," says Karen Fierst, president of KerenOr Consulting and Taiwan Auto Body Parts Association (TABPA) liaison to the U.S. market. "While I believe most of the litigation will eventually be resolved in a way that enables the inde-

pendent aftermarket to flourish in the future, it's causing a serious setback to the industry."

Despite Fierst's claims of a devastated A/M crash parts market, not all OEM suppliers credit the verdict for OEM sales increases. Art Garner, spokesman for American Honda, dismisses the case's effect on his company's parts sales and credits the strong economy of recent years for any increase. "We've had an across the board increase in sales, including our captive parts where there are no aftermarket competitors," says Garner. •

**"To quote State Farm, CAPA is a joke," says attorney Tom Thrash, one of several lawyers who represented the plaintiffs in the State Farm case. "If their past is any indication of their future, CAPA has none. CAPA hasn't worked in the past. What on earth would make [anyone] think CAPA can work in the future?"**



### HE SAID ...

"Essentially, all the litigation reaching the public has dealt with consumer issues, (ones) we've long supported," says COALITION FOR COLLISION REPAIR EXCELLENCE (CCRE) PRESIDENT MARK COBB. "The State Farm verdict was a landmark, and we hope the ruling stands. But even if it doesn't, insurers realize business isn't as usual from now on. Someone is out there watching their practices, so they're going to have to be more attuned to proper claims handling."

### ... SHE SAID

"The politicization of the issue, the allegations of safety problems and the insistence (on) banning the products or having signed consent is simply anti-consumer," says KAREN FIERST, PRESIDENT OF KERENDR CONSULTING AND TAIWAN AUTO BODY PARTS ASSOCIATION (TABPA) LIAISON TO THE U.S. MARKET, ABOUT THE ACTIVITIES IN BOTH THE COURTHOUSES AND STATE HOUSES TO ADDRESS THE PARTS ISSUES. "This issue is being used as a weapon for some in the repair segment to hit back at the insurance industry."



CAPA

## The Changing Face of Certification

IS THERE ANY HOPE FOR CAPA EVER GAINING recognition as a credible, independent testing organization? It depends on whom you ask. Keenan, a CAPA board member, says the organization has only begun to prove its value in the marketplace.

"In my opinion, CAPA has made more headway in assuring quality aftermarket parts in the last year or so than they have in their entire history," he says. "The vehicle test fit program has provided manufacturers with an accurate, real-life opportunity to see just how their parts fit on a vehicle."

If you're unfamiliar with recent changes at CAPA, the test Keenan is referring to is an actual vehicle test fit of parts performed by real-life technicians on actual cars — a process previously deemed unreliable by the cer-

tifying organization. CAPA had always asserted that OEM vehicle-build quality was too inconsistent to serve as a means of testing replacement parts. With the test fit now a part of every certification process, that argument has apparently lost its supporters within the organization. Perhaps with good reason: The parts are designed and intended for installation on those supposedly unreliable OEM vehicles, as opposed to a test fixture developed in a laboratory.

Was this change made in a last-ditch effort to give the association credibility? Until now, CAPA never tested anything, though they could've been doing these vehicle test fits for years. But the off-shore, voluntary in-house testing at the point of manufacture bounced fewer parts, and members were happy with that. CAPA is, after all, an association of manufacturers.

As you might suspect, not everyone is impressed with CAPA's so called "progress." "To quote State Farm, CAPA is a joke," says Thrash. "If their past is any indication of their future, CAPA has none. CAPA hasn't worked in the past. What on earth would make [anyone] think CAPA can work in the future?"

How is CAPA handling such industry negativity?

In an apparent effort at damage

control in the wake of CAPA Executive Director Jack Gillis' gaffes both in and out of court, the association took on some new blood early last year. General Henry "Butch" Viccello of USAA was appointed president of the CAPA board.

"CAPA isn't a flawless organization, and while we'll continue to recruit insurance industry members to participate in the organization, a multi-industry partnership is the only effective approach to a truly competitive marketplace — CAPA's primary goal," says Viccello. "This partnership needs to include the collision repair industry, the insurance industry, parts manufacturers, parts distributors and those who promulgate policy through legislation or regulation."

But even if A/M crash parts aren't legislated and/or litigated out of existence, some degree of market forces may come to bear on the parts. Consistently inferior parts will earn a reputation as such, as will better fitting and performing parts. However, this type of brand recognition has yet to surface in the collision repair market due to the generic nature of A/M parts. Most aren't identified by brand as much as they're ordered strictly by application. The typical body shop operator has no idea what's inside that string bikini packaging until it arrives.

"As an industry, the aftermarket crash part segment realizes that it must brand its products and provide a high level of consumer and repairer confidence in order to turn the image around," says Fierst.

"Until a few years ago, Taiwanese companies had hoped that CAPA would be the recognized brand for quality parts," she says. "They put their energies into the program thinking it would provide marketing and brand image support. It's become clear over the past few years that CAPA, while being a viable certification option, isn't the answer to the branding issue. ... The bottom line is that certification organizations should be invisible, like Underwriters Laboratory in the field of electronics."

## What Consumers Really Want

WHILE THE BATTLE OVER A/M CRASH PARTS

## Comments?

Are you impressed? Irritated? Angry? If you have something to say — about this article, another article in BSB or something going on in the industry — we want to hear from you! Please fax your comments to (330) 535-0874 or e-mail them to BSB editor Georgina Kajjanic at [gakajjanic@babcox.com](mailto:gakajjanic@babcox.com).

has largely been waged on body snop and insurance turf. the party with the most at stake is the collision repair customer. (Though some aftermarket advocates would have us think customers are oblivious to the parts issues.)

Do consumers really demand more affordable auto parts? In general terms, the answer is an unequivocal yes. However, just like with virtually every other consumer product, consumers demand better quality, convenience and service *along with* the bargain price. This principle is the basis for the success of big box retailers like Wal Mart and The Home Depot.

But what you have to remember in regard to the A/M crash parts issue is that we're not talking about the traditional retail scenario. Autobody sheet metal is, at best, an arm's length transaction for consumers.

The automotive aftermarket has existed on the oversights, errors and excesses of OEMs, which is why we find a non-OEM battery with the most powerful name recognition in the business. But are Diehard batteries and Gordon hoods analogous? The implication that they are could face skepticism.

Even if A/M body parts and hard parts are similar in terms of value, consumers haven't shown any substantive desire for price consciousness when the repairs to their cars are covered by an insurance claim (threats of premium hikes notwithstanding). The prospect of savings passed along to policyholders in the form of lower rates tends to lose significance when you're talking about a consumer's personal vehicle. At that point, he or she typically doesn't want to compromise. Most times, the only instance a consumer is willing to compromise is in the case of an older vehicle without collision coverage, in which function is stressed over form and appearance. At that point, a generic part could very well be an acceptable alternative to declaring the car a total loss. But in general, the real demand for more affordable collision parts comes from third-party payers.

"I think most consumers give little thought to the issue of aftermarket parts," says Fierst. "Those who do

## One Tech's Thoughts on A/M Parts

**F**INALLY, A VIEW FROM GROUND ZERO — THAT OF A FLAT-RATE LINE TECHNICIAN, AN OFTEN forgotten party to the A/M crash parts dispute. Barney Slifer is an ASE Certified collision repair tech with more than 25 years of experience. He works at Arnell Paint and Body, a dealer body shop in Burns Harbor, Ind. What's his first-hand take on A/M crash parts?

"Not that it's pertinent to the replacement sheet-metal arguments, but A/M inner-structure parts are equally miserable as far as accuracy of fit," says Slifer.

"At present, I'm doing a Grand Am builder for which [the owner] bought a Taiwanese (Conjoin Key) upper tie-bar and left and right rad-support reinforcements. It's all flimsy, lighter gauge metal, and it's terrible when you're jiggling up the parts as per a unibody data sheet. Nothing is accurate.

"Unlike OEM components, I can't trust these parts to be dimensionally correct. Once you weld them in, you're committed. There's no going back for further adjustments after you've jigged them to factory specs, only to find yet another related A/M fit problem later on. This is the same reason I hate CAPA-certified A/M external sheet metal, such as fenders. In addition to the usual reasons most anti-A/M parts critics give, I find them a real handicap to production.

"[Some measuring system manufacturers] recommend using OEM front fenders as the final say-so when it comes to determining front datum measurements. If the fender fits the door, you're good to go. But I can't do it on this particular job because I can't trust the A/M part to be accurate enough to perform this kind of preliminary measuring. Even if I do correct the front datum to the factory height — which it now is — odds are, the Taiwanese fender won't fit the door without some serious modifications, which, I might add, no one pays me for."



**"Unlike OEM components, I can't trust these parts to be dimensionally correct." — Barney Slifer, Arnell Paint and Body, Burns Harbor, Ind.**

have likely been influenced by the February 1999 'Consumer Reports' article or their collision repair professionals. In my opinion, the negative image of aftermarket crash parts, as perceived by repairers, is far more problematic than that of consumers.

"This image is a perception that's evolved over the past 20 years. There's some historical basis for the perception, but problematic aftermarket parts aren't found in the market today as frequently as some people would have us believe. In fact, while aftermarket part quality is continually improving, poor quality OEM parts are more and more evident in the marketplace."

### The Power of Test Fits

IN WHAT HAS BECOME A REGULAR EVENT (IN addition to being a round of ammunition for the A/M parts industry), the

Collision Industry Conference (CIC) parts test fit trials are often held up as a definitive measure of the parts' suitability.

The test fit held in Orlando in December 2000 indicated that a Yung Shine fender made in Taiwan was actually a *better* part than the OEM replacement fender. Assuming the A/M part was reverse-engineered from the part it was judged against, this raises a question as to the test's validity: How can a copy of an original be better than the original? This assumes, of course, that the service parts made by the OEM are identical to the ones the vehicle came with, a fact A/M parts makers dispute.

At any rate, the blind test by industry participants yielded higher scores for the imitation part. However, these types of tests only deal in the illusory qualities of appearance and don't

address the more substantive issues of the part's construction, long-term durability or effect on the owner's equity in the car.

When questioned as to whether the steel of the Yung Shine fender was made from two-sided galvanized steel like the Ford fender, CAPA spokesperson Stephanie Ackerman said: "As of Jan. 1, 1999, all CAPA sheet-metal parts are required to be constructed of double-sided galvanized steel. This part was no exception."

While her response was precise, it was somewhat ambiguous. CAPA standards may very well require that the Yung Shine part be constructed from two-side galvanized steel in order to be certified, but that in and of itself doesn't necessarily mean that the OE-grade of steel has made its way into parts inventories. E-mails and telephone calls to Yung Shine to confirm this weren't returned.

In follow up communication with Ackerman, she seemed less convincing. "I'm pretty sure that was a two-sided galvanized part," she said. "If it was certified, it's a given."

Asked for his assessment of the significance of the CIC parts trials, George Gilbert — crash parts merchandising manager, Ford Customer Service Division of Ford Motor Com-

pany — says, "A lot of flurry comes out of those [CIC] tests. We never agree with the tests, even when we win. The real fit tests are done every single day by body shops."

Gilbert also touched on a cost issue in which the OEM part could conceivably have an advantage over its cheaper competitors. In terms of enhanced repair cycle time, which has become the biggest buzzword in the business, OEM parts usage could involve real net savings in repair costs. Because A/M parts have been associated with increased labor time for their installation, delivery time delays and the tedious process of trial-and-error fitting, OEM parts makers have been able to claim the high ground on that basis.

"Where the parts-to-labor ratios change and you start to do more replacement [work] than repair, I see it as an opportunity — anything that can improve value to the customer is worthwhile," says Gilbert.

#### Survival of the Fittest

I CAN'T PREDICT EXACTLY HOW THESE forces will affect the future of A/M crash parts, but I don't see these parts disappearing ... ever. Some will improve based on sales (what a concept, huh?), while the not-so good parts won't sell as well and will be

used primarily by re-builders of totals. The better fitting, better performing, better looking A/M crash parts will gain recognition as the good brands.

Which brings us to branding. Like in every other business, some brands will be established as better than others. Up until now, A/M crash parts have been generic: You ordered by the application, e.g. hood and fender for an F-150. In the future, however, it may be "Send me a Brand Y hood and fender for an F-150. I've had good luck with them in the past. And don't send me a Brand X hood or fender; they're bad."

Like it or not, the A/M crash parts market will continue to evolve and mature. It may have a long way to go, but understand one thing: It's not going away. 🐶

*Writer Charlie Barone has been working in and around the body shop business for the last 27 years, having owned and managed several collision repair shops. He's an ASE Master Certified technician, a licensed damage appraiser and has been writing technical, management and opinion pieces since 1993. Barone can be reached via e-mail at (charlie@auto-claimshelp.net).*

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## State Farm Argues Its Case Before Appellate Court

*Claims decision to use non-OEM parts rests with individual shops*

*By Sheila Loftus, Hammer & Dolly*

In its appeal of a \$1.2 billion class action decision against it, State Farm argued last month before the Illinois Appellate Court in Mount Vernon, Illinois that State Farm doesn't fix cars, it only pays for them to be repaired. Any issue with the repair – or the parts used in the repair – would seem to be the concern of the collision repair facility, State Farm indicated.

If State Farm loses its appeal (and a decision is expected sometime between now and the end of the summer), it has two more recourses, the Illinois Supreme Court and the United States Supreme Court.

Robert (Barney) Shultz Jr., State Farm's lead attorney, argued that simply because a non-OEM crash part is specified on an estimate doesn't mean the part is used in the repair. That decision, Shultz intimated, is in the hands of the shop. In addition, Shultz said State Farm's obligation is "not to pay for a part that is equal to a brand new OEM part. It is to pay for a part to restore to preloss condition."

State Farm lost a \$1.2 billion class action suit over its advocacy of non-OEM parts in October of 1999 in a trial in Marion, Ill. The judgment against it (and in favor of the 4.7 million policyholders who were part of the class) was the

largest class-action verdict in Illinois history.

The plaintiff's lawyer, Elizabeth Cabraser, said State Farm breached its contract with policyholders by writing estimates for the cheapest parts, not parts that would restore their insureds' vehicles to pre-loss condition. The insurer relied on a computer to determine the cheapest part, she said, a decision State Farm based on cost-efficiency. But in seeking the cheapest part, State Farm committed fraud against its policyholders, she said. "State Farm," she said, "chose to use the computer" when it could have opted for a better way to ensure that its insureds' vehicles were returned to preloss condition.

Another plaintiffs' lawyer, Edward Kionka, argued that non-OEM crash parts are incapable of restoring a car to preloss condition, "State Farm promised [its policyholder] parts of like kind and quality," he said. "When State Farm gave a cheaper part, [the insurer saved] \$130 million by doing this."

The three judges hearing the appeal, Gordon Maag, Robert Welch, and Thomas Welch (no relation), were outspoken in their questioning of the lawyers. At one point, Maag paraphrased Supreme Court Justice Antonin Scalia to suggest that Shultz was evading giving an honest answer to a question he asked.

Shultz repeated his main argument – that State Farm doesn't fix cars, only pays to have them fixed – a number of times during the course of his

*(continued on next page)*

argument before the court.

Fifty-six people were in attendance at the courthouse, including four collision repairers.

Since losing the class-action verdict, State Farm has not written for non-OEM parts.

*Publisher's note: Our thanks to Sheila Loftus, publisher of Hammer & Dolly, for this eyewitness report.*

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# ALASKA AUTO DEALERS ASSOCIATION

P.O. Box 201305, Anchorage, Alaska 99520-1305

April 2, 2002

The Honorable John Cowdery  
Chair Senate Transportation Committee  
Alaska State Legislature  
Juneau, Alaska 99801-1182

Re: SB 348

Dear Senator Cowdery,

On Behalf of the Alaska Auto Dealers Association we wish to lend our support to SB 348. This is a pro-consumer issue that is extremely important to the constituents of our state.

Throughout the country there has been a strong influx of potentially inferior body parts. We feel that although these parts are touted as being less expensive and therefore have the potential of reducing insurance rates nothing could be further from the truth. These parts may not have the quality and longevity of OEM (original equipment) body parts. This could result in more expense for the consumer.

SB 348 does not simply single out insurance carriers and their relation to body shops. It also provides protection in the consumer/body shop relationship by requiring strong, clear disclosure of the quality, type, and options available to the consumer.

We strongly support the Transportation Committees effort to advance SB 348.

Respectfully Yours,

A handwritten signature in black ink, appearing to read "Steve Allwine". The signature is fluid and cursive, written over a faint, illegible stamp or background.

Steve Allwine  
Chair AADA Legislative Committee

**S B**

**3 5 8**

*Fairweather*

Alaska Marine Highway System  
Name the Ferries Contest  
Student Entry Form

Attach this form to the front of your essay.

Student Name Wesley Tyrrell  
Parent or Guardian Name Laurel Tyrrell  
Mailing Address P.O. Box 30168  
Central, AK 99730  
Home Phone (907) 520-5253 Parent/Guardian Daytime Phone Same  
Email Address rtyrrell@ideafamilies.org  
Name of School Alyeska Central School  
Grade Level 4 Student's age as of January 30, 2002 9 yrs

**Presentation.** The essay should be:

- Up to 250 words in length
- Typed and double spaced on plain white paper, or clearly written on lined white paper
- Your name and grade level on each page of the essay

**Judging the Essays.** Completed essays should be submitted to your school teacher. One essay will be chosen from each school to send to the school district. The school district will select essays from all the public, private, charter, and home schools in its district. A Department of Education and Early Education selection team will then review the essays submitted by the districts. Ten essays will be selected from this group and sent on for final judging by Lieutenant Governor Fran Ulmer and the leadership of the Alaska Legislature. Two winners will be selected.

**Timeline.**

January 30	Student essays due to the schools
February 13	Best essay in each school submitted to the school district
February 22	Winning district essays received by DEED
Week of March 4	Winners announced

**Fairweather**  
**By Wesley Tyrrell**  
**Fourth Grade**

The Alaska Marine Highway System should name its new ferry after the Fairweather Glacier for two important reasons. First of all, the glacier, born on the border of Alaska and Canada, represents close relations between two nations. Secondly, Fairweather is the perfect name for a ship.

In 1778 Captain James Cook named a mountain range, Fairweather. It is odd that he should choose this name because this place gets some of the worst weather in the world, receiving 100 inches of precipitation every year.

This weather sounds horrible for people but is fantastic for glaciers. Precipitation falling as snow on the summit of Mount Fairweather (15,300ft/4,660 m) does not melt. The ice crystals get deeper and heavier until they reach sixty feet deep, becoming a river of ice. Fairweather Glacier flows down the south side of this mountain to the Gulf of Alaska.

As the glacier creeps down the mountain it scrapes chunks of rock from the highest peak in British Columbia, Canada. The rocks are caught in crevasses, dragged through the glacier, and eventually deposited at its front in Alaska. Sharing Mount Fairweather, its glacier, and its boulders, are two countries meeting together in friendship.

We want people to be confident about their trip on the state ferry. When people hear the name Fairweather, they will picture sunny blue skies and calm seas. The name cries out, "Excellent sailing! Good times! Terrific journeys!"

For these reasons, naming the ferry after the Fairweather Glacier is a great idea.

Chenega

Alaska Marine Highway System  
Name the Ferries Contest

Student Entry Form

Attach this form to the front of your essay.

Student Name Emily Rose Oskolkoff

Parent or Guardian Name Bruce and Jamie Oskolkoff

Mailing Address Po Box 39313  
Winilchik, AK 99639

Home Phone 567-3211 Parent/Guardian Daytime Phone 567-055

Email Address \_\_\_\_\_

Name of School Ninilchik

Grade Level 6th Student's age as of January 30, 2002 13

Presentation. The essay should be:

- Up to 250 words in length
- Typed and double spaced on plain white paper, or clearly written on lined white paper
- Your name and grade level on each page of the essay

Judging the Essays. Completed essays should be submitted to your school teacher. One essay will be chosen from each school to send to the school district. The school district will select essays from all the public, private, charter, and home schools in its district. A Department of Education and Early Education selection team will then review the essays submitted by the districts. Ten essays will be selected from this group and sent on for final judging by Lieutenant Governor Fran Ulmer and the leadership of the Alaska Legislature. Two winners will be selected.

Timeline

January 30	Students essays due to the schools
February 19	Best essay in each school submitted to the school district
February 22	Winning district essays received by DEED
Week of March 4	Winners announced

## Chenega Glacier Essay

By Emily Rose Oskolkoff

Prince William Sound, nestled in the Alaska's Chugach Mountain Range, has over 20 glaciers ending at sea level; numerous others cling to mountainsides. These glaciers form because warm, low-pressure systems sweeping in off the Pacific Ocean in the winter encounter the high mountains, rise, cool and deposit their excess moisture as snow. More snow falls in the long winter than melts during the short summer. The thick, accumulating snow layers compress into ice, which gradually flows down to the sea as glaciers.

The Chenega Glacier located on the map at 60-degrees 14'N, 148-degrees 28' 20"W. This glacier can be seen by boat from Nassau Fiord and is next to the Tiger Tail glacier. There is a village with the same name as this glacier. Ivan Petroff first reported the Alutiiq village at Chenega Bay named in the 1880 census. The village was destroyed and approximately 1/3 of the villagers perished when a tsunami caused by the 1964 earthquake hit the Prince William Sound. The village was reestablished in the mid-1980's on Evans Island, although it is still named Chenega.

I chose the name Chenega because I liked the sound of it. But as I researched this glacier and discovered what had happened at Chenega Bay in 1964 and how the remaining families had to leave their homes and start a new village on Evans Island I now think that naming one of the new ships Chenega would be a great way to honor the courageous people of Chenega.

State of Alaska  
Office of the Lieutenant Governor

**FRAN ULMER**  
Lieutenant Governor  
P.O. Box 110015  
Juneau, Alaska 99811-0015



**Contact: Glenda Carino**  
907-465-3557  
FAX: 907-465-5400  
glenda\_carino@gov.state.ak.us

**NEWS RELEASE**

**www.state.ak.us**

**FOR IMMEDIATE RELEASE: March 22, 2002**

**0087**

**Two ferry names announced  
Students from Ninilchik and Central win contest**

The two new Alaska Marine Highway System ferries will be named the Fairweather and the Chenega. The names were announced today by Lt. Governor Fran Ulmer, Speaker of the House Brian Porter and Senate President Rick Halford after reviewing the top ten essays in the "Name the Ferry" contest.

The name Chenega was submitted by 6<sup>th</sup> grader Emily Rose Oskolkoff of Ninilchik. "I chose the name Chenega because I liked the sound of it. But as I researched this glacier and discovered what had happened at Chenega Bay in 1964 and how the remaining families had to leave their homes and start a new village on Evans Island, I now think that naming one of the new ships Chenega would be a great way to honor the courageous people of Chenega."

Fourth grader Wesley Tyrrell of Central submitted the name Fairweather because "when the people hear the name Fairweather, they will picture sunny blue skies and calm seas."

Representative Brian Porter liked what Wesley wrote: "The name cries out, 'Excellent sailing! Good times! Terrific journeys!'" To me the essay cries out "this is an excellent essay and should be chosen," Porter said.

"It was wonderful to see the strong participation by students throughout Alaska," said Senator Rick Halford. "All of the participants are to be commended."

Hundreds of elementary students in grades 2-6 participated statewide in the contest at the school level. Winning school essays were forwarded to the district level with judging based on criteria established by the Alaska Department of Education & Early Development.

-more-

Ferry names chosen

Page 2

March 22, 2002

"We see this contest as a great way for kids to make history and have fun," Ulmer said. "The winners, their parents and teachers will receive a six-day cruise on a ferry and their essays will be permanently displayed in the new ferries."

Alaska laws require a state ferry be named after an Alaska glacier. The Name the Ferry contest was developed and coordinated by the Office of the Lt. Governor, Alaska Marine Highway System, the Department of Transportation and Public Facilities and the Alaska Department of Education & Early Development.

## About the Contest

Alaska laws require a state ferry be named after an Alaska glacier. This contest will allow a student in the 2<sup>nd</sup> through 6<sup>th</sup> grade to choose a name for one of our new ferries. To enter, write an essay of up to 250 words explaining why you picked a particular glacier name.

Judges at each school will pick the best essay from that school and forward it to the school district. Each district will then choose essays to forward to the Department of Education and Early Development, which will work with Lt. Gov. Fran Ulmer and the Statewide Selection Committee to choose the winners. The essays will be judged on content, originality, composition and writing skills, grammar, and spelling.

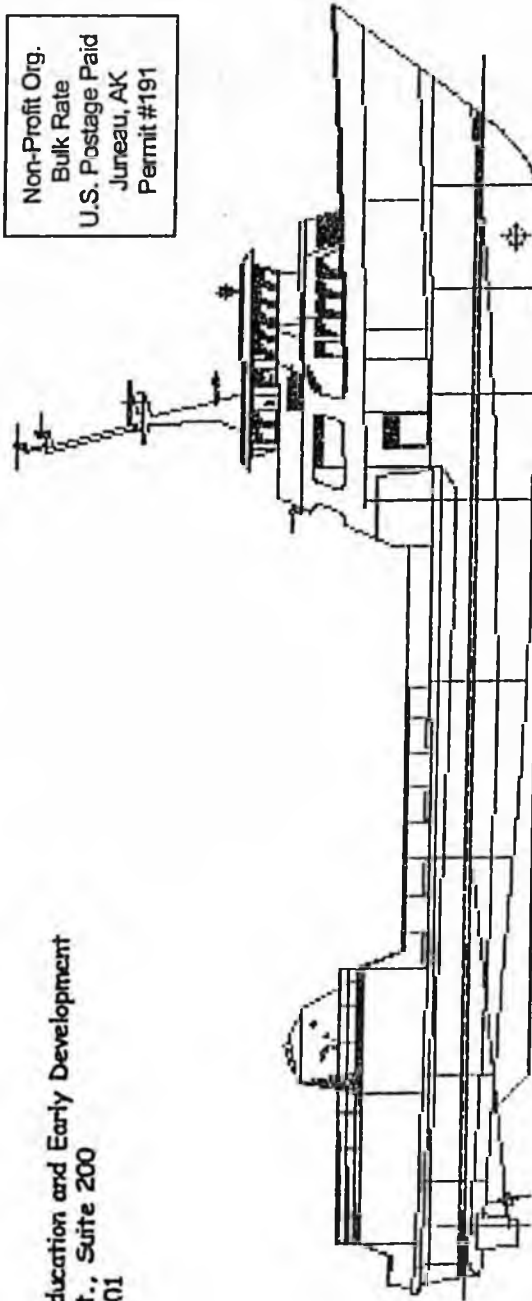
All participants will receive a letter and certificate of appreciation. District winners will receive a vessel photo. The top ten essay winners will win a three-day ferry pass for themselves and their parents. The winning essay for each vessel will be permanently mounted on the new vessel, and the winners and their parents will receive a six-day cruise, including stateroom and meals, on any Alaska Marine Highway vessel.

**Essay due date:  
January 30, 2002**

This is a project developed and coordinated by the Office of the Lt. Governor, Alaska State Legislature, Alaska Marine Highway System, the Department of Transportation and Public Facilities, and the Alaska Department of Education and Early Development. If you have questions, call: Coney Danitz (907) 465-8681.

Coney Danitz  
Department of Education and Early Development  
801 W. Tenth St., Suite 200  
Juneau, AK 99801

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Juneau, AK  
Permit #191



# Name the New Ferries Contest for Alaska's Marine Highway

Write an essay to name one  
of the new ferries and win:

- A six-day cruise on one of Alaska's ferries, including a stateroom and meals (for both you and your parents)!
- Your essay permanently displayed on the ferry you name!
- A six-day cruise for your teacher!



**MARINE HIGHWAY**  
A Proud Tradition

[www.alaska.gov/ferry](http://www.alaska.gov/ferry)

## Did you know?

- An Alaska Marine Highway ferry has to be named after an Alaska glacier (it's the law!)
- Eleven names have been used and cannot be used again:
 

Aurora	Malaspina
Bartlett	Matanuska
Chilkat	Taku
Columbia	Tustumena
Kennicott	Wickersham
LeConte	
- There are 735 more glacier names to choose from!

## Tips to help you:

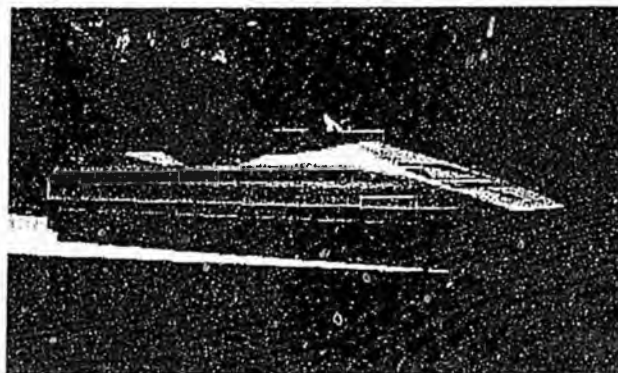
1. New and original ideas - something nobody has thought of before.
2. Include facts about your glacier - both from science and history.
3. Your essay has a beginning, middle and an end and is easy to read.
4. A person reading your essay can tell how you feel about what you are writing.
5. You use interesting words. Your sentences are complete and make sense.
6. Your spelling, use of paragraphs, punctuation, and grammar are correct.

## Prizes for everyone!

- Everyone gets a special appreciation certificate.
- District winners get a photo of one of the new ferries.
- The top ten selected essays earn students a three-day ferry pass for themselves and their parents.
- The top two winners (and their parents) get a six-day cruise on a ferry (with a stateroom and meals) plus their essay is permanently displayed in the new ferry.
- The winners' teachers will also get a six-day cruise on any AMHS vessel.

## Here's How You Do It:

1. Get a list of Alaska glacier names. You can do this by contacting your school librarian, public librarian or the internet.
2. From the list of glaciers, pick out a name for one of the new ferries.
3. Write an essay of up to 250 words, about 1 page, explaining why you selected the name. Be creative! Have fun with the essay.
4. Fill out the entry form and attach it to your essay. Then turn in your essay to your teacher. That's all there is to it! Yours may be one of the winning essays!



## Details on the New Ferries

### The New Metlakatla Ferry

Length overall .....	181 feet
Max. beam .....	50 feet
Vehicle capacity .....	18 cars
Passenger capacity .....	149
Speed .....	12 knots
Route .....	Metlakatla to Ketchikan

### The New Fast Ferry

Length overall .....	235 feet
Max. beam .....	60 feet
Vehicle capacity .....	36 cars
Passenger capacity .....	250
Speed .....	32 knots
Route No. 1 .....	Sitka to Juneau