

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With ALEC EXPOSED, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

ALEC's Corporate Board -in recent past or present

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For more on these corporations, search at www.SourceWatch.org.

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. DO YOU?

Home -> Model Legislation -> Commerce, Insurance, and Economic Development

Consumer Choice Motor Vehicle Insurance Act

Summary

This Act would give motorists the right to choose the kind of personal protection available in case of an automobile accident and the amount of financial protection they deem appropriate and affordable. Instead of being forced to buy traditional fault liability insurance to protect strangers, motorists would have the opportunity to buy a new personal protection policy to protect themselves and their family members in the event of a motor vehicle accident.

Model Legislation

(Title, enacting clause, etc.)

Section 1. {Title.} This Act shall be known and may be cited as the Consumer Choice Motor Vehicle Insurance Act.

Section 2. {Definitions.} As used in this Act:

(A) "Accidental bodily injury" means bodily injury, sickness, or disease or death resulting therefrom, arising out of the ownership, operation, or use of a motor vehicle or while occupying such vehicle, which is accidental as to the person injured.

(B) "Added personal protection" means an optional policy, plan, or coverage for personal protection that each insurer issuing motor vehicle liability insurance in this state shall make available. The added personal protection coverage shall include a schedule of benefits with an aggregate limit of \$100,000 per person, which includes: medical expenses; up to \$1,000 per week for lost income from work; replacement services loss for up to \$300 per week; and death benefits of \$25,000 if the death occurs within one year after the date of a motor vehicle accident and was a direct result of the accident. Collateral sources shall be subtracted in calculating added personal protection benefits, but an insurer may write added personal protection. The insurer shall also make available a scheduled pain and suffering coverage with an aggregate limit of \$50,000 payable if the injured person sustains an accidental bodily injury that is subject to the limitations on tort liability under Section 10 and is a serious injury. Nothing contained in this Section prevents a personal protection insurer from also making available optional additional compensation benefits in amounts other than those prescribed in this section. No applicant or insured may be required to purchase a lesser amount than those prescribed by this subsection.

(C) "Basic personal protection" means a policy, plan, or coverage for personal protection that provides benefits for loss resulting from accidental bodily injury resulting from a motor vehicle accident. Basic personal protection benefits consists of the following with an aggregate limit of \$15,000 per person:

- (1) medical expenses;
(2) lost income from work up to \$200 per week;
(3) replacement services loss of up to \$100 per week; and
(4) death benefits of \$5,000 if the death of the injured person occurs within one year after the date of a motor vehicle accident and was a direct result of the accident.

(D) "Cause of action for injury" means a claim for accidental bodily injury for economic or non-economic loss or both, caused by the negligent conduct or intentional misconduct of another person, and includes a claim by any person other than a person suffering accidental bodily injury based on such injury, including but not limited to loss of consortium, companionship, or any derivative claim.

(E) "Collateral sources" means any benefit a person receives or is entitled to receive from any source, other than added personal protection benefits, as reimbursement for loss resulting from an accidental bodily injury. Such benefits shall be subtracted from loss in calculating added personal protection benefits payable to a personal protection insured; no subtraction may be made for the amounts the personal protection insured receives or is entitled to receive:

- (1) in discharge of familial obligations or support;

Did you know that global corporation Kraft Foods served as corporate co-chair in 2011?

(2) by reason of another person's death, except that amounts received from Social Security or workers' compensation shall be subtracted; or

(3) as gratuities, any amount paid by an employer to an employee or the survivors of the employee is not a gratuity.

(F) "Dependent" means all persons related to another person by blood, marriage, adoption, or otherwise who reside in the same household at the time of the accidental bodily injury and receive financial services or support from him or her.

(G) "Director" means the director of the (state department of insurance).

(H) "Driving under the influence of alcohol or illegal drugs" means conduct that causes or contributes to the harm claimed:

(1) if a blood, breath or urine test shows a blood or breath alcohol content of 0.10 or more;

(2) if the driver refuses to submit to a blood, breath, or urine test in violation of (cite state DUI law); or

(3) if the driver is convicted of violating (cite state DUI law).

(I) "Economic loss" means pecuniary loss and monetary expenses incurred by or on behalf of an injured person as the result of an accidental bodily injury.

(J) "Governmental unit" means the United States government, the government of the State of (state), and any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of either such government, or any local government in this state, and such units thereof, including, but not limited to, counties, cities, towns, and other regional governments.

(K) "Injured person" means a person who sustains accidental bodily injury when eligible for benefits under a policy providing personal protection or under the assigned claims plan under Section 19. The term also includes where appropriate the personal representative of an estate.

(L) "Intentional misconduct" means conduct whereby harm is intentionally caused or attempted to be caused by one who acts or fails to act for the purpose of causing harm or with knowledge that harm is substantially certain to follow when such conduct caused or substantially contributed to the harm claimed for. A person does not intentionally cause or attempt to cause harm:

(1) merely because his act or failure to act is intentional or done with the realization that it creates a grave risk of causing harm; or

(2) if the act or omission causing bodily harm is for the purpose of averting bodily harm to oneself or another person.

(M) "Loss of income from work" means 80 percent loss of income from the work the injured person would have performed if he had not been injured, reduced by any income from substitute work actually performed by him or by income he would have earned in available appropriate substitute work he was capable of performing but unreasonably failed to undertake. Loss of income from work does not include any loss after the death of the injured person and payment for the period of disability shall not exceed two years from the date of the accident.

(N) "Medical expenses" means reasonable amounts incurred by an injured person for necessary medical, surgical, radiological, dental, ambulance, hospital, medical rehabilitation and professional nursing services, eyeglasses, hearing aids, and prosthetic devices. Personal protection insurers may review medical expenses to ensure that the expenses are reasonable and necessary. Under basic personal protection and added personal protection, medical expenses are promptly payable to the injured person for covered expenses incurred within two years after the date of the accident. Medical expenses do not include that portion of a charge for a room in a hospital, clinic, or convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless medically required, and does not include treatments, services, products, or procedures that are experimental in nature, for research, or not primarily designed to serve a medical purpose, or which are not commonly and customarily recognized throughout the medical profession within the United States as appropriate treatment of the accidental bodily injury.

(O) "Medical rehabilitation" means rehabilitation services that are reasonable and necessary to reduce the disability and restore the pre-accident level of physical functioning of the injured person.

(P) "Motor vehicle" means:

(1) a vehicle of a kind required to be registered pursuant to this title other than a vehicle with three or fewer load bearing wheels; or

(2) a vehicle, including a trailer, designed for operation on a public roadway by other than any muscular power, except a vehicle used exclusively on stationary rails or tracks. For the purposes of this section, "public roadway" means a way open to the use of the public for purposes of automobile travel.

(Q) "Non-economic loss" means any loss other than economic loss and includes, but is not necessarily limited to, pain, suffering, inconvenience, physical impairment, mental anguish, emotional pain and suffering, hedonic damages and loss of any of the following: consortium, society, companionship, comfort, protection, marital care, parental care, filial

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care, attention, advice, counsel, training, guidance, or education, and all other non-economic damage whether formerly recoverable under the law of this state or not. Non-economic loss does not include economic loss caused by pain and suffering or by physical impairment.

(R) "Operation or use" means operation or use of a motor vehicle as a motor vehicle, including, incident to its operation or use as a vehicle, occupying, entering into, and alighting from it. Operating or use of a motor vehicle does not include:

(1) conduct within the course of manufacturing, sale or maintenance of a motor vehicle, including repairing, servicing, washing, loading or unloading, unless the conduct occurs while occupying it; or

(2) conduct in the course of loading and unloading the vehicle unless the conduct occurs while occupying, entering into or alighting from it.

(S) "Owner" means the person or persons other than a lien holder or secured party, who owns or has title to a motor vehicle or is entitled to the use and possession of a motor vehicle subject to a security interest held by another person. Owner does not include a lessee under a lease not intended as security.

(T) "Person" means a person or an organization, public or private.

(U) "Personal protection" means a policy, a plan, or other coverage that provides basis benefits for loss resulting from accidental bodily injury, regardless of fault.

(V) "Personal protection insured" means:

(1) a person identified by name as an insured in a contract providing personal protection benefits;

(2) while residing in the same household with a named insured, the following persons:

(a) a spouse or other relative of a named insured;

(b) a minor in the custody of a named insured. A person resides in the same household if he usually makes his home in the same family unit, even though he temporarily lives elsewhere;

(3) a person with respect to accidents within this state who sustains accidental bodily injury while occupying or through being struck by a motor vehicle insured for personal protection, unless the person has reflected the coverage.

(W) "Personal protection insurer" means an insurer or qualified self-insurer who provides personal protection benefits.

(X) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services from others, not members of the injured person's household, in lieu of those the injured person would have performed for the benefit of the household. Replacement services loss shall not be paid if the injured person is entitled to receive personal protection benefits for loss of income from work for the same period. Under basic personal protection, replacement services loss does not include any loss incurred after the death of the injured person, and payment for the period of disability shall not exceed two years from the date of the accident.

(Y) "Serious injury" means an accidental bodily injury that results in death, dismemberment, significant and permanent loss of an important bodily function, or significant and permanent scarring or disfigurement.

(Z) "Uncompensated economic loss" means that portion of economic loss arising out of an accidental bodily injury of an injured person which exceeds the benefits provided by a personal protection insurer under a policy providing such benefits (except for loss incurred by a deductible under such a policy), and collateral sources. Such loss is payable under the same terms and limitations as under added personal protection, but shall not be subject to the aggregate limit of liability of such coverage.

(AA) "Uninsured motorist" means the owner of a motor vehicle uninsured for either basic personal protection or liability insurance at the limits prescribed by the state's motor vehicle insurance law.

Section 3. { Insurance requirements. }

(A) Each motor vehicle required to be registered in this state shall be insured for basic personal protection and for at least the minimum property damage liability limits prescribed by (cite state insurance law), unless the owner of the motor vehicle exercises his right of rejection pursuant to Section 11. An insurance policy written by a personal protection insurer pursuant to this act to provide basic personal protection is deemed to include all basic personal protection coverage required by this Act. Coverage under basic personal protection meets the requirements of this state's motor vehicle insurance law.

(B) In addition to any added personal protection coverage, a personal protection insurer shall make available additional insurance coverage. The additional coverage shall include bodily injury liability insurance, collision coverage, and comprehensive physical damage.

Section 4. { Geographic application of personal protection policies. }

(A) A personal protection insurer shall pay to a personal protection insured benefits for accidental bodily injury sustained within the United States, its territories or possessions or Canada.

(B) A personal protection policy issued in this state shall contain

coverage such that it satisfies the financial responsibility laws of any other state or Canadian province in which the insured motor vehicle is operated.

Section 5. {Persons not entitled to personal protection benefits.}

(A) A personal protection insurer may not pay benefits to or on behalf of an injured person who:

- (1) was involved in a motor vehicle accident while committing a felony or while voluntarily occupying a motor vehicle that he knew to be stolen;
- (2) was driving under the influence of alcohol or illegal drugs;
- (3) was occupying an uninsured motor vehicle owned by the person;
- (4) is guilty of intentional misconduct. If the person dies as a result of his own intentional misconduct, his survivors are not entitled to personal protection for loss arising from the decedent's injury or death;
- (5) has reflected the limitation on his right to sue pursuant to Section 11;
- (6) is an uninsured motorist; or
- (7) was operating or occupying a motor vehicle with three or fewer load bearing wheels.

(B) A personal protection insurer may include in personal protection coverage any person under Subsection A if the insurer states his intent to do so clearly on the policy.

Section 6. {Payment of personal protection benefits.} At the option of the personal protection insurer, personal protection benefits are payable to any of the following persons:

- (A) the injured person;
- (B) the parent or guardian of the injured person if the injured person is a minor or incompetent; or
- (C) a survivor, executor or administrator of the injured person.

Section 7. {Multiple coverage.} Notwithstanding the number of motor vehicles involved, persons covered, claims made, motor vehicles or premiums shown on the policy, or premiums paid, the liability limits under a motor vehicle insurance policy for any coverage shall not be combined with or added to any other coverage limit to determine the maximum limit of coverage available to an injured person. Unless the contract clearly provides otherwise, the contract may provide that if two or more policies, plans, or coverages apply equally to the same accident, the highest limit of liability applicable is the maximum amount available to an injured person under any one of the policies. Each policy, plan, or coverage is responsible for its proportionate share of the loss.

Section 8. {Priority of benefits.}

(A) Subject to Section 7, a person who is entitled to receive personal protection benefits may claim the benefits in the following order up to the limits of personal protection in the listed category:

- (1) the personal protection applicable to a motor vehicle provided by an employer if the injured person is an employee and the injury results from a motor vehicle accident while the person was driving, was occupying, or was struck by the employer's motor vehicle;
- (2) the personal protection of a motor vehicle used principally for the commercial transportation of personnel or property if the injured person was an occupant of or was struck by the motor vehicle;
- (3) the personal protection covering a motor vehicle involved in the accident, if the injured person was an occupant of or was struck by the motor vehicle;
- (4) the personal protection under which the injured person is or was a named insured;
- (5) the personal protection under which the injured person is or was an insured, other than a named insured.

(B) If two or more insurers are obligated to pay personal protection benefits, the insurer against whom the claim is first made shall pay the claim and may thereafter recover a pro rata contribution from any other insurer at the same priority level for the costs of the payments and for processing the claim. For the purposes of this section an unoccupied parked motor vehicle is not a motor vehicle involved in an accident unless parked in such a way as to cause unreasonable risk of injury.

Section 9. {Other sources of indemnity for basic personal protection benefits.}

(A) A basic personal protection insurer is primarily obligated to indemnify an injured person, except that state or federally mandated disability benefits and any workers' compensation benefits or similar benefits provided pursuant to an occupational injury shall be subtracted from the basic personal protection benefits payable to the injured person. Any other benefits payable for accidental bodily injury are secondary to the benefits payable for the basic personal protection.

(B) Basic personal protection is subject to a \$250 deductible with respect to a claim by the named insured or a person residing in the same household with the named insured. A basic personal protection insurer may write policies with a deductible that is higher or

lower than that prescribed by this Subsection pursuant to rules adopted by the director.

(C) Added personal protection is written as excess insurance pursuant to Subsection (A) of Section 2. A provider of personal protection benefits or other collateral sources shall not recover any amount against the claimant pursuant to a claim for added protection benefits or for uncompensated loss and shall not be subrogated to any rights the claimant may have against the defendant.

(D) Notwithstanding any provision to the contrary, a personal protection insurer is subrogated, to the extent of its obligations, to all of the rights of its personal protection insured with respect to an accident caused in whole or in part by:

- (1) the negligence of an uninsured motorist;
- (2) the negligence of the owner or operator of a motor vehicle having a gross weight of 7,000 pounds or more;
- (3) driving under the influence of alcohol or illegal drugs;
- (4) intentional misconduct; or
- (5) any person who has rejected, or is otherwise not affected by, the limitations on tort rights and liabilities.

Adopted by the CIED Task Force at the Task Force Summit on May 30, 1997. Approved by the ALEC Board of Directors June 1999.

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Center for Media and Democracy's quick summary

This Model Act would drastically limit the amount insurance companies would have to pay for automobile accidents while also increasing their revenue. This bill would establish a minimum "basic personal protection" insurance plan for states with mandatory insurance coverage, which would only cover the insured up to \$15,000 (an exceptionally low amount) in case of accidents.

It would alter the traditional "fault liability system," where the insurer for the driver responsible for the accident compensates the victims. Under the "fault liability system," minimum insurance coverage is "liability only," covering persons potentially injured by the insured's negligence (but not the insured). "Liability only" coverage also tends to have much higher caps on coverage.

The bill would significantly limit payouts for accidents. It references a "Section 11" allowing persons to opt-out of the "basic personal protection" coverage in favor of the "fault liability system," but that Section is not in this version of the bill.