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STATE OF ARKANSAS  
LEGISLATIVE COUNCIL  
315 STATE CAPITOL  
LITTLE ROCK  
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COMPULSORY AUTO LIABILITY INSURANCE; ISSUES AND INFORMATION

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## I Basic Types of Liability Laws

Five basic types of liability laws are now in force throughout the United States. The first is the Financial Responsibility law of which there are two types. Minimum requirements of financial responsibility are shown in terms of amount applicable to death or injury of one person, death or injury of more than one person, and property damage. Arkansas Statutes 74-1444 provides for limits of \$10,000 for death or injury of one person, \$20,000 for death or injury of more than one person, and \$5,000 for property damage. The Security-type laws require that, following report of an accident, each driver or owner of the vehicles involved show his ability to pay any damages which may be charged to him in subsequent litigation or negotiation arising out of the accident. Arkansas Statute 75-1418 requires the driver of a vehicle involved in an accident causing damage in excess of two hundred and fifty dollars (\$250.00) to report the accident to the Department of Revenue within thirty (30) days following the accident. Security must be posted at that time. Evidence of security can be provided in any of the following ways:

1. Showing that there was, at the time of the accident, an automobile liability policy in effect in at least the amounts prescribed by statute;
2. Posting a bond for those amounts;
3. Depositing with State authorities money or securities equalling the stipulated amounts;
4. Proving the person is self-insured.

The "Future-Proof Type" law requires a similar showing of financial responsibility be made by persons who have been convicted of certain serious traffic offenses or who have failed to pay a judgment against them for damages arising out of an accident. It should be noted that financial responsibility laws are not compulsory insurance. They provide that following certain occurrences, proof must be given of the ability to respond in damages. One of the ways to show proof is through evidence of an automobile liability insurance policy. Financial responsibility laws are invoked or become effective in any one of three situations.

1. Following an automobile accident involving bodily injury, or involving property damage to the property of any one person exceeding a stipulated amount. (\$250.00 or more in Arkansas)

2. As a result of conviction for certain offenses (reckless driving) or for an excessive number of convictions.
3. Failure to pay final judgment arising from an accident.

For accidents, requirements usually call either for "security for the current accident" or for "security for the current accident plus proof of future financial responsibility".

A detailed summary of the financial responsibility laws of other states is contained in Table I.

A second type of liability law has been enacted in twenty-four (24) states. This is the so-called "No-Fault" type of automobile insurance statute. Under no-fault plans the owner of the vehicle looks to his own insurance company for reimbursement for damages which is sustained in an accident rather than having to go to court and prove that the other party caused the accident. Most plans cover only bodily injury, and not vehicle damage. Most plans specify a minimum amount or "threshold" below which tort suits for general damages are barred. Once the "threshold" amount is reached in terms of the damages suffered, the motorist is permitted to institute a suit to recover general damages. The no-fault insurance is usually compulsory. The no-fault plan in Arkansas is provided by attaching the Personal Injury Protection Endorsement (P.I.P.) to the policy. The Arkansas plan is optional, or "add-on" plan because an accident victim still retains the right to sue a negligent driver regardless of the amounts of benefits collected under the no-fault coverage. A summary of the basic provisions of the various no-fault laws in effect are contained in Table II.

A number of states have experimented with a third type of liability law, the so-called "Unsatisfied Judgment Funds". The state operated funds are commonly financed with fees from motorists who are unable to provide evidence of insurance when they register their vehicles, or from assessments levied on automobile insurance companies. New Jersey, New Mexico and North Dakota have this type of liability law.

A fourth type of liability law, "Uninsured Motorist Law", has been enacted in many states. These laws generally require insurance companies to offer, as a part of their basic policy, coverage against potential damages by motorists who are not insured. A majority of states provide that uninsured motorist coverage is at the option of the insured. Arkansas is one of the "optional" states. Table III contains additional detail.

## II COMPULSORY INSURANCE

A fifth type of liability law, "Compulsory Insurance", requires that motorists file proof of financial responsibility prior to annual vehicle registration as a condition of vehicle registration. Twenty-three (23) states have presently enacted statutes requiring liability insurance. Similar legislation was proposed in Arkansas at the Seventy-First General Assembly in 1977. House Bill 17 would have required compulsory liability insurance to the amount of at least ten thousand dollars (\$10,000.00) on account of injury or death to any one person, twenty thousand dollars (\$20,000.00) for more than one person, and five thousand dollars (\$5,000.00) for property damage. The bill proposed that a certification of insurance be issued by the insurance company which was to be submitted to the Commissioner of Revenues at the time of registering a motor vehicle. Table IV contains detailed information on enforcement and certification procedures concerning compulsory liability insurance in the various states.

Comparative rate data in terms of comparing Arkansas with other states is a difficult task. States do not have the same liability limits and every state is unique in loss ratios and exposure. The rates for automobile insurance contained in Table V should therefore be looked at as representative rates in the various states.

TABLE I

State	Compulsory Liability Insurance	Liability Limits	FINANCIAL RESPONSIBILITY LAWS									Termination Notice to Department
			ACCIDENTS INVOKING LAWS						EVIDENCE REQUIRED			
			Minimum Property Damage	Requires Security (S), PIP (P) from Driver (D), Owner (O)	Regardless of fault?	Applicable to accidents in other states?	INSURANCE IN EFFECT?		- Proof of future responsibility Sic - Security Sat - Satisfaction of judgment Figuras - Number of years required			
							Information required in accident report?	Verification required from insurer? (* - Only if policy not in effect)	After Accident	After Conviction	After Judgment	
ALABAMA	No	10/20/5	\$ 50	S - D&O	Yes	Yes	Yes	Verification*	S	P-3	Sat. & P-3	10
ALASKA	No	25/50/10	\$200	S&P - D&O	No	Yes	Yes	Verification*	S&P-3	P-3	Sat. & P-3	10
ARIZONA	No	15/30/10	\$300	S&P - D&O	Yes	Yes	Yes	Verification*	S&P-3	P-3	Sat. & P-3	10
ARKANSAS	No	10/20/5	\$250	S&P - D&O	No	Yes	Yes	Verification	S	P-3	Sat. & P-3	10
CALIFORNIA	Yes*	15/30/5	\$250	P - D&O	Yes	Yes	Yes	Verification	P-3	P-3	Sat. & P-3	10
COLORADO	Yes	15/30/5	\$100	S&P - D&O	No	Yes	Yes	Verification	S&P-3	P-3	Sat. & P-3	10

\*Requires every driver and owner of a motor vehicle to maintain proof of financial responsibility. Violation is an infraction and punishable by a fine up to \$100.

TABLE I (CONTINUED)

State	Compulsory Liability Insurance	Liability Limits	FINANCIAL RESPONSIBILITY LAWS									Termination Notice to Department
			ACCIDENTS INVOKING LAWS						EVIDENCE REQUIRED			
			Minimum Property Damage	Requires Security (S), Proof (P) from Driver (D), Owner (O)	Regardless of fault?	Applicable to accidents in other states?	INSURANCE IN EFFECT?		P - Proof of future responsibility Sec - Security Sat - Satisfaction of judgment Figures - Number of years required			
Information required in accident report?	Verification required from insurer? (* - Only if policy not in effect)	After Accident					After Conviction	After Judgment				
CONNECTICUT	Yes	20/10/5	\$400	S - D&O	No	Yes	Yes	Verification*	S(e)	P-3	Sat.	10
DELAWARE	Yes	10/20/5	\$250	S - D&O	Yes	No	Yes	Verification	S(c)	P-3	Sat. & P-3	No prov.
DISTRICT OF COLUMBIA	No	10/20/5	\$100	S - D&O	Yes	Yes	Yes	Verification	S	P-3	Sat. & P-3	10
FLORIDA	Yes	10/20/5	\$500	S&P - D&O	Yes	Yes	Yes	Verification*	S&P-3	P-3	Sat. & P-3	10
GEORGIA	Yes	10/20/5	\$100	S&P - D&O	Yes	Yes	Yes	Verification	S&P-1(b)	P-1(b)	Sat.	20
HAWAII	Yes	25/Unlimited/10	\$100	S - D&O	Yes	No	Yes	Verification	S	P-3	Sat. & P-3	10

\* Requires every driver and owner of a motor vehicle to maintain proof of financial responsibility. Violation is an infraction and punishable by a fine up to \$100.

(e) If the provisions of law for motor vehicle financial responsibility law or motor vehicle compulsory insurance law requires insurance in greater limits, then

the limits of the company's liability and the kinds of coverage afforded by the policy shall be as set forth in such law.

(b) Second time proof required it shall be maintained for 3 years.

(c) Security Deposit not required in the case of accident by licensed driver involved.

TABLE I (CONTINUED)

State	Compu- sory Liability Insurance	Liability Limits	FINANCIAL RESPONSIBILITY LAWS									Termina- tion Notice to Depart- ment
			ACCIDENTS INVOKING LAWS						EVIDENCE REQUIRED			
			Minimum Property Damage	Requires Security (S), Proof (P) from Driver (D), Owner (O)	Regard- less of fault?	Applicable to accidents in other states?	INSURANCE IN EFFECT?		P - Proof of future responsibility Sec - Security Sat - Satisfaction of judgment Figures - Number of years required			
							Information required in accident report?	Verification required from insurer? (* - Only if policy not in effect)	After Accident	After Conviction	After Judgment	
IDAHO	Yes	10/20/5	\$100	S - D&O(a)	Yes	Yes	Yes	Verification	S(a)	P-3	Sat. & P-3	10
ILLINOIS	No	10/20/5	\$250	S - D&O	No	Yes	Yes	Verification*	S(b)	P-3	Sat. & P-3	10
INDIANA	No	15/30/10	\$200	S&P - D&O(d)	Yes	No	Yes	Verification	S&P-2(c)	P-3	Sat. & P-3	10
IOWA	No	10/20/5	\$250	S - D&O	Yes	No	Yes	Verification*	S	P-3	Sat. & P-3	10
KANSAS	Yes	16/30/5						Verification*				
KENTUCKY	Yes	10/20/5										10
LOUISIANA	No	5/10/1	\$200	S&P - D&O(a)	Yes	Yes	Yes	Verification*	S&P-3	P-3	Sat. & P-3	10

\*Requires every driver and owner of a motor vehicle to maintain proof of financial responsibility. Violation is an infraction and punishable by a fine up to \$100.

(a) When license restored after lapse of 1 year without full, proof must be given for 3 years.  
(b) Minimum security \$250.

(c) Requirement of proof discretionary.  
(d) Discretionary as to owner.

(e) Registration of owner not suspended where not legal by 16346.

TABLE I (CONTINUED)

State	Compulsory Liability Insurance	Liability Limits	FINANCIAL RESPONSIBILITY LAWS									Termination Notice to Department
			ACCIDENTS INVOKING LAWS						EVIDENCE REQUIRED			
			Minimum Property Damage	Requires Security (S), Proof (P) from Driver (D), Owner (O)	Regardless of fault?	Applicable to accidents in other states?	INSURANCE IN EFFECT?		After Accident	After Conviction	After Judgment	
Information required in accident report?	Verification required from insurer? (* - Only if policy not in effect)											
MAINE	No	20/40/10	\$200	S&P - D&O	No	Yes	Yes	Verification*	S&P/[1]	P-3	Sat. & P-3	10
MARYLAND	Yes	20/40/5									Sat.	
MASSACHUSETTS	Yes	5/10/5									Sat. (P.D.)	
MICHIGAN	Yes	20/40/10								P-3	Sat. & P-3	10
MINNESOTA	Yes	25/50/10										
MISSISSIPPI	No	10/20/5	\$100	S&P - D&O	Yes	Yes	Yes	Verification*	S&P-3	P-3	Sat. & P-3	5
MISSOURI	No	10/20/2	\$100	S - D&O	No	Yes	Yes	Verification*	S	P-2	Sat. & P-2	10
MONTANA	No	25/50/5[2]								P-3	Sat. & P-3	10

\*Requires every driver and owner of a motor vehicle to maintain proof of financial responsibility. Violation is an infraction and punishable by a fine up to \$100.

[1] Proof requirement may be waived 3 years after accident.

[2] Limits for certified policy. Policy with limits of 10/20/5 is sufficient to avoid suspension.

TABLE I (CONTINUED)

State	Compulsory Liability Insurance	Liability Limits	FINANCIAL RESPONSIBILITY LAWS						EVIDENCE REQUIRED			Termination Notice to Department
			ACCIDENTS INVOKING LAWS						EVIDENCE REQUIRED			
			Minimum Property Damage	Requires Security (S), Proof (P) from Driver (D), Owner (O)	Regard- less of fault?	Applicable to accidents in other states?	INSURANCE IN EFFECT?		EVIDENCE REQUIRED			
							Information required in accident report?	Verification required from insurer? (* - Only if policy not in effect)	P - Proof of future responsibility Sec - Security Sat - Satisfaction of judgment Figures - Number of years required			
							After Accident	After Conviction	After Judgment			
NEBRASKA	No	15/30/5	\$250	S&P - D	No	Yes	Yes	Verification*	S&P-3	P-3	Sat. & P-3	10
NEVADA	Yes	15/30/5	\$250	S - D&O(a)	Yes	Yes	Yes	Verification*	S(a)	P-3	Sat. & P-3	10
NEW HAMPSHIRE	No	20/40/5	\$300	S&P - D&O	No	Yes	Yes	Verification*	S&P-3	P-3(b)	Sat. & P-3	20
NEW JERSEY	Yes	15/30/5	\$200	S - D&O(c)	Yes	Yes	Yes	Verification*	S(c)	P-3	Sat. & P-3	10
NEW MEXICO	No	15/30/5				Yes				P-3	Sat. & P-3	10
NEW YORK	Yes	10/20/5(d)	\$200	S - D&O	Yes	Yes	Yes	No	S		Sat.	(b)

\* Requires every driver and owner of a motor vehicle to maintain proof of financial responsibility. Violation is an infraction and punishable by a fine up to \$100.

(a) When license restored after lapse of 3 years without suit, proof must be given for 3 years.

(b) Requirement of proof is discretionary.  
(c) Suspension is discretionary with Commissioner.

(d) Higher for some vehicles for hire.

TABLE I (CONTINUED)

State	Compu- sory Liability Insurance	Liability Limits	FINANCIAL RESPONSIBILITY LAWS									Termi- nation Notice to Depart- ment
			ACCIDENTS INVOKING LAWS						EVIDENCE REQUIRED			
			Minimum Property Damage	Requires Security (S), Proof (P) from Driver (D), Owner (O)	Regard- less of fault?	Applicable to accidents in other states?	INSURANCE IN EFFECT?		P - Proof of future responsibility Sec - Security Sat - Satisfaction of judgment Figures - Number of years required			
							Information required in accident report?	Verification required from insurer? (Only if policy not in effect)	After Accident	After Conviction	After Judgment	
NORTH CAROLINA	Yes	15/30/5	\$200	S - D&O	No	Yes	Yes	Verification	S(a)		Sat.	20
NORTH DAKOTA	Yes	10/20/5	\$200	S(b) - D	No(b)	Yes	Yes	Verification	S(b)	P-3	Sat. & P-3	10
OHIO	No	12.5/25/7.5	\$150	S - D&O	Yes	Yes	Yes	Verification	S(c)	P-3	Sat. & P-3	10
OKLAHOMA	Yes	5/10/5	\$100	S&P - D&O	Yes	No	Yes	Verification*	S&P-3(a)	P-3	Sat. & P-3(a)	10
OREGON	No	15/30/5	\$200	P - D&O(a)	Yes	Yes	Yes	Verification*	P-5	P-1	Sat. & P-5	10

\*Requires every driver and owner of a motor vehicle to maintain proof of financial responsibility. Violation is an infraction and punishable by a fine up to \$100.

(a) Extension only for failure to deposit security of more than \$100. Appeal to court automatically stays suspension and court may exempt motorist not at fault.

(b) Acquisition of responsibility required as prerequisite to security. Prior to adjudication driver must supply security as proof.

(c) Minimum \$500 security for bodily injury.  
(d) In hearing cases court may modify extent of security with provisions of act.  
(e) Employer liable, where operator is an employee.

TABLE I (CONTINUED)

State	Compu- sory Liability Insurance	Liability Limits	FINANCIAL RESPONSIBILITY LAWS									Termina- tion Notice to Depart- ment
			ACCIDENTS INVOKING LAWS						EVIDENCE REQUIRED			
			Minimum Property Damage	Requires Security (S), Proof (P) from Driver (D), Owner (O)	Regard- less of fault?	Applicable to accidents in other states?	INSURANCE IN EFFECT?		P - Proof of future responsibility Sec - Security Sat - Satisfaction of judgment Figures - Number of years required			
							Information required in accident report?	Verification required from insurer? (* - Only if policy not in effect)	After Accident	After Conviction	After Judgment	
PENN- SYLVANIA	Yes	18/30/5	\$200	S - D&O	Yes	Yes	Yes	Verification <sup>a</sup>	S	P-3	Sat. & P-3	10
PUERTO RICO	No											
RHODE ISLAND	No[a]	25/50/10	\$200[a]	S - D&O	Yes	Yes	Yes	Verification <sup>a</sup>	S	P-1	Sat. & P-1	10
SOUTH CAROLINA	Yes	15/30/5								P-5	Sat. & P-5	
SOUTH DAKOTA	No	15/30/5								P-3	Sat. & P-3	10
TENNESSEE	No	10/20/5	\$200	S&P - D&O	Yes	Yes	Yes	Verification <sup>a</sup>	S[c] & P-3	P-3	Sat. & P-3	10
TEXAS	No	10/20/5	\$250	S&P - D&O	No	Yes	Yes	Verification <sup>a</sup>	S[d] & P-5	P-5	Sat. & P-5	5

<sup>a</sup> Requires every driver and owner of a motor vehicle to maintain proof of financial responsibility. Violation is enforcement and punishable by a fine up to \$100.

[a] Minors owning motor vehicle must furnish proof before registration.

[b] Minimum responsible damage is \$100.  
[c] Minimum \$500 security.

[d] Minimum \$250 security.

TABLE I (CONTINUED)

State	Compulsory Liability Insurance	Liability Limits	FINANCIAL RESPONSIBILITY LAWS									Termination Notice to Department	
			ACCIDENTS INVOKING LAWS					EVIDENCE REQUIRED		After Accident	After Conviction		After Judgment
			Minimum Property Damage	Requires Security (S), Proof (P) from Driver (D), Owner (O)	Regardless of fault?	Applicable to accidents in other states?	INSURANCE IN EFFECT?						
Information required in accident report?	Verification required from insurer? (* - Only if policy not in effect)	P - Proof of future responsibility					Sec - Security	Sat - Satisfaction of judgment	Figures - Number of years required				
UTAH	Yes	15/30/5(s)	\$200	S - D(b)	No	Yes	Yes	No	S	P-3	Sat. & P-3	10	
VERMONT	No	10/20/5	\$100	S&P - D	No	Yes	Yes	Verification*	S&P-3	P-3	Sat. & P-3	10	
VIRGINIA	No	25/50/5	\$250	P - O	Yes	No	Yes	Verification*	P-3	P-3	Sat. & P-3	20	
VIRGIN ISLANDS	Yes	10/20/10 (c)											
WASHINGTON	No	15/30/5	\$200	S&P - D&O	Yes	Yes	Yes	Verification*	S&P-3	P-3	Sat. & P-3	10	
WEST VIRGINIA	No	10/20/5	\$100	S - D&O	No	No	Yes	Verification*	S	P-3	Sat. & P-3	10	
WISCONSIN	No	15/30/5	\$200	S - D&O	No	Yes	Yes	Verification* (d)	S	P-3	Sat. & P-3	10	

\*Requires every driver and owner of a motor vehicle to maintain proof of financial responsibility. Violation is an infraction and punishable by a fine up to \$100.

(a) For proof of financial responsibility, it may be a single limit of \$20,000.

(b) Owner subject to law if employer or driver, in that event registration is suspended.

(c) Higher for some vehicles.  
(d) As respects permission, insurer may contest report only by filing affidavit within 30 days after receipt.

TABLE I (CONTINUED)

State	Compu- sary Liability Insurance	Liability Limits	FINANCIAL RESPONSIBILITY LAWS									Termi- na- tion due to part- ent
			ACCIDENTS INVOKING LAWS						EVIDENCE REQUIRED			
			Minimum Property Damage	Require- Security (S), Proof (P) from Driver (D), Owner (O)	Regard- less of fault?	Applicable in accident in other states?	INSURANCE IN EFFECT?		P - Proof of future responsibility Sec - Security Sat - Satisfaction of judgment Figures - Number of years required			
							Information required in accident report?	Verification required from insurer? (* - Only if policy not in effect)	After Accident	After Conviction	After Judgment	
WYOMING	No	10/20/8	\$150	S - D&O	Yes	Yes	Yes	Verification	S	S	Sat.	10

\* Requires every driver and owner of a motor vehicle to maintain proof of financial responsibility. Violation is an infraction and punishable by a fine up to \$100.

Source: American Insurance Association, New York

# State No-Fault Laws

	Effective Date	Purchase of First Party Benefits	Minimum Tort Liability Threshold <sup>a</sup>	Maximum First Party (No-Fault) Benefits				Property Damage
				Medical	Income Loss	Replacement Services	Survivors/Funeral Benefits	
ARKANSAS (Ark. Stat. Ann. §66-4914)	July 1, 1974	Optional	None	\$2,000 if incurred within two years.	70% of lost income up to \$140/wk., beginning 8 days after accident, for up to 52 wks.	Up to \$70/wk. beginning 8 days after accident, for up to 52 wks.	\$5,000	Under tort law.
COLORADO (Colo. Rev. Stat. §10-4-701)	April 1, 1974	Mandatory	\$500	\$25,000 if incurred within 3 years (additional \$25,000 for rehabilitation)	Up to \$125/wk. for up to 52 wks.	Up to \$15/day for up to 52 wks.	\$1,000	Under tort law.
CONNECTICUT (Conn. Gen Stat. Rev. §30-319)	January 1, 1973	Mandatory	\$500	Limited only by total benefit limit.	75% of actual loss for income loss and replacement services up to \$200/wk.		75% of actual loss for income loss & replacement services up to \$200/wk. Funeral benefit: \$2,000.	Under tort law.
				\$5,000 overall maximum on first-party benefits				
DELAWARE (Del. Code Ann. tit. 21, §2110)	January 1, 1972	Mandatory	None, but amt. of no-fault benefits received can't be used as evidence in suits for general damages.	Limited only by total benefit limit, but must be incurred within two years.	100% of loss; no weekly maximum.	Limited only by total benefits limit.	Funeral benefit: \$2,000.	Under tort law.
				\$10,000 per person, \$20,000 per accident overall maximum on first party benefits.				
FLORIDA (Fla. Stat. §627.730)	January 1, 1972 for original law. Present law effective October 1, 1976	Mandatory	No dollar threshold <sup>1</sup>	Limited only by total benefits limit.	75% of loss; no weekly maximum.	Limited only by total benefits limit.	Funeral benefit: \$1,000.	Under tort law.
				\$5,000 overall maximum on first-party benefits				
GEORGIA (Ga. Code Ann. §56-3041b)	March 1, 1975	Mandatory	\$500	\$2,500	75% of lost income up to \$200/wk.	\$20/day	Maximum wage loss and replacement services amounts. Funeral benefit: \$1,000.	Under tort law.
				\$5,000 overall maximum on first party benefits				
HAWAII (Hawaii Rev. Stat. §294-1)	September 1, 1974	Mandatory	Floating threshold set annually by insurance commissioner.	Limited only by total benefits limit. <sup>2</sup>	Up to \$100/month for income loss and replacement services. <sup>2</sup>		Up to \$100/month for income loss and replacement services. Funeral benefit: \$1,500.	Under tort law.
				\$15,000 overall maximum on first-party benefits				

Source: National Conference of State Legislatures.

TABLE II (CONTINUED)

	Effective Date	Purchase of First Party Benefits	Minimum Tort Liability Threshold <sup>a</sup>	Maximum First Party (No-Fault) Benefits				Property Damage <sup>b</sup>
				Medical	Income Loss	Replacement Services	Survivors/Funeral Benefits	
KANSAS (Kan. Stat. Ann. §40-3101)	January 1, 1974	Mandatory	\$500	\$2,000 (additional \$2,000 for rehabilitation).	85% of lost income up to \$650/month for 1 yr.	\$12/day for one year.	Up to \$600/month for lost income and \$12/day for replacement services, less disability payments received, for up to 1 year. Funeral benefit: \$1,000.	Under tort law.
KENTUCKY (Ky. Rev. Stat. Ann. §304.39-010)	July 1, 1975	Mandatory	\$1,000	Limited only by total benefits limit.	85% of lost income (where if tax advantage is less than 15%) up to \$200/wk.	Up to \$200/wk.	Up to \$200/wk. each for survivors' economic loss and survivors' replacement services loss. Funeral benefit: \$1,000.	Under tort law.
\$10,000 overall maximum on first party benefits								
MARYLAND (Md. Code Ann. art. 40A, §53H)	January 1, 1973	Mandatory	None	Limited only by total benefits limit, but must be incurred within 3 years.	100% of loss; no weekly maximum.	Limited only by total benefits limit; only for services usually performed by non-income-earners.	Funeral benefit: limited only by total benefits limit.	Under tort law.
\$2,500 overall maximum on first party benefits for expenses incurred within three years of accident.								
MASSACHUSETTS (Mass. Ann. Laws ch. 90, §§31A, 34M & ch. 231, §6D)	January 1, 1971	Mandatory	\$500	Limited only by total benefits limit, if incurred within 2 yrs.	Up to 75% of actual loss.	Limited only by total benefits limit; payments made to non-family members.	Funeral benefit: limited only by total benefits limit.	Under tort law after 1, 1977; prior to then, no liability for vehicle damage.
\$2,000 overall maximum on first party benefits								
MICHIGAN (Mich. Comp. Laws Ann. §500.3101)	October 1, 1973	Mandatory	No dollar threshold. <sup>4</sup>	Unlimited.	85% of lost income up to \$1215/30 day period for up to 3 years; maximum amount adjusted annually for cost of living.	\$20/day for 3 years.	Up to \$1,000/30 day period for lost income and \$20/day for replacement services, for up to 1 year. Funeral benefit: \$1,000.	No tort law for vehicle damage.
MINNESOTA (Minn. Stat. §65B.41)	January 1, 1975	Mandatory	\$2,000	\$20,000	85% of lost income up to \$200/week.	\$15/day, beginning 3 days after accident.	Up to \$200/wk. each for income loss and replacement services. Funeral benefit: \$1,250.	Under tort law.
\$10,000 maximum for first party benefits other than medical								

	Effective Date	Purchase of First Party Benefits	Minimum Tort Liability Threshold <sup>a</sup>	Maximum First Party (No-Fault) Benefits				Property Damages
				Medical	Income Loss	Replacement Services	Survivor's/Funeral Benefits	
DELAWARE (Del. Rev. Stat. §69A.010)	February 1, 1974	Mandatory	\$750	Limited only by total benefits limit.	85% of lost income up to \$175/week.	Up to \$10/day for up to 104 weeks.	At least \$5,000, but not more than 1 year's maximum disability benefits. Funeral benefits: \$1,000	Under tort law.
				\$10,000 overall maximum on first party benefits				
NEW JERSEY (N.J. Stat. Ann. §19:6A-1)	January 1, 1973	Mandatory	\$200	Unlimited.	100% of lost income up to \$100/wk. for 1 year.	Up to \$12/day up to a maximum of \$4200/person.	100% of lost income up to \$100/wk. and \$12/day for replacement services. Up to difference between aggregate amount payable and amount received by victim. Funeral benefit: \$1,000.	Under tort law.
NEW YORK (N.Y. Ins. Law §670)	February 1, 1974	Mandatory	\$500	Limited only by total benefits limit.	100% of lost income up to \$1000/month for 3 yrs.	\$25/day for 1 yr.	NONE.	Under tort law.
				\$50,000 overall maximum on first party benefits				
NORTH DAKOTA (N.D. Cent. Code Ann. §26-41-01)	January 1, 1976	Mandatory	\$1,000	Limited only by total benefits limit.	85% of lost income up to \$150/week.	\$15/day.	85% of lost income up to \$150/wk. and \$15/day for replacement services. Funeral benefit: \$1,000.	Under tort law.
				\$15,000 overall maximum on first party benefits				
OREGON (Ore. Rev. Stat. §743.000)	January 1, 1972 (Jan. 1, 1974 for current first party benefits.)	Mandatory	None	\$5,000, if incurred within 1 yr.	70% of lost income up to \$750/month for up to 52 weeks, only if victim is disabled at least 14 days.	Up to \$10/day for up to 52 weeks, only if victim is disabled at least 14 days.	Funeral benefit: \$1,000.	Under tort law.
PENNSYLVANIA (Pa. Stat. Ann. Tit. 40, §1009.101)	July 19, 1975	Mandatory	\$750	Unlimited.	Up to \$15,000. <sup>b</sup>	Up to \$25/day for 1 year.	Income loss and replacement services benefits up to \$5,000. Funeral benefit: \$1,500	Under tort law.

	Effective Date	Benefits	Restrictions	Medical	Income Loss	Services	Benefits	Damage
SOUTH CAROLINA (S.C. Code Ann. §46-750.101)	October 1, 1974	Mandatory	None	Limited only by total benefits limit if incurred within 3 yrs	100% of lost income. No weekly limit.	Limited only by total benefits limit.	Funeral benefit; limited only by total benefits limit.	Under tort system.
\$1,000 overall maximum on first party benefits								
SOUTH DAKOTA (S.D. Comp Laws Ann. §50-27-6)	January 1, 1972	Optional	None	\$2,000 if incurred within 2 yrs.	\$60/wk. for up to 52 weeks, only if victim is disabled at least 14 days.	\$30/wk. for up to 52 weeks, only if victim is disabled at least 14 days. Benefits to non-wage-earning named insureds only.	\$10,000 death benefit if death occurs within 90 days of accident.	Under tort system.
TEXAS (Tex. Ins. Code Ann. art. 5.06-3)	August 26, 1973	Optional	None	Limited only by total benefits limit if incurred within 3 yrs.	100% of lost income; no weekly limit.	Limited only by total benefits limit. Payable only to non-wage-earners.	Limited only by total benefits limit.	Under tort system.
\$2,500 overall maximum on first party benefits								
UTAH (Utah Code Ann. §31-41-1)	January 1, 1974	Mandatory	\$500	\$2,000	65% of lost income up to \$150/wk. for up to 52 weeks. 3-day waiting period which does not apply if disability lasts longer than 14 days.	\$12/day for up to 365 days. 3-day waiting period which does not apply if disability lasts longer than 14 days.	\$2,000 death benefit. Funeral benefit: \$1,000.	Under tort system.
VIRGINIA (Va. Code Ann. §38.1-310.1)	July 1, 1972	Optional	None	\$2,000 if incurred within 1 yr.	100% of lost income up to \$100/week for up to 52 weeks.	None.	Funeral benefit; included in medical benefit.	Under tort system.
FEDERAL STANDARDS (S. 1301, 95th Session of Congress)		Mandatory	6	\$100,000 (or \$250,000 if disability lasts over 2 years)	7	7	\$1000/both funeral & death benefit	Under tort system.

\*Returns to minimum amount of medical expenses necessary before victim can sue for general damages ("pain and suffering"); benefits allowed in all states for injuries resulting in death and permanent disability; some states allow lawsuits for non or some of the following: serious and permanent disfigurement; certain temporary disabilities; loss of body members; loss of certain bodily functions; certain fractures; or economic losses (other than medical) which exceed stated limits.

1. Florida-Victim cannot sue for general damages unless injury results in one of the following: death, loss of body member; permanent loss of bodily function; permanent injury other than scarring or disfigurement; significant permanent scarring or disfigurement; serious non-permanent injury that has a material bearing on the victim's ability to resume his normal activity and life-style during all or substantially all of the 90 day period after the injury, if the effects of the injury are medically or scientifically demonstrable at the end of that period. Before 1976, Florida had a \$1000 tort threshold.
2. Hawaii-Income loss not payable to public assistance recipients receiving free insurance.
3. Kentucky-Accident victim is not bound by tort restriction if 1) he has rejected the tort limitation in writing or 2) he is injured by a driver who has rejected the tort limitation in writing. Rejection bars recovery of first-party benefits.
4. Michigan-Victim can't sue for general damages unless injuries result in death, serious impairment of bodily function or serious permanent disfigurement.
5. Pennsylvania-Maximum monthly income loss benefit is 100% times the relationship of the average Penn. per capita income to the average U.S. per capita income; or 100% of income loss if income is disclosed prior to accident.
6. Federal Standards-tort restrictions are the same as Michigan (4 above), in addition to losses which exceed minimum first-party benefits.
7. Federal Standards-monthly income benefit based on \$1000 and replacement services based on \$20/day; both figures are multiplied by the relationship of the average state per capita income to the average U.S. per capita income; or 100% of income loss if income is disclosed prior to accident; whichever is less. Maximum income benefit limited to 12 times monthly benefit; replacement services limited to 366 times daily benefit.

TABLE III

State	UNINSURED MOTORIST COVERAGE					Other Provisions
	Limits	Property Damage Exclusion	May insured reject coverage?	Uninsured Motorist Fee	Applicable where insurer insolvent?	
ALABAMA	10/20		Yes <sup>1</sup>	None	No prov.	
ALASKA	25/50		Yes	None	No prov.	
ARIZONA	15/30		No	None	Yes	Optional coverage up to 3 times F.R. limits must be offered.
ARKANSAS	10/20		Yes	None	Yes	
CALIFORNIA	15/30		Yes <sup>(a)</sup>	None	Yes	Failure to file evidence of financial responsibility under Financial Responsibility Law creates rebuttable presumption that vehicle was uninsured. Also covers where insurer denies liability or coverage.
COLORADO	15/30		Yes <sup>1</sup>	None	No prov.	

<sup>1</sup> If rejected, insurer need not offer coverage or refund unless required.

<sup>(a)</sup> To reject, a specified waiver form must be signed by the insured.

TABLE III (CONTINUED)

State	UNINSURED MOTORIST COVERAGE					
	Limits	Property Damage Exclusion	May Insured reject coverage?	Uninsured Motorist Fee	Applicable when Insurer Insolvent?	Other Provisions
CONNECTICUT	20/40[a]		No	None	Yes	Arbitration optional with insured.
DELAWARE	10/20/5[b]	\$250	Yes	None	Yes	
DISTRICT OF COLUMBIA						
FLORIDA	15/30[a]		Yes	None	Yes	"Uninsured motor vehicle" includes vehicle insured in lower limits.
GEORGIA	10/20/5[c]	\$250	Yes	None	Yes	Covers uninsured vehicles or where insurer denies coverage. Arbitration provision prohibited. Property damage coverage only for vehicle and contents. Uninsured motorist claims not barred by insured's application for discharge in bankruptcy, appointment of a trustee in bankruptcy or a discharge in bankruptcy.
HAWAII	10/20		Yes	None	No prov.	

[a] If rejected, insurer need not offer coverage on renewal unless requested.  
 [c] Insured may obtain coverage up to 100/300.

[b] Insured may require limits equal to his bodily injury limits, up to \$300,000.  
 [c] Limit may be 25/50/10.

TABLE III (CONTINUED)

State	UNINSURED MOTORIST COVERAGE					Other Provisions
	Limits	Property Damage Exclusion	May Insured reject coverage?	Uninsured Motorist Fee	Applicable where Insurer Insolvent?	
IDAHO	10/20		Yes	None	Yes	
ILLINOIS	10/20		No	None	Yes	
INDIANA	15/30		Yes	None	Yes	
IOWA	10/20		Yes	None	Yes	
KANSAS	15/30		Yes	None	Yes	
KENTUCKY	10/20 <sup>(a)</sup>		Yes	None	Yes	Also covers where vehicle underinsured or where insurer denies coverage.
LOUISIANA	(b)		Yes	None	Yes	Arbitration optional with insured. "Uninsured motor vehicle" includes vehicles insured in lower limits.

(1) selected, Insurer need not offer coverage on personal unless requested.

(a) KRS § 304.20-118 provides that uninsured motorist coverage be provided in limits for bodily injury or death as set forth in KRS § 187.230, currently 10/20.

The Kentucky no fault law repeals § 187.230 but requires liability coverage in amounts of 10/20/5, see § 304.29-110.

(b) is amounts over its liability injury limits, but insured may select lower limits.

TABLE III (CONTINUED)

State	UNINSURED MOTORIST COVERAGE					
	Limits	Property Damage Exclusion	May insured reject coverage?	Uninsured Motorist Fee	Applicable where insurer insolvent?	Other Provisions
MAINE	20/40/10		Yes	None	Yes	"Uninsured motor vehicles" includes vehicles insured in lower limits.
MARYLAND	20/40		No		Yes	Arbitration provision prohibited.
MASSACHUSETTS	5/10(a)		No	None	Yes	Also covers injuries caused by underinsured vehicles.
MICHIGAN				\$45(b)		
MINNESOTA	25/50		No *	None	No prov.	
MISSISSIPPI	10/20		Yes†	None	Yes	"Uninsured motor vehicle" includes vehicle insured in lower limits. Requires contact in hit and run cases. Arbitration provision prohibited.
MISSOURI	10/20		No	None	Yes	
MONTANA	25/50		Yes†	None	No prov.	

† If rejected, insurer need not offer coverage on renewal unless requested.

(a) Insured may request higher limits up to policy's B.I. limits.  
 (b) Applies only to motorcycles.

TABLE III (CONTINUED)

State	Limit	Property Damage Exclusion	May Injured Party (Exclusion)	Uninsured Motorist Fee	Applies where (Insured)	Other Provisions
NEBRASKA	15/30	Yes	Yes	None	Yes	
NEVADA	15/30[a]	Yes	Yes	None	Yes	Requires contact in hit and run cases. Also covers where insurer denies coverage.
NEW HAMPSHIRE	20/40[a]	No	No	None	Yes	
NEW JERSEY	15/30/5	5/50	No	None	No prov.	
NEW MEXICO	15/30/5	\$250	Yes	None	No prov.	
NEW YORK	10/20	No	No	None	No prov.	Also covers where insurer denies liability or coverage.

[a] Indented, Insurer need not offer coverage or refund with request. [b] Insured may require Insurer equal to his liability cover.

[c] Notice to Commissioner of Motor Vehicle within 30 days of termination of policy.

TABLE III (CONTINUED)

State	UNINSURED MOTORIST COVERAGE					Other Provisions
	Limits	Property Damage Exclusion	May Insured reject coverage?	Uninsured Motorist Fee	Applicable where Insurer Insolvent?	
NORTH CAROLINA	15/30/5(a)	\$100	Yes	None	Yes	Also covers underinsured vehicles, or where insurer denies coverage. Insurer may defend uninsured motorist.
NORTH DAKOTA	10/20		No	None	Yes	
OHIO	12.5/25		Yes <sup>1</sup>	None	Yes	Also covers where insurer denies coverage.
OKLAHOMA	5/10(b)		Yes	None	Yes	If agreement by arbitration is not reached within 3 months from demand for arbitration insured may sue tortfeasor. "Stacking" of liability policies held required by Oklahoma Supreme Ct.
OREGON	10/20(b)		No	None	Yes	Coverage not required in policy covering trucks of combined weight and load capacity of more than 6000 lbs. operated by employees covered by workmen's compensation. Also covers where insurer denies coverage.

<sup>1</sup> If rejected, insurer need not offer coverage on renewal unless requested.  
<sup>2</sup> Person with average liability limit of at least 15/30 is entitled to 15/30 coverage.

<sup>3</sup> Optional higher limits up to \$1, limits must be offered.

TABLE III (CONTINUED)

State	UNINSURED MOTORIST COVERAGE					Other Provisions
	Limits	Property Damage Exclusion	May Insured reject coverage?	Uninsured Motorist Fee	Applicable where insurer insolvent?	
PENN- SYLVANIA	10/20		No	None	Yes	
PUERTO RICO						
RHODE ISLAND	10/20		Yes	None	Yes	
SOUTH CAROLINA	15/20/5	\$200	No	None	Yes	Also covers where insurer denies coverage. Arbitration provision prohibited. Insurer may defend uninsured motorists. Requires contact in hit and run cases.
SOUTH DAKOTA	15/20[a]		No	None	Yes	Also covers where vehicle insured in lower limits.
TENNESSEE	10/20[a]		Yes	None	Yes	Also covers where vehicle insured in lower limits. Provides for optional property damage coverage for damage in excess of \$200. Requires contact in hit and run cases. Arbitration provision prohibited.
TEXAS	10/20		Yes	None	Yes	

[1] where, insurer need not offer coverage on request unless requested.

[a] Insured may require limits equal to his liability limits.

TABLE III (CONTINUED)

State	UNINSURED MOTORIST COVERAGE					
	Limits	Property Damage Exclusion	May Insured reject coverage?	Uninsured Motorist Fee	Applicable where Insurer Insolvent?	Other Provisions
UTAH	15/30		Yes	None	No prov.	
Vermont	10/20		No	None	Yes	
VIRGINIA	25/50/5[a]	\$200	No	\$150	No prov.	Arbitration provision prohibited. Insurer may defend uninsured motorist. Also covers where insurer denies coverage. No coverage provided in policies primarily providing excess coverage.
VIRGIN ISLANDS						
WASHINGTON	15/30		Yes	None	Yes	
WEST VIRGINIA	10/20/5	\$300	No	None	Yes	Also covers where insurer denies coverage. Arbitration provision prohibited. Requires contact in hit and run cases.
WISCONSIN	15/30		No	None	Yes	Also covers vehicles insured in lower limits.

[a] selected, Insurer need not offer coverage on removal unless requested.

[a] Insured may require limits equal to own liability limits. Insurer must offer higher limits in premium action.

TABLE IV  
 COMPULSORY LIABILITY INSURANCE

State	Liability Limits	Year Effective	Certification Required?	Verification Program	Termination Notification Requirements	Punition
HAWAII	25/10- limited/ 10	1974	Proof of insurance required when car is registered. Self-certification is permitted. (Proof of insurance cards are provided)	None at present	Termination notice must be given County Dir. and Police Chief of appropriate county of registration prior to date of termination	Subject to following: Fine not to exceed \$1,000 30 days imprisonment, loss of license or registration or combination of penalties
IDAHO	10/20/5	1975	Must display certificate of insurance to County Assessor at time of registration	None at present	Insurers must notify Dept. of Law Enforcement within seven days of the cancellation date. Insurers must secure approval of Dir. of Law Enforcement before cancelling during first 90 days after certification	Gilty of a misdemeanor to either operate a motor vehicle without the required security or to falsify a certificate of liability insurance
KANSAS	15/30/5	1974	Yes - self-certification at time of registration (ID cards are provided)	Yes - negative verification procedure (20 Day notice)	Notice of Termination (except for non-pay) must be sent to Dir. of Motor Vehicles who may then revoke registration	Gilty of Class C Misdemeanor. Max. penalty \$500 fine and one month jail sentence
KENTUCKY	10/20/5	1975	Yes - self-certification at time of registration	None at present	None	Shall be fined not less than \$50 nor more than \$500
MARYLAND	20/40/5	1973	Yes - certification of registration will not be issued until owner produces satisfactory evidence that specified security is in effect. Self-certification is in effect	Random verification positive procedure	Insurers are to immediately notify the Administrator of lapses in coverage, as certificate of registration can be suspended	Gilty of a misdemeanor - fine not more than \$500. license & Vehicle suspension up to \$40 penalty assessed by Motor Vehicle Administration

TABLE IV  
COMPULSORY LIABILITY INSURANCE

State	Liability Limits	Year Effective	Certification Required?	Verification Program	Termination Notification Requirements	Penalties
CALIFORNIA	15/30/5	1975	No	None at present	Termination Notice must be given to Commissioner	Fine up to \$100
COLORADO	15/30/5	1974	None at present	None at present	Cancellation for cause after first 60 days - must be on a form which satisfies state requirements	Suspension of license after at-fault accident
CONNECTICUT	20/40/5	1973	You - self-certification at time of registration	You - negative verification procedure	None	1) Class C Misdemeanor - (fine to \$500 or jail sentence up to 3 months) 2) Fine not more than \$1,000
DELAWARE	10/20/5	1972	You - ID card or policy must be produced when vehicle is being inspected at safety lane	None at present	Termination Notice must be given to Commissioner	Misdemeanor. Fine not less than \$300 nor more than \$1,000. May be imprisoned for not more than six months
FLORIDA	10/20/5	1972	You - must show proof of insurance at time of vehicle inspection - ID cards are provided	None at present	Notice of termination of new business (first 6 months of policy period) are to be given to Bureau of Financ. Resp.	Misdemeanor and subject to revocation of license and/or vehicle registration. Fine up to \$1,000 and/or up to one yr. imprisonment
GEORGIA	10/20/5	1975	You - self-certification at time of registration. In addition, evidence of insurance must be carried in all "affect" motor vehicles	Specific verification for Acc. and Serious Violations will be requested (20 day notice)	Insurer must notify Dept. of Public Safety within 3 days after effective date of cancellation	Culprity of a misdemeanor

TABLE III (CONTINUED)

State	UNINSURED MOTORIST COVERAGE					
	Limits	Property Damage Exclusion	May Insured reject coverage?	Uninsured Motorist Fee	Applicable where Insurer Impaired?	Other Provisions
UTAH	15/30		Yes	None	No prov.	
VERMONT	10/20		No	None	Yes	
VIRGINIA	25/50/5[a]	\$200	No	\$150	No prov.	Arbitration provision prohibited. Insurer may defend uninsured motorist. Also covers where Insurer denies coverage. No coverage provided in policies primarily providing excess coverage.
VIRGIN ISLANDS						
WASHINGTON	15/30		Yes	None	Yes	
WEST VIRGINIA	10/20/5	\$300	No	None	Yes	Also covers where Insurer denies coverage. Arbitration provision prohibited. Requires contact (a hit and run cases.
WISCONSIN	15/30		No	None	Yes	Also covers vehicles insured in lower limits.

[1] Selected, Insurer need not offer coverage on removal unless requested.

[a] Insured may require limits equal to own liability limits. Insurer must offer higher limits in premium rates.

TABLE IV  
COMPULSORY LIABILITY INSURANCE

State	Liability Limits	Year Effective	Certification Required?	Verification Program	Termination Notification Requirements	Penalties
CALIFORNIA	15/30/5	1975	No	None at present	Termination Notice must be given to Commissioner	Fine up to \$100
COLORADO	15/30/5	1974	None at present	None at present	Cancellation for cause after first 60 days - must be on a form which satisfies state requirements	Suspension of license after at-fault accident
CONNECTICUT	20/40/5	1973	You - self-certification at time of registration	You - negative verification procedure	None	1) Class C Misdemeanor - (fine to \$500 or jail sentence up to 3 months) 2) Fine not more than \$1,000
DELAWARE	10/20/5	1972	You - ID card or policy must be produced when vehicle is being inspected at safety lane	None at present	Termination Notice must be given to Commissioner	Misdemeanor. Fine not less than \$300 nor more than \$1,000. May be imprisoned for not more than six months
FLORIDA	10/20/5	1972	You - must show proof of insurance at time of vehicle inspection - ID cards are provided	None at present	Notice of termination of new business (first 6 months of policy period) are to be given to Bureau of Finan. Reg.	Misdemeanor and subject to revocation of license and/or vehicle registration. Fine up to \$1,000 and/or up to one yr. imprisonment
GEORGIA	10/20/5	1975	You - self-certification at time of registration. In addition, evidence of insurance must be carried in all "affect" motor vehicles	Specific verification for Acc. and Serious Violations will be requested (20 day notice)	Insurer must notify Dept. of Public Safety within 5 days after effective date of cancellation	Culprity of a misdemeanor

TABLE IV  
 COMPULSORY LIABILITY INSURANCE

State	Liability Limit	Year Effective	Certification Required?	Verification Program	Termination Notification Requirements	Punition
MASSACHUSETTS	5/30/5	1927	Yes - must have certificate of insurance when registering motor vehicle	None at present	When policy is cancelled, copy is sent to Motor Vehicle Registrar who then revokes registration or asks for recertification	No punishment provided except for forging certificate (Up to \$1,000 fine and/or up to one year in jail.)
MICHIGAN	20/40/10	1973	Yes - must have proof of insurance at time of registration. Utilization of ID card permitted when registering in person. Self-certification permitted when registering by mail	None at present	None	Fine not less than \$100 nor more than \$500 and/or imprisonment for not more than one year
MINNESOTA	25/50/10	1975	Yes - self-certification at time of registration	Random verification	Insurer must notify Comm. of Public Safety of policy cancellation within 10 days of coverage expiration. (Termination after 60 days for non-pay. of premium is not considered as cancellation.)	Guilty of a misdemeanor and will be subject to lic. and/or veh. registration revocation for a period of not less than 6 months
NEVADA	15/30/5	1974	Yes - self-certification at time of registration	None at present	None	None
NEW JERSEY	15/30/5	1973	Yes - must self certify at time of registration. Also must show proof of insurance at time of vehicle inspection - ID cards provided	None at present	Notice of termination must be given to Motor Vehicle Department if policy is cancelled within 6 months of original effective date	Fine not less than \$50 nor more than \$200 and/or imprisonment for a term of not less than 30 days nor more than 3 months. Must also forfeit right to operate a motor vehicle for 6 mos. Subsequent conviction results in 3 mos. imprisonment and forfeiture of right to operate a motor vehicle for 2 years

TABLE IV  
COMPULSORY LIABILITY INSURANCE

State	Liability Limits	Year Effective	Certification Required?	Verification Program	Termination Notification Requirements	Punition
HAWAII	25/0n- limited/ 10	1974	Proof of insurance required when car is registered. Self-certification is permitted. (Proof of insurance cards are provided)	None at present	Termination notice must be given County Dir. and Police Chief of appropriate county of registration prior to date of termination	Subject to following: Fine not to exceed \$1,000 30 days imprisonment, loss of license or registration or combination of penalties
IDAHO	10/20/5	1975	Must display certificate of insurance to County Assessor at time of registration	None at present	Insurers must notify Dept. of Law Enforcement within seven days of the cancellation date. Insurers must secure approval of Dir. of Law Enforcement before cancelling during first 90 days after certification	Gilty of a misdemeanor to either operate a motor vehicle without the required security or to falsify a certificate of liability insurance
KANSAS	15/30/5	1974	Yes - self-certification at time of registration (10 cards are provided)	Yes - negative verification procedure (20 day notice)	Notice of Termination (except for non-pay) must be sent to Dir. of Motor Vehicles who may then revoke registration	Gilty of Class C Misdemeanor. Max. penalty \$500 fine and one month jail sentence
KENTUCKY	10/20/5	1975	Yes - self-certification at time of registration	None at present	None	Shall be fined not less than \$50 nor more than \$500
MARYLAND	20/40/5	1973	Yes - certification of registration will not be issued until owner produces satisfactory evidence that specified security is in effect. Self-certification is in effect	Random verification positive procedure	Insurers are to immediately notify the Administrator of lapses in coverage, so certificate of registration can be suspended	Gilty of a misdemeanor - fine not more than \$500. License & Vehicle suspension up to \$40 penalty assessed by Motor Vehicle Administration

TABLE IV  
 COMPULSORY LIABILITY INSURANCE

State	Liability Limits	Year Effective	Certification Required?	Verification Program	Termination Notification Requirements	Penalties
SOUTH CAROLINA	15/30/5	1974	Yes - self-certification at time of registration	Random verification	Notification of the lapse or termination of insurance must be given to the Chief Highway Commissioner within 10 days following effective date of cancellation	Guilt of a misdemeanor, conviction of which will result in a fine of not more than \$100 or imprisonment for not more than 30 days, also 30 days license suspension. Making false statement as to insurance is a misdemeanor and will result in a fine not less than \$50 nor more than \$100 or imprisonment for not less than 10 days nor more than 30 days. Also, conviction will result in revocation of lic. and denial of registration for 6 months.
ITALY	15/30/5	1974	Yes - self-certification at time of registration. Shall be required to exhibit evidence of security being in effect as a condition to obtain license plate for safety inspection. Evidence may be in form of ID card	Random verification	None	Guilt of a misdemeanor and loss of license and/or registration (Attorney General has ruled that false affirmation of insurance at time of registration will be treated as a felony.)

SOURCE: Insurance Department, State of Arkansas.  
 American Insurance Association, New York  
 Various State Statutes.

TABLE IV  
 COMPULSORY LIABILITY INSURANCE

State	Liability Limits	Year Effective	Certification Required?	Verification Program	Termination Notification Requirements	Penalties
NEW YORK	10/20/5	1957	Yes - must have proof of financial responsibility when registering motor vehicle - ID cards are provided. Self-certification is permitted	Yes - random verification; negative procedure (30 day notice) Specific verification; positive procedure (20 day notice)	None	Fine not less than \$100 nor more than \$1,000 and/or be imprisoned for not more than one year. Revocation of license and/or registration for one year. Also possible impounding of vehicle. Also civil penalty of up to \$300 assessed and collected by Motor Vehicle Department
NORTH CAROLINA	15/30/5	1958	Yes - self-certification at time of registration. However, Commissioner may require owner to produce record of financial responsibility	Yes - negative verification procedure (20 day notice)	Notice of termination must be given to Department of Motor Vehicles "forthwith"	60 days registration suspension and possible imposition of misdemeanor penalties
NORTH DAKOTA	10/20/5	1976	Yes - self-certification at time of registration	Yes - random verification	None	Revocation of registration
OKLAHOMA	5/10/5	1976	Yes - self-certification at time of registration	Yes - negative verification procedure (30 day notice)	Cancellation notice must be sent to Department of Public Safety	\$100 fine
PENNSYLVANIA	15/30/5	1975	Yes - self-certification at time of registration ID cards are provided	Yes - negative verification procedure	Notice of termination must be given to Penn. Dept. of Transportation within first 6 mos. of a new business policy	Guilt of a misdemeanor which will result in a fine of not less than \$100 or more than \$500 or may be imprisoned for not more than 6 mos. or both

TABLE V

## PRIVATE PASSENGER AUTOMOBILE PREMIUM COMPARISONS\*

COMPANY	COVERAGE	STATE								
		<sup>1</sup> ARK 10/20/10	<sup>2</sup> COL 15/30/10	<sup>3</sup> MO 10/20/10	<sup>4</sup> CONN 20/40/10	<sup>5</sup> FLA 10/20/10	<sup>6</sup> OKL 10/20/10	<sup>7</sup> KANSAS 15/30/10	<sup>8</sup> GEORGIA 10/20/10	<sup>9</sup> S.C. 15/30/10
ISO	Liability	143	117	166	232	NA	135	105	128	153
	Comp.	36	45	48	38		36	54	30	29
	Coll.	121	119	171	152		102	90	116	95
	Total	300	281	385	422		273	249	274	277
ALL STATE	Liability	130	111	171	215	120	104	93	104	113
	Comp.	27	30	37	43	16	32	54	29	28
	Coll.	74	61	99	132	47	71	68	80	69
	Total	231	202	307	390	183	207	215	213	205
STATE FARM GROUP	Liability	99	93	127	NA	96	87	75	93	118
	Comp.	18	30	32		18	32	51	20	20
	Coll.	58	73	107		54	68	72	90	60
	Total	175	196	266		168	187	198	203	198

SOURCE: Insurance Services Office

- |                          |                      |                       |
|--------------------------|----------------------|-----------------------|
| 1. Little Rock Territory | 5. Orlando Territory | 9. Columbia Territory |
| 2. Denver Territory      | 6. Tulsa Territory   |                       |
| 3. Kansas City Territory | 7. Wichita Territory |                       |
| 4. Hartford Territory    | 8. Atlanta Territory |                       |

\*Comparison of pleasure use, no youthful operator, annual premiums, physical damage, \$50 deductible, comprehensive and \$100 deductible collision.

DONALD E. WILLIAMS  
COMMISSIONER

FRANK W. SENCINDIVER  
DEPUTY COMMISSIONER



CHERYL F. CLARK  
DRIVER SERVICES ADMINISTRATOR

# COMMONWEALTH of VIRGINIA

*Division of Motor Vehicles*

*2300 West Broad Street*

MAIL ADDRESS  
P. O. BOX 27412  
RICHMOND, VIRGINIA 23269

Under the state law, motor vehicle owners must have an automobile liability insurance policy with a company licensed to do business in Virginia, or pay the uninsured motor vehicle fee of \$200 at the time they purchase license plates or renew their decals. Insurance policies must provide a minimum liability coverage of \$25,000 for injury or death of one person, \$50,000 for injury or death of two or more people and \$10,000 for property damage.

The uninsured motor vehicle fees collected are paid into a fund called the Uninsured Motorist Fund. The funds are distributed to the insurance companies as to the number of policies they write. The law provides that the Commissioner may expend from this fund an amount to be fixed by the Governor for the administration of the article.

The following is a summary of four methods that we use to monitor our insurance program in Virginia, along with copies of the Motor Vehicle Law that allows us to use these methods of monitoring.

1. FR422A, Insurance Confirmation Form, was designed by DMV to be issued by law enforcement agencies at a random road check. (§ 46.1-167.1)

FR422A received -----	29,261
FR422A orders issued -----	7,720

2. FR4A, Insurance Confirmation Form, issued to DMV by insurance companies when a company cancels policy within six months of issue date. (§ 46.1-513.1)

FR4A received -----	120,415
FR4A orders issued -----	17,099

3. FR300C, Citizen Accident Report, required when vehicle is involved in a reportable accident. Purpose is to confirm insurance (§ 46.1-167.4)

Accident reports received -----	145,645
Accident orders issued -----	21,269



*A Partnership With the Public*

4. FRI, Insurance Confirmation Form, issued by DMV requesting insurance information. (\$ 46.1-167.1)

FRI forms issued -----	303
FRI orders issued -----	179

The above figures are based on fiscal year July 1, 1981, to June 30, 1982. They do not reflect the number of cases that were cancelled due to the owner of vehicles in question show they had the required insurance at the time of the possible violation of the law, but failed to notify DMV before the order was issued.

Our records indicate there were 3.9 million registered motor vehicles in Virginia during this period. During the same period 7,977 uninsured motor vehicle fees were paid at the time the vehicle was registered or re-registered.

# MADD

MOTHERS AGAINST DRUNK DRIVERS

*Fairbanks Northern Lights Chapter*

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

September 28, 1983

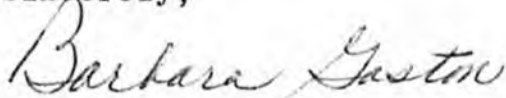
Senator Richard I. Eliason  
Box 143  
Sitka, Alaska 99835

Dear Senator Eliason,

I have enclosed a copy of the statutes and backup material on how the State of Virginia handled their insurance problem. I realize that we cannot, of course, adopt any one state's methods of doing things, but I thought that perhaps this information would be helpful to you in working out a solution to our problem here in the State of Alaska.

I was extremely impressed to read that they had approximately 3.9 million registered motor vehicles in the State of Virginia during fiscal year July 1, 1981 to June 30, 1982, and only 7,977 uninsured motorists vehicle fees were collected.

Sincerely,



Barbara Gaston, President  
Fairbanks Northern Lights Chapter, MADD

1982 STATUTES

EFFECTIVE JULY 1, 1982

## ARTICLE 2.

*Driving Motor Vehicle, etc., While Intoxicated.*

§ 18.2-266. Driving motor vehicle, engine, etc., while intoxicated. — It shall be unlawful for any person to drive or operate any motor vehicle, engine or train while under the influence of alcohol, or while under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature. For the purposes of this section, the term "motor vehicle" shall include pedal bicycles with helper motors, while operated on the public highways of this State. (Code 1950, § 18.1-54; 1960, c. 358; 1975, cc. 14, 15; 1977, c. 637.)

**Cross references.** — As to dismissal of one of dual charges for driving while intoxicated and reckless driving upon conviction of other charge, see § 19.2-294.1. As to incorporation of provisions of this article in local ordinances, see § 46.1-188. As to additional penalties for fourth conviction of violation of this section and certain other offenses, see § 46.1-423.1. As to revocation of license upon fourth conviction, see § 46.1-423.2. As to revocation of operator's license, see note to § 46.1-466. As to bringing person arrested for violation of this section before judicial officer, see note to § 52-21.

**Law Review.** — For survey of Virginia criminal law for the year 1975-1976, see 62 Va. L. Rev. 1400 (1976). For note discussing the defendant's right to independent analysis of the breathalyzer ampoule, see 21 Wm. & Mary L. Rev. 219 (1979). For note, "Criminal Procedure and Criminal Law: Virginia Supreme Court Decisions During the 70's," see 15 U. Rich. L. Rev. 585 (1981).

**Construction.** — In construing this section and §§ 18.2-270 through 18.2-273 consideration must be given to the words used, their relation to the subject matter in which they are used, the purposes for which the statute was intended, and the mischief sought to be suppressed. *Commonwealth v. Ellett*, 174 Va. 403, 4 S.E.2d 762 (1939).

The gravamen of the offense is driving while under the influence of alcohol, and the Commonwealth must establish both essential facts beyond a reasonable doubt to carry the burden of proof. *Clemmer v. Commonwealth*, 208 Va. 661, 159 S.E.2d 664 (1968).

This section and the "implied consent" statute are separate. — The "implied consent" statute § 18.2-268 and the drunken driving statute (this section) are not intricately related, but rather completely separate offenses with separate penalties. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

The defendant's contention at the trial that this section and § 18.2-268 should be read together by virtue of the decision of *Russell v. Hammond*, 200 Va. 600, 106 S.E.2d 626 (1959) has no merit. This section is a separate statute and is not cited in *Russell v. Hammond* as being read together with the blood test statutes. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

Driving an automobile means putting it in motion. *Gallagher v. Commonwealth*, 205 Va. 666, 139 S.E.2d 37 (1964).

But the word "operate" is not limited to moving the vehicle from one place to another. *Gallagher v. Commonwealth*, 205 Va. 666, 139 S.E.2d 37 (1964); *Lyons v. City of Petersburg*, 221 Va. 10, 266 S.E.2d 880 (1980).

The meaning of the word "operate" as used in this section is not limited to the movement of

the vehicle. *Nicolls v. Commonwealth*, 212 Va. 257, 184 S.E.2d 9 (1971).

The word "operate" is not defined in this section, but the word "operator" is defined, in part, in § 46.1-1 (17) as "every person who drives or is in actual physical control of a motor vehicle," and this definition is approved for the purpose of determining whether one "operates" a motor vehicle within the meaning of this section. *Nicolls v. Commonwealth*, 212 Va. 257, 184 S.E.2d 9 (1971); *Lyons v. City of Petersburg*, 221 Va. 10, 266 S.E.2d 880 (1980).

**"Operating" inoperable vehicle.** — The contention that a defendant cannot be convicted of operating an inoperable vehicle is without merit, since a motor vehicle is defined in § 46.1-1 (15) as "every vehicle as herein defined which is self-propelled or designed for self-propulsion." *Nicolls v. Commonwealth*, 212 Va. 257, 184 S.E.2d 9 (1971).

Where defendant was arrested after the officer found him sitting at the steering wheel of his car, which was stuck in a ditch, with the motor running and the right rear wheel spinning, it was held that he was operating the vehicle and that his conviction was proper under this section, for it prohibits operation as well as driving of a vehicle while intoxicated. *Gallagher v. Commonwealth*, 205 Va. 666, 139 S.E.2d 37 (1964).

**No automatic right to blood test.** — It does not appear that a person arrested for driving under the influence has the automatic right to a blood test. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

Section 18.2-268 does not entitle one charged with a violation of this section to an automatic blood test. *United States v. Fletcher*, 344 F. Supp. 332 (E.D. Va. 1972).

**Effect of refusal to take blood test.** — The concept of the law is that a driver, if arrested under this section, may be asked to consent to taking the blood test and for an unreasonable refusal, the penalty of a suspended license would be imposed. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

**Violation of section as negligence.** — If defendant was driving his car while under the influence of intoxicants, he violated this section and that was negligence. Yet it was not his intoxication but his negligence that had to be the proximate cause of the mishap before there could be a finding against him because of his conduct in that respect. *Bogstad v. Hope*, 199 Va. 453, 100 S.E.2d 745 (1957).

One committing a homicide while violating this section may be convicted of involuntary manslaughter. *Massie v. Commonwealth*, 177 Va. 883, 15 S.E.2d 30 (1941).

There can be no conviction unless there is evidence tending to establish the agency

responsible for the erratic behavior of the accused. *Miller v. Commonwealth*, 214 Va. 689, 204 S.E.2d 268 (1974).

**Degree of intoxication contemplated.** — Under this section the burden is not upon the Commonwealth to prove that, while he was driving an automobile, accused was under the influence of intoxicants to such an extent that his ability to drive with safety to himself and others was thereby materially impaired. The test to be applied, in a prosecution under this section, is not merely the ability of the driver to operate the automobile with safety to himself and others, but whether or not he is under the influence of intoxicants at the time he is driving or running an automobile. *Owens v. Commonwealth*, 147 Va. 624, 136 S.E. 765 (1927).

The degree of intoxication is a circumstance relevant to a determination of the question whether, in light of all other circumstances, the act of driving an automobile was such an improper performance of a lawful act as to constitute negligence so gross and culpable as to indicate a callous disregard to human life. *Beck v. Commonwealth*, 216 Va. 1, 216 S.E.2d 8 (1975).

→ **Person acquitted under section could be prosecuted for involuntary manslaughter.** — The doctrine of collateral estoppel may not bar the prosecution for involuntary manslaughter of a person previously acquitted of driving under the influence of intoxicants, since the issue of intoxication is not necessarily dispositive of the crime of involuntary manslaughter. *Simon v. Commonwealth*, 220 Va. 412, 258 S.E.2d 567 (1979).

**But evidence of intoxication barred.** — Although the defendant could be tried for involuntary manslaughter, even though he previously had been acquitted of driving under the influence of intoxicants based upon failure of the Commonwealth to prove legal intoxication, since the issue of intoxication is not necessarily dispositive of the crime of involuntary manslaughter, the Commonwealth should have been barred, under the doctrine of collateral estoppel, from introducing in the manslaughter trial evidence to show that the defendant was intoxicated while operating the motor vehicle. *Simon v. Commonwealth*, 220 Va. 412, 258 S.E.2d 567 (1979).

**Though consumption of alcohol could be shown.** — If the Commonwealth elected to try a defendant who previously had been acquitted of the offense under this section for involuntary manslaughter, the Commonwealth would not be estopped from introducing evidence to show that the defendant consumed alcohol shortly before the accident in question, since the quantity of alcohol consumed by an automobile driver, even though not enough to cause legal intoxication, may be sufficient to impair his capacity to perceive the dangers with the

clarity, make decisions with the prudence, and operate the vehicle with the skill and caution required by law. *Simon v. Commonwealth*, 220 Va. 412, 258 S.E.2d 567 (1979).

**Criminal negligence.** — Even when the evidence shows a level of intoxication lower than that necessary to a conviction for violation of this section, such evidence is germane to the question of criminal negligence. *Beck v. Commonwealth*, 216 Va. 1, 216 S.E.2d 8 (1975).

For a discussion of the applicability of Miranda warnings to motor vehicle offenses, see *Clay v. Riddle*, 341 F.2d 456 (4th Cir. 1976).

**Question for jury.** — In a prosecution for operating a motor vehicle while under the influence of intoxicants, there was evidence for the State that the defendant was intoxicated. The evidence given by the defendant and his witnesses was to the effect that he was not intoxicated. The resulting conflict in the evidence was for the jury to settle. *Rodgers v. Commonwealth*, 197 Va. 527, 90 S.E.2d 257 (1955).

**Instruction defining intoxication.** — In a prosecution for violation of this section, an instruction defining intoxication should be in the language of subsection (14) of § 4-2. *Rodgers v. Commonwealth*, 197 Va. 527, 90 S.E.2d 257 (1955), commented on in 12 Wash. & Lee L. Rev. 82 (1955).

In a prosecution for drunken driving, it was reversible error to instruct the jury that one is under the influence of intoxicating beverages if he has voluntarily taken an amount of such beverage "as to make him act differently from what he would have done if he had taken none." The instruction was not in accord with the statutory definition given in § 4-2 (14). *Gardner v. Commonwealth*, 195 Va. 945, 81 S.E.2d 614 (1954).

The burden is on the Commonwealth to prove that the defendant was under the influence of intoxicants, not on the defendant to prove that he was not. The Commonwealth's evidence must exclude every reasonable hypothesis of innocence. Until that is done the defendant is not required to explain or to offer evidence of his innocence. *Clemmer v. Commonwealth*, 208 Va. 661, 159 S.E.2d 664 (1968).

In order to convict the defendant, it is necessary that the Commonwealth establish two things: (1) that the defendant was operating or driving a motor vehicle, and (2) that he was under the influence of intoxicants at the time he was driving or operating it. *Nicolls v. Commonwealth*, 212 Va. 257, 184 S.E.2d 9 (1971).

The Commonwealth bears the burden of proving that the accused was driving under the influence of alcohol or other self-administered intoxicant. *Miller v. Commonwealth*, 214 Va. 689, 204 S.E.2d 252 (1974).

**Confusing instruction properly refused.** — It was not error to refuse an instruction that defendant might be thought guilty of reckless driving yet not be guilty of driving while drunk. This would have been confusing to the jury, directing their attention to an offense with which defendant was not charged. *Mawyer v. Commonwealth*, 203 Va. 895, 128 S.E.2d 433 (1962).

The evidence was sufficient to support defendant's conviction of driving under influence of intoxicants where defendant admitted having had two drinks, drove his car onto the shoulder of the road and again into the center lane, veered across the road when the trooper signalled him to stop then back again into a telephone pole, was unsteady on his feet when arrested and proposed to the officer that the charge be fixed. *Doughty v. Commonwealth*, 204 Va. 240, 129 S.E.2d 664 (1963).

Conviction was supported by the evidence where it was proved defendant drove his vehicle into the rear of a bus stopped for a red light, gave no explanation for the occurrence, denied he was driving his vehicle and made conflicting statements as to who was driving, had a strong odor of alcohol on his breath, and could not satisfactorily complete certain coordination tests administered by police at the scene. *Holt v. City of Richmond*, 204 Va. 364, 131 S.E.2d 394 (1963).

Evidence held insufficient to support conviction of driving under the influence of intoxicants. *Fowlkes v. Commonwealth*, 194 Va. 676, 74 S.E.2d 683 (1953).

Evidence establishing that defendant was intoxicated fifty-five minutes after being involved in an accident was not sufficient to support a jury finding that he was intoxicated at the time of the accident. *Coffey v. Commonwealth*, 202 Va. 185, 116 S.E.2d 257 (1960).

The manner in which the accident occurred, the appearance and behavior of defendant, and his bizarre conduct generally, constituted sufficient evidence to engender a probability of

guilt. However, the evidence failed to establish that the drinking of alcohol or the self-administering of drugs caused this conduct, and, in its absence, the court of appeals was unable to conclude that beyond a reasonable doubt defendant operated his automobile under the influence of alcohol or some self-administered drug. *Clemmer v. Commonwealth*, 208 Va. 661, 159 S.E.2d 664 (1968).

The evidence was not such that one could infer from it a tacit admission by defendant that he had been drinking, or was under the influence of alcohol. *Clemmer v. Commonwealth*, 208 Va. 661, 159 S.E.2d 664 (1968).

**Prosecution in federal court for driving while intoxicated on federal land.** — The Assimilative Crimes Act of 1948, 18 U.S.C.A. § 13, makes applicable to a prosecution in a federal court for driving while intoxicated on a federal parkway within the territorial limits of Virginia the Virginia statute which prohibits one from driving an automobile while under the influence of alcohol and the Virginia statute (§ 18.2-270) which prescribes penalties for the offense. *Kay v. United States*, 255 F.2d 476 (4th Cir. 1958), commented on in 16 Wash. & Lee L. Rev. 62 (1959).

In a prosecution under the Assimilative Crimes Act for drunken driving on a military post in Virginia, the magistrate need not consider both the Virginia statutes, this section and § 18.2-268 together, but may consider this section as a separate offense and disregard any evidence as to blood tests with respect to a drunken driving charge. *United States v. Ghulson*, 319 F. Supp. 499 (E.D. Va. 1970).

**Applicability to driving on private roads.** — In *Valentine v. County of Brunswick*, 202 Va. 696, 119 S.E.2d 486 (1961), it was held that a county ordinance similar to this section applied to driving on private roads as well as public highways.

Applied in *Davis v. Commonwealth*, 219 Va. 806, 252 S.E.2d 299 (1979).

#### § 18.2-267. Analysis of breath to determine alcoholic content of blood.

— (a) Any person who is suspected of a violation of § 18.2-266 shall be entitled, if such equipment be available, to have his breath analyzed to determine the probable alcoholic content of his blood. Such breath may be analyzed by any police officer of the Commonwealth, or of any county, city or town, or by any member of the sheriff's department of any county, in the normal discharge of his duties.

(b) The Department of General Services, Division of Consolidated Laboratory Services shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

(c) Any person who has been stopped by a police officer of the Commonwealth, or of any county, city or town, or by any member of the sheriff's department of any county and is suspected by such officer to be guilty of a violation of § 18.2-266, shall have the right to refuse to permit his breath to

be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution under § 18.2-266, provided, however, that nothing in this section shall be construed as limiting in any manner the provisions of § 18.2-268.

(d) Whenever the breath sample so taken and analyzed indicates that there is alcohol present in the blood of the person from whom the breath was taken, the officer may charge such person for the violation of § 18.2-266, or a similar ordinance of a county, city or town wherein the arrest is made. Any person so charged shall then be subject to the provisions of § 18.2-268, or of a similar ordinance of a county, city or town.

(e) The results of such breath analysis shall not be admitted into evidence in any prosecution under § 18.2-266, the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having violated the provisions of § 18.2-266.

(f) Police officers or members of any sheriff's department shall, upon stopping any person suspected of having violated the provisions of § 18.2-266, advise such person of his rights under the provisions of this section. (Code 1950, § 18.1-54.1; 1970, c. 511; 1975, cc. 14, 15; 1979, c. 717.)

**Law Review.** — For survey of Virginia law on criminal law and procedure for the year 1969-1970, see 56 Va. L. Rev. 1572 (1970). For survey of recent legislation on criminal law — breath test to determine alcoholic content of

blood, see 5 U. Rich. L. Rev. 189 (1970). For comment on the admissibility of documentary evidence and the right to confrontation, see 12 Wm. & Mary L. Rev. 440 (1970).

**§ 18.2-268. Use of chemical test to determine alcoholic content of blood; procedure; qualifications and liability of person withdrawing blood; costs; evidence; suspension of license for refusal to submit to test; localities authorized to adopt parallel provisions.** — (a) As used in this section "license" means any operator's, chauffeur's or learner's permit or license authorizing the operation of a motor vehicle upon the highways.

(b) Any person whether licensed by Virginia or not, who operates a motor vehicle upon a public highway in this Commonwealth on and after January 1, 1973, shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood or breath taken for a chemical test to determine the alcoholic content of his blood, if such person is arrested for violation of § 18.2-266 or of a similar ordinance of any county, city or town within two hours of the alleged offense. Any person so arrested shall elect to have either the breath or blood sample taken, but not both. It shall not be a matter of defense that either test is not available.

(c) If a person after being arrested for a violation of § 18.2-266 or of a similar ordinance of any county, city or town and after having been advised by the arresting officer that a person who operates a motor vehicle upon a public highway in this Commonwealth shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood or breath taken for a chemical test to determine the alcoholic content of his blood, and that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of this Commonwealth, then refuses to permit the taking of a sample of his blood or breath for such tests, the arresting officer shall take the person arrested before a committing magistrate and if he does again so refuse after having been further advised by such magistrate of the law requiring a blood or breath test to be taken and the penalty for refusal, and so declares again his refusal in writing upon a form provided by the Division of Consolidated Laboratory Services (hereinafter referred to as Division), or refuses or fails to so declare in writing and such fact is certified as prescribed in paragraph (j), then no blood or breath sample shall be taken even though he may thereafter request same.

(d) Only a physician, registered professional nurse, graduate laboratory technician or a technician or nurse designated by order of a circuit court acting upon the recommendation of a licensed physician, using soap and water to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining the alcoholic content thereof. No civil liability shall attach to any person authorized to withdraw blood as provided herein as a result of the act of withdrawing blood from any person submitting thereto, provided the blood was withdrawn according to recognized medical procedures; and provided further that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood sample.

(d1) Portions of the blood sample so withdrawn shall be placed in each of two vials provided by the Division which vials shall be sealed and labeled by the person taking the sample or at his direction, showing on each the name of the accused, the name of the person taking the blood sample, and the date and time the blood sample was taken. The vials shall be placed in two containers provided by the Division, which containers shall be sealed so as not to allow tampering with the contents. The arresting or accompanying officer shall take possession of the two containers holding the vials as soon as the vials are placed in such containers and sealed, and shall transport or mail one of the vials forthwith to the Division. The officer taking possession of the other container (hereinafter referred to as second container) shall, immediately after taking possession of the second container give to the accused a form provided by the Division which shall set forth the procedure to obtain an independent analysis of the blood in the second container, and a list of those laboratories and their addresses, approved by the Division; such form shall contain a space for the accused or his counsel to direct the officer possessing such second container to forward that container to such approved laboratory for analysis, if desired. The officer having the second container, after delivery of the form referred to in the preceding sentence (unless at that time directed by the accused in writing on such form to forward the second container to an approved laboratory of the accused's choice, in which event the officer shall do so) shall deliver the second container to the chief police officer of the county, city or town in which the case will be heard, and the chief police officer who receives the same shall keep it in his possession for a period of seventy-two hours, during which time the accused or his counsel may, in writing, on the form provided hereinabove, direct the chief police officer having possession of the second container to mail it to the laboratory of the accused's choice chosen from the approved list. As used in this section, the term "chief police officer" shall mean the sheriff in any county not having a chief of police, the chief of police of any county having a chief of police, the chief of police of the city or the sergeant or chief of police of the town in which the charge will be heard.

(d2) The testing of the contents of the second container shall be made in the same manner as hereafter set forth concerning the procedure to be followed by the Division, and all procedures established herein for transmittal, testing and admission of the result in the trial of the case shall be the same as for the sample sent to the Division.

(d3) A fee not to exceed fifteen dollars shall be allowed the approved laboratory for making the analysis of the second blood sample which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.2-266, or of a similar ordinance of any county, city or town, the fee charged by the laboratory for testing the blood sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the State treasury.

(d4) If the chief police officer having possession of the second container is not directed as herein provided to mail it within seventy-two hours after receiving the container then the officer shall destroy such container.

(e) Upon receipt of the blood sample forwarded to the Division for analysis, the Division shall cause it to be examined for alcoholic content and the Director of the Division or his designated representative shall execute a certificate which shall indicate the name of the accused, the date, time and by whom the blood sample was received and examined, a statement that the container seal had not been broken or otherwise tampered with, a statement that the container was one provided by the Division and a statement of the alcoholic content of the sample. The certificate attached to the vial from which the blood sample examined was taken shall be returned to the clerk of the court in which the charge will be heard. The certificate attached to the container forwarded on behalf of the accused shall also be returned to the clerk of the court in which the charge will be heard, and, on motion of the accused, such certificate shall be admissible in evidence when attested by the pathologist or by the supervisor of the laboratory approved by the Division.

(f) When any blood sample taken in accordance with the provisions of this section is forwarded for analysis to the Division, a report of the results of such analysis shall be made and filed in that office. Upon proper identification of vial into which the blood sample was placed, the certificate as provided for in this section shall, when duly attested by the Director of the Division or his designated representative, be admissible in any court, in any criminal or civil proceeding, as evidence of the facts therein stated and of the results of such analysis.

(g) Upon the request of the person whose blood or breath sample was taken for a chemical test to determine the alcoholic content of his blood, the results of such test or tests shall be made available to him.

(h) A fee not exceeding ten dollars shall be allowed the person withdrawing a blood sample in accordance with this section, which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.2-266 or of a similar ordinance of any county, city or town, or is placed under the purview of a probational, educational, or rehabilitational program as set forth in § 18.2-271.1, the amount charged by the person withdrawing the sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the State treasury.

(i) In any trial for a violation of § 18.2-266 of the Code or of a similar ordinance of any county, city or town, this section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of the result of the blood or breath test or tests, if any, consider such other relevant evidence of the condition of the accused as shall be admissible in evidence. The failure of an accused to permit a sample of his blood or breath to be taken for a chemical test to determine the alcoholic content of his blood is not evidence and shall not be subject to comment by the Commonwealth at the trial of the case, except in rebuttal; nor shall the fact that a blood or breath test had been offered the accused be evidence or the subject of comment by the Commonwealth, except in rebuttal.

(j) The form referred to in paragraph (e) shall contain a brief statement of the law requiring the taking of a blood or breath sample and the penalty for refusal, declaration of refusal and lines for the signature of the person from whom the blood or breath sample is sought, the date and the signature of a witness to the signing. If such person refuses or fails to execute such declaration, the committing justice, clerk or assistant clerk shall certify such fact, and that the committing justice, clerk or assistant clerk advised the person arrested that such refusal or failure, if found to be unreasonable, constitutes

grounds for the revocation of such person's license to drive. The committing or issuing justice, clerk or assistant clerk shall forthwith issue a warrant charging the person refusing to take the test to determine the alcoholic content of his blood, with violation of this section. The warrant shall be executed in the same manner as criminal warrants. Venue for the trial of the warrant shall lie in the court of the county or city in which the offense of driving under the influence of intoxicants is to be tried.

(k) The executed declaration of refusal or the certificate of the committing justice, as the case may be, shall be attached to the warrant and shall be forwarded by the committing justice, clerk or assistant clerk to the court in which the offense of driving under the influence of intoxicants shall be tried.

(l) When the court receives the declaration of refusal or certificate referred to in paragraph (k) together with the warrant charging the defendant with refusing to submit to having a sample of his blood or breath taken for the determination of the alcoholic content of his blood, the court shall fix a date for the trial of the warrant, at such time as the court shall designate, but subsequent to the defendant's criminal trial for driving under the influence of intoxicants.

(m) The declaration of refusal or certificate under paragraph (k), as the case may be, shall be prima facie evidence that the defendant refused to submit to the taking of a sample of his blood or breath to determine the alcoholic content of his blood as provided hereinabove. However, this shall not be deemed to prohibit the defendant from introducing on his behalf evidence of the basis for his refusal to submit to the taking of a sample of his blood or breath to determine the alcoholic content of his blood. The court shall determine the reasonableness of such refusal.

(n) If the court shall find the defendant guilty as charged in the warrant, the court shall suspend the defendant's license for a period of ninety days for a first offense and for six months for a second or subsequent offense or refusal within one year of the first or other such refusals; the time shall be computed as follows: the date of the first offense and the date of the second or subsequent offense; provided, that if the defendant shall plead guilty to a violation of § 18.2-266, or of a similar ordinance of a county, city or town, the court may dismiss the warrant.

(o) The court shall forward the defendant's license to the Commissioner of the Division of Motor Vehicles of Virginia as in other cases of similar nature for suspension of license unless, however, the defendant shall appeal his conviction in which case the court shall return the license to the defendant upon his appeal being perfected.

(p) The procedure for appeal and trial shall be the same as provided by law for misdemeanors; if requested by either party, trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2, and the Commonwealth shall be required to prove its case beyond a reasonable doubt.

(q) No person arrested for a violation of § 18.2-266 or a similar ordinance of any county, city or town shall be required to execute in favor of any person or corporation a waiver or release of liability in connection with the withdrawal of blood and as a condition precedent to the withdrawal of blood as provided for herein.

(r) The court or the jury trying the case shall determine the innocence or the guilt of the defendant from all the evidence concerning his condition at the time of the alleged offense.

(r1) Chemical analysis of a person's breath, to be considered valid under the provisions of this section, shall be performed by an individual possessing a valid license to conduct such tests, with a type of equipment and in accordance with the methods approved by the Division. Such breath-testing equipment shall be tested for its accuracy by the Division at least once every six months.

The Division is directed to establish a training program for all individuals who are to administer the breath tests, of at least forty hours of instruction in the operation of the breath-test equipment and the administration of such tests. Upon the successful completion of the training program the Division may issue a license to the individual operator indicating that he has completed the course and is authorized to conduct a breath-test analysis. Licenses previously issued by the State Health Commissioner shall continue to be valid until the expiration date.

Any individual conducting a breath test under the provisions of this section and as authorized by the Division shall issue a certificate which will indicate that the test was conducted in accordance with the manufacturer's specifications, the equipment on which the breath test was conducted has been tested within the past six months and has been found to be accurate, the name of the accused, the date, the time the sample was taken from the accused, the alcoholic content of the sample, and by whom the sample was examined. The certificate, as provided for in this section, when duly attested by the authorized individual conducting the breath test, shall be admissible in any court in any criminal or civil proceeding as evidence of the facts therein stated and of the results of such analysis. In no case may the officer making the arrest, or anyone with him at the time of the arrest, or anyone participating in the arrest of the accused, make the breath test or analyze the results thereof. A copy of such certificate shall be forthwith delivered to the accused.

(s) The steps herein set forth relating to the taking, handling, identification, and disposition of blood or breath samples are procedural in nature and not substantive. Substantial compliance therewith shall be deemed to be sufficient. Failure to comply with any one or more of such steps or portions thereof, or variance in the results of the two blood tests shall not of itself be grounds for finding the defendant not guilty, but shall go to the weight of the evidence and shall be considered as set forth above with all the evidence in the case, provided that the defendant shall have the right to introduce evidence on his own behalf to show noncompliance with the aforesaid procedure or any part thereof, and that as a result his rights were prejudiced.

(t) The governing bodies of the several counties, cities and towns are authorized to adopt ordinances paralleling the provisions of (a) through (s) of this section. (Code 1950, § 18.1-55.1; 1964, c. 240; 1966, c. 635; 1970, c. 622; 1972, cc. 741, 756; 1973, c. 511; 1974, c. 591; 1975, cc. 14, 15, 587; 1977, cc. 638, 659; 1978, c. 593; 1979, cc. 717, 728; 1980, c. 553; 1981, c. 424.)

**Editor's note.** — Many of the cases in the following annotation were decided under repealed §§ 18.1-55 and 18.1-56, which covered the same subject matter as this section.

The 1981 amendment inserted "on motion of the accused" in the third sentence of subsection (e).

**Law Review.** — For comment on use of blood tests as evidence of intoxication in Virginia, see 18 Wash. & Lee L. Rev. 370 (1961). For note on Virginia's implied consent statute, a survey and appraisal, see 49 Va. L. Rev. 386 (1963). For note on the Virginia blood test statute discussing statistical methods of evaluating blood samples, see 56 Va. L. Rev. 349 (1970). For survey of Virginia law on criminal law and procedure for the year 1969-1970, see 56 Va. L. Rev. 1572 (1970). For survey of Virginia law on administrative law for the year 1969-1970, see 56 Va. L. Rev. 1603 (1970). For comment on the

admissibility of documentary evidence and the right to confrontation, see 12 Wm. & Mary L. Rev. 440 (1970). For note comparing Virginia law with a model implied consent statute for drunken drivers, see 12 Wm. & Mary L. Rev. 654 (1971). For survey of Virginia law on criminal law for the year 1971-1972, see 58 Va. L. Rev. 1206 (1972). For survey of Virginia law on evidence for the year 1971-1972, see 58 Va. L. Rev. 1268 (1972). For survey of Virginia practice and pleading for the year 1975-1976, see 62 Va. L. Rev. 1460 (1976). For note discussing the defendant's right to independent analysis of the breathalyzer ampoule, see 21 Wm. & Mary L. Rev. 219 (1979).

**Constitutionality.** — See *Shumate v. Commonwealth*, 207 Va. 877, 153 S.E.2d 243 (1967).

Operation of vehicles is subject to reasonable regulation. — The right to operate a

motor vehicle on the highways of this State is not a property, or unrestrained right, but a privilege which is subject to reasonable regulation under the police power of the State in the interest of public safety and welfare. *Walton v. City of Roanoke*, 204 Va. 678, 133 S.E.2d 315 (1963).

Operation of a motor vehicle on a public highway is not a natural right but a conditional privilege, which may be suspended or revoked under the police power. The operator's license is not a contract or a property right in a constitutional sense. It is a privilege granted to those who are qualified, and it is withheld from those who are not. *Deaner v. Commonwealth*, 210 Va. 284, 170 S.E.2d 199 (1969).

The concept of the law is that a driver, if arrested under the drunk driving statute (§ 18.2-266), may be asked to consent to taking the test and for an unreasonable refusal, the penalty of a suspended license would be imposed. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

This section also known as the "implied consent" statute of Virginia, in essence provides that a person who uses the highways of Virginia may, when arrested for drunken driving under § 18.2-266, be required to take a blood test. If the driver unreasonably refuses to do so, then he shall be taken before a committing magistrate and if he refuses again, no blood test will be taken and his license may be suspended. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

This section is largely procedural. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

One of the obvious purposes of the statute was to prescribe a uniform procedure with adequate safeguards and to provide for proof of the result of the analysis without the necessity of producing as a witness every person through whose hands the sample may have passed in the completion of the established routine. *Kay v. United States*, 255 F.2d 476 (4th Cir. 1957).

Consent to take a blood test is given when a person operates a motor vehicle. *Deaner v. Commonwealth*, 210 Va. 285, 170 S.E.2d 199 (1969).

It is not a qualified consent and it is not a conditional consent, and therefore there can be no qualified refusal or conditional refusal to take the test. *Deaner v. Commonwealth*, 210 Va. 285, 170 S.E.2d 199 (1969).

The fact that under the Virginia statute an accused is afforded an opportunity to establish the reasonableness of his refusal does not operate to dilute the consent previously given, or convert that consent into a qualified or conditional one. The statute does excuse from taking the test one whose refusal is reasonable. An illustration is where a person's health would be endangered by the withdrawal of blood. *Deaner*

*v. Commonwealth*, 210 Va. 285, 170 S.E.2d 199 (1969).

**Implied consent not part of penalty.** — The implied consent of one who operates a vehicle on the public highways of Virginia to take a blood test, in event he be charged with drunk driving, is not a part of the penalty or punishment inflicted for drunk driving. It is a measure flowing from the police power of the State designed to protect other users of State highways. *Deaner v. Commonwealth*, 210 Va. 285, 170 S.E.2d 199 (1969).

Section 18.2-266 is separate. — The "implied consent" statute (this section) and the drunken driving statute (§ 18.2-266) are not intricately related, but rather completely separate offenses with separate penalties. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

And need not be read together with this section. — The defendant's contention at the trial that § 18.2-266 and this section should be read together by virtue of the decision of *Russell v. Hammond*, 200 Va. 600, 106 S.E.2d 626 (1959) has no merit. Section 18.2-266 is a separate statute and is not cited in *Russell v. Hammond* as being read together with the blood test statutes. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

The blood test is a new and more objective test and definition. — As compared with the statutory definitional test of intoxication set out in § 4-2 (14), the blood test is a new and more objective test and definition for an accused who consents to a blood analysis. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

And serves to protect accused. — The chemical test serves the salutary purpose of protecting from unjust conviction accused persons who were not in fact intoxicated, by supplying a scientifically accurate method of determining the question. *Walton v. City of Roanoke*, 204 Va. 678, 133 S.E.2d 315 (1963).

But § 4-2 (14) provides for another test. — Even though this section provides a procedure for determining the alcoholic content of blood of one arrested for drunken driving, it is clear that this is not the only procedure for determining intoxication. In fact, § 4-2 (14) provides for another test. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

Even where a blood sample was taken but was invalid because not sufficiently identified, the defendant could be retried for drunken driving under the definition set forth in § 4-2 (14). *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

To support a conviction for drunk driving it is not necessary to take a blood test. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

There is no mandatory requirements that the blood test be given in all cases of drunken driving. This is borne out by subsection (i) of this section. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

And there is no automatic right to a blood test. — It does not appear that a person arrested for driving under the influence has the automatic right to a blood test. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

This section does not entitle one charged with a violation of § 18.2-266 to an automatic blood test. *United States v. Fletcher*, 344 F. Supp. 332 (E.D. Va. 1972).

Nor is a defendant compelled to submit to the blood test. He can refuse to submit, and his refusal will result at most only in a revocation of his privilege to drive, and then only if the refusal is found after fair trial to have been unreasonable. *Walton v. City of Roanoke*, 204 Va. 678, 133 S.E.2d 315 (1963).

If a driver unreasonably refuses to consent to a blood test when picked up on a drunken driving charge, he may be civilly liable and his license may be suspended for the unreasonable refusal. *United States v. Gholson*, 319 F. Supp. 499 (E.D. Va. 1970).

Hence constitutional prohibitions against self-incrimination are not violated. — Former § 18.1-55 did not violate the Virginia Constitution, as it did not compel testimony from defendant. *Walton v. City of Roanoke*, 204 Va. 678, 133 S.E.2d 315 (1963).

Because Fifth Amendment is not applicable. — The Fifth Amendment to the federal Constitution, even if applicable to the states, is limited to oral testimony and does not preclude the use of one's body or secretions therefrom or proof of the results of their chemical analyses. *Walton v. City of Roanoke*, 204 Va. 678, 133 S.E.2d 315 (1963).

There must be some reasonable factual basis for refusal to take the blood test, for example, endangerment of the health of the accused by the withdrawal of blood. *Bailey v. Commonwealth*, 215 Va. 130, 207 S.E.2d 828 (1974).

It is not reasonable to refuse a blood analysis solely because counsel advises not to take the test. *Bailey v. Commonwealth*, 215 Va. 130, 207 S.E.2d 828 (1974).

Nor due to lack of consultation with counsel. — An unwillingness to take the blood test without prior consultation with counsel is not a reasonable refusal. *Coleman v. Commonwealth*, 212 Va. 684, 187 S.E.2d 172 (1972); *Bailey v. Commonwealth*, 215 Va. 130, 207 S.E.2d 828 (1974).

Refusal based on reluctance to sign document implying agency. — A defendant's refusal, following an automobile accident, to sign the consent form required by a hospital before administration of a blood test did not

constitute a refusal to submit to the blood test within the contemplation of subsection (c) of this section, where his refusal was based upon his reluctance to sign his name to a printed document whose contents implied that he had been the driver of the automobile, and not upon his unwillingness to submit to a blood test. *Simon v. Commonwealth*, 220 Va. 412, 258 S.E.2d 567 (1979).

No right to consult counsel. — For the Supreme Court to uphold the contention of defendant that his right to consult counsel before refusing or taking the blood test is a constitutional right, would virtually nullify the implied consent law. *Deaner v. Commonwealth*, 210 Va. 285, 170 S.E.2d 199 (1969).

The blood test prescribed by this section is a part of a civil and administrative proceeding and defendant had no right to condition his taking the test upon his ability first to consult with counsel. *Deaner v. Commonwealth*, 210 Va. 285, 170 S.E.2d 199 (1969).

A person charged with operating a motor vehicle while under the influence of intoxicants does not have a constitutional right to consult an attorney before deciding whether to take a blood test. *Coleman v. Commonwealth*, 212 Va. 684, 187 S.E.2d 172 (1972).

Denial of the right to consult with counsel before an accused decides whether to take a blood test does not impair an accused's right to a trial "by the law of the land" guaranteed by art. I, § 8, of the State Constitution. *Law v. City of Danville*, 212 Va. 702, 187 S.E.2d 197 (1972).

Because a proceeding relative to refusal to take a blood test is civil in nature, a person arrested for driving under the influence does not have a constitutional right to consult with counsel before deciding whether to submit to the test. *Bailey v. Commonwealth*, 215 Va. 130, 207 S.E.2d 828 (1974).

Independent civil and criminal proceedings. — An analysis of this section shows none of the indicia of a criminal prosecution. The criminal offense which gives rise to the procedure under the implied consent law is driving under the influence of alcohol or drugs. The same motor vehicle operation may give rise to two separate and distinct proceedings — one a civil and administrative procedure and the other a criminal action. Each action proceeds independently of the other and the outcome of one is of no consequence to the other. *Deaner v. Commonwealth*, 210 Va. 285, 170 S.E.2d 199 (1969).

There is nothing about the entire proceeding under this section that parallels the procedure in a criminal prosecution. *Deaner v. Commonwealth*, 210 Va. 285, 170 S.E.2d 199 (1969).

An administrative and civil proceeding is not converted into a criminal action merely because the procedural steps preliminary to trial, and incident to appeal, are the same as in a misde-

meanor case. *Deaner v. Commonwealth*, 210 Va. 285, 170 S.E.2d 199 (1969).

The blood test prescribed by this section is part of a civil rather than a criminal proceeding. *Bailey v. Commonwealth*, 215 Va. 130, 207 S.E.2d 828 (1974).

**Certificate of committing justice that defendant refused to submit to test.** — Under subsection (m), the certificate of the committing justice is made "prima facie evidence that the defendant refused to submit to the taking of a sample of his blood to determine the alcoholic content thereof." Lacking a certificate, the Commonwealth is not entitled to the benefit of subsection (m) of the statute; it may, however, prove the refusal by other evidence. *Boggs v. Commonwealth*, 212 Va. 658, 187 S.E.2d 204 (1972).

The warrant referred to by this section is obviously not a criminal warrant. It is in the nature of a writ or precept from a competent authority in pursuance of law, directing the doing of an act, and addressed to the officer or person competent to do the act. *Deaner v. Commonwealth*, 210 Va. 285, 170 S.E.2d 199 (1969).

This section directs that the warrant "be executed" in the same manner as a criminal warrant. This is to prescribe an appropriate method of serving notice on the accused. *Deaner v. Commonwealth*, 210 Va. 285, 170 S.E.2d 199 (1969).

Admission of the certificate does not deprive defendant of his right of confrontation by witnesses. *Kay v. United States*, 255 F.2d 476 (4th Cir. 1958).

And is admissible in federal court. — In a federal court, the certificate would be admissible under the provisions of 28 U.S.C.A. § 1732, as a writing made, pursuant to statutory requirement, in the regular performance of the official duty of the Chief Medical Examiner of Virginia (now the Director of the Division of Consolidated Laboratory Services). *Kay v. United States*, 255 F.2d 476 (4th Cir. 1958), commented on in 16 Wash. & Lee L. Rev. 62 (1959).

**Certificate self-authenticating.** — The General Assembly intended to spare the Commonwealth the prosecutorial and financial burdens of calling two public officers to testify in every drunk driving case involving breathalyzer test evidence. When the certificate contains what this section requires, this section makes the certificate self-authenticating for purposes of admissibility, and once the certificate is admitted, this section makes it evidence of the alcoholic content of the blood to be considered with all other evidence in the case. *Stroupe v. Commonwealth*, 215 Va. 243, 207 S.E.2d 894 (1974).

But the certificate is not conclusive evi-

dence of the statutory regularity of the test. *Stroupe v. Commonwealth*, 215 Va. 243, 207 S.E.2d 894 (1974).

**Relevant questions going to weight of certificate as evidence.** — The questions as to the qualification of the person taking the sample, the possibility of contamination from the fact that the defendant's arm was wiped with alcohol before the needle was inserted into his vein and the effect, if any, of the presence of a white powder, described as an anti-coagulant, in the vial, are all relevant. Such questions, however, go to the weight of the evidence rather than to the initial admissibility of the certificate. If the proof established a material failure to follow the procedure required by statute, it may be that the certificate should be stricken from the record, but the proof here established no such failure. *Kay v. United States*, 255 F.2d 476 (4th Cir. 1958).

**Failure to comply with subsection (s) goes to weight of evidence.** — Subsection (s) of this section provides that the question of how blood is taken is procedural, and a failure to comply with the directed procedures goes to the weight of the evidence and is to be considered with all the evidence in the case, with the right to the defendant to show noncompliance and resulting prejudice. *Shumate v. Commonwealth*, 207 Va. 877, 153 S.E.2d 257 (1967).

With respect to regularity of the test, the statute affords the defendant the right to prove noncompliance with test procedures, but such proof would not defeat admissibility of the certificate but only affect its weight as evidence of the alcoholic content of his blood. *Stroupe v. Commonwealth*, 215 Va. 243, 207 S.E.2d 894 (1974).

But subsection (s) of this section does not change the ultimate burden of proof in a prosecution under this section. *Shumate v. Commonwealth*, 207 Va. 877, 153 S.E.2d 243 (1967).

**Reasonable proof that the instrument was properly sterilized is essential in establishing the reliability of the test itself.** *Brush v. Commonwealth*, 205 Va. 312, 136 S.E.2d 864 (1964).

In the absence of proof showing that the instrument used to withdraw defendant's blood was sterilized pursuant to the requirements of this section, the Commonwealth has not met the burden imposed upon it, and the certificates setting forth the alcoholic content of defendant's blood are not admissible. *Brush v. Commonwealth*, 205 Va. 312, 136 S.E.2d 864 (1964).

**Proof that blood analyzed was that of defendant.** — In a prosecution for operating a motor vehicle while under the influence of intoxicants, arising prior to the enactment of former §§ 18.1-55, 18.1-56 and 18.1-57, evi-

dence was held insufficient to establish beyond a reasonable doubt that the blood analyzed was that of defendant. *Rodgers v. Commonwealth*, 197 Va. 527, 90 S.E.2d 257 (1955).

**Inconsistent date on certificate.** — In a prosecution under a city ordinance paralleling former § 18.1-55, an inconsistent date on the Medical Examiner's (now Director's) certificate, which indicated that the blood was withdrawn from defendant the day before his arrest, caused the certificate to be inadmissible in evidence since the prosecution failed to show the inconsistency to be a typographical error. *Lutz v. City of Richmond*, 205 Va. 93, 135 S.E.2d 156 (1964).

**Facts shown on a certificate raised a reasonable inference that a breath alcohol test was conducted on the type of equipment and in accordance with the methods approved by the State Health Commissioner.** *Calfee v. Commonwealth*, 215 Va. 253, 208 S.E.2d 740 (1974).

**Test given before defendant arrested.** — Where defendant was offered and accepted a blood test within two hours of the offense, but was not arrested until he was released from the hospital several days later, the plain intent of former § 18.1-55 was complied with and evidence of the result of the test was properly admitted. *Bowman v. Commonwealth*, 201 Va. 656, 112 S.E.2d 887 (1960).

**Testimony that accused refused to submit to blood test.** — In a prosecution for drunken driving arising prior to the enactment of former §§ 18.1-55 and 18.1-56, it was held that to permit the arresting officer to testify that defendant at the time of the arrest refused to submit to a blood test did not violate defendant's constitutional privilege against self-incrimination. *Gardner v. Commonwealth*, 195 Va. 945, 81 S.E.2d 614 (1954), commented on in 12 Wash. & Lee L. Rev. 82 (1955).

**Arresting officer.** — Town policeman, called in by State trooper, held an arresting officer. *Bowman v. Commonwealth*, 201 Va. 656, 112 S.E.2d 887 (1960).

**"Drunk-o-meter" test.** — As to use of "drunk-o-meter" test in prosecution under county ordinance, see *Crohundo v. County of Arlington*, 194 Va. 773, 75 S.E.2d 496 (1953).

§ 18.2-269. **Presumptions from alcoholic content of blood.** — In any prosecution for a violation of § 18.2-266, or any similar ordinance of any county, city or town, the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the accused's blood or breath to determine the alcoholic content of his blood in accordance with the provisions of § 18.2-266 shall give rise to the following rebuttable presumptions:

(1) If there was at that time 0.05 percent or less by weight by volume of alcohol in the accused's blood, it shall be presumed that the accused was not under the influence of alcoholic intoxicants;

(2) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight by volume of alcohol in the accused's blood, such facts shall

**Offense may not be prosecuted under federal Assimilative Crimes Act.** — The offense of refusing to take a breathalyzer test may not be prosecuted under the federal Assimilative Crimes Act, since the proceeding under this section to suspend a driver's license for his refusal to submit to a test is administrative and civil, not criminal, in nature. *United States v. Rowe*, 599 F.2d 1319 (4th Cir. 1979).

**This section is irrelevant to prosecutions under federal regulations.** — See *United States v. Eubanks*, 435 F.2d 1261 (4th Cir. 1971).

**Admissibility of test results in manslaughter trial after acquittal under § 18.2-266.** — Where the prosecution would be estopped from introducing evidence of intoxication in a prosecution for involuntary manslaughter following acquittal of the defendant in a prosecution for driving under the influence of intoxicants on the basis of the failure of the Commonwealth to prove legal intoxication, the Commonwealth could not introduce into evidence the results of defendant's blood test, to prove that the defendant had been drinking before the accident in question, even though not estopped from proving that fact, since the prejudicial effect of the evidence would outweigh its probative value. If, however, the defendant presented evidence that he was not drinking before the accident, evidence of the test results would be competent on rebuttal, because its probative value would then outweigh its prejudicial effect. *Simon v. Commonwealth*, 220 Va. 412, 258 S.E.2d 567 (1979).

**Entitled to new trial in circuit court.** — By incorporating the "procedure for appeal" set forth in § 16.1-136 into this section, the General Assembly has declared that a person convicted in a court not of record of unreasonable refusal is entitled, on appeal, to a new trial by jury in the circuit court. *Eames v. Town of Rocky Mount*, 217 Va. 16, 225 S.E.2d 197 (1976).

**Applied in:** *Logan v. Shealy*, 500 F. Supp. 502 (E.D. Va. 1980).

not give rise to any presumption that the accused was or was not under the influence of alcoholic intoxicants, but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused;

(3) If there was at that time 0.10 percent or more by weight by volume of alcohol in the accused's blood, it shall be presumed that the accused was under the influence of alcoholic intoxicants. (Code 1950, § 18.1-57; 1960, c. 358; 1964, c. 240; 1966, c. 636; 1972, c. 757; 1973, c. 459; 1975, cc. 14, 15; 1977, c. 638.)

**Law Review.** — For note on the Virginia blood test statute discussing statistical methods of evaluating blood samples, see 56 Va. L. Rev. 349 (1970). For survey of Virginia law on criminal law for the year 1971-1972, see 58 Va. L. Rev. 1206 (1972). For survey of Virginia law on evidence for the year 1972-1973, see 59 Va. L. Rev. 1526 (1973). For survey of Virginia law on evidence for the year 1973-1974, see 60 Va. L. Rev. 1543 (1974). For note discussing the defendant's right to independent analysis of the breathalyzer ampoule, see 21 Wm. & Mary L. Rev. 219 (1979).

**Constitutionality.** — Consideration by the jury of the statutory presumptions created by

this section does not deprive the defendant of any protected right. *Kay v. United States*, 255 F.2d 476 (4th Cir. 1958).

The presumption created by this section is rebuttable. It neither restricts the defendant in the presentation of his defense nor deprives him of the presumptions of innocence. Since wide experience has demonstrated the close connection between the presumed fact and the alcoholic content of the blood, there is no constitutional objection to the jury's consideration, with all of the other evidence, of the statutory presumption. *Kay v. United States*, 255 F.2d 476 (4th Cir. 1958).

§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction. — Any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor.

Any person convicted of a second offense within less than five years after a first offense under § 18.2-266 shall be punishable by a fine of not less than \$200 nor more than \$1,000 and by confinement in jail for not less than one month nor more than one year. Forty-eight hours of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court. Any person convicted of a second offense within a period of five to ten years of a first offense under § 18.2-266 shall be punishable by a fine of not less than \$200 nor more than \$1,000 and by confinement in jail for not less than one month nor more than one year. Any person convicted of a third offense or subsequent offense within ten years of an offense under § 18.2-266 shall be punishable by a fine of not less than \$500 nor more than \$1,000 and by confinement in jail for not less than two months nor more than one year. Thirty days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within less than five years. Ten days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within a period of five to ten years of a first offense.

For the purpose of this section a conviction or finding of not innocent in the case of a juvenile under the provisions of § 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or town in this State or the laws of any other state substantially similar to the provisions of §§ 18.2-266 through 18.2-269 of this Code, shall be considered a prior conviction. (Code 1950, § 18.1-58; 1960, c. 358; 1962, c. 302; 1975, cc. 14, 15; 1982, c. 301.)

**Cross reference.** — As to application of this section in federal court, see note to § 18.2-266.

The 1982 amendment substituted "Class 1" for "Class 2" in the first paragraph, and rewrote the second paragraph.

**Law Review.** — For note on the Virginia blood test statute discussing statistical methods

of evaluating blood samples, see 56 Va. L. Rev. 349 (1970).

The provisions of this section are dependent upon the nature of the charge contained in the warrant or indictment, and deal with the punishment to be fixed by the court or jury. *Commonwealth v. Ellett*, 174 Va. 403, 4 S.E.2d 762 (1939).

And to impose the heavier punishment prior offense must be charged. — The purpose of this section is to enable the court or jury to impose a heavier punishment when the accused is tried for and convicted of an offense charged as a second or subsequent offense. To effect this purpose, the prior offense must be charged and proven. *Commonwealth v. Ellett*, 174 Va. 403, 4 S.E.2d 762 (1939).

For the heavier punishment to be imposed by jury or a court trying a case without a jury, the prior offenses must be charged and proven. *Calfee v. Commonwealth*, 215 Va. 253, 208 S.E.2d 740 (1974).

The purposes of an allegation in a warrant or indictment that an accused has been previously convicted of a similar offense are to put him on notice that proof of his prior conviction will be introduced in evidence and to permit the imposition of a heavier punishment if the second or subsequent offense is proved. *Calfee v. Commonwealth*, 215 Va. 253, 208 S.E.2d 740 (1974).

**Burden of showing similarity of foreign law.** — Where defendant was convicted for a second and subsequent offense of driving under the influence of intoxicants, a prior conviction for drunk driving in North Carolina which was shown on a certified transcript of the defendant's driving record prepared by the Virginia Division of Motor Vehicles was insufficient to carry the Commonwealth's burden of proving substantial similarity and to shift to the defendant the burden of going forward with the evidence of dissimilarity. *Ruffy v. Commonwealth*,

221 Va. 836, 275 S.E.2d 584 (1981).

**Jury instructions necessary before prior conviction admissible.** — A previous conviction of a similar offense is admissible when the jury is told that such evidence is admitted only for the purpose of fixing the quantum of punishment if the accused is found guilty and is not to be considered by them as evidence of guilt in the second or subsequent offense for which he is on trial. *Calfee v. Commonwealth*, 215 Va. 253, 208 S.E.2d 740 (1974).

Where a final order sentenced accused to thirty days instead of one month as stated in the verdict and presumably prescribed, in accordance with this section, by the town ordinance under which he was prosecuted, the judgment should be made to accord with the verdict in all necessary particulars on a retrial. *Dickerson v. Town of Christiansburg*, 201 Va. 342, 111 S.E.2d 292 (1959).

**Evidence of prior conviction properly admitted.** — Where the trial court instructed the jury that although the defendant had been previously convicted of a similar offense they should not consider this in determining his guilt or innocence of the charge they were then trying, and they were further instructed that in the event they found the defendant guilty as charged in the warrant they could consider the prior conviction in determining the quantum of his punishment, the trial court did not err in admitting evidence of defendant's prior conviction. *Calfee v. Commonwealth*, 215 Va. 253, 208 S.E.2d 740 (1974).

§ 18.2-271. Same; forfeiture of driver's license; suspension of sentence. — Except as provided in § 18.2-271.1, the judgment of conviction if for a first offense under § 18.2-266, or for a similar offense under any county, city or town ordinance, shall of itself operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, engine or train in the Commonwealth for a period of six months from the date of such judgment. If such conviction is for a second or other subsequent offense (i) within five years of a first offense conviction under § 18.2-266 such person's license to operate a motor vehicle, engine or train shall be suspended for a period of three years or, (ii) within five to ten years of a first offense conviction under § 18.2-266 such person's license to operate a motor vehicle, engine or train shall be suspended for a period of two years from the date of the judgment of conviction. Any such period of license suspension, in any case shall run consecutively with any period of suspension for failure to permit a blood or breath sample to be taken as required by § 18.2-268. If any person has heretofore been convicted or found not innocent in the case of a juvenile of violating any similar act in the Commonwealth or any other state and thereafter is convicted of violating the provisions of § 18.2-266, such conviction or finding shall for the purpose of this section and § 18.2-270 be a subsequent offense and shall be punished accordingly. Six months of any license suspension or revocation imposed pursuant to this section for a first offense conviction may be suspended, in whole or in part by the court upon the entry of such person convicted into and the successful completion of a program pursuant to § 18.2-271.1. Upon a second conviction, the court may not suspend more than two years of such license suspension or

revocation if such second conviction occurred less than five years after a previous conviction under § 18.2-270, nor more than one year if such second conviction occurred five to ten years after a previous conviction. Upon a third conviction of a violation of § 18.2-266, such person shall not be eligible for participation in a program pursuant to § 18.2-271.1. (Code 1950, § 18.1-59; 1960, c. 358; 1962, c. 625; 1964, c. 240; 1972, c. 757; 1975, cc. 14, 15; 1982, c. 301.)

The 1982 amendment rewrote this section.

Law Review. — For survey of Virginia law on criminal law and procedure for the year 1969-1970, see 56 Va. L. Rev. 1572 (1970). For survey of Virginia law on criminal law for the year 1971-1972, see 58 Va. L. Rev. 1206 (1972).

Purpose. — The purpose of this section is to deprive the convicted person of the right to secure a permit to operate a vehicle for a specified time after he has been convicted once or more than once. Commonwealth v. Ellett, 174 Va. 403, 4 S.E.2d 762 (1939).

The purpose of §§ 18.2-266 and 18.2-270 through 18.2-273 is not only to punish drunken drivers, but to prevent such drivers from using the highways to the hazard of other citizens. Commonwealth v. Ellett, 174 Va. 403, 4 S.E.2d 762 (1939).

Provisions self-executing. — The provisions of this section become effective only after

judgments of conviction, and then are self-executing. Commonwealth v. Ellett, 174 Va. 403, 4 S.E.2d 762 (1939).

The loss of the right to operate a vehicle is no part of the judgment of conviction, or the punishment fixed by the court or jury, and no action or order of the court or other officer is required to put it into effect. It is not dependent upon evidence necessary to convict. Evidence of conviction alone is essential. Commonwealth v. Ellett, 174 Va. 403, 4 S.E.2d 762 (1939).

"Subsequent offense" need not have been tried as a "second offense". — This section makes a conviction under § 18.2-266 following a conviction for the former violation of a similar act a "subsequent offense," whether or not it was tried as a "second offense." Commonwealth v. Ellett, 174 Va. 403, 4 S.E.2d 762 (1939).

§ 18.2-271.1. Probation, education and rehabilitation of person convicted; person convicted under law of another state. — (a) Any person convicted of a violation of § 18.2-266, or any ordinance of a county, city or town similar to the provisions thereof, or any second offense thereunder, may, with leave of court or upon court order, enter into an alcohol safety action program, or a driver alcohol rehabilitation program or such other alcohol rehabilitation program as may in the opinion of the court be best suited to the needs of such person, in the judicial district in which such charge is brought or in any other judicial district upon such terms and conditions as the court may set forth. In the determination of the eligibility of such person to enter such a program, the court shall consider his prior record of participation in any other alcohol rehabilitation program. If such person has never entered into or been committed to a driver alcohol safety action program or driver alcohol rehabilitation program or similar rehabilitation or education program, in keeping with the procedures provided for in this section, and upon motion of the accused or his counsel, the court shall give mature consideration to the needs of such person in determining whether he be allowed to enter such program.

(a1) The court shall require the person entering such program under the provisions of this section to pay a fee of \$250, a reasonable portion of which as may be determined by the Director of the Department of Transportation Safety, but not to exceed twenty dollars, shall be forwarded to be deposited with the State Treasurer for expenditure by the Department of Transportation Safety for administration of driver alcohol rehabilitation programs, and the balance shall be held in a separate fund for local administration of driver alcohol rehabilitation programs. Upon a positive finding that the defendant is indigent, the court may reduce or waive the fee. In addition to the costs of the proceeding, fees as may reasonably be required of defendants referred for extended treatment under any such program may be charged.

(b) Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to the provisions thereof, the court shall impose sentence as authorized by §§ 18.2-270 and 18.2-271. Upon a finding that a person so convicted is eligible for participation in the program described herein, the court shall enter the conviction on the warrant, and shall note that the person so convicted has been referred to such program. The court may then proceed to issue an order in accordance with paragraph (b1a) of this section, if the court finds that the person so convicted is eligible for a restricted license. If the court finds that a person is not eligible for such program or subsequently that such person has violated, without good cause, any of the conditions set forth by the court in entering the program, the court shall dispose of the case as if no program had been entered, in which event the revocation provisions of §§ 18.2-271 and 46.1-421 (a) shall be applicable to the conviction. The court shall, upon final disposition of the case, send a copy of its order to the Commissioner of the Division of Motor Vehicles. If such order provides for the issuance of a restricted license, the Commissioner of the Division of Motor Vehicles, upon receipt thereof, shall issue a restricted license. Appeals from any such disposition shall be allowed as provided by law. The time within which an appeal may be taken shall be calculated from the date of the final disposition of the case or any motion for a rehearing, whichever is later.

(b1) Any person who has been convicted in another state of the violation of a law of such state substantially similar to the provisions of § 18.2-266, and whose privilege to operate a motor vehicle in this State is subject to revocation under the provisions of § 46.1-417, may petition the general district court of the county or city in which he resides that he be given probation and assigned to a program as provided in subsection (a) of this section and that upon successful completion of such program his privilege to operate a motor vehicle in this State be restored or, if unrevoked, that any order of the Commissioner of the Division of Motor Vehicles revoking such privilege be stayed. If the court shall find that such person would have qualified therefor if he had been convicted in this State of a violation of § 18.2-266, the court may grant the petition and may suspend the period of license suspension or revocation imposed pursuant to § 46.1-417. Such suspension of sentence shall be conditioned upon the successful completion of a program by the petitioner. If such person has previously been convicted of a violation under § 18.2-266 or the laws of any other state substantially similar thereto, the court may suspend not more than two years of the sentence of license suspension or revocation imposed. If the court subsequently finds that such person has violated any of the conditions set forth by the court, the court shall dispose of the case as if no program had been entered and shall impose a sentence of license suspension or revocation in accordance with the provisions of §§ 18.2-271 or 46.1-421 (a). A copy of the order granting the petition or subsequently revoking or suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner of the Division of Motor Vehicles.

No period of suspension or license revocation shall be imposed pursuant to this subsection which, when considered together with any period of license suspension or revocation previously imposed for the same offense in any state, results in such person's license being suspended for a period in excess of the maximum periods specified in this subsection.

(b1a) Whenever a person enters a program pursuant to this section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such person be issued a restricted permit to operate a motor vehicle for any or all of the following purposes: (i) travel to and from his place of employment; or (ii) travel to an alcohol rehabilitation program entered pursuant to this paragraph; or (iii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary

incident of such employment. The court shall order the surrender of such person's license to operate a motor vehicle to be disposed of in accordance with the provisions of § 46.1-425 and shall forward a copy of its order entered pursuant to this paragraph, which shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify such person, to the Commissioner of the Division of Motor Vehicles. The court shall also provide a copy of its order to the person so convicted who may operate a motor vehicle on the order until receipt from the Commissioner of the Division of Motor Vehicles of a restricted license. A copy of such order or, after receipt thereof, the restricted license shall be carried at all times while operating a motor vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be guilty of a violation of § 46.1-350.

(b2) The court shall have jurisdiction over any person entering such program under any provision of this section until such time as the case has been disposed of by either successful completion of the program, or revocation due to ineligibility or violation of a condition or conditions imposed by the court, whichever shall first occur. Revocation proceedings shall be commenced by notice to show cause why the court should not revoke the privilege afforded by this section. Such notice shall be made by first class mail to the last known address of such person, and shall direct such person to appear before the court in response thereto on a date contained in such notice, which shall not be less than ten days from the date of mailing of the notice. Failure to appear in response to such notice shall of itself be grounds for revocation of such privilege. Notice of revocation under this paragraph shall be sent forthwith to the Commissioner of Motor Vehicles.

(c) The State Treasurer or any city or county is authorized to accept any gifts or bequests of money or property, and any grant, loan, service, payment or property from any source, including the federal government, for the purpose of driver alcohol education. Any such gifts, bequests, grants, loans or payments shall be deposited in the separate fund provided in (a1) hereof.

(d) The Department of Transportation Safety, or any county, city, town, or cities or any combination thereof may establish and, if established, shall operate in accordance with the standards and criteria required by this subsection alcohol safety action programs or driver alcohol treatment and rehabilitation programs or driver alcohol education programs in connection with highway safety. The Department of Transportation Safety and the Department of Mental Health and Mental Retardation shall establish standards and criteria for the implementation and operation of such programs. The Department of Transportation Safety shall establish criteria for the modalities of administration of such programs, as well as public information, accounting procedures and allocation of funds. Funds paid to the State hereunder shall be utilized by the Department of Transportation Safety to offset the costs of state programs and local programs run in conjunction with any county, city or town. The Department of Transportation Safety shall submit an annual report as to actions taken at the close of each calendar year to the Governor and the General Assembly.

(e) [Repealed.] (1975, c. 601; 1976, cc. 612, 691; 1977, c. 240; 1978, c. 352; 1979, c. 353; 1980, c. 589; 1981, c. 195; 1982, c. 301 )

The 1981 amendment deleted "not more than" preceding "200" in the first sentence of subsection (a1) and added the present second sentence of that subsection.

The 1982 amendment rewrote the first sentence of subsection (a); deleted "and, upon com-

pletion of the program successfully, whether the warrant should be amended as provided in (b) hereof" at the end of subsection (a); in subsection (a1), substituted "\$250" for "two hundred dollars" in the first sentence, deleted the third sentence, relating to the payment of costs,

and inserted "to the costs of the proceeding" and deleted "such" preceding "fees" in the last sentence; rewrote subsections (b) and (b1); inserted subsection (b1a); added the last sentence of subsection (b2); and deleted subsection (e), relating to the court's authority to make lawful disposition of a charge in violation of § 18.2-266 or a similar local offense.

**Recognition of the right of municipalities to deny with the subject.** — This section clearly recognizes the power, which theretofore existed in the municipalities, to adopt ordinances declaring the offense of driving vehicles or conveyances, while intoxicated, as

an offense against the municipality. *Shaw v. City of Norfolk*, 167 Va. 346, 189 S.E. 335 (1937). See § 15.1-132.

**Discretion in assignments to alcohol programs.** — The language "the court shall give mature consideration to the needs of such person in determining whether he be allowed to enter such program" imposes upon a court in a drunk-driving case the duty to give "good faith consideration" to a motion to assign the accused to an alcohol program authorized by this section. *Midkiff v. Commonwealth*, — Va. —, 266 S.E.2d 150 (1982).

§ 18.2-272. **Driving after forfeiture of license.** — If any person so convicted shall, during the time for which he is deprived of his right so to do, drive or operate any motor vehicle, engine or train in this State, he shall be guilty of a misdemeanor and shall be confined in jail not less than ten days nor more than six months and may in addition be fined not exceeding five hundred dollars; but nothing in this section or §§ 18.2-266, 18.2-270 or 18.2-271, shall be construed as conflicting with or repealing any ordinance or resolution of any city, town or county which restricts still further the right of such persons to drive or operate any such vehicle or conveyance. (Code 1950, § 18.1-60; 1960, c. 358; 1975, cc. 14, 15.)

§ 18.2-273. **Report of conviction to Division of Motor Vehicles.** — The clerk of every court of record and the judge of every court not of record shall, within thirty days after final conviction of any person in his court under the provisions of this article, report the fact thereof and the name, post-office address and street address of such person, together with the license plate number on the vehicle operated by such person to the Commissioner of the Division of Motor Vehicles who shall preserve a record thereof in his office. (Code 1950, § 18.1-61; 1960, c. 358; 1975, cc. 14, 15.)

The Commissioner of the Division of Motor Vehicles has no power to hear evidence to fix the measure of guilt, nor has he

the right to disregard a judgment of conviction. *Commonwealth v. Ellett*, 17 Va. 403, 4 S.E. 2d 762 (1939).

## 1982 CUMULATIVE SUPPLEMENT

## ARTICLE 3.

*Revocation of Licenses; Additional Penalties.*

§ 46.1-417. Required revocation for one year upon conviction or finding of guilty of certain offenses; exceptions thereto. — The Commissioner shall forthwith revoke, and not thereafter reissue during the period of one year, except as provided in §§ 18.2-271 or 18.2-271.1, the license of any person, resident or nonresident, upon receiving a record of his conviction or a record of his having been found guilty in the case of a juvenile of any of the following crimes, committed in violation of either a state law or a valid town, city or county ordinance paralleling and substantially conforming to a like state law and to all changes and amendments of it:

(a) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;

(b) Violation of the provisions of § 18.2-266 or § 18.2-272 or violation of a valid town, city or county ordinance paralleling and substantially conforming to §§ 18.2-266 to 18.2-273;

(b)(i) Upon receipt of a copy of an order entered by a general district court pursuant to the provisions of § 18.2-271.1 (b1) that a person whose license would otherwise be subject to revocation under the provisions of this section has entered a program under the provision of § 18.2-271.1, the Commissioner shall not revoke such license, or having revoked it, shall forthwith withdraw his order of revocation and any order of suspension of registration certificates and plates under the provisions of § 46.1-418. In the event the Commissioner shall receive a copy of an order from the court revoking or suspending the privilege of such person to operate a motor vehicle, the Commissioner shall then revoke or suspend such license and suspend such registration and plates pursuant to this section and § 46.1-418;

(c) Perjury or the making of a false affidavit to the Division under this chapter or any other law of this State requiring the registration of motor vehicles or regulating their operation on highways, or the making of a false statement to the Division on any application for an operator's or chauffeur's license;


(d) Any crime punishable as a felony under the motor vehicle laws of this State or any other felony in the commission of which a motor vehicle is used;

(e) [Repealed.]

(f) Failure to stop and disclose his identity at the scene of the accident, on the part of a driver of a motor vehicle involved in an accident resulting in the death of or injury to another person. (Code 1950, § 46-416; 1958, cc. 496, 541; 1960, c. 364; 1966, c. 238; 1974, c. 453; 1976, cc. 612, 691; 1982, c. 301.)

The 1982 amendment substituted "§§ 18.2-271 or 18.2-271.1" for "§ 18.2-271" and "guilty" for "not innocent" in the introductory paragraph, inserted "or suspending" and "or suspend" in the second sentence of subdivision (b)(i) and deleted the last sentence of subdivision (b)(i), relating to the purging of records.

§ 46.1-418. Suspension of registration certificates and plates upon suspension or revocation of operator's license. — Whenever the Commissioner under any law of this State suspends or revokes the operator's or chauffeur's license of any person upon receiving record of his conviction he shall also suspend all of the registration certificates and registration plates issued for any motor vehicle registered in the name as owner of the person so convicted, except that he shall not suspend such registration certificate or registration plates, notwithstanding any provisions of law to the contrary, in the event the owner has previously given, or gives and thereafter maintains, proof of his financial responsibility in the future in the manner specified in this chapter with respect to each and every motor vehicle owned and registered by such person. In this event it shall be lawful for said vehicle or vehicles to be operated during this period of suspension by any duly licensed driver when so authorized by the owner of same. (Code 1950, § 46-59; 1958, c. 541; 1975, c. 458.)



§ 46.1-421. Revocation of license upon conviction of driving while under the influence of drugs, intoxicants, etc.; exception. — (a) The Commissioner shall forthwith revoke and not thereafter reissue for three years the operator's or chauffeur's license of any person upon receiving a record of a conviction of such person for a violation of the provisions of § 18.2-266 pertaining to driving under the influence of drugs or intoxicants or of § 18.2-272 pertaining to driving while the driver's license has been forfeited for a conviction under § 18.2-266, or upon receiving a record of a conviction for a violation of a federal law, or law of any other state or a valid ordinance of any city, town or county of this State, or of any other state similar to § 18.2-266 or 18.2-272, either of such convictions being subsequent to a prior conviction for a violation of a federal law, law of any other state or town, city or county or ordinance of any other state similar to § 18.2-266 or 18.2-272 as the case may be or of the provisions of § 18.2-266 or 18.2-272; provided that the subsequent violation has been committed within ten years from the prior violation; provided, that if the Commissioner has received a copy of an order as provided in § 18.2-271.1, he shall not revoke such license, but shall proceed as provided in § 46.1-417.

(b) Notwithstanding any other provision of law, the Commissioner shall forthwith revoke and not thereafter reissue the operator's or chauffeur's license of any person upon receiving a record of a third conviction of such person for a violation of the provisions of § 18.2-266 pertaining to driving while under the influence of drugs or intoxicants, or a federal law, or law of any other state or a valid ordinance of any city, town, or county of this State, similar to § 18.2-266, notwithstanding the length of time between violations; provided, however, that each of said convictions occurs after July one, nineteen hundred sixty-four. At the expiration of ten years from the date of the revocation hereunder, such person may petition the circuit court in the county or city wherein such person resides, and for good cause shown, such license may in the discretion of the court be restored on such terms and conditions as the court may prescribe.

(c) Any person who has had his operator's or chauffeur's license revoked in accordance with subsection (b) above may, after the expiration of five years from the date of such revocation, petition the circuit court of his residence for restoration of his privilege to operate a motor vehicle in this State. Upon such petition, the court may, in its discretion, restore to such person such privilege, if the court is satisfied from the evidence presented that: (i) at the time of such previous convictions, the petitioner was addicted to or psychologically dependent upon the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent upon the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with regard to the operation of a motor vehicle. (Code 1950, § 46-417; 1958, c. 541; 1960, c. 364; 1964, c. 194; 1968, c. 561; 1976, cc. 359, 612, 691.)

Applied in *Scott v. Hill*, 407 F. Supp. 391  
(E.D. Va. 1976).

## ANALYSIS OF AUTOMOBILE NO FAULT STATUTES

The material contained in this publication is the result of an effort undertaken by the Casualty and Automobile Division of GAB. It is an attempt to analyze only "Pure No Fault Statutes", that is, those statutes which restrict or limit the right to recover for "pain and suffering". Additional jurisdictions have purported "No Fault Statutes", but these statutes do not restrict or limit the right to recover for pain and suffering.

In this publication, we have attempted to utilize the statutory language as much as possible. Obviously, for the sake of clarity, we did have to deviate from this rule in certain instances. It should be recognized that there are ongoing judicial and insurance department interpretations that will have an impact upon the practical application of the statutes. Should you have a need for further information, or an interpretation, it is suggested that you can contact the GAB Regional Casualty Supervisor in the involved jurisdiction. He can be located through your GAB Office Directory.

The ranks of Pure No Fault States have been reduced to (15) by Nevada's repeal of their "No Fault Act" effective 1-1-80. The Florida Act's section on "Limitation on Right to Damages", has been found unconstitutional by the Florida Fifth District Court of Appeals and will be reviewed by the Florida Supreme Court. If upheld, this would remove Florida from the ranks of the Pure No Fault States.

The Federal "Omnibus Reconciliation Act of 1980" amended Section 1862 (b) of the Social Security Act. This amendment, effective December 5, 1980, indicates that Medicare is to be excess where payment for Health Care Services can be made under automobile liability or No Fault Insurance. This has created a conflict with the language of many of the State No Fault Acts.

GAB Business Services, Inc.  
August 1, 1981

## TABLE OF CONTENTS

Colorado Auto Accident Reparation Act . . . . .	2
The Connecticut No-Fault Motor Vehicle Insurance Statute . . . . .	4
Florida Automobile Reparations Reform Act . . . . .	6
Georgia Motor Vehicle Accident Reparations Act . . . . .	8
Hawaii No-Fault Law . . . . .	10
Kansas Automobile Injury Reparation Act . . . . .	12
Kentucky Revised Statute—Relating to No-Fault . . . . .	14
The Massachusetts No-Fault Motor Vehicle Insurance Statute . . . . .	16
The Michigan No-Fault Auto Insurance Law . . . . .	18
Minnesota No-Fault Automobile Insurance Act . . . . .	20
New Jersey Automobile Reparation Reform Act . . . . .	22
New York Comprehensive Automobile Insurance Reparation Act . . . . .	24
North Dakota Auto Accident Reparations Act . . . . .	26
Pennsylvania No-Fault Motor Vehicle Insurance Act . . . . .	28
Utah Automobile No-Fault Insurance Act . . . . .	30

## DEFINITIONS

- A. **MOTOR VEHICLE**—Means any vehicle required to be registered and licensed and designed to be propelled by an engine or a motor. The term does not include motorcycles, motor scooters, mini-bikes, snowmobiles, bicycles with motor or engine attached, or any vehicle designed primarily for use off the road or on rails.
- B. **INSURED**—Means the named insured, relatives of named insured residing in the same household, or any person using the described motor vehicle with permission of the named insured.

## SECURITY REQUIRED

Every owner of a motor vehicle who operates the motor vehicle on the public highways of Colorado or who knowingly permits the operation of the vehicle on the public highways of Colorado shall have in effect a policy complying with the terms of this Act.

Minimum liability coverages shall be in the amounts of 15/30/5.

Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued at the discretion of the Director.

## PROPERTY DAMAGE

No Provisions in the Act.

## PERSONS COVERED

For accidental bodily injury sustained as the result of an accident involving any motor vehicle in Colorado or any other jurisdiction:

- A. Named insured and resident relatives of named insured.
1. First party benefits extend to the named insured and resident relatives injured in a motor vehicle accident in Colorado or any other jurisdiction including the United States, its territories or possessions, and Canada.
  2. The named insured and his relatives (residing in the same household) do not qualify for basic reparation benefits when injury arises from the use or operation of an owned motor vehicle not actually covered under the terms of this act.
  3. Coverages not applicable to a relative where the relative is injured as a result of the use or operation of his own motor vehicle not actually covered under the terms of this act.
- B. Other persons including pedestrians.
1. First party benefits extend to any other person while occupying a described motor vehicle with permission of insured or while a pedestrian for accidental bodily injury occurring within Colorado.

## PERSONS EXCLUDED

The coverage required by this Act may be subject to conditions and exclusions approved by the Commissioner which are not inconsistent with the requirements of this Act. Required coverages may also be subject to exclusions where the injured person:

1. Sustains injury caused by his own intentional act.
2. Is operating a motor vehicle as a converter.

## TORT ACTION

There is no limit to an action in tort by either an insurer or a person injured as a result of an automobile accident against an alleged tort-feasor who was:

- (1) Using a motor vehicle not required to be covered under the provisions of this Act (except where provision has been made for equivalent coverage)
- (2) Using a motor vehicle required to be covered by this Act and was not, at the time of accident.
- (3) Deliberately and intentionally committing a tort.
- (4) Subject as a manufacturer, distributor, supplier, or repairman to a tort action arising out of product liability or product defect.

## TORT EXEMPTION

No person for whom direct benefit coverage is required by this Act or for whom direct benefits would have been payable shall be allowed to recover against an owner, user, or operator of a motor vehicle for damages for bodily injury caused by motor vehicle except where injury results in:

- (1) Death
- (2) Dismemberment
- (3) Permanent disability
- (4) Permanent disfigurement
- (5) Medical and rehabilitative services have a "reasonable value" in excess of \$500.
- (6) Loss of earnings and "loss of earning capacity" extending beyond 52 weeks after the accident and not compensated by an applicable complying policy.

## PRIORITY OF BENEFITS

1. When an accident involves the operation of a motor vehicle by a person who is neither the owner of the motor vehicle involved in the accident nor an employee of the owner, and the operator of the motor vehicle is an insured under a complying policy other than the complying policy insuring the motor vehicle involved in the accident, primary coverage as to all coverages provided in the policy under which the operator is an insured shall be afforded by the policy insuring the said operator, and any policy under which the owner is an insured shall afford excess coverage.
2. When an accident involves the operation of a motor vehicle designed to seat twelve or more passengers which is owned by, and being operated on behalf of, a nonprofit religious, charitable, or educational organization entitled to tax exemption under section 501 (c) (3) of the federal "Internal Revenue Code of 1954", as amended, or an

equivalent successor statutory provision, with the exception of such vehicles owned or being operated on behalf of a public school district, the policy covering said vehicle shall be secondary and excess to any motor vehicle policy covering any person occupying said vehicle to the extent of such other policy coverages; except that the coverage of the operator or assistant operator of said vehicle, whether or not he is being paid to operate the vehicle.

3. Auto insurance is primary except for Colorado Workmen's Compensation and medical benefits under Social Security.\*

\*See Omnibus Reconciliation Act of 1980 for clarification.

## BASIC REPARATION BENEFITS

**Medical**—\$25,000. Covering all reasonable and necessary medical expenses, including recognized religious methods of healing performed within 3 years after the accident for bodily injury arising out of the use or operation of a motor vehicle.

**Rehabilitation**—\$25,000. Covering rehabilitation procedures for treatment and rehabilitative occupational training for a period of 5 years after the accident.

**Work Loss**—100% of first \$125 of loss of gross income per week commencing the day after the date of accident, not exceeding 52 additional weeks.

**Substitute Services**—\$15 per day for essential services reasonably incurred in lieu of those the injured person would have performed without income, commencing the day after the date of accident, not exceeding 52 additional weeks.

**Death Benefits**—\$1,000 payable to the estate of the deceased person for whom direct benefits are provided.

**Additional Benefits**—Every insurer shall offer in addition to Basic Reparation Benefits compensation of all medical expenses without dollar or time limitation; benefits equivalent to 85% of loss of gross income per week; and may provide an aggregate limit for Reparation Benefits of \$100,000 per injury or death per person per accident.

The insurers must offer \$100 deductible applying to mandatory first party medical payments for claims for the named insured and resident relatives.

## CO-ORDINATION OF BENEFITS

To avoid duplication of benefits, providers of benefits available through other insurance or contract rights are required to coordinate their benefits with basic Reparation Benefits.

1. Such providers must file evidence with the commissioner that co-ordination results in an equitable reduction in premiums or costs to beneficiaries of such other insurance or contract rights.
2. It must clearly state in the contract that such benefits have been co-ordinated with basic reparation benefits.

## INSURERS RIGHTS OF RECOVERY

Neither any person eligible for direct benefits nor any insurer providing benefits shall have any right to recover against an owner, user, or operator of a motor vehicle or against any person or organization legally responsible for the acts or omissions of such person in any action for damages for benefits required to be paid, regardless of any deductible option, waiting period, or percentage limitation; except that an insurer paying benefits to or for any one person for whose injuries legal liability exists or may exist on the part of a third person who is not an insured under a policy of automobile

liability insurance issued by an insurer licensed to write automobile liability insurance in this state shall have a direct cause of action against an alleged tort-feasor to only the extent of the alleged tort-feasor's insurance coverage in excess of reasonable compensation paid to the injured person for such person's injury or damage by the alleged tort-feasor's insurer when the injured person could recover in tort.

An insurer of a private passenger motor vehicle (defined for this section of the Act as "an automobile of the private passenger, station wagon, or camper type, not used as public or livery conveyance or an automobile of the panel delivery or truck type with rated local capacity of 1,500 pounds or less.) involved in an accident with a commercial vehicle shall have a direct cause of action for all benefits paid, such direct cause of action shall be to only the extent of the alleged tort-feasor's insurance coverage in excess of reasonable compensation paid to the injured person for such person's injury or damage by the alleged tort-feasor's insurer.

## INTER-COMPANY ARBITRATION

Every insurer licensed to write motor vehicle insurance in Colorado, as a condition to maintaining such license after January 1, 1974, agrees:

- (1) That, where its insured is or would be held legally liable for damages and benefits paid by another insurer, it will reimburse such other insurer to the extent of such benefits but not in excess of the amount of damages so recoverable for the type of loss covered by such benefits and only to the extent of the alleged tort-feasor's insurance coverage in excess of reasonable compensation paid to the injured person for such person's injury or damage by the alleged tort-feasor's insurer.
- (2) That the issue of liability and the amount thereof shall be decided by mandatory, binding inter-company arbitration procedures approved by the Commissioner. Any collision or upset payments arising out of the same occurrence shall be subject to the same arbitration procedures.
- (3) That arbitration proceedings shall be brought within one year of the first payment of any first party benefits by the insurer claiming reimbursement. Award if any to include provision for reimbursement of subsequent benefits.
- (4) Nothing in this section shall be construed to allow an insurer to claim and receive reimbursement, whether by arbitration, subrogation, litigation, intracompany setoff, or any other means, from the liability insurance of the tort-feasor in such a manner as to reduce the amount of liability insurance available to reasonably compensate an injured victim having a claim or cause of action.

## MISCELLANEOUS

- A. **PENALTY**—First party benefits shall be paid on a monthly basis. Benefits are overdue if not paid within 30 days after insurer receives reasonable proof of the fact and amount of expenses incurred. Overdue payments bear interest at the rate of 18% per annum. Persons entitled to benefits, which are overdue, may bring an action in contract to recover same. In the event of wilful and wanton failure of the insurer to pay benefits when due, the insurer shall pay the other party an amount 3 times the amount of unpaid benefits in controversy.
- B. **COLLISION & UPSET COVERAGE**—All insurers shall offer collision and upset coverage subject to deductibles of \$50 to \$250 in \$50 increments applying to accidents within the United States, its territories or possessions, Canada, or Mexico. An insurer may not refuse to write or renew motor vehicle insurance solely on the basis of age, color, sex, etc., or because a person has been cancelled or refused by another motor vehicle insurer.

## DEFINITIONS

- 1. PRIVATE PASSENGER MOTOR VEHICLE:** A private passenger type automobile, a station wagon type automobile, a camper type motor vehicle, or a truck type motor vehicle with a load capacity of 1500 lbs. or less, registered as a passenger motor vehicle, or as a passenger and commercial motor vehicle, or used for farming purposes. It does not include a motorcycle or motor vehicle used as a public or livery conveyance.
- 2. BASIC REPARATIONS INSURED:** The owner of a private passenger motor vehicle; any relative of such owner residing in the same household; a minor in the custody of such owner or relative and resides in the same household.
- 3. INJURY:** means bodily injury, sickness, or disease, including death resulting therefrom, accidentally caused and arising out of the ownership, maintenance or use of a private passenger motor vehicle.  
**Note:** Applying ONLY to parked private passenger motor vehicles. An "injury" does not arise unless:
  - (a) injury was sustained by a person while occupying the vehicle,
  - (b) the vehicle was parked in such a way as to cause unreasonable risk of the injury which occurred.
  - (c) The injury was the direct result of physical contact with
    - (1) equipment permanently mounted on such vehicle, while such equipment was being operated or used.
    - (2) Property being lifted onto or lowered from such vehicle in the loading or unloading process.

## SECURITY REQUIRED

This Act requires the owners of private passenger motor vehicles registered or used in Connecticut to maintain security for payment of Basic Reparation Benefits and automobile liability coverage with minimum limits of 20/40/5.

The security required may be provided by (1) a policy of insurance complying with this Act or by (2) self-insurance. (Self-insurance to be approved by the Insurance Commissioner.) Security must be verified by a current No-Fault automobile insurance identification card for each insured vehicle.

Failure to provide security required is a Class C misdemeanor.

Any owner who fails to provide security shall be personally liable for the payment of Basic Reparations Benefits.

## PROPERTY DAMAGE

Basic Reparations Benefits do not include benefits for physical damage to property including private passenger motor vehicles and their contents.

## PERSONS COVERED:

1. Basic Reparations Insureds (see definitions) while occupying any private passenger motor vehicle or while a pedestrian injured by physical contact with a motor vehicle of any type.
2. Any other person while occupying the owner's private passenger motor vehicle or while a pedestrian injured by physical contact with such vehicle.

3. An employee driving or occupying a private passenger motor vehicle furnished by his employer, gets his Basic Reparations Benefits from the security covering the vehicle, if none, then from the security under which the injured person is a Basic Reparations Insured.

## PERSONS EXCLUDED:

Insurer of the owner is not liable to pay benefits for injury sustained by:

- (a) any other person who is the owner of a motor vehicle for which security is required under this act.
- (b) a pedestrian, other than a Basic Reparations Insured, if the accident occurs outside Connecticut
- (c) any person, if accident occurs outside United States, its territories or possessions or Canada
- (d) any person, other than a Basic Reparations Insured, to the extent that he is entitled to direct benefits without regard to fault for economic loss from the insurer of any other motor vehicle.
- (e) any person who converts a private passenger motor vehicle is disqualified from basic or added reparations benefits except from a policy under which the converter is a Basic Reparations Insured.
- (f) any person intentionally causing or attempting to cause injury to himself or another is disqualified from basic or added reparations benefits for injury arising from his acts.

## TORT EXEMPTIONS AND TORT ACTION

No cause of action to recover economic loss or non-economic detriment based on negligence arising out of the ownership, maintenance or use of a private passenger motor vehicle may be maintained against the owner, registrant operator or occupant of a private passenger motor vehicle for which security has been provided as required by this Act, or against any person or organization legally responsible for the operation of such vehicle, unless the injured party has sustained

- (a) death
- (b) permanent injury
- (c) fracture of any bone
- (d) permanent significant disfigurement
- (e) permanent loss of any bodily function
- (f) loss of a body member
- (g) allowable expense (as defined) in excess of \$400.

The above exemption of a person from liability to pay damages for injury applies only with respect to injury to:

- (a) owner of private passenger motor vehicle with respect to which security is required under this Act
- (b) persons entitled to basic reparations benefits from any such owner or his insurer or through the assigned claims plan
- (c) persons who would be entitled to such benefits but for Section 13 (converters) or Section 14 (intentional injury).

## BASIC REPARATIONS BENEFITS

Owner's insurer is liable to pay, without regard to fault, Basic Reparations Benefits under a uniform separately identifiable coverage of \$5,000 per person, per accident for Economic Loss resulting from injury arising out of ownership, maintenance or use of a private passenger motor vehicle, as a motor vehicle, subject to the provisions of this Act.

**ECONOMIC LOSS:** means economic detriment resulting from injury and consists only of Allowable Expenses, Work Loss and if injury causes death Survivor's Loss, limited to a total of \$5,000 per person, per accident.

**Non-Economic Detriment**—pain and suffering, physical impairment, etc. is not economic loss.

**Economic Loss consist of:**

(a) **Allowable Expense:**

Reasonable charges incurred for reasonably needed products, services and accommodations, including medical, surgical, dental and hospital care, nursing services, ambulance, x-rays, prosthetic devices, laboratory fees and drugs and rehabilitation. Also funeral and burial expenses up to \$2,000.

(b) **Work Loss:**

(1) Loss of income from work an injured person who would normally be employed in gainful activity during the period of his disability would have performed had he not been injured, or if unemployed at the time of the accident, at least the equivalent of any unemployment compensation benefits the injured person would have received if eligible during the period of his disability had he not been injured.

Note: Lost income normally earned will be reduced by any income received from substitute work actually performed OR by available substitute work which the injured person could have performed but *unreasonably* failed to undertake.

(2) Also includes expenses reasonably incurred for ordinary and necessary services from others, not members of injured person's household, for those services the injured person would normally perform (not for income) for benefit of himself or his family. Work loss does not include any loss after the death of an injured person.

(3) Benefits for work loss shall not exceed 85% of the value of such work loss. Both work loss and survivor's loss shall not exceed \$200 per week; pro rata for lesser period.

(c) **Survivor's Loss:**

Economic loss sustained after an injured person's death by his dependent survivors during their dependency for contributions they would have received for their support from the decedent from work he would normally have performed or if unemployed at the time of the accident, at least the equivalent of unemployment compensation the decedent would have received if eligible, had he not died and expenses if eligible had he not died and expenses reasonably incurred by dependent survivors for ordinary and necessary services from others not members of decedent's household for services decedent would have performed for his household.

Note: "Dependent survivors" of deceased injured include only:

- (1) surviving spouse if residing in his household at time of his death.
- (2) other persons receiving support from deceased at time of his death who qualify as dependents for federal income tax purposes, who are under age 18 or who are physically or mentally incapacitated from earning or engaged full-time in formal program of academic or vocational education or training.

## COLLATERAL BENEFITS

Basic Reparation Benefits payable for economic loss shall be reduced by any amount otherwise paid, or payable under any workmen's compensation law or by Medicare Benefits\* other than lifetime reserve days, and provided Medicare Benefits utilized herein do not result in a reduction in the eligible injured person's Medicare Benefits for a subsequent illness or injury; the Medicare provision shall apply to all policies delivered or issued for delivery, renewed or amended in this state on or after October 1, 1979 and to all policies, regardless of their effective date, by October 1, 1980.

\*See Omnibus Reconciliation Act of 1980 for clarification.

## SUBROGATION

Whenever a person receiving basic reparations benefits recovers damages by judgment or settlement from owner, registrant, operator or occupant of a private motor vehicle with respect to which security has been provided, or from a person or organization legally responsible for his acts or omissions, the insurer shall be entitled to reimbursement from the claimant to the extent of basic reparations benefits already paid minus an amount representing insured's reasonable attorney's fees needed to collect the basic reparations benefits.

Such amount shall be computed by multiplying the total amount of such reasonable attorney's fees and costs, by a fraction, the numerator of which shall be the amount of basic reparations benefits received by the claimant and the denominator shall be the amount of damages recovered by the claimant, less court costs. In no event shall such amount exceed one-third the amount of the basic reparations benefits to be reimbursed to the insurer. The insurer has a lien on the claimant's recovery to the extent of the reimbursement he is entitled to.

## MISCELLANEOUS

1. Comparative negligence doctrine is established.
2. Doctrines of Last Clear Chance and Assumption of Risk are abolished.
3. Each self-insurer and insurer licensed to write basic reparation insurance shall participate in the assigned claims bureau and the assigned claims plan.
4. Basic Reparations Benefits are payable as Allowable Expense, Work Loss, or Survivor's Loss is incurred. Benefits are overdue, if not paid within 15 working days after insurer receives proof and amount of loss realized, except, insurer may accumulate claims up to \$100 for period not exceeding 30 days, and then payment is due 15 working days after period of accumulation. Overdue payments bears interest of 12% per annum.
5. Insurance commissioner upon application by insurer may direct insured to be examined by a physician chosen by the commissioner or forfeit Basic Reparations benefits.

## DEFINITIONS:

1. "Motor Vehicle"—Any self-propelled vehicle which is of a type both designed and required to be licensed for use on the highways of this state and includes
  - a. Private passenger motor vehicles.
  - b. Commercial motor vehicle.
  - c. Does not include any self-propelled vehicle with less than four wheels or a mobile home.
2. Owner—Person who holds legal title to motor vehicle. Includes debtor or lessee (who has option to purchase) provided such persons have right of possession.
3. Named Insured—Person named as the insured under the policy.
4. Relative Residing in Same Household—Any relative by blood or marriage, who usually makes his home in same family unit—whether or not temporarily living elsewhere.
5. Government Vehicles Excluded From Act—Act does not apply to any motor vehicle owned by state, political subdivision of the state, or the federal government.

## SECURITY REQUIREMENTS:

1. Persons Required to Provide Security:
  - a. Every owner, or registrant, of motor vehicle required to be registered and licensed in Florida.
  - b. Every non-resident, owner or registrant of motor vehicle (whether operated or not) when vehicle is physically present in Florida more than 90 days during preceding 365 days.
2. How Security is Provided:
  - a. Insurance policy.
  - b. Any other method approved by the Department of Insurance.
  - c. Proof that personal injury protection benefits have been purchased and that financial responsibility requirements have been complied with shall be made by applicant at the time of registration of any motor vehicle.
3. Penalty When Security Not Provided:
  - a. Owner who fails to have proper security in effect, at the time of an accident, shall have no immunity from tort liability, and be personally liable for payment of benefits under this act.
  - b. Any owner, or registrant, who operates such motor vehicle, or permits it to be operated in this state without the security required by this act shall have his operator's license and registration revoked.

## PERSONS COVERED BY ACT:

1. Named insured, relatives residing in same household, passengers in the insured vehicle, persons operating insured motor vehicle with consent of insured, and pedestrians.
2. Owner:

*In Florida Only*—Accidental bodily injury sustained in this state by the owner while occupying a motor vehicle, or while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with a motor vehicle.

*Outside Florida*—Accidental bodily injury sustained outside this state but within the United States of America, its territories or possessions, or Canada by the owner while occupying the owner's motor vehicle.
3. Relatives—same as owner provided the relative at the time of the accident is domiciled in the owner's household and is not himself the owner of a motor vehicle

with respect to which security is required.

4. Other Persons:

*In Florida Only*—Accidental bodily injury sustained in this state by any other person while occupying the owner's motor vehicle or, if a resident of this state, while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with such motor vehicle, provided the injured person is not:

  - a. Owner of a motor vehicle subject to this act
  - b. Entitled to personal injury benefits from the insured of the owner or owners of such a motor vehicle.

## TORT EXEMPTION:

- B.1. Every owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided by this act is exempt from tort liability for damages because of:
  - a. bodily injury.
  - b. sickness or disease.

Arising out of ownership, operation, maintenance or use of such motor vehicle (in the State of Florida) to the extent that benefits are payable under this act, or would have been payable but for an exclusion or deductible. Unless the injured is entitled to maintain an action for pain, suffering, mental anguish and inconvenience. (See "Tort Action").

### Rights of Florida Residents

The rights of a Florida resident to claim damages in tort, shall not be diminished when they are involved in motor vehicle accidents with persons not required to provide security under this act.

## TORT ACTION:

- Plaintiff may recover damage in tort for pain, suffering, mental anguish and inconvenience because of bodily injury, sickness or disease only in the event that the injury or disease considered in whole or in part of
1. Significant and permanent loss of an important bodily function.
  2. Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.
  3. Significant and permanent scarring or disfigurement.
  4. Death.

## INSURER MAY EXCLUDE BENEFITS

1. To named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy or injury sustained by any person operating the insured motor vehicle without the express or implied consent of the insured.
2. To any person, if such person's conduct contributed to his injury under any of the following circumstances:
  - a. Causing injury to himself intentionally;
  - b. Being convicted of driving while under the influence of alcohol or narcotic drugs to the extent that his driving faculties are impaired;
  - c. While committing a felony.

## PERSONAL INJURY PROTECTION BENEFITS:

Every insurance policy complying with the security benefits of this act shall provide for payment of

### 1. Medical Benefits

- a. 80% of all reasonable expenses for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices, and necessary ambulance, hospital, and nursing services. Such benefits shall also include necessary remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing, in accordance with his religious beliefs.

### 2. Disability Benefits—Due from inability to work proximately caused by injury sustained

- a. 80% of any loss of gross income and loss of earning capacity per individual, unless such benefits are deemed not includable in gross income for federal income tax purposes, in which event such benefits shall be limited to 60 percent.

Note: Practice is to use 60% in all cases. This percent is not considered to be subject to income tax.

- b. All expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his household.

### 3. Funeral Burial or Cremation Benefits

## BENEFIT LIMITATIONS AND PAYMENTS

### 1. Limitations

- a. \$10,000 limit per person (per accident) including a limit of \$1,000 for funeral expense, per person.
- b. No time limit, during which medical expense must be incurred.
- c. No aggregate limit, per accident.

### 2. Optional Limitations

Named insured may elect modified forms of personal protection insurance to apply to named insured alone, or to named insured and dependent relatives residing in same household. Each modification apply to each such person making claim.

Further, the amount of modification cannot be collected in tort from any person who is exempt from tort liability by this act; modifications include,

- a. Deductible modification in amounts of \$250, \$500, \$1000, \$2000, \$3500, \$4000, \$6000 and \$8000
- b. Medicare Modification
- c. Loss of gross income and loss of earning capacity excluded

### 3. Benefits Overdue:

- a. Personal injury protection insurance benefits are overdue if not paid within 30 days after insurer receives written notice of a covered loss and the amount of same. (All disability benefits shall be paid not less than every two weeks.)
- b. The payment for any partial claim is overdue after 30 days written notice and support of the Partial claim has been furnished the insurer.
- c. Payment considered as being made on date draft is placed in the U.S. mail in properly addressed, postpaid envelope. If not posted, then on the date of delivery.
- d. Overdue payments shall bear simple interest of 10% per annum.

## INSURERS RIGHTS TO RECOVERY

### 1. Subrogation

No insurer shall have a lien on any recovery except to the extent of any personal injury protection benefits paid to any person as a benefit arising out of such private passenger motor vehicle insurance, a right of reimbursement against the owner of the insurer of the owner of a commercial motor vehicle, if the benefits paid result from such person.

1. having been an occupant of the commercial motor vehicle
2. or having been struck by the commercial motor vehicle while not an occupant of any self-propelled vehicle.

### 2. Collateral Sources of Indemnity

In any action for personal injury or wrongful death, the court shall admit into evidence the total amount of all collateral sources paid to the claimant, and the court shall instruct the jury to deduct from its verdict the value of all benefits received from any collateral source. Benefits received under workers compensation act shall not be considered a collateral source.

## MISCELLANEOUS

1. Makes uninsured motorist coverage excess over personal injury protection.
2. Authorizes holding PIP benefits in abeyance until trial outcome of charges of
  - a. Driving under influence of alcohol, or narcotic drugs to extent that his driving faculties are impaired
  - b. Committing a felonyIf charges dismissed, nolle prossed or insured acquitted, 30 days payment provision activated from date insurer notified of such action.
3. Prohibits stacking of motor vehicle insurance
4. Formed Division of Insurance Fraud to Investigate Suspected Fraudulent Activity
  1. Insurer required to report claims they suspect of being fraudulent
  2. Insurance Company and employees' agents given immunity to lawsuits for libel that may arise because of information given to division.
  3. Doctors, Hospital and Med. Inst. required to provide sworn statement that treatment rendered an accident victim was reasonable and necessary.

## DEFINITIONS

- A. "Motor Vehicle"—more than three load bearing wheels; kind required to be registered in Georgia; designed primarily for on road use; other than muscularly powered; and includes trailer drawn by or attached to such vehicle.
- B. "Insured"—named insured; (if residing in the named insured's household) his spouse, children, and relatives of either; any pedestrian struck by insured vehicle; any other person using or occupying insured vehicle with expressed or implied permission of named insured or spouse. Also named insured, spouse, or any resident relative while a pedestrian or while occupying or when struck by a motor vehicle not insured as required.
- C. "Pedestrian"—Not occupying any motor vehicle, motorcycle, or any other motor driven vehicle designed primarily for on road use; not in or upon a vehicle operated on stationary rails or tracks or aircraft.
- D. "Operation, Maintenance or use of a Motor Vehicle"—Excludes:
1. Operation, Maintenance, or use for purposes other than as a vehicle.
  2. Conduct within the course of a business of repairing, servicing, or otherwise maintaining motor vehicle (unless conduct occurs off the business premises).
  3. Conduct in the course of loading and unloading the vehicle (unless conduct occurs while occupying it).

## SECURITY REQUIREMENTS

- A. Minimum coverage—any owner or driver of a motor vehicle required to be registered (unless a qualified self insurer) must insure that vehicle has the following minimum coverage:
1. Bodily Injury and Property Damage—10/20/5
  2. No-Fault (PIF)—\$5,000 per injured person.
- B. PROOF OF INSURANCE—
1. Owner must sign affidavit to register
  2. Insurer must notify State within five days of cancellation.
- C. PENALTY—Violation is a misdemeanor.

## TORT ACTION

Plaintiff may bring an action in tort for non economic damages where he has sustained a "serious injury".

A serious injury means an accidental bodily injury which results in one or more of the following:

1. Death.
2. Fractured bone.
3. Permanent disfigurement.
4. Dismemberment.
5. Permanent loss of a bodily function.
6. Permanent partial or total loss of sight or hearing.
7. Reasonably incurred medical expenses exceeding \$500.00 (or services rendered that have a reasonable value exceeding \$500.00).
8. Disability for not less than 10 consecutive days.

## OPTIONAL COVERAGE

Each insurer shall also make available:

- A. Additional Injury Benefits—up to \$50,000.00 (includes the basic \$5,000.00)
- B. Damage to Insured Motor Vehicle—up to Actual Cash Value including up to \$10.00 per day (maximum \$300.00) for loss of use. Offered with and without deductible.

## PERSONS ENTITLED TO PIP BENEFITS (FROM ACCIDENTAL BODILY INJURY)

- A. In U.S. its territories or possessions or Canada
1. Insured, and any relative resident while
    - a. Occupying any motor vehicle
    - b. A pedestrian and struck by any motor vehicle.
  2. Anyone occupying owner's vehicle.
- B. In State of Georgia only—Any other pedestrian struck by insured motor vehicle.

## PERSON NOT ENTITLED TO PIP BENEFITS

Benefits shall not be payable to or on behalf of any person who sustains accidental bodily injury:

- (1) While voluntarily occupying a motor vehicle known by him to be stolen;
- (2) While occupying a motor vehicle owned by such person which is not insured for the benefits required by this Act;
- (3) Due to war;
- (4) Resulting from the explosion of any nuclear device.

## PERSONAL INJURY PROTECTION (PIP) BENEFITS

- A. "Medical Expenses"—(Broadly defined)—not to exceed \$2,500.00.
- B. "Loss Wages"—85% of gross loss of income with maximum of \$200.00 per week. (Disability must begin within 24 months from date of accident.)
- C. "Expenses"—Maximum \$20.00 reasonably incurred expenses to others (not household members) to maintain household during disability.
- D. Funeral expenses—Maximum of \$1,500.00.

## LIMITATIONS

- A. Basic PIP Benefits (\$5,000.00) are subject to sub-limitations for each benefit covered (See PIP).
- B. Optional coverage contains the following limitations:
  - 1. 85% of the loss of income or earnings.
  - 2. \$20.00 per day to continue household expenses.
  - 3. \$2,000.00 funeral expense (over basic \$1,500.00).
- C. The 85% loss of income or earning remain on optional also.
- D. Deductible (Insured's option) is offered only on coverage for "damage to insured motor vehicle."

## CORRELATION OF BENEFITS

- A. On basic PIP \$5,000.00 is the maximum recovery per injured person per accident regardless of number of insurers providing similar coverage.
- B. The benefits payable under this Act shall not be reduced or eliminated by any workmen's compensation benefits, medical payments benefits or any other disability benefits, wage loss benefits or hospitalization benefits that the injured person is entitled to receive except in those instances where the benefits payable under this Act have been provided for at the expense of an employer who is also obligated by statute to provide compensation for its employees under any workers' compensation law.
  - a. medical expenses incurred as a result of a motor vehicle accident shall be reduced or eliminated to the extent that the insured injured person is entitled to receive compensation for such expenses incurred under any workers' compensation law.
  - b. loss of income will not be less than (1) an amount which is equal to such person's loss of income or earnings during disability or (2) an amount which is equal to the amount such person is entitled to receive as compensation for such loss under any worker's compensation law plus the limits of such coverage under any applicable policy of motor vehicle insurance or any program of self-insurance providing such benefits, whichever is less.
- C. Auto medical payment and uninsured motorist coverage is excess to No-Fault.

## PAYMENT OF BENEFITS

After reasonable proof by injured party, payment for medical and disability must be paid within 30 days. If payment not made timely, a penalty of up to 25% plus attorneys fees can be assessed unless insurer proves good faith. Insurer may be subject to punitive damages for failure to pay within 60 days of receiving Proof of Loss.

## SUBROGATION

Insurers and self-insurers providing benefits without regard to fault shall *not* be subrogated to the rights of the person for whom benefits are provided, except in those motor vehicle accidents involving two or more vehicles, at least one of which is a motor vehicle weighing more than 6,500 pounds unloaded.

- A. The right of recovery and the amount thereof shall be determined on the basis of tort law between the insurers.
- B. Expenses incurred in subrogation are sole expense of insurers.
- C. If the responsible tort-feasor is uninsured, the insurer providing benefits shall have a right of action to the extent of benefits provided against such tort-feasor only in the event that the person for whom benefits are provided has been completely compensated for all economic and non-economic losses incurred as a result of the motor vehicle accident.

## DEFINITIONS

1. "Motor Vehicles" means any vehicle of a type required to be registered under chapter 286, including a vehicle with less than four wheels or a trailer.
2. "Accidental Harm" means bodily injury, death, sickness, or disease caused by a motor vehicle accident to a person.
3. "Operation, maintenance, or use" when used with respect to a motor vehicle includes occupying, entering into and alighting from it, but does not include... loading and unloading... unless the accidental harm occurs in the immediate proximity of the vehicle and does not include... business of repairing, servicing or otherwise maintaining vehicles unless the accidental harm occurs outside the premises of such business.
4. "No Fault Insureds"
  - a. Named Insured
  - b. While residing in the same household with a named insured, the following persons not identified by name as an insured in the policy: a spouse or other relative of a named insured; and a minor in the household of a named insured or of a relative residing in the same household as a named insured.

## SECURITY REQUIREMENTS

No person may register any motor vehicle in Hawaii, or operate a motor vehicle upon any public street, road or highway of the state, unless such motor vehicle is insured under a no-fault policy providing the benefits required by statute; in addition to the no-fault coverage.

There must be bodily injury liability insurance with limits of \$25,000.00 per person, without limit per accident; and property damage liability insurance with limit of \$10,000.00 per accident.

Basic limit on benefits is \$15,000.00 per person in any one motor vehicle accident, regardless of the number of motor vehicles involved or policies applicable. There is no aggregate limit per accident.

Policy applies to any operator using the insured motor vehicle with the express or implied permission of the named insured.

Penalties for non-compliance with this chapter may result in a fine not to exceed \$1,000 or thirty days imprisonment, or suspension of a motor vehicle operator's license, or forfeiture of motor vehicle certificate of registration, or any combination of such penalties. Additional penalties are imposed in the case of multiple violations.

**PROPERTY DAMAGE** No provision in the act.

## PERSONS COVERED

1. If injury occurs in State of Hawaii:

Any person, including the owner, operator, occupant, or user of the insured motor vehicle, or any pedestrian (including a bicyclist) who sustains accidental harm as a result of the operation, maintenance, or use of said vehicle.
2. If injury occurs outside the State of Hawaii:
  - a. No Fault insured. (see Definition).
  - b. The driver and other occupants of an insured vehicle, other than a vehicle which is regularly used in the course of business of transporting persons or property and which is one of five or more vehicles under common ownership.

## PERSONS EXCLUDED

1. Occupants of a motor vehicle other than the insured motor vehicle or to the operator or user of a motor vehicle engaging in criminal conduct which causes any loss.
2. Any person who is
  - a. The owner or registrant of an uninsured motor vehicle at the time of its involvement in the accident out of which such person's accidental harm arose, or
  - b. The operator or any passenger of such a vehicle at such time with reason to believe that such vehicle was an uninsured motor vehicle.

## SUBROGATION/RECOVERY

1. Whenever any person, effects a tort liability recovery for accidental harm, which duplicates no-fault benefits already paid the no-fault insurer shall be subrogated to fifty percent of the no-fault benefits, up to the maximum limit specified.
2. When one vehicle exceeds 10,000 lbs., 75% of benefits paid by insurer of heavier vehicle and 25% by insurer of lighter vehicle.
3. When one vehicle has less than 4 wheels, 80% of benefits paid by insurer of vehicle with 4 or more wheels and 20% by vehicle with less than 4 wheels.

## TORT ACTION AND TORT EXEMPTION

1. Tort liability of the owner, operator or user of an insured motor vehicle, or the operator or user of an uninsured motor vehicle who operates or uses such vehicles without reason to believe it to be an uninsured motor vehicle, with respect to accidental harm arising from motor vehicle accidents occurring in this State, is abolished.
2. Tort Action not abolished when
  - a. Accidental harm results in death.
  - b. Accidental harm results in a significant permanent loss of use of a part or function of the body.
  - c. Permanent and serious disfigurement which results in subjection of the injured person to mental or emotional suffering;
  - d. Amount paid or accrued exceeds the medical-rehabilitative limit established. This amount is established annually by state insurance commissioner and represents dollar level below which full 90 per cent of all motor vehicle accident claims for medical and rehabilitation expense.
  - e. The aggregate limit of \$15,000.00 in payable no-fault benefits is exceeded.
  - f. Injury or damage to person or property was caused intentionally.
  - g. Criminal-conduct caused the injury or damage.
  - h. Conduct was such as to result in punitive or exemplary damages.
  - i. For injury arising from a defect in a motor vehicle caused, or not corrected, by an act or omission in the manufacturing, retailing, repairing, servicing, or other maintenance of a vehicle.

## NO-FAULT BENEFITS

'No-fault benefits' with respect to any accidental harm shall be subject to an aggregate limit of \$15,000 per person or his survivor and means:

### 1. Medical Expenses:

All appropriate and reasonable expense necessarily incurred for medical services, etc.... and may include any non-medical remedial care and treatment rendered in connection with the teachings, faith or belief or any group which depends for healings upon spiritual means through prayer.

All appropriate and reasonable expense necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation.

### 2. Monthly earnings loss measured by an amount equal to the lesser of:

(a) \$800 per month, or

(b) The monthly earnings for the period during which the accidental harm results in the inability to engage in available and appropriate gainful activity.

### 3. Substitute Services:

All appropriate and reasonable expenses necessarily incurred as a result of such accidental harm, including but not limited to expenses incurred in obtaining services in substitution of those that the injured or deceased person would have performed for the benefit of himself or his family up to \$800.00 per month. (No limitation is noted as to possibility of claiming both (1) monthly earnings loss and (3) substitute services.)

### 4. Funeral Expenses:

Funeral expenses not to exceed \$1,500.00.

### 5. Attorney's Fees:

Based upon actual time expended, which shall be treated separately from such claim and be paid directly by the insurer to the attorney, and all reasonable costs of suit in an action brought against an insurer who denies all or part of a claim for benefits under such policy unless the court determines that the claim was fraudulent, excessive, or frivolous."

## PAYMENTS

Payments of benefits shall be made as such benefits accrue except that in the case of death, payment for such benefits may, at the option of the beneficiary, be made immediately in a lump sum payment. Amounts of benefits accrued, unpaid thirty days after the insurer has received reasonable proof of the fact shall bear interest at the rate of one and one-half per cent per month.

## DENIAL OF BENEFITS

If an insurer or self-insurer elects to deny a claim for no-fault or optional additional insurance benefits in whole or in part, it shall within five business days thereafter notify the claimant in writing of the denial and the reasons for the denial.

If a claimant objects to the denial of benefits, he shall file with the commissioner two copies of the denial, a written request for review and a written statement setting forth specific reasons for his objections. The documents must be filed within sixty days after the date of denial of his claim.

## PRIORITY OF BENEFITS

1. The insurance on the vehicle occupied by the injured person at the time of the accident, or, if the injured person is a pedestrian (including a bicyclist), the insurance on the vehicle which caused accidental harm to such pedestrian (including a bicyclist).
2. Claim of a person who is not an occupant of any motor vehicle may be made against the no-fault insurer of any involved vehicle. The insurer against whom the claim is asserted shall process and pay the claim as if wholly responsible, but shall be entitled to recover from the insurers of all other involved vehicles proportionate contribution for the benefits paid and the costs of processing the claim.
3. No-fault benefits shall be paid secondarily and net of any benefits a person is entitled to receive from social security\* laws or workers' compensation laws; provided however, that this section shall be inapplicable to benefits payable to a surviving spouse dependent as provided under section 294-4. Upon payment of benefits insurer will be subrogated to injured persons rights to collect such benefits.
4. If a temporary substitute vehicle is made available to a customer by an auto repair shop registered with the motor vehicle repair industry board or a motor vehicle dealer licensed by the motor vehicle industry licensing board, while the shop or dealer repairs or services the customer's insured motor vehicle, the no-fault policy of the customer's insured motor vehicle shall be primary over the policy on the temporary substitute vehicle.
5. Insured motor vehicle is operated by a repair shop in the course of a service or repair, policy of the repair shop shall be primary.

\*See Omnibus Reconciliation Act of 1980 for clarification.

## MISCELLANEOUS

1. Provision is made for arbitration.
2. Assigned claim program makes benefits available under specified circumstances when insurer not identifiable, or otherwise does not perform.
3. No-fault benefit deductible available at \$100, \$300, \$500 and a \$1,000 deductible also available for vehicles with less than 4 wheels.
4. Insurers cannot cancel or refuse to renew an existing policy unless the policyholder's license has been suspended or revoked, or unless the premiums are not paid.
5. Insurers cannot reject an applicant unless he does not have a valid driver's license or fails to tender a reasonable portion of the premium with the application.

## DEFINITIONS

"Motor vehicle" means every self-propelled vehicle of a kind required to be registered in this state, including any trailer, semitrailer or pole trailer designed for use with such vehicle, but such term shall not include a motorized bicycle.

"Implement of husbandry" means every vehicle designed or adapted and used exclusively for agricultural operations and only incidentally operated or moved upon the highways.

"Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway.

"Injury" means bodily harm, sickness, disease or death resulting from an accident arising out of the ownership, maintenance or use of a motor vehicle.

"Personal injury protection benefits" means the disability benefits, funeral benefits, medical benefits, rehabilitation benefits, substitution benefits and survivors' benefits required to be provided in motor vehicle liability insurance policies pursuant to this act.

## SECURITY REQUIRED

1. Every owner shall provide motor vehicle liability coverage with limits of 15/30/5 and first party reparation benefits insurance. The Act applies to all motor vehicles except:
  - (a) motor vehicles owned by government of United States, any state or political subdivision of any state
  - (b) an implement of husbandry or special mobile equipment operated only incidentally on highway
  - (c) a vehicle operated on a highway only for the purpose of crossing such highway from one property to another.
2. Non resident owners must also provide motor vehicle liability coverage including first party benefits while operating a motor vehicle in Kansas.
3. Self Insurance: any person in whose name more than twenty-five (25) motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance from the commissioner of insurance.
4. The owner of a motor-cycle or motor-driven cycle, who is the named insured, shall have the right to reject in writing insurance coverage including such benefits for injury to a person which occurs while he is operating or is a passenger on such motor-cycle or motor-driven cycle.
5. Penalty for first violation is Class B Misdemeanor, second violation within 3 years results in Class A Misdemeanor.

## PROPERTY DAMAGE

No Provision in the Act.

## PERSONS COVERED

Include:

1. named insured
2. resident relatives
3. persons operating the insured motor vehicle
4. passengers—if not owners of motor vehicles required to have security under the Kansas Automobile Injury Reparations Act
5. pedestrians

## PERSONS EXCLUDED

Any insurer may exclude personal injury protection benefits:

- (a) for injury of named insured and resident relatives while occupying another owned motor vehicle not insured under the policy
- (b) for injury sustained by any person operating the insured motor vehicle without the express or implied consent of the named insured
- (c) to any person causing intentional injury to himself
- (d) to any person injured while intentionally converting a motor vehicle
- (e) any person injured as a result of conduct within the course of a business of repairing, servicing or maintaining motor vehicles unless such conduct occurred off the business premises.
- (f) any person injured while loading and unloading a motor vehicle unless conduct occurred while occupying, entering into or alighting from such vehicle.

## TERRITORIAL LIMITS

### 1. OWNERS AND RESIDENT RELATIVES

Coverage extends under the owner's policy for injuries sustained in the United States, its territories or possessions or Canada provided a resident relative is not himself an owner of a motor vehicle for which security is required.

### 2. OTHER PERSONS

Injury sustained in Kansas by any other person while occupying the owners motor vehicle or, if a resident of this state while not an occupant of such motor vehicle, if the injury is caused by physical contact with such motor vehicle and the injured person is not the owner of a motor vehicle for which security is required under this Act.

## TORT ACTION AND TORT EXEMPTION

In any action for tort brought against the owner, operator or occupant of a motor vehicle, a plaintiff may recover damages in tort for pain, suffering, mental anguish, inconvenience, and other non-pecuniary loss because of injury only in the event the injury results in:

1. Medical expense incurred, or having a reasonable value, of \$500.00 or more.
2. Injury consists in whole or in part of
  - (a) permanent disfigurement
  - (b) a fracture to a weight bearing bone
  - (c) a compound, comminuted, displaced or compressed fracture,
  - (d) loss of a body member.
  - (e) permanent injury within reasonable medical probability
  - (f) permanent loss of a body function.
3. Death.

## BASIC REPARATION BENEFITS

Disability Benefits—allowances for loss of monthly earnings subject to

1. injury is proximate cause of inability to work
2. allowances equal 100% of any such loss, unless such allowances are not included in gross income for federal income tax purposes, in which case the allowance is limited to 85%
3. payments up to \$650.00 per month for one year, after the date of inability to work.

Funeral Benefits—not to exceed \$1,000.00 per person.

Medical Benefits—includes allowances for all reasonable medical expenses up to a limit of not less than \$2,000.00.

**Rehabilitation Benefits**—allowances for all reasonable rehabilitation benefits up to a limit of not less than \$2,000.00, including psychiatric and occupational therapy or retraining necessary to obtain suitable employment.

**Substitution Benefits**—allowances for reasonable expenses incurred for ordinary and necessary services in lieu of those the injured person would have performed for the benefit of self or family up to \$12.00 per day for 365 days after the date such expenses are incurred.

**Survivors' Benefits**—total allowances to all survivors for:

1. loss of injured persons monthly earnings after death up to maximum of not less than \$650.00 per month
2. substitution benefits after injured persons death less avoided expenses due to death of said injured person
3. survivors benefits shall not be paid for more than 1 year after injured persons death, less the number of months the injured person received disability benefits prior to his death.

### **BENEFITS OVERDUE:**

- a. Personal injury protection benefits are overdue if not paid within 30 days after insurer receives written notice of a covered loss and the amount of same. (All disability benefits shall be paid not less than every two weeks.)
- b. The payment for any partial claim is overdue after 30 days written notice and support of the partial claim has been furnished the insurer.
- c. Payment considered as being made on date draft is placed in the U.S. mail in properly addressed, postpaid envelope. If not posted, then on the date of delivery.
- d. Overdue payments shall bear simple interest of 18% per annum.

### **COLLATERAL SOURCES**

Personal injury protection benefits are primary except benefits payable under any workmen's compensation law shall be credited against such benefits.

### **INSURER'S RIGHTS OF REIMBURSEMENT AND SUBROGATION**

1. Insurers can not reduce first party benefits due to the value of a tort claim. However, after recovery of damages by judgment, settlement or otherwise of such tort claim, the insurer shall make a subtraction of such recovered damages from the tort-feasor or his insurer which are duplicative of first party benefits payable. If first party benefits have already been paid, the claimant shall repay to the insurer(s) out of any such recovery, the amount of benefits received to the extent that the claimant recovered damages which are duplication of first party benefits received. The injured person's insurer(s) have a lien on such recovery to this extent. But, no recovery of damages by an injured person or his estate shall be subtracted by insurer in calculating benefits due after such person's death resulting from injury for which the benefits were payable, and no recovery under the Wrongful Death Act shall be subtracted in calculating funeral benefits.
2. In the event of recovery from tort-feasor by the injured person, his or her dependents or personal representatives by judgment, settlement or otherwise, the insurer shall be subrogated to the extent of duplicative personal injury protection benefits provided to date of such recovery and shall have a lien therefor against such recovery and the insurer or self-insurer may intervene in any action to protect

and enforce such lien. Whenever any judgment in any such action, settlement or recovery otherwise shall be recovered by the injured person, prior to the completion of personal injury protection benefits, the amount of such judgment, settlement or recovery otherwise actually paid and recovered which is in excess of the amount of personal injury protection benefits paid to the date of recovery of such judgment, settlement or recovery otherwise shall be credited against future payments of said personal injury protection benefits.

3. An insurer having a right of reimbursement and who is unable to collect out of a payment received by an injured person upon a tort claim, is entitled to indemnity from one who, with notice of the insurer's interest, made such payment to the injured person without including the insurer as a joint payee, or without obtaining insurer's consent to a different method of payment.
4. In the event an injured person fails to commence an action against such tort-feasor within eighteen (18) months after the date of the accident resulting in the injury, such failure shall operate as an assignment to the insurer of any cause of action in tort which the injured person may have against such tort-feasor for the purpose and to the extent of recovery of damages which are duplicative of personal injury protection benefits. Such insurer may enforce same in his or her own name or in the name of the injured person, for their benefit as their interest may appear by proper action in any court of competent jurisdiction.
  - (a) In the event of a recovery the insurers right of subrogation shall be reduced by the percentage of negligence attributable to the injured person.
  - (b) Pursuant to this section the court shall fix attorney fees which shall be paid proportionately by the insurer and the injured person, in the amounts determined by the court.
5. Provided the third party is insured, the respective insurers may agree that the issue of liability and the amount thereof shall be decided by arbitration between insurers. Such arbitration shall be in lieu of the insurer's right to commence an action against a third party.

### **MISCELLANEOUS**

1. If two or more insurers are liable for first party benefits for the same injury to any one person, any insurer paying benefits is entitled to recover from other insurers a pro rata share of the benefits paid and expenses incurred in processing the claim.
2. Worker's Compensation benefits are primary to personal injury protection benefits.
3. No claim for personal injury protection benefits may be made after two years from the date of injury.
4. Benefits provided under this Act shall be deducted from any recovery received by an injured person under uninsured motorist coverage.
5. The Act calls for cooperation of employers, physicians, hospital and others in the discovery of information relating to claims for personal protection benefits and, in the event of failure to receive needed cooperation, an insurer may petition the district court to enter an order permitting such discovery.
6. Insurers obligated under any motor vehicle liability insurance policy must participate in the organization and maintenance of an assigned claims plan. The same obligation applies to any self insurer.
7. The attorney's fee shall be a charge against the insured or self-insurer in addition to the benefits recovered, if the court finds that the insurer or self-insurer unreasonably refused to pay the claim or unreasonably delayed.
8. Failure by an insurance company to deny coverage within twenty (20) days may be considered acknowledgment that information as submitted by insured is correct.

## DEFINITIONS

- 1. Motor Vehicle:** means any vehicle which transports persons or property upon the public highways of the Commonwealth, propelled by other than muscular power except road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, such other construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, such vehicles as travel exclusively upon rails and such vehicles as are propelled by electrical power obtained from overhead wires while being operated within any municipality or where said vehicles do not travel more than five miles beyond the said limits of any municipality.
- 2. Basic Reparation Insured**  
"Basic reparation insured" means:
  - (a) A person identified by name as an insured
  - (b) A spouse or other relative of a named insured; and a minor in the custody of a named insured or of a relative residing in the same household with the named insured if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.
- 3. User:** A person who resides in a household in which any person owns or maintains a motor vehicle.
- 4. Use of a Motor Vehicle:** Any utilization of the motor vehicle as a vehicle including occupying, entering into and alighting from it. It does not include (i) conduct within the course of a business repairing, servicing, or otherwise maintaining motor vehicles unless the conduct occurs off the business premises, or (ii) conduct in the course of loading and unloading the vehicle unless the conduct occurs while occupying, entering into, or alighting from it.
- 5. Pedestrian:** Any person who is not making use of a motor vehicle at the time his injury occurs.

## SECURITY REQUIREMENT

All owners or registrants of a motor vehicle in the State of Kentucky except governments and their agencies, shall provide security. The basic reparations insurance applicable to bodily injury to which this act applies is the security covering the vehicle occupied by the injured person at the time of the accident or, if the injured person is a pedestrian, the security covering the vehicle which struck such pedestrian.

- (1) The requirement of security for payment of tort liabilities is fulfilled by providing:  
Liability coverage of not less than 10/20/5.
- (2) Security for a motorcycle is fulfilled by providing the coverages noted in (1).
- (3) The maximum amount of basic reparation benefits payable for all economic loss resulting from injury to any one person as the result of one (1) accident shall be (\$10,000).

Penalty when security not provided.

- (1) Shall be fined not less than \$50 nor more than \$500.
- (2) An owner or registrant shall have all rights and obligations of an insurer and any other insurer which has paid or may become obligated to pay basic or added reparation benefits to an injured person under a basic or added reparation contract or under the terms of the assigned claims plan shall be subrogated to the rights of the injured person against such owner or registrant.

## PROPERTY DAMAGE

No provision in the act.

## PERSONS ENTITLED TO BENEFITS

1. If the accident causing injury occurs in Kentucky, every person suffering loss from injury arising out of maintenance or use of a motor vehicle has a right to basic reparation benefits, unless he has rejected the limitation upon his tort rights as provided in the act.
2. If the accident causing injury occurs outside Kentucky but within the United States, its territories and possessions, or Canada, the following persons and their survivors suffering loss from injury arising out of maintenance or use of a motor vehicle have a right to basic reparation benefits:
  - (a) Basic reparation insured; and
  - (b) The driver and other occupants of a secured vehicle who have not rejected the limitation upon their tort rights, other than (i) a vehicle which is regularly used in the course of the business of transporting persons or property and which is one of five or more vehicles under common ownership, or (ii) a vehicle owned by an obligated government other than this Commonwealth, its political subdivisions, municipal corporations, or public agencies.

## PERSONS EXCLUDED FROM BENEFITS

1. A person who converts a motor vehicle is disqualified from benefits from any source other than an insurance contract under which he is a basic or added reparation insured.
2. A person intentionally causing, or attempting to cause injury to himself or another person is disqualified from benefits as are his survivors.
3. A person who has rejected the limitation on tort rights is disqualified from benefits.
4. Notwithstanding any other provisions of this subtitle, no operator or passenger on a motorcycle is entitled to basic reparation benefits from any source for injuries arising out of the maintenance or use of such a motorcycle unless such reparation benefits have been purchased as optional coverage for the motorcycle or by the individual so injured.

## REJECTION OF TORT LIMITATION

1. Every motorist is deemed to have accepted the tort limitation unless he rejects it on a form prescribed by the insurance commissioner and provided by the insurance company.
2. Any person may refuse to consent to tort limitation. Rejection must be in writing in form specified by the Department of Insurance and filed with the Department, prior to the accident.
3. Any owner or operator of a motorcycle may file a rejection, which will apply solely to the ownership and operation of a motorcycle but will not apply to injury resulting from the ownership, operation or use of any other type of motor vehicle.
4. Rejections are filed with the state insurance department and will remain in effect indefinitely unless revoked in writing.

## BASIC REPARATION BENEFITS

The maximum amount of benefits payable for all economic loss shall be \$10,000 per person. Economic loss consists of:

- (a) "Medical expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, physical rehabilitation, rehabilitative occupational training and other remedial treatment and care and may include non-medical remedial treatment rendered in accordance with a recognized religious method of healing.
- (b) Includes funeral expense not to exceed \$1,000.
- (c) "Work loss" means loss of income from work the injured person would probably have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income.

- reduced by any income from substitute work actually performed by him.
- (d) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.
- (e) "Survivor's economic loss" means loss after decedent's death of contributions of things of economic value to his survivors, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of decedent's death.
- (f) "Survivor's replacement services loss" means expenses reasonably incurred by survivors after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of the decedent's death and not subtracted in calculating survivor's economic loss.

Benefits provided by c thru f are limited to \$200 per week per person.

The income tax saving that is attributable to his loss of income because of injury is subtracted in calculating net loss. Subtraction may not exceed fifteen per cent (15%) of the loss of income and shall be in a lesser amount if the claimant furnished to the insurer reasonable proof of a lower value of the income tax advantage.

### TORT ACTION AND EXEMPTION

Tort liability with respect to accidents occurring in this Commonwealth and arising from the ownership, maintenance, or use of a motor vehicle is "abolished" for damages because of bodily injury, sickness or disease to the extent the basic reparation benefits provided in this subtitle are payable therefor

Recovery in the form of a tort action is allowed only when one or more of the following conditions is met:

1. "Medical expense" or which would be payable but for any exclusion or deductible authorized by this subtitle exceed one thousand dollars (\$1,000)
2. The injury or disease consists in whole or in part of:
  - (a) Permanent disfigurement
  - (b) Fracture to a weight bearing bone
  - (c) A compound, comminuted, displaced or compressed fracture
  - (d) Loss of a body member
  - (e) Permanent injury, within reasonable medical probability
  - (f) Permanent loss of bodily function
  - (g) Death

Tort liability is not so limited for injury to a person who is not an owner, operator, maintainer or user of a motor vehicle within subsection (1) of this section, nor for injury to the passenger of a motorcycle arising out of the maintenance or use of such motorcycle.

### BENEFIT PAYMENTS DUE

Benefits are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of loss realized, unless the insurer elects to accumulate claims for periods not exceeding thirty-one days after insurer receives reasonable proof of the fact and amount of loss realized, and pays them within fifteen days after the period of accumulation. If reasonable proof is supplied as to only part of a claim, and the part totals \$100 or more, the part is overdue if not paid within the time provided by this section. Expense benefits may be paid by the insurer directly to persons supplying product, services, or accommodations to the claimant.

Overdue payments bear interest at the rate of twelve per cent (12%) per annum, except if delay was without reasonable foundation the rate of interest shall be eighteen per cent (18%) per annum.

### ADDED REPARATION BENEFITS AVAILABLE

1. For economic loss in units of \$10,000 per person subject to the lesser of:
  - (a) \$40,000 in added reparation benefits, or
  - (b) The limit of security provided for liability to any one persons in excess of the requirements of subsection (1) (a) of Section 11.
2. The amounts payable under added reparation benefits may be duplicative of benefits received from collateral source benefits, or may provide for reasonable waiting periods, deductibles or coinsurance provision.
3. Basic reparation insurers shall make available upon request deductibles in the amounts of \$250, \$500, and \$1,000 from all basic reparation benefits otherwise payable, except that if two or more basic reparation insureds to whom the deductible is applicable under the contract of insurance are injured in the same accident, the aggregate amount of the deductible applicable to all of them shall not exceed the specified deductible, which amount where necessary shall be allocated equally among them.
4. Every insurer shall make available upon request to its insureds underinsured motorist coverage.

### SUBROGATION ARBITRATION

1. An insurance carrier which has paid or may become obligated to pay basic reparation benefits
  - A. Shall be subrogated to the extent of its obligations to all of the rights of the person suffering the injury against any person or organization other than a secured person.
  - B. Shall have the right to recover basic reparation benefits paid to or for the benefit of a person suffering the injury from the insurer of a secured person by:
    - (a) Joining as a party in an action that may be commenced by the person suffering the injury
    - (b) To reimbursement, pursuant to Section 30, sixty days after said claim has been presented to the insurer of secured persons.
    - (c) The right to recover basic reparation benefits paid under shall be limited to those instances established as applicable by the Kentucky Insurance Arbitration Association.
2. An injured person entitled to damages shall have priority over the rights of the subrogee for its reimbursement of basic reparation benefits as well as added reparation benefits.
3. Disputes between insurance companies must be decided by the Kentucky Insurance Arbitration Association.
4. Inter-Company Loss Transfer upon determination of fault is subject to arbitration. A per-accident deductible of \$500, applies.

### MISCELLANEOUS

1. All benefits or advantages a person received or is entitled to receive because of the injury from Social Security\* or Workers' Compensation are subtracted in calculating net loss.
2. Assigned claims plan established.

\*See Omnibus Reconciliation Act of 1980 for clarification.

### PERSONAL INJURY PROTECTION (PIP) SECURITY

1. Every owner shall provide motor vehicle liability coverage with Tort limits of 10/20 Bodily Injury and \$2,000 PIP Benefits.
11. PIP Benefits
  1. Have no "accident" or aggregate limit
  2. Limit applies regardless of fault
  3. Insured may purchase deductible for himself or members of his household; deductible may be \$100, \$250, \$500, \$1,000 or \$2,000.
- III. Additional coverage available of at least 15/40 BI and \$5,000 medical. Medical coverage applies only after PIP benefits exhausted.

### PERSONS COVERED

1. Named insured, members of the insured's household, any authorized operator or passenger of the insured's motor vehicle including a guest occupant.
2. Any pedestrian struck by the insured motor vehicle.
3. Named insured and members of household while in, upon, entering into or alighting from, or by being struck as a pedestrian by, a motor vehicle not insured by a policy providing personal injury protection unless such person recovers such expenses or loss in an action of tort.

### PERSONS EXCLUDED

1. Persons entitled to Workmen's Compensation benefits.
2. Persons operating motor vehicles while:
  - a. Under influence of alcohol or a narcotic drug;
  - b. Committing a felony or fleeing lawful apprehension;
  - c. Acting with intention of causing injury to himself or others.
3. Any person injured while operating or riding on a motorcycle.

### BENEFITS

Payments up to \$2,000 per person per accident for:

1. Medical—All reasonable and necessary medical expenses *incurred* within two years from date of accident.
2. Lost Wages—Loss of wages or salary of their equivalent or, in the case of persons *not employed*, loss by reason of diminution of earning power, shall be limited to amounts actually lost by reason of the accident.

Limits *employed or self employed* to 75% of average weekly wage for one year preceding date of accident less any salary continuation program benefits.

"Salary Continuation Program" is defined as amounts paid under employment oriented plans. Private insurance policy benefits, Social Security payments, strike benefits, pension plan payments are not to be considered salary continuation plans.

3. Payments to others for services injured party would have performed for himself or household.

### DEDUCTIBLES

PIP deductibles of \$250, \$500, \$1,000 or \$2,000 applicable to the policyholder alone, or to the policyholder and members of his household. Anyone subject to the deductible endorsement cannot claim expenses within the deductible against one who is exempt from tort liability. No deductible would apply to a passenger or operator not a member of insured's household. Deductible applies to both medical expense and wage loss.

### TORT ACTION AND TORT EXEMPTION

Insured persons are immune from tort actions unless:

1. Medical and wage loss exceeds PIP limit.
2. If reasonable and necessary medical expenses *incurred* are determined to be excess of \$500, except injuries resulting in:
  - a. Death
  - b. Loss in whole or part of a body member
  - c. Permanent and serious disfigurement
  - d. Loss of sight or hearing
  - e. A fracture
3. Tort Action out of state accident, PIP payments are deferred until tort case is concluded; PIP payments reduced by tort recovery.

### PAYMENT OF CLAIMS

1. Benefits payable "as loss accrues".
2. Lump sum payment is permitted discharging future liability.
3. Claimant may sue insurer in contract if not paid in 30 days.

### REQUIREMENTS FOR FILING CLAIMS

1. File notice with insurer "as soon as practicable", and within two years of date of accident.
2. Notice must include a written description of:
  - a. Nature and extent of injuries
  - b. Treatment received and contemplated
3. Injured person must give authorization for medical information and wage records.

### SUBROGATION—ARBITRATION

1. Pursued in tort by PIP carrier if tort-feasor is not immune from suit under the statute.
2. If other vehicle is insured, PIP carrier may proceed against other PIP carrier for amount paid plus file and investigation expenses and costs of subrogation action.
3. Determination of right to subrogate shall be by agreement between involved PIP insurers, or, if they cannot agree, by arbitration. (NOTE: Massachusetts law requires that arbitration award must be submitted for judicial review.)

### TERRITORIAL LIMITS

Applies to occupants of a Massachusetts insured and registered motor vehicle injured in accidents anywhere in the United States and Canada.

## MISCELLANEOUS

1. Non-cooperation is a defense under PIP section.
2. Property damage not involved under PIP.
3. Comparative negligence statute applies to tort action.
4. Uninsured Motorist coverage is excess to PIP benefits paid.

## PROPERTY PROTECTION INSURANCE (PPI)

### COMPULSORY PROPERTY DAMAGE INSURANCE

Minimum of \$5,000 Property Damage Liability Insurance is required.

### FIRE, THEFT AND COMPREHENSIVE INSURANCE

1. \$200.00 deductible, but insured can buy back \$100.00.
2. Insurer must offer coverage providing no depreciation to determine A.C.V. if:
  - a. Vehicle insured for agreed figure and insurer permitted to inspect at time of application,
  - b. Insured submits claim form showing repair work performed per appraisal by licensed appraiser.
3. Fire, theft and comprehensive coverage may be written as part of any policy of property protection insurance, or separately as authorized by the commissioner.

## PHYSICAL DAMAGE TO INSURED VEHICLE

### Cover Options:

1. All Risk Coverage
2. Restricted Coverage—In the following cases and no others the insurer will pay either to the insured or to a repair shop if the insured so indicates in writing to his insurance company when:
  - a. insured except for the exemption from liability granted by this section would have been entitled to recover in tort for such loss or damage against another identified person also insured by a policy of property protection insurance;
  - b. insured is entitled to recover in tort for such loss or damage against another identified person who is not exempt from liability under the provisions of this section; the insured, in such a case, shall take all steps necessary to preserve the insurer's right of subrogation;
  - c. loss or damage is incurred by the insured vehicle while the vehicle is lawfully parked and the loss or damage is the result of impact with another vehicle owned by another identified person;
  - d. insured vehicle is struck in the rear by another vehicle owned by another identified person moving in the same direction.
  - e. The operator of the vehicle causing damage is convicted of operating under the influence of alcohol or a narcotic drug, or driving the wrong way on a one-way street or of operating at an excessive rate of speed. No coverage is created under this clause, however, if the operator of the insured vehicle is himself convicted of any such violations
3. No Coverage for Own Car. Under this option the policyholder shall not be entitled to receive insurance payments under property protection insurance for accidental loss of or damage to his own vehicle as identified in the policy. The policyholder's election of this option shall bar all claims for loss of or damage to his vehicle he might otherwise have had.

## PAYMENTS OF CLAIMS

Payments under option (1) and under clauses (c), (d), and (e) of option (2) shall be due and payable to the insured within fifteen working days after receipt by the insurer of reasonable proof claimant is, a policyholder, that an accident occurred, and the amount of the loss or damage claimed. Where the insurer fails to make payment within fifteen working days, the insured may commence an action in contract for payments claimed to be due. If the court determines that the insurer was unreasonable in refusing to pay said insured's claim, the claimant shall be entitled to recover double the amount of damages claimed plus his costs and reasonable attorney fees fixed by the court.

Payments due without regard to tort recovery potential under option 2 clause c, d&e.

Payments option 2 clause 1 & 2 subject to comparative negligence and shall not exceed amount recoverable in tort.

## OPTIONAL ADDITIONAL COVERAGE

1. Deductible Reduction to \$100.
11. Provide that if negligence attributed to insured is 50% or less full payment due without regard to comparative negligence or any deductible. An insurer may refuse to issue such optional additional coverage on the basis of accident frequency, claims paid, or conviction of violations of motor vehicle laws.

## TORT ACTION AND TORT EXEMPTION

**Tort Action:** Tort actions permitted for property damage.

**Tort Exemption:** Every owner, authorized operator or other person legally responsible for the operation of any vehicle to which this section applies, shall be exempt from all liability every other Property Protection Insurance (PPI) policyholder and his insurer might otherwise have been entitled to claim by subrogation or otherwise, for accidental loss of or damage to any vehicle to which this section applies.

## SUBROGATION—ARBITRATION

1. Any insurer making payments under PPI shall be subrogated to that extent including the payments made, costs of processing claims and expenses of enforcing this right, against any other insurer, providing a motor vehicle liability policy or bond on a Massachusetts registered motor vehicle, whose owner or operator would be liable for such damages, except for the tort exemption provided under PPI.
2. Determination as to whether any insurer is legally entitled to recover any such expense from another insurer shall be made by agreement between the involved insurers, or, if they fail to agree, by arbitration in accordance with the provisions of the General Laws.

**THE MICHIGAN NO FAULT AUTO INSURANCE LAW**  
Effective October 1, 1973—Amended thru January 15, 1981—Compulsory

**DEFINITIONS**

1. "Motor vehicle" means a vehicle, including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than 2 wheels. Motor vehicle does not include a motorcycle or a moped.
2. "Motor vehicle accident" means a loss involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle regardless of whether the accident also involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle.
3. "Motorcycle" means a vehicle having a saddle or seat for the use of the rider, designed to travel on not more than 3 wheels in contact with the ground, which is equipped with a motor that exceeds 50 cubic centimeters piston displacement. The wheels on any attachment to the vehicle shall not be considered as wheels in contact with the ground. Motorcycle does not include a moped.
4. "Motorcycle accident" means a loss involving the ownership, operation, maintenance, or use of a motorcycle as a motorcycle, but not involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle.
5. "Injured Person" is a natural person suffering accidental bodily injury.
6. "Bodily injury" is accidental as to a person claiming personal protection insurance benefits unless suffered intentionally by the injured person or caused intentionally by the claimant. Even though a person knows that bodily injury is substantially certain to be caused by his act or omission, he does not cause or suffer injury intentionally if he acts or refrains from acting for the purpose of averting injury to property or to any person including himself.

**SECURITY REQUIRED**

Every owner or registrant of a motor vehicle shall maintain minimum required liability limits of 20/40/10. Every owner or registrant shall maintain security for payment of benefits under Personal Protection Insurance, Property Protection Insurance and Residual Liability Insurance. Security shall be in effect continuously during the period of registration of the motor vehicle.

An owner or registrant of a motorcycle shall provide security against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by a person arising out of the ownership, maintenance, or use of that motorcycle.

**PENALTY**

- a. Violation is a misdemeanor.
- b. Person convicted shall have his license ~~and~~, if an owner or registrant, his registration revoked and may be fined not less than \$100.00 nor more than \$500.00 or imprisoned for not more than 1 year or both.

**PERSONAL PROTECTION BENEFITS PPI**

1. "Medical" allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation. Allowable expenses within personal protection insurance coverage shall not include charges for a hospital room in excess of a reasonable and customary charge for semi-private accommodations except when the injured person requires special or intensive care. Medical benefits have no monetary limit.
2. Funeral Expenses not to exceed \$1,000.
3. "Work Loss" consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he had not been injured.
  - a. Does not include loss after date injured person dies.
  - b. PIP Benefits not taxable and benefits payable for loss of income shall be reduced 15% unless lower level of tax advantage can be proven.
  - c. The benefits payable for work loss sustained in a single 30-day period and the income earned by an injured person for work during the same period together shall not exceed \$1870 which maximum shall apply pro rata to any lesser period of work loss. The maximum shall be adjusted annually to reflect changes in the cost of living under rules prescribed by the commissioner but any change in the maximum shall apply only to benefits arising out of accidents occurring subsequent to the date of change in the maximum.

- d. Work loss for an injured person who is temporarily unemployed at the time of the accident or during the period of disability shall be based on earned income for the last month employed full time preceding the accident.
4. "Substitute Services" not exceeding \$20.00 per day, reasonably incurred in obtaining ordinary and necessary services in lieu of those that, if he had not been injured, and injured person would have performed during the first 3 years after the date of the accident, not for income but for the benefit of himself or of his dependent.
5. "Survivors Loss" which consists of a loss, after the date on which the deceased died, of contributions of tangible things of economic value, not including services, that dependents of the deceased at the time of his death would have received for support during their dependency from the deceased if he had not suffered the accidental bodily injury causing death and expenses, not exceeding \$20.00 per day, reasonably incurred by these dependents during their dependency and after the date on which the deceased died in obtaining ordinary and necessary services in lieu of those that the deceased would have performed for their benefit if he had not suffered the injury causing death. The benefits payable for survivors' loss in connection with the death of a person in a single 30-day period shall not exceed \$1870.00 and is not payable beyond the first 3 years after the date of the accident.

NOTE: \$1,870.00 limit for work loss and survivors loss applicable Oct. 1, 1980 to Oct. 1, 1981.

**PERSONS COVERED INCLUDE:**

1. Named insured
2. Spouse
3. Relative of either domiciled in same household

**PERSONS NOT COVERED**

- a. When the person was using the motor vehicle which he had taken unlawfully unless he reasonably believed that he was entitled to take and use the vehicle.
- b. When the person was the owner or registrant of a motor vehicle involved in the accident with respect to which the security required was not in effect.
- c. When the person was not a resident of this state, was an occupant of a motor vehicle not registered in this state and was not insured by an insurer which has filed a certification in the state.

**PRIORITY OF COVERAGES**

- (1) When personal protection insurance benefits or personal injury benefits are payable to or for the benefit of an injured person under his or her own policy and would also be payable under the policy of his or her spouse, relative, or relative's spouse, the injured person's insurer shall pay all of the benefits and shall not be entitled to recoupment from the other insurer.
- (2) A person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which the person is entitled from the insurer of the motor vehicle. This subsection shall not apply to a passenger in the following, unless that passenger is not entitled to personal protection insurance benefits under any other policy:
  - (a) A school bus, providing transportation not prohibited by law.
  - (b) A bus operated by a common carrier of passengers certified by the public service commission.
  - (c) A bus operating under a government sponsored transportation program.
  - (d) A bus operated by or providing service to a non-profit organization.
  - (e) A taxicab insured as prescribed.
- (3) An employer, his or her spouse, or a relative of either domiciled in the same household, who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle.
- (4) Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
  - (a) The insurer of the owner or registrant of the vehicle occupied.
  - (b) The insurer of the operator of the vehicle occupied.

- (5) A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:
- The insurer of the owner or registrant of the motor vehicle involved in the accident.
  - The insurer of the operator of the motor vehicle involved in the accident.
  - The motor vehicle insurer of the operator of the motorcycle involved in the accident.
  - The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.
- (6) If 2 or more insurers are in the same order of priority to provide personal protection insurance benefits under subsection (5), an insurer paying benefits due is entitled partial recoupment from the other insurers in the same order of priority, together with a reasonable amount of partial recoupment of the expense of processing the claim.

### PAYMENTS

- Personal protection insurance benefits are payable as loss accrues.
- Benefits are overdue if not paid within 30 days after insurer receives reasonable proof of the fact and of amount of loss sustained.
- Payment considered as being made on date draft is placed in the U.S. mail in properly addressed, postpaid envelope. If not posted, then on the date of delivery.
- Overdue payments shall bear simple interest of 12% per annum.
- Personal protection insurance benefits are due without regard to fault.

### TORT EXEMPTION AND ACTION

- A person remains subject to tort liability for noneconomic loss caused by the ownership, maintenance or use of a motor vehicle only if the injured person has suffered:
  - Death.
  - Serious impairment of body function.
  - Permanent serious disfigurement.
- Notwithstanding any other provisions of law, tort liability arising from the ownership maintenance or use within this state of motor vehicle with respect to which the security is required and was in effect, is abolished except to:
  - Intentionally caused harm to person or property. Even though a person knows that harm to persons or property is substantially certain to be caused by his act or omission, he does not cause or suffer such harm intentionally if he acts or refrains from acting for the purpose of averting injury to any person, including himself, or for the purpose of averting damage to tangible property.
  - Damages for noneconomic loss as provided and limited in number 1, above, for injuries.
  - Damages for allowable expenses, work loss and survivor's loss in excess of daily, monthly and 3 year limitation contained in Personal Protection Insurance.
  - Damages up to \$400.00 to motor vehicles to the extent that the damages are not covered by insurance. (Many insurers voluntarily offer a special liability coverage for vehicle damage cases of less than \$400.)
    - Damages shall be assessed on the basis of comparative fault, except that damages shall not be assessed in favor of a party who is more than 50% at fault.
    - Liability shall not be a component of residual liability, for which maintenance of security is required by this Act.

### COLLATERAL SOURCES

Benefits are reduced by:

- Benefits provided or required to be provided under the laws of any state or the federal government shall be subtracted from the personal protection insurance benefits otherwise payable for the injury, i.e. workers compensation.
- An insurer providing personal protection insurance benefits shall offer, at appropriately reduced premium rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured. Such deductibles and exclusions required to be offered are subject to prior approval by the commissioner and shall apply only to the person named in the policy, the spouse of the insured and any relative or either domiciled in the same household.

### TERRITORIAL LIMITS

Personal Protection Insurance Benefits are payable for accidental bodily injury suffered in an accident occurring out of this state, if the accident occurs within the U.S., its territories and possessions, or in Canada.

### SUBROGATION

Insurer paying First Party Benefits has lien on any tort recovery if tort recovery results in duplication of payment of economic losses.

### MISCELLANEOUS

- The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making the proper payment.
 

An insurer may be allowed by a court an award of a reasonable sum against a claimant as an attorney's fee for the insurer's attorney in defense against a claim that was in some respect fraudulent or so excessive as to have no reasonable foundation.
- An action for recovery of personal protection insurance benefits payable under the Act for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury.

### PROPERTY PROTECTION INSURANCE

- Under property protection insurance an insurer is liable to pay benefits for accidental damage to tangible property arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle subject to the provisions of this section.
- Property protection insurance benefits are due under the conditions stated in this chapter without regard to fault.
- Damage to tangible property consists of physical injury to or destruction of the property and loss of use of the property so injured or destroyed.
- Damage to tangible property is accidental, as to a person claiming property protection insurance benefits, unless it is suffered or caused intentionally by the claimant. Even though a person knows that damage to tangible property is substantially certain to be caused by his act or omission, he does not cause or suffer such damage intentionally if he acts or refrains from acting for the purpose of averting injury to any person, including himself, or for the purpose of averting damage to tangible property.
- Property protection insurance benefits consist of the lesser of reasonable repair costs or replacement costs less depreciation and, where applicable, the value of loss of use. However, property protection insurance benefits paid under 1 policy for damage to all tangible property arising from 1 accident shall not exceed \$1,000,000.00.
- Exceptions: Damage to the following kinds of property is excluded from property protection insurance benefits.
  - Vehicles and their contents, including trailers, unless the vehicle is parked in such a way as not to cause unreasonable risk of the damage which occurred.
  - Property owned by a person named in a property protection insurance policy, his spouse or a relative of either domiciled in the same household, if the person named, his spouse or the relative was the owner, registrant or operator of a vehicle involved in the motor vehicle accident out of which the property damage arose.
  - Property protection insurance benefits are not payable for property damage arising from motor vehicle accidents occurring out of this state.

### OPTIONAL COVERAGES

- Insurers must offer collision coverage that will pay, without a deductible, for vehicle damage sustained in collisions in which the operator was not more than 50 percent at fault. Insureds also have the option of buying standard collision coverage, with a deductible, that pays in cases where the operator is more than 50 percent at fault.
- Each insurer transacting insurance in this state which affords coverage for a motorcycle as described in subsection (1) also shall offer, to an owner or registrant of a motorcycle, security for the payment of first-party medical benefits only, in increments of \$5,000.00, payable in the event the owner or registrant is involved in a motorcycle accident.
- An insurer providing personal protection insurance benefits may offer, at appropriately reduced premium rates, a deductible of a specified dollar amount which does not exceed \$300.00 per accident. This deductible may be applicable to all or any specified type of personal protection insurance benefits but shall apply only to benefits payable to the person named in the policy, his spouse and any relative of either domiciled in the same household. Any other deductible provisions require the prior approval of the commissioner.

## DEFINITIONS

"Motor Vehicle" means every vehicle, other than a motorcycle or other vehicle with fewer than four wheels, which (a) is required to be registered (b) is designed to be self-propelled by an engine or motor for use primarily upon public roads, highways or streets in the transportation of persons or property, or (c) is a trailer, when connected to or being towed by a motor vehicle.

"Commercial vehicle" means: (a) any motor vehicle used as a common carrier, (b) any motor vehicle, other than a passenger vehicle or a station wagon which has a curb weight in excess of 5500 pounds apart from cargo capacity, or (c) any motor vehicle while used in the for-hire transportation of property. Does not include a "commercial van" which means a motor vehicle having a capacity of 7 to 16 people and used principally as prearranged transportation to and from employment.

"Insured" means an insured under a plan of reparation security as provided by this act, including the named insured and the following persons not identified by name as an insured while (a) residing in the same household with the named insured and (b) not identified by name in any other contract for a plan of reparation security complying with this act as an insured:

- (1) a spouse, (2) other relative of a named insured or
- (2) a minor in the custody of a named insured or of a relative residing in the same household with a named insured.

A person resides in the same household with the named insured if that person usually makes his home in the same family unit, even though he temporarily lives elsewhere.

## SECURITY REQUIRED

Every owner of a motor vehicle which is required to be registered or licensed or is principally garaged in this state shall maintain during the period in which operation or use is contemplated a plan of reparation security and uninsured motor vehicle coverage.

"Security covering the vehicle" is the insurance or other security so provided. The vehicle for which the security is so provided is the "secured vehicle."

Minimum liability coverages shall be in the amount of 25/50/10 and 25/50 uninsured motorists insurance. The act mandates maximum basic economic loss benefits of \$30,000 for loss arising out of the injury of any one person.

## PENALTIES

1. Every owner of a motor vehicle or motorcycle for which security has not been provided as required shall not be relieved of tort liability.
2. Any owner of a motor vehicle or motorcycle who operates the vehicle or motorcycle or permits it to be operated upon a public highway, street or road in this state and who knows or has reason to know that the motor vehicle or motorcycle does not have security and any other person who operates a motor vehicle or motorcycle upon a public highway, street or road in this state with knowledge that the owner does not have security in full force and effect is guilty of a misdemeanor.
3. Any operator of a motor vehicle or motorcycle who is convicted of a misdemeanor under the terms of this section shall have his operators license revoked. If such operator is also an owner of the motor vehicle, or motorcycle the registration of the motor vehicle or motorcycle shall also be revoked.

## PROPERTY DAMAGE

No provision in the act.

## PERSONS COVERED

1. If the accident causing injury occurs in this state, every person suffering loss from injury arising out of maintenance or use of a motor vehicle has a right to basic economic loss benefits.

2. If the accident causing injury occurs outside this state in the United States, United States possessions, or Canada, the following persons and their surviving dependents suffering loss from injury arising out of maintenance or use of a motor vehicle have a right to basic economic loss benefits:

- (1) Insured's and
- (2) the driver and other occupants of a secured vehicle, other than (a) a vehicle which is regularly used in the course of the business of transporting persons or property and which is one of five or more vehicles under common ownership, or (b) a vehicle owned by a government other than this state, its political subdivisions, municipal corporations, or public agencies.

## PERSONS EXCLUDED

1. A person who converts a motor vehicle is disqualified from coverage other than under which the converter is an insured.
2. A person who is injured in the course of an official racing contest, other than a rally held in whole or in part on public roads, or in practice or preparation therefor is disqualified from basic or optional economic loss benefits. His survivors are not entitled to basic or optional economic loss benefits for loss arising from his death.
3. A person intentionally causing or attempting to cause injury to himself or another person is disqualified from coverage.

## PRIORITY OF COVERAGES

- A. If the injured person is insured, the applicable policy is the one under which he is insured;
- B. If an injured occupant is not insured, the applicable policy is the one covering the motor vehicle; and
- C. If an injured pedestrian is not insured, the applicable policy is one covering any involved motor vehicle.

### Exception:

In case of injury to the driver or other occupant of a motor vehicle other than a commuter van or a vehicle being used to transport children to school or to a school sponsored activity, if the accident causing the injury occurs while the vehicle is being used in the business of transporting persons or property or by an employee or his household relative injured while occupying an employer-furnished motor vehicle, the security for payment of basic economic loss benefits is the security covering the vehicle or, if none, the security under which the injured person is an insured.

## TORT ACTION AND TORT EXEMPTION

An insured bringing an action in tort for negligence resulting in injury is limited in his recovery to the excess of his economic loss over the economic losses paid or payable under the no-fault policy. An insured may bring an action to recover economic losses not paid or payable by an insurer because of statutory limitations and exclusions.

No person shall recover damages for non-economic detriment unless:

- (a) The sum of the following exceeds \$4,000:

- (1) Reasonable medical expense benefits paid, payable or payable but for any applicable deductible, plus
- (2) The value of free medical or surgical care or ordinary and necessary nursing services performed by a relative of the injured person or a member of his household, plus
- (3) The amount by which the value of reimbursable medical services or products exceeds the amount of benefit paid, payable, or payable but for an applicable deductible for those services or products if the injured person was charged less than the average reasonable amount charged in this state for similar services or products, minus

(4) The amount of medical expense benefits paid, payable, or payable but for an applicable deductible for diagnostic X-rays and for a procedure or treatment for rehabilitation and not for remedial purposes or a course of rehabilitative occupational training; or

(b) the injury results in:

- (1) permanent disfigurement; (3) death; or
- (2) permanent injury; (4) disability for 60 days or more.

Disability means the inability to engage in substantially all of the injured person's usual and customary daily activities.

## BASIC ECONOMIC LOSS BENEFITS

Benefits shall provide reimbursement for all loss suffered through injury arising out of the maintenance or use of a motor vehicle, subject to any applicable deductibles, exclusions, disqualifications, and other conditions, and shall provide a maximum of \$30,000 for loss arising out of the injury of any one person, consisting of:

- (a) \$20,000 for medical expense loss arising out of injury to any one person; and
- (b) A total of \$10,000 for income loss, replacement services loss, funeral expense loss, survivor's economic loss, and survivor's replacement services loss arising out of the injury to any one person.

- (1) **Medical Expenses**—Includes rehabilitation and all other reasonable transportation expenses incurred in traveling to receive covered medical benefits.
- (2) **Funeral Expenses**—Up to \$1,250, including expenses for cremation or delivery under the Uniform Anatomical Gift Act.
- (3) **Work Loss**—85 per cent of the injured person's loss of present and future gross income from inability to work subject to a maximum of \$200 per week. Reduced by any income from substitute work actually performed or by income the injured person would have earned in available appropriate substitute work which he was capable of performing but unreasonably failed to undertake.

When injured person is unemployed at the time of injury and is receiving or is eligible to receive unemployment benefits under chapter 268 but the injured person loses his eligibility for those benefits because of inability to work caused by the injury, disability and income loss benefits shall provide compensation for the lost benefits in an amount equal to the unemployment benefits which otherwise would have been payable, subject to a maximum of \$200 per week.

"Inability to work" means disability which prevents the injured person from engaging in any substantial gainful occupation or employment on a regular basis, for wage or profit for which he is or may be training become reasonably qualified.

"Loss of income" involves the costs incurred by a self-employed person to hire substitute employees to perform tasks, necessary to maintain income, which the insured would have performed had it not been for the injury.

- (4) **Substitute Services**—Up to \$15 per day, excluding the day of the injury and the first 7 days thereafter. Expenses must be incurred.
- (5) **Survivor's Economic Loss**—If death occurs within one year of accident, payment of up to \$200 per week for contributions of money or tangible things of economic value, not including services, surviving dependents would have received.
- (6) **Survivor's Replacement Services Loss**—Up to \$200 per week for substitute services expenses incurred by surviving dependents, minus expenses avoided because of decedent's death.

## BENEFITS DUE

Basic economic loss benefits are payable monthly as loss accrues.

Benefits are overdue if not paid within 30 days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, unless the reparation obligor elects to accumulate claims for periods not exceeding 31 days and pays them within 15 days after the period of accumulation. If reasonable proof is supplied as to only part of a claim, and the part totals \$100 or more, the part is overdue if not paid within the time provided by this section.

Overdue payments shall bear simple interest at the rate of 15% per cent per annum.

## MANDATORY OFFER ADDED OPTIONAL COVERAGES AND DEDUCTIBLES

### OPTIONAL COVERAGES

- (a) Medical expense benefits subject to a maximum payment of \$10,000;
- (b) Medical expense benefits subject to a maximum payment of \$20,000;
- (c) Residual bodily liability coverage of not less than \$25,000 for damages for injury to one person in any one accident arising out of the maintenance or use of a motor vehicle, subject to a limitation of \$50,000 for damages arising out of any one accident;
- (d) Basic economic loss benefits to all persons purchasing liability coverage for injuries arising out of the maintenance or use of a motorcycle;
- (e) Underinsured motorist coverage
- (f) Uninsured motorist coverage in addition to the minimum limits specified in subdivision 4, so as to provide total limits of uninsured motorist coverage equal to the residual bodily injury liability limits of the policy, or smaller limits as the insured may select.
- (g) Insurers must offer the first-party medical coverage with an optional deductible of \$100. A deductible of \$200 must be offered on the disability and income loss benefits.

### SUBROGATION/BENEFIT RECOVERY

1. There shall be deducted from any recovery the value of basic or optional economic loss benefits paid or payable or which, will be payable in the future, or which would be payable but for any applicable deductible.
2. Insurer paying or obligated to pay basic or optional economic loss benefits is entitled to indemnity subject to the limits of the applicable residual liability coverage from a insurer providing residual liability coverage on a commercial vehicle of more than 5,500 pounds curb weight if negligence in the operation, maintenance or use of the commercial vehicle was the direct and proximate cause of the injury for which the basic economic loss benefits were paid or payable to the extent that the insured would have been liable for damages but for the deduction provisions.

The right of an insurer to be subrogated to all or a portion of the claim of an insured, whether the right to subrogation arises from contract, statute or any other source, shall be enforceable against the insured only if the insurer, upon demand by the insured, agrees to pay a share of the attorney fees and costs incurred to prosecute the claim, in such proportion as the insurer's subrogated interest in the claim bears to any eventual recovery on the claim.

Disputes between insurance companies must be settled thru binding arbitration.

Subd. 5. Nothing in Minnesota Statutes, Section 65B.41 to 65B.71 shall limit or abridge the subrogation rights of a insurer providing collision coverage to a policyholder.

### ARBITRATION

1. Provision is made by the act for the submission to arbitration, upon mutual consent of all parties to the action, of all cases at issue where a claim in the amount of \$5,000 or less is made by a motor vehicle accident victim.
  2. Provision is made by the act for arbitration between insurers.
- Arbitration proceedings need not await final payment of benefits, and the award, if any, shall include provision for reimbursement of subsequent benefits, but no question of fact decided by a prior award shall be reconsidered in any such subsequent arbitration hearing.

### MISCELLANEOUS

1. Basic economic loss benefits shall be primary with respects to benefits, except for those paid or payable under a worker's compensation law or Medicare.\*
2. Provision is made in the act for the establishment of an assigned claims plan.

\*See Omnibus Reconciliation Act of 1980 for clarification.

## DEFINITIONS

"Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pick-up body, a delivery sedan or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

"Essential services" means those services performed not for income which are ordinarily performed by an individual for the care and maintenance of such individual's family or family household.

"Medical expense" means expenses for medical treatment, surgical treatment, dental treatment, professional nursing services, hospital services, rehabilitation services, X-ray and other diagnostic services, prosthetic devices, ambulance services, medication and other reasonable and necessary expenses resulting from the treatment prescribed by persons licensed to practice medicine and surgery, dentistry, psychology, or chiropractic or by persons similarly licensed in other states and nations or any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

"Hospital expenses" means:

1. the cost of a semiprivate room, based on rates customarily charged by the institution in which the recipient of benefits is confined;
2. the cost of board, meals and dietary services;
3. the cost of other hospital services, such as operating room; medicines, drugs, anesthetics, treatments with X-ray, radium and other radioactive substances; laboratory tests, surgical dressings and supplies; and other medical care and treatment rendered by the hospital;
4. the cost of treatment by a physiotherapist;
5. the cost of medical supplies such as prescribed drugs and medicines; blood and blood plasma; artificial limbs and eyes; surgical dressings, casts, splints, trusses, braces, crutches, rental of wheelchair, hospital bed or iron lung; oxygen and rental of equipment for its administration.

## SECURITY REQUIRED

Every owner or registered owner of an automobile registered or principally garaged in New Jersey shall maintain automobile liability insurance coverage with limits of at least 15/30/5.

Every automobile liability insurance policy insuring an automobile as defined in the act shall provide additional coverage for the payment of benefits, without regard to negligence, liability or fault of any kind.

Uninsured motorists coverage without right of rejection is mandatory with limits of 15/30/5. There is \$100 deductible on the property damage U.M.I. coverage.

Penalties for false and fraudulent representation and for failure to maintain insurance coverage.

- A. In any claim or action arising under this act wherein any person, obtains or attempts to obtain from any other person, insurance company or Unsatisfied Claim and Judgment Fund any money or other thing of value by (1) falsely or fraudulently representing that such person is entitled to benefits, (2) falsely and fraudulently making statements or presenting documentation in order to obtain or attempt to obtain benefits under, (3) cooperates, conspires or otherwise acts in concert with any person seeking to falsely or fraudulently obtain, or attempt to

obtain, benefits under section 4 may upon conviction be fined not more than \$5,000.00, or imprisoned for not more than 3 years or both, or in the event the sum so obtained or attempted to be obtained is not more than \$500.00, may upon conviction, be fined not more than \$500.00, or imprisoned for not more than 6 months or both, as a disorderly person.

Any owner, operator or registrant of an automobile registered or principally garaged in this State who operates or causes to be operated an automobile upon any public road or highway in this State knowingly without automobile insurance coverage, extending coverage to such automobile may upon conviction be fined not more than \$500.00, or imprisoned for not more than 6 months or both, as a disorderly person and shall forthwith forfeit his right to operate a motor vehicle over the roads and highways of this state for a period of 1 year.

For a subsequent violation the automobile in question may be subject to confiscation.

The Director of the Division of Motor Vehicles shall have the authority to suspend a license and registration at any time the registrant cannot furnish proof the vehicle is insured.

## PROPERTY DAMAGE

No provision in the Act.

## PERSONS COVERED

Personal Injury Protection Coverage (first-party) applies to:

- A. Named insured and member of his family residing in his household.
- B. Other persons sustaining bodily injury while occupying the automobile of the named insured.
- C. Persons using the automobile with the permission of the named insured.
- D. Pedestrians sustaining bodily injury caused by the named insured's automobile or struck by an object propelled by or from such automobile provided the injured pedestrian has no Personal Injury Protection Coverage of his own.
- E. Coverage follows the insured, not the automobile.

## PERSONS EXCLUDED

Insurers may exclude a person from Personal Injury Protection Coverage where such person's conduct contributed to his personal injury or death occurred in any of the following ways:

- (a) While committing a high misdemeanor or a felony or seeking to avoid lawful apprehension or arrest by a police officer; or
- (b) While acting with specific intent of causing injury or damage to himself or others.

## TORT EXEMPTIONS

Every owner, registrant, operator or occupant of any automobile to which the Personal Injury Protection Coverage, regardless of fault, applies, and every person or organization legally responsible for his acts or omissions is hereby exempted from tort liability for damages to any person who is required to maintain the coverage mandated by this act, or to any person who has a right to receive benefits under the Personal Injury Protection Coverage of this act as a result of bodily injury, rising out of the ownership, operation, maintenance or use of such automobiles in this state, if the bodily injury is confined solely to the soft tissue of the body and the medical expenses incurred or to be incurred by such injured person or the equivalent value thereof for the reasonable and necessary treatment of such bodily injury, is less than \$200.00, exclusive of hospital expenses, X-rays, and other diagnostic medical expenses.

Bodily injury confined solely to the soft tissue, for the purpose of this section means, injury in the form of sprains, strains, contusions, lacerations, bruises, hematomas, cuts, abrasions, scrapes, scratches and tears confined to the muscles, tendons, ligaments, cartilages, nerves, fibers, veins, arteries and skin of the human body.

## TORT ACTION

Regardless of the right of any person to receive benefits under the Personal Injury Protection Coverage there shall be no exemption from tort liability if the injured party has sustained.

- A. Death
- B. Permanent Disability
- C. Permanent Significant Disfigurement
- D. Permanent Loss of any Bodily Function
- E. Loss of a body member in Whole or in Part.

## BASIC REPARATIONS BENEFITS

"Additional Coverage" means and includes:

- (a) **Medical expense benefits.** Payment of all reasonable medical expenses incurred as a result of personal injury sustained in an automobile accident. In the event of death, payment shall be made to the estate of the decedent.
- (b) **Income continuation benefits.** The payment of the loss of income of an income producer as a result of bodily injury disability, subject to a maximum weekly payment of \$100.00, per week. Such sum shall be payable during the life of the injured person and shall be subject to an amount or limit of \$5,200.00, on account of injury to any one person, in any one accident.
- (c) **Essential services benefits.** Payment of essential services benefits to an injured person shall be made in reimbursement of necessary and reasonable expenses incurred for such substitute essential services ordinarily performed by the injured person for himself, his family and members of the family residing in the household, subject to an amount or limit of \$12.00 per day. Such benefits shall be payable during the life of the injured person and shall be subject to an amount or limit of \$4,380.00, on account of injury to any one person in any one accident.
- (d) **Survivor benefits.** In the event of the death of an income producer as a result of injuries sustained in an accident entitling such person to benefits under section 4 of this act, the maximum amount of benefits which could have been paid to the income producer, but for his death, under (b) shall be paid to the surviving spouse, then to the surviving children, and in the event there are no surviving spouse or surviving children, then to the estate of the income producer.  
In the event of the death of one performing essential services as a result of injuries sustained in an accident entitling such person to Essential service benefits, the maximum amount of benefits which could have been paid such person, shall be paid to the person incurring the expense of providing such essential services.
- (e) **Funeral expenses benefits.** All reasonable funeral, burial and cremation expense, subject to a maximum benefit of \$1,000.00.  
Note: In the event medical expense benefits paid by an insurer, are in excess of \$75,000.00\* on account of personal injury to any one person in any one accident, the Unsatisfied Claim and Judgment Fund shall assume such excess and reimburse the insurer therefor in accordance with rules and regulations promulgated by the Director of the Division of Motor Vehicles after consultation with the Commissioner of Insurance\*; provided, however, that this provision is not intended to broaden the coverage available to accidents involving uninsured or hit-and-run automobiles, to provide extraterritorial coverage, nor to pay excess medical expenses.

## ADDITIONAL BENEFITS

Insurers shall make available suitable additional first-party coverage for income continuation, essential services, survivor and funeral expense benefits. Income continuation in excess of that provided by the act must be provided as an option as long as disability persists, up to an income level of \$35,000.00 per year, with the excess between \$5,200.00 and the amount of coverage to be written on the basis of 75% of said difference.

## SUBROGATION

There is no subrogation of Personal Injury Protection Benefits from accidents occurring after December 31, 1974.

## TERRITORIAL LIMITS

No specific provision. However, by Insurance Commissioner's approval of the Personal Injury Protection Endorsement, coverage applies to accidents within the United States of America, its territories or possessions, or Canada. This out of state coverage is restricted in the endorsement to the named insured, relatives or residents of the State of New Jersey.

## COLLATERAL SOURCE

The benefits provided in the Personal Injury Protection Coverage shall be payable as loss accrues, upon written notice of such loss and without regard to collateral sources, except that benefits collectible under workmen's compensation insurance, employees temporary disability benefit statutes and, medicare\* provided under Federal law, (or benefits), and benefits, in fact collected, that are provided under Federal law to active and retired military personnel, shall be deducted from the benefits collected under the Personal Injury Protection Coverage. By Insurance Commissioner's Regulation, Blue Cross and Blue Shield benefits are secondary to Personal Injury Protection Coverage.

\*See Omnibus Reconciliation Act of 1980 for clarification.

## LIMITATION OF ACTION

Every action for the payment of benefits set forth in this act, except an action by a decedent's estate, shall be commenced not later than 2 years after the injured person or survivor suffers a loss or incurs an expense and either knows or in the exercise of reasonable diligence should know that the loss or expense was caused by the accident, or not later than 4 years after the accident whichever is earlier, provided, however, that if benefits have been paid before then an action for further benefits may be commenced not later than 2 years after the last payment of benefits.

Every action by a decedent's estate for the payment of benefits shall be commenced not later than 2 years after the injured person or survivor suffers a loss or incurs an expense and either knows or in the exercise of reasonable diligence should know that the loss or expense was caused by the accident whichever is earlier, provided, however, that if benefits have been paid before then an action for further benefits may be commenced not later than 2 year after the last payment of benefits.

Every action by a decedent's estate for the payment of benefits shall be commenced not later than 2 years after death or 4 years after the accident from which death results, whichever is earlier, provided, however, that if benefits had been paid to the decedent prior to his death then an action may be commenced not later than 2 years after his death or 4 years after the last payment of benefits, whichever is earlier, provided, further, that if the decedent's estate has received benefits before then an action for further benefits shall be commenced not later than 2 years from the last payment of benefits.

## MISCELLANEOUS

1. Personal Injury Protection Benefits are overdue if not paid within 30 days after written notice of a covered loss and the amount. Overdue payments shall bear simple interest at the rate of 10% per annum.
2. Two or more insurers liable for Personal Injury Protection Benefits, regardless of fault for the same bodily injury or death of any one person, shall each contribute a pro rata share of benefits paid. Contribution is to be determined by intercompany arbitration or inter-company agreement.
3. Evidence of losses collectible under Personal Injury Protection Coverage is inadmissible in a civil action for recovery of damages.
4. Discovery procedures are provided for Insurers or the Unsatisfied Claim and Judgment Fund to obtain information about lost earnings, medical treatment, etc. or to obtain independent medical examinations. Injured person is to be furnished a copy of all information obtained.

# NEW YORK COMPREHENSIVE AUTOMOBILE INSURANCE REPARATION ACT

Effective February 1, 1974—Amended thru May 8, 1979—Compulsory

## DEFINITIONS

"MOTOR VEHICLE" means a motor vehicle, as defined in Section 311 of the New York Vehicle and Traffic Law; except that it shall include fire and police vehicles and it shall not include a motorcycle;

**VEHICLES INCLUDED**—All vehicles operated or driven upon a public highway by any power other than muscular power.

"VEHICLES EXCLUDED"—Motorcycles, motor bikes; electrically driven invalid chairs; vehicles running upon rails or tracks, snowmobiles; self propelled farm equipment and trailers used exclusively for agricultural purposes; self-propelled caterpillar or crawler type equipment, while operated on a contract site.

**OWNER**—A person, other than a lien holder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person and also includes any lessee or bailee of a motor vehicle having the exclusive use thereof, under a lease or otherwise, for a period greater than 30 days.

## SECURITY REQUIRED

Every owner's policy of liability insurance issued on a motor vehicle; every owner who maintains another form of financial security and every owner of a motor vehicle required to be subject to the provisions of this article shall be liable for the payment of first party benefits to persons other than occupants of another motor vehicle or a motorcycle, for loss arising out of the use or operation in this state of such motor vehicle; provided that in the case of the occupants of a bus or school bus other than operators, owners, and employees of the owner or operator of such bus or school bus, the coverage for first party benefits for such occupants shall be afforded under the policy or policies, if any, providing first party benefits to the injured person and members of his household for loss arising out of the use or operation of any motor vehicle of such household, and in the event there is no such policy or policies, then first party benefits shall be provided by the insurer of such bus or school bus.

Every owner's policy of liability insurance issued on a motorcycle, every owner who maintains another form of financial security on a motorcycle and every owner of a motorcycle required to be subject to the provisions of this article shall be liable for the payment of first party benefits to persons, other than the occupants of such motorcycle, another motor cycle, or any motor vehicle, for loss arising out of the use or operation within this state of such motorcycle.

Liability coverage with minimum limits of \$10,000, per person/\$20,000 per accident bodily injury, \$5,000 per accident property damage, and \$50,000 per person/\$100,000 per accident where death arises is required.

The law requires motorists to carry first-party economic loss coverage with aggregate limit of \$50,000 per person.

## PROPERTY DAMAGE

No provision in the Act.

## PERSONS COVERED

- A. Any owner, operator or occupant of a motor vehicle which has in effect the financial security required.
- B. Any pedestrian injured through the use or operation of a motor vehicle for which security is required.
- C. Any other person entitled to First Party Benefits who is injured by any kind of "Motor Vehicle".
- D. The named insured and members of the household, other than occupants of a motorcycle, for loss arising out of the use or operation of an uninsured motor vehicle and, outside of this state, of an insured motor vehicle.

## PERSONS EXCLUDED

- A. Insurers may exclude a person from First Party Benefits who
  1. intentionally causes his own injury
  2. is injured as a result of operating a motor vehicle while in an intoxicated condition or while his ability to operate such vehicle is impaired by the use of drugs.
  3. is injured while
    - (a) committing an act which would constitute a felony.
    - (b) seeking to avoid lawful apprehension or arrest by a law enforcement officer.
    - (c) operating a motor vehicle in a race or speed test.
    - (d) operating or occupying a motor vehicle known to him to be stolen.
- B. No-fault benefits are not paid to riders of motorcycles.

## TORT EXEMPTION AND TORT ACTION

Notwithstanding any other law, in any action by or on behalf of a covered person against another covered person for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, there shall be no right of recovery for non-economic loss, except in the case of a serious injury or for basic economic loss. The owner, operator or occupant of a motorcycle which has in effect the financial security required shall not be subject to an action by or on behalf of a covered person for recovery for non-economic loss, except in the case of a serious injury, or for basic economic loss.

*Serious Injury* means a personal injury which results in death; dismemberment; significant disfigurement; a fracture; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation or use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.

When no right of recovery for basic economic loss exists, such loss may nevertheless be pleaded to the extent that is relevant to the proof of non-economic loss.

## BASIC FIRST PARTY BENEFITS

- A. First party benefits means payments to reimburse a person for basic economic loss on account of personal injury arising out of the use or operation of a motor vehicle in this state.
- B. Basic economic loss means, up to fifty thousand dollars per person including:
  1. All reasonable and necessary expenses incurred for:
    - (a) Medical, hospital, surgical nursing, dental, ambulance, X-ray, prescription drugs and prosthetic services.
    - (b) Psychiatric, physical and occupational therapy and rehabilitation.
    - (c) Any non-medical treatment of a religious method recognized by the laws of New York.
    - (d) Any other professional health service.All without limitation as to time, provided that within one year after the date of the accident causing the injury it is ascertainable that further expenses may be incurred as a result of the injury, and
  - (e) Shall not include any loss incurred on account of death.
2. Loss of earnings from work which the injured person would have performed had he not been injured, and reasonable and necessary expenses incurred by such person in obtaining services in lieu of those that he would have performed

income, up to one thousand dollars (\$1,000) per month for not more than three years from the date of the accident causing the injury and

3. All other reasonable and necessary expenses incurred, up to twenty five dollars per day for not more than one year from the date of the accident causing injury.

#### C. DEATH BENEFIT

Payable to the estate of any covered person, other than an occupant of another motor vehicle or a motorcycle, as a death benefit in the amount of two thousand dollars (\$2,000) for the death of such person arising out of the use or operation of such motor vehicle, such amount being in addition to any first party benefits for basic economic loss.

#### D. FIRST PARTY BENEFITS: may be reduced by

- (a) Twenty percent of lost earnings
- (b) Amounts recovered or recoverable on account of such injury under state or federal laws providing social security disability benefits, or workmen's compensation benefits, or disability benefits (other than lifetime reserve days and provided further that the medicare benefits utilized herein do not result in a reduction of such person's medicare benefits for a subsequent illness or injury); and
- (c) any amounts deductible under the applicable insurance policy.

### SUBROGATION/RECOVERY

Any insurer liable for the payment of first party benefits to or on behalf of a covered person shall have the right to recover the amount of such benefits so paid from the insurer of any other covered person if and to the extent that such other covered person would have been liable, but for the provisions of this article, to pay damages in an action at law. Such right to recover shall exist, however, only if at least one of the motor vehicles involved is (a) motor vehicle weighing more than six thousand five hundred pounds unloaded or (b) motor vehicle used principally for the transportation of persons or property for hire. Provided, however, that in the case of occupants of a bus or school bus other than operators, owners, and employees of the owner or operator of such bus or school bus, an insurer which provides coverage for first party benefits for such occupants under the policy or policies providing first party benefits to the injured person and members of his household for loss arising out of the use or operation of any vehicle of such household, shall have no right to recover the amount of such benefits from the insurer of such bus or school bus.

The sole remedy of any insurer to recover on a claim arising under this section shall be the submission of the controversy to mandatory arbitration pursuant to procedures to be promulgated or approved by the superintendent. Such mandatory arbitration procedures shall also be utilized to resolve all disputes arising between insurers concerning their responsibility for the payment of first party benefits.

In any action by or on behalf of a covered person, against a non-covered person, where damages for personal injuries arising out of the use or operation of a motor vehicle or a motorcycle may be recovered, an insurer which paid or is liable for first party benefits on account of such injuries shall have a lien against any recovery to the extent of benefits paid or payable by it to the covered person. No such action may be compromised by the covered person except with the written consent of the insurer, or with the approval of the court, or where the amount of such settlement exceeds fifty thousand dollars. The failure of such person to commence such action within two years after the accrual thereof shall operate to give the insurer a cause of action for the amount of first party benefits paid or payable against any person who may be liable to the covered person for his personal injuries, which cause of action shall be in addition to the cause of action of the covered person; provided, however, that in any action subsequently commenced by the covered person for such injuries, the amount of his basic economic loss shall not be recoverable.

### PAYMENT OF BENEFITS

1. Payments of first party benefits shall be made as the loss is incurred. Such benefits are overdue if not paid within thirty days after the claimant supplies proof of the fact and amount of loss sustained. If proof is not supplied as to the entire claim, the amount which is supported by proof is overdue if not paid within thirty days after such proof is supplied.
2. Within 30 calendar days after proof of claim is received the insurer shall either pay or deny a claim in whole or in part.
3. All overdue payments shall bear interest at the rate of two percent per month.

### LIMITATIONS OF CHARGES

Doctors, hospitals, and other providers of health services cannot charge more for treatment of traffic accident victims than the amount permitted in the schedule of charges established by the chairman of the workmen's compensation board for industrial accidents.

### ARBITRATION FIRST PARTY BENEFITS

Every insurer shall provide a claimant with the option of submitting any dispute involving the insurer's liability to pay first party benefits, the amount thereof or any other matter which may arise to (binding) arbitration pursuant to simplified procedures to be promulgated or approved by the superintendent.

### COLLATERAL SOURCES

1. If a motorist has health insurance that pays all of the medical benefits required by the no-fault law, he can instruct his auto insurer to exclude all the members of his family covered by health insurance from the medical coverage in the no-fault package. The policy-holder must give his auto insurer a list of the persons who will not be entitled to medical benefits under the no-fault coverage.
2. Benefits received under federal or state laws providing social security\* disability or workers' compensation coverage will be primary over the no-fault benefits. Medicare benefits other than lifetime reserve days—are primary unless they result in a reduction in the victim's Medicare benefits for later illnesses.
3. If an injured person is entitled to receive his salary from his employer while unable to work because of his injuries, he will not receive loss-of-income benefits from his auto insurer except in cases where the employee's future benefits for illness or injury would be reduced. \*See Omnibus Reconciliation Act of 1980 for clarification.

### MISCELLANEOUS PROVISIONS

- A. Insurers shall offer Insurance for Basic First Party Benefits without a deductible and with a family deductible up to \$200.00 which applies only to loss sustained by insured and members of his household. Insurers may offer additional first party benefits. The New York Superintendent of Insurance may approve a higher deductible for policies providing such additional benefits.
- B. Every "owners" liability insurance policy issued to provide the security required in New York shall also provide coverage for such motor vehicle at least in the minimum amounts required by any other state or any Canadian Province when such motor vehicle is used or operated in such other states or provinces.
- C. All motor vehicle liability insurance coverage written for non-resident motorists while driving in New York, by insurers authorized to transact business in New York, shall be construed to provide for payment of first party benefits and other financial security requirements of New York.
- D. Requires motorcycle liability policies to provide no-fault benefits, giving pedestrians the same right to benefits when injured by a motorcycle as they would have had had they been injured by an automobile.

**NORTH DAKOTA AUTO ACCIDENT REPARATIONS ACT**  
Effective January 1, 1976—Amended thru March 19, 1981—Compulsory

**DEFINITIONS**

"Motor vehicle" means a vehicle having more than three load bearing wheels, of a kind required to be registered under the laws of this state relating to motor vehicles, designed primarily for operation upon the public streets, roads, and highways, and driven by power other than muscular power, and includes a trailer drawn by or attached to such a vehicle.

"Bus" means:

- a. any motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school, or
- b. any motor vehicle owned by charitable, religious, educational or governmental corporation or organization designed for carrying more than ten passengers and used for the transportation of persons not for compensation.

"Medical expenses" means reasonable charges incurred for necessary medical surgical, X-ray, dental, prosthetic, ambulance, hospital, or professional nursing services or services for remedial treatment and care rendered in accordance with a recognized religious healing method.

"Work loss" means eighty-five percent of loss of income from work an injured person who would normally be employed in gainful activity during the period of his disability, would have performed had he not been injured, reduced by any income

from substitute work actually performed by the injured person or by income the injured person would have earned in available appropriate substitute work which he was capable of performing but unreasonably failed to undertake. Work loss does not include any loss after death of an injured person.

"Disability" means the inability to engage in substantially all of the injured person's usual and customary daily activities.

"Replacement services loss" means expenses not exceeding fifteen dollars per day in obtaining ordinary and necessary services from others not members of the injured person's household in lieu of those that the injured person would have performed had he not been injured, not for income but for the benefit of himself or his household. Replacement services loss does not include any loss after the death of an injured person.

"Survivors income loss" means loss sustained after an injured person's death by his dependent survivors during their dependency and consisting of the loss of the contributions they would have received for their support from the decedent out of income from work he would normally have performed had he not died.

"Survivors replacement loss" means expenses not to exceed fifteen dollars per day after the injured person's death by his dependent survivors in obtaining ordinary and necessary services from others not members of the decedent's household in lieu of the services he would have performed not for income but for the benefit of his household.

**SECURITY REQUIRED**

The owner of a motor vehicle required to be registered in this state, or the owner of a motor vehicle operated in this state by him or with his permission, shall continuously provide with respect to such motor vehicle during the period in which operation is contemplated in this state security for payment of basic no-fault benefits and the liabilities covered under the motor vehicle liability insurance.

The security may be provided by:

- a. Policy of insurance complying with this Act.
- b. Self-insurance as approved by the commissioner of insurance.

Liability coverage with limits of \$25,000 per person and \$50,000 per accident for bodily injury and \$10,000 per accident for property damage is required.

**PENALTIES**

1. An owner of a motor vehicle with respect to which security is required who fails to have such security in effect at the time of an accident shall be absolutely liable at law for payment of basic no-fault benefits, and shall have all the rights and obligations of a basic no-fault insurer under this Act. This remedy shall be in addition to any other remedy that an injured person may have against such an owner.
2. The owner of any motor vehicle required to be registered in this state who operates it or permits it to be operated in this state when he knows or should know that he has failed to comply with the requirement that he provide security under this Act shall have his motor vehicle registration revoked or suspended.

**PROPERTY DAMAGE**

No provisions in the Act.

**PERSONS ENTITLED TO BENEFITS**

Each basic no-fault insurer of a secured motor vehicle shall pay basic no-fault benefits without regard to fault for economic loss resulting from accidental bodily injury.

- A. When the accident occurs within the United States of America, its territories or possessions or Canada and sustained by:
  1. The owner of the motor vehicle or any relative of the owner:
    - a. While occupying any motor vehicle, or
    - b. While a pedestrian as a result of being struck by a motor vehicle while for the purpose of this subdivision, shall also include a motorcycle.
  2. Any other person while occupying the secured motor vehicle.
  3. Any other person as a result of being struck by the secured motor vehicle while a pedestrian in this state.

**PERSONS NOT ENTITLED TO BENEFITS**

Basic or optional excess no-fault benefits shall not be payable to or on behalf of any person while:

1. Occupying any motor vehicle without the expressed or implied consent of the owner or while not in lawful possession of the motor vehicle.
2. Occupying a motor vehicle owned by such person which is not insured for the benefits required by this Act.
3. In the course of a racing or speed contest, or in practice or preparation thereof; or
4. Intentionally causing or attempting to cause injury to himself or another person.

## TORT EXEMPTION AND TORT ACTION

In any action against a secured person to recover damages because of accidental bodily injury arising out of the ownership or operation of a secured motor vehicle in this state, the secured person shall be exempt from liability to pay damages for:

- a. Noneconomic loss unless the injury is a serious injury;
- b. Economic loss to the extent of all basic no-fault benefits paid or to become payable for such injury under this Act after subtracting the same elements of loss recoverable under any workmen's compensation act.

"Serious injury" means an accidental bodily injury which results in death, dismemberment, serious and permanent disfigurement or disability beyond sixty days, or medical expenses in excess of one thousand dollars.

## BASIC REPARATION BENEFITS

Basic no-fault benefits means benefits for economic loss resulting from accidental bodily injury. The maximum amount of basic no-fault benefits payable for all economic loss incurred resulting from accidental bodily injury to any one person as the result of any accident shall not exceed fifteen thousand dollars, regardless of the number of persons entitled to such benefits or the number of basic no-fault insurers obligated to pay such benefits. Basic no-fault benefits payable shall not exceed one hundred and fifty dollars per week per person prorated for any lesser period for work loss or survivors income loss.

"Economic loss" means one or more of the following:

1. Medical and rehabilitation expense.
2. Lost income up to \$150 per week, but limited to 85 per cent of actual income.
3. Replacement services loss up to \$15 a day.
4. Up to \$150 a week for survivors income loss.
5. Up to \$15 a day for survivors replacement services loss.
6. Up to \$1,000 for funeral, cremation, and burial expenses.

## PAYMENTS OF BENEFITS

1. Basic and optional excess no-fault benefits are payable monthly for economic loss sustained by an injured person or his dependent survivors or incurred on his behalf by his spouse, relative or guardian.
2. Payments are overdue if not paid within thirty days after the basic no-fault insurer receives reasonable proof of the fact and the amount of loss sustained.
3. Payment is deemed made on the date of mailing. All overdue payments shall bear interest at the rate of eighteen percent per annum.

## PRIORITY OF APPLICABLE SECURITY

- a. Basic no-fault benefits are primary except benefits payable under any Worker's Compensation Law shall be deducted from such benefits.
- b. Insurer of the secured motor vehicle primary as to any person injured while occupying a secured motor vehicle, or injured as a pedestrian by a secured motor vehicle.
- c. Insurer of the injured person primary as to any person who is injured while occupying an unsecured motor vehicle, or while being struck as a pedestrian by an unsecured motor vehicle.
- d. As to any person injured while occupying a bus which is a secured motor vehicle, the benefits shall be payable by the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of secured motor vehicle; and, if there is no such basic no-fault insurer affording benefits to the injured person, then the benefits shall be payable to the injured person by the basic no-fault insurer of the bus.

## LIMITATION OF ACTIONS

1. If no basic or optional excess no-fault benefits have been paid for loss, an action therefore may be commenced not later than two years after the injured person suffers the loss and either knows, or in the exercise of reasonable diligence should know, that the loss was caused by the accident or not later than four years after the accident whichever is earlier.
2. If no basic or optional excess no-fault benefits have been paid to the decedent or his dependent survivors, an action for benefits for survivors income loss and replacement services loss and funeral and burial expenses may be commenced not later than one year after the death or four years after the accident from which death results, whichever is earlier. If survivors income loss and replacement services loss benefits have been paid to any dependent survivor, an action for recovery of further survivors income loss or replacement services loss benefits by either the same or another claimant may be commenced not later than two years after the last payment of benefits.

## SUBROGATION

A basic no-fault insurer which has paid or may become obligated to pay basic no-fault benefits under this Act shall be subrogated to the extent of its obligations to all of the rights of the injured person against any person or organization other than a secured person. The subrogee shall have a lien to the extent of its obligations, and no release of such rights shall be effective against such rights without the subrogee's consent.

A basic no-fault insurer shall have a right to recover basic no-fault benefits paid to or for the benefit of an injured person from the motor vehicle liability insurer of a secured person if:

1. The injured person has sustained a serious injury; or
2. The injury results from an accident involving two or more motor vehicles, at least one of which is a motor vehicle weighing more than six thousand five hundred pounds unloaded.

## ARBITRATION

The right of recovery and the amount thereof shall be determined on the basis of tort law by agreement between the basic no-fault insurers involved, or, if they fail to agree, by binding intercompany arbitration.

## MISCELLANEOUS PROVISIONS

1. Auto insurers must offer an additional \$25,000 of no-fault coverage that would pay benefits when the required no-fault coverage was exhausted. The additional coverage may be written with deductibles, waiting periods, or coinsurance provisions.
2. Health insurers may exclude in their policies any expenses resulting from auto accidents that are covered by the first \$5,000 of no fault insurance. If they do, they must give their customers an equitable reduction in premiums.
3. Benefits are not payable to any persons injured as a result of conduct within the course of a business or repairing, servicing or maintaining motor vehicles unless the injury occurs off the premises, or conduct in the course of loading and unloading the vehicle unless the injury occurs while occupying it.
4. A pedestrian struck by a motorcycle may recover benefits from own carrier, if none then the Assigned Claim Plan.  
(Motorcycles are not motor vehicles; however, they are included by specific verbiage when relating to striking a pedestrian.)
5. Provides for Assigned Claims Plan.

## DEFINITIONS

"Motor Vehicle" means a vehicle of a kind required to be registered under the provisions of the Pennsylvania Vehicle Code.

"Victim" means an individual who suffers injury arising out of the maintenance or use of a motor vehicle,

"Insured" means:

- (A) an individual identified by name as an insured in a contract of basic loss insurance complying with this act; and
- (B) a spouse or other relative of a named insured, a minor in the custody of a named insured, and a minor in the custody of a relative of a named insured if:
  - (1) not identified by name as an insured in any other contract of basic restoration insurance complying with this act; and
  - (2) in residence in the same household with a named insured.

"Basic loss benefits" means benefits provided in accordance with this act for the net loss sustained by a victim, subject to any applicable limitations, exclusions, deductibles, waiting periods, disqualifications, or other terms and conditions provided or authorized in accordance with this act. However, basic loss benefits do not include benefits for net loss sustained by an operator or passenger of a motorcycle.

"Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income, but for the benefit of himself or his family, if he had not been injured.

"Survivor's loss" means the

- (A) loss of income of a deceased victim which would probably have been contributed to a survivor or survivors, if such victim had not sustained the fatal injury; and
- (B) expenses reasonably incurred by a survivor or survivors, after a victim's death resulting from injury, in obtaining ordinary and necessary services in lieu of those which the victim would have performed, not for income, but for their benefit, if he had not sustained the fatal injury, reduced by expenses which the survivor or survivors would probably have incurred but avoided by reason of the victim's death.

## SECURITY REQUIRED

Every owner of a motor vehicle which is registered or which is operated in this Commonwealth by the owner or with his permission, shall continuously provide security covering such motor vehicle while such vehicle is either present or registered in the Commonwealth.

Security shall be provided for the payment of basic loss benefits, and for the payment of bodily injury and property damage up to a total limit of 15/30/5.

## PENALTIES

Any owner of a passenger vehicle who operates such motor vehicle or permits it to be operated upon a public highway in this State without having in full force and effect security required is guilty of a misdemeanor. And any other person who operates such a motor vehicle upon a public highway in this Commonwealth with the knowledge that the owner does not have such security in full force and effect is guilty of a misdemeanor. And each person convicted of a misdemeanor may be fined not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or may be imprisoned for not more than six months or both.

## PROPERTY DAMAGE

No provision in the Act.

## PERSONS COVERED

- (A) Accident within this State—If the accident resulting in injury occurs in this Commonwealth, any victim or any survivor of a deceased victim is entitled to receive basic loss benefits in accordance with the provisions of this act.
- (B) Accident outside this state—If the accident resulting in injury occurs outside of this Commonwealth, a victim or a survivor of a deceased victim is entitled to receive basic loss benefits if such victim was or is:
  - (1) an insured; or
  - (2) the driver or other occupant of a secured vehicle.

## PERSONS EXCLUDED

Converter—A converter of a motor vehicle is ineligible to receive no-fault benefits from any source other than a contract of insurance under which he is insured.

Persons Intentionally Causing Loss—An individual who intentionally injures himself or another individual is ineligible to receive no-fault benefits for injury arising out of his acts.

Further, if an individual dies as a result of intentionally injuring himself or if a converter dies from his injuries his survivor or survivors are not entitled to no-fault benefits for survivor's loss.

## TORT LIABILITY

Tort liability is abolished with respect to any injury that takes place in this Commonwealth in accordance with the provision of the Act if such injury arises out of the maintenance or use of a motor vehicle except that:

An owner of a motor vehicle involved in an accident remains liable if, at the time of the accident, the vehicle was not a secured vehicle.

A person in the business of designing, manufacturing, repairing, servicing or otherwise maintaining motor vehicles remains liable for injury arising out of a defect in such motor vehicle which is caused or not corrected by an act or omissions in the course of such business, other than a defect in a motor vehicle which is operated by such business.

An individual remains liable for intentionally injuring himself or another individual.

A person remains liable for loss which is not compensated because of any limitations on basic loss benefits but is not liable for loss which is not compensated because of a deductible or waiting period.

A person remains liable for damages for non economic detriment if the accident results in:

- A. Death or serious and permanent injury.
- B. The reasonable value of reasonable and necessary mental and dental services including prosthetic devices and necessary ambulance, hospital and professional nursing expenses incurred in the diagnosis care and recovery of the victim, exclusive of diagnostic X-ray cost and rehabilitation costs in excess of \$100.00, is in excess of \$750.00.
- C. Medically determinable physical or mental impairment which prevents the victim from performing all or substantially all of the material acts and duties which constitute his usual and customary daily activities and which continues for more than 60 consecutive days.
- D. Injury which in whole or in part consists of cosmetic disfigurement which is permanent, irreparable and severe.

A person remains liable for injury arising out of a motorcycle accident to the extent that such injury is not covered by the basic loss benefits payable under the Act.

The right of a victim or of a survivor of a deceased victim to sue in tort shall be determined by the law of the state of domicile of such victim. If a victim is not domiciled in a state, such right to sue shall be determined by the law of the state in which the accident resulting in injury or damage to property occurs.

## FIRST PARTY BENEFITS:

**Medical**—First party medical expenses are consolidated under the term "allowable expense." There is no overall monetary limit on allowable expense.

"Allowable expense" means reasonable charges incurred for, or the reasonable value of (where no charges are incurred), reasonably needed and used products, services, and accommodations for:

- (A) professional medical treatment and care;
- (B) emergency health services;
- (C) medical and vocational rehabilitation services;
- (D) expenses directly related to the funeral, burial, cremation, or other form of disposition of the remains of a deceased victim, not to exceed one thousand five hundred dollars (\$1,500).

"Income loss" means gross income actually lost by a victim or that would have been lost but for any income continuation plan, reduced by:

- (A) eighty per cent (80%) of any income which such individual earns from substitute work;
- (B) income which such individual would have earned in available substitute work he was capable of performing but unreasonably failed to undertake; or
- (C) any income which such individual would have earned by hiring an available substitute to perform self-employment services but unreasonably failed to do.

Income loss limits:

- (1) Up to a monthly maximum of:
  - (A) One thousand dollars (\$1,000) multiplied by a fraction whose numerator is the average per capita income in this Commonwealth and whose denominator is the average per capita income in the United States, according to the latest available United States Department of Commerce figures; or
  - (B) the disclosed amount, in the case of a named insured who, prior to the accident resulting in injury, voluntarily discloses his actual monthly earnings to his obligor and agrees in writing with such obligor that such sum shall measure work loss; and
- (2) Up to a total amount of fifteen thousand dollars (\$15,000).
- (3) Up to 20 percent can be subtracted to offset the income tax savings.

*continued on next page* →

### FIRST PARTY BENEFITS (cont'd)

Calculation of Work Loss—Work loss benefits are payable to victims who were regularly employed, seasonally employed, or not employed at the time of the accident. To determine the work loss of one regularly or seasonally employed, one must determine the victim's probable weekly income by dividing his probable annual income by 52 (for one regularly employed) or by the number of weeks he normally works (for one seasonally employed). That probable weekly income must then be multiplied by the number of work weeks, or fraction thereof, the victim sustains loss of income during the accrual period. The work loss of a victim not employed at the time of the accident is determined by multiplying his probable weekly income by the number of work weeks he "would reasonable have expected to realize income" after the accident. "Absent a showing that it is or would be some other amount," the probable weekly income of such a victim previously employed is measured by averaging his income during the years he was employed. The probable weekly income of a victim not previously employed is measured by the average income of a production or nonsupervisory worker in the private nonfarm economy of his domiciliary state.

Replacement services loss, shall be provided up to a daily maximum of twenty-five dollars (\$25) for an aggregate period of one year.

Survivors may also receive work loss benefits that would have been payable to the deceased.

The basic loss benefits available to any victim or to any survivor of a deceased victim shall be determined pursuant to the provisions of the state no-fault plan for motor vehicle insurance in effect in the state of domicile of the victim on the date when the motor vehicle accident resulting in injury occurs. If there is no such state no-fault plan in effect or if the victim is not domiciled in any state, then basic loss benefits available to any victim shall be determined pursuant to the provisions of the state no-fault plan for motor vehicle insurance, if any, in effect in the state in which the accident resulting in injury occurs.

### PAYMENTS

No-fault benefits are payable monthly as loss accrues. Loss accrues not when injury occurs, but as allowable expense, work loss, replacement services loss, or survivor's loss is sustained.

No-fault benefits are overdue if not paid within thirty days after the receipt by the insurer.

An obligor who rejects a claim for basic loss benefits shall give to the claimant written notice of the rejection promptly, but in no event more than thirty days after the receipt of reasonable proof of the loss.

Overdue payments bear interest at the rate of eighteen per cent (18%) per annum.

A claim for no-fault benefits shall be paid without deduction for the benefits or advantages which are to be subtracted from loss in calculating net loss if such benefits or advantages have not been paid or provided to such claimant prior to the date the no-fault benefits are overdue or the no-fault benefits claim is paid. The obligor is thereupon entitled to recover reimbursement from the person obligated to pay or provide such benefits or advantages or from the claimant who actually receives them.

### PRIORITY OF SECURITY

For an employee, or spouse or other relative of any employee residing in the same household, if the victim or deceased victim is driving, or occupying, a motor vehicle furnished by his or her employer—security for the payment of basic loss benefits covering such motor vehicle, or, if none, any other security applicable to such victims;

For an insured—the security under which the victim or deceased victim is insured;

For the driver, or other occupant of a motor vehicle, involved in an accident resulting in injury who is not insured—the security covering such vehicle;

For an individual who is not an insured, or the driver or other occupant of a motor vehicle involved in an accident resulting in injury—the security covering any motor vehicle involved (for purposes of this paragraph, a parked and unoccupied motor vehicle is not a motor vehicle involved in an accident, unless it was parked so as to cause unreasonable risk or injury);

For any other individual—the applicable assigned claims plan.

### ADDITIONAL LOSS BENEFITS (MANDATORY)

Insurers providing security for the payment of basic loss benefits shall offer or obligate themselves to provide added loss benefits for injury or damage arising out of the ownership, maintenance, or use of a motor vehicle, including:

- (1) loss excluded from basic loss benefits by limits on allowable expense, work loss, replacement services loss, and survivor's loss;
- (2) benefits for damage to property;
- (3) benefits for loss of use of a motor vehicle;
- (4) benefits for expense for remedial religious treatment and care;
- (5) for physical damage to a motor vehicle, a coverage for all collision and upset damage, subject to an optional deductible; and
- (6) for economic detriment, a coverage for work loss sustained by a victim in excess of limitations on basic loss benefits for work loss.

## COLLATERAL SOURCES

The owner or operator of a motor vehicle may elect to provide for security in whole or in part for the payment of basic loss benefits through a program, group, contract or other arrangement that would pay to or on behalf of the victim or members of his family residing with him or the survivors of a deceased victim, basic loss benefits. In all such instances, each contract of insurance issued by an insurer shall be construed to contain a provision that all basic loss benefits provided therein shall be in excess of any valid and collectible benefits otherwise provided through such program, group, contract or other arrangement as designated at the election of the owner or operator which shall be primary and the insurer shall reduce the cost of such contract of insurance to reflect the anticipated reduction in basic loss benefits payable by the insurer by reason of the election of the owner or operator to provide substitute security.

Basic loss benefits are payable for net loss. Net loss is defined as accrued economic detriment less all benefits or advantages (less reasonably incurred collection costs) from social security\* (except those benefits provided under Title XIX of the Social Security Act and except those medicare benefits to which a person's entitlement depends upon use of his so-called "life-time reserve" of benefit days); workmen's compensation; state-required temporary nonoccupational disability insurance; and benefits (except life insurance proceeds) from the federal or a state government, unless the law authorizing or providing for such benefits or advantages makes them excess or secondary to basic loss benefits.

\*See Omnibus Reconciliation Act of 1980 for clarification.

## SUBROGATION

Whenever an individual who receives or is entitled to receive no-fault benefits for an injury has a claim or cause of action against any other person causing the injury as based upon a determination of fault, the insurer is subrogated to the rights of the claimant only for:

- (A) elements of damage compensated for by security for the payment of no-fault benefits in excess of the minimum basic loss benefits required under this act are recoverable; and
- (B) the insurer has paid or become obligated to pay accrued or future no-fault benefits in excess of the minimum basic loss benefits required under this act.

The insurer obligated to pay basic loss benefits for accidental bodily injury to a person occupying a motor vehicle, the owner of which is uninsured, shall be entitled to recover all the benefits paid and appropriate loss adjustment costs incurred from the owner of such motor vehicle or from his estate.

## MISCELLANEOUS PROVISIONS

1. A claim for no-fault benefits may be discharged by a settlement agreement for an agreed amount payable in installments or in a lump sum, if the reasonable anticipated net loss does not exceed two thousand five hundred dollars (\$2,500). In all other cases, a claim may be discharged by a settlement to the extent authorized by law and upon a finding, by a court of competent jurisdiction, that the settlement is in the best interest of the claimant.
2. Referral for rehabilitation services—The insurer shall promptly refer each victim to whom basic benefits are expected to be payable for more than two months to the State vocational rehabilitation agency.
3. An action for no-fault benefits for loss arising other than from death must be commenced within 2 years after the victim suffers loss or 4 years after the accident occurs, whichever is earlier. If no-fault benefits have been paid (other than loss arising from death), an action must be commenced within 2 years after the last payment of benefits. There are special provisions for death.
4. Assigned claims plan provided for.
5. The insurer against whom a claim is first asserted shall process and pay the claim; thereafter such obligor is entitled to recover contribution, on a pro rata basis, from any other such insurer for the basic loss benefits paid and for the costs of processing the claim.
6. Coverages can be written with a deductible of \$100 per person. The work loss and replacement service coverages can be bought with a waiting period of up to one week.
7. Excessive charges—Any person who charges, demands, receives or collects for hospital or medical products, services or accommodations rendered in the treatment of an injured person or for rehabilitative occupational training or for legal services rendered in connection with a claim for basic loss benefits, any amount in excess of that authorized is guilty of a misdemeanor and upon conviction may be fined not less than one hundred dollars (\$100) or more than five hundred (\$500) or may be imprisoned for not more than six months or both.

**UTAH AUTOMOBILE NO-FAULT INSURANCE ACT**  
Effective January 1, 1974—Amended thru May 8, 1979—Compulsory

**DEFINITIONS**

"Motor vehicle" means any vehicle of a kind required to be registered under Title 41, but excluding, however, motorcycles.

"Person" includes every natural person, firm, partnership, association, corporation, or any governmental entity, or agency of it.

"Insured" means the named insured, the spouse or other relative of the named insured who reside in the same household as the name insured, including those who usually make their home in the same household but temporarily live elsewhere, or any person

using the described motor vehicle with the permission, either expressed or implied, of the owner.

"Pedestrian" means any natural person not occupying or riding upon a motor vehicle, excluding, however, any natural person occupying or riding upon a motorcycle.

"Occupying" means being in or upon a motor vehicle as a passenger or operator or engaged in the immediate acts of entering, boarding, or alighting from a motor vehicle.

**SECURITY REQUIRED**

Every resident owner of a motor vehicle shall maintain the security in effect continuously throughout the registration period of the motor vehicle.

Every non-resident owner of a motor vehicle which has been physically present in this state for more than 90 days during the preceding 365 days shall thereafter maintain the security in effect continuously throughout the period the motor vehicle remains within this state.

The State of Utah and all of its political subdivisions and their respective departments, institutions, or agencies shall maintain the security.

The United States and any other state, or any political subdivisions of same, or any of their agencies, may maintain the security.

Security may be provided by:

1. insurance policy.
2. any other method approved by the department as affording security equivalent to that offered by a policy of insurance.

Liability coverage with limits of \$20,000 per person and \$40,000 per accident for bodily injury and \$5,000 for property damage is required. Coverage with a single limit of \$30,000 is permitted.

Every insurance policy or other security shall provide personal injury protection providing for payments to the insured and to all other persons suffering personal injury arising out of an accident involving any motor vehicle except as otherwise provided in this act.

**PENALTIES**

1. The owner of a motor vehicle with respect to which security is required by this act who fails to have such security in effect at the time of an accident shall have no immunity from tort liability and shall be personally liable for the payment of the benefits provided for under this act.
2. Violation is a misdemeanor.
3. Each person convicted of a misdemeanor shall have:
  - (a) operators or chauffeurs license revoked.
  - (b) motor vehicle registration revoked.

**PROPERTY DAMAGE**

No provision.

**PERSONS COVERED**

1. **Insured:**  
Personal injuries sustained when injured in an accident in this state involving any motor vehicle.
2. **Any Other Natural Person:**  
Personal injuries arising out of automobile accidents occurring in this state sustained while occupying the described motor vehicle with the consent of the insured or while a pedestrian if injured in an accident involving the described motor vehicle.
3. When a person injured is also an insured party under any other policy, including those complying with this act, primary coverage shall be afforded by the policy insuring the motor vehicle out of the use of which the accident arose.

**PERSONS EXCLUDED**

- Any Insurer may exclude benefits.
1. For injury sustained by the injured while occupying another motor vehicle owned by the insured and not insured under the policy.
  2. For an injury sustained by any person while operating the insured motor vehicle without the express or implied consent of the insured or while not in lawful possession of the insured motor vehicle.
  3. To any injured person, if such person's conduct contributed to his injury under any of the following circumstances:
    - (a) Causing injury to himself intentionally; or
    - (b) While committing a felony.

**TORT EXEMPTIONS**

No person for whom direct benefit coverage is provided for in this act shall be allowed to maintain a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident except where there has been caused by this accident any one or more of the following:

- (a) Death;
- (b) Dismemberment or fracture;
- (c) Permanent disability;
- (d) Permanent disfigurement; or
- (e) Medical expenses to a person in excess of \$500.

## BASIC REPARATIONS BENEFITS

- (a) **Medical benefits:** the reasonable value of all expenses for necessary medical, surgical, x-ray, dental, and rehabilitation services, including prosthetic devices, necessary ambulance, hospital, and nursing services not to exceed a total of \$2,000 per person.
- (b) **Disability benefits:**
- (1) 85% of any loss of gross income and loss of earning capacity per person from inability to work during a period commencing not later than three days after the date of the injury and continuing for a maximum of 52 consecutive weeks thereafter, not to exceed a total of \$150 per week, but if the person's inability to work shall so continue for in excess of a total of two consecutive weeks after the date of the injury, this three-day elimination period shall not be applicable; and
  - (2) a special damages allowance not exceeding \$12 per day for services actually rendered or expenses reasonably incurred for services that, but for the injury, the injured person would have performed for his household.

Commencing not later than three days after the date of the injury and continuing for a maximum of 365 days thereafter, but if the person's inability to perform these services shall so continue for in excess of a total of 14 days after the date of the injury, this three-day elimination period shall not be applicable.

- (c) **Funeral benefits:** funeral, burial, or cremation benefits not to exceed a total of \$1,000 per person.
- (d) **Survivor benefits:** compensation on account of death of a person, payable to his heirs, in the total of \$2,000.

The reasonable values assigned to various medical services will be based on a relative value study of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person in Utah's most populous county. The study, to be prepared by the state insurance department, will assign a unit value and median charge to each type of medical service or accommodation.

## PAYMENT OF BENEFITS

Payment of the benefits shall be made on a monthly basis as expenses are incurred.

Benefits for any period are overdue if not paid within 35 days after the insurer receives reasonable proof of the fact and amount of expenses incurred during the period.

In the event the insurer fails to pay such expenses when due, the amount of these expenses shall bear interest at the rate of 1-1/2% per month after the due date.

## COLLATERAL SOURCE

Basic reparation benefits are primary except for:

- (a) Any benefits which that person receives or is entitled to receive as a result of an accident covered in this act under any workmen's compensation plan or any similar statutory plan; and
- (b) Any amounts which that person receives or is entitled to receive from the United States or any of its agencies because of his or her being on active duty in the military services.

## SUBROGATION/INDEMNITY

When an insurer pays no-fault benefits to a policyholder who was injured in an accident in which another driver was at fault, it has the right of reimbursement from the other motorist's insurance company. The determination of fault and the amount of reimbursement must be decided by binding arbitration between the insurance companies.

- (a) That where its insured is or would be held legally liable for the personal injuries sustained by any person to whom benefits required under this act have been paid by another insurer, including the state insurance funds, it will reimburse such other insurer for the payment of such benefits, but not in excess of the amount of damages so recoverable, and
- (b) That the issue of liability for such reimbursement and the amount of same shall be decided by mandatory, binding arbitration.

## TERRITORIAL LIMITS

First party benefits are not payable for injuries sustained outside State of Utah.

## MISCELLANEOUS

1. All registered motor vehicles except motorcycles are covered by no-fault.
2. **Optional Offer of Deductibles—**At appropriately reduced premium rates. Insurers may offer these first-party coverages with deductibles not exceeding \$500 per accident, but the deductibles apply only to claims of the insured (including the spouse and other relatives living in the same household) not to other passengers or pedestrians.

**GAB**

126 William Street  
New York, New York 10038

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By Jeffrey O'Connell\*

## Operation of No-Fault Auto Laws: A Survey of the Surveys †

### I. INTRODUCTION

Daniel Patrick Moynihan has called no-fault auto insurance the "one incontestably successful reform [proposed in] . . . the 1960s."<sup>1</sup>

But in the late summer of 1976, John Massi, a motorist in East Meadow, Long Island, wrote to his State Senator, John Dunne, stating that the Senator, in acting as a primary backer of no-fault insurance in New York State, had thereby sold the public a "bill of goods."<sup>2</sup>

No-fault auto insurance, born in intense controversy, the subject of bitter, massive opposition by trial lawyers all over the country, continues to live that way.

As a result of the controversy, passage of no-fault laws, enacted in various forms in 24 states between 1970 and 1975, has been stalled. No new no-fault law was passed in any state in the last year, and an attempt to pass a federal bill failed in the Senate in the spring of 1976 after a tense roll-call vote of 49 to 45.<sup>3</sup>

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\* Professor of Law, University of Illinois; B.A. 1951, Dartmouth College; J.D. 1954, Harvard University.

† This manuscript is adapted from the author's remarks before the Department of Consumer Economics and Public Policy, Cornell University, Ithaca, N.Y., October 22, 1976.

1. Moynihan, *Foreword to J. O'CONNELL, ENDING INSULT TO INJURY* at xi (1975).

2. *N.Y. Times*, July 25, 1976, § 1, at 1, col. 1.

3. *Wall St. J.*, Apr. 1, 1976, at 2, col. 2.

According to one account, at the end of the voting the motion [to recommit] was ahead by only one vote, with a tie being the same as a defeat [for no-fault]. Senator Frank Moss (D-Utah), floor leader for the bill, changed his vote so as to be able to move to reconsider the motion after Senator Claiborne Pell (D-R.I.) could get to the floor. But Senator Wendell Ford (D-Ky.) misunderstood the switch and altered his vote as well. . . . The later motion by Senator Moss to reconsider the motion to recommit lost 45 to 47.

Recently, several academic studies in law reviews and elsewhere have rather exhaustively examined the operation of several of the earliest no-fault laws. Who has been right, Moynihan or Massi? Before answering, some background information will be helpful.

## II. NO-FAULT SYSTEMS

In essence, no-fault insurance is premised on the following conditions. Under the old common-law "tort," or fault-based system, after an accident between Smith and Jones, Smith can be paid only by claiming against Jones and proving him at fault and himself free from fault, or at least comparatively so. Because Smith is an "innocent" party claiming against a "wrongdoer," Smith is paid in one final lump sum not only for his out-of-pocket loss, but for the monetary value of his pain and suffering. But obviously, it is often very difficult to establish not only who was at fault in an accident but the pecuniary value of pain.<sup>4</sup> Under the no-fault solution, after an accident between Smith and Jones, each would be paid regardless of anyone's fault, by his own insurance company, periodically month-by-month as his losses accrued, and only for out-of-pocket losses. As a corollary, each would be required to surrender his claim based on fault against the other.<sup>5</sup>

No-fault, then, was designed to make the following improvements in auto accident compensation. First, it was designed to assure that everyone injured in auto accidents is eligible for auto insurance payment, regardless of whether he was able to prove fault-based claims. According to a massive study by the United States Department of Transportation (DOT), about 55 per cent of those seriously injured get absolutely nothing from automobile liability insurance.<sup>6</sup>

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Four senators who previously supported S. 354 were absent on the day of the voting.

HENDERSON, Report on the Status and Effect of No-Fault Insurance Schemes for Automobile Accidents in the United States, submitted to the Special Committee on the Uniform Motor Vehicle Accident Reparations Act of the National Conference of Commissioners on Uniform State Laws, June 26, 1976, at 12 n.25.

4. For a description of the tort system in operation in the context of auto accidents see J. O'CONNELL, *THE INJURY INDUSTRY AND THE REMEDY OF NO-FAULT INSURANCE* 1-93 (1971), and J. O'CONNELL & R. HENDERSON, *TORT LAW, NO-FAULT AND BEYOND: TEACHING MATERIALS ON COMPENSATION FOR ACCIDENTS AND AILMENTS IN MODERN SOCIETY* 99-221 (1975).
5. See generally J. O'CONNELL, *supra* note 4, at 94-154; J. O'CONNELL & R. HENDERSON, *supra* note 4, at 223-46.
6. 1 U.S. DEP'T OF TRANSPORTATION, *ECONOMIC CONSEQUENCES OF AUTOMOBILE ACCIDENT INJURIES* 37-38 (1970); A. CONARD, J. MORGAN, R. PRATT, C. VOTZ & R. BOMBAUGH, *AUTOMOBILE ACCIDENT COSTS AND PAYMENTS—STUDIES IN THE ECONOMICS OF INJURY REPARATION* 186 (1964) (45

Second, it was designed to spend less on smaller, relatively trivial claims, and more on serious injury. According to Professor Alfred Conard of the University of Michigan, who conducted an extensive Michigan study, "If there is one thing which [all] the surveys have shown conclusively, it is that the [fault-based] system overpays the small claimants who need it least and underpays the large claimants who need it most."<sup>7</sup>

Third, it was designed to pay claims promptly. According to the DOT study, on the average, a period of 16 months elapses between an accident and time of payment. The larger the loss, the larger the delay. For losses over \$2,500, the average delay rose to 19 months.<sup>8</sup>

Fourth, it was designed to pay more efficiently by using less of the premium dollar on insurance overhead and legal fees. No-fault insurance has been called "no-lawyer insurance" by one consumer advocate.<sup>9</sup> Prior to no-fault in Massachusetts, approximately 80 per cent of successful claimants under liability insurance there were represented by attorneys.<sup>10</sup> According to several studies, 56 cents of the automobile liability insurance dollar is used up by insurance expenses and legal fees on both sides, with only 44 cents going to victims themselves.<sup>11</sup> This is in contrast, as Colston Warne, president of Consumers Union, has pointed out, to "an administrative cost of 3¢ in Social Security, 7¢ for Blue Cross [and] 17¢ for health and accident plans . . ."<sup>12</sup> As a corollary, no-fault was designed to reduce the amount of litigation stemming from auto accidents. Prior to no-fault laws, typically 50 to 80 per cent of civil jury dockets were taken up with auto cases.<sup>13</sup>

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per cent of the seriously injured get no damage recovery through the tort law system).

7. Conard, *Testimony Before the New York Joint Legislative Committee on Insurance Rates and Regulation*, U. MICH. L. QUADRANGLE NOTES 14 (Fall, 1970).
8. 1 U.S. DEP'T OF TRANSPORTATION, *supra* note 6, at 52.
9. 1 LAWYER REFORM NEWS 4 (April/May, 1971).
10. 1 U.S. DEP'T OF TRANSPORTATION, AUTOMOBILE PERSONAL INJURY CLAIMS 78 (1970). The Department of Transportation study lists the figures for 19 states. In 1970, the national average was about 47 per cent.
11. E.g., P. KEETON & R. KEETON, TORTS: CASES AND MATERIALS 514 (1971). The Keetons' figures were later cited and independently confirmed in N.Y. INSURANCE DEP'T, AUTOMOBILE INSURANCE . . . FOR WHOSE BENEFIT? A REPORT TO GOVERNOR NELSON A. ROCKEFELLER 34-37 (1970).
12. Warne, *Let's Hear From the Insurance Consumer*, 36 INS. COUNSEL J. 493, 496 (1969); see J. O'CONNELL, *supra* note 4, at 29. See also A. CONARD, J. MORGAN, R. PRATT, C. VOTZ & R. BOMBAUGH, *supra* note 6, at 59.
13. J. O'CONNELL, *supra* note 4, at 137. In unpublished remarks, then-Chief Justice Joseph Weintraub of New Jersey, in an address to a joint dinner in Newark of the State Supreme Court Justices and members of the New Jersey Press Association, offered the opinion that 51 per

Fifth, no-fault insurance was designed to reduce, or at least to stabilize, the costs of auto insurance. Prior to no-fault, the number one complaint about auto insurance was its high cost.<sup>14</sup> It was one of the fastest rising items on the consumer price index.<sup>15</sup>

In response to all these problems, beginning in the mid-1960's, vigorous attempts were begun to initiate no-fault insurance reform. In fact, academic studies had been urging such reform since the early 1930's, but largely had been confined to the law reviews, and were consequently ignored. In 1970, Massachusetts enacted the first no-fault law, followed since by 23 other states. The laws are a bewildering variety—a fact that adds to the pressure for a uniform federal law—but basically fall into three categories, with some overlap.

In the first category are *modified no-fault laws*, which provide only modest no-fault benefits and eliminate only relatively few fault-based claims.<sup>16</sup> States with modified plans are Colorado,<sup>17</sup> Connecticut,<sup>18</sup> Florida,<sup>19</sup> Georgia,<sup>20</sup> Hawaii,<sup>21</sup> Kansas,<sup>22</sup> Kentucky,<sup>23</sup> Massachusetts,<sup>24</sup> Minnesota,<sup>25</sup> Nevada,<sup>26</sup> New Jersey,<sup>27</sup> North Da-

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cent of civil cases arise from automobile-accident suits, but that those cases occupy about 80 per cent of the total civil trial time, and about 20 per cent of all trial time. In a letter to the author, Chief Justice Weintraub wrote that "the actual impact of this litigation on total court time is more than the stated percentages." Letter from Chief Justice Joseph Weintraub to Jeffrey O'Connell, Dec. 23, 1973. See also EXECUTIVE SECRETARY TO THE JUSTICES OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS, ANNUAL REPORTS, indicating that consistently about two thirds of the jury cases pending in the trial courts of general jurisdiction in Massachusetts, and listed as "undisposed of" on June 30, were motor vehicle tort cases. See, e.g., *id.*, 11TH ANNUAL REPORT, Tip-in sheet between 60-61 (1967); *id.*, 12TH ANNUAL REPORT, Tip-in sheet between 72-73 (1968); *id.*, 13TH ANNUAL REPORT, Tip-in sheet between 68-69 (1969).

14. J. O'CONNELL, *supra* note 4, at 70-72; J. O'CONNELL & W. WILSON, CAR INSURANCE AND CONSUMER DESIRES 15 (1969).
15. N.Y. Times, July 6, 1970, at 47, col. 4.
16. For a description of modified no-fault plans see J. O'CONNELL & R. HENDERSON, *supra* note 4, at 281-82.
17. COLO. REV. STAT. ANN. §§ 10-4-701 to -723 (1973).
18. CONN. GEN. STAT. ANN. §§ 38-319 to -351a (Supp. 1975).
19. FLA. STAT. ANN. §§ 627.730-.741 (1972).
20. GA. CODE ANN. §§ 56-3401b to -3413b, -9915.2 (Supp. 1976).
21. HAWAII REV. STAT. §§ 294-1 to -41 (Supp. 1975).
22. KAN. STAT. ANN. §§ 40-3101 to -3121 (Supp. 1975).
23. KY. REV. STAT. ANN. §§ 304.39-010 to -340, -.99-050 (Supp. 1975).
24. MASS. GEN. LAWS ANN. ch. 90, §§ 34A, D, H, K, M-O, ch. 231, § 6D (Supp. 1976).
25. MINN. STAT. ANN. §§ 65B.14, -.41-.71 (Supp. 1976).
26. NEV. REV. STAT. §§ 698.010-.510 (1973).
27. N.J. STAT. ANN. §§ 39:6A-1 to -20 (1973).

kota,<sup>28</sup> Pennsylvania,<sup>29</sup> and Utah.<sup>30</sup>

The second includes *add-on plans*, which, arguably, are not no-fault plans at all, in that although they call for usually modest benefits to be paid to traffic victims without regard to anyone's fault, they do not eliminate any victim's right to press a fault-based claim for his pain and suffering against other drivers.<sup>31</sup> Hence, the name *add-on*. The laws add on benefits but do not take anything away. States with add-on plans are Arkansas,<sup>32</sup> Delaware,<sup>33</sup> Maryland,<sup>34</sup> Oregon,<sup>35</sup> South Carolina,<sup>36</sup> South Dakota,<sup>37</sup> Texas,<sup>38</sup> and Virginia.<sup>39</sup>

In the third category are *plans approaching pure no-fault*. A pure no-fault plan would eliminate all, or almost all, claims based on fault, and substitute relatively unlimited benefits for all medical expenses and wages lost, no matter how extensive.<sup>40</sup> No law goes that far, but Michigan's comes closest. It covers unlimited medical expenses and a maximum of about \$46,000 of wage loss, while eliminating fault-based claims unless the victim suffers death, serious disfigurement, or serious impairment of bodily function.<sup>41</sup> New York's law, in providing \$50,000 of no-fault benefits, might be thought to approach pure no-fault, but like Massachusetts', it eliminates fault-based claims only where medical bills are less than \$500.<sup>42</sup> On the other hand, the federal no-fault bill<sup>43</sup> clearly approaches pure no-fault in both benefits and elimination of fault-based claims.<sup>44</sup>

28. N.D. CENT. CODE §§ 26-41-01 to -19 (Supp. 1975).

29. PA. STAT. tit. 40, §§ 1009.101-.603 (Supp. 1976).

30. UTAH CODE ANN. §§ 31-41-1 to -13.4 (1974).

31. See generally J. O'CONNELL & R. HENDERSON, *supra* note 4, at 279-81.

32. ARK. STAT. ANN. §§ 66-4014 to -4021 (Supp. 1975).

33. DEL. CODE ANN. tit. 21, § 2118 (1974).

34. MD. ANN. CODE art. 48A, §§ 538-548 (Supp. 1975).

35. ORE. REV. STAT. §§ 743.800-.835 (1973).

36. S.C. CODE ANN. §§ 46-750.101 to -.154 (Supp. 1976).

37. S.D. COMP. LAWS ANN. §§ 58-23-6 to -8 (Supp. 1976).

38. TEX. INS. CODE art. 5.06-3 (Supp. 1975).

39. VA. CODE ANN. §§ 38.1-380.1 to -380.2 (Supp. 1975).

40. For a discussion of plans approaching pure no-fault see J. O'CONNELL & R. HENDERSON, *supra* note 4, at 283-84.

41. MICH. COMP. LAWS ANN. §§ 500.3101-.3179 (Supp. 1976). Under the Michigan law, wage-loss is tied to inflation. Originally pegged at \$1000 per month, the maximum payment for lost wages was, in September 1976, \$1,285. See MICH. COMP. LAWS ANN. § 500.3107(b) (Supp. 1976).

42. N.Y. INS. LAW §§ 670-677 (McKinney Supp. 1975).

43. S. 354, 94th Cong., 2d Sess. (1976).

44. In a congressional hearing, Professor Robert Keeton characterized the various no-fault laws as follows:

As noted, the drive for no-fault reform has been stalled in the various states, largely over the question of whether laws should be of the add-on variety or otherwise. The trial bar vigorously has asserted, at both the state and federal levels, that no-fault benefits can be paid without eliminating anyone's fault-based claims for pain and suffering. No-fault backers, on the other hand, oppose add-on laws as a mockery of reform, often labeling them "yes-fault." Trial lawyers in reply argue that under add-on plans auto insurance rates are not only not increased, but reduced. How, though, can no-fault claims be added on, without eliminating fault-based claims, and still reduce costs? After all, no one eligible to be paid under fault-based claims loses anything, and new claimants are added to the rolls. Trial lawyers answer that many fault-based claims are *voluntarily* abandoned, as when people receive their out-of-pocket losses promptly from their own insurance companies and don't bother to press the claim against the other driver. Former Association of Trial Lawyers of America President Leonard Ring notes that the Delaware add-on experience "has indeed proven that, where the victim has received his medical and wage loss, the incen-

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Among the real no-fault laws (as well as the "add-on" laws that do not provide a partial tort exemption), no two statutes thus far enacted are identical. The variations are substantial enough to cause confusion and concern among motorists who are quite properly worried about the possible consequences of accidents during travel outside their home state.

In one respect, the real no-fault laws are all alike. Each contains some kind of partial tort exemption. That is, in addition to providing benefits without regard to fault to cover losses from bodily injuries caused by car accidents, the statute eliminates tort claims . . . for some injuries. The claims for injuries of a less serious nature are eliminated. Persons who suffer more serious injuries still have their tort claims, in addition to the new no-fault benefits. A good statute also dovetails these two kinds of benefits to avoid double recovery for a single item of loss—and to avoid double cost for the system.

Two of the partial-tort-exemption statutes—those in New Jersey and Connecticut—eliminate tort recoveries for *minor* injuries only.

Thirteen eliminate tort recoveries for what I call *minor* and *substantial* injuries but preserve tort recoveries for what I call *moderate*, *serious* and *severe* injuries. These are the statutes in Colorado, Florida, Georgia, Kansas, Kentucky, Massachusetts, Minnesota, Nevada, New York, North Dakota, Pennsylvania, and Utah.

Two statutes eliminate tort recoveries for *minor*, *substantial*, and *moderate* injuries but preserve tort recoveries for *serious* and *severe* injuries. These are the statutes in Hawaii and Michigan.

By way of comparison UMVARA—the Uniform Motor Vehicle Accident Reparations Act proposed by the National Conference of Commissioners on Uniform State Laws—would eliminate tort recoveries for all *except severe* injuries.

tive to make further claim is extinguished in all but the most serious cases."<sup>45</sup>

Proponents of the purer forms of no-fault that formally ban some fault-based claims argue that statistics for Delaware demonstrate that fault-based claims are not reduced by add-on plans.<sup>46</sup> Second, even if fewer people than expected bring fault-based claims when provided with no-fault benefits, despite their right to do so, that situation cannot be expected to remain, given the aggressive personal-injury bar and the money that can be made by pressing fault-based claims. Why, such proponents ask, pass a reform that leaves intact the claims which led to the need for reform in the first place, counting on human nature to forego taking advantage of the right to press those claims?<sup>47</sup>

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*Hearings on H.R. 285, H.R. 1272, H.R. 1900, H.R. 7985, and H.R. 8441 Before the Subcomm. on Consumer Protection and Finance of the House Comm. on Interstate and Foreign Commerce, 94th Cong., 1st Sess., ser. 54-42, at 676 (1975) (testimony of Robert Keeton) [hereinafter cited as *Hearings*].*

45. Ring, *The Fault with 'No-Fault,'* 49 NOTRE DAME LAWYER 796, 826 (1974).

46. See notes 71 & 94 *infra* and accompanying text.

47. See J. O'CONNELL & R. HENDERSON, *supra* note 4, at 306-07.

The following exchange between Craig Spangenberg, a plaintiffs' lawyer from Cleveland, Ohio, and among trial lawyers perhaps one of the leading advocates of add-on plans, and Professor Robert E. Keeton, a leading proponent of purer no-fault plans, before a congressional hearing, is instructive:

MR. SPANGENBERG.

... What happened in Oregon [with its add-on law] is called by the insurance folks, and it is a good word they adopted, the happiness factor.

Most people with smaller claims just want their losses paid. They can't get them paid [in a state like Florida with its tort exemption]. The adjustor gives them a hard time.

Now, under Oregon no-fault the adjustor has to be sweet. He has to pay them; he goes in and pays them right away. He says: "Here are all of your losses. You don't want to have a tort suit, do you? Any losses you have we will pay—your wage and your medical."

It works. The claimants go to a lawyer, particularly when they say you get a couple of hundred more, but you have to then pay the lawyer and pay these people [the no-fault insurers] back, so what is the point? So, they don't bring a lawsuit. That factor works.

[One difficulty with Spangenberg's analysis up to this point is that the no-fault insurer is normally not the insurer defending the tort liability claim. In such cases, there may be no motivation for the no-fault insurer to turn off the tort liability claim.]

Now, suppose you say to the victim:

You aren't going to have a tort suit. Although you were on the right side of the road and he was on the wrong side and he creamed you and he was drunk and you are

Quite clearly, the several extensive statistical studies appraising the operation of no-fault laws help us answer how the various forms of no-fault have fared in practice.

### III. STATISTICAL STUDIES

The principal controversy over no-fault has been whether insurance premiums go up or down upon its enactment. Early actuarial

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mad at him and your wife is bleeding and battered and your kids are hurt and you are hurt and you know you are going to hurt and you want a tort suit. What happens?

You can't have it until you pass our thresholds.

What is that?

You have to spend \$1,000 of medical.

Where am I going to get \$1,000?

We will give it to you.

Do you think he is not going to spend \$1,000 for medical if he finds a doctor who is willing to treat him and why shouldn't the doctor be willing to treat him? He hurts and his doctor says: "Come on and we will give you physical therapy, massage and stretch your neck."

This is probably good for him, but it is not going to cure him any faster. I think you can get as much good out of standing under a hot shower.

Well, you get a crick in your neck; wrap a towel around your neck and put that on your neck and get a real hot soaking. That is deep heat. You can get it done by a pretty girl, and a massage, too, if you want to spend \$15 a session for physical therapy. If I could get that benefit and move myself beyond a threshold I guess I would.

You know, the average fellow says: "Try to cheat me and I will fight back and if you treat me fair I will be fair with you." That is human psychology. All you see in these results is what happens to people.

When Congress gets over the idea that everyone is a plastic chip that you can move around and handfeed through a computer and say, "Your hurt does not count, show us your wage stub."

He says, "Forget that, I hurt. I enjoyed life and I have only one to live and you are taking away 3 or 4 months of it. When I don't enjoy it, I want to be paid for it."

MR. KEETON. Mr. Chairman, I will be very brief. I first want to express my admiration for Mr. Spangenberg's great advocacy . . . .

I refer . . . [to] just one example . . . . Do you realize that what he has told us is that if, instead of having any kind of tort exemption at all, you just add on more coverage, that it will cost less?

That is the proposition. You add on coverage that was not there before, and you provide for no duplication between the two. But nevertheless he says by adding the extra it will come out that it costs you less.

On the other hand, if you produce a tort exemption which says the insurance company pays out less, it will cost you

studies seemed to indicate clearly that insurance premiums would be cut. Based on these studies, many states, including Massachusetts, Florida, and New York, mandated a 15 per cent cut in auto insurance rates supposedly affected by no-fault. This was a crude

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more. That is the proposition. That is what it adds up to. I submit that that is a little difficult to believe.

Now what is his theory? He finally got around to trying to tell us why it would be true . . . because on its face it is an absurd proposition. Why did he tell us it would happen? He says that because of what he refers to as the happiness factor—people will be so happy they get something more than they had before—they won't sue for what they could have sued for under the previous system.

Now there is, of course, another proposition that has been asserted by the [insurance] industry. Every time anybody proposes such [an add-on] . . . system to them and proposes that they rate it as something lower than what they would have charged, the industry talks about financing claims.

. . . [I]t is a well-known phenomenon in the [insurance] industry. First party benefits run the risk of doing what the claims men call "financing more claims." They take away the bargaining weapon that the insurance company has because of the injured person's need for cash.

Now, I personally think that taking away this bargaining weapon will result in somewhat higher payments to the most severely injured persons, and I think that is right. That is the way it should be, because they have sometimes been settling their claims for less than they were truly worth because of the necessity of getting some cash promptly.

So, working on the opposite side from this so-called happiness factor is this proposition that you give an improved bargaining position to the claimant and do what claims men refer to, in [a] somewhat . . . pejorative sense, as financing claims.

Then I submit that not only is this proposition [of Mr. Spangenberg] absurd on its face—this proposition that by increasing the coverage and changing nothing else you can reduce the costs—but also when you start talking about "What would be the incentive factors to people operating under the system?" you will have a lot more people using these no-fault benefits to finance tort claims than you will saying "I am so happy that the insurance company is giving this that I won't pursue the rights I have."

*Hearings, supra* note 44, at 692-93, 696-97.

There is a further irony in the argument of the plaintiffs' lawyers from the Association of Trial Lawyers of America (ATL) that no-fault benefits can be added on to fault-based claims and yet reduce costs. When no-fault was first proposed, leaders of the ATL argued, in opposing it, that paying no-fault benefits would be so cumbersome and difficult that even if tort claims were eliminated, costs of insurance and litigation, in determining whether and what no-fault benefits were due, would increase under a no-fault system. See, e.g., Sargent & Corboy, *The Basic Protection Plan—Panacea or Inequity*, 44 NOTRE DAME LAWYER 51, 57-59 (1968); Cone, *The Keeton-O'Connell Monstrosity*, in UNIVERSITY OF MICHIGAN INSTITUTE OF CONTINUING LEGAL EDUCATION, PROTECTION FOR THE TRAFFIC VICTIM: THE KEETON-O'CONNELL PLAN

gauge when one considers that the same size cuts were required in various states despite widely differing benefit levels and other provisions in the statutes. Perhaps nothing is more confusing to the average layman than "actuarial science," and actuarial opinions on whether no-fault does in fact increase or decrease costs have wildly fluctuated.

Recently, the New York State Insurance Department announced that the cost of auto insurance had more than doubled during 1975 for many state residents, with some department officials and insurance executives citing abuses in the state's no-fault system as a major factor.<sup>48</sup>

Vernon G. Phelps, a spokesman for Government Employees Insurance Company (Geico), a major auto insurer, formerly a darling of the stock market but now threatened with insolvency, put a major share of the blame for the company's acute financial troubles on no-fault. The company's 1975 losses, estimated at about \$75,000,000, were "aggravated by the unexpectedly adverse effect of no-fault laws,"<sup>49</sup> said Phelps.

The ratios of the percentage of losses to premiums—called "loss ratios"—have increased under no-fault, according to Nationwide Insurance Company, from 56 per cent to 71 per cent in New York; from 70 per cent to 81 per cent in Florida; from 54 per cent to 63 per cent in Connecticut; and from 76 per cent to 112 per cent in New Jersey, where it has been especially difficult to get approval for rate increases from the Insurance Commissioner.<sup>50</sup>

In reply to these figures, proponents of no-fault insurance argue that the "abuses" of the no-fault insurance system are due not to any defect in the no-fault principle, but to inadequate provisions inserted in no-fault laws largely at the urging of trial lawyers and those insurance companies opposed to true no-fault insurance. In New York, for example, although \$50,000 in no-fault benefits are mandated for auto accident victims, fault-based claims can be pressed if medical bills exceed only \$500. Compared to Massachusetts, then, New York provided \$50,000 in benefits, instead of \$2,000, and kept the same threshold for fault-based claims while mandating the same 15 per cent rate decrease! As a result, relatively few

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AND ITS CRITICS 161, 169-74 (1967). Now we are told by the same trial lawyers that no-fault claims are so expeditious and simple that they can be added on to the tort system and reduce total costs. Quite a switch!

48. N.Y. Times, July 25, 1976, § 1, at 1, col. 1.

49. J. COMMENCE, Feb. 5, 1976; Wall St. J., Jan. 21, 1976, at 1, col. 6.

50. Wall St. J., Jan. 21, 1976, at 1, col. 6.

claims based on fault are eliminated, with the further result that insurance companies in far too many instances must be ready to respond to both no-fault and fault-based claims. Moreover, doctors and lawyers working together in many instances have arranged to use the no-fault benefits for medical bills to make sure that such bills exceed the \$500 threshold figure. According to a Geico spokesman, "People are learning that all they have to do is have another X-ray or spend another night in the hospital" in order to surpass the threshold and file a fault-based claim. Thomas C. Morrill, a vice-president of State Farm Mutual Automobile Insurance Co., the nation's largest, has charged that in Florida, where medical bills over \$1,000 permit a fault-based claim, many claims illegitimately have been "built to a level that exceeds the threshold established by the law. Once that level is passed, [claimants] are free to go for that alluring pot of litigious gold, which our customers keep filling for them."<sup>51</sup> In New York too, according to James March, a recent director of research for the state's Select [Legislative] Committee on Insurance, the low threshold acts as "an incentive for doctors to work in cahoots with patients to get their medical fees over that \$500 level."<sup>52</sup> In addition, United States Senator Frank E. Moss, Democrat of Utah, a sponsor of the federal no-fault bill, charges that New York State trial lawyers have attempted to circumvent the no-fault law by circulating a letter that encourages accident victims to seek larger medical expenses. In addition, Senator Moss charged, the lawyers' letter offers an incentive to doctors to go along with such higher charges by offering to collect them from insurance companies without charge to the doctors.<sup>53</sup>

Investigations by the Florida Insurance Department and the Florida Legislature, as well as criminal prosecutions have caused Florida to scrap its \$1,000 medical bill threshold and phrase the barrier to fault-based claims in less manipulable terms, calling in effect for 90 days of disability before a fault-based claim can be brought. Similarly, Thomas Harnett, the insurance commissioner in New York, favors lifting the New York threshold to \$2,000 of medical bills or, even better he says, "a verbal definition of serious injury," perhaps along the lines of Florida's.<sup>54</sup> Admittedly, however, as one New York legislative aide puts it, "It would be a real political battle if we attempted to limit court cases this way." In the words of New York Times Albany correspondent Ronald Smothers, "[S]uch a pro-

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51. *Id.* at 25, col. 3.

52. *N.Y. Times*, July 25, 1976, § 1, at 1, col. 1.

53. *N.Y. Times*, Apr. 18, 1976, § 1, at 24, col. 4.

54. *N.Y. Times*, July 25, 1976, § 1, at 1, col. 1.

posal . . . would have rough going in a Legislature that was made up of many lawyers and was vulnerable to pressure from groups representing trial lawyers."<sup>55</sup>

Some idea of the widespread political power of trial lawyers is gained from the experience of a Democratic candidate for governor in a major northern industrial state in 1972. Convinced of the merits of no-fault, he finally was dissuaded from backing it as a campaign issue through fear of the effect on many of his key campaign workers. "In community after community," said a key aide, "we checked and found that plaintiffs' lawyers were campaign or finance chairmen, etc. They would not have tolerated a pro-no-fault stand. Our organization might well have fallen apart." The problem is especially acute for ambitious Democrats. With many individual exceptions, able and prominent Democratic lawyers who can be helpful to a politician at campaign time, especially in smaller cities, tend to represent either plaintiffs in personal-injury cases or unions in labor law matters. Often the two interests overlap in that many labor lawyers in effect provide free or cut-rate legal services to unions in return for the right to represent injured union members on a contingent fee.

As to Geico's problems, after discussing the effect of no-fault, an article in *Fortune* concluded, "But, these difficulties could have been surmounted—if only Geico had been doing things right. Basically, its downfall can be explained, as corporate catastrophes usually can, by bad management."<sup>56</sup> For example, according to the *Wall Street Journal*, Geico traditionally

charged 10% to 20% less than its competitors. It was able to do so because its traditional policyholder's base—government employees and other white-collar workers—had lower accident and claim rates than the population at large. But in the early 1970s, Geico tried to enlarge its market share by writing discounted business to practically anyone—one cause, analysts feel, of the company's downfall.<sup>57</sup>

In addition to some adverse claims experience under inadequate no-fault laws, the *Wall Street Journal* stated that "no-fault has impaired the financial strength of some insurance firms [including Geico] in another way." It quoted a New York State Insurance Department spokesman as stating that under the old fault-based system, "a company had a claim reserved for it, went to court, argued and maybe one day had to pay. But in the meantime, that money

55. N.Y. Times, Apr. 18, 1976, § 1, at 24, col. 5.

56. Loomis, *An Accident Report on Geico*, FORTUNE, June, 1976, at 126, 128.

57. Wall St. J., Sept. 16, 1976, at 40, col. 2.

was earning income. Now, under no-fault, a company has to pay from day one, meaning its investment income is considerably reduced."<sup>58</sup> Surely, however, this is a curious complaint against no-fault. Traffic victims, if not investors, will welcome prompt payment of claims. After all, are insurance companies primarily in the business of paying for accident losses or investing money? If readers of the *Wall Street Journal* are confused on this point, the rest of us should not be.

Also, as business writer Philip Zinkewicz has stated concerning higher loss ratios, they were "not unexpected. The American Insurance Association predicted in the beginning that loss ratios would increase under no-fault. It was the high company expense ratio which is supposed [to] decrease under no-fault . . ."<sup>59</sup> Even those expense ratios may not decrease all that much to the extent that many fault-based claims are preserved along with no-fault claims. No-fault's effect on loss ratios in Michigan, however, which has a realistic ban on fault-based claims, seems to be favorable.<sup>60</sup>

In addition, there is considerable indication that any price rise in auto insurance has been due not to difficulties under inadequate no-fault laws, but to rapidly rising prices, a factor applicable to all auto insurance, in fault-based states and no-fault states alike. Price rises for medical services and auto parts have been especially rapid.<sup>61</sup> In the case of auto parts prices, the Council on Wage and Price Stability is investigating price increases over the past two years. According to the Council, a price index maintained by State Farm Insurance Company showed that auto crash-part prices increased by 31.7 per cent in 1974 and 24.8 per cent in 1975, compared to increases in the wholesale price index for new cars of 12.9 and 6.0 per cent respectively during the same period. Crash parts include such items as fenders, hoods, trunk lids, doors, and bumpers.<sup>62</sup> Such disparity in price increases probably reflects the near monopoly of the seller of replacement parts. Initially when you buy a car, you can buy a Chevy, a Ford, or a Plymouth; but once you've bought, say, a Chevy, you can probably purchase crash parts, the ones most likely to be damaged in a collision, only from GM.<sup>63</sup>

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58. *Wall St. J.*, Jan. 21, 1976, at 1, col. 6.

59. *J. COMMERCE*, Feb 5, 1976.

60. Address by Robert H. Rowe, Deputy Insurance Commissioner, State of Michigan, Insurance/Finance Conference of the Cooperative League, Montreal, June 29, 1976.

61. *N.Y. Times*, July 25, 1976, § 1, at 34, col. 1.

62. *INSURANCE INSTITUTE FOR HIGHWAY SAFETY, STATUS REPORT*, vol. 11, no. 4, Mar. 3, 1976, at 9.

63. *J. O'CONNELL*, *supra* note 4, at 109-10.

There seems to be considerable evidence that, all things considered, no-fault has not only not increased auto insurance costs, but has in fact decreased them, just as was originally promised, despite the inadequacy of the laws passed. Granting all the difficulties of actuarial computations and comparisons, according to State Farm, admittedly a supporter of no-fault insurance, from 1971 to 1975 rates rose 23.4 per cent in add-on states and 12.6 per cent in non-no-fault states, while rising only 3.2 per cent in true no-fault states.<sup>64</sup>

When one turns to "before" and "after" comparisons in a particular state, the measurement problems are prodigious. One is then trying to compare no-fault rates with rates for fault-based coverages which *would* have been imposed if no-fault had not been enacted. But inflation and differing accident rates for varying years can undermine such comparisons. Even so, comparisons have been made. A Michigan Insurance Department study<sup>65</sup> has compared the auto insurance premium rates charged on March 1, 1976, by four companies that wrote a total of 44 per cent of Michigan's auto premiums, with the rates charged by the same companies on September 30, 1973, the day before no-fault became effective. For all four companies, two risks were studied—that of a married couple, aged 35 with no children old enough to be driving, and that of a retired couple aged 67. Two different territories, one in Detroit and one in suburban Dearborn, were used. In all eight cases the rates for bodily injury coverage *decreased*, not just at the start of no-fault, but after a full 29 months of experience during the height of the worst inflation seen in modern time! The decreases ranged from 2 per cent to 27 per cent, with the sharpest cuts going to the retirees.<sup>66</sup>

Professor Robert E. Keeton of the Harvard Law School, one of the originators of no-fault as it has been implemented, has characterized the effect of no-fault on Massachusetts auto insurance costs as one of dramatic reduction in compulsory rates for injured persons.<sup>67</sup> These reductions were in the face of raging inflation and

64. Henderson, *supra* note 3, at 63.

65. T. JONES, THE MICHIGAN NO-FAULT AUTOMOBILE EXPERIENCE: A PRELIMINARY STUDY (1976). Some of the data contained in Commissioner Jones's report are also included in Henderson, *supra* note 3, at 53-55. See also Address by Robert H. Rowe, *supra* note 60.

66. T. JONES, *supra* note 65, at 9, 12. See also note 60, *supra*.

67. Private Passenger Car Average Compulsory

Year	Rates for Injuries to Persons		
	All Cars in the State	Boston Cars	
		Under 25	Lowest Adult Category
1970	\$66.75	\$374	\$117

a general history of precipitous price rises before the introduction of no-fault.

Upon the passage of the first no-fault auto laws, the Council on Law-Related Studies (CLRS), a small private foundation supportive of no-fault, commissioned several unbiased legal scholars to do statistical studies of the actual operation of no-fault.<sup>68</sup> One of these studies, by Professor Joseph Little of the University of Florida Law School, estimated that under Florida's no fault law, the costs of insurance covering personal injuries per registered vehicle in Miami and Jacksonville apparently decreased 15 per cent from 1971 to 1973, after the enactment of no-fault.<sup>69</sup> Little goes on to state that this

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1971	53.57	318	99
1972	40.24	237	74
1973	39.54	196	61
1974	39.54	196	61
1975	36.10	146	45

Hearings, *supra* note 44, at 680.

Admittedly, the savings in Massachusetts are probably greater than elsewhere in light of the state's low limits on no-fault benefits (\$2,000), and the greater propensity of plaintiffs in Massachusetts to assert smaller tort claims that were eliminated by the tort exemption in Massachusetts, despite the threshold for the exemption being very low (\$500 in medical bills). According to the *Wall Street Journal*:

Prof. Keeton says that even no-fault's most fervent early supporters were surprised by these results, and he now believes they had missed the importance of certain special factors in the state. He notes that back in 1927, Massachusetts was the first state to require all motorists to carry bodily-injury liability insurance, but it didn't require coverage for property damage.

"I think we (no-fault's supporters) all under-estimated the extent to which unjustified bodily-injury claims were used to get cars repaired," Prof. Keeton surmises.

Wall St. J., Jan. 21, 1976, at 25, col. 1. For more on Keeton's cost estimates see *Hearings, supra* note 44, at 678-83, and Keeton, *Compensation Systems and Utah's No-Fault Statute*, 1973 UTAH L. REV. 383, 394-96. According to Professor Roger Henderson, "The same conclusions arrived at by Keeton are demonstrated again with greater detail and documentation in a forthcoming piece by Randall R. Bovbjerg, Associate Study Director for the Massachusetts No-Fault Auto Insurance Study sponsored by the Council on Law-Related Studies." Henderson, *supra* note 3, at 112 n.2.

68. All of the studies will be available in a book to be published by Oceana Publications, Inc., in 1976. Also included will be a Michigan Insurance Department study of that state's no-fault experience. See generally notes 78-81 *infra* and accompanying text. See also Little, *A Critique of No-fault Reparation for Traffic Crash Victims*, 51 IND. L.J. 635 (1976).
69. See Little, *No-Fault Auto Reparation in Florida: An Empirical Examination of Some of its Effects*, 9 MICH. J.L. REFORM 1, 45 (1975); Henderson, *supra* note 3, at 31.

apparent reduction occurred during a period when the trends in number of claims per registered passenger vehicle and in the cost of medical services apparently were increasing.<sup>70</sup> Another CLRS study of the Delaware add-on plan was unable to determine the effect of no-fault on insurance premiums in that state, but doubted that it had caused any reduction.<sup>71</sup>

On the other hand, a study by an insurance trade organization, the National Association of Independent Insurers (NAII), made up of companies generally opposed to no-fault, including Allstate, concluded that in Florida, Connecticut, New Jersey and Nevada, "the cost of no-fault coverages was higher than under [fault-based coverages]."<sup>72</sup>

Summing up some of the cost appraisals, Professor Roger Henderson of the University of Nebraska College of Law reported to the Commissioners on Uniform State Laws, a quasi-official body, with members appointed by governors of the various states, which earlier had drafted a model no-fault law for the states. Henderson noted:

An examination of the . . . data with regard to insurance rate changes leads one to conclude that private passenger automobile insurance rates for bodily injury have gone up in most states since 1970 and that 1975 saw some substantial increases. The data from State Farm would lead one to conclude that the increases have been greater in those states which have not enacted no-fault plans with a . . . threshold [barring fault-based claims], that is some type of modified plan. The data from . . . [American Insurance Association] companies [a trade association favorable to no-fault] generally supports this position. On the other hand the NAII figures indicate that just the opposite has occurred.<sup>73</sup>

All in all, Henderson, a no-fault backer, concluded that the figures from various sources

will not provide clear-cut answers to the question of the impact of no-fault on costs, but perhaps by a dogged and tedious effort

70. Little, *supra* note 69 (footnotes omitted).

71. While the Delaware study recounted the statements by the Delaware Commissioner of Insurance that no-fault had reduced premiums, the investigators were dubious of any cause and effect relationship since the rates were ordered to be reduced and there did not appear to be enough experience under the no-fault law at the time to support the statements. Two explanations were suggested though: (1) that the rates were probably too high at the time no-fault went into effect and (2) with more insureds the costs to each insured was lower. To repeat though, this was mere speculation.

Henderson, *supra* note 3, at 32 (citing Clark & Waterson, "No-Fault" in Delaware, 6 RUTGERS-CAMDEN L.J. 225, 255-56 (1974)).

72. Henderson, *supra* note 3, at 79.

73. *Id.* at 109.

one can sense, if not actually demonstrate, that the better designed no-fault automobile insurance plans do in fact lower bodily injury insurance rates. At the very least though, the data clearly does [sic] not support the claims of those who charge that no-fault has caused higher rates.<sup>74</sup>

But as several of the recent studies have strained to point out, simple premium aggregates are only one rather crude way of measuring costs. As Professor Little states in his Florida study, "[A]nother [way of defining cost] might be the amount of money paid out to recipients of insurance settlements; and a third might be the ratio of the first two, representing a measure of the administrative cost efficiency of the transfer of money from premium payers to injured beneficiaries."<sup>75</sup> Professor Little goes on to find even more dramatic cost improvements under no-fault in Florida when these last two criteria are also considered. Benefits paid per registered vehicle had increased by 31 per cent by 1973 and, even more important, the "benefits-to-premium ratio increased markedly [by 56 per cent] during the same period."<sup>76</sup> In other words, premiums went down while benefits went up, and the combination of the two meant more than a 50 per cent increase in value for the public. Concluded Professor Little, "To these [findings] may be added the earlier finding that the number of claims per registered vehicle also increased, thereby spreading the benefits paid over a larger population. . . . [T]hese findings . . . suggest that the hypothesis of more cost-effectiveness with no-fault should be accepted."<sup>77</sup>

Perhaps the improved value per insurance dollar under no-fault is most graphically illustrated by the Michigan experience. Coverage under Michigan's no-fault law pays unlimited medical expenses plus over \$46,000 in wage losses, in addition to coverage of \$20,000 for those fault-based claims against a motorist which are preserved under the law. All this insurance is provided at a cost no greater, and apparently less, than the costs of only \$20,000 of traditional liability insurance based on fault, under which few seriously injured victims were paid much, if at all.

One must translate these figures into palpable, human dimensions. Keep in mind the importance to the tragically injured traf-

74. *Id.* at 62.

75. Little, *supra* note 69, at 43.

76. *Id.* at 49.

	1971	1972	1973
Premium Paid Per Registered Vehicle	1	0.88	0.85
Benefits Paid Per Registered Vehicle	1	1.22	1.31
B/P Ratio	1	1.39	1.56

*Id.*

77. *Id.* (footnote omitted).

fic victim and his family of relatively unlimited medical and other benefits, including comprehensive rehabilitation. According to a February 1976 letter to the editor of the Grand Rapids Press,

No-fault has been a godsend to our family over the past 28 months. . . . Our 18-year-old son was very seriously injured in a collision. . . . The no-fault insurance our boy carried on his car at the time has helped us keep our heads above water. I wouldn't attempt to list all the expenses it has paid, but I will name a few. [In addition to covering normal medical expenses not covered by health insurance] it paid for his wheelchair, crutches, leg braces, shoes and even for the labor attaching to the braces to his shoes. It paid for the driver's training to enable our son to get his driver's license with the use of hand controls, as his legs were paralyzed in the mishap. Also it paid for the hand controls on his car and pick-up truck. Our agent even gave me to understand I could submit a bill for caring for my son after he returned home from an eight-month stay in the hospital.<sup>78</sup>

After detailing some of the other benefits, the writer concluded that no-fault cannot save and restore lives, but that it helped his son over what could have been a pretty rough rehabilitation.

A study of "catastrophic" medical claims in Michigan (defined as injuries resulting in medical expenses over \$25,000) by NAIL, the insurance trade organization of companies generally opposed to no-fault poignantly illustrates the large amounts available under no-fault to pay for tragic losses most often unpaid for under the old fault-based system. Bear in mind that a U.S. Department of Transportation study showed that those who suffer more than \$25,000 of economic losses from auto accidents suffer total losses of \$76,341 but receive from fault-based claims an average of \$3,742, or 5 per cent of their losses!<sup>79</sup> By way of contrast, between October 1, 1973 (when no-fault went into effect in Michigan), and December 31, 1975, of 260 representative claims for catastrophic medical expenses, 82 (or 32 per cent) were for single-car accidents. These, then, were cases where, in all likelihood, no fault-based payment would have been made, because, by definition, there was no "other" car or driver to sue. And yet for 82 claimants, almost nine million dollars had been "reserved" under no-fault insurance (that is, specifically car-marked for payment) for these claims, amounting to an average of about \$108,000 per claim. According to the same study, 40 catastrophically injured victims (or 15 per cent) were motorcyclists, for whom about 2.5 million dollars was reserved. Given the

78. Grand Rapids Press, Feb. 27, 1976.

79. See 1 U.S. DEP'T OF TRANSPORTATION, *supra* note 6, at 277-78, Table 31 FS.

typical age and antics of motorcyclists, probably few would have been eligible for fault-based payment. In this connection, the NAI data were further broken down by type of injury and average age of accident victims.<sup>80</sup> The Michigan Insurance Department study concludes: "The seriousness of the injuries and the relative young age of the accident victims (32) vividly illustrates the need which is being met by no-fault."<sup>81</sup>

Professor Keeton of Harvard, in testimony before Congress, has compared the costs under the federal no-fault bill, which provides unlimited medical benefits and wage-loss protection up to a minimum of \$15,000, while eliminating fault-based claims unless total disability exceeds 90 days, with the cost for present fault-based coverage. Keeton noted that the actuarial estimates submitted to Congress from the three major segments of the insurance industry, which disagree sharply about the desirability of no-fault, ranged from only modest savings to modest increases in moving to such no-fault plans from the present system.<sup>82</sup> "[G]ood no-fault laws, including [the one] before this committee now," Keeton testified,

would not increase the total amount of premiums that the public are putting into automobile insurance. Indeed, it is my own estimate that [they] would decrease it somewhat. But I accept, for the [sake of discussion] the data we are getting from the [insurance] industry studies that show that the total cost would remain at about the same level. But what would we get for our money? What would be the comparison?

80. Unlimited Medical Claims in Michigan  
October 1, 1973-December 31, 1975, NAI Companies  
Distribution by Type of Accident \$25,000 and Over

Type of Injury	Number	Amount of Reserve	Average Age (Years)
Brain Damage	61	\$ 8,115,484	25
Quadriplegic	12	1,906,449	30
Paraplegic	20	2,881,974	24
Other	256	12,182,458	34
TOTAL	349	\$25,086,365	32

T. Jones, *supra* note 65 at 4, Table 3.

81. *Id.* at 5. "Some insurers have expressed concern that the cost of unlimited medical benefits may be prohibitive. It is interesting to note that on the basis of its study the NAI estimates the cost of medical claims exceeding \$25,000 in Michigan is \$8.00 per car." *Id.*

For favorable journalistic reports on the operation of no-fault, especially in serious cases, see the Chicago Tribune, Oct. 6, 1976, at 1, col. 3, and MONEY, Nov., 1976, at 75.

82. Hearings, *supra* note 44, at 678.

Instead of . . . coverage that pays several times the loss in minor injury claims and does not give us guaranteed protection above \$10,000 or some such figure as that, with [a] good no-fault law we would get life-time protection for medical expense [stemming from an automobile accident], at least \$15,000 of wage protection, something of that order for protection in death benefits, all of that plus liability protection [for the fault-based claims that are preserved under the federal no-fault law]. We would get all that for about the same price that we are now paying for this other [fault-based] package.<sup>83</sup>

Keeton's comments raise another goal of no-fault insurance—namely, spending less on small, rather trivial claims, and, conversely, more on serious injuries. Professor Little found in his Florida study that a "shift to greater payments for more serious injuries is clearly seen" under no-fault compared to fault-based payment.<sup>84</sup> The percentage of total personal injury payments to more seriously injured victims almost doubled after two years' experience under no-fault.

As to the aim of prompt payment under no-fault, Professor Little found that the first payment to victims is made much more promptly but that, if anything, total time taken to finally settle claims increases under no-fault. He hypothesized that this may well be due to a more relaxed attitude on the part of victims about the need to finally settle since they are receiving no-fault benefits periodically as losses accrue, whereas they must wait for one final lump-sum settlement, as bills and wage-losses pile up, under fault-based claims. Professor Little concluded: "Owing to the change in the pattern of claim modes, it is difficult to conclude from these analyses that claimants are better or worse off under no-fault than before with regard to speed of claims and processing. Nevertheless, on balance the speeding up of the receipt of first payment appears to be a favorable result for claimants."<sup>85</sup>

As to no-fault's aim of more efficiency by using less of the premium dollar on legal fees and insurance overhead, another CLRS

83. *Id.* at 669.

84. See Little, *supra* note 69, at 36.

PERCENTAGE DISTRIBUTIONS OF TOTAL PERSONAL  
INJURY PAYMENTS . . .

	1971	1972	1973
\$0 to \$500	41.9	38.4	28.8
\$500 to \$999	16.3	16.9	17.1
\$1,000 to \$2,000	21.1	16.9	16.2
\$2,000 & above	20.7	27.7	37.9
n =	(473)	(354)	(309)

*Id.* This sample is limited to claims files in which at least one claim for payments of \$200 or more was made. *Id.* at 31-32.

85. *Id.* at 35.

study of the Massachusetts no-fault system by Professor Alan Widiss of the University of Iowa Law School suggests a radical reduction in the need for lawyers under no-fault claims. In contrast to the use of attorneys in about 80 per cent of the cases prior to the institution of no-fault, attorneys were used for no-fault claims in substantially less than 15 per cent of the cases.<sup>86</sup> According to Widiss, "No-fault insurance claims are usually paid without disputes over either the existence of coverage or the amount due the claimant."<sup>87</sup> He states: "A majority of the claimants and defense attorneys surveyed felt that the average [no-fault] . . . claimant did not require legal assistance because the forms were not complicated. Typical of this group was the response of one attorney who observed: 'It's just like Blue Cross or any health or accident claim.'<sup>88</sup> In Florida, too, overall lawyer involvement per claim diminished.<sup>89</sup> On the other hand, according to Widiss,

A significant number of claimants' attorneys counseled, as one lawyer put it, that "you always need an attorney when an insurance company is involved." However, this attorney, as well as several others, also pointed out that, even if the attorney is able to do a better job of presenting the client's claim, the amount involved in a [no-fault] . . . claim is usually not sufficient to justify hiring a lawyer. Many lawyers felt this was true even though they also felt that some insurance companies were unjustifiably disputing medical bills, especially those for hospitalization and X rays. One attorney, who suggested that some claims departments were paying only a percentage of the amounts claimed, summarized the situation by observing that because "claimants don't stand to gain enough from suing the insurer to make it worthwhile, they are at the mercy of the insurer, and the insurer takes advantage."<sup>90</sup>

Of course, the dilemma of the consumer whose complaint concerns an amount too small to sue for is not confined to insurance companies. One can argue that such a dilemma under no-fault is vastly better than the dilemma under fault-based claims, where insurers often pay little or nothing when the claimant's losses are heavy. Far better to have a situation where the claimant is paid so much of his loss—and conversely not paid so little—that the remainder is not really worth bothering about.

As to reduced litigation under no-fault, another Massachusetts study sponsored by CLRS found that the filing of personal injury cases in Massachusetts courts was "precipitously lowered in the

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86. See note 10 *supra* and accompanying text.

87. Widiss, *Massachusetts No-Fault Automobile Insurance: Its Impact on the Legal Profession*, 56 B.U.L. Rev. 323, 338 (1976).

88. *Id.* at 336.

89. Little, *supra* note 69, at 25.

90. Widiss, *supra* note 87, at 337.

wake of no-fault,"<sup>91</sup> including a remarkable reduction of over 50 per cent in courts of unlimited jurisdiction, and an astonishing decline<sup>92</sup> of about 90 per cent in courts limited to claims under \$2,000. The reduction of litigation in Florida, while much less dramatic, was also significant.<sup>93</sup>

On the other hand, under Delaware's add-on plan, according to the CLRS study there, "[T]ort litigation is continuing substantially unabated by the no-fault legislation." Concludes Professor Roger Clark of Rutgers-Camden Law School who conducted the Delaware study, "It is now clear that, whatever beneficial effects it has had, the Delaware legislation has not discouraged any significant number of potential tort plaintiffs from suing."<sup>94</sup>

In this connection, Professor Widiss reports:

Although the reduction in the retention of attorneys had no overwhelming effects on a majority of the lawyers in Massachusetts, no-fault insurance has had a marked economic impact on the trial bar and on at least a portion of the lawyers in general practice. Many of the attorneys whose practices were substantially affected appear to have offset the economic effects by increasingly engaging in other fields of practice [including real estate, probate, commercial, corporate, tax, and other civil or criminal litigation].<sup>95</sup>

On the other hand, the common canard that it is lawyers deprived of auto suits who have caused the recent rise in the number of malpractice claims is probably not true. In the first place, it seems that the relatively marginal practitioner is most affected by no-fault.<sup>96</sup> While many such lawyers are able to handle a simple auto intersection accident,<sup>97</sup> they would be quite unable to handle technical, arcane suits such as those involving medical malpractice. Second, the rise in malpractice suits seems as great, if not greater, in

91. Bovbjerg, *The Impact of No-Fault Auto Insurance on Massachusetts Courts*, 11 *NEW ENGLAND L. REV.* 325, 336 (1976); Henderson, *supra* note 3, at 17.

92. Bovbjerg, *supra* note 91, at 339.

93. Little, *supra* note 69, at 18; Henderson, *supra* note 3, at 18.

94. Clark, *Delaware No-Fault—1974 and 1975 Court Filings Arising from Personal Injury Incurred in Motor Vehicle Accidents*, an update of Clark & Waterson, *supra* note 71. Compare table 1 in the update with those in Clark & Waterson, *supra* note 71, at 232, 260.

95. Widiss, *supra* note 87, at 347, 355.

96. *Id.* at 346; *N.Y. Times*, Jan. 25, 1976, § 1, at 1, col. 7.

97. Actually, many lawyers deriving the bulk of their income from personal-injury claims could not try the simplest case, and never even think of appearing in court. They are only capable of "settling" the simplest cases, referring any complex cases to trial lawyers, with whom they—often illegitimately—share the contingent fee. J. O'CONNELL, *supra* note 4, at 60-62 (citing J. CARLIN, *LAWYERS ON THEIR OWN* 74-78 (1962)).

states such as California, Illinois, and Texas, which do not have auto no-fault, as in no-fault states.

Overall, Professor Widiss found tremendous satisfaction in Massachusetts with the operation of no-fault as applied to personal injury. Among those who had claimed and received no-fault benefits,

[s]eventy-five to 85 per cent . . . indicated that they were either "fairly satisfied" or "very satisfied" with the manner in which their claims had been handled and with the amount they had received. . . .

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[I]t seems unlikely that many comparable systems exist in which the percentage of "fairly satisfied" and "very satisfied" consumers exceeds 80 percent.<sup>98</sup>

Seventeen to 19 months after the accidents, insurers had denied liability on only 1.5 per cent of the claims, and claims pending or otherwise not paid amounted to some 18 per cent of the cases.<sup>99</sup>

In only three states has no-fault insurance been extended to property damage. In Florida the state supreme court ruled such an extension unconstitutional;<sup>100</sup> in Michigan, a trial court's ruling to the same effect is on appeal;<sup>101</sup> and in Massachusetts the no-fault property damage law has just been repealed.<sup>102</sup>

Admittedly, as Professor Keeton testified before Congress, the "possibilities for improvement of the [auto insurance] system [applied to car damage] . . . are very modest in comparison with the dramatic improvements effected by a real no-fault system for injuries to people."<sup>103</sup> This is largely because the savings from eliminating payment for pain and suffering and lawyers' fees are not applicable, because cars don't suffer pain, and car-damage cases are often arbitrated inexpensively and expeditiously between insurance companies, without the intervention of lawyers. But savings are still possible under no-fault car-damage coverage, compared to fault-based systems. Note that in the typical two-car accident, four

98. Widiss, *Accident Victims Under No-Fault Automobile Insurance; A Massachusetts Survey*, 61 IOWA L. REV. 1, 64-65 (1975).

99. *Id.* at 50-51. For a report on the percentage of claimants under predominantly fault-based claims who are satisfied or dissatisfied with their treatment at the hands of insurance companies see J. O'CONNELL & R. SIMON, *PAYMENT FOR PAIN & SUFFERING: WHO WANTS WHAT, WHEN & WHY?* 27 n.72 (1972), in 1972 U. ILL. L.F. 1, 27 n.72.

100. See *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

101. For the trial court's opinion see *Shavers v. Kelley*, 1973-1975 AUTO. INS. CAS. (CCH) ¶ 8308. For the intermediate appellate court's decision see *Shavers v. Kelley*, 65 Mich. App. 355, 237 N.W.2d 325 (1975).

102. See NATIONAL UNDERWRITER (Prop. & Cas. ed.), Aug. 6, 1976, at 1, col. 1.

103. *Hearings*, *supra* note 44, at 676.

insurance coverages are applicable to the potential damage to the two cars: each driver has insurance covering his liability to the other based on fault, and each driver normally carries collision insurance, a supplementary no-fault coverage applicable to the driver's own car widely sold even prior to no-fault. Any car bought on time must have collision insurance by order of the lender. Insurance companies, understandably, like a system that calls for four coverages on two losses. But the public shouldn't. By the application of no-fault, each car can be covered at the owner's option by collision-like no-fault coverage, with all fault-based claims abolished. This results in a sensible maximum of two coverages applicable to the two losses.

In point of fact, however, most of the public satisfaction with no-fault insurance has stemmed from its application to property damage. Why? Well, when someone plows into your car causing \$250 worth of damage, and you either haven't bothered to insure your own car or have insured it with a \$100 deductible, you are inclined to become outraged at your own uncompensated losses. People may not be so outraged at suffering the same kind of deductible loss in an accident causing injury to their person. This may be because they are thankful to have escaped with their lives or because they are thankful to be assured payment of all the rest of their medical expenses or lost wages, or both. In addition, in states that have applied no-fault to property damage as well as in those that have not, the precipitous rise in auto repair costs, which the Cost of Living Council is investigating, has served to cancel out any savings produced by no-fault insurance applicable to injuries to persons.

Even so, Professor Little's Florida no-fault insurance study demonstrates that the application of no-fault to property damage, prior to its being held unconstitutional there, resulted in net advantages to the consumer, albeit less dramatic than those stemming from no-fault for injuries to persons. Using the same formula he applied to personal-injury no-fault, Little found that under the benefits-to-premium ratio consumers were getting more for their dollar under property no-fault by a factor of about 19 per cent.<sup>104</sup>

104. See Little, *supra* note 69, at 61.

	<u>1971</u>	<u>1972</u>	<u>1973</u>
Property Damage Premiums Paid Per Vehicle	1	1.14	1.14
Property Damage Benefits Paid Per Vehicle	1	1.22	1.24
B/P Ratio	1	1.07	1.09

Granting all that, the application of no-fault to car damage is still of much less moment than its application to personal injuries, especially because of the likelihood in personal injury cases of much more tragic personal and social losses.

#### IV. SLOWING OF LEGISLATIVE MOMENTUM

In many ways, the slowing momentum of the change to no-fault is very frustrating. The need and its solution have long seemed obvious to almost everyone except trial lawyers and a few recalcitrant insurance companies. Yet, six years after the enactment of the first no-fault law, only one state in the Union, Michigan, has a no-fault law good enough to comply with proposed standards under the federal bill, and many states have no no-fault law at all. On the other hand, perhaps this slow pace of reform is not surprising. As Daniel Patrick Moynihan stated as long ago as 1967 in a speech before a group of insurance executives and lawyers,

Many of the essential issues concerning [no-fault insurance] . . . were raised in 1932 in the *Report by the Committee To Study Compensation for Automobile Accidents*, published by the Columbia University Council for Research in the Social Sciences. This was a civilized country in 1932, and there were a lot of automobiles around. The Committee came out very explicitly on behalf of scrapping the concept of [fault-based] . . . liability in automobile accidents in favor of a non-fault . . . solution for such accidents. That was 35 years ago. And yet the proposal which the researchers at Columbia University so confidently recommended to a rational nation made no impression whatsoever. . . . Things do not change that simply.

The undeniable fact seems to be that built into the American system is a predisposition to keep things as they are in this and other respects. Anybody would be ill-advised to suppose that the American society changes very rapidly when it shows itself able to resist for so long such proposals for reform.<sup>105</sup>

Experience under workers' compensation also helps put the whole matter in context. Workers' compensation, in essence a no-

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The conclusion to be drawn from this information is that while both premiums and the size of property damage benefit payments increased under the Florida no-fault system, the benefits-to-premium [B/P] ratio also increased. This suggests that the no-fault system was somewhat more cost-efficient in transferring premiums paid to beneficiaries than was the superseded system.

*Id.*

105. Moynihan, *Changes for Automobile Claims?*, 1967 U. ILL. L.F. 361, 361-62, reprinted in *CRISIS IN CAR INSURANCE* 1-2 (R. Keeton, J. O'Connell & J. McCord eds. 1968).

fault system applied to industrial accidents, was first enacted in the United States in New York State in 1910, with the last state, Mississippi, enacting such a statute in 1948, almost 40 years later.<sup>106</sup> But no one really doubted, at least after the first few years, that workers' compensation would become the norm for compensating industrial accidents to replace the fault-based system. It is significant that after more than 50 years of experience with no-fault workers' compensation, none of the 50 states that have adopted it has ever seriously considered voluntarily abandoning it.<sup>107</sup>

Thus it is not surprising that the principal dispute over no-fault auto insurance concerns whether and how it is to be extended beyond the states where it has been enacted. No state in which it has been enacted for injuries to persons is seriously considering abandoning it, but every state that does not have it is debating whether to adopt it.

Once again, it is Moynihan who has viewed the problem in a broad perspective.<sup>108</sup> Writing in 1975, Moynihan stated:

106. H. SOMERS & A. SOMERS, *WORKMEN'S COMPENSATION* 34 (1954). On the other hand, by 1920 all but six states had workmen's compensation legislation, with the holdouts concentrated in the then economically backward South. *Id.*

107. According to the National Commission on State Workmen's Compensation Laws:

We have discussed the implications of abolishing workmen's compensation and reverting to the negligence suits, a remedy abandoned some 50 years ago. This option is still inferior to workmen's compensation. . . . [Tort] liability suits [are] a drawn-out, costly, and uncertain process that was dismissed long-ago as a means of dealing with occupational injuries and diseases.

NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS, REPORT 25, 45 (1972).

108. Moynihan's early interest in no-fault insurance should not be surprising. As Timothy Crouse has grudgingly admitted in an otherwise hostile profile of Moynihan,

[H]e is in many ways a natural-born politician, and one of his gifts is so rare and valuable that it nearly offsets his drawbacks. It is the gift of short-term prophecy. When he has had a few drinks, he sometimes brags to his Harvard colleagues that he has a terrific ability to identify a going issue. This may be one of his few understatements. He has spotted many a hot issue—from auto safety to welfare reform—while it was still on the horizon of public consciousness. He has an uncanny sense of precisely what is going to worry people next. Just over a year ago he caught on to a monster of an issue, one so big . . . that it eventually took over his life and pushed him into politics—the Red/Third World Menace.

Crouse, *Ruling Class Hero: How Pat Moynihan Became a Credit to His Race*, *ROLLING STONE*, Aug. 12, 1976, at 42-43.

[N]o-fault automobile insurance laws not only succeeded in the first states to enact them, but also succeeded visibly, palpably, and almost immediately. . . . Overnight it became evident that [this reform] had substantially solved a major social problem—that this was the way to allocate the costs of personal injuries . . . that arise through the automobile transportation system. . . .

\* \* \* \* \*

[A] settlement for a broken back need not take four years to reach and end up with the injured person getting, say, forty percent of the money spent in the process, the remainder going to lawyers and other expenses.

\* \* \* \* \*

It is here that [the issue involved in no-fault] assumes an almost unique importance, for while modest seeming, it addresses the largest of questions. To wit: there is a rise in the perception of threat in modern society, a decline in confidence, a decline in trust. This surely must be the judgment of any person of sensibility.

\* \* \* \* \*

[No-fault reformers do] not want us litigating ourselves into a stalemated and paranoid society. We could do so . . . and that would be such a waste, such a loss. . . . When everyone sues, no one gets satisfied. Our experience with the automobile [has] brought us after the fact to that realization.<sup>109</sup>

In an early article on no-fault, Moynihan pointed out the essential virtue of a new system whereby people would look to their own insurance companies for automatic payment for their dollar losses after an accident. The proponents of no-fault insurance, he said, are "right in the all-important perception as to what it is Americans are good at. We are good at maintaining business relationships once a basis for mutual self-interest is established. [No-fault insurance] . . . would establish one."<sup>110</sup>

## V. CONCLUSION

Moynihan's observation as to what it is we Americans are good at is profoundly true. Nowhere else in the world are there so many people in the affluent middle class—people who deal prosperously with one another. We are not so good, of course, at taking care of those unlucky or unskilled at keeping up—many of the aged, ill, injured, poor, or black. But at least we ought to play to our strengths where possible—especially where we find a way to deal effectively with each other on the happening of accidents. It is not without significance that on the issue of no-fault auto insurance, unlike all other areas of social insurance, America stands first and as a model. Plans indeed are afoot to try to copy our experience

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109. Moynihan, *supra* note 1, at xi-xx (1975).

110. Moynihan, *Next: A New Auto Insurance Policy*, N.Y. Times, Aug. 27, 1967, § 6 (Magazine), at 26, 82.

all over the motorized world—in England, France, Sweden, Israel, Ireland, to name only the most prominent examples.

It turns out—as it so often has before—that Moynihan is right. The answer is “Yes” for No-Fault.

We really ought to get on with it.

# ILLINOIS LEGISLATIVE COUNCIL

RESEARCH MEMORANDUM FILE 9-273

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May 3, 1982

Updated September 16, 1982

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## NO-FAULT MOTOR VEHICLE INSURANCE

### Summary

No-fault motor vehicle insurance is protection policyholders receive from their own insurance companies to compensate them for economic loss suffered as a result of motor vehicle accidents, regardless of the policyholders' fault in the accident. There are no-fault motor vehicle insurance laws in 23 states.

No-fault motor vehicle insurance coverages extend to the named insured, the insured's family, authorized occupants of the insured vehicle, and, except in Texas and Virginia, pedestrians struck by the insured motor vehicle. In 16 states all registered vehicles are required to carry no-fault insurance; 3 other states require only passenger motor vehicles to carry no-fault insurance. Many no-fault insurance states also limit coverage to accidents occurring in a specific territorial area. For example, pedestrians injured outside the state in which the insured vehicle is registered are not insured under the no-fault coverage of the vehicle.

No-fault motor vehicle insurance programs provide benefits to cover medical expenses, lost wages, expenses incurred in replacing household services provided by the injured beneficiary (except in Virginia), and survivors' benefits (in most of the states). These benefits are generally subject to various types of limits. Only Delaware requires motor vehicles to carry no-fault insurance that provides benefits to cover property damage.

There are other aspects of no-fault motor vehicle insurance prevalent in many no-fault plans.

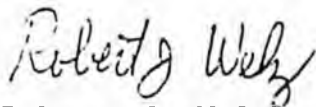
- Besides the minimum no-fault motor vehicle insurance benefits that each state requires, optional insurance coverage providing for additional benefit and deductibles often must be offered.
-

- Benefits can often be reduced by collateral sources, such as workers' compensation benefits.
- Benefit payments must be made by an insurer within 30 days of notification of an expense.
- The right of a no-fault beneficiary to bring a lawsuit is limited in 15 states.
- Mandatory arbitration for certain types of disputes relating to no-fault insurance is imposed in 7 states.
- Subrogation and reimbursement of insurers is allowed.

The Illinois Supreme Court has held that a 1971 Illinois no-fault law violated the Illinois Constitution. The court stated that the law constituted special legislation because it applied to passenger automobiles only, and that mandatory arbitration violates the right to trial by jury and the prohibition against fee officers in the judicial system. Currently, bills to provide for no-fault automobile insurance are on the House Insurance Committee Interim Study Calendar and in the House Rules Committee.

Proponents of no-fault motor vehicle insurance attack the concept of negligence as applied to motor vehicle accidents. They argue that motor vehicle accident cases clog the court system and cost much more than they would under a no-fault system. A 1977 U.S. Department of Transportation study of existing systems concluded that "no-fault automobile insurance works."

Opponents of no-fault motor vehicle insurance argue that elimination of the fault system of recovery is a retrogression to the early common law notion of absolute liability, which was abandoned by the courts in the 19th century. They object to the deduction of collateral benefits under no-fault insurance laws from recovery, arguing that these collateral benefits rightfully belong to the beneficiary.



Robert J. Welz  
Staff Attorney

RJW:lam

NO-FAULT MOTOR VEHICLE INSURANCE

Contents

	<u>Page</u>
The "No-Fault" Insurance Concept . . . . .	4
No-Fault Motor Vehicle Insurance in Other States . .	4
No-Fault Coverage. . . . .	5
Persons Covered. . . . .	5
Vehicles Covered . . . . .	6
Territorial Coverage . . . . .	6
No-Fault Benefits. . . . .	7
Total Benefits . . . . .	8
Benefits for Medical Expenses. . . . .	8
Lost Wages . . . . .	10
Substituted Services . . . . .	12
Benefits for Survivors . . . . .	14
Property Damage. . . . .	16
Optional Benefits. . . . .	16
Treatment of Collateral Sources. . . . .	16
Payment of Claims. . . . .	17
Late Payments. . . . .	17
Tort Limitations . . . . .	17
Arbitration. . . . .	18
Subrogation and Reimbursement Provisions . . . . .	18
No-Fault Insurance Bills Introduced in Illinois. . .	19
Current Illinois Legislation . . . . .	20
Policy Questions . . . . .	22
1977 U.S. Department of Transportation Study . .	22
Public Opinion . . . . .	24
Notes. . . . .	24

Appendix

A. Major Provisions of 23 State No-Fault Motor Vehicle Insurance Systems and Three Illinois Bills. . . . .	A-1
B. Statutory Limitations on Tort Liability in 23 States. . . . .	B-1
C. 1974 Public Opinion Report. . . . .	C-1

The "No-Fault" Insurance Concept

Discontent with the system of assessing financial responsibility for the injuries resulting from automobile accidents on the basis of negligence reached such proportions during the 1970's that more than 100 "no-fault" automobile insurance proposals competed for adoption as public policy. These plans are called "no-fault" because they all embody in varying degrees the principle that bodily injury and property damage claims arising from motor vehicle accidents should be settled in the same way as collision and medical payments claims, that is, without regard to the negligence of the drivers and other parties involved. In short, they would extend direct or "first party" insurance to areas where "third party" insurance, protection against legal liability determined according to tort law rules, has long prevailed.

No-Fault Motor Vehicle Insurance in Other States

Twenty-five states enacted no-fault motor vehicle insurance legislation between 1970 and 1976. An Illinois no-fault insurance law was passed in 1971, but the Illinois Supreme Court held the law unconstitutional in 1972. Since 1976 no additional states have adopted no-fault insurance; and one state, Nevada, repealed its law.<sup>1</sup> In 20 of the 23 states motor vehicle insurance coverage is compulsory.<sup>2</sup>

<u>State</u>	<u>Year effec- tive</u>	<u>compul- sory</u>	<u>State</u>	<u>Year effec- tive</u>	<u>compul- sory</u>
Arkansas	1974	No	Massachusetts	1971	Yes
Colorado	1974	Yes	Michigan	1973	Yes
Connecticut	1973	Yes	Minnesota	1975	Yes
Delaware	1972	Yes	New Jersey	1972	Yes
Florida	1972	Yes	New York	1974	Yes
Georgia	1975	Yes	North Dakota	1976	Yes
Hawaii	1974	Yes	Oregon	1972	Yes
Kansas	1974	Yes	Pennsylvania	1975	Yes
Kentucky	1975	Yes	South Carolina	1974	Yes
Maryland	1973	Yes	South Dakota	1972	No
			Texas	1973	Yes
			Utah	1974	Yes
			Virginia	1973	No

Details of the provisions of the laws in these states and of three proposals pending in Illinois are summarized in Appendix A.

### No-Fault Coverage

The "faults" from which the new developments would largely absolve the motoring public are those of simple negligence or carelessness. The rationale for this is the theory that the negligence concept is difficult to apply with even-handed justice under modern driving conditions. However, there are exceptions for those who injure themselves and others intentionally or in the course of acting illegally or criminally.

Persons Covered. All no-fault motor vehicle insurance laws with some exceptions, require the insurer to pay for the economic loss of:

- the named insured;
- the insured's household family members;
- authorized occupants and operators of the insured's motor vehicle; and
- pedestrians struck by the insured's motor vehicle.

In Texas and Virginia the no-fault insurance law does not require the insurer to provide coverage to pedestrians struck by insured's motor vehicle.

In some states, insurers may refuse to provide benefits to individuals who are injured under the following circumstances.

People who intentionally caused the injury may be denied benefits in 15 states.

Arkansas	Massachusetts	Oregon
Florida	Minnesota	Pennsylvania
Kansas	New Jersey	South Carolina
Kentucky	New York	Texas
Maryland	North Dakota	Utah

People injured while in a known stolen vehicle or in a vehicle without the owner's consent may be denied benefits in 11 states.

Georgia	Michigan	Pennsylvania
Kansas	Minnesota	South Carolina
Kentucky	New York	Utah
Maryland	North Dakota	

People committing a crime or fleeing arrest at the time of injury may be denied benefits in 10 states.

Arkansas	Massachusetts	South Carolina
Florida	New Jersey	Texas
Hawaii	New York	Utah
Maryland		

People injured while competing in a race may be denied benefits in 4 states.

Minnesota	North Dakota	Oregon
New York		

People who were intoxicated at the time of the accident may be denied benefits in 3 states.

Florida	Massachusetts	New York
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In Georgia, people injured by a war, insurrection, or nuclear bomb may be denied benefits.

Vehicles Covered. Sixteen states have made no-fault insurance coverage mandatory for all registered motor vehicles, except that some states exempt motorcycles, mopeds, and primarily off-road vehicles from the mandatory coverage.

Colorado	Kentucky	New Jersey
Delaware	Maryland	New York
Florida	Massachusetts	North Dakota
Georgia	Michigan	Pennsylvania
Hawaii	Minnesota	Utah
Kansas		

Three states, Connecticut, Oregon, and South Carolina, require only passenger motor vehicles to have no-fault insurance coverage.

Territorial Coverage. No-fault motor vehicle insurance coverage is often made mandatory for accidents occurring in certain geographical areas. In Kansas and Florida, the insured and the insured's family must be covered for accidents in the United States and Canada; while in 8 other states the insured, insured's family, and occupants of insured's motor vehicle must be covered for accidents in the United States and Canada.

Connecticut	Kansas	Minnesota
Delaware	Kentucky	North Dakota
Georgia	Michigan	

Colorado, Kansas, New York, and Florida do not require no-fault coverage for pedestrians struck by the insured's vehicle or occupants of insured's vehicle injured outside of the state, unless the occupant is the insured or a member of insured's family. Nine additional states do not require coverage of pedestrians struck by insured's vehicle outside the state.

Connecticut	Hawaii	Michigan
Delaware	Kansas	Minnesota
Georgia	Kentucky	North Dakota

Utah limits no-fault coverage to motor vehicle accidents occurring in Utah.

#### No-Fault Benefits

All no-fault motor vehicle insurance laws mandate benefits covering medical expenses incurred and wages lost because of motor vehicle accidents. All states except Virginia require benefits for expenses for the cost of household services formerly provided by the injured beneficiaries. Certain types of expenses incurred by the deceased's heirs are also covered, such as funeral expenses. Only Delaware requires motor vehicle owners to carry no-fault insurance covering property damage.

Every state with a no-fault motor vehicle insurance program limits the amount of benefits recoverable by a beneficiary. Some limit the amount of benefits recoverable for specific types of expenses; others limit benefits recoverable for both total expenses and certain specific expenses.

The states with limits on total benefits have set dollar ceilings. Medical benefits are generally limited to a certain dollar amount; however, percentage limits and time limits are also used. Wage loss benefit limits consist of a combination of dollar limits, time limits, and percentage limits. Other types of specific benefits are generally subject to dollar limits and time limits.

Total Benefits. The amount of total benefits that an injured beneficiary may recover is not limited in 10 states.

Arkansas	New Jersey	South Dakota
Colorado	Oregon	Utah
Kansas	Pennsylvania	Virginia
Michigan		

In seven of these states benefits for specific expenses are limited as to the dollar amounts that can be collected: Arkansas, Colorado, Kansas, Oregon, South Dakota, Utah, and Virginia.

In Michigan, New Jersey, and Pennsylvania benefits for lost wages and substituted services are limited as to the dollar amount that can be collected, while the amount of benefits for medical expenses is not limited.

The 13 remaining states with no-fault insurance provisions limit the amount of total benefits that beneficiaries can collect. These limits range from \$1,000 per person in South Carolina to \$50,000 per person in New York.

<u>State</u>	<u>Limit on total benefits (per person)</u>
Connecticut	\$ 5,000
Delaware	10,000; \$20,000 (per accident)
Florida	10,000
Georgia	5,000
Hawaii	15,000
Kentucky	10,000
Maryland	2,500
Massachusetts	2,000
Minnesota	30,000
New York	50,000
North Dakota	15,000
South Carolina	1,000
Texas	2,500

Benefits for Medical Expenses. A common feature of all no-fault insurance laws is the compensation of motor vehicle accident victims without regard to fault for medical expenses, which generally include medical, surgical, dental, nursing, hospital, ambulance, prosthetic, and rehabilitative expenses. The amount of benefits covering medical expenses is not limited as to the dollar amount in 12 states; however, in Florida,

only 80 percent of medical expenses need to be compensated and in New York, benefits are limited to expenses incurred or which are foreseeable within 1 year of the accident. In the remaining states except Michigan, New Jersey, and Pennsylvania, total benefits are limited and the amount of medical benefits may not exceed the limit on total benefits.

No Dollar Limits on Medical Benefits

<u>State</u>	<u>Limit on total benefits (per person)</u>	<u>Limit on medical benefits</u>
Connecticut	\$ 5,000	None
Delaware	\$10,000 \$20,000 (per accident)	None
Florida	\$10,000	80% of expenses
Hawaii	\$15,000	None
Maryland	\$ 2,500	None
Massachusetts	\$ 2,000	None
Michigan	None	None
New Jersey	None	None
New York	\$50,000	1 year
North Dakota	\$15,000	None
Pennsylvania	None	None
South Carolina	\$ 1,000	None

In the remaining 11 no-fault insurance states, dollar limits have been placed on the amount of benefits an individual can collect for medical expenses. The limits range from \$1,000 in Kentucky to \$25,000 in Colorado. Colorado also provides an additional amount, not to exceed \$25,000, to cover physical rehabilitation expenses incurred within 5 years of the accident.

Dollar Limits on Medical Benefits

<u>State</u>	<u>Limit on total benefits (per person)</u>	<u>Limit on medical benefits (per person)</u>
Arkansas	None	\$ 5,000
Colorado	None	\$25,000 for med. exp.; \$25,000 for rehab. exp.
Georgia	\$ 5,000	\$ 2,500
Kansas	None	\$ 2,000 for med. exp.; \$2,000 for rehab. exp.
Kentucky	\$10,000	\$ 1,000
Minnesota	\$30,000	\$20,000
Oregon	None	\$ 5,000
South Dakota	None	\$ 2,000
Texas	\$ 2,500	\$ 2,500
Utah	None	\$ 2,000
Virginia	None	\$ 2,000

Lost Wages. Injuries sustained as the result of a motor vehicle accident often result in the loss of wages for the injured person. All no-fault motor vehicle insurance states provide for the reimbursement of lost wages. Maryland, South Carolina, and Texas do not place limits on the amount that the injured person can collect. The remaining states place some sort of limit on the amount of benefits that the injured person can collect. These states impose percentage limits, dollar limits, time limits, or a combination of these on the collection of benefits to cover lost wages. Delaware, on the other hand, limits benefits for lost wages to an amount equivalent to the injured person's net wages. A summary of limits on benefits for lost wages follows.

<u>State</u>	<u>Limit on total benefits (per person)</u>	<u>Limit on benefits for lost wages (per person)</u>
Arkansas	None	70% of wages up to \$125/wk. for 1 yr.
Colorado	None	Up to \$125/wk. for 1 yr.
Connecticut	\$ 5,000	85% of wages up to \$200/wk.
Delaware	\$10,000 \$20,000 (per accident)	None--can recover net wages
Florida	\$10,000	60% of wages
Georgia	\$ 5,000	85% of wages up to \$200/wk.
Hawaii	\$15,000	Up to \$800/mo.
Kansas	None	80% of wages up to \$650/mo. for 1 yr.
Kentucky	\$10,000	Up to \$200/wk.
Maryland	\$ 2,500	None
Massachusetts	\$ 2,000	75% of wages
Michigan	None	Up to \$2,049/mo. for 3 yrs.
Minnesota	\$30,000	Up to \$200/wk.
New Jersey	None	Up to \$5,200 for 100 wks.
New York	\$50,000	Up to \$1,000/mo.
North Dakota	\$15,000	Up to \$150/wk.
Oregon	None	70% of wages up to \$750/mo. for 1 yr.
Pennsylvania	None	Up to \$1,000/mo. with a total limit of \$15,000
South Carolina	\$ 1,000	None
South Dakota	None	Up to \$60/wk. for 1 yr.
Texas	\$ 2,500	None
Utah	None	85% of wages up to \$150/wk. for 1 yr.
Virginia	None	Up to \$100/wk. for 1 yr.

Substituted Services. When a person is injured in a motor vehicle accident, the person is often unable to perform household services. All no-fault insurance states except Virginia require insurers to provide no-fault benefits to cover the cost of paying a person from outside the household to perform the household services normally provided by the injured beneficiary.

Six no-fault insurance states do not impose limits on the amount of benefits that can be collected to pay for the replacement of household services. The remaining states impose dollar limits, time limits, or a combination of dollar limits and time limits. A summary of limits on benefits for substituted services follows.

<u>State</u>	<u>Limit on total benefits (per person)</u>	<u>Limit on benefits for substituted household services (per person)</u>
Arkansas	None	Up to \$70/wk. for 1 yr.
Colorado	None	Up to \$15/day for 1 yr.
Connecticut	\$ 5,000	85% of the value of services up to \$200/wk.
Delaware	\$10,000 20,000 (per accident)	None
Florida	\$10,000	None
Georgia	\$ 5,000	Up to \$20/day for 24 mos.
Hawaii	\$15,000	Up to \$800/mo.
Kansas	None	Up to \$12/day for 1 yr.
Kentucky	\$10,000	Up to \$200/wk.
Maryland	\$ 2,500	None
Massachusetts	\$ 2,000	None
Michigan	None	Up to \$20/day for 3 yrs.
Minnesota	\$30,000	Up to \$15/day
New Jersey	None	Up to \$12/day; up to a total of \$4,380
New York	\$50,000	Up to \$25/day for 1 yr.
North Dakota	\$15,000	Up to \$150/wk.
Oregon	None	Up to \$18/day for 1 yr.
Pennsylvania	None	Up to \$25/day for 1 yr.
South Dakota	None	Up to \$30/wk. for 1 yr.
Texas	\$ 2,500	None
Utah	None	Up to \$12/day for 1 yr.
Virginia	None	No coverage

Benefits for Survivors. Nineteen of the 23 no-fault insurance states require benefits for the survivors of deceased motor vehicle accident victims. Insurers in 6 of these states must give survivors lump sum payments ranging from \$1,000 in Colorado to \$10,000 in South Dakota. The remaining 13 states provide the survivor with benefits to replace lost wages and household services that the deceased would have rendered to the survivors. Generally, the amount that can be collected by a survivor is subject to the same or similar dollar and time limits imposed on lost wages and replacement services benefits that can be collected by injured beneficiaries.

Payment specifically for burial expenses is provided in 19 states. Five of these 19 states do not impose any limits on the amount of benefits that can be used to cover burial expenses. The remaining 14 states have limits ranging from \$1,000 in 8 states to \$2,000 in Connecticut and Delaware. A summary of burial expenses and survivors' benefits follows.

<u>State</u>	<u>Benefits for burial expenses (per person)</u>	<u>Survivors' benefits (per person)</u>
Arkansas	None <sup>1/</sup>	\$5,000
Colorado	None <sup>1/</sup>	\$1,000
Connecticut	\$2,000	up to \$200/wk.
Delaware	\$2,000	None
Florida	\$1,750	None
Georgia	\$1,500	Lost wages and substituted household services
Hawaii	\$1,500	Lost wages and substituted household services
Kansas	\$1,000	Lost wages and substituted household services
Kentucky	\$1,000	Lost wages and substituted household services
Maryland	<u>2/</u>	Lost wages and substituted household services

<u>State</u>	<u>Benefits for burial expenses (per person)</u>	<u>Survivors' benefits (per person)</u>
Massachusetts	<u>2/</u>	Lost wages and substituted household services
Michigan	\$1,000	Lost wages and household services up to \$1,475 for 3 yrs.
Minnesota	\$1,250	Up to \$200/wk. for lost wages; up to \$200/wk. for household services
New Jersey	\$1,000	Whatever decedent could have collected
New York	None <sup>1/</sup>	\$2,000
North Dakota	\$1,000	Lost wages and substituted household services
Oregon	\$1,000	None
Pennsylvania	\$1,500	Lost wages and household services up to \$5,000
South Carolina	<u>2/</u>	None
South Dakota	None <sup>1/</sup>	\$10,000
Texas	<u>2/</u>	Lost wages and substituted household services
Utah	\$1,000	\$2,000
Virginia	<u>2/</u>	\$2,000 for expenses incurred within 1 yr. of death

1/ Lump-sum survivors' benefits provided instead.

2/ No limits are placed on funeral expenses, but such expenses may not exceed limits on total benefits.

Property Damage. Only Delaware requires motor vehicle owners to maintain no-fault insurance benefits covering expenses related to property damages. These benefits cover property damage other than damage to vehicles, trailers, boats, and like objects and are limited to \$5,000 for all property damage incurred in one accident.

Seven states require all no-fault insurers to offer insurance coverage with benefits to cover property damage, including damage to motor vehicles.

Colorado	Maryland	Pennsylvania
Georgia	Massachusetts	South Carolina
Hawaii		

In Colorado benefits can be collected if the accident occurs in the United States, Canada, or Mexico. In South Carolina benefits for property damage are subject to a \$200 deductible.

Optional Benefits. No-fault insurance states often require insurers to offer motor vehicle owners additional benefits or benefits subject to deductibles. For example, Colorado no-fault insurers must give motor vehicle owners the option of purchasing no-fault insurance that provides total benefits of \$100,000. Florida no-fault insurers must offer motor vehicle owners the option of purchasing no-fault insurance with up to a \$2,000 deductible to be assessed against the maximum benefits recoverable of \$10,000.

#### Treatment of Collateral Sources

The amount of no-fault benefits can be reduced by the amount of various collateral sources of benefits available to beneficiaries in 18 of the 23 no-fault insurance states:

Colorado	Kentucky	New York
Connecticut	Maryland	North Dakota
Florida	Massachusetts	Oregon
Georgia	Michigan	Pennsylvania
Hawaii	Minnesota	South Carolina
Kansas	New Jersey	Utah

In Michigan, benefits can be reduced by the amount of state and federal benefits that the beneficiary receives. Benefits can be reduced by the amount of workers' compensation benefits that the beneficiary receives in the 17 other states. Other collateral sources that can be used to reduce no-fault benefits

include various social security benefits, military benefits, and other governmental benefits.

### Payments of Claims

Payment procedures are specified in 20 states.

Arkansas	Kansas	New York
Colorado	Kentucky	North Dakota
Connecticut	Maryland	Oregon
Florida	Massachusetts	Pennsylvania
Georgia	Michigan	South Carolina
Hawaii	Minnesota	Texas
	New Jersey	Utah

Insurers must make payment of claims within a specified period of time after notice of the claim is received, unless the insurer, in good faith, challenges the claim. Oregon requires insurers to make "prompt" payments. In Connecticut, payments are late if not paid to the beneficiary within 15 working days of the claim.<sup>3</sup> In Utah, payments are late if not paid within 35 days of the claim. In the remaining 17 states, claims are late if they are not paid within 30 days of the claim, except that benefits for lost wages are late in Kansas if not paid within 2 weeks of the claim.

Late Payments. Interest rates or penalties on late payments by insurers are imposed by 14 states. Rates range from 10 percent in New Jersey to up to 25 percent in Georgia. Also, if payments are over 60 days late in Georgia, a beneficiary who sues the insurer can collect additional punitive damages if the insurer withheld payment in bad faith.

<u>State</u>	<u>Annual interest rate</u>	<u>State</u>	<u>Annual interest rate</u>
Connecticut	12%	Minnesota	15%
Florida	10	New Jersey	10
Georgia	up to 25	New York	24
Hawaii	13	North Dakota	18
Kansas	18	Pennsylvania	18
Maryland	18	Texas	12
Michigan	12	Utah	18

### Tort Limitations

The ability of a no-fault insurer to bring a tort action to recover for economic losses and noneconomic losses (pain and suffering) is limited in 15 states:

Colorado	Kansas	New Jersey
Connecticut	Kentucky	New York
Florida	Massachusetts	North Dakota
Georgia	Michigan	Pennsylvania
Hawaii	Minnesota	Utah

Generally, economic losses cannot be recovered in a tort action unless no-fault benefits, including the addition of deductibles, would be insufficient to cover economic losses arising from the accident. A no-fault beneficiary cannot bring a tort action to recover noneconomic loss unless the beneficiary suffers a serious injury or death. (See Appendix B.)

### Arbitration

Some insurance states provide for permissive, and sometimes mandatory, arbitration. Only 7 states have some form of mandatory arbitration:

Colorado	Massachusetts	New York
Delaware	Minnesota	Utah
Georgia		

All of these states, except Georgia, impose mandatory arbitration of disputes between insurers. In Colorado and New York, disputes between an insurer and a beneficiary must be arbitrated if the beneficiary requests arbitration. In Georgia, disputes between an insurer and a beneficiary must be arbitrated if either party requests arbitration.

### Subrogation and Reimbursement Provisions

In situations where the party collecting no-fault benefits also has some other legal claim, the no-fault insurer that pays the benefits often has the right to be subrogated to the claim or reimbursed in an amount equal to benefits received. When an insurer is subrogated to a beneficiary's legal claim, the insurer is placed in the same legal position as the insured beneficiary. Thus, if the insured has a right to bring a lawsuit against a person or has a right to workers' compensation benefits, the insurer also has a right, because of subrogation, to bring the lawsuit or collect the compensation benefits in the name of the insured beneficiary for the benefit of the insurer.

In Connecticut, Delaware, Hawaii, Massachusetts, New Jersey, and South Carolina, a no-fault insurer is subrogated to all the legal rights or claims of the no-fault beneficiary. However, in Hawaii the insurer is subrogated to the beneficiary's right to collect for liability in an amount equal to 50 percent of no-fault benefits paid. In South Carolina, an insurer is subrogated only if the beneficiary agrees to the subrogation in writing after the insurer provides the beneficiary with written notice of the beneficiary's right to deny the insurer of all rights to subrogation.

Kansas and Kentucky provide that the insurer is subrogated to the right of the beneficiary to bring a tort action. In Kansas, the insurer has only a right to collect judgment benefits and no right to bring a tort action in the name of the beneficiary until 18 months after the right to bring the lawsuit accrues, at which time the insurer receives the right to bring the lawsuit. Florida, Georgia, Minnesota, New York, and North Dakota provide that an insurer is subrogated to the beneficiary's right to bring a tort action but only if one of the vehicles involved in the accident is a commercial or large vehicle.<sup>4</sup>

Arkansas and Michigan require reimbursement of an insurer from tort liability benefits to the extent of benefits paid; Oregon and Utah require reimbursement of no-fault insurers by liability insurers; and Pennsylvania requires reimbursement from all sources. In Maryland and Texas insurers do not have a right of subrogation.

#### No-Fault Insurance Bills Introduced in Illinois

Illinois passed a no-fault insurance law in 1971, effective January 1, 1972.<sup>5</sup> On April 17, 1972 the Illinois Supreme Court held the law unconstitutional.<sup>6</sup> It was repealed in 1975.

The 1972 Illinois no-fault law required all passenger automobile motorists owning five or fewer automobiles to maintain no-fault insurance coverage that would provide benefits to (1) the insured; (2) members of the insured's household family; (3) occupants and drivers of insured's automobile; and (4) pedestrians struck by the automobile.

The law required reimbursement of (1) medical, hospital, and funeral expenses up to \$2,000; (2) 85 percent of lost income, up to \$150 a week for 1 year;

(3) lost household services provided by the injured party to the household, up to \$12 a day for 260 weeks; and survivors' benefits to replace lost income and household services. It did not provide for no-fault insurance benefits for property damage.

Under the Illinois no-fault law, insurers were exempted from paying any no-fault insurance benefits to insured and other individuals covered by the policy when, at the time of the accident, the beneficiary (1) intentionally caused the injury; (2) was operating the automobile while under the influence of liquor or drugs; (3) was operating the automobile without a license or with a suspended license; (4) was operating the automobile in a race for a wager or bet; (5) was eluding arrest; (6) was operating or occupying a known stolen automobile; (7) was committing a felony; or (8) was committing some other act, for which the director of the Department of Insurance had promulgated an exclusion.

The 1972 law did not prevent a person from bringing a tort action but did limit the amount recoverable for noneconomic loss to 50 percent of medical treatment expenses, up to \$500, and the total amount of medical expenses over \$500. It also provided for mandatory arbitration in actions in which the amount in controversy did not exceed \$3,000.

On April 17, 1972, less than 5 months after the no-fault law went into effect, the Illinois Supreme Court held it unconstitutional.<sup>7</sup> The court stated that (1) the law constituted invalid special legislation because it applied to owners of private passenger automobiles only; and (2) the mandatory arbitration provision violated the constitutional right to a trial by jury and the constitutional provision prohibiting fee officers in the judicial system.

#### Current Illinois Legislation

Three bills proposing no-fault motor vehicle insurance have been introduced in the 82nd General Assembly. House Bills 332 (Bradley et al.) and 2478 (Yourell) would require all motor vehicle owners, except motorcycle owners, to have no-fault motor vehicle insurance. House Bill 2573 (Van Dyne et al.) would require owners of passenger vehicles for 10 or fewer people except motorcycles and mopeds to have no-fault motor vehicle insurance. House Bill 332 was introduced on February 24, 1981 and was assigned to the House Insurance Committee on February 26. The bill is now on the House Insurance Committee Interim Study Calendar.

House Bill 2478 was introduced on April 1, 1982 and was assigned to the House Rules Committee. House Bill 2573 was introduced on April 13, 1982 and was assigned to the House Rules Committee.

House Bills 332 and 2478 would require an insurer to pay the following benefits to motor vehicle accident victims regardless of fault:

- medical expenses not to exceed \$25,000;
- 85 percent of lost income for 3 years;
- replacement service expenses (to replace services provided by the victim to the household) not to exceed \$20 a day for 3 years; and
- death benefits to the victim's estate not to exceed \$1,500.

House Bill 2478 would also require benefits for property damage in the amount of \$5,000.

House Bill 2573 would require insurers to pay medical expenses, 75 percent of lost wages, and substituted household service expenses incurred within 2 years of the accident regardless of fault. Insurers could limit total benefits covering these expenses to a \$10,000 maximum.

Under H.B. 332 and H.B. 2478, accident victims, eligible for no-fault benefits, would be prohibited from bringing a tort action:

- to the extent that the no-fault benefits covered expenses; and
- for noneconomic loss unless death, "serious and irreparable permanent disfigurement," or "serious and permanent injury," occurred.

Motor vehicle accident victims who intentionally cause the accident would be denied benefits under all three proposals. Under H.B. 332 and H.B. 2478 benefits could be denied to a victim who voluntarily occupied a known stolen vehicle. House Bill 332 states that an insurer does not have to provide benefits to a person in a vehicle with three or fewer load bearing wheels; H.B. 2573 states that benefits are not available for accident victims who contributed to the accident by operating a vehicle under the influence of alcohol or marijuana.

Policy Questions<sup>8</sup>

Proponents of no-fault motor vehicle insurance attack the concept of negligence as applied to motor vehicle accidents. They discount the moral value of the negligence concept in automobile accidents; the idea that awareness on the part of a driver that he will be penalized for carelessness will improve his driving habits. They point out that the negligent driver can insure himself against these consequences now and add that it is unlikely that anyone would be induced under a no-fault system to operate a motor vehicle so carelessly as to risk serious injury or death by knowing that expenses will be compensated.

Proponents further argue that motor vehicle negligence cases clog the court system; that small "nuisance value" personal injury claims are overcompensated, while meritorious claims based on serious injuries are undercompensated; and that third party liability insurance, because of legal fees, court costs, and other expenses, delivers no more than 45 cents of compensation for every premium dollar. They contend that no-fault insurance would mitigate all these shortcomings.

The opponents of no-fault insurance argue that the elimination of the rule that liability should follow negligence would in their view be a retrogression to the early common law notion of absolute liability, which the courts abandoned for the fault system in the 19th century. Under a system of absolute liability, parties are held liable or accountable whether or not they were at fault for the occurrence.

Restrictions of the right to sue for pain and suffering have also aroused opposition. Opponents of no-fault insurance claim that the flexibility of the courts allows judges and juries to "tailor justice to each individual case" while the no-fault system awards benefits on a "rigid, structured, objective basis."

Other objections center on the treatment of collateral sources of recovery. It is argued that the deduction of collateral source benefits from recoveries under the no-fault policies will deprive accident victims of additional protection that rightfully belongs to them.

1977 U.S. Department of Transportation Study

In 1977 the U.S. Department of Transportation conducted a study of the existing no-fault systems, including a summary of studies done by individual states.<sup>9</sup>

Major conclusions of the report are as follows.

- All known evidence indicates that state no-fault plans, in varying degrees, provide more adequate and equitable benefits than the tort liability system.
- The goal of providing more prompt payment of economic loss appears to be achieved under the no-fault system.
- The effective coordination of benefits from various compensation systems affects the potential for savings in all such systems.
- The increase in the number of first-party, no-fault claims reflects a clear shift from inefficient third-party benefits towards more efficient first-party benefits. Although the quantitative evidence is meager, being reflected chiefly in the relative reduction in claims personnel, this would appear to indicate that cost efficiency has improved with no-fault.
- Available evidence indicates that the burden on the courts and the legal system is being reduced.
- Depending on the trade off between cost saving features and higher economic loss benefits, any particular no-fault plan can result in higher premiums, lower premiums, or no change at all. Benefit maximizing no-fault plans must be accompanied by strong cost saving features if insurance prices are to be held in check.

The report concluded:

In summary, State experience with no-fault automobile insurance would appear to confirm the basic soundness of the theory and the feasibility of the theory's implementation. No-fault plans of sharply varying objectives and character are widely seen as successes. No problem has arisen in the implementation of no-fault for which there does not appear to be a readily available and feasible solution, given the political will to make the necessary change. No-fault automobile insurance works.

## Public Opinion

A majority of people apparently favors the implementation of a no-fault insurance system, according to a 1974 public opinion study, conducted by Louis Harris and Associates and the Insurance Department, Wharton School, University of Pennsylvania. According to the authors of the study:

Public opinion apparently favors the concept of no fault insurance by 50 to 60%, with about 25% opposed. While this may seem to be a clear endorsement, there is evidence that the public wants it both ways. Nearly half (49%) of those surveyed, would reserve the right for accident victims to sue those responsible for amounts in excess of financial loss in order "to compensate them for the pain and suffering they have endured."<sup>10</sup>

For a more complete breakdown of the results, see Appendix C.

## Notes

1. The law was repealed, effective January 1, 1980, because of strong opposition from various interest groups.

2. The source of information for the section concerning the no-fault insurance laws of states other than Illinois is Commerce Clearing House, Inc., Automobile Law Reporter (looseleaf to date), par. 1935-1987C.

3. Insurers in Connecticut may accumulate payments of less than \$100 for up to 30 days.

4. Florida (one of the vehicles involved must be a commercial vehicle); Minnesota (one of the vehicles involved must be a commercial vehicle that weighs in excess of 5,500 pounds when empty); Georgia, New York, North Dakota (one of the vehicles must weigh in excess of 6,500 pounds when empty).

5. P.A. 77-1430.

6. *Grace v. Howlett*, 51 Ill. 2d 478, 283 N.E.2d 474 (1972).

7. Same as note 6.

8. The sources for this section are: Collins, James, "A Short Course on No-Fault's Faults," *Trial*, Mar. 1979, pp. 44-46; Gillespie, Paul and Miriam Klipper, No-Fault: What You Save, Gain, and Lose With the New Auto Insurance (1972); O'Connell, Jeffrey, "Operation of No-Fault Auto Laws: A Survey of the Surveys," *Insurance Law Journal*, p. 152, Mar. 1977;

O'Connell, Jeffrey, and Janet Beck, "An Update of the Survey on the Operation of No-Fault Auto Laws," Insurance Law Journal, p. 129, Mar. 1979.

9. U.S. Department of Transportation, "State No-Fault Automobile Insurance Experience, 1971-1977," June 1977.

10. Louis Harris and Associates and the Department of Insurance, the Wharton School, University of Pennsylvania, Sentry Insurance National Opinion Study: A Profile of Consumer Attitudes Toward Auto and Homeowner's Insurance, p. 67 (January, 1974).

## Appendix A

## Major Provisions of 23 State No-fault Motor Vehicle Insurance Systems and Three Illinois Bills

States <sup>1/</sup>	Compulsory	Total benefits	Benefits for medical expenses	Lost income benefits	Replacement service benefits	Benefits for burial expenses	Survivors' benefits
Arkansas	No	No limit	Limited to \$5,000	70% of income not to exceed \$125/week	up to \$70 per week	None <sup>2/</sup>	\$5,000
Colorado	Yes	No limit	\$25,000 limit add. \$25,000 allowed for rehab.	\$125/week limit	\$15/week limit	None <sup>2/</sup>	\$1,000
Connecticut	Yes	\$5,000 limit (includes funeral limited to \$2,000)	No limit	85% of income up to \$200/week	85% of value of service NTE \$200/wk	\$2,000	up to \$200/wk
Delaware	Yes	\$10,000 limit/person \$20,000 limit/accident	No limit	No limit	No limit	\$2,000	None
Florida	Yes	\$10,000 limit	80% of expenses	60%	No limit	\$1,750	None
Georgia	Yes	\$5,000 limit	\$2,500 limit	85% of income up to \$200/week	\$20/day limit	\$1,500	"
Hawaii	Yes	\$15,000 limit	No limit	\$800/month limit	\$800/month limit	\$1,500	"
Illinois		No limit	\$25,000 limit	85% of lost income for 3 years	up to \$20/day for 3 years	None <sup>2/</sup>	\$1,500
1981 H.B. 332	Yes					None <sup>2/</sup>	\$1,500
1982 H.B. 247B	Yes					None <sup>2/</sup>	\$1,500
1982 H.B. 2573	Yes	\$10,000 limit	No limit	75% of income for 2 years	All expenses for 2 years	No limit	None mentioned

## Appendix A (cont'd)

<u>States<sup>1/</sup></u>	<u>Compulsory</u>	<u>Total benefits</u>	<u>Benefits for medical expenses</u>	<u>Lost income benefits</u>	<u>Replacement service benefits</u>	<u>Benefits for burial expenses</u>	<u>Survivors' benefits</u>
Kansas	Yes	No limit	\$2,000 limit \$2,000 limit for rehab.	80% of income up to \$650/month	\$12/day limit	\$1,000	*
Kentucky	Yes	\$10,000 limit	\$1,000 limit	\$200/week limit	\$200/week limit	\$1,000	*
Maryland	Yes	\$2,500 limit (includes funeral)	No limit	No limit	No limit	Benefits provided <sup>2/</sup>	*
Massachusetts	Yes	\$2,000 limit (includes funeral)	No limit	75% of income	No limit		*
Michigan <sup>4/</sup>	Yes	No limit	No limit	\$2,049/month limit	\$20/day limit		for lost income and household services up to \$1,475 for 3 years
Minnesota	Yes	\$30,000 limit	\$20,000 limit	\$200/week limit	\$15/day limit	\$1,250	up to \$200/wk for lost income and up to \$200/wk for household services
New Jersey	Yes	No limit	No limit	\$5,200 limit for 100 weeks	\$4,380 limit \$12/day	\$1,000	Whatever decedent could have collected
New York	Yes	\$50,000 limit	No limit	\$1,000/month limit	\$25/day limit	None <sup>2/</sup>	\$2,000
North Dakota	Yes	\$15,000 limit	No limit	\$150/week limit	\$15/day limit	\$1,000	*
Oregon	Yes	No limit	\$5,000 limit	70% of income up to \$750/month	\$18/day limit	\$1,000	None

Appendix A (cont'd)

<u>States<sup>1/</sup></u>	<u>Compulsory</u>	<u>Total benefits</u>	<u>Benefits for medical expenses</u>	<u>Lost income benefits</u>	<u>Replacement service benefits</u>	<u>Benefits for burial expenses</u>	<u>Survivors' benefits</u>
Pennsylvania	Yes	No limit	No limit	\$1,000/month limit total limit \$15,000	\$25/day limit	\$1,500	for lost income and household services up to \$5,000
South Carolina	Yes	\$1,000 limit (includes funeral)	No limit	No limit	No limit	Benefits provided <sup>3/</sup>	None
South Dakota	No	No limit	\$2,000 limit	\$60/week limit	\$30/week limit	None <sup>2/</sup>	\$10,000
Texas	Yes	\$2,500 limit (includes funeral)	\$2,500 limit	No limit	No limit	Benefits provided <sup>3/</sup>	*
Utah	Yes	No limit	\$2,000 limit	85% of income up to \$150/week	\$12/day limit	\$1,000	\$2,000
Virginia	No	No limit	\$2,000 limit; includes funeral	\$100/week limit	No coverage	Benefits provided <sup>3/</sup>	\$2,000 for expenses incurred within 1 year of death

Source: Commerce Clearing House, Inc., Automobile Law Reporter (looseleaf to date), par. 1935-1987C.

\* Benefits provided for lost income and substituted household services.

<sup>1/</sup> Benefits are generally limited to expenses incurred within 2 years of the accident; some states have a 3-year limit while some others have a 1-year limit.

<sup>2/</sup> Lump sum survivors' benefits provided instead.

<sup>3/</sup> No limits are placed on funeral expenses, but such expenses may not exceed limits on total benefits.

<sup>4/</sup> Michigan law provides that the maximum rates for work loss benefits should be adjusted annually to reflect changes in the cost of living under administrative rules. The maximums listed are current maximums that were administratively set.

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 Statutory Limitations on Tort Liability in 23 States
 

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State	Type of Limitation
Arkansas	None.
Colorado	Tort action not allowed (1) for economic loss to the extent that no-fault benefits cover the loss; and (2) for noneconomic loss unless one of the following occurs: death, dismemberment, permanent disability, permanent disfigurement.
Connecticut	Tort action not allowed unless one of the following occurs: death; permanent injury; fracture of a bone; permanent significant disfigurement; permanent loss of bodily function; expense in excess of \$400.
Delaware	None.
Florida	Tort action not allowed (1) to the extent benefits cover the economic loss; (2) for noneconomic loss unless one of the following occurs: significant or permanent loss of bodily function, permanent injury, significant and permanent disfigurement, or death.
Georgia	Tort action not allowed unless one of the following occurs: expenses exceed benefits; death; fractured bone; permanent disfigurement; dismemberment; permanent loss of bodily function; permanent or partial loss of sight or hearing; injury resulting in medical expenses exceed \$500; injury resulting in disability for 10 or more consecutive days.
Hawaii	Tort action not allowed unless one of the following occurs: death; permanent injury; permanent disfigurement; or medical expenses exceed the no-fault benefits.
Illinois H.B. 332 H.B. 2478	Tort action for economic loss is not allowed if no-fault benefits cover the losses and not allowed for noneconomic loss unless death, serious and irreparable permanent injury, or serious and permanent injury results.

Appendix B (cont'd)

<u>State</u>	<u>Type of Limitation</u>
Illinois H.B. 2573	None.
Kansas	Tort action for noneconomic loss not allowed unless one of the following occurs; medical costs for injury exceed \$500; permanent disfigurement; fracture to a weightbearing bone; compound, comminuted, displaced, or compressed fracture; or permanent loss of bodily function.
Kentucky	Tort action not allowed unless: (1) no-fault benefits do not cover the loss; (2) for noneconomic loss unless one of the following occurs: medical costs exceed \$1,000; permanent disfigurement; fracture to a weightbearing bone; compound, comminuted, displaced, or compressed fracture; permanent injury; permanent loss of bodily function; or death.
Maryland	None.
Massachusetts	Tort action not allowed unless: (1) benefits do not cover the loss; (2) for noneconomic loss unless one of the following occurs: medical and funeral expenses exceed \$500; death; loss of a body part; sight or hearing loss; or fracture.
Michigan	Tort action not allowed unless: (1) for all actions unless one of the following occurs: intentional harm; damages exceed benefits; motor vehicle damages to extent not insured; (2) for noneconomic loss unless one of the following occurs: death; serious impairment of bodily function; or permanent serious disfigurement.
Minnesota	Tort action not allowed unless: (1) benefits do not cover expenses; (2) for noneconomic loss unless one of the following occurs: medical expenses exceed \$4,000, injury results in: permanent disfigurement, permanent injury, death, or disability for 60 days or more.

## Appendix B (cont'd)

<u>State</u>	<u>Type of Limitation</u>
New Jersey	Tort liability is not allowed unless one of the following occurs: (1) the injury is to soft tissue of the body and treatment is less than \$200; (2) death; (3) permanent disability; (4) permanent significant disfigurement; or (5) permanent loss of bodily function or body member.
New York	Tort liability is not allowed unless: (1) benefits do not cover expenses; (2) for noneconomic loss unless one of the following occurs: death, dismemberment, significant disfigurement, fracture, or permanent loss of the use of a body organ.
North Dakota	Tort action not allowed: (1) for noneconomic loss unless the injury is serious; (2) for economic loss to the extent no-fault benefits cover the loss.
Oregon	None.
Pennsylvania	Tort liability not allowed unless: (1) motorist is unsecured; (2) action is against a person for repairing or manufacturing a vehicle; (3) intentional injury occurs; (4) the loss is uncompensated by no-fault benefits; (5) for noneconomic loss unless one of the following occurs: death or serious injury, medical costs exceed \$750, medical impairment, cosmetic disfigurement.
South Carolina	None.
South Dakota	None.
Texas	None.
Utah	Tort liability not allowed unless one of the following occurs: (1) death; (2) dismemberment or fracture; (3) permanent disability; (4) permanent disfigurement; or (5) medical expenses exceed \$500.
Virginia	None.

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Source: Commerce Clearing House, Inc., Automobile Law Reporter (looseleaf to date), par. 1935-1987C.

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## Appendix C

## 1974 Public Opinion Report

Attitude Toward All Auto Owners Being Required To  
Purchase Auto Insurance To Cover Their Own  
Personal Injuries

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
Total	66%	22%	12%
Have automobile insurance	67	23	10
Own automobile but no automobile insurance	60	23	17
Under \$5,000	61	20	19
\$ 5,000 to \$9,999	68	20	12
\$10,000 to \$14,999	69	22	9
\$15,000 and over	66	24	10

If Injured In An Automobile Accident And It Were  
The Other Driver's Fault, Would You Be Willing To  
Forego Your Right To Sue Him If Your Insurance  
Company Agreed To Pay All Medical Expenses  
And Wage Losses?

(Base: Own auto insurance = 78%)

	<u>Would Be Willing</u>	<u>Would Not Be Willing</u>	<u>Not Sure</u>
Total	55%	32%	13%
8th grade	41	41	18
High School	56	32	12
College	60	29	11
White	56	32	12
Non-white	51	35	14
Age 18 to 29	62	27	11
Age 30 to 49	54	33	13
Age 50 and over	52	35	13

To a similar question, 57-27 percent of the public said it would favor a state law requiring each auto insurance company to pay its own policyholders "regardless of who is to blame for the accident."

Appendix C (cont'd)

Attitude Toward Law Whereby Each Auto Insurance  
Company Pays Its Own Policyholder Regardless  
Of Who Was To Blame For The Accident

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
Total	57%	27%	16%
Have automobile insurance	59	28	13
Own automobile but no automobile insurance	61	26	13
East	61	24	15
South	49	31	20
Midwest	59	26	15
West	63	25	12
Cities	62	24	14
Suburbs	61	25	14
Towns	49	32	19
Rural	52	30	18
Under \$5,000	50	25	25
\$ 5,000 to \$ 9,999	56	27	17
\$10,000 to \$14,999	61	27	12
\$15,000 and over	61	28	11
Male	62	26	12
Female	49	28	23

Attitude Toward No-Fault Insurance Law In Your State

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
Total	52%	25%	23%
Have automobile insurance	55	25	20
Own automobile but no automobile insurance	47	35	28
East	59	23	18
South	41	29	30
Midwest	55	24	21
West	56	22	22
Cities	59	21	20
Suburbs	57	22	21
Towns	45	28	27
Rural	45	29	26
8th grade	37	26	37
High School	51	27	22
College	63	21	16

## Appendix C (cont'd)

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
White	54%	24%	22%
Non-white	46	26	28
Age 18 to 29	57	27	16
Age 30 to 49	53	24	23
Age 50 and over	49	23	28
Male	57	24	19
Female	44	25	31

Attitude Toward Auto Accident Victims Being Able  
To Sue Those Responsible For The Accident, For  
Amounts In Excess Of Loss To Cover Suffering

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
Total	49%	38%	13%
Under \$5,000	51	30	19
\$ 5,000 to \$ 9,999	48	39	13
\$10,000 to \$14,999	52	38	10
\$15,000 and over	46	44	10
8th grade	54	29	17
High School	51	36	13
College	45	45	10
White	48	39	13
Non-white	55	32	13
Age 18 to 29	45	44	11
Age 30 to 49	52	37	11
Age 50 and over	51	33	16

Source: Louis Harris and Associates and the Department of Insurance, the Wharton School, University of Pennsylvania, Sentry Insurance National Opinion Study; A Profile of Consumer Attitudes Towards Auto and Homeowner's Insurance pp. 65-68 (January, 1974).

ASSEMBLY, No. 3981

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 22, 1983

By Assemblymen ADUBATO, KARCHER and DEVERIN

AN ACT concerning automobile insurance, to be known as "The New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984," and revising parts of the statutory law.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Section 2 of P. L. 1968, c. 385 (C. 17:28-1.1) is amended to  
2 read as follows:

3 2. a. No [automobile] *motor vehicle* liability policy, or renewal  
4 of such policy, of insurance, *including a liability policy for an*  
5 *automobile as defined in section 2 of P. L. 1972, c. 70 (C. 39:6A-2),*  
6 insuring against loss resulting from liability imposed by law for  
7 bodily injury or death, sustained by any person arising out of  
8 the ownership, maintenance or use of a motor vehicle, shall be  
9 issued in this State with respect to any motor vehicle registered or  
10 principally garaged in this State unless it includes coverage[,] in  
11 limits for bodily injury or death as follows:

12 (1) an amount or limit of \$15,000.00, exclusive of interest  
13 and costs, on account of injury to, or death of, one person, in  
14 any one accident, and

15 (2) an amount or limit, subject to such limit for any one  
16 person so injured or killed, of \$30,000.00, exclusive of interest  
17 and costs, on account of injury to or death of more than one  
18 person, in any one accident,

19 under provisions approved by the Commissioner of Insurance, for  
20 payment of all or part of the sums which the insured or his legal

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

21 representative shall be legally entitled to recover as damages  
 22 from the operator or owner of an uninsured [automobile] motor  
 23 vehicle, or hit and run [automobile] motor vehicle, as defined in  
 24 section 18 of [chapter 174 of the laws of 1952] P. L. 1952, c. 174  
 25 (C. 39:6-7S), because of bodily injury, sickness or disease, including  
 26 death resulting therefrom, sustained by the insured, caused by  
 27 accident and arising out of the ownership, maintenance or use of  
 28 such uninsured or hit and run [automobile] motor vehicle any-  
 29 where within the United States or Canada; *except that uninsured*  
 30 *motorist coverage shall provide that in order to recover for non-*  
 31 *economic loss, as defined in section 2 of P. L. 1972, c. 70 (C.*  
 32 *39:6A-2), for accidents to which the benefits of section 4 of that act*  
 33 *apply (C. 39:6A-4) the injured person shall have sustained an*  
 34 *injury or incurred the medical expenses described under the tort*  
 35 *option elected pursuant to section 8 of that act (C. 39:6A-8).*

36 All [such automobile] motor vehicle liability policies shall also  
 37 include coverage for the payment of all or part of the sums which  
 38 persons insured thereunder shall be legally entitled to recover as  
 39 damages from owners or operators of uninsured [automobiles]  
 40 motor vehicles, other than hit and run [automobiles] motor  
 41 vehicles, because of injury to or destruction to the personal prop-  
 42 erty of such insured with a limit in the aggregate for all insureds  
 43 involved in any one accident of \$5,000.00, and subject, for each  
 44 insured, to an exclusion of the first [ \$100.00 ] \$250.00 of such  
 45 damages.

45A b. Uninsured and underinsured motorist coverage [in excess of  
 45B that provided for in subsection a. of this section] shall be provided  
 45C as an option by an insurer to the named insured up to at least  
 45D the following limits: \$250,000.00 each person and \$500,000.00 each  
 46 accident for bodily injury[.]; \$100,000.00 each accident for prop-  
 47 erty damage or \$500,000.00 single limit, subject to an exclusion of  
 48 the first [ \$100.00 ] \$250.00, of such damage to property for each  
 49 accident, except that the limits for uninsured and underinsured  
 50 motorist coverage shall not exceed the insured's [automobile]  
 51 motor vehicle liability policy limits for bodily injury and property  
 52 damage, respectively.

53 Rates for uninsured and underinsured motorist coverage for  
 54 the same limits shall, for each filer, be uniform on a Statewide basis  
 55 without regard to classification or territory.

56 [For the purpose of this section, "underinsured motorist cov-  
 57 erage" means insurance for damages because of bodily injury and  
 58 property damage resulting from an accident arising out of the  
 59 ownership, maintenance or use of an underinsured automobile. An

60 automobile is underinsured when the sum of the limits of liability  
61 under all bodily injury and property damage liability bonds and  
62 insurance policies available to a person against whom recovery is  
63 sought for bodily injury or property damage is, at the time of the  
64 accident, less than the applicable limits of liability afforded under  
65 the automobile insurance policy held by the person seeking such  
66 recovery.]

67 *c. Uninsured and underinsured motorist coverage provided for*  
68 *in this section shall not be increased by stacking the limits of*  
69 *coverage of multiple motor vehicles covered under the same policy*  
70 *of insurance nor shall these coverages be increased by stacking the*  
71 *limits of coverage of multiple policies available to the insured.*  
72 *If the insured had uninsured motorist coverage available under*  
73 *more than one policy, any recovery shall not exceed the higher of*  
74 *the applicable limits of the respective coverages and the recovery*  
75 *shall be prorated between the applicable coverages as the limits*  
76 *of each coverage bear to the total of the limits.*

77 *d. Uninsured motorist coverage shall be subject to the policy*  
78 *terms, conditions and exclusions approved by the Commissioner of*  
79 *Insurance, including but not limited to unauthorized settlements,*  
80 *nonduplication of coverage, subrogation and arbitration.*

81 *e. For the purpose of this section, (1) "underinsured motorist*  
82 *coverage" means insurance for damages because of bodily injury*  
83 *and property damage resulting from an accident arising out of the*  
84 *ownership, maintenance or use of an underinsured motor vehicle.*  
84A *Underinsured motorist coverage shall not apply to an uninsured*  
85 *motor vehicle. A motor vehicle is underinsured when the sum of the*  
86 *limits of liability under all bodily injury and property damage liabil-*  
87 *ity bonds and insurance policies available to a person against whom*  
88 *recovery is sought for bodily injury or property damage is, at the*  
89 *time of the accident, less than the applicable limits for underinsured*  
90 *motorist coverage afforded under the motor vehicle insurance policy*  
91 *held by the person seeking that recovery. A motor vehicle shall not*  
92 *be considered an underinsured motor vehicle under this section*  
93 *unless the limits of all bodily injury liability insurance or bonds*  
94 *applicable at the time of the accident have been exhausted by pay-*  
95 *ment of settlements or judgments. The limits of underinsured*  
96 *motorist coverage available to an injured person shall be reduced*  
97 *by the amount he has recovered under all bodily injury liability*  
98 *insurance or bonds;*

99 *(2) "uninsured motor vehicle" means; (a) a motor vehicle with*  
100 *respect to the ownership, operation, maintenance, or use of which*  
101 *there is no bodily injury liability insurance or bond applicable at*  
102 *the time of the accident;*

103 (b) a motor vehicle with respect to the ownership, operation,  
 104 maintenance, or use of which there is bodily injury liability insur-  
 105 ance in existence but the liability insurer denies coverage or is  
 106 unable to make payment with respect to the legal liability of its  
 107 insured because the insurer has become insolvent or bankrupt, or  
 108 the Commissioner of Insurance has undertaken control of the  
 109 insurer for the purpose of liquidation, or

110 (c) a hit and run motor vehicle as described in section 18 of P. L.  
 111 1952, c. 174 (C. 39:6-78).

112 "Uninsured motor vehicle" shall not include an underinsured  
 113 motor vehicle; a motor vehicle owned by or furnished for the  
 114 regular use of the named insured or any resident of the same  
 115 household; a self-insurer within the meaning of any financial  
 116 responsibility or simliar law of the state in which the motor vehicle  
 117 is registered or principally garaged; a motor vehicle which is owned  
 118 by the United States or Canada, or a state, political subdivision or  
 119 agency of those governments or any of the foregoing; a land motor  
 120 vehicle or trailer operated on rails or crawler treads; a motor  
 121 vehicle used as a residence or stationary structure and not as  
 122 a vehicle; or equipment or vehicles designed for use principally  
 123 off public roads, except while actually upon public roads.

1 2. Section 10 of P. L. 1952, c. 174 (C. 39:6-70) is amended to  
 2 read as follows:

3 10. Hearing on application for payment of judgment. The court  
 4 shall proceed upon such application, in a summary manner, and,  
 5 upon the hearing thereof, the applicant shall be required to show

6 (a) He is not a person covered with respect to such injury or  
 7 death by any **[workmen's]** workers' compensation law, or the  
 8 personal representative of such a person,

9 (b) He is not a spouse, parent or child of the judgment debtor,  
 10 or the personal representative of such spouse, parent or child,

11 (c) He was not at the time of the accident a person (1) operating  
 12 or riding in a motor vehicle which he had stolen or participated in  
 13 stealing or (2) operating or riding in a motor vehicle without the  
 14 permission of the owner, and is not the personal representative of  
 15 such a person,

16 (d) He was not at the time of the accident, **[operating or riding**  
 17 **in an uninsured motor vehicle owned by him or his spouse, parent**  
 18 **or child, and]** the owner or registrant of an uninsured motor vehicle,  
 19 or was not operating a motor vehicle in violation of an order of  
 20 suspension or revocation,

21 (e) He has complied with all of the requirements of section 5,

22 (f) The judgment debtor at the time of the accident was not

23 insured under a policy of automobile liability insurance under the  
24 terms of which the insurer is liable to pay in whole or in part the  
25 amount of the judgment,

26 (g) He has obtained a judgment as set out in section 9 of this act,  
27 stating the amount thereof and the amount owing thereon at the  
28 date of the application,

29 (h) He has caused to be issued a writ of execution upon said  
30 judgment and the sheriff or officer executing the same has made a  
31 return showing that no personal or real property of the judgment  
32 debtor, liable to be levied upon in satisfaction of the judgment,  
33 could be found or that the amount realized on the sale of them or  
34 of such of them as were found, under said execution, was insuffi-  
35 cient to satisfy the judgment, stating the amount so realized and  
36 the balance remaining due on the judgment after application  
37 thereon of the amount realized,

38 (i) He has caused the judgment debtor to make discovery under  
39 oath, pursuant to law, concerning his personal property and as to  
40 whether such judgment debtor was at the time of the accident  
41 insured under any policy or policies of insurance described in sub-  
42 paragraph (f) of this section,

43 (j) He has made all reasonable searches and inquiries to ascer-  
44 tain whether the judgment debtor is possessed of personal or real  
45 property or other assets, liable to be sold or applied in satisfaction  
46 of the judgment,

47 (k) By such search he has discovered no personal or real prop-  
48 erty or other assets, liable to be sold or applied or that he has  
49 discovered certain of them, describing them, owned by the judgment  
50 debtor and liable to be so sold and applied and that he has taken  
51 all necessary action and proceedings for the realization thereof  
52 and that the amount thereby realized was insufficient to satisfy the  
53 judgment, stating the amount so realized and the balance remaining  
54 due on the judgment after application of the amount realized,

55 (l) The application is not made by or on behalf of, any insurer  
56 by reason of the existence of a policy of insurance, whereby the  
57 insurer is liable to pay, in whole or in part, the amount of the  
58 judgment and that no part of the amount to be paid out of the  
59 fund is sought in lieu of making a claim or receiving a payment  
60 which is payable by reason of the existence of such a policy of  
61 insurance and that no part of the amount so sought will be paid  
62 to an insurer to reimburse or otherwise indemnify the insurer in  
63 respect of any amount paid or payable by the insurer by reason of  
64 the existence of such a policy of insurance,

65 (m) Whether or not he has recovered a judgment in an action

66 against any other person against whom he has a cause of action in  
 67 respect of his damages for bodily injury or death or damage to  
 68 property arising out of the accident and what amounts, if any, he  
 69 has received by way of payments upon the judgment, or by way of  
 70 settlement of such cause of action, in whole or in part, from or on  
 71 behalf of such other person,

72 *(n) In order to recover for noneconomic loss, as defined in sec-*  
 73 *tion 2 of P. L. 1972, c. 70 (C. 39:6A-2) for accidents to which the*  
 74 *benefits of sections 7 and 10 of P. L. 1972, c. 198 (C. 39:6-86.1 and*  
 75 *C. 39:6-86.4) apply, the injured person shall have sustained an*  
 76 *injury or incurred the medical expenses described in subsection a.*  
 77 *of section 8 of P. L. 1972, c. 70 (C. 39:6A-8).*

78 Whenever the applicant satisfies the court that it is not possible  
 79 to comply with one or more of the requirements enumerated in sub-  
 80 paragraphs (h) and (i) of this section and that the applicant has  
 81 taken all reasonable steps to collect the amount of the judgment  
 82 or the unsatisfied part thereof and has been unable to collect the  
 83 same, the court may dispense with the necessity for complying with  
 84 such requirements.

85 The heard or any insurer to which the action has been assigned  
 86 may appear and be heard on application and show cause why the  
 87 order should not be made.

1 2.1 Section 18 of P. L. 1952, c. 174 (C. 39:6-78) is amended to  
 2 read as follows:

3 18. When the death of, or personal injury to, any person arises  
 4 out of the ownership, maintenance or use of a motor vehicle in this  
 5 State on or after April 1, 1955, but the identity of the motor vehicle  
 6 and of the operator and owner thereof cannot be ascertained or it  
 7 is established that the motor vehicle was at the time said accident  
 8 occurred, in the possession of some person other than the owner  
 9 without the owner's consent and that the identity of such person  
 10 cannot be ascertained, any qualified person who would have a  
 11 cause of action against the operator or owner or both in respect to  
 12 such death or personal injury may bring an action therefor against  
 13 the director in any court of competent jurisdiction, but no judgment  
 14 against the director shall be entered in such an action unless the  
 15 court is satisfied, upon the hearing of the action, that—

16 (a) The claimant has complied with the requirements of section 5,

17 (b) The claimant is not a person covered with respect to such  
 18 injury or death by any **[workmen's]** *workers'* compensation law,  
 19 or the personal representative of such a person,

20 (c) The claimant was not at the time of the accident **[operating**  
 21 or riding in an uninsured motor vehicle owned by him or his spouse,

22 parent or child, and] *the owner or registrant of an uninsured motor*  
 23 *vehicle, or was not operating a motor vehicle in violation or an*  
 24 *order of suspension or revocation,*

25 (d) The claimant has a cause of action against the operator or  
 26 owner of such motor vehicle or against the operator who was  
 27 operating the motor vehicle without the consent of the owner of  
 28 the motor vehicle,

29 (e) All reasonable efforts have been made to ascertain the  
 30 identity of the motor vehicle and of the owner and operator thereof  
 31 and either that the identity of the motor vehicle and the owner and  
 32 operator thereof cannot be established, or that the identity of the  
 33 operator, who was operating the motor vehicle without the owner's  
 34 consent, cannot be established,

35 (f) The action is not brought by or on behalf of an insurer under  
 36 circumstances set forth in paragraph (1) of section 10.

1 3. Section 7 of P. L. 1972, c. 198 (C. 39:6-86.1) is amended to  
 2 read as follows:

3 7. When any person qualified to receive payments under the  
 4 provisions of the "Unsatisfied Claim and Judgment Fund Law,"  
 5 suffers bodily injury or death *through being struck, as a pedestrian,*  
 6 *as defined in section 2 of P. L. 1972, c. 70 (C. 39:6A-2), by a motor*  
 7 *vehicle, including an automobile as defined in section 2 of P. L.*  
 8 *1972, c. 70 (C. 39:6A-2), and a motorcycle, or by an object propelled*  
 9 *therefrom, or arising out of [the ownership, maintenance, operation*  
 10 *or use of] an accident while occupying, entering into, alighting*  
 11 *from, or using an automobile, [as defined in P. L. 1972, c. 70,]*  
 12 *registered or principally garaged in this State for which personal*  
 13 *injury protection benefits under the "New Jersey Automobile*  
 14 *Reparation Reform Act", P. L. 1972, c. 70 (C. 39:6A-1 et seq.), or*  
 15 *section 19 of this 1983 amendatory and supplementary act, would*  
 16 *be payable to such person if personal injury protection coverage*  
 17 *were in force and the damages resulting from such [automobile]*  
 18 *accident or deaths are not satisfied due to the personal injury*  
 19 *protection coverage not being in effect with respect to such*  
 20 *[automobile] accident, then in such event the Unsatisfied Claim*  
 21 *and Judgment Fund shall provide, under the following conditions,*  
 21A *the following benefits:*

22 a. Medical expense benefits. Payment of all reasonable medical  
 23 expenses incurred as a result of personal injury sustained in [an  
 24 automobile] *a motor vehicle* accident. In the event of death,  
 25 payment shall be made to the estate of the decedent.

26 b. Income continuation benefits. The payment of the loss of  
 27 income of an income producer as a result of bodily injury disability,

28 subject to a maximum weekly payment of \$100.00, per week. Such  
29 sums shall be payable during the life of the injured person and  
30 shall be subject to an amount or limit of \$5,200.00, on account of  
31 injury to any one person, in any one accident, *except that in no case*  
32 *shall income continuation benefits exceed the net income normally*  
33 *earned during the period in which the benefits are payable.*

34 c. Essential services benefits. Payment of essential services  
35 benefits to an injured person shall be made in reimbursement of  
36 necessary and reasonable expenses incurred for such substitute  
37 essential services ordinarily performed by the injured person for  
38 himself, his family and members of the family residing in the  
39 household, subject to an amount or limit of \$12.00 per day. Such  
40 benefits shall be payable during the life of the injured person and  
41 shall be subject to an amount or limit of \$4,380.00, on account of  
42 injury to any one person in any one accident.

43 d. **[Survivor]** *Death* benefits. In the event of the death of an  
44 income producer as a result of injuries sustained in an accident  
45 entitling such person to benefits under section 7 of this act, the  
46 maximum amount of benefits which could have been paid to the  
47 income producer, but for his death, under section 7 b. shall be paid  
48 to the surviving spouse, or in the event there is no surviving spouse,  
49 then to the surviving children, and in the event there are no  
50 surviving spouse or surviving children, then to the estate of the  
51 income producer.

52 In the event of the death of one performing essential services as  
53 a result of injuries sustained in an accident entitling such person to  
54 benefits under section 7 e. of this act, the maximum amount of  
55 benefits which could have been paid such person, under section 7 e.,  
56 shall be paid to the person incurring the expense of providing such  
57 essential services.

58 e. Funeral expenses benefits. All reasonable funeral, burial and  
59 cremation expenses, subject to a maximum benefit of \$1,000.00,  
60 on account of the death to any one person in any one accident shall  
61 be payable to decedent's estate.

62 Provided, however, that no benefits shall be paid under this sec-  
63 tion unless the person applying for benefits has demonstrated:

64 1. He is not a person covered with respect to such injury or  
65 death by any workmen's compensation law, or the personal  
66 representative of such a person;

67 2. He is not a spouse, parent or child of the uninsured motorist  
68 referred to in 4. of this section, or the personal representative of  
69 such spouse, parent or child;

70 3. He was not, at the time of the accident, a person:

71 (a) Operating or riding in a motor vehicle which he had  
72 stolen or participated in stealing; or

73 (b) Operating a motor vehicle without the permission of the  
74 owner, and is not the personal representative of such a person,

75 4. He was not, at the time of the accident, operating or riding in  
76 an uninsured motor vehicle owned by him or his spouse, parent or  
77 child, and was not operating a motor vehicle in violation of an  
78 order of suspension or revocation; and

79 5. He is not an insurer, and is not bringing this action on behalf  
80 of any insurer] *that he is not disqualified by reason of the*  
81 *provisions of subsections (a), (c), (d) or (1) of section 10 of*  
82 *P. L. 1952, c. 174 (C. 39:6-70), or any other provision of law.*

1 4. Section 8 of P. L. 1972, c. 198 (C. 39:6-86.2) is amended to  
2 read as follows:

3 8. The benefits provided in sections 7 and 10, shall be payable as  
4 loss accrues, upon written notice of such loss including reasonable  
5 proof of such loss [and without regard to collateral sources], except  
6 that benefits collectible under:

7 a. Employees temporary disability benefit statutes and medicare  
8 provided under Federal law[,] shall be deducted from the benefits  
9 collectible under sections 7 and 10; and

10 b. *Any hospital, medical or dental benefit plan or policy coverage*  
11 *with benefits similar to those provided under section 7, in an amount*  
12 *not to exceed \$2,500.00 for any one claim for any one person, shall*  
13 *be deducted from the benefits collectible under sections 7 and 10.*

14 *Evidence of benefit payments collectible under subsections a. and*  
15 *b. of this section shall not be admissible in a civil action by the*  
16 *claimant for recovery of damages for bodily injury from the fund.*

1 5. Section 10 of P. L. 1972, c. 198 (C. 39:6-86.4) is amended to  
2 read as follows:

3 10. When the death or personal injury to any person arises out  
4 of the ownership, maintenance or use of an automobile in this State  
5 on or after the effective date of this act, but the identity of the  
6 automobile and of the operator and owner thereof cannot be  
7 ascertained or it is established that the automobile was at the time  
8 said accident occurred, in the possession of some person other  
9 than the owner without the owner's consent and that the identity  
10 of such person cannot be ascertained, any person qualified to  
11 receive payments under the provisions of the "Unsatisfied Claim  
12 and Judgment Fund Law" shall be entitled to receive payment  
13 under sections 7 and 10 of this act, provided that:

14 a. The claimant is not a person covered with respect to such  
15 injury or death by any [workmen's] workers' compensation law, or  
16 the personal representative of such a person,

17 b. The claimant was not at the time of the accident [operating or  
18 riding in an uninsured motor vehicle owned by him or his spouse,  
19 parent or child, and] *the owner or registrant of an uninsured motor*  
20 *vehicle, or was not operating a motor vehicle in violation of an order*  
21 *of suspension or revocation,*

22 c. The claimant was not at the time of the accident:

23 (1) A person operating or riding in a motor vehicle which he  
24 had stolen or participated in stealing, or

25 (2) Operating a motor vehicle without the permission of the  
26 owner, and is not the personal representative of such a person,

27 d. All reasonable efforts have been made to ascertain the identity  
28 of the motor vehicle and of the owner and operator thereof and  
29 either that the identity of the motor vehicle and the owner and  
30 operator thereof cannot be established, or that the identity of the  
31 operator, who was operating the motor vehicle without the owner's  
32 consent, cannot be established, *or*

33 e. [The claimant is not a spouse, parent or child of the uninsured  
34 motorist referred to in subsection b. of this section, or the personal  
35 representative of such spouse, parent or child, or] (*Deleted by*  
36 *amendment, P. L. , c. .*)

37 f. The action or claim is not brought by or on behalf of an insurer.

1 6. Section 2 of P. L. 1972, c. 70 (C. 39:6A-2) is amended to read  
2 as follows:

3 2. Definitions. As used in this act:

4 a. "Automobile" means a private passenger automobile of a  
5 private passenger or station wagon type that is owned or hired  
6 and is neither used as a public or livery conveyance for passengers  
7 nor rented to others with a driver; and a motor vehicle with a pick-  
8 up body, a delivery sedan, *a van*, or a panel truck or *a camper* type  
9 vehicle used for recreational purposes owned by an individual or  
10 by husband and wife who are residents of the same household, not  
11 customarily used in the occupation, profession or business of the  
12 insured other than farming or ranching. An automobile owned by a  
13 farm family copartnership or corporation which is principally  
14 garaged on a farm or ranch and otherwise meets the definitions  
15 contained in this section, shall be considered a private passenger  
16 automobile owned by two or more relatives resident in the same  
17 household.

18 b. "Essential services" means those services performed not for  
19 income which are ordinarily performed by an individual for the  
20 care and maintenance of such individual's family or family house-  
21 hold.

22 c. "Income" means salary, wages, tips, commissions, fees and  
23 other earnings derived from work or employment.

24 d. "Income producer" means a person, who at the time of the  
25 accident causing personal injury or death, was in an occupational  
26 status, earning or producing income.

27 e. "Medical expenses" means expenses for medical treatment,  
28 surgical treatment, dental treatment, professional nursing services,  
29 hospital [services] expenses, rehabilitation services, X-ray and  
30 other diagnostic services, prosthetic devices, ambulance services,  
31 medication and other reasonable and necessary expenses resulting  
32 from the treatment prescribed by persons licensed to practice  
33 medicine and surgery pursuant to R. S. 45:9-1 et seq., dentistry  
34 pursuant to R. S. 45:6-1 et seq., psychology pursuant to P. L. 1966,  
35 c. 282 (C. 45:14B-1 et seq.) or chiropractic pursuant to P. L. 1953,  
36 c. 233 (C. 45:9-41.1 et seq.) or by persons similarly licensed in other  
37 states and nations or any nonmedical remedial treatment rendered  
38 in accordance with a recognized religious method of healing.

39 f. "Hospital expenses" means:

40 (1) The cost of a semiprivate room, based on rates customarily  
41 charged by the institution in which the recipient of benefits is  
42 confined:

43 (2) The cost of board, meals and dietary services;

44 (3) The cost of other hospital services, such as operating room;  
45 medicines, drugs, anesthetics, treatments with X-ray, radium and  
46 other radioactive substances; laboratory tests, surgical dressings  
47 and supplies; and other medical care and treatment rendered by  
48 the hospital;

49 (4) The cost of treatment by a physiotherapist;

50 (5) The cost of medical supplies such as prescribed drugs and  
51 medicines; blood and blood plasma; artificial limbs and eyes;  
52 surgical dressings, casts, splints, trusses, braces, crutches, rental  
53 of wheelchair, hospital bed or iron lung; oxygen and rental of equip-  
54 ment for its administration.

55 g. "Named insured" means the person or persons identified as  
56 the insured in the policy and, if an individual, his or her spouse, *if*  
57 *the spouse is named as a resident of the same household, except that*  
58 *if the spouse ceases to be a resident of the household of the named*  
59 *insured, coverage shall be extended to the spouse for the full term*  
60 *of any policy period in effect at the time of the cessation of*  
61 *residency.*

62 h. "Pedestrian" means any person who is not occupying, *enter-*  
63 *ing into, or alighting from* a vehicle propelled by other than mus-  
64 cular power and designed primarily for use on highways, rails and  
65 tracks [and includes any person who is entering into or alighting  
66 from such a vehicle].

67 i. "Noneconomic loss" means pain, suffering and inconvenience.  
 68 j. "Motor vehicle" means a motor vehicle as defined in R. S.  
 69 39:1-1, exclusive of an automobile as defined in subsection a. of this  
 70 section.

1 7. Section 4 of P. L. 1972, c. 70 (C. 39:6A-4) is amended to  
 2 read as follows:

3 4. Personal injury protection coverage, regardless of fault.

4 Every automobile liability insurance policy insuring an auto-  
 5 mobile as defined in this act against loss resulting from liability  
 6 imposed by law for bodily injury, death and property damage  
 7 sustained by any person arising out of ownership, operation, main-  
 8 tenance or use of an automobile shall provide **[additional]** *personal*  
 9 *injury protection* coverage, as defined herein below, under provi-  
 10 sions approved by the Commissioner of Insurance, for the payment  
 11 of benefits without regard to negligence, liability or fault of any  
 12 kind, to the named insured and members of his family residing in  
 13 his household who sustained bodily injury as a result of an acci-  
 14 dent **[involving]** *while occupying, entering into, alighting from or*  
 15 *using an automobile, or, as a pedestrian, being struck by an auto-*  
 16 *mobile, to other persons sustaining bodily injury while occupying,*  
 17 *entering into, alighting from or using the automobile of the named*  
 18 *insured [or while using such automobile], with the permission of*  
 19 *the named insured, and to pedestrians, sustaining bodily injury*  
 20 *caused by the named insured's automobile or struck by an object*  
 21 *propelled by or from such automobile.*

22 " **[Additional]** *Personal injury protection coverage*" means and  
 23 includes:

24 a. Medical expense benefits: Payment of all reasonable medical  
 25 expenses incurred as a result of personal injury sustained in an  
 26 automobile accident. In the event of death, payment shall be made  
 27 to the estate of the decedent. In the event benefits paid by an  
 28 insurer, pursuant to this subsection are in excess of \$75,000.00 on  
 29 account of personal injury to any one person in any one accident,  
 30 such excess shall be paid by the insurer in consultation with the  
 31 Unsatisfied Claim and Judgment Fund Board and shall be reim-  
 32 bursable to the insurer from the Unsatisfied Claim and Judgment  
 33 Fund pursuant to section 2 of **[this act]** *P. L. 1977, c. 310 (C.*  
 34 *39:6-73.1).*

35 b. Income continuation benefits. The payment of the loss of  
 36 income of an income producer as a result of bodily injury disability,  
 37 subject to a maximum weekly payment of \$100.00, per week. Such  
 38 sum shall be payable during the life of the injured person and  
 39 shall be subject to an amount or limit of \$5,200.00, on account of

40 injury to any one person, in any one accident, *except that in no*  
 41 *case shall income continuation benefits exceed the net income*  
 42 *normally earned during the period in which the benefits are payable.*

43 c. Essential services benefits. Payment of essential services  
 44 benefits to an injured person shall be made in reimbursement of  
 45 necessary and reasonable expenses incurred for such substitute  
 46 essential services ordinarily performed by the injured person for  
 47 himself, his family and members of the family residing in the house-  
 48 hold, subject to an amount or limit of \$12.00 per day. Such benefits  
 49 shall be payable during the life of the injured person and shall  
 50 be subject to an amount or limit of \$4,380.00, on account of injury  
 51 to any one person in any one accident.

52 d. **[Survivor]** *Death* benefits. In the event of the death of an  
 53 income producer as a result of injuries sustained in an accident  
 54 entitling such person to benefits under section 4 of this act, the  
 55 maximum amount of benefits which could have been paid to the  
 56 income producer, but for his death, under section 4 b. shall be paid  
 57 to the surviving spouse, or in the event there is no surviving spouse,  
 58 then to the surviving children, and in the event there are no sur-  
 59 viving spouse or surviving children, then to the estate of the  
 60 income producer.

61 In the event of the death of one performing essential services as  
 62 a result of injuries sustained in an accident entitling such person  
 63 to benefits under section 4 e. of this act, the maximum amount of  
 64 benefits which could have been paid such person, under section 4 e.,  
 65 shall be paid to the person incurring the expense of providing such  
 66 essential services.

67 e. Funeral expenses benefits. All reasonable funeral, burial and  
 68 cremation expenses, subject to a maximum benefit of \$1,000.00, on  
 69 account of the death to any one person in any one **[account]** *acci-*  
 70 *dent* shall be payable to decedent's estate.

71 Benefits payable under this section shall:

72 (1) *Be subject to any deductibles or exclusions elected by the*  
 73 *policyholder pursuant to section 13 of this 1983 amendatory and*  
 74 *supplementary act;*

75 (2) *Not be assignable **[or]**, except to a provider of service bene-*  
 76 *fits under this section, nor subject to levy, execution, attachment*  
 77 *or other process for satisfaction of debts.*

1 8. Section 5 of P. L. 1972, c. 70 (C. 39:6A-5) is amended to read  
 2 as follows:

3 5. Payment of personal injury protection coverage benefits.

4 a. An insurer may require written notice to be given as soon as  
 5 practicable after an accident involving an automobile with respect

6 to which the policy affords personal injury protection coverage  
7 benefits required by this act.

8     b. Personal injury protection coverage benefits shall be overdue  
9 if not paid within 30 days after the insurer is furnished written  
10 notice of the fact of a covered loss and of the amount of same. If  
11 such written notice is not furnished to the insurer as to the entire  
12 claim, any partial amount supported by written notice is overdue if  
13 not paid within 30 days after such written notice is furnished to the  
14 insurer. Any part or all of the remainder of the claim that is  
15 subsequently supported by written notice is overdue if not paid  
16 within 30 days after such written notice is furnished to the insurer;  
17 provided, however, that any payment shall not be deemed overdue  
18 where [the insurer has reasonable proof to establish that the in-  
19 surer is not responsible for the payment, notwithstanding that  
20 written notice has been furnished to the insurer], *within 30 days*  
21 *of receipt of notice of the claim, the insurer notifies the claimant or*  
22 *his representative in writing of the denial of the claim or the need*  
23 *for additional time, not to exceed 45 days, to investigate the claim,*  
24 *and states the reasons therefor. The written notice stating the need*  
25 *for additional time to investigate the claim shall set forth the*  
26 *number of the insurance policy against which the claim is made,*  
27 *the claim number, the address of the office handling the claim and a*  
28 *telephone number, which is toll free or can be called collect, or is*  
29 *within the claimant's area code. For the purpose of determining*  
30 *interest charges in the event the injured party prevails in a sub-*  
31 *sequent proceeding where an insurer has elected a 45 day extension*  
32 *pursuant to this subsection, payment shall be considered overdue*  
33 *at the expiration of the 45 day period or, if the injured person was*  
34 *required to provide additional information to the insurer, within*  
35 *10 business days following receipt by the insurer of all the infor-*  
36 *mation requested by it, whichever is later.*

37     For the purpose of calculating the extent to which any benefits  
38 are overdue, payment shall be treated as being made on the date  
39 a draft or other valid instrument which is equivalent to payment  
40 was placed in the United States mail in a properly addressed,  
41 postpaid envelope, or, if not so posted, on the date of delivery.

42     c. All overdue payments shall bear [simple] interest at the  
43 percentage [rate] of [10% per annum] *interest prescribed in the*  
44 *Rules Governing the Courts of the State of New Jersey for judg-*  
45 *ments, awards and orders for the payment of money. All automobile*  
46 *insurers shall provide any claimant with the option of submitting*  
47 *a dispute under this section to binding arbitration. Arbitration pro-*  
48 *ceedings shall be administered and subject to procedures established*  
49 *by the American Arbitration Association. If the claimant prevails*

50 *in the arbitration proceedings, the insurer shall pay all the costs*  
 51 *of the proceedings, including reasonable attorney's fees to be*  
 52 *determined in accordance with a schedule of hourly rates for*  
 53 *services performed to be prescribed by the Supreme Court of*  
 54 *New Jersey.*

1 9. Section 6 of P. L. 1972, c. 70 (C. 39:6A-6) is amended to read  
 2 as follows:

3 6. Collateral source. The benefits provided in section 4 [a., b., c.,  
 4 d., and e.] and section 10, shall be payable as loss accrues, upon  
 5 written notice of such loss and without regard to collateral sources,  
 6 except that benefits, collectible under [workmen's] workers' com-  
 7 pensation insurance, employees' temporary disability benefit sta-  
 8 tutes medicare provided under Federal law, and benefits, in fact  
 9 collected, that are provided under Federal law to active and retired  
 10 military personnel shall be deducted from the benefits collectible  
 11 under section 4 [a., b., c., d., and e.] and section 10.

12 *If an insurer has paid those benefits and the insured is entitled*  
 13 *to, but has failed to apply for, workers' compensation benefits or*  
 14 *employees' temporary disability benefits, the insurer may immedi-*  
 15 *ately apply to the provider of workers' compensation benefits or of*  
 16 *employees' temporary disability benefits, for a reimbursement of*  
 17 *any section 4 and section 10 benefits it has paid.*

1 10. Section 7 of P. L. 1972, c. 70 (C. 39:6A-7) is amended to  
 2 read as follows:

3 7. Exclusions. a. Insurers may exclude a person from benefits  
 4 under section 4 [a., b., c., d., and e.] and section 10 where such per-  
 5 son's conduct contributed to his personal injuries or death occurred  
 6 in any of the following ways:

7 [a.] (1) while committing a high misdemeanor or felony or  
 8 seeking to avoid lawful apprehension or arrest by a police officer; or

9 [b.] (2) while acting with specific intent of causing injury or  
 10 damage to himself or others.

11 b. An insurer may also exclude from section 4 and section 10  
 12 benefits any person having incurred injuries or death, who, at the  
 13 time of the accident:

14 (1) was the owner or registrant of an automobile registered or  
 15 principally garaged in this State that was being operated without  
 16 personal injury protection coverage;

17 (2) was occupying or operating an automobile without the per-  
 18 mission of the owner or other named insured.

1 11. Section 12 of P. L. 1972, c. 70 (C. 39:6A-12) is amended to  
 2 read as follows:

3 12. Inadmissibility of evidence of losses collectible under per-  
 4 sonal injury protection coverage. [Evidence] *Except as may be*

5 *required in an action brought pursuant to section 20 of this 1983*  
 6 *amendatory and supplementary act, evidence of the amounts col-*  
 7 *lectible or paid pursuant to sections 4 and 10 of this act to an in-*  
 8 *jured person, including the amounts of any deductibles or exclu-*  
 9 *sions elected by the named insured pursuant to section 13 of this*  
 10 *1983 amendatory and supplementary act otherwise compensated,*  
 11 *is inadmissible in a civil action for recovery of damages for bodily*  
 12 *injury by such injured person.*

13 *The court shall instruct the jury that, in arriving at a verdict*  
 14 *as to the amount of the damages for noneconomic loss to be recov-*  
 15 *ered by the injured person, the jury shall not speculate as to the*  
 16 *amount of the medical expense benefits paid or payable under sec-*  
 17 *tion 4 to the injured person.*

18 *Nothing in this section shall be construed to limit the right of*  
 19 *recovery, against the tortfeasor, of uncompensated economic loss*  
 20 *sustained by the injured party.*

1 12. (New section) P. L. 1972, c. 70 (C. 39:6A-1 et seq.) is sup-  
 2 plemented as follows:

3 *Primacy of coverages.* The personal injury protection coverage  
 4 of the named insured shall be the primary coverage for the named  
 5 insured and any resident relative in the named insured's house-  
 6 hold who is not a named insured under an automobile insurance  
 7 policy of his own. No person shall recover personal injury pro-  
 8 tection benefits under more than one automobile insurance policy  
 9 for injuries sustained in any one accident.

1 13. (New section) P. L. 1972, c. 70 (C. 39:6A-1 et seq.) is sup-  
 2 plemented as follows:

3 *Personal injury protection coverage deductibles, exclusions and*  
 4 *setoffs.* With respect to personal injury protection coverage pro-  
 5 vided on an automobile in accordance with section 4 of P. L. 1972,  
 6 c. 70 (C. 39:6A-4), the automobile insurer shall, at appropriately  
 7 reduced premiums, provide the following coverage options:

8 a. medical expense benefit deductibles in amounts of \$500.00,  
 9 \$1,000.00 and \$2,500.00 for any one accident for any one person;

10 b. the option to exclude all benefits offered under subsections b.,  
 11 c., d., and e. of section 4;

12 c. a setoff option entitling an automobile insurer paying medical  
 13 expense benefits under section 4 to reimbursement from, and a lien  
 14 on, any recovery for noneconomic loss by an injured party pursuant  
 15 to an arbitration award, judicial judgment or voluntary settlement  
 16 for the amount of the medical expense benefits paid, not to exceed  
 17 20% of the amount of the award, judgment or settlement, including  
 18 recoveries under uninsured and underinsured motorist coverage,

19 except that if, at the time of the award, judgment or settlement,  
20 the amount of medical expense benefits does not exceed 20% but  
21 additional expense benefits of an indeterminate amount are antici-  
22 pated, the amount of the setoff shall be 20% of the award, judg-  
23 ment or settlement, with the difference between the value of the  
24 20% and the amount of medical expense benefits previously paid  
25 to be placed in an interest bearing trust account for use to indemnify  
26 the insurer paying the medical expense benefits, as the benefits are  
27 paid. Attorney's contingent fees shall be computed on the amount  
28 of the award, judgment or settlement, less the amount of the setoff,  
29 which setoff shall be, if the medical expense benefit claim of the  
30 injured person, as of the date of the award, judgment or settle-  
31 ment is made, is: (1) closed, the amount of medical expense bene-  
32 fits paid, not to exceed 20% of the award, judgment or settlement,  
33 or (2) open, 20% of the award, judgment or settlement. Under a  
34 contingent fee arrangement, the attorney shall also be entitled to  
35 reimbursement out of the amount of the setoff for costs actually  
36 incurred in the institution and prosecution of the claim or action,  
37 which amount shall in no instance exceed 10% of the amount of  
38 the setoff, in a manner to be prescribed by the Supreme Court.  
39 Nothing in this subsection shall be construed to prohibit an attorney  
40 representing the injured party from recovering from the insurer  
41 providing personal injury protection benefits the reasonable cost  
42 of any legal services rendered to that insurer primarily in con-  
43 junction with the setoff reimbursement.

44 a deductible, exclusion or setoff elected by the named insured in  
45 accordance with this section shall apply only to the named insured  
46 and any resident relative in the named insured's household, and  
47 not to any other person eligible for personal injury protection  
48 benefits required to be provided in accordance with section 4.

49 No insurer or health provider providing benefits to an insured  
50 who has elected a deductible pursuant to subsection a. of this sec-  
51 tion shall have a right of subrogation for the amount of benefits  
52 paid pursuant to a deductible elected thereunder.

53 Where a trust account has been established in accordance with  
54 subsection c. of this section, any remaining principal and all accrued  
55 interest in the trust account at the time the final payment of medi-  
56 cal expense benefits is made shall be paid to the party to whom the  
57 award, judgment or settlement was made, or to his estate.

58 The Commissioner of Insurance shall adopt rules and regulations  
59 to effectuate the purposes of this section.

1 14. Section 8 of P. L. 1972, c. 70 (C. 39:6A-8) is amended to  
2 read as follows:

3 8. Tort exemption; limitation on the right to **[damages]** non-  
4 economic loss.

5 One of the following two tort options shall be elected, in accor-  
6 dance with section 14.1 of this 1983 amendatory and supplementary  
7 act, by any named insured required to maintain personal injury  
8 protection coverage pursuant to section 4 of P. L. 1972, c. 70 (C.  
9 39:6A-4):

10 a. Every owner, registrant, operator or occupant of an auto-  
11 mobile to which section 4, personal injury protection coverage,  
12 regardless of fault, applies, and every person or organization  
13 legally responsible for his acts or omissions, is hereby exempted  
14 from tort liability for **[damages]** noneconomic loss to **[any]** a  
15 person who is subject to this subsection and who is either a person  
16 who is required to maintain the coverage mandated by this act,  
17 or **[to any]** is a person who has a right to receive benefits under  
18 section 4 of this act as a result of bodily injury, arising out of the  
19 ownership, operation, maintenance or use of such automobile in  
20 this State, if the bodily injury, is confined solely to the soft tissue  
21 of the body and the medical expenses incurred or to be incurred  
22 by such injured person or the equivalent value thereof for the  
23 reasonable and necessary treatment of such bodily injury, is less  
24 than \$200.00, exclusive of hospital expenses, X-rays and other  
25 diagnostic medical expenses. There shall be no exemption from  
26 tort liability if the injured party has sustained death, permanent  
27 disability, permanent significant disfigurement, permanent loss of  
28 any bodily function or loss of a body member in whole or in part,  
29 regardless of the right of any person to receive benefits under  
30 section 4 of this act. Bodily injury confined solely to the soft tissue,  
31 for the purpose of this section means, injury in the form of sprains,  
32 strains, contusions, lacerations, bruises, hematomas, cuts, abrasions,  
33 scrapes, scratches, and tears confined to the muscles, tendons,  
34 ligaments, cartilages, nerves, fibers, veins, arteries and skin of the  
35 human body; or

36 b. As an alternative to the basic tort option specified in sub-  
37 section a. of this section, every owner, registrant, operator, or occu-  
38 pant of an automobile to which section 4 of P. L. 1972, c. 70 (C.  
39 39:6A-4) applies, and every person or organization legally respon-  
40 sible for his acts or omissions, is hereby exempted from tort lia-  
41 bility for noneconomic loss to a person who is subject to this sub-  
42 section and who is either a person who is required to maintain the  
43 coverage mandated by P. L. 1972, c. 70 (C. 39:6A-1 et seq.) or is  
44 a person who has a right to receive benefits under section 4 of that  
45 act (C. 39:6A-4), as a result of bodily injury, arising out of the

46 ownership, operation, maintenance or use of such automobile in  
 47 this State, if the medical expenses incurred or to be incurred by  
 48 that injured person, or the equivalent value thereof, for the reason-  
 49 able and necessary treatment of the bodily injury, is less than  
 50 \$1,500.00, which amount shall be adjusted annually on January 1  
 51 of each year following the operative date of this act by the Com-  
 52 missioner of Insurance to reflect increases or decreases in the na-  
 53 tional Consumer Price Index for the professional services com-  
 54 ponent of medical care services, all urban consumers, U. S. city  
 55 average, and which amount shall be exclusive of hospital expenses,  
 56 X-rays and other diagnostic medical expenses. The adjusted rate  
 57 shall apply to any claim for noneconomic loss arising from any  
 58 automobile accident occurring on or after the adjustment date.  
 59 There shall be no exemption from tort liability if the injured party  
 60 has sustained death, permanent disability, permanent significant  
 61 disfigurement, permanent loss of any bodily function or loss of a  
 62 body member in whole or in part, regardless of the right of any  
 63 person to receive benefits under section 4 of P. L. 1972, c. 70 (C.  
 64 39:6A-4).

65 The tort option provisions of subsection a. of this section shall  
 66 also apply to the right to recover for noneconomic loss of any  
 67 person eligible for benefits pursuant to section 4 of P. L. 1972, c. 70  
 68 (C. 39:6A-4) but who is not required to maintain personal injury  
 69 protection coverage and is not an immediate family member, as  
 70 defined in section 14.1 of this 1983 amendatory and supplementary  
 71 act, under an automobile insurance policy.

72 The tort option provisions of subsection b. of this section shall  
 73 also apply to the right to recover for noneconomic loss of any  
 74 person who is required but fails to maintain personal injury pro-  
 75 tection coverage mandated by P. L. 1972, c. 70 (C. 39:6A-1 et seq.)  
 76 at the time of accident.

77 The tort option provisions of subsection b. of this section shall  
 78 remain inoperative until July 1, 1984, and shall apply to accidents  
 79 occurring on or after that date.

80 If any provision of subsection b. of this section shall be deemed  
 81 to be unconstitutional, the provisions of the entire subsection shall  
 82 be deemed null and void, and without further effect, but the deci-  
 83 sion of the court shall not affect the validity of any other provision  
 84 of this act.

1 14.1. (New section) P. L. 1972, c. 70 (C. 39:6A-1 et seq.) is  
 2 amended to read as follows:

3 Election of tort option. a. Election of a tort option pursuant to  
 4 section 8 of P. L. 1972, c. 70 (C. 39:6A-8) shall be in writing by

5 the named insured on a form approved by the Commissioner of  
6 Insurance. The tort option elected shall apply to the named insured  
7 and any immediate family member residing in the named insured's  
8 household. "Immediate family member" means the spouse of the  
9 named insured and any child of the named insured or spouse  
10 residing in the named insured's household who is not a named  
11 insured under another automobile insurance policy.

12 b. If the named insured fails to elect, in writing, any of the tort  
13 options offered pursuant to section 8 of P. L. 1972, c. 70 (C.  
14 39:6A-8), the named insured shall be deemed to elect the tort  
15 option of subsection a. of that section 8. No new automobile policy  
16 issued on or after July 1, 1984 in this State shall be issued by an  
17 insurer unless the named insured has elected one of the tort options  
18 provided in section 8.

19 c. The tort option elected by a named insured shall continue in  
20 force as to subsequent renewal or replacement policies until the  
21 insurer or its authorized representative receives a properly ex-  
22 ecuted form electing the other tort option.

23 d. The tort option elected by the named insured shall apply to  
24 all automobiles owned by the named insured and to any immediate  
25 family member who is not a named insured under another auto-  
26 mobile insurance policy, except that in the case where more than  
27 one policy is applicable to the named insured or immediate family  
28 member, and the policies have different tort options, the tort option  
29 elected by the injured named insured shall apply or, in the case  
30 of an immediate family member who is not a named insured and  
31 is injured in an accident involving an automobile to which a policy  
32 issued to a named insured in the household of the injured immediate  
33 family member applies, the tort option elected by that named in-  
34 sured shall apply.

35 In the case of automobile insurance policies in force on July 1,  
36 1984, notice of the tort options available pursuant to the aforesaid  
37 section 8 shall be given in accordance with section 17 of this 1983  
38 amendatory and supplementary act.

1 15. (New section) P. L. 1972, c. 70 (C. 39:6A-1) is supplemented  
2 as follows:

3 The New Jersey Automobile Insurance Risk Exchange: member-  
4 ship, board of directors.

5 There shall be created, within 45 days of the operative date of  
6 this act, an unincorporated association, to operate on a nonprofit-  
7 nonloss basis, to be known as the New Jersey Automobile Insur-  
8 ance Risk Exchange, with its headquarters to be located within  
9 the State of New Jersey. Every insurer licensed to transact

10 private-passenger automobile insurance in this State shall be a  
 11 member of the exchange and shall be bound by the rules of the  
 12 exchange as a condition of the authority to transact insurance  
 13 business in this State. The New Jersey Automobile Full Insurance  
 14 Underwriting Association created pursuant to section 16 of P. L.  
 15 1983, c. 65 (C. 17:30E-4) shall also be a member of the exchange  
 16 and shall be bound by the rules of the exchange. Any insurer which  
 17 ceases to transact automobile insurance business in this State  
 18 shall remain liable for any amounts due to the exchange for busi-  
 19 ness transacted prior to the effective date of its cessation of busi-  
 20 ness in the State.

21 The rules of the exchange shall be determined and its business  
 22 affairs governed by a board of directors to be comprised of nine  
 23 members who shall be appointed by the Governor, with the advice  
 24 and consent of the Senate, and who shall serve at the pleasure  
 25 of the Governor, of whom two shall represent the Alliance of  
 26 American Insurers, or its successor organization; two shall repre-  
 27 sent the National Association of Independent Insurers, or its suc-  
 28 cessor organization; two shall represent the American Insurance  
 29 Association, or its successor organization: two shall represent the  
 30 independent companies; and one shall be an insurer representative  
 31 on the board of directors of the New Jersey Automobile Full Insur-  
 32 ance Underwriting Association. No insurer shall represent more  
 33 than one organization on the board of directors of the exchange.  
 34 Appointments shall be made from a list of names submitted by the  
 35 Commissioner of Insurance. Vacancies in the board of directors of  
 36 the exchange shall be filled in the same manner as the original  
 37 appointments.

1 16. (New section) P. L. 1972, c. 70 (C. 39:6A-1 et seq.) is sup-  
 2 plemented as follows:

3 Powers of exchange. A. The exchange shall be empowered to raise  
 4 sufficient monies to (1) pay its operating expenses, and (2) to  
 5 compensate members of the exchange for claims for noneconomic  
 6 loss, and associated claim adjustment expenses, which would not  
 7 have been incurred had the tort limitation option provided in  
 8 section 14 of this 1983 amendatory and supplementary act been  
 9 elected by the injured party filing the claim for noneconomic loss.

10 b. In order to meet its obligations under subsection a. of this  
 11 section, the exchange shall collect:

12 (1) from every insurer transacting automobile insurance in this  
 13 State, a percentage designated by the board of directors of the  
 14 exchange of all bodily injury premiums paid by insureds not elect-  
 15 ing the tort limitation option;

16 (2) from the New Jersey Full Insurance Underwriting Asso-  
17 ciation, the percentage designated by the board of directors of  
18 the exchange of the bodily injury portion of association's total  
19 income, as defined in section 20 of P. L. 1983, c. 65 (C. 17:30E-8),  
20 for every insured not electing the tort limitation option.

21 c. All exchange members shall furnish the exchange with, and  
22 periodically update, lists of all persons electing the tort limitation  
23 option for claim verification by members.

24 d. The exchange shall have such powers as may be necessary  
25 or appropriate to effectuate the purposes of the exchange.

1 17. (New section) P. L. 1972, c. 70 (C. 39:6A-1 et seq.) is  
2 supplemented as follows:

3 Notice of available coverages and rate credits for deductible,  
4 exclusion, setoff and tort limitation options.

5 a. No new automobile insurance policy, shall be issued on or  
6 after July 1, 1984, unless the application for the policy is accom-  
7 panied by a written notice identifying and containing a brief  
8 description of all available policy coverages and benefit limits,  
9 and identifying which coverages are mandatory and which are  
10 optional under State law, as well as all deductible, exclusion, setoff  
11 and tort limitation options offered by the insurer. The insurer  
12 shall identify the percentage of premium rate credit for each option  
13 or combination of options, as the case may be.

14 The written notice shall also contain a statement on the possible  
15 coordination of other health benefit coverages with the personal  
16 injury protection coverage options, the form and contents of which  
17 shall be prescribed by the Commissioner of Insurance.

18 The applicant shall indicate the options elected on the written  
19 notice which shall be signed and returned to the insurer. Each  
20 applicant shall also be provided with a buyer's guide containing a  
21 description of the policy coverages, benefit limits and coverage  
22 options offered by the insurer, and a statement on the possible  
23 coordination of personal injury protection coverage benefits with  
24 other health benefit coverages.

25 b. In the case of any automobile insurance policy in force on  
26 July 1, 1984, the named insured shall be provided not later than  
27 May 15, 1984 with a written notice and buyer's guide, as required  
28 under subsection a. of this section. Every policy subject to this  
29 subsection shall be endorsed and, if necessary, rereated in accord-  
30 ance with the instructions provided by the named insured, as  
31 indicated on the written notice, which instructions shall be executed  
32 and shall take effect on July 1, 1984.

33 c. Any notice of renewal of an automobile insurance policy with

34 an effective date subsequent to July 1, 1984, shall be accompanied  
 35 by a written notice of all policy coverage information required to  
 36 be provided under subsection a. of this section.

37 The Commissioner of Insurance shall, within 45 days following  
 38 the effective date of this act, promulgate standards for the written  
 39 notice and buyer's guide required to be provided under this section.

1 18. (New section) P. L. 1944, c. 27 (C. 17:29A-1 et seq.) is  
 2 supplemented as follows:

3 Premium credits shall be provided for each deductible, exclusion  
 4 and setoff on personal injury protection coverage offered in  
 5 accordance with section 13, and for the tort limitation option on  
 6 bodily injury liability coverage offered in accordance with section  
 7 14 of this 1983 amendatory and supplementary act. All premium  
 8 credits to which this section applies shall be calculated and repre-  
 9 sented to the insured as a percentage of the applicable premium,  
 10 and the percentage shall be uniform by filer on a Statewide basis.

11 The premium charged for each coverage shall be clearly set forth  
 12 in any policy or endorsement provided the insured.

13 The percentage rate of commission or rate of other compensation  
 14 payable by an automobile insurer to an agent or broker shall not  
 15 vary by reason of the selection or nonselection of any option pro-  
 16 vided in sections 13 and 14 of this 1983 amendatory and supple-  
 17 mentary act.

1 19. (New section) P. L. 1968, c. 385 (C. 17:28-1.1 et seq.) is  
 2 supplemented as follows:

3 Every liability insurance policy issued in this State on a motor  
 4 vehicle, exclusive of an automobile as defined in section 2 of P. L.  
 5 1972, c. 70 (C. 39:6A-2), but including a motorcycle, insuring  
 6 against loss resulting from liability imposed by law for bodily  
 7 injury, death, and property damage sustained by any person aris-  
 8 ing out of the ownership, operation, maintenance, or use of a motor  
 9 vehicle shall provide personal injury protection coverage benefits,  
 10 in accordance with section 4 of P. L. 1972, c. 70 (C. 39:6A-4), to  
 11 pedestrians who sustain bodily injury in the State caused by the  
 12 named insured's motor vehicle or by being struck by an object  
 13 propelled by or from the motor vehicle.

1 20. (New section) P. L. 1972, c. 70 (C. 39:6A-1 et seq.) is supple-  
 2 mented as follows:

3 An insurer paying personal injury protection benefits in accor-  
 4 dance with section 4 or section 10 of P. L. 1972, c. 70, (C. 39:6A-4  
 5 or C. 39:6A-10) as a result of an accident occurring within this  
 6 State shall, within two years of the filing of the claim, have the  
 7 right to recover the amount of payments from any tortfeasor who

8 was not, at the time of the accident, required to maintain personal  
 9 injury protection coverage, other than for pedestrians. In the case  
 10 of an accident occurring in this State involving an insured tort-  
 11 feator, the determination as to whether an insurer is legally en-  
 12 titled to recover the amount of payments and the amount of  
 13 recovery, including the costs of processing benefit claims and en-  
 14 forcing rights granted under this section, shall be made against  
 15 the insurer of the tortfeasor, and shall be by agreement of the  
 16 involved insurers or, upon failing to agree, by arbitration.

1 21. Section 9 of P. L. 1952, c. 174 (C. 39:6-69) is amended to  
 2 read as follows:

3 9. When any qualified person recovers a valid judgment in any  
 4 court of competent jurisdiction in this State, against any other  
 5 person, who was the operator or owner of a motor vehicle, for  
 6 injury to, death of, any person or persons, or a similar valid  
 7 judgment in such court against such a defendant for an amount  
 8 in excess of ~~[\$100.00]~~ \$250.00 exclusive of interest and costs, for  
 9 damages to property, except property of others in charge of such  
 10 operator or owner or such operator's or owner's employees, arising  
 11 out of the ownership, maintenance or use of the motor vehicle in  
 12 this State on or after April 1, 1955, and any amount remains unpaid  
 13 thereon in the case of a judgment for bodily injury or death, or  
 14 any amount in excess of ~~[\$100.00]~~ \$250.00 remains unpaid thereon  
 15 in case of a judgment for damage to property, such judgment  
 16 creditor may, upon the termination of all proceedings, including  
 17 reviews and appeals in connection with such judgment, file a veri-  
 18 fied claim in the court in which the judgment was entered and,  
 19 upon 10 days' written notice to the board may apply to the court  
 20 for an order directing payment out of the fund, of the amount  
 21 unpaid upon such judgment for bodily injury or death, which does  
 22 not exceed, or upon such judgment for damage to property which  
 23 exceeds the sum of ~~[\$100.00]~~ \$250.00 and does not exceed—

24 (a) The maximum amount or limit of \$15,000.00, exclusive of in-  
 25 terest and costs, on account of injury to, or death of, one person,  
 26 in any one accident, and

27 (b) The maximum amount or limit, subject to such limit for  
 28 any one person so injured or killed, of \$30,000.00, exclusive of  
 29 interest and costs, on account of injury to, or death of, more than  
 30 one person, in any one accident, and

31 (c) The maximum amount or limit of \$5,000.00 exclusive of  
 32 interest and costs, for damage to property in any one accident.

1 22. Section 13 of P. L. 1952, c. 174 (C. 39:6-73) is amended to  
 2 read as follows:

3 13. Except with respect to medical expense benefits paid pursuant  
4 to section 2 of [this act] P. L. 1977, c. 310 (C. 39:6-73.1) no order  
5 shall be made for the payment and the treasurer shall make no  
6 payment, out of the fund, of

7 (a) Any claim for damage to property for less than [\\$100.00]  
8 \$250.00.

9 (b) The first [\\$100.00] \$250.00 of any judgment for damage to  
10 property or of the unsatisfied portion thereof, or

11 (c) The unsatisfied portion of any judgment which, after deduct-  
12 ing [\\$100.00] \$250.00 therefrom if the judgment is for damage to  
13 property, exceeds

14 (1) the maximum or limit of, \$15,000.00 exclusive of interest  
15 and costs, on account of injury to, or death of, one person in  
16 any one accident, and

17 (2) the maximum amount or limit, subject to such limit for  
18 any one person so injured or killed, of, \$30,000.00 exclusive of  
19 interest and costs, on account of injury to, or death of, more  
20 than one person, in any one accident, and

21 (3) the maximum amount or limit of \$5,000.00, exclusive of  
22 interest and costs, for damages to property in any one accident  
23 provided, that such maximum amounts shall be reduced by any  
24 amount received or recovered as specified in subparagraph (m)  
25 of section 10.

26 (d) Any claim for damage to property which includes any sum  
27 greater than the difference between said maximum amounts and the  
28 sum of [\\$100.00] \$250.00 and any amount paid out of the fund in  
29 excess of the amount so authorized may be recovered by the trea-  
30 surer in an action brought to him against the person receiving the  
31 same.

1 23. Section 27 of P. L. 1983, c. 65 (C. 17:30E-15) is amended to  
2 read as follows:

3 27. A qualified applicant who is eligible for coverage through the  
4 association shall be offered and entitled to coverage up to at least  
5 the following limits: a. bodily injury liability: \$250,000.00 each  
6 person, \$500,000.00 each accident; b. property damage liability:  
7 \$100,000.00; c. bodily injury and property damage: \$500,000.00  
8 single limit each accident; d. comprehensive and collision coverage;  
9 e. uninsured motorist and underinsured motorist coverage:  
10 \$250,000.00 each person and \$500,000.00 each accident for bodily  
11 injury; \$100,000.00 each accident for property damage or  
12 \$500,000.00 single limit, subject to an exclusion of the first [\\$100.00]  
13 \$250.00 of the damage to property for each accident, except that the  
14 limits for uninsured and underinsured motorist coverages on

15 association coverage shall not exceed the insured's policy limits  
 16 for bodily injury and property damage, respectively; f. personal  
 17 injury protection coverage as required by law; g. additional  
 18 personal injury protection coverage required to be offered by law;  
 19 and h. any other automobile insurance required to be offered by  
 20 law and subject to the limits stated in the law. Motorcycles shall  
 21 not be written for the coverages required or required to be offered  
 22 pursuant to P. L. 1972, c. 70 (C. 39:6A-1 et seq.).

1 24. This act shall take effect immediately, but subsection a. of  
 2 section 13 shall remain inoperative for 60 days following enact-  
 3 ment; sections 1, 2, 2.1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14.1, 15, 16, 17, 18,  
 4 19, 20, 21, 22 and 23, shall remain inoperative until January 1, 1984;  
 5 and subsections b. and c. of section 13 and section 14 shall remain  
 6 inoperative until July 1, 1984.

---

#### STATEMENT

This bill, known as "The New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984", offers motorists for the first time the option to choose the type of insurance coverage that suits their needs and finances. The main provisions of the bill are as follows:

##### 1. *No-Fault Medical Benefits*

There would continue to be unlimited medical expense benefits but insureds would have the option to choose, at reduced premiums stated as a percentage of the coverage premium, medical expense deductibles in amounts of \$500, \$1,000 and \$2,500. This option would permit an insured to coordinate his automobile insurance coverage with other forms of health coverage.

##### 2. *No-Fault Non-Medical Benefits*

The no fault law now mandates the payment of the loss of income, essential services and funeral expenses as a result of an injury or death sustained in an automobile accident. This provision would offer an insured, at reduced premiums stated as a percentage of the coverage premium, the option to purchase or not to purchase these coverages. There are insureds, including senior citizens, who are not working and would never be eligible to collect for income losses, or who may not have a need for or want essential service benefits, and have adequate funeral expense benefits under other insurance coverage.

##### 3. *Set-Off*

This provision would permit an insured the *option* to choose to

entitle his insurer, when it has paid medical expense benefits on his behalf, to reimbursement for the amount of such benefits paid from any recovery for general damages sustained in an auto accident and received by the insured. The reimbursement shall not exceed 20% of the amount of the recovery. Attorneys' contingent fees would be computed on the amount of the recovery, less the amount of the set-off. An attorney would also be entitled to reimbursement out of the set-off for out-of-pocket legal expenses, not to exceed 10% of the total amount of the set-off. This set-off provision would offer an insured the option to reduce his no fault medical coverage premium, which must be stated as a percentage of the coverage premium, by reimbursing his insurer from a general damage recovery for all or a portion of the medical benefits paid on his behalf.

#### *4. Tort Limitation Option*

This provision would require insurers to offer all insureds the right to choose to limit their right to sue for general damages (pain and suffering) resulting from bodily injuries incurred in an auto accident. The choice of monetary tort options is \$200.00 or \$1,500.00, exclusive of hospital, X-ray and diagnostic medical expenses. The \$1,500.00 option covers both soft tissue injuries and fractures, and would be adjusted annually in accordance with a specified index. The tort limitation would not apply to injuries subject to the exclusionary provisions of the current law. In return for electing the tort limitation option, an insured would receive a reduction in his bodily injury liability premium stated as a percentage of the coverage premium.

#### *5. No-Fault And Related Clean-Up Provisions*

These provisions mainly are designed to tighten statutory eligibility requirements for personal injury protection coverage so as to comport with the original intent of the no-fault law.

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State of New Jersey

UNSATISFIED CLAIM AND JUDGMENT FUND BOARD

137 EAST STATE STREET  
TRENTON, NEW JERSEY 08666

PHONE 609-292-4527

October 17, 1983

The Honorable Richard Eliason  
Pouch V  
Juneau, Alaska 99811

Attn: Ms. Shelia Peterson

Re: New Jersey Unsatisfied Claim  
and Judgment Fund

Dear Ms. Peterson:

As per our conversation of Friday, October 14, 1983, I am enclosing copies of:

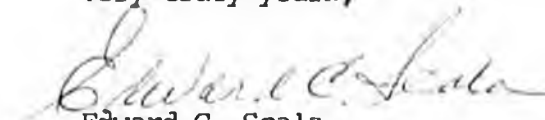
1. Manager's Annual Report to the Unsatisfied Claim and Judgment Fund Board.
2. Typed copy of Unsatisfied Claim and Judgment Fund Law.
3. Claims Handling Procedures Booklet.

Page eight (8) of the Manager's Report will show assessments made against the insurance companies since the Fund's inception.

During the early life of the Fund's existence assessments were made against those motorists registering an uninsured motor vehicle. The assessment was abolished when New Jersey became a Compulsory Insurance State as of January 1, 1973.

I trust the enclosed literature will be of some assistance to Senator Eliason. Should there be any further questions, do not hesitate contacting our office.

Very truly yours,

  
Edward C. Scala  
Senior Adjuster

ECS:map

Enclosures

## TABLE OF CONTENTS

	Page
Introduction .....	1
<u>CLAIMS INVOLVING UNINSURED OR HIT-RUN MOTORISTS</u>	
Initiating a Claim .....	1 - 2
Investigation of Claims .....	2 - 3
Statutory Settlements .....	3
Settlement of Cases that are on Trial .....	3 - 4
Disposal of Cases where the Uninsured Defendant was Properly served but cannot now be located .....	4 - 5
Default Judgments .....	5
Restoration of Driving Privileges where Fund Has Made a Payment .....	6
Release or Subordination of Judgment Lien .....	6
Waiver of Interest .....	6 - 7
Forms Used by Board in UCJ Claims .....	8 - 9
Facsimile of UCJ Forms .....	10 - 24
Regulations Concerning UCJ Claims .....	25
<u>CLAIMS BY INSURERS FOR REIMBURSEMENT OF EXCESS MEDICAL BENEFITS</u>	
History of EMB (Excess Medical Benefit) Claims .....	26
Initiating a Claim .....	26
Claim Processing .....	26
Reimbursement of Insurers .....	26 - 27
Forms Used by Board in EMB Claims .....	28
Facsimile of EMB Forms .....	29 - 31
Regulations Concerning EMB Claims .....	32 - 33

PROCEDURES FOR HANDLING CLAIMS UNDER  
THE NEW JERSEY UNSATISFIED CLAIM AND  
JUDGMENT FUND LAW

Introduction

The Unsatisfied Claim and Judgment Fund is presently responsible for two types of claims - claims involving hit-run or uninsured motorists, and claims by insurers for reimbursement of excess medical expense benefits in excess of \$75,000. These two types of claims will be treated separately in this document.

The object here is to set forth various procedures as they affect the handling of claims under the Unsatisfied Claim and Judgment Fund Law.

Claims Involving Uninsured or Hit-Run Motorists

Initiating a Claim

To collect from the Fund, an eligible person must file a Notice of Intention to Make Claim with the board within ninety (90) days of the accident. This is to be filed on a form prescribed by the board. Form UCJ 201, "Notice of Intention to Make Claim" is available at the board's office. The board's office will mail a supply to any person upon request. The form may also be available at police stations and local motor vehicle agencies in New Jersey. Any other writing received by the board that purports to be a Notice of Intention, and contains the elements of a notice, will be processed as a notice even though it is not on the prescribed form (UCJ Regulation #1).

The board's office will process each Notice of Intention as it is received. The claimant, or claimant's attorney, will receive from the fund either an acknowledgment card, a letter as to ineligibility, or a letter as to the further processing of the claim.

The question of insurance coverage as to the vehicles in the accident is a key item in determining eligibility. The letter of ineligibility most often sent out

by the fund is that the vehicles involved in the accident are insured. The second principal reason for ineligibility is that an uninsured motorist endorsement is available to the claimant. New Jersey statutes mandate that all motor vehicle liability insurance policies must include protection to the insured for damages caused by an uninsured or hit-run automobile. The courts have held that the uninsured motorist protection provided by the uninsured motorist endorsement must be as broad as the Fund Law protection. This protection, in addition to being available to the named insured, is also available to the spouse and relatives of either while residents of the same household. It is also available when the named insured, or an eligible member of the household, is a pedestrian or a passenger in another vehicle.

The claimant, or claimant's attorney, who files a Notice of Intention to Make Claim with the fund should also complete and file an Accident Report form with the Security Responsibility Section of the Division of Motor Vehicles.

The fund will open a claim file and assign a claim number with a "UCJ" prefix to the file if the information furnished on the Notice of Intention indicates a claimant may be eligible. No claim file will be set up and an IN (ineligible) number will be assigned if it appears from the Notice that the claimant will not be eligible.

#### Investigation of Claims

The law provides that the board must assign for investigation hit-run cases, and cases wherein a notice of intention to enter default judgment is received. The board may also assign other cases for investigation.

The assignments are sent to insurance companies, or their designated agencies. The cost of investigation and defense is borne by the company to whom the case is assigned. The insurance companies are to investigate the cases as they would their own.

Company investigations, in addition to the normal motor vehicle accident investigation, should also, by investigation, determine whether claimant will be eligible to recover from the fund if successful in obtaining a judgment against the uninsured or the director in a hit-run case.

Bulletin #24, issued by the board to all companies, investigating agencies and counsel assigned handling of Unsatisfied Claim and Judgment Fund cases, details both the procedures and format to be used concerning investigations and reports.

### Settlement of Claims

#### Statutory Settlements

N.J.S.A. 39:6-72 sets forth requirements for settlement of an action against an uninsured motorist. The uninsured must agree to the settlement in all of these cases. In cases that are in suit, the proposed settlement must be entered into with and by the consent of the court and approved by the manager.

In cases not in suit, the carrier may settle any claim paying less than \$5,000 with the approval of the manager, or any claim paying \$5,000 or more with the approval of the board. The uninsured must agree to the settlement.

N.J.S.A. 39:6-82 provides for settlement of hit-run actions against the Director by the board and court approval.

In cases requiring court approval under N.J.S.A. 39:6-72 and 82, when advised a claim can be settled within the authority approved by the manager or the board, the board's office will send a letter to the assigned company reciting approval of the settlement. The plaintiff's attorney should then have the case set for court approval. Sufficient evidence should be given the court to permit it to make its own determination. If the court approves of the settlement, an order for judgment should be entered. The plaintiff may then apply for the amount to be paid by the treasurer from the fund.

#### Settlement of Cases that are on Trial:

The fund is a trust fund which must be protected by the board and the courts.

Both are interested in disposing of cases by way of settlements where agreements can be reached. The following procedure is suggested in cases where the uninsured is present, the cases are on trial and can be settled within the evaluation fixed by the manager.

Facts as to liability and damages are to be presented to the judge hearing the case. If the judge is satisfied the settlement is fair, he may order a judgment entered. An order for judgment must be drawn by plaintiff's counsel for the court's signature and filed with the clerk. At this time, plaintiff's counsel may wish to call the defendant to the stand for discovery to permit the court to determine if the uninsured has assets to satisfy part or all the judgment.

Where it is ascertained the uninsured has no assets, the plaintiff may apply under N.J.S.A. 39:6-69, 70 and 71 for payment from the fund. The court, on hearing the application for payment and having been apprised of the agreed settlement and entrance of the judgment, is then in a position to determine whether or not the statutory requirements as to eligibility have been satisfied, and if they have, to direct a payment from the fund.

If the court decides on installment payments, the order directing payment from the fund should contain an additional paragraph permitting the uninsured to make the payments. The fund generally expects 10% of salary. If there is no specific court determination as to the reasonableness of the proposed installment, then no order should be entered as to the payments.

Settlement authorizations given to the carrier upon the manager or board's review of the investigation file will not be further reviewed or increased at the time of trial unless the status of the claim has changed. In cases involving board approval (hit-run proposals), the change in status must be submitted in writing to the board at the next meeting with the recommendation of the trial judge, carrier and assigned counsel.

Disposal of Cases where the Uninsured Defendant was Properly Served but cannot now be located:

These cases can be disposed of if the plaintiff, the assigned insurer and the

manager have all agreed to an amount.

Where an attorney has been assigned to defend an uninsured or where the insured has personal counsel who has entered an appearance of record, and the uninsured cannot be located or is not present for trial, the following procedure is suggested for placing a judgment on record:

- (a) Plaintiff's and defendant's counsel advise the assignment judge a judgment has been agreed upon and approved by the manager and outlined for the record steps taken by the carrier and or counsel to procure the cooperation of or locate the defendant.
- (b) Trial date established.
- (c) The defendant's counsel should advise the defendant by mail addressed to the last known residence of the trial date. If the uninsured fails to appear, the plaintiff should present his prima facie proofs to the court. If the court is satisfied as to the defendant's liability and the fairness and reasonableness of the agreed amount, a judgment may be entered. The plaintiff's attorney must draw the order for judgment for the court's signature.

The plaintiff may then move for payment under N.J.S.A. 39:6-69, 70 and 71. The statutory requirement giving the board ten days notice and three additional days if the notice is mailed should be followed.

Default Judgments:

Default judgments in which payment is anticipated from the fund should only be entered in cases where the amount of the judgment has been specifically agreed to by the manager.

Prior to presentation to the court, the default proposal must be submitted to the board's office by the carrier or designated agency together with the investigation file and the carrier's recommendation. If the proposal is found reasonable upon review, the board's office will address a letter to the carrier agreeing to the proposal. These will be cases in which counsel has not been assigned to appear for the uninsured. The plaintiff should submit his prima facie proofs to the court. If the court approves the proposal, a judgment must be entered. The plaintiff may then move for payment from the fund under N.J.S.A. 39:6-69, 70 and 71. The statutory 10 - 13 days notice to the board should be followed as indicated above.

Restoration of Driving Privileges Where Fund Has Made a Payment:

Driving privileges may be restored in settlement cases, if there is nothing else against a person's driving record. The fund will not recommend restoration until the first installment payment is received. There is a statutory interest charge on the debt. The privileges are subject to being suspended if the uninsured fails to make the payments to the fund as agreed.

In judgment cases, the judgment debtor can apply to the court for an installment order. The amount of repayment sought by the fund is based on 10% of gross salary, unless there are unusual circumstances. Restoration will not be recommended until the first installment payment is received by the fund and there is a statutory interest charge on the debt.

Repayments under a settlement agreement or installment court order should be made payable to the State Treasurer and mailed to the Unsatisfied Claim and Judgment Fund Board.

Release or Subordination of Judgment Lien

The board has statutory authority, upon assignment of a judgment to the director that has been paid by the fund, to release or subordinate the judgment lien, where it determines it is advantageous to the fund. There must, therefore, be a consideration recited to obtain a release. The board will consider the request if the following documents are submitted:

- (1) Current affidavit or certification as to the debtor's financial status, including assets, liabilities, employment, marital status, etc.
- (2) Complete details covering the real estate transaction, including value of property, equity, if any, held by the debtor, disposition of proceeds from the sale, type of mortgage on the premises, etc.
- (3) Release documents in triplicate that the director is to execute in the event the request is granted. Included must be the consideration being offered in return for the release by the debtor.

Waiver of Interest

The board has statutory authority to waive interest where it determines it

is advantageous to the fund. The board will consider requests for waiver of interest only if the balance due is promptly paid off in full after board approval. The board requires a completed affidavit or certification as to the debtor's financial status and a letter reciting the reasons and justification for the request for waiver of interest on the debt.

FORMS USED BY FUND BOARD  
IN U.C.J. CLAIMS -  
CLAIMS INVOLVING UNINSURED OR HIT-RUN MOTORISTS

UCJ 201 - Notice of Intention to Make Claim.

To be used by a person who desires to make claim against the fund. This form, or a letter containing the information required by Regulation #1, must be filed with the Board within 90 days of the accident (N.J.S.A. 39:6-65).

UCJ 202A - Assignment Form.

This is a cover sheet used in cases assigned a claim number and sent to an insurance company for investigation under N.J.S.A. 39:6-66.

SR4 or SR4A - Physician's and Dentist's Certificate.

Provided so that a claimant may report injuries under the law. Form is interchangeable with Security-Responsibility so that a party reporting need submit it once under either law.

UCJ 208 - Settlement Agreement.

When an agreement to settle is reached, and there is no suit pending, this form is to be executed by uninsured and claimant or his personal representative. The full settlement should be entered, not merely the amount to be paid by the fund.

UCJ 209 - Assignment of Judgment.

This form is provided by the fund to assign the judgment to the Director of Motor Vehicles as required by N.J.S.A. 39:6-77 when payment on an unsatisfied judgment is made by the fund. It must be executed by the judgment creditor in the full amount of the unsatisfied judgment. If the judgment creditor is acting in a representative capacity, then a surrogate's certificate showing appointment must accompany the certificate.

UCJ 210 - Bond.

To be used in all settlement cases not in suit (N.J.S.A. 39:6-72) and submitted along with UCJ 211 to the board with the file. The full settlement, not merely the amount to be paid from the fund, should be entered. The present percentage of interest is 8%.

UCJ 211 - Warrant for Confession of Judgment.

This form must be executed by the uninsured at the time form UCJ 210 is executed.

UCJ 213 - Claimant's Statement of Eligibility.

This form is provided to determine the eligibility of the claimant.

UCJ 223 - Trial Report.

This form should be completed by the assigned insurance company and submitted to the board at the conclusion of the trial of the case.

UCJ 239 - 60 Day Report.

This is to be submitted to the board's office 60 days after assignment of the case. The board's office will include the form in each assignment.

UCJ 309 - Certification of Financial Status.

This form is used in settlement cases and cases where there is a judgment against an uninsured and no installment order has been entered. It is also used in cases where the board does not have sufficient information to determine whether or not the uninsured's installment payment is reasonable.

UCJ 335 - Order for Installment Payments.

This form is used in cases when there is a judgment against an uninsured motorist and no installment order or in cases where the fund and the uninsured reach agreement on an increase in the amount of the installment payment.

UC-236 - Acknowledgement Card.

Bulletin #24 - Issued by the board to insurance companies, investigating agencies and counsel to detail procedures and format used concerning investigations and reports.

Treasurer's Voucher Form #AR 50/54.

This is the form upon which the Treasurer of the State of New Jersey makes his payments from the fund. It is drawn by the board's office upon receipt of a court order, or approval of a settlement. It will be drawn to the order of claimant and claimant's attorney. It should be signed in all settlement cases by the claimant and claimant's attorney.

TO: UNSATISFIED CLAIM AND  
JUDGMENT FUND BOARD  
137 E. STATE STREET  
TRENTON, NEW JERSEY 08666  
TEL: 609-292-4527

NOTICE OF INTENTION  
TO MAKE CLAIM  
(R.S. 39:6-65)  
AND REQUEST TO PROCESS CLAIM

PLEASE PRINT OR TYPE  
ALL QUESTIONS ON BOTH  
SIDES MUST BE ANSWERED  
(INCOMPLETE FORMS MAY  
BE RETURNED)

IF YOU WISH TO MAKE CLAIM AGAINST THE UNSATISFIED CLAIM AND JUDGMENT FUND,  
THIS FORM MUST BE FILED WITHIN 90 DAYS AFTER DATE OF ACCIDENT.

I, \_\_\_\_\_ of \_\_\_\_\_  
(FIRST NAME) (MIDDLE INITIAL) (LAST NAME) (AGE) (STREET)

\_\_\_\_\_ hereby give notice of my intention to make claim against the Unsatisfied Claim and Judgment Fund  
(CITY) (STATE)  
for damages, if otherwise uncollectible.

Date of Accident \_\_\_\_\_ (a.m. p.m.)  
(MONTH) (DAY) (YEAR) (TIME)

Place of Accident: \_\_\_\_\_  
(STREET OR HIGHWAY) (CITY OR MILES FROM CITY) (COUNTY)

Vehicle No. 1 --Registration No. \_\_\_\_\_  
Owned by: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driven by: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driver License No. \_\_\_\_\_  
Insured by: \_\_\_\_\_  
Policy No. \_\_\_\_\_ Agent \_\_\_\_\_  
(IF AVAILABLE)

Vehicle No. 2 --Registration No. \_\_\_\_\_  
Owned by: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driven by: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driver License No. \_\_\_\_\_  
Insured by: \_\_\_\_\_  
Policy No. \_\_\_\_\_ Agent \_\_\_\_\_  
(IF AVAILABLE)

I was a passenger  I was a pedestrian   
of Vehicle No. \_\_\_\_\_

How many cars involved in this accident \_\_\_\_\_  
(Attach additional sheet if more than two)

Were you injured?  Yes  No If yes, describe injuries \_\_\_\_\_

Do you claim personal injury protection benefits?  Yes  No  
If you were injured, a physician's certificate must accompany this notice, or must be filed as soon as possible. Use Form SR-4A (or SR-4) for this purpose.

Did you sustain property damage?  Yes  No

If yes, estimated cost of repairs. \$ \_\_\_\_\_  
Describe property and damage to it (if to automobile, state year and model)

Submit with this notice estimates of repairmen, or an itemized repair bill.

Have you been paid or will you be paid for your property damage by an insurance company?  Yes  No

Do you or the injured party receive N.J. Medicaid benefits?  Yes  No

WITNESSES TO THE ACCIDENT (Important)

1. \_\_\_\_\_ Address \_\_\_\_\_  
(FIRST NAME) (LAST NAME) (STREET) (CITY) (STATE)  
2. \_\_\_\_\_ Address \_\_\_\_\_  
(FIRST NAME) (LAST NAME) (STREET) (CITY) (STATE)  
3. \_\_\_\_\_ Address \_\_\_\_\_  
(FIRST NAME) (LAST NAME) (STREET) (CITY) (STATE)

Describe Accident \_\_\_\_\_

If you have started a lawsuit attach a copy of the complaint. Check if complaint is attached

IMPORTANT-QUESTIONS ON REVERSE SIDE MUST BE ANSWERED AND FORM SIGNED

- |   |     |                          |    |                          |
|---|-----|--------------------------|----|--------------------------|
| Is the claim payable under an uninsured motorists endorsement?<br>(see check list #4 below before answering)  | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| Were you covered by any Workmen's Compensation Law for injuries received?   | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| Were you the spouse, parent or child of the uninsured motorist against whom claim was made?   | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| Were you operating or riding in an uninsured motor vehicle owned by yourself, spouse, parent or child?  | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| Were you operating a motor vehicle without the permission of the owner?   | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| Were you operating a motor vehicle in violation of an order of suspension or revocation of your license?  | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| Are your medical bills payable under a medical payment provision under which you must repay your insurance company if you collect from the responsible party? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| Were you the owner or operator of the vehicle involved in the accident?   | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| Did you file an accident report (SR-1) with the Bureau of Security Responsibility?  | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |

I CERTIFY THAT ALL STATEMENTS MADE BY ME ARE TRUE. N.J.S.A. 39:6-90 PROVIDES PENALTIES FOR FALSE INFORMATION.

Date \_\_\_\_\_ 19 \_\_\_\_ Signature \_\_\_\_\_

**INCOMPLETE FORMS MAY BE RETURNED**

**NOTICE OF INTENTION TO MAKE CLAIM FOR PAYMENT FROM THE FUND MUST BE MADE TO THE BOARD WITHIN NINETY DAYS AFTER THE DATE OF THE ACCIDENT; OTHERWISE, RIGHT TO COLLECT FROM THE FUND WILL BE LOST.**

**CHECK LIST**

Have you attached the following (where applicable) to this Notice of Intention?

1. A certification by a physician of the injuries sustained so far as they can now be anticipated and of the treatment afforded by him? (Use Form SR-4 when available. This can be obtained where you got this Notice of Intention form or from a motor vehicle agency or your local police.)
2. Estimates of a repairman or an itemized repair bill?
3. Such information as is known to you as to liability insurance in effect with respect to the motor vehicles involved in the accident?
4. Have you checked as to the availability of uninsured motorist coverage? The liability insurance policy of the named insured should be checked as to whether or not a premium has been paid. If the premium has been paid, the coverage is available to all persons in an insured vehicle. It is also available to the named insured and members of his household when he is a pedestrian or passenger in another vehicle.
5. A copy of the complaint, if you have started a lawsuit.

**YOU CANNOT COLLECT FROM THE FUND IF:**

1. You fail to notify the Board of your intention to make claim ninety days after the date of the accident.
2. Your injuries or death are covered by Workmen's Compensation.
3. You are the spouse, parent or child of the judgment debtor (person against whom claim is made).
4. You were at the time of the accident operating or riding in a motor vehicle which you had stolen or helped to steal or were operating a motor vehicle without the owner's permission.
5. You were operating or riding in an uninsured vehicle owned by yourself, your spouse, parent or child.
6. The judgment debtor was insured at the time of the accident and the insurance company is liable to pay part or all of the judgment.
7. The claim is covered by uninsured motorist coverage, collision insurance, extended fire or other insurance.
8. The damage to your vehicle or property is covered by an insurance policy.
9. Your claim is for property damage of \$100.00 or less.

**IMPORTANT**

**IF YOU START A SUIT, AFTER FILING THIS NOTICE, YOU MUST NOTIFY THE UNSATISFIED CLAIM AND JUDGMENT FUND BOARD WITHIN 15 DAYS BY GIVING IT A COPY OF YOUR COMPLAINT.**

Report of accident must be made to the Security-Responsibility Section, Division of Motor Vehicles, if you are a driver involved in an accident resulting in damage to property of any one person in excess of two hundred dollars or injury to or death of any person.

State of New Jersey  
Unsatisfied Claim and Judgment Fund Board

ASSIGNMENT SHEET

NEW ASSIGNMENT

ADDITIONAL CLAIMANT

Kindly conduct an investigation and/or defense of the below claim. If you determine it is one for settlement, please attempt to arrange for a settlement at an early date subject to the approved procedures under the statute.

The attached 60 day report is due in this office 60 days after assignment.

The following are enclosed:

- Notice of Intention
- Physician's Certificate
- SR - 1
- 60 Day Report

- Complaint
- Correspondence
- Estimate

Very truly yours,

Sal E. Capozzi  
Manager

By \_\_\_\_\_

TO: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CLAIM ASSIGNMENT?

TO: UNSATISFIED CLAIM AND  
JUDGMENT FUND BOARD  
137 E. STATE STREET  
TRENTON, NEW JERSEY 08666  
TELEPHONE: 609-292-4527

**INJURED  
PERSON**

Name \_\_\_\_\_ Age \_\_\_\_\_ Address \_\_\_\_\_  
Occupation \_\_\_\_\_ Employed by \_\_\_\_\_  
Employer's Address \_\_\_\_\_

**HISTORY  
OF  
CONDITION**

Date of injury \_\_\_\_\_ 19 \_\_\_\_ How did patient say injury occurred? \_\_\_\_\_  
Are you the family physician \_\_\_\_\_ If not, give name of family physician \_\_\_\_\_

**DIAGNOSIS  
AND  
TREATMENT**

Complete description of nature and extent of injury \_\_\_\_\_  
Describe treatment given \_\_\_\_\_

**X-RAY**

Was patient confined to hospital \_\_\_\_\_ Name of hospital \_\_\_\_\_  
Probable period of hospitalization \_\_\_\_\_  
Date taken \_\_\_\_\_ 19 \_\_\_\_ Where taken \_\_\_\_\_  
By whom \_\_\_\_\_ Findings \_\_\_\_\_

**CONTRIBUT-  
ING  
FACTORS**

Are symptoms from which patient is suffering due entirely to this injury \_\_\_\_\_  
Has previous sickness, injury or disease contributed to disability? \_\_\_\_\_ If so, give your opinion as to extent \_\_\_\_\_

Is patient able to attend to any part of regular or any other occupation \_\_\_\_\_

If so, state nature of work he can do now \_\_\_\_\_

Is patient working now? \_\_\_\_\_ Where, if known \_\_\_\_\_

Has patient received any permanent injuries? \_\_\_\_\_ If so, nature and degree of permanency \_\_\_\_\_

Give your estimate of disability from work FROM DATE OF ACCIDENT:

Total disability \_\_\_\_\_ weeks \_\_\_\_\_ days \_\_\_\_\_  
Partial disability \_\_\_\_\_ weeks \_\_\_\_\_ days \_\_\_\_\_  
Number of treatments to date: Office \_\_\_\_\_ Home \_\_\_\_\_  
Hospital \_\_\_\_\_

(Date of your first treatment \_\_\_\_\_ )  
(Date of your latest treatment \_\_\_\_\_ )

Amount of your bill to date \_\_\_\_\_ Estimated total fee \$ \_\_\_\_\_

Estimate of your further treatments, if any \_\_\_\_\_

Was patient treated by others \_\_\_\_\_ If yes, by whom \_\_\_\_\_

Remarks \_\_\_\_\_

Date of this report \_\_\_\_\_ Signed \_\_\_\_\_ M.D.  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_

(Injured to Complete Reverse Side)

## NOTICE TO PHYSICIAN OR DENTIST

The law provides that a Notice of Intention to Make Claim be filed within 90 days after an accident and that such Notice shall be accompanied by a Physician's Certificate. If the Notice of Intention is not filed in that time the injured individual will lose his right to collect from the Unsatisfied Claim and Judgment Fund.

Therefore, please do not delay completing this form.

## NOTICE TO INJURED PERSON

If you have already filed a Physician's and Dentist's Certificate with the Security Responsibility Section, you need not file it with your Notice of Intention to Make Claim (UCJ-201).

### TO BE COMPLETED BY INJURED PERSON

Date of Accident \_\_\_\_\_ Location of Accident \_\_\_\_\_

Your full name \_\_\_\_\_ Age \_\_\_\_\_ Male  Married   
Female  Single

Address \_\_\_\_\_

Occupation \_\_\_\_\_ Name of employer \_\_\_\_\_

Employer's Address \_\_\_\_\_

Weekly salary at time of accident \$ \_\_\_\_\_ Number of dependents \_\_\_\_\_

Your estimate of total loss of earnings due to injury \$ \_\_\_\_\_

I was driver   
passenger  - in vehicle driven by \_\_\_\_\_  
pedestrian

I certify that the information in this report is true to the best of my knowledge and the injuries are the result of the described accident.

Date \_\_\_\_\_ 19 \_\_\_\_\_ Signature of injured person \_\_\_\_\_

PHYSICIAN TO COMPLETE REVERSE SIDE - - OVER

SETTLEMENT AGREEMENT

February, 1982  
UCJ - Page 13

\_\_\_\_\_ of \_\_\_\_\_, New  
(Claimant)  
Jersey and \_\_\_\_\_ of \_\_\_\_\_,  
(Uninsured)

New Jersey were involved in an accident at or near \_\_\_\_\_  
\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_,  
and it is desired on the part of both parties that a settlement be had.

It is agreed by and between the above named parties as follows:

\_\_\_\_\_ agrees to pay and \_\_\_\_\_  
(Uninsured) (Claimant)

\_\_\_\_\_ agrees to accept the sum of \$\_\_\_\_\_ in full  
settlement of any and all claims he has or may have. The sum of \$\_\_\_\_\_  
is to be paid by the Unsatisfied Claim and Judgment Fund. \_\_\_\_\_

\_\_\_\_\_ has agreed by way of separate instrument to repay the  
(Uninsured)

Treasurer of New Jersey the sum expended in his behalf by the Unsatisfied  
Claim and Judgment Fund. PURSUANT TO R.S. 39:6-72 THIS AGREEMENT IS SUBJECT  
TO APPROVAL OF THE DIRECTOR OF THE DIVISION OF MOTOR VEHICLES AND ONE MEMBER  
OF THE UNSATISFIED CLAIM AND JUDGMENT FUND BOARD, THE BOARD, OR THE BOARD  
AND COURT APPROVAL.

\_\_\_\_\_ NAME

\_\_\_\_\_ NAME

\_\_\_\_\_ Address

\_\_\_\_\_ Address

On this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

\_\_\_\_\_ personally  
known to me appeared before me and I  
having first made known to him the  
contents thereof he did acknowledge  
that the foregoing was executed by  
him for the purposes set forth there-  
in.

\_\_\_\_\_ personally  
known to me appeared before me and I  
having first made known to him the  
contents thereof he did acknowledge  
that the foregoing was executed by  
him for the purposes set forth there-  
in.

Notary Public in and for the County  
of \_\_\_\_\_  
State of New Jersey  
My commission expires \_\_\_\_\_

Notary Public in and for the County  
of \_\_\_\_\_  
State of New Jersey  
My commission expires \_\_\_\_\_

ASSIGNMENT

For value received, I hereby assign, transfer and set over unto \_\_\_\_\_  
 Director of the Division of Motor Vehicles, State of New Jersey, his successors or assigns,  
 a certain judgment recovered by me on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in an  
 action in the \_\_\_\_\_ Court, before the Honorable \_\_\_\_\_,  
 Judge of said Court between me, as the plaintiff and \_\_\_\_\_ as  
 the defendant, which judgment is for the amount of \$ \_\_\_\_\_ damages with costs, if any,  
 as the record may appear, of which \$ \_\_\_\_\_ has not been paid, together with the interest  
 due or to become due thereon and the benefit of all the proceedings by virtue of execution  
 or otherwise, levied or instituted or to be levied or instituted on the said judgment. I do  
 name, appoint and constitute the said \_\_\_\_\_, his successors  
 or assigns, my attorney in my name, for his or their own use and benefit, but at his or their  
 own cost and expense, to do and perform any and every act and thing necessary in his or their  
 judgment to the recovering and settling of the aforesaid judgment, costs and interest.

Dated:

Attest:

ACKNOWLEDGMENT

State of New Jersey }  
 County of \_\_\_\_\_ } ss.

Be it remembered that, on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the  
 subscriber \_\_\_\_\_, personally appeared \_\_\_\_\_  
 who I am satisfied is the person named in and who executed the within assignment, and I  
 having first made known to \_\_\_\_\_ the contents thereof, \_\_\_\_\_ did thereupon severally  
 acknowledge that \_\_\_\_\_ signed, sealed and delivered the same as \_\_\_\_\_ voluntary act and  
 deed, for the uses and purposes therein expressed.

KNOW all men by these presents that I, \_\_\_\_\_ of the city  
of \_\_\_\_\_ County of \_\_\_\_\_ and State of New Jersey am held and  
firmly bound unto the Treasurer of the State of New Jersey, his successors or assigns in the sum  
of \$ \_\_\_\_\_ for which payment well and truly to be made, I do hereby bind myself, my heirs,  
executors, and administrators, and assigns firmly by these presents.

The condition of this obligation is such that if the above-bounded \_\_\_\_\_  
his heirs, executors, or administrators, of any of them shall and does well and truly pay to the  
said Treasurer of the State of New Jersey, his successors or assigns, the full and just sum of  
\$ \_\_\_\_\_ in installments as stated belcw until the indebtedness is fully paid, with interest  
on the said sum at the rate of 6% per annum, then this obligation shall be void; otherwise, this  
obligation shall remain in full force and virtue.

The above obligation shall be paid by the above-bounded \_\_\_\_\_, his  
heirs, executors, administrators, or assigns in equal installments of \$ \_\_\_\_\_ per month  
commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and on the \_\_\_\_\_ day of each succeeding  
month thereafter until the entire amount due hereunder shall be paid. In the event that any de-  
fault occurs in any monthly payment hereunder, the entire remaining amount of principal and in-  
terest due on this obligation shall immediately be due notwithstanding anything herein con-  
tained, and the entire amount of principal and interest remaining on this obligation shall be in  
default of any monthly payment due hereunder.

IN WITNESS WHEREOF, I have hereunto placed my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
L.S.

Signed, sealed and delivered  
on this \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_\_\_  
in the presence of

\_\_\_\_\_  
Notary

# WARRANT FOR CONFESSION OF JUDGEMENT

To any Attorney at Law of any Court of Record of the State of New Jersey or  
Elsewhere or to any Other Person:

These presents are to authorize you to appear for me in any court of  
competent jurisdiction in the State of New Jersey or elsewhere, in an action at law  
brought or to be brought against me at the suit of the Treasurer of the State of  
New Jersey, the obligee in a certain bond executed and delivered to him by me  
on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_,  
or at the suit of his successors, or assigns, and thereupon to confess judgment  
against me as of the last term or any subsequent date, for the sum mentioned in  
the condition of the said bond with the costs of the suit, agreeably to law, hereby  
releasing all errors, and this instrument shall be your warrant.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal on  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

Signed, sealed, and delivered

on this \_\_\_\_\_ day of \_\_\_\_\_,

19\_\_\_\_\_, in the presence of

\_\_\_\_\_ L.S.

\_\_\_\_\_  
Notary

CLAIMANT'S STATEMENT OF ELIGIBILITY  
AND OF OTHER INSURANCE CARRIED WHICH IS  
APPLICABLE TO THE ACCIDENT

- ANSWER  
YES OR NO
1. Were you covered by Workmen's Compensation Law for injuries received? \_\_\_\_\_
  2. Were you the spouse  , parent  , or child  of the uninsured motorist against who claim is made? \_\_\_\_\_
  3. Were you operating a motor vehicle without the permission of the owner? \_\_\_\_\_
  4. Were you operating or riding in an uninsured motor vehicle owned by yourself  , spouse  , parent  or child  ? \_\_\_\_\_
  5. Were you operating a motor vehicle in violation of an order of suspension or revocation of your license? \_\_\_\_\_
  6. Do you, or does any member of the household where you reside, own an automobile?  
\_\_\_\_\_
- If Yes: Plate No. \_\_\_\_\_  
Name of Automobile \_\_\_\_\_  
Liability Insurance Co. \_\_\_\_\_ Policy No. - \_\_\_\_\_  
  
Name of Collision \_\_\_\_\_  
Insurance Company \_\_\_\_\_ Policy No. - \_\_\_\_\_
7. Do you claim Personal Injury Protection Benefits?  
If the answer is yes, you must answer the following additional questions:  
    - (a) If you were a pedestrian, was the vehicle involved a private passenger auto (as distinguished from a bus, truck, taxi, etc.) \_\_\_\_\_
    - (b) If you were a passenger, were you a passenger in a private passenger auto (as distinguished from a bus, truck, taxi, etc.) \_\_\_\_\_
    - (c) Did this accident occur while you were committing a high misdemeanor, felony or seeking to avoid lawful apprehension? \_\_\_\_\_
    - (d) Did this accident occur while you were acting with specific intent of causing injury? \_\_\_\_\_
    - (e) Are you eligible to collect benefits under employee temporary disability statutes? \_\_\_\_\_
    - (f) Are you eligible to collect benefits under medicare? \_\_\_\_\_

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Claimant's Social Security  
Number \_\_\_\_\_

STATE OF NEW JERSEY  
Unsatisfied Claim and Judgment Fund Board  
209 East State Street  
Trenton, New Jersey 08625

February, 1982  
UCJ Page - 18

TRIAL REPORT

This trial report must be submitted at the time verdict is entered either for the plaintiff or the defendant.

Claim No. \_\_\_\_\_ UCJ \_\_\_\_\_ Date Of Accident \_\_\_\_\_

Co. report must be submitted for each plaintiff:

Plaintiff \_\_\_\_\_

This case was tried on (date) \_\_\_\_\_ Length of trial in days \_\_\_\_\_

By Judge \_\_\_\_\_ Court \_\_\_\_\_

Verdict of \_\_\_\_\_

In favor of \_\_\_\_\_

Rendered by \_\_\_\_\_  
Judge or Jury Consent or Default

ASSIGNED COUNSEL'S TRIAL REPORT MUST BE ATTACHED

Was there a co-def. \_\_\_\_\_ Was co-def. held in \_\_\_\_\_

Was the co-def. insured \_\_\_\_\_

Did assigned counsel or uninsured's personal attorney try case?  
\_\_\_\_\_

Did uninsured appear in Court \_\_\_\_\_ Uninsured's latest address  
\_\_\_\_\_

Does it appear that Plaintiff will be eligible to collect from the Fund if the defendant cannot satisfy the judgment \_\_\_\_\_

Do you or your counsel recommend an appeal Yes  No

If yes, please attach the recommendations to the file and submit entire file with this report.

\_\_\_\_\_  
(Signature of person making report)

\_\_\_\_\_  
Title

60 DAY REPORT

This report form must be completed for each claimant and forwarded to the Unsatisfied Claim and Judgment Fund Board sixty (60) days after Assignment of the File.

Board \_\_\_\_\_ Company \_\_\_\_\_  
File No. \_\_\_\_\_ File No. \_\_\_\_\_

For Use of U.C.J.

Claimant \_\_\_\_\_ Age \_\_\_\_\_

Recorded by:

-Uninsured \_\_\_\_\_

Bookkeeper

Date of Accident \_\_\_\_\_ Date of Receipt \_\_\_\_\_

Adjuster

Place of Accident (County) \_\_\_\_\_

Reserve: B.I. \_\_\_\_\_ P.D. \_\_\_\_\_

Ped.  Hit & Run  Other

Investigation:	Rep. By		Atty.	Rep. By		
	Yes	No		Yes	No	
Uninsured Interviewed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Photos	<input type="checkbox"/>	<input type="checkbox"/>
Statement Obtained	<input type="checkbox"/>	<input type="checkbox"/>		Diagram of Scene	<input type="checkbox"/>	<input type="checkbox"/>
Claimant Interviewed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Hospital Report	<input type="checkbox"/>	<input type="checkbox"/>
Statement Obtained	<input type="checkbox"/>	<input type="checkbox"/>		Medical Examination	<input type="checkbox"/>	<input type="checkbox"/>
Witnesses Interviewed	<input type="checkbox"/>	<input type="checkbox"/>		Report Directed To	<input type="checkbox"/>	<input type="checkbox"/>
Statements Obtained	<input type="checkbox"/>	<input type="checkbox"/>		Central Index Bureau	<input type="checkbox"/>	<input type="checkbox"/>
Eligibility Form 213 Filed by Claimant	<input type="checkbox"/>	<input type="checkbox"/>		Claimant's Driving	<input type="checkbox"/>	<input type="checkbox"/>
Police Report	<input type="checkbox"/>	<input type="checkbox"/>		Record Obtained	<input type="checkbox"/>	<input type="checkbox"/>
Copy Obtained	<input type="checkbox"/>	<input type="checkbox"/>		Claimant's Application For	<input type="checkbox"/>	<input type="checkbox"/>
				Driver's License Obtained		

Liability: \_\_\_\_\_

Specials: Property Damage \$ \_\_\_\_\_ Verified? \_\_\_\_\_

Doctors \$ \_\_\_\_\_ Verified? \_\_\_\_\_; Hospital \$ \_\_\_\_\_ Verified? \_\_\_\_\_

Loss of Wages \$ \_\_\_\_\_ Verified? \_\_\_\_\_

Dependants - Number & Ages \_\_\_\_\_

Suit: County \_\_\_\_\_ Court \_\_\_\_\_ Was Uninsured Served? \_\_\_\_\_

Claimant's Attorney \_\_\_\_\_

Uninsured's Attorney \_\_\_\_\_

Personal? \_\_\_\_\_ or Assigned by Company \_\_\_\_\_

Expected Trial Date \_\_\_\_\_

Settlement: Is Case one for settlement? \_\_\_\_\_

Demand \_\_\_\_\_ Value \_\_\_\_\_

Will Uninsured agree to settlement \_\_\_\_\_ For how much \_\_\_\_\_

REMARKS AND ADDITIONAL INVESTIGATION TO BE COMPLETED (LIST):

Date: \_\_\_\_\_ Company Assigned \_\_\_\_\_

Claim Supervisor \_\_\_\_\_

: Superior Court of New Jersey  
: Law Division  
: Docket No.

Plaintiff,

:

vs.

CERTIFICATION  
OF FINANCIAL  
STATUS

:

Defendant.

:

:

, of full age, certifies that the following

statements are true:

1. I am the defendant in the above captioned matter in which judgment was entered against me on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus interest with costs, and remains unpaid. I desire to be permitted to pay this judgment, plus statutory interest, in installments.

2. I am employed by:

Name of employer -

Address -

City -

Occupation -

and earn a gross salary of \$ \_\_\_\_\_ per week.

My Social Security No. is \_\_\_\_\_

Date of Birth: \_\_\_\_\_

3. I own, or partially own, the following:

(a) Home or other real estate located at -



SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION,  
DOCKET NO.

	:	
	:	
	:	
Plaintiff,	:	
vs.	:	Civil Action
	:	ORDER FOR INSTALLMENT PAYMENTS
	:	
Defendant.	:	
	:	

This matter being opened to the Court by  
the defendant, the Court having examined the affidavit of the defendant attached  
hereto and the Unsatisfied Claim and Judgment Fund Board having consented to the  
entry of this order, it is on this                      day of                      , 19

ORDERED that, commencing immediately, the defendant,  
pay the judgment and costs with statutory interest in installments of \$  
per month.

\_\_\_\_\_  
(J.S.C.)

We consent to the form of the  
above order.

Checklist for the Court:

NAMES OF PARTIES

PAPERS RECEIVED

UNSATISFIED CLAIM AND JUDGMENT FUND BOARD

BY \_\_\_\_\_

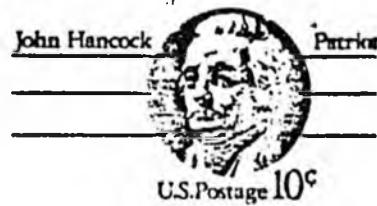
**UNSATISFIED CLAIM AND JUDGMENT FUND BOARD  
137 EAST STATE STREET  
TRENTON, NEW JERSEY 08666**

We acknowledge receipt of your Notice of Intention to Make Claim against the Unsatisfied Claim and Judgment Fund, if it is otherwise uncollectible.

The claim will be given early attention and you will be advised further.

**Sal E. Capozzi  
Manager**

UC-226 (PB/78)





February, 1982  
UCJ - Page 23

## State of New Jersey

### UNSATISFIED CLAIM AND JUDGMENT FUND BOARD

209 E. STATE STREET  
TRENTON, NEW JERSEY 08625  
TELEPHONE: AREA CODE 609-292-4527

June 21, 1971

PULLETT, RC. #24

**TO: ALL COMPANIES, INVESTIGATING AGENCIES AND COUNSEL ASSIGNED HANDLING  
UNSATISFIED CLAIM AND JUDGMENT FUND CASES**

**Re: Recent Amendments, Settlements, and Evaluation of Claims  
under the Unsatisfied Claim and Judgment Fund Law**

Recent amendments to the Unsatisfied Claim and Judgment Fund Law (N.J.S.A. 39:6-72) give settlement authority to the court and manager in all cases involving uninsured motorists that are in suit to the full limits of \$10,000 to any one person, and \$20,000 for any one accident. For cases not in suit where the uninsured agrees to repay the fund, settlement authority is in the manager under \$5,000, in the board if over \$5,000. There has been no change in settlement authority of hit-run cases. They must still be approved by the board, and the court.

The board requires the assigned carrier to submit files on all claims to the board's office as soon as investigations are completed, and no later than nine months after assignment of the claim. The file is to be submitted with the carrier's recommendation on disposition together with a summary of file contents. An outline and detailed format for the summary is attached.

This will be reviewed and an evaluation fixed. The file will be returned to the carrier for conclusion. The summary will be retained by the Unsatisfied Claim and Judgment Fund.

If the claim can be settled within the fixed evaluation, the matter may proceed by way of the statutory settlement procedures set forth in N.J.S.A. 39:6-72 and 82.

If the carrier believes the status of the claim has changed and wants to recommend a re-evaluation, it may resubmit the complete file with a covering memorandum setting forth additional available information and its recommendation.

To avoid excessive court time and attorney appearances in claims under \$500, the suit may be dismissed after the manager has approved the proposed settlement with the agreement of the uninsured. In these cases the file must contain a completed and executed settlement agreement, bond, and warrant for confession of judgment signed by the uninsured.

Telephone call approval to settle claims where the investigation file has not been submitted to the board's office must be avoided. The carrier must have its

assigned counsel advise it of the first time a case is listed for trial. When the carrier is first notified of trial, the file must be reviewed. If the file has not been submitted to the board, it must then be submitted immediately.

No final settlement is to be entered into which exceeds the evaluation or settlement authority granted by the manager or the board. No settlement will be consummated until prior approval is obtained. Unless prior approval is obtained, the case will have to proceed to a fully contested trial. There will be no telephone call approval of settlements in hit-run cases.

#### Statutory Settlements:

N.J.S.A. 39:6-72 sets forth requirements for settlement of an action against an uninsured motorist. The uninsured must agree to the settlement in all of these cases. In cases that are in suit, the proposed settlement must be entered into with and by the consent of the court and approved by the manager.

In cases not in suit, the carrier may settle any claim paying less than \$5,000 with the approval of the manager, or any claim paying \$5,000 or more with the approval of the board. The uninsured must agree to the settlement.

N.J.S.A. 39:6-82 provides for settlement of hit-run actions against the Director by the board and court approval.

In cases requiring court approval under N.J.S.A. 39:6-72 and 82, when advised a claim can be settled within the authority approved by the manager or the board, the board's office will send a letter to the assigned company with a copy to counsel and to the county clerk (the county in which venue is laid with the docket number) reciting approval of the settlement. The plaintiff's attorney should then have the case set for court approval. Sufficient evidence should be given the court to permit it to make its own determination. If the court approves of the settlement, an order should be entered reciting the court's approval and directing the amount be paid by the treasurer from the fund.

#### Settlement of Cases that are on Trial:

The fund is a trust fund which must be protected by the board and the courts. Both are interested in disposing of cases by way of settlements where agreements can be reached. The following procedure is suggested in cases where the uninsured is present, the cases are on trial and can be settled within the evaluation fixed by the manager.

Facts as to liability and damages are to be presented to the judge hearing the case. If the judge is satisfied the settlement is fair, he may order a judgment entered. An order for judgment must be drawn by plaintiff's counsel for the court's signature and filed with the clerk. At this time, plaintiff's counsel may wish to call the defendant to the stand for discovery to permit the court to determine if the uninsured has assets to satisfy part or all of the judgment.

Where it is ascertained the uninsured has no assets, the plaintiff may apply under N.J.S.A. 39:6-69, 70 and 71 for payment from the fund. The court, on hearing the application for payment and having been apprised of the agreed settlement and entrance of the judgment, is then in a position to determine whether or not the

statutory requirements as to eligibility have been satisfied, and if they have, to direct a payment from the fund.

If the court decides on installment payments, the order directing payment from the fund should contain an additional paragraph permitting the uninsured to make the payments. The fund generally expects 10% of salary. If there is no specific court determination as to the reasonableness of the proposed installment then no order should be entered as to the payments.

Settlement authorizations given to the carrier upon the manager or board's review of the investigation file will not be further reviewed or increased at the time of trial unless the status of the claim has changed. In cases involving board approval (hit-run proposals), the change in status must be submitted in writing to the board at the next meeting with the recommendation of the trial judge, carrier and assigned counsel.

Disposal of Cases where the Uninsured Defendant was Properly Served but cannot now be located:

These cases can be disposed of if the plaintiff, the assigned insurer and the manager have all agreed to an amount.

Where an attorney has been assigned to defend an uninsured or where the insured has personal counsel who has entered an appearance of record, and the uninsured cannot be located or is not present for trial, the following procedure is suggested for placing a judgment on record:

- (a) Plaintiff's and defendant's counsel advise the assignment judge a judgment has been agreed upon and approved by the manager and outline for the record steps taken by the carrier and or counsel to procure the cooperation of or locate the defendant.
- (b) Trial date established.
- (c) The defendant's counsel should advise the defendant by mail addressed to the last known residence of the trial date. If the uninsured fails to appear, the plaintiff should present his prima facie proofs to the court. If the court is satisfied as to the defendant's liability and the fairness and reasonableness of the agreed amount a judgment may be entered. The plaintiff's attorney must draw the order for judgment for the court's signature.

The plaintiff may then move for payment under N.J.S.A. 39:6-69, 70 and 71. The statutory requirement giving the board ten days notice and three additional days if the notice is mailed should be followed.

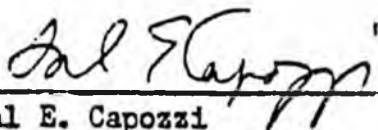
Default Judgments:

Default Judgments in which payment is anticipated from the fund, should only be entered in cases where the amount of the judgment has been specifically agreed to by the manager.

Prior to presentation to the court, the default proposal must be submitted to the board's office by the carrier or designated agency together with the investi-

gation file and the carrier's recommendation. If the proposal is found reasonable upon review, the board's office will address a letter to the carrier agreeing to the proposal. A copy will be sent to plaintiff's attorney and to the county clerk (the county in which venue is laid with the docket number). These will be cases in which counsel has not been assigned to appear for the uninsured. The plaintiff should submit his prima facie proofs to the court. If the court approves the proposal, a judgment must be entered. The plaintiff may then move for payment from the fund under N.J.S.A. 39:6-69, 70 and 71. The statutory 10 - 13 days notice to the board should be followed as indicated above.

In addressing correspondence to the fund, please use the UCJ File No. Five digit numbers have been completely used. A letter and four digits is now in effect so that files after 99,999 are A0000, A0001, A0002, etc. Please be sure to include the letter in these new file numbers.

  
\_\_\_\_\_  
Sal E. Capozzi  
Manager

TO

Day Month Year

UNSATISFIED CLAIM AND JUDGMENT FUND BOARD

UCJ FILE NO. \_\_\_\_\_

CLAIMANT: \_\_\_\_\_ AGE: \_\_\_\_\_

Claimant's Attorney \_\_\_\_\_

UNINSURED: \_\_\_\_\_ AGE: \_\_\_\_\_

Uninsured's Attorney \_\_\_\_\_ Personal- \_\_\_\_\_ Assigned- \_\_\_\_\_

COMPANY ASSIGNED: \_\_\_\_\_ INVESTIGATING AGENCY: \_\_\_\_\_

ACCIDENT DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ PLACE: \_\_\_\_\_

SUIT: \_\_\_\_\_ COURT: \_\_\_\_\_ COUNTY: \_\_\_\_\_

PRESENT RESERVE: B.I. \$ \_\_\_\_\_ P.D. \$ \_\_\_\_\_

AMOUNT OF SETTLEMENT AUTHORITY REQUESTED: B.I. \$ \_\_\_\_\_

P.D. \$ \_\_\_\_\_

ELIGIBILITY OF CLAIMANT:

DESCRIPTION OF ACCIDENT:

NAMES AND ADDRESSES OF WITNESSES AND THEIR DESCRIPTION OF ACCIDENT:

POLICE DESCRIPTION OF ACCIDENT:

DESCRIPTION OF INJURIES:

SPECIALS:

UNINSURED: Financial Status  
Cooperation  
Accord to Settlement

SETTLEMENT NEGOTIATIONS:

CARRIER'S RECOMMENDATION AS TO DISPOSITION OF CLAIM:

NAME & TITLE OF PERSON  
SUBMITTING REPORT:

\_\_\_\_\_



from the Fund, assuming he successfully obtains a judgment against the uninsured or the Director in a hit-and-run case.

The following points should be considered by the company in determining eligibility. If the claimant is deemed eligible, the board must be advised of such based on the following reasons:

1. The question of coverage under an uninsured motorist endorsement has been carefully checked.
2. Claimant's liability coverage where applicable has been verified independently by contacting in writing the claimant's liability insurance company.
3. Claimant has filed Form 213 Statement of Eligibility and insurance applicable to the accident. If the questions raised by this form are answered in any other manner deemed satisfactory by the assigned investigator this should be stated.
4. Has the claimant filed his Notice of Intention within the time requirement of N.J.S.A. 39:6-65.
5. Has the claimant met and complied with all the requirements of section 70 (a) through (f) inclusive and subsection (l) and (m).

The assigned company should particularly make sure the eligibility requirements called for by these subsections have been met. These requirements establish:

- A. That claimant or his personal representative are not covered by Workmen's Compensation.
- B. That the claimant is not related to the judgment debtor as specified in subsection (b) of Section 70 of the statute.
- C. That the claimant was not operating or riding in a stolen vehicle or one which he participated in stealing or that he was operating a vehicle without the owner's permission.
- D. That he has complied with subsection (d) of Section 70.
- E. That the uninsured was not covered by automobile liability insurance.
- F. That the requirements of subsection (l) of Section 70 have been met.
- G. That he tried to recover from all persons against whom he reasonably has a cause of action, meeting all the requirements of subsection (m) of Section 70 and Section 71.

In suits against the Director under the Hit-and-Run Statute, the assigned company or investigator shall state whether all requirements of Section 78 have been met.

Typical problems often encountered under Section 78 are as follows:

Claimant fails to clearly establish he has made all reasonable efforts to ascertain the identity of the vehicle, the negligent operator or owner.

Claimant fails to clearly establish the vehicle was stolen or the driver identity unknown.

Where Section 79 is involved, claimant fails to clearly establish the type of "Qualifying" judgment envisioned by Section 79.

These examples are not meant to exclude those problems of eligibility not included in this suggested outline. In other words, claimant must establish he has met all requirements as written and amended by the Legislature and as interpreted by the courts.

As stated previously, cases assigned to insurance companies should be handled by them in the same manner as they would handle their own casualty claims.

Please include the following in all summaries so the board may fully evaluate the claim:

ACCIDENT DESCRIPTION:

- . Describe as fully as possible. If verbal description is difficult, submit a diagram to include any additional information the investigator thinks necessary.
- . Summarize the uninsured's version of the accident. If no statement taken, specify why.
- . State claimant's version. Point out any contradictions or inconsistencies in the two versions. Include any information on the Notice of Intention or on any contradictory written or oral statements. Include inconsistencies or information resulting from interrogatories, depositions, CIB reports or other means.
- . State if photos were taken disclosing information affecting liability or injuries and damages.

WITNESSES:

Submit summarized relevant portions of witnesses' statements. If statements not taken, explain why.

POLICE REPORT:

Is there a police report and does the board have it? Indicate if portions of the police report could assist the board in determining negligence, contributory negligence, other defenses, or extent of injuries.

INJURIES:

- . State sufficient information to inform the board of the claimant's injuries. List

proof which supports or rebuts, minimizes or denies the extent of injury.

- . If physical examination not given, state why. Include any facts in the hospital's or doctor's #SR-4 report describing injury which should be brought to the board's attention.
- . Information necessary to determining a fair settlement must be submitted. This includes any information obtained through documents, methods or descriptions listed in the sections above.

PROPERTY DAMAGE:

- . Clearly spell out the nature of any claim for property damage. Include year and make of car and market value if relevant.
- . State in what manner claim has been verified.

SPECIALS:

- . For out of pocket specials and claims for lost wages, clearly state names of persons to whom payments were made or owing and period of time claimed for lost wages or profit.
- . State exact method for computing losses so that board may determine whether claim is exaggerate
- . Indicate whether the investigator has verified all specials claimed or why he feels they should be accepted without verification.

UNINSURED:

- . State financial status of the uninsured.
- . Indicate whether Form #214 has been obtained which is the uninsured's statement of his financial status and consent to settlement or judgment.
- . Advise of uninsured's attitude on cooperation, settlement, amount of repayments and as to the type of witness he would make if the case were tried.

SETTLEMENT NEGOTIATIONS:

Inform the board if there have been any tentative settlement negotiations, or demand.

REMARKS AND CARRIER'S DISPOSITION RECOMMENDATION:

- . List any other information not specifically asked for but which the investigator feels could be pertinent to the board's determination on the case.
- . Indicate how the investigator recommends the board handle the case.
- . State potential judgment value if case is in suit.
- . Indicate whether investigator feels he should have authority to settle case.
- . Indicate what authority, if any, investigator recommends he should have to settle the case.

(1) TRANSACTION CODE S/C	(2) BATCH NUMBER	(3) NEW/MATCH
0		

TRANS CODE  
30 = PA  
34 = UA

# STATE OF NEW JERSEY

(4) FISCAL YEAR	(5) TRANSACTION DATE	(6) DOC TYP	(7) DOCUMENT NUMBER	(8) REJECT INDICATOR

## INVOICE

(9) VENDOR STATUS

BLANK = NO CHANGE  
1 = NEW VENDOR  
2 = ADDRESS CHANGE  
3 = LOCATION CODE  
4 = NEW VENDOR AND LOCATION  
5 = VENDOR NO. CORRECTION

February, 1982  
UCJ Page - 24

(10) ACCOUNT NUMBER						(11)	(12)	(13)	(14) TOTAL AMOUNT	(15) AGENCY P.O. NO.	(16) OBLIGATION NUMBER
ORGANIZATION	FUND	PROGRAM	OBJECT	COST CENTER	PROJECT ACTIVITY	EXTENDED NUMBER					

(B) PAYEE NAME AND ADDRESS

(18) NAME (19) STREET (20) CITY (21) STATE (22) ZIP CODE

(D) PAYEE DECLARATION:

I certify that the within invoice is correct in all its particulars, that the described goods or services have been furnished or rendered, and that no bonus has been given or received on account of said invoice.

\_\_\_\_\_  
PAYEE SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

(C) DEPARTMENT/AGENCY

(24) COMMODITY CODE	(25) 1000 INDICATOR	(26) PAYEE REFERENCE - (LIMIT 34 CHARACTERS)	(27) PAYEE IDENTIFICATION NUMBER	(28)	(29) CONTRACT NUMBER	(30)

(31) LAST INVOICE	(32) CHECK NUMBER	(33) ACCOUNTING USE ONLY	(34) SUSPENSE NUMBER	(35) DEF-REPC	(G) TERMS	(H) BILLING DATE	PAYMENT DUE DATE				
	SERIES	NUMBER				MONTH	DAY	YEAR	MONTH	DAY	YEAR

● PAYEE - SEE INSTRUCTIONS ON REVERSE SIDE ●

ITEM NO.	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			DELIVERY IS <input type="checkbox"/> F.O.B. DESTINATION <input type="checkbox"/> F.O.B. SHIPPING POINT		
					TOTAL

CERTIFICATION BY RECEIVING AGENCY  
I CERTIFY THAT THE ABOVE ARTICLES HAVE BEEN RECEIVED OR SERVICES RENDERED AS STATED HEREIN.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

CERTIFICATION BY APPROVAL OFFICER  
I CERTIFY THAT THIS INVOICE IS CORRECT AND JUST, AND PAYMENT IS APPROVED.

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

## PAYEE INSTRUCTIONS

ITEMS (A) THROUGH (H) ARE TO BE COMPLETED BY PAYEE

### (A) TOTAL AMOUNT

Enter the total amount of this invoice.

### (B) PAYEE NAME AND ADDRESS

The name of the individual or company to whose name the check shall be drawn and the complete address where the check shall be mailed.

### (C) DEPARTMENT/AGENCY

The Department, Division, Bureau or Institution to whom the materials or services were furnished.

### (D) PAYEE DECLARATION

Payee must sign the declaration.

### (E) PAYEE REFERENCE NUMBER

Payee must show his own invoice or billing number or any other identification for reference purposes. This information is recorded on the check stub and aids the payee to identify the invoices which have been paid. Do not use more than 34 characters.

### (F) PAYEE IDENTIFICATION NUMBER

Complete the payee identification field with the federal employer identification number assigned to the business or the social security number if the payee is an individual.

### (G) TERMS

The terms of sale, such as "NET", "2% fifteen days," etc.

### (H) BILLING DATE

Enter the date the invoice is prepared.

PAYEE IS TO COMPLETE THE SCHEDULE OF ITEMS OR SERVICES SHOWING QUANTITY, UNIT, DESCRIPTION, UNIT PRICE AND AMOUNT. IF THE NUMBER OF ITEMS EXCEEDS THE SPACE, ATTACH A SCHEDULE SHOWING THE REQUIRED INFORMATION.

TO INSURE PROMPT PAYMENT, SEND COMPLETED INVOICE ONLY  
TO THE DEPARTMENT/AGENCY SHOWN IN ITEM C

REGULATIONS CONCERNING U.C.J. CLAIMS -  
CLAIMS INVOLVING UNINSURED OR HIT-RUN MOTORISTS

N.J.A.C. - New Jersey Annotated Code

N.J.A.C. 13:19-3.1 Claim information

(a) A Notice of Intention to Make Claim under N.J.S.A. 39:6-65 as amended by Chapter 99, Public Laws of 1958 approved July 1, 1958, shall contain the following information.

1. The claimant's name and address;
2. The time and place of accident;
3. The identity of the operators and vehicles involved in the accident;
4. Such witnesses to said accident as are then known;
5. A short description of the accident;
6. A description of the injuries then known, and attached thereto a medical certificate if then available. In any event the medical certificate shall be filed as soon as available;
7. A description of the damage sustained to property, and attached thereto an estimate of the cost of repairs if then available.

N.J.A.C. 13:19-3.2 Claim filing; form

(a) A Notice of Intention to Make Claim under N.J.S.A. 39:6-65 may be filed on a form of the Unsatisfied Claim and Judgment Fund Board designated as a "Notice of Intention to Make Claim."

(b) A written notice to the Board in any other form that contains the information required by this section shall be acceptable.

N.J.A.C. 13:18-2.1 Uninsured's current financial status

(a) Upon review of a case by the Unsatisfied Claim and Judgment Fund Board, if the Board does not have sufficient current information to determine whether or not the uninsured's installment payment is reasonable, a request will be addressed to the uninsured asking for a statement of current financial status.

(b) If the uninsured fails to furnish a completed statement of current financial status within a time period to be established by the manager, the Unsatisfied Claim and Judgment Fund Board will request the Director of Motor Vehicles to suspend the license and all registrations of the uninsured pursuant to N.J.S.A. 39:5-30 and 39:5-87, for failure to furnish this information.

CLAIMS BY INSURERS FOR REIMBURSEMENT OF  
EXCESS MEDICAL EXPENSE BENEFITS

History of E.M.B. (Excess Medical Benefit) Claims

The Public Laws of 1977, Chapter 310 (N.J.S.A. 39:6A-4; 39:6-63, 73 & 88), applicable to accidents occurring on or after February 19, 1978, provided for the reimbursement of insurers from the Unsatisfied Claim and Judgment Fund in the event benefits paid under the N. J. Automobile Reparations Reform Act (N.J.S.A. 39:6A-4a) exceeded \$75,000.

On May 9, 1978 Rules were adopted concerning the processing of the EMB claims.

Initiating a Claim

The insurer is required to file with the board a Notice Form as soon as it posts a reserve of \$75,000 or more for a claim for medical expense benefits payable under N.J.S.A. 39:6A-4a.

Claim Processing

The insurer must complete a Report Form (with the required attachments) and file it with the board when the carrier makes payment of \$50,000 for medical expense benefits.

The board will create a claim file and assign an EMB file number. The board will post a reserve on the claim. It is, therefore, important the board be advised by the insurer when the reserve is changed or the file closed.

The board's office will, on opening of the EMB file, furnish the insurer with the board's EMB file number and will also advise the insurer as to further handling of the claim.

An incomplete claim form will not receive attention nor will a Report Form without the proper attachments.

Reimbursement of Insurers

The Reimbursement and Reserve Form is to be filed by the insurer when the insurer's medical expense benefit payments have exceeded \$75,000. Again it is

important that the board be advised when the reserve is changed or the file closed. The fund will reimburse insurers on a quarterly basis.

An unusually long period between the filing of Reimbursement Forms will result in delayed action on the part of the fund. Claims should be submitted promptly on a quarterly basis, or semi-annually, if relatively small in amount.

FORMS USED BY BOARD IN E.M.B. CASES  
CASES INVOLVING REIMBURSEMENT OF INSURERS FOR EXCESS MEDICAL BENEFITS

UC-321 - Notice Form.

This is the first form to be filed with the board by the insurer anticipating reimbursement of medical expense benefits from the fund as soon as practical where the potential exposure to the insurer exceeds \$75,000.

UC-322(6/81) Report Form.

To be filed with the board by the insurer anticipating reimbursement from the fund of medical expense benefits as soon as the insurer's payment exceeds \$50,000. The form calls for attaching a copy of the application for benefits submitted by or on behalf of the injured party, a copy of the accident report received, and a copy of the police report.

UC-323(3/79) Reimbursement and Reserve Form.

To be filed with the board by insurer seeking reimbursement from the fund when the payment level has exceeded \$75,000. The form should be submitted quarterly and any change in reserves should be reported immediately. This form calls for the attachment of the record of payments. The personal injury payment record is acceptable if kept on a daily basis and contains information as to date paid, amount paid, name of party paid and services rendered. If that record is not submitted, a copy of each medical expense draft issued is to be submitted.

NOTICE FORM

February, 1982

UCJ - Page 29

Form shall be completed by Carrier anticipating reimbursement of Medical Expense Benefits from the Fund. A separate form shall be completed for each claim, i.e. each person.

PLEASE PRINT OR TYPE

NAME OF CARRIER SEEKING REIMBURSEMENT FROM THE FUND \_\_\_\_\_  
 ADDRESS \_\_\_\_\_

NAME OF NAMED INSURED \_\_\_\_\_  
 ADDRESS \_\_\_\_\_

CARRIER'S FILE NUMBER	POLICY NUMBER ON WHICH MEDICAL BENEFIT PAYMENTS ARE BEING MADE	EFFECTIVE AND TERMINATION DATE OF POLICY From _____ To _____
-----------------------	--	---

Are there any other applicable policies such as Medicare, Workmen's Compensation, or other applicable automobile policies that cover this loss?  Yes  No If yes, furnish the following:

NAME OF CARRIER	NAME OF INSURED
POLICY NUMBER	AMOUNT PAID ON CLAIM \$ _____

NAME OF INJURED PERSON	AGE OF INJURED PERSON
ADDRESS	

DESCRIPTION OF INJURIES \_\_\_\_\_

PROGNOSIS AS TO INJURIES \_\_\_\_\_

AMOUNT OF MEDICAL BENEFIT PAYMENTS MADE TO DATE \$ _____	TOTAL AMOUNT OF EXPECTED FUTURE MEDICAL BENEFIT PAYMENTS \$ _____
---	--

Recommended reserve for total value of claim to its ultimate disposition including the \$75,000 threshold. \_\_\_\_\_ Date on which the \$75,000 threshold may be reached.

DATE OF ACCIDENT	LOCATION OF ACCIDENT
------------------	----------------------

DESCRIPTION OF ACCIDENT \_\_\_\_\_

Is this claim in litigation?  Yes  No If yes, attach a copy of the complaint and answer. Present status of the litigation \_\_\_\_\_

NAME OF SUPERVISOR RESPONSIBLE FOR INVESTIGATION FILE	LOCATION OF THE INVESTIGATION CLAIM, & LEGAL FILE
---	---

REPORT FORM

This form shall be completed by Carrier anticipating reimbursement from the Fund of Medical Expense Benefits.

This form shall be sent to the Fund at the time Carrier has made claim payments in a total amount of \$50,000 and the Carrier expects the claim payments will exceed a total of \$75,000.

If a Notice Form has not been submitted, such form shall be completed and accompany this form.

PLEASE PRINT OR TYPE

NAME OF CARRIER SEEKING REIMBURSEMENT FROM THE FUND \_\_\_\_\_ CARRIER'S FILE NUMBER \_\_\_\_\_  
ADDRESS \_\_\_\_\_

NAME OF INSURED \_\_\_\_\_ DATE OF ACCIDENT \_\_\_\_\_  
ADDRESS \_\_\_\_\_

NAME OF INJURED PERSON \_\_\_\_\_ AGE OF INJURED PERSON \_\_\_\_\_  
ADDRESS \_\_\_\_\_

PROGNOSIS AS TO INJURIES \_\_\_\_\_  
\_\_\_\_\_

Amount of Medical Benefit Payments Made to Date . . . . . \$ \_\_\_\_\_

*DATE PAID	AMOUNT PAID	NAME OF PARTY PAID	SERVICES RENDERED
*(attach PIP claim payment record, if kept on a daily basis and contains information required or copies of all medical expense drafts issued to date)			

Total Amount of Anticipated Payments during Next Two Years . . . \$ \_\_\_\_\_

Recommended Reserve for Total Value of Claim to Its Ultimate  
Disposition Including the \$75,000 Threshold . . . . . \$ \_\_\_\_\_

Date on Which the \$75,000 Threshold May Be Reached . . . . . \_\_\_\_\_

Attach copy of the application for benefits (PIP form) submitted by or on behalf of injured party, the accident report received from the insured or on his behalf and a copy of the police report.

NAME OF SUPERVISOR RESPONSIBLE FOR INVESTIGATION FILE \_\_\_\_\_ LOCATION OF THE INVESTIGATION, CLAIM, & LEGAL FILE \_\_\_\_\_  
-----  
PHONE # \_\_\_\_\_

Completed by \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

# REIMBURSEMENT & RESERVE FORM

February, 1982  
UCJ - Page 31

This form shall be completed by Carrier seeking reimbursement from the Fund for Medical Expense Benefits in excess of \$75,000. A separate form shall be submitted for each claim.

If a Report Form has not been sent to the Fund, such form shall be completed and accompany this form.

PLEASE PRINT OR TYPE

NAME OF CARRIER SEEKING REIMBURSEMENT FROM THE FUND	CARRIER'S FILE NUMBER
ADDRESS	

NAME OF INSURED	UCJ FILE NUMBER
ADDRESS	

NAME OF INJURED PERSON
ADDRESS

SET FORTH PROGNOSIS AS TO INJURY AND EXPECTED FUTURE MEDICAL BENEFIT PAYMENTS
---

Date on Which the \$75,000 Threshold Was Reached . . . . . \_\_\_\_\_

Recommended Reserve for Total Value of Claim to its Ultimate Disposition, Not Including the \$75,000 Threshold . . . . . \$ \_\_\_\_\_

Recommended Reserve for the Following Two Years after the \$75,000 Threshold Has Been Reached . . . . . \$ \_\_\_\_\_

Total Amount of Expected Claim Payments During the Next 90 Days . . . . . \$ \_\_\_\_\_

If this is the first reimbursement sought from the Fund, give the following information on payments made on behalf of the injured party from inception of claim. (On subsequent forms, list payments not previously reported.)

DATE PAID	AMOUNT PAID	NAME OF PARTY PAID

Amount of Reimbursement Now Sought from the Fund Under this Claim . . . . . \$ \_\_\_\_\_

Amount of Reimbursement Previously Received, If Any . . . . . \$ \_\_\_\_\_

No further reimbursement on this claim anticipated. We have closed our medical expense coverage file.

COMPLETED BY _____	TITLE _____	DATE COMPLETED _____
--------------------	-------------	----------------------

REGULATIONS CONCERNING E.M.B.  
(EXCESS MEDICAL BENEFIT) CLAIMS

N.J.A.C. - New Jersey Annotated Code

N.J.A.C. 13:18-10.1 Notification of potential for payment of excess medical expense benefits

An automobile liability insurance carrier shall, as soon as practical, notify the Unsatisfied Claim and Judgment Fund on forms provided by the fund of all claims for medical expense benefits, as defined in N.J.S.A. 39:6A-2(e), where the potential exposure to the carrier exceeds \$75,000 on account of personal injury to any one person in any one accident occurring after 12:00 A.M. on February 19, 1978.

N.J.A.C. 13:18-10.2 Report of such claims when the carrier has paid a least \$50,000 for medical expense benefits

In cases where the potential exposure to the automobile liability insurance carrier exceeds \$75,000, the carrier shall report on forms provided by the fund whenever medical expense benefits in a total amount of \$50,000 have been paid on account of personal injury to any one person in any one accident.

N.J.A.C. 13:18-10.3 Notice of change in the amount of reserves

Whenever an automobile liability insurance carrier has paid medical expense benefits on account of personal injury to any one person in any one accident in a total amount of \$50,000, said carrier shall notify the fund of any changes in the amount of reserves established for payment of the claim or closing of the file.

N.J.A.C. 13:18-10.4 Supplemental form to be submitted to the fund

A reimbursement and reserve form shall be filed with the fund within 90 days after an automobile insurance liability carrier has paid medical expense benefits on account of personal injury to any one person in any one accident in a total amount of \$75,000. Such form shall be filed each quarter that the carrier seeks reimbursement.

N.J.A.C. 13:18-10.5 Carrier's continuing obligation to investigate claims

An automobile liability insurance carrier shall be required to discharge its duty of investigating claims where the potential exposure to the carrier exceeds \$75,000. Said carrier's duty and obligation with regard to claim handling shall exist and continue to exist notwithstanding this regulation. The fund manager may direct such investigations as often as he deems necessary. All expenses relating to the investigation of claims, including expenses for medical examinations and file maintenance, are the responsibility of the automobile liability insurance carrier.

N.J.A.C. 39:18-10.6 Reimbursement of excess medical expense benefits paid by insurers

(a) Carriers shall submit to the fund itemized accounts with supporting documentation of claim payments as soon as practicable after the close of the quarter for which reimbursement is sought. The fund shall reimburse automobile liability insurance carriers for excess medical benefits on a quarterly basis. Carriers shall not be reimbursed for interest, attorney fees or punitive damages.

(b) The fund shall not reimburse a carrier for excess medical expense benefits if it is determined that there are multiple insurance policies applicable to a claim unless a carrier or carriers have expended medical benefits in an amount exceeding \$75,000 per policy on account of personal injury to any one person in any one accident.

(b) Where the fund has reimbursed a carrier for excess medical expense benefits and thereafter determines that there were or are multiple insurance policies applicable to the underlying claim, the carrier shall return all moneys paid from the fund. The carrier(s) shall apportion the medical benefits payment and make individual application to the fund where the potential exposure to the carrier(s) exceeds \$75,000 per policy on account of personal injury to any one person in any one accident.

(d) Whenever a carrier recovers amounts expended by it for medical benefits it shall not be reimbursed for excess medical expense benefits unless it has fully repaid the amount previously reimbursed by the fund.

N.J.A.C. 39:18-10.7 Audits

Upon request of the fund, the carrier(s) shall present for audit at the direction of the fund manager at a New Jersey location all policy and claim records on which notice of potential for payment of excess medical expense benefits have been submitted.

THE NEW JERSEY UNSATISFIED CLAIM  
AND JUDGMENT FUND LAW.

MANAGER'S ANNUAL REPORT  
TO THE  
UNSATISFIED CLAIM AND JUDGMENT  
FUND BOARD

July 1, 1982

Sal E. Capozzi  
Manager

June 30, 1983

August 9, 1983

MEMBERS OF THE BOARD

1982 -- 1983

James G. Tretter, Chairman  
State Farm Insurance Companies  
Representing Independent Mutual and other Companies

Frank R. Montgomery  
Allstate Insurance Company  
Representing Independent Stock Companies

Donald F. Leypoldt  
New Jersey Manufacturers Insurance Company  
Representing Mutual Company Rating Organization Members

M. Barry Isenburg  
Travelers Insurance Company  
Representing Stock Company Rating Organization Members

Clifford W. Snedeker  
Director of the Division of Motor Vehicles

Joseph F. Murphy  
Commissioner of the Department of Insurance

MANAGER'S ANNUAL REPORT TO EHE UNSATISFIED

CLAIM AND JUDGMENT FUND BOARD

1982 - 83 In Review

This annual report is issued to cover the State fiscal year July 1, 1982 to June 30, 1983.

Total payments from the Fund, on uninsured and hit-run accidents, during the twenty-eighth year of operation ending June 30, 1983, amounted to \$2,460,811.90. This is an increase of \$248,975.93 over the previous fiscal year. The number of claims closed with payment from the Fund decreased to 445 in 1982-83, as compared to 530 for the prior fiscal year. Included in the total payments is an amount of \$591,533.44 paid on 297 personal injury protection payments on 134 open claims.

Legislation enacted in 1983 (L. 1983, C125) permitted advances from the Fund to the Division of Motor Vehicles of those sums necessary for implementation of the New Jersey Merit Rating Plan (Joint Underwriters Association).

Legislation enacted in 1977 (L. 1977, Chapt. 310, Senate 1380) continues to have a substantial impact on the Fund. The act added the responsibility of reimbursing insurers when their payments for medical expense benefits exceed \$75,000. The accident victim continues to receive full compensation for medical expenses from the insurance company, but the specific insurance company is relieved of the financial burden of unlimited medical expense coverage. The Fund, through its assessment of all automobile insurance companies, passes these losses on to all insurance companies in relationship to the percentage of automobile insurance written in this State. The insurance companies, in turn, reflect the assessment in their rate structure.

The legislation was effective January 5, 1978, but was made applicable commencing with accidents occurring after 12:00 A.M. on the forty-fifth day following its enactment. It is, therefore, applicable to accidents occurring on and after 12:00 A.M. on February 19, 1978.

The rules to implement this legislation were published in the March 9, 1978 issue of the New Jersey Register, page 31 (cite 10 N.J.R. 119 (c), N.J.A.C. 13:18-10).

The claims filed were initially slow in developing, but activity picked up in fiscal year 1980 and substantially increased during the fiscal years of 1981, 1982, and 1983. As of June 30, 1983, the Fund had received 1,427 notices of potential claims exceeding \$75,000. Of these, 420 reached the \$50,000 claim payment level which is the level at which the Fund sets up a claim file and a reserve. As of June 30, 1983, the two-year reserves on 757 pending claims are \$55,680,571.00, and the ultimate reserves are \$147,060,237.00. There is also a substantial incurred but not reported factor which an independent actuarial survey has evaluated at \$268,716,000.00 as of December 31, 1982. There has been \$12,740,596.06 paid on 527 reimbursements to insurers during this fiscal year involving 300 claims (cases).

The substantial increase in the volume of excess medical expense claims has resulted in a substantial increase in the time of the Board and the Board's office being devoted to this activity. The chart below reflects the increased activity and see also Exhibit H on page 15.

Excess Medical Benefit Claims Filed

<u>Fiscal Years -</u>	<u>*1978-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>
Notices Received -	238	309	438	442
Report Forms Received -	132	162	244	304
Reimb. Forms Received -	58	185	333	536
Reimb. Paid - Payments -	57	191	337	527
Claims or Cases -	40	102	184	300
Claims Pending -	126	153	217	261
2-Year Reserve -	\$ 9,947,592	\$10,242,314	\$16,751,421	\$18,739,244
**Ultimate Reserve -	\$27,190,985	\$23,216,370	\$40,462,519	\$56,190,363

\* Effective date of legislation - 2-19-78.

\*\* Does not include a substantial incurred but not reported factor.

Legislation enacted in 1973 continues to have a great impact on the Fund. The legislation affects not only the claim volume, but the substantive remedy.

The two principal items that affected claim volume were the enactment of the mandatory uninsured motorist endorsement (L.1972 C.204, paragraph 1, effective January 1, 1973 - N.J.S.A. 17:28-1.1 and 1.2) and compulsory motor vehicle liability insurance (L.1972 C.197, paragraph 1, effective January 1, 1973 - N.J.S.A. 39:6B-1). The mandatory uninsured motorist endorsement transferred the responsibility for handling the claim of the "insured" motorist from the Fund to the automobile liability insurance companies.

Legislation was enacted, however, which increased the activity on those claims which remain eligible for payment from the Fund (pedestrians who do not own an automobile, passengers in uninsured motor vehicles who do not own an automobile, certain out-of-State residents, certain property damage claims, etc.). At the same time that "no fault" legislation, providing for personal injury protection benefits, was enacted as to insured automobiles, the Fund Law was amended to provide "no fault" benefits to claimants who are eligible to claim against the Fund (L.1972 C.198, paragraph 10, effective January 1, 1973 - N.J.S.A. 39:6-86-1 et seq.).

Additionally, the enactment of comparative negligence (L.1972 C.45 - N.J.S.A.-59:9-4) has increased the number of claims the Fund will have to pay.

Other specific amendments to the Fund Law included the elimination of the fee for registering an uninsured motor vehicle and providing for insurers to fund both claim payment and administrative expenses (L.1972, Chapt. 18, paragraph 1, effective December 26, 1972).

Additionally, legislation (L.1972 Chapt. 198, paragraphs 3, 4 and 5, effective January 1, 1973 - N.J.S.A. 39:6-69, 73 & 84) increased the limits available from the Fund from \$10,000 on account of injury or death of one person to \$15,000; increased the limits available for injury or death to more than one person, in

any one accident, from \$20,000 to \$30,000. This is in accord with the increased limits required under N. J. Motor Vehicle liability policies and the uninsured motorist endorsement.

Claims Involving Uninsured and Hit-Run Motorists Filed in 1982 - 83

There were 8,226 Notices of Intention to Make Claim filed in 1982 - 83. Of these, it appeared that 1,736 could be claims eligible to collect from the Fund. The Board assigned these claims and 133 reopened claims to insurance companies for investigation and defense. The decision of the New Jersey Supreme Court in Feuchtbaum vs. Constantini, 59 N.J. 167, which permits substituted service, continues to require the reopening of a substantial number of closed files. As of June 30, 1983, there were 2,479 claims pending for which a reserve of \$10,795,886.00 was being carried.

<u>Fiscal</u> <u>Years -</u>	<u>1955-</u> <u>1977</u>	<u>1977-8</u>	<u>1978-9</u>	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>
Notice of Intention Received (1)	226,470	4,322	4,866	5,441	5,910	6,749	8,226
Eligible Claims	161,580	1,230	1,068	1,312	1,297	2,008	1,736

(1) Could contain more than one claim, i.e., property damage and bodily injury.

Claims Involving Uninsured and Hit-Run Motorists Disposed of in 1982 - 83

Total claim payments from the Fund exceeded two million dollars, bringing the amount paid out of the Fund since April 1, 1955 to \$86,778,955.98.

In the past year 445 claims were closed with payment of \$1,869,278.46 for an average of \$4,200.63 per claim. The amount paid on Bodily Injury claims was \$1,545,429.17 for an average of \$7,056.75 per claim closed with payment. The Property Damage claim payments amounted to \$189,929.87 for an average of \$1,165.21 per claim closed with payment. Personal Injury protection benefit payments amounted to \$133,919.42 for an average of \$2,125.71 per claim closed with payment.

In addition, the Fund paid out \$591,533.44 on 297 personal injury protection benefit payments without closing the claims, for an average of \$1,991.70 per payment.

During this past year, we closed 1,300 claims without payment from the Fund. These claimants were not qualified to collect from the Fund as the defendant was insured, or not at fault, or financially responsible; or the claimant was covered under an uninsured motorist endorsement, or was not insured, or the claimant's damages did not exceed the deductible, or the claimant did not press the claim.

The Bureau of Compulsory Insurance and Accident Reporting in the Division of Motor Vehicles (charged with administering the Security-Responsibility Law) reported that during fiscal year 1983, they processed 267 release and settlement agreements filed by uninsured motorists. These documents showed that uninsured motorists paid to claimants \$215,362.19 for an average of \$806.60 per claim.

#### Claim Recovery from Uninsured Motorists

The total recovered in 1982 - 83 was \$841,691.65. The judgments are being reviewed regularly to try to encourage the uninsured debtors to undertake installment payments or to assign them to attorneys for collection. We are also reviving old judgments before the twenty-year statute of limitation expires.

LIST OF ATTACHED EXHIBITS

1. EXHIBIT A, Page 7  
Statement of UCJ Claim Closings with payment and without payment for the Fund years dating back to the origin of the Fund on 4-1-55.
2. EXHIBIT B, Page 8 and 9  
Income and Disbursement Recapitulation - 4-1-55 to 6-30-83.
3. EXHIBIT C, Page 10  
Status Report as to UCJ Claims Received during the fiscal year ending 6-30-83, and cumulative period 4-1-55 to 6-30-83. Also included in this exhibit is the net reserve set up and repayments to the Fund for the fiscal year ending 6-30-83, and cumulative period 4-1-55 to 6-30-83.
4. EXHIBIT D, Page 11  
Status Report as to UCJ Claims Closed during fiscal year ending 6-30-83, and cumulative period 4-1-55 to 6-30-83. Also included in this exhibit is the payment from the Fund for the fiscal year ending 6-30-83 and cumulative period 4-1-55 to 6-30-83.
5. EXHIBIT E, Page 12  
Statement of Income and Disbursements for the fiscal year 7-1-82 to 6-30-83.
6. EXHIBIT F, Page 13  
Balance Sheet as of June 30, 1983.
7. EXHIBIT G, Page 14  
UCJ Claims Experience Report covering fiscal year ending 6-30-83 and cumulative period 4-1-55 to 6-30-83. Note the relationship of claims payment to reserve closed with payment.
8. EXHIBIT H, Page 15  
Excess Medical Benefits Report covering fiscal year ending 6-30-83, cumulative period 2-19-83 to 6-30-83 and calendar year to date.

## EXHIBIT A

UCJ CLAIM CLOSINGS

<u>YEAR</u>	<u>NO. OF CLAIMS CLOSED WITH PAYMENT</u>	<u>TOTAL AMOUNT PAID</u>	<u>NO. OF CLAIMS CLOSED W/O/P</u>
4-1-55 to 6-30-77	40,354	\$76,588,524.25	134,219
7-1-77 to 6-30-78	714	1,397,507.60	750
7-1-78 to 6-30-79	540	1,334,169.92	639
7-1-79 to 6-30-80	529	1,191,665.75	602
7-1-80 to 6-30-81	591	1,594,440.59	752
7-1-81 to 6-30-82	530	2,211,835.97	1,015
7-1-82 to 6-30-83	445	*2,460,811.90	1,300
<hr/>			
TOTALS	43,703	\$86,778,955.98	139,276

\* Includes 297 PIPB payments in the amount of \$591,533.44 made on 134 open PIPB claims.

EXHIBIT B  
 RECAPITULATION 4-1-55 to 6-30-83  
 INCOME

<u>YEAR</u>	<u>ASSESSMENT - INSURANCE COMPANIES</u>	<u>AMOUNT</u>	
3-1-55 to 6-30-77		\$23,034,171.03	
7-1-77 to 6-30-78	1/17 of 1%	389,862.22	
7-1-78 to 6-30-79	1/19 of 1%	437,481.34	
7-1-79 to 6-30-80	13/19 of 1%	6,366,011.76	
7-1-80 to 6-30-81	17/25 of 1%	7,374,558.32	
7-1-81 to 6-30-82	1.34271 %	16,445,799.00	
7-1-82 to 6-30-83	2.73776 %	<u>38,396,538.19</u>	\$ 92,444,421.86

<u>YEAR</u>	<u>ASSESSMENT - UNINSURED MOTORIST FEE</u>		
4-1-55 to 6-30-77		\$43,686,796.99	
	(Fee Requirement Abolished 1-1-73)		
7-1-77 to 6-30-78	" " "	* 34,425.00	
7-1-78 to 6-30-79	" " "	* 29,370.00	
7-1-79 to 6-30-80	" " "	* 18,000.00	
7-1-80 to 6-30-81	" " "	* 15,855.00	
7-1-81 to 6-30-82	" " "	* 13,505.00	
7-1-82 to 6-30-83	" " "	<u>* 10,980.00</u>	\$ 43,808,931.99

CUMULATIVE INCOME -  
INTEREST

4-1-55 - 6-30-83

Net Interest on Invest- ments	\$21,836,492.69	
Net Interest on Claims Recoverable	<u>6,899,511.66</u>	\$ 28,736,004.35

CUMULATIVE INCOME -  
CLAIMS RECOVERABLE

4-1-55 - 6-30-83

Reimbursement of Fund	\$11,473,389.39	
Excess Recovery	<u>510,358.24</u>	\$ 11,983,747.63

Total \$176,973,105.83

\* Fees collected on registrations issued prior to 1-1-73.

## EXHIBIT B (CON'T)

DISBURSEMENTS

EMB Reimbursements to Insurance Companies		\$ 27,694,515.18
Claim Payments from Fund		\$ 86,778,955.98
Legal and Related - 4-1-55 to 6-30-80	\$ 348,855.87	
" " " 7-1-80 to 6-30-81	7,924.55	
" " " 7-1-81 to 6-30-82	7,523.81	
" " " 7-1-82 to 6-30-83	<u>3,410.77</u>	\$ 367, .5.00
Administrative Expense - UCJ Fund		
4-1-55 to 6-30-77	\$ 6,076,853.61	
7-1-77 to 6-30-78	406,396.43	
7-1-78 to 6-30-79	424,719.76	
7-1-79 to 6-30-80	433,716.46	
7-1-80 to 6-30-81	530,253.70	
7-1-81 to 6-30-82	615,882.29	
7-1-82 to 6-30-83	<u>636,715.71</u>	\$ 9,124,537.96
Refund of Excess Recovery to Claimants		412,452.34
Refund of Fees to Insured Motorists & Dishonored Checks		112,612.00
Administrative Expense - Ins. Ver. Bur. 7-1-70 to 6-30-71		476,113.04
" " - " " " 7-1-71 to 6-30-72		536,748.02
" " - " " " 7-1-72 to 6-30-73		528,375.46
" " -Comp. Ins. Sec. 7-1-73 to 6-30-74		<u>100,000.00</u>
	Total	\$126,132,024.98

There were 2,479 claims pending on June 30, 1983 which are valued at \$10,795,886.00.

STATUS REPORT  
1982-83 FISCAL YEAR  
UCJ CLAIMS RECEIVED

EXHIBIT C  
NEW JERSEY UNSATISFIED CLAIM AND JUDGMENT FUND

Month of	Eligible Claims Opened	Total Eligible Claims from 4-1-55	Net Reserve Change per Month	Total Net Reserve from 4-1-55	Claims Pending at Month's End	Repayment to Fund	Total Repayment from 4-1-55
July	165	170,573	+ 78,484	10,217,918.00	2,371	86,560.39	17,541,014.09
August	129	170,702	-293,498	10,224,420.00	2,348	67,538.73	17,608,552.82
September	145	170,847	-271,934	9,952,486.00	2,335	59,357.24	17,667,910.06
October	182	171,029	+192,420	10,144,906.00	2,400	70,112.33	17,738,022.39
November	81	171,110	-109,439	10,035,467.00	2,326	82,590.80	17,820,613.19
December	161	171,271	+206,753	10,242,220.00	2,387	54,543.74	17,875,156.93
1983							
January	194	171,465	+361,802	10,604,022.00	2,456	74,955.67	17,950,112.60
February	121	171,586	+ 89,672	10,693,694.00	2,474	58,824.49	18,008,937.09
March	152	171,738	+129,647	10,823,341.00	2,506	79,777.24	18,088,714.33
April	127	171,865	+ 79,779	10,903,120.00	2,529	69,040.23	18,157,754.56
May	120	171,985	-289,467	10,613,653.00	2,444	83,289.21	18,241,043.77
June	159	172,144	+182,233	10,795,886.00	2,479	55,101.58	18,296,145.35
TOTALS FOR YEAR						1,736	841,691.65
CUMULATIVE							
4-1-55							
6-30-83		172,144	+356,452	10,795,886.00	2,479		18,296,145.35

STATUS REPORT  
1982-83 FISCAL YEAR  
UCJ CLAIMS CLOSED

EXHIBIT D  
NEW JERSEY UNSATISFIED CLAIM AND JUDGMENT FUND

Month of	*Total Payment from Fund	No. of Claims Closed with Payment	Cumulative Payment 4-1-55 to Month's End	Cumulative No. of Claims Closed with Payment 4-1-55 to Month's End	No. of Claims Closed W/O Payment	Cumulative No. of Claims Closed W/O Payment
July	\$ 194,388.05	51	\$84,512,532.13	43,309	106	138,082
August	225,086.27	45	84,737,618.40	43,354	111	138,193
September	292,473.96	42	85,030,092.36	43,396	133	138,326
October	115,416.00	28	85,145,508.36	43,424	101	138,427
November	218,153.85	39	85,363,662.21	43,463	130	138,557
December	240,825.89	38	85,604,488.10	43,501	73	138,630
1983						
January	112,876.09	16	85,717,364.19	43,517	126	138,756
February	202,263.76	33	85,919,627.95	43,550	74	138,830
March	155,740.14	47	86,075,358.09	43,597	78	138,908
April	205,857.38	26	86,281,225.47	43,623	93	139,001
May	272,649.59	39	86,553,875.06	43,662	180	139,181
June	225,080.92	41	86,778,955.98	43,703	95	139,276
TOTALS FOR YEAR	*\$2,460,811.90	445			1,300	
CUMULATIVE 4-1-55 6-30-83	*Includes 297 PIPB Payments W/O Closing in the Amount of \$591,533.44		\$86,778,955.98	43,703		139,276

## EXHIBIT E

UNSATISFIED CLAIM AND JUDGMENT FUNDSTATEMENT OF INCOME AND DISBURSEMENTSFOR THE FISCAL YEAR, JULY 1, 1982 TO JUNE 30, 1983

## INCOME:

Insurance Company Assessment	\$38,396,538.19
Uninsured Motorist Fee	10,705.00
Installment Payments	841,691.65
Interest from Investments	4,020,850.74
*Adjustments on Claim Payments	<u>(350.59)</u>
TOTAL INCOME	<u>\$43,269,434.99</u>

## DISBURSEMENTS:

EMB Reimbursements	\$12,740,596.06
UCJ Claim Payments	2,460,811.90
Administrative Exp. - 1982-83	640,126.48
Attorneys' Collection Expense	<u>36,049.80</u>
TOTAL DISBURSEMENTS	<u>\$15,877,584.24</u>

\* Represents net balance of claim payment checks returned for re-deposit over supplemental claim payments made on claims paid by the Fund during the current and previous fiscal years.

STATE OF NEW JERSEY  
UNSATISFIED CLAIM AND JUDGMENT FUND BOARD

BALANCE SHEET

June 30, 1983

ASSETS:

CASH IN BANK

NEW JERSEY NATIONAL BANK		*\$ (456,873.10)
PETTY CASH		100.00
INVESTMENTS	4,000,000.00	
PREMIUM AND DISCOUNT ON INVESTMENTS	(4,251.23)	3,995,748.77
CASH MANAGEMENT FUND	54,358,518.90	
ACCRUED INTEREST RECEIVABLE	2,497,507.54	56,856,026.44
RECOVERABLE SUBROGATION		<u>9,955,395.90</u>
TOTAL ASSETS		<u>\$ 70,350,398.01</u>

LIABILITIES:

EXCESS RECOVERY DUE CLAIMANTS		\$ 97,905.90
PREPAID INSURANCE CO. ASSESSMENTS		2,638,177.87
ACCRUED ADMIN. EXPENSE PAYABLE		640,126.48
RESERVE ON PENDING UCJ CLAIMS	10,795,886.00	
LESS POTENTIAL RECOVERABLE	1,417,216.00	9,378,670.00
RESERVE FOR INCURRED BUT NOT REPORTED	2,201,147.00	
LESS POTENTIAL RECOVERABLE CLAIMS	290,992.00	1,910,155.00
RECOMMENDED RESERVES (2YRS., EMB CLAIMS)	55,680,571.00	
***ULTIMATE RESERVE EMB CLAIMS	91,379,666.00	**147,060,237.00
FUND BALANCE	(127,140,290.75)	
GAIN OR LOSS FOR PERIOD	12,765,416.51	<u>(114,374,874.24)</u>
TOTAL LIABILITIES AND FUND BALANCE		<u>\$ 70,350,398.01</u>

\* Bank balance reflects status of account adjusted at time payment invoice is sent to State Treasurer's Office rather than when check is issued and cleared by bank.

\*\* Includes Recommended Reserves for two years on Excess Medical Payments.

\*\*\* Does not include a substantial incurred but not reported factor. A recent independent actuarial review of the excess medical benefit claims valued the incurred but not reported claims at \$268,716,000 as of December 31, 1982.

( ) Reflects deficit balance.

FISCAL YEAR - JULY 1, 1982 TO JUNE 30, 1983

CLOSED CLAIMS											
TYPE CLAIM	New Claims Opened Reserve Changes		Re-Opened		Without Payment		With Payment		Claim Payment	Pending	
	No.	Reserve	No.	Reserve	No.	Reserve	No.	Reserve	Amount	No.	Reserve
BI	735	4,328,677	75	409,490	623	3,218,621	219	1,887,238	\$ 1,545,429.17	-32	-367,692
PD	291	410,565	45	47,565	219	272,604	163	221,815	189,922.87	-46	- 36,289
PIPB	710	2,190,779	13	32,403	458	763,236	63	*699,513	**725,452.86	+202	+760,433
TOTAL	1,736	6,930,021	133	489,458	1,300	4,254,461	445	2,808,566	\$ 2,460,811.90	+124	+356,452

CUMULATIVE FOR PERIOD - APRIL 1, 1955 to present

BI	119,444	183,884,554	11,074	16,594,353	96,980	122,606,905	32,292	69,886,876	\$78,479,930.04	1,246	7,985,126
PD	48,014	14,334,433	2,961	1,127,544	41,934	10,842,854	8,711	4,187,268	4,531,919.02	330	431,855
PIPB	4,491	7,232,264	72	144,613	972	1,213,037	2,688	3,784,935	3,767,106.92	903	2,378,905
TOTAL	171,949	205,451,251	14,107	17,866,510	139,886	134,662,796	43,691	77,859,079	\$86,778,955.98	2,479	10,795,886

\* Includes Reserve Reduction in the amount of \$553,663 for 297 PIPB Payments made on 134 Open PIPB Claims.

\*\* Includes 297 PIPB Payments in the amount of \$591,533.44 made on 134 Open PIPB Claims.

EXHIBIT H  
 CUMULATIVE REPORT  
 EXCESS MEDICAL BENEFITS

June 30, 1983

	<u>FISCAL YEAR</u> JULY, 1982 to JUNE, 1983	<u>CUMULATIVE</u> 2-19-78 to PRESENT	<u>CALENDAR</u> YEAR TO DATE
NOTICE FORMS RECEIVED	442	1,427	253
REPORT FORMS RECEIVED (\$50,000 PAID BY CARRIER SET UP AS A CLAIM & RESERVED)	304	842	159
REOPENED CLAIMS	2	5	1
CLAIMS CLOSED - WITH PAYMENT	22	40	6
WITHOUT PAYMENT	23	50	17
PENDING CLAIMS	261	757	137
RESERVE CHANGES	+32,152,727.00	+ 67,887,713.00	+16,107,973.00
RECOMMENDED RESERVES (2 YEARS)	18,739,244.00	55,680,571.00	9,490,427.00
*ULTIMATE RESERVES (EXCLUDING \$75,000 THRESHOLD)	56,190,363.00	147,060,237.00	26,807,942.00
REIMBURSEMENT & RESERVE FORMS RECEIVED	536	1,112	286
REIMBURSEMENTS PAID FROM FUND			
NUMBER - PAYMENTS	527	1,112	286
CLAIMS	300	370	--
DOLLARS -	\$12,740,596.06	\$ 27,694,515.18	\$ 7,184,800.05

\* Does not include a substantial incurred but not reported factor. A recent independent actuarial review of the excess medical benefit claims valued the incurred but not reported claims at \$268,716,000 as of December 31, 1982.

UNSATISFIED CLAIM

and

JUDGMENT FUND LAW

As Amended to

April 1, 1980

State of New Jersey  
Unsatisfied Claim and Judgment Fund Board  
137 East State Street  
Trenton, New Jersey 08666

CHAPTER 174

AN ACT providing for the establishment, maintenance and administration of an unsatisfied claim and judgment fund for the payment of damages for injury to or death of certain persons and for damages to property arising out of the ownership, maintenance or use of motor vehicles in this State in certain cases.

Title of Act

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Title. This act shall be known and may be cited as the "Unsatisfied Claim and Judgment Fund Law."

C. 39:6-61  
Short Title.

2. Definitions. As used in this act:

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

C. 39:6-62  
Terms Defined.

"Manager" means the official designated by the director to administer to and be in charge of the Unsatisfied Claim and Judgment Fund, and who shall be responsible to the Unsatisfied Claim and Judgment Fund Board

"Treasurer" means the State Treasurer of New Jersey acting as the custodian of the Unsatisfied Claim and Judgment Fund.

"Commissioner" means the Commissioner of Department of Insurance.

"Unsatisfied Claim and Judgment Fund" or "Fund" means the fund derived from the sources specified in this act.

"Unsatisfied Claim and Judgment Fund Board" or "Board" means the board created in section 4 of this act.

"Qualified person" means a resident of this State or the owner of a motor vehicle registered in this State or a resident of another State,

territory, or Federal district of the United States or Province of Canada or a foreign country, in which recourse is afforded, to residents of this State, of substantially similar character to that provided for by this act; provided, however, that no person shall be a qualified person where such person is an insured under a policy provision providing coverage for damages sustained by the insured as a result of the operation of an uninsured motor vehicle in a form authorized to be included in automobile liability policies of insurance delivered or issued for delivery in this State, pursuant to the provisions of, or any supplement to, chapter 28 of Title 17 of the Revised Statutes or in a form substantially similar thereto.

"Uninsured motor vehicle" means a motor vehicle as to which there is not in force a liability policy meeting the requirements of sections 3, 24, 25 or 26 of the Motor Vehicle Security-Responsibility Law of this State, [N.J.S.A. 39:6-25, 39:6-46 to 39:6-48] established pursuant to the provisions of chapter 173 of the laws of 1952, as amended and supplemented, and which is not owned by a holder of a certificate of self-insurance under said Law.

"Person" includes natural persons, firms, co-partnerships, associations and corporations.

"Insurer" means any insurer authorized in this State to write the kinds of insurance specified in paragraphs d and e, section 17:17-1 of the Revised Statutes.

"Net direct written premiums" means direct gross premiums written on policies, insuring against legal liability for bodily injury or death and for damage to property arising out of the ownership, operation or maintenance of motor vehicles, which are principally garaged in this State, less return premiums thereon and dividend paid to policyholders on such direct business.

"Registration license year" means the period beginning June 1, 1956, and ending May 31, 1957, and each subsequent 12 month period, beginning June 1 and ending the following May 31.

3. Creation and maintenance of fund.

For the purpose of creating and maintaining the fund.

C. 39:6-63  
Fund Created and  
Maintained.

(a) Deleted by amendment, P.L.1968, c. 323, § 3.)  
(b) Deleted by amendment, P.L.1968, c. 323, § 3.)  
(c) Deleted by amendment, P.L.1968, c. 323, § 3.)  
(d) On December 30 in each year, beginning with 1956, the director shall calculate the probable amount which will be needed to carry out the provisions of this act during the ensuing registration license year. In such calculation, he shall take into consideration the amount presently reserved for pending claims, anticipated payments from the fund during said year, anticipated payments from the fund for medical expenses to be made pursuant to section 2 of this act during the 2 years after said year, anticipated amounts to be reserved for claims pending during said year, and the desirability of maintaining a surplus over and above such anticipated payments and present and anticipated reserves, such surplus not to exceed the amount actually paid from the fund during the 12 full calendar months immediately preceding the date of calculation. Such probable amount which will be needed to carry out the provisions of this act shall be assessed against insurers for such year's contribution to the fund. Such probable amount needed shall be apportioned among such insurers in the proportion that the net direct written premiums of each bears to the aggregate net direct written premiums of all insurers during the preceding calendar year as shown by the records of the commissioner. Each insurer shall pay the sum assessed to the treasurer on or before March 31, next following.

(e) Whenever any of the provisions of this act concerning the method and sources of assessments, the maximum amounts payable from the fund, eligibility or qualifications of claimants, or amounts to be deducted from payments made from the fund are amended by law, between January 1 and April 30 in any year, the director may, if he deems it necessary, rescind any assessment made on December 30 of the preceding year. He shall then, within 15 days of the adoption of such amendment, recalculate the probable amount which will be needed to carry out the provisions of this act during the ensuing registration license year, in accordance with the provisions of subsection (d) of this section. If, in his judgment, the estimated balance of the fund at the beginning of the next registration license year will be insufficient to meet such needs, he shall determine the contributions of insurers, if any, in accordance with the provisions of subsection (d) of this section. In the event of a rescission and

and reassessment subsequent to March 1 in any year, insurers shall pay the sum so assessed, if any, to the treasurer within 90 days of the date of such assessment.

Amended by L.1977, c. 310, § 3, eff. Jan. 5, 1978.

Last additions in text indicated by underline;  
last deletions by ~~strikeouts~~.

4. Unsatisfied Claim and Judgment Fund Board

C. 39:6-64  
Unsatisfied claim  
and judgment fund  
board.

There is hereby established in, but not as part of, the Division of Motor Vehicles of the Department of Law and Public Safety, an Unsatisfied Claim and Judgment Fund Board consisting of the director, the commissioner, and four representatives of insurers. Such representatives of insurers shall be designated annually by the commissioner. He shall designate one representative of each of the following classes of companies:

- (a) Stock company rating organization members;
- (b) Mutual company rating organization members;
- (c) Independent stock companies; and
- (d) Independent mutual and other companies.

A person designated as a representative shall be an employee or officer of an insurer of the class which he represents. None of the members of the board shall receive any compensation or remuneration from the fund. Such board shall maintain an office in this State, administer the fund subject to the provisions of this act, determine its cash requirements, and the amounts, if any, available for investment, and shall have the power to employ such clerical and other help as may be necessary to the proper discharge of the duties of the board. The director in the administration of the Motor Vehicle Security-Responsibility Law and the board in the administration of this act shall cooperate in order to avoid duplication and to achieve efficiency and economy. The board shall reimburse the Division of Motor Vehicles semi-annually for the reasonable and appropriate costs and expenses incurred in performing any service for the board under this act. Expenses so incurred by the board or by any department, division or agency of the State on behalf of the board shall

be assessed annually by it, against insurers pro rata in proportion to premium writings as provided in section 3(d).

Rules and regulations.

4.1 The board may, from time to time, adopt, amend and enforce all reasonable rules and regulations necessary or desirable in its opinion in connection with its functions, duties and responsibilities in administering this act.

Notwithstanding the provisions of sections 4, 11 and 13 of chapter 20 of the laws of 1944, the board, with the approval of the Attorney General, shall have the power to engage the services of such attorneys and other persons as may be deemed necessary or desirable for the purpose of suing for, enforcing, collecting and taking any other action for the collection of moneys due to the director or treasurer on any right, claim, agreement, judgment, assignment and other obligation arising out of the application of this act. After repayment to the director or treasurer of all sums paid from the fund and all moneys due to the director and treasurer on any claim, agreement, judgment, assignment or other obligation, the director or treasurer may assign to the original claimant, judgment debtor or other person entitled thereto all of the right, title and interest that the director or treasurer has in and to the balance due upon such obligation. Any attorney so engaged shall not be deemed an employee of the board or the State of New Jersey, shall not be subject to the Civil Service laws as contained in Title 11 of the Revised States of New Jersey and shall not have any right to continued employment in such capacity. The compensation of an attorney so engaged for services so rendered shall be deemed an expense of the board under section 4 of the act and shall be paid out of the moneys recovered on the obligation in connection with which the services were rendered, upon such terms as may be authorized by the board with the approval of the Attorney General.

5. Notice of accident and intention to file claim.

Any qualified person, or the personal representative of such person, who suffers damages resulting from bodily injury or death or damage

C. 39:6-64.1  
Rules and  
Regulations;  
engaging services  
of attorneys.

C. 39:6-65  
Notice of acci-  
dent and in-  
tention to file  
claim.

to property arising out of the ownership, maintenance or use of a motor vehicle in this State on or after April 1, 1955, and whose damages may be satisfied in whole or in part from the fund, shall, except in cases in which the claim is asserted by actions brought under section 18 of this act pursuant to section 19 of this act, within 90 days after the accident, as a condition precedent to the right thereafter to apply for payment from the fund, give notice to the board, in the form and contents of which shall be prescribed by the board, of his intention to make a claim thereon for such damages if otherwise uncollectible; provided, any such qualified person may, in lieu of giving said notice within said time, make proof to the court on the hearing of the application for the payment of a judgment (a) that he was physically incapable of giving said notice within said period and that he gave said notice within 90 days after he became physically capable to do so or in the event he did not become so capable, that a notice was given on his behalf within a reasonable period, or (b) that he gave notice to the board within 15 days of receiving notice that an insurer had disclaimed on a policy of insurance so as to remove or withdraw liability insurance coverage for his claim against a person or persons who allegedly caused him to suffer damages. A copy of the complaint shall be furnished to the board if any action has theretofore been brought for the enforcement of such claim. Such person shall also notify the board of any action thereafter instituted for the enforcement of such claim within 15 days after the institution thereof and such notice shall be accompanied by a copy of the complaint.

The director is hereby authorized and empowered, the provisions of any other law relating to the confidential nature of any reports or information furnished to or filed with the Division of Motor Vehicles notwithstanding, to furnish to the board upon its request, for such use, utilization and purposes as the board may deem reasonably appropriate to administer this act and discharge its functions hereunder, any reports or information filed by any person, or persons claiming benefits under the provisions of this act, that the director has with regard to any accident, and any operator or owner of a motor vehicle involved in any accident, and as to any automobile

or motor vehicle liability insurance or bond carried by an operator or owner of any motor vehicle.

See Regulation

6. Investigation and defense of claims.

C. 39:6-66  
Investigation  
and defense  
of claims.

(a) The board shall assign to insurers for investigation and defense, all default actions described in section fourteen and all actions against the director brought under section eighteen.

(b) Any time after the receipt of notice of intention to make a claim as provided in section five, the board may also assign such of said claims as in the judgment of the board it is advisable to investigate, to insurers for the purpose of making such investigation. At any time after receipt of notice of the institution of an action against the operator or owner of a motor vehicle as provided in section five the board may also assign such of said actions as in its judgment it is advisable to defend, to insurers for the purpose of conducting such defense.

(c) All assignments made under this section shall be made to insurers in proportion of their premium writings subject to assessment hereunder. Each insurer shall at its own expense (1) make such investigation as may be appropriate to any claim or action and (2) cause to be conducted on behalf of the fund the defense of any action assigned to it.

(d) After consultation with insurers the commissioner shall approve a reasonable plan for such equitable apportionment among such insurers of claims against operators and owners of motor vehicles, for investigation and defense, in accordance with this act. When any such plan has been so approved all insurers shall subscribe thereto and participate therein.

7. Defense of actions against motorists.

C. 39:6-67  
Defense of  
actions against  
motorists.

The insurer to whom any action has been assigned may through counsel enter an appearance on behalf of the defendant, file a defense, appear at the trial or take such other steps as it may deem appropriate on the behalf

and in the name of the defendant, and may thereupon, on the behalf and in the name of the defendant, conduct his defense, take recourse to any appropriate method of review on behalf of, and in the name of, the defendant, and all such acts shall be deemed to be the acts of such defendant; provided, however, that nothing contained herein shall deprive defendant of the right to also employ his own counsel and defend the action. All expenses incurred by such insurer in connection with any review prosecuted or defended by it from a judgment rendered in such action, shall be borne by the fund, and its attorneys' fees in connection therewith, unless agreed to between the board and the attorney, shall be subject to approval by the court.

8. Co-operation of defendant.

In any case in which an insurer has assumed under this act, the defense of any action, the defendant shall cooperate with such insurer in the defense of such action. In the event of his failure to do so, such insurer may apply to the court for an order directing such co-operation.

9. Application for payment of judgment.

When any qualified person recovers a valid judgment in any court of competent jurisdiction in this State, against any other person, who was the operator or owner of a motor vehicle, for injury to, death of, any person or persons, or a similar valid judgment in such court against such a defendant for an amount in excess of \$100.00, exclusive of interest and costs, for damages to property, except property of others in charge of such operator or owner or such operator's or owner's employees, arising out of the ownership, maintenance or use of the motor vehicle in this State on or after April 1, 1955, and any amount remains unpaid thereon in the case of a judgment for bodily injury or death, or any amount in excess of \$100.00 remains unpaid thereon in case of a judgment for damage to property, such judgment creditor may, upon the termination of all proceedings, including reviews and appeals in connection with such judgment, file a verified claim in the court in which the judgment was entered and, upon 10 days' written notice to the board, may apply to the court for an order directing payment out of the fund, of the amount unpaid upon such judgment for bodily injury or death, which does not exceed, or upon such judgment for damage to property which exceeds the sum of \$100.00 and does not exceed--

C. 39:6-69  
Application  
for payment  
of judgment.

(a) The maximum amount or limit of \$15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident, and

(b) The maximum amount or limit, subject to such limit for any one person so injured or killed, of \$30,000.00, exclusive of interest and costs, on account of injury to, or death of, more than one person, in any one accident, and

(c) The maximum amount or limit of \$5,000.00 exclusive of interest and costs, for damage to property in any one accident.

10. Hearing on application for payment of judgment.

C. 39:6-70  
Hearing on  
application  
for payment  
of judgment.

The court shall proceed upon such application, in a summary manner, and upon the hearing thereof, the applicant shall be required to show

(a) He is not a person covered with respect to such injury or death by any workmen's compensation law, or the personal representative of such a person,

(b) He is not a spouse, parent or child of the judgment debtor, or the personal representative of such spouse, parent or child,

(c) He was not at the time of the accident, a person (1) operating or riding in a motor vehicle which he had stolen or participated in stealing or (2) operating a motor vehicle without the permission of the owner, and is not the personal representative of such a person,

(d) He was not at the time of the accident, operating or riding in an uninsured motor vehicle owned by him or his spouse, parent or child, and was not operating a motor vehicle in violation of an order of suspension or revocation,

(e) He has complied with all of the requirements of section 5,

(f) The judgment debtor at the time of the accident was not insured under a policy of automobile liability insurance under the terms of which the insurer is liable to pay in whole or in part the amount of the judgment,

(g) He has obtained a judgment as set out in section 9 of this act, stating the amount thereof and the amount owing thereon at the date of the application,

(h) He has caused to be issued a writ of execution upon said judgment and the sheriff or officer executing the same has made a return showing that no personal or real property of the judgment debtor, liable to be levied upon in satisfaction of the judgment, could be found or that the amount realized on the sale of them or of such of them as were found, under said execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application thereon of the amount realized,

(i) He has caused the judgment debtor to make discovery under oath, pursuant to law, concerning his personal property and as to whether such judgment debtor was at the time of the accident insured under any policy or policies of insurance described in subparagraph (f) of this section,

(j) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of personal or real property or other assets, liable to be sold or applied in satisfaction of the judgment,

(k) By such search he has discovered no personal or real property or other assets, liable to be sold or applied or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be sold and applied and that he has taken all necessary action and proceedings for the realization thereof and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized,

(l) The application is not made by or on behalf of, any insurer by reason of the existence of a policy of insurance, whereby the insurer is liable to pay, in whole or in part, the amount of the judgment and that no part of the amount to be paid out of the fund is sought in lieu of making a claim or receiving a payment which is payable by reason of the existence of such a policy of insurance and that no part of the amount so sought will be paid to an insurer to reimburse or otherwise indemnify

the insurer in respect of any amount paid or payable by the insurer by reason of the existence of such a policy of insurance,

(m) Whether or not he has recovered a judgment in an action against any other person against whom he has a cause of action in respect of his damages for bodily injury or death or damage to property arising out of the accident and what amounts, if any, he has received by way of payments upon the judgment, or by way of settlement of such cause of action, in whole or in part, from or on behalf of such other person.

Whenever the applicant satisfies the court that it is not possible to comply when 1 or more of the requirements enumerated in subparagraph (h) and (i) of this section and that the applicant has taken all reasonable steps to collect the amount of the judgment or the unsatisfied part thereof and has been unable to collect the same, the court may dispense with the necessity for complying with such requirements.

The board or any insurer to which the action has been assigned may appear and be heard on application and show cause why the order should not be made.

11. Order for payment of judgment.

C. 39:6-71  
Order for  
Payment

The court shall make an order directed to the treasurer requiring him to make payment from the fund of such sum, if any, as it shall find to be payable upon said claim, pursuant to the provisions of and in accordance with the limitations contained in this act, if the court is satisfied, upon the hearing:

(a) Of the truth of all matters required to be shown by the applicant by section 10,

(b) That the applicant has fully pursued and exhausted all remedies available to him for recovering damages against all persons mentioned in subparagraph (m) of section 10 by

(1) Commencing action against all such persons against whom the applicant might reasonably be considered as having a cause of action in respect of such damages and prosecuting every such action in good faith to judgment and

(2) Taking all reasonable steps available to him to collect on every judgment so obtained and by applying the proceeds of any judgment or recovery so obtained towards satisfaction of the amount due upon the judgment for payment of which the claim is made.

Any amount which the plaintiff has received or can collect by way of payments upon the judgment or by way of settlement of the cause of action, in whole or in part, from or on behalf of any person other than the judgment debtor, described in subparagraph (m) of section 10, shall be deducted from the amount due upon the judgment for payment of which claim is made.

12. Settlement of actions against motorists.

C. 39:6-72  
Settlement of  
actions against  
motorists.

(a) In any action against an operator or owner of a motor vehicle for injury to or death of any person or for damage to property arising out of the ownership, maintenance or use of said vehicle in this State on or after April 1, 1955, pending in any court of competent jurisdiction in this State, a plaintiff may upon notice to the board file a verified petition with the court alleging

(1) The matters set forth in subparagraph (a), (b), (c), (d), (e), and (f) of section 10;

(2) That the petition is not presented on behalf of an insurer under circumstances set forth in subparagraph (1) of section 10;

(3) That he has entered into an agreement with the defendant to settle all claims set forth in the complaint in said action and the amount proposed to be paid to him pursuant thereto;

(4) That the said proposed settlement has been entered into with and by the consent of the county, county district, or Superior Court and approved by the manager of the fund;

(5) That the defendant has executed and delivered to the board a verified statement of his financial condition;

(6) That a judgment against the defendant would be uncollectible;

(7) That the defendant has undertaken in writing to repay to the treasurer the sum that he would be required to pay under such settlement, and has executed a confession of judgment in connection therewith.

If the court be satisfied of the truth of the allegations in said petition and of the fairness of such proposed settlement, it may enter an order approving the same and directing the treasurer, upon receipt of the undertaking and confession of judgment mentioned in subparagraph (7) of this section, to make payment to the plaintiff of the amount agreed to be accepted.

(b) An insurer to whom a claim has been assigned may settle any claim involving the payment of less than \$5,000.00 with the approval of the manager of the fund or any claim involving payment of \$5,000.00 or more with the approval of the board, without court approval, if satisfied.

(1) That the claimant is not a person of the character described in subparagraphs (a), (b), (c), (d), (e), and (f) of section 10;

(2) That the settlement is not made on the behalf of an insurer under circumstances set forth in subparagraph (e) of section 10; and

(3) That a judgment against the owner or operator of the motor vehicle involved in the accident would be uncollectible, and that such owner or operator has consented to such settlement, executed and delivered to the board a verified statement of his financial condition and undertaken in writing to repay to the treasurer the sum to be paid under the settlement, and executed a confession of judgment in connection therewith. Any settlement so made shall be certified by the board to the treasurer, who shall, upon receipt of said undertaking to repay and confession of judgment, make the required payment to claimant out of the fund.

13. Limitation on amounts payable from fund.

Except with respect to medical expense benefits paid pursuant to section 2 of this act, no order shall be made for the payment and the treasurer shall make no payment, out of the fund, of

(a) Any claim for damage to property for less than \$100.00

(b) The first \$100.00 of any judgment for damage to property or of the unsatisfied portion thereof, or

C. 39:6-73  
Limitation on  
amounts payable  
from fund.

(c) The unsatisfied portion of any judgment which, after deducting \$100.00 therefrom if the judgment is for damage to property, exceeds

(1) the maximum or limit of \$15,000.00 exclusive of interest and costs, on account of injury to, or death of, one person in any one accident, and

(2) the maximum amount or limit, subject to such limit for any one person so injured or killed, of \$30,000.00 exclusive of interest and costs, on account of injury to, or death of, more than one person, in any one accident, and

(3) the maximum amount or limit of \$5,000.00, exclusive of interest and costs, for damages to property in any one accident, provided, that such maximum amounts shall be reduced by any amount received or recovered as specified in subparagraph (m) of section 10.2

(d) Any claim for damage to property which includes any sum greater than the difference between said maximum amounts and the sum of \$100.00, and any amount paid out of the fund in excess of the amount so authorized may be recovered by the treasurer in an action brought to him against the person receiving the same.

Amended by L.1977, c. 310, § 4, eff. Jan. 5, 1978.

Last additions in text indicated by underline;  
last deletions by ~~strikeouts~~.

13(a). Medical expense benefits in excess of personal injury protection coverage under Automobile Reparation Reform Act; reimbursement of insurer.

In the event medical expense benefits paid by an insurer, in accordance with section 4 a. of P.L.1972, c. 70 (C. 39:6A-4), are in excess of \$75,000.00 on account of personal injury to any one person in any one accident, the Unsatisfied Claim and Judgment Fund shall assume such excess and reimburse the insurer therefore in accordance with rules and regulations promulgated by the Director of the Division of Motor Vehicles after consultation with the Commissioner of Insurance; provided, however, that this provision is not intended to broaden the coverage available to accidents involving uninsured or hit-and-run

C. 39:6-73.1  
Medical expense  
benefits in excess  
of personal injury  
protection cover-  
age under Auto-  
mobile Reparation  
Reform Act; reim-  
bursement of in-  
surer

automobiles, to provide extraterritorial coverage, nor to pay excess medical expenses.

L.1977, c. 310, § 2, eff. Jan. 5, 1978.

14. Default and consent judgments.

C. 39:6-74  
Default and consent judgments.

No claim shall be allowed and ordered to be paid out of fund if the court shall find, upon the hearing for the allowance of the claim, that it is founded upon a judgment which was entered by default unless (1) the claimant shall have complied with the requirements of section 5, and (2) prior to the entry of such judgment the board shall have been given notice of intention to enter the judgment and file a claim thereon against the fund and shall have been afforded an opportunity to take such action as it shall deem advisable under section 15..

If the court, upon a hearing for the allowance of any claim against the fund, finds that it was a claim which was not assigned by the board to an insurer in accordance with section 6, or that the action upon such claim was not fully and fairly defended, or that the judgment thereon was entered upon the consent or with the agreement of the defendant, the court shall allow such claim but shall order it to be paid only in such sum as the court shall determine to be justly due and payable out of the fund, on the basis of the actual amount of damages for which the defendant was liable to the plaintiff under the cause of action, upon which the judgment was rendered and reduced by any amount received from any person mentioned in subparagraph (m) of section 10, notwithstanding that the judgment is for a greater amount.

15. Defense of default actions.

C. 39:6-75  
Defense of default actions.

When the board receives notice, as provided in section 14, the insurer to which such action has been assigned may through counsel enter an appearance, file an answer, appear at the trial, defend the action or take such other action as it may deem appropriate on the behalf and in the name of the defendant, and take recourse to any appropriate method of review on behalf of, and in the name of, the defendant.

In the event that the time allowed for filing an answer has expired or judgment has been entered by default in any such action, the insurer to

which the action has been assigned shall be granted a reasonable time after the receipt of notice by the board to answer or to make application for relief against the judgment and leave to answer and defend such action.

16. Collusive judgments.

C. 39:6-76  
Collusive  
judgments.

No claim against the fund shall be allowed in any case in which the court shall find, upon the hearing for the allowance of the claim, that the judgment upon which the claim is founded was obtained by fraud, or by collusion of the plaintiff and of any defendant in the action relating to any other matter affecting the cause of action upon which such judgment is founded or the amount of damages assessed therein.

17. Assignments of judgment to director.

C. 39:6-77  
Assignments of  
judgment to  
director.

The treasurer shall not pay any sum from the fund, in compliance with an order made for that purpose, in any case in which the claim is founded upon a judgment, except a judgment obtained against the director under this act, until the applicant assigns the judgment to the director and, thereupon, the director shall be deemed to have all the rights of the judgment creditor under the judgment and shall enforce and collect the same for the full amount thereof with interest and costs and if more money is collected upon any such judgment than the amount paid out of the fund, the director shall pay the balance, after reimbursing the fund, to the judgment creditor. Upon assignment of a judgment to the director, the board may, on behalf of the director, enter into agreement with the defendant for reimbursement of the fund by lump sum or installment payments, including waiver of interest and subordination of the lien of the judgment where the same is determined to be advantageous in obtaining reimbursement of payments made by the fund. Any such agreement may be annexed to an application for a court order made pursuant to section 27 (b).

18. "Hit and run cases".

C. 39:6-78  
"Hit and run"  
cases.

When the death of, or personal injury to, any person arises out of the ownership, maintenance or use of a motor vehicle in this State on or after April 1, 1955, but the identity of the motor vehicle and of the operator and owner thereof cannot be ascertained or it is established that the motor vehicle was at the time

said accident occurred, in the possession of some person other than the owner without the owner's consent and that the identity of such person cannot be ascertained, any qualified person who would have a cause of action against the operator or owner or both in respect to such death or personal injury may bring an action therefor against the director in any court of competent jurisdiction, but no judgment against the director shall be entered in such an action unless the court is satisfied, upon the hearing of the action that -

(a) The claimant has complied with the requirements of section 5,

(b) The claimant is not a person covered with respect to such injury or death by any workmen's compensation law, or the personal representative of such a person,

(c) The claimant was not at the time of the accident operating or riding in an uninsured motor vehicle owned by him or his spouse, parent or child, and was not operating a motor vehicle in violation of an order of suspension or revocation,

(d) The claimant has a cause of action against the operator or owner of such motor vehicle or against the operator who was operating the motor vehicle without the consent of the owner of the motor vehicle,

(e) All reasonable efforts have been made to ascertain the identity of the motor vehicle and of the owner and operator thereof and either that the identity of the motor vehicle and the owner and operator thereof cannot be established, or that the identity of the operator, who was operating the motor vehicle without the owner's consent, cannot be established,

(f) The action is not brought by or on behalf of an insurer under circumstances set forth in paragraph (1) of section 10.

19. Other "Hit and run" cases.

When in an action in respect to the death of, or personal injury to, any person, arising out of the ownership, maintenance or use of a motor vehicle in this State on or after April 1, 1955, judgment is rendered for the defendant on the

C. 39:6-79  
Other "hit and  
run" cases.

sole ground that such death or personal injury was occasioned by a motor vehicle -

(a) The identity of which, and of the owner and operator of which, has not been established, or

(b) Which was in the possession of some person other than the owner or his agent without the consent of the owner and the identity of the operator has not been established, such cause shall be stated in the judgment and the plaintiff in such action may within 3 months from the date of the entry of such judgment bring an action upon said cause of action against the director in the manner provided in section 18.

20. Impleading director in "Hit and run" cases.

C. 39:6-80  
Impleading  
director.

When an action has been commenced in respect of the death or injury of any person arising out of the ownership, maintenance or use of a motor vehicle in this State on or after April 1, 1955, the plaintiff shall be entitled to make the director a party thereto if the provisions of section 18 or 19 shall apply in any such case, and the plaintiff has made the application and the court has entered the order provided for in section 18.

21. Defense of such actions by director.

C. 39:6-81  
Defense of such  
actions by  
director.

In any action brought under sections 18 and 19 of this act, the director may appear by counsel for the insurer to whom such action has been assigned. He shall for all purposes of the action be deemed to be the defendant. He shall have available to him any and all defenses which would have been available to said operator or owner or both if the action had been brought against them or either of them and process upon them or either of them had been duly served within this State, but he shall be entitled to defend in all cases without asserting any specific facts.

22. Settlement of actions against the director.

C. 39:6-82  
Settlement of  
actions against  
director.

In any action brought against the director pursuant to an order by the court entered in accordance with the provisions of section 18, the plaintiff may file a verified petition alleging that he has entered into an agreement with the board to settle all claims set forth in the complaint in said action and the amount proposed to be paid to him pursuant thereto. If the court be satisfied of the fairness of such proposed settlement, it may enter an order approving

such settlement and enter judgment against the director for the amount so agreed to be paid thereunder.

23. Credits against judgment.

A judgment against the director shall be reduced by any amounts which such plaintiff has received from any person mentioned in subparagraph (m) of section 10. ▼

C. 39:6-83  
Credits against judgment.

24. Judgment against director.

When a judgment is obtained against the director, in an action brought under this act, upon the determination of all proceedings including appeals and reviews, the court shall make an order directed to the treasurer directing him to pay out of the fund to the plaintiff in the action the amount thereof which does not exceed \$15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person and, subject to such limits for the death of, or injury to, any one person, does not exceed \$30,000.00, exclusive of interest and costs, on account of the injury to, or death of, more than one person, in any one accident, provided that such maximum amount shall be reduced by any amount received or recovered by the plaintiff as specified in subparagraph (m) of section 10.

C. 39:6-84  
Judgment against director.

24 (a). Increase in payment of maximum amounts from fund; application to accidents on or after January 1, 1973.

The provisions of sections 9, 13 and 24 of the act of which this act is supplementary (C. 39:6-69, 39:6-73 and 39:6-84 as amended by sections 3, 4 and 5 of P.L.1972, c.198 which increases the maximum amounts payable from the fund shall be applicable only to claims made by qualified persons, or the personal representatives of such persons, who suffered damages resulting from bodily injury or death or damage to property arising out of the ownership, maintenance or use of a motor vehicle in this State on or after January 1, 1973; and whose damages may be satisfied in whole or in part from the fund.

C. 39:6-84.1  
Increase in payment of maximum amounts from fund; application to accidents on or after January 1, 1973.

L.1975, c. 6, § 1.

25. Subrogation.

When a judgment has been obtained against the

C. 39:6-85  
Subrogation.

director in an action brought under this act, the director shall, upon payment from the fund of the amount of the judgment to the extent provided in this act, be subrogated to the cause of action of the judgment creditor against the operator and owner of the motor vehicle by which the accident was occasioned and shall bring an action against either or both of such persons for the amount of the damages sustained by the judgment creditor when and in the event that identity of either or both of such persons shall be established, and shall recover the same out of any funds which would be payable in respect to the death or injury under any policy of insurance, which was in force, at the time of the accident and in the event that more is recovered and collected in any such action than the amount paid out of the fund by reason of the judgment, the treasurer shall pay the balance, after reimbursing the fund, to the judgment creditor.

26.1 Benefits payable in accordance with Automobile Reparation Reform Act; exceptions.

When any person qualified to receive payments under the provisions of the "Unsatisfied Claim and Judgment Fund Law", suffers bodily injury or death arising out of the ownership, maintenance, operation or use of an automobile, as defined in P.L.1972, c. 70 [N.J.S.A. 39:6A-1 to 18] registered or principally garaged in this State for which personal injury protection benefits under the "New Jersey Automobile Reparation Reform Act" would be payable to such person if personal injury protection coverage were in force and the damages resulting from such automobile accident or deaths are not satisfied due to the personal injury protection coverage not being in effect with respect to such automobile accident, then in such event the Unsatisfied Claim and Judgment Fund shall provide, under the following conditions, the following benefits:

a. Medical expense benefits. Payment of all reasonable medical expenses incurred as a result of personal injury sustained in an automobile accident. In the event of death, payment shall be made to the estate of the decedent.

C. 39:6-86.1  
Benefits payable in accordance with Automobile Reparation Reform Act; exceptions.

b. Income continuation benefits. The payment of the loss of income of an income producer as a result of bodily injury disability, subject to a maximum weekly payment of \$100.00, per week. Such sums shall be payable during the life of the injured person and shall be subject to an amount or limit of \$5,200.00, on account of injury to any one person, in any one accident.

c. Essential services benefits. Payment of essential services benefits to an injured person shall be made in reimbursement of necessary and reasonable expenses ordinarily performed by the injured person for himself, his family and members of the family residing in the household, subject to an amount or limit of \$12.00 per day. Such benefits shall be payable during the life of the injured person and shall be subject to an amount or limit of \$4,380.00, on account of injury to any one person in any one accident.

d. Survivor benefits. In the event of the death of an income producer as a result of injuries sustained in an accident entitling such person to benefits under section 7 of this act, the maximum amount of benefits which could have been paid to the income producer, but for his death, under section 7 b. shall be paid to the surviving spouse, or in the event there is no surviving spouse, then to the surviving children, and in the event there are no surviving spouse or surviving children, then to the estate of the income producer.

In the event of the death of one performing essential services as a result of injuries sustained in an accident entitling such person to benefits under section 7 c. of this act, the maximum amount of benefits which could have been paid such person, under section 7 c., shall be paid to the person incurring the expense of providing such essential services.

e. Funeral expenses benefits. All reasonable funeral, burial and cremation expenses, subject to a maximum benefit of \$1,000.00, on account of the death to any one person in any one accident shall be payable to decedent's estate.

Exceptions. Provided, however, that no benefits shall be paid under this section unless the person applying for benefits has demonstrated:

1. he is not a person covered with respect to such injury or death by any workmen's compensation law, or the personal representative of such a person;

2. he is not a spouse, parent or child of the uninsured motorist referred to in 4. of this section, or the personal representative of such spouse, parent or child;

3. he was not, at the time of the accident, a person:

(a) operating or riding in a motor vehicle which he had stolen or participated in stealing; or

(b) operating a motor vehicle without the permission of the owner, and is not the personal representative of such a person;

4. he was not, at the time of the accident, operating or riding in an uninsured motor vehicle owned by him or his spouse, parent or child, and was not operating a motor vehicle in violation of an order of suspension or revocation; and

5. he is not an insurer, and is not bringing this action on behalf of any insurer.

#### 26.2 Payment of benefits.

C. 39:6-86.2  
Payment of  
benefits.

The benefits provided in sections 7 and 10, shall be payable as loss accrues upon written notice of such loss including reasonable proof of such loss and without regard to collateral sources, except that benefits collectible under employees temporary disability benefit statutes and medicare provided under Federal law, shall be deducted from the benefits collectible under sections 7 and 10.

#### 26.3 Denial of benefits; grounds.

C. 39:6-86.3  
Denial of bene-  
fits; grounds.

Any qualified person entitled to receive benefits as provided in section 7 of this act shall be precluded from receiving such benefits where such person's conduct contributed to his personal injuries or death in any of the following ways:

a. While committing a high misdemeanor or felony or seeking to avoid lawful apprehension or arrest by a police officer; or

b. While acting with specific intent of causing injury or damage to himself or others.

26.4 Death or injury due to unidentifiable operator or owner, or to operator using automobile without consent of owner; benefits payable; conditions.

C. 39:6-86.4  
Death or injury  
due to unidentifiable  
operator or owner.

When the death of or personal injury to any person arises out of the ownership, maintenance or use of an automobile in this State on or after the effective date of this act, but the identity of the automobile and of the operator and owner thereof cannot be ascertained or it is established that the automobile was at the time said accident occurred, in the possession of some person other than the owner without the owner's consent and that the identity of such person cannot be ascertained, any person qualified to receive payments under the provisions of the "Unsatisfied Claim and Judgment Fund Law" shall be entitled to receive payment under sections 7 and 10 of this act, provided that:

a. The claimant is not a person covered with respect to such injury or death by any workmen's compensation law, or the personal representative of such a person,

b. The claimant was not at the time of the accident operating or riding in an uninsured motor vehicle owned by him or his spouse, parent or child, and was not operating a motor vehicle in violation of an order of suspension or revocation,

c. The claimant was not at the time of the accident:

(1) a person operating or riding in a motor vehicle which he had stolen or participated in stealing, or

(2) operating a motor vehicle without the permission of the owner, and is not the personal representative of such a person,

c. All reasonable efforts have been made to

ascertain the identity of the motor vehicle and of the owner and operator thereof and either that the identity of the motor vehicle and the owner and operator thereof cannot be established, or that the identity of the operator, who was operating the motor vehicle without the owner's consent, cannot be established,

e. The claimant is not a spouse, parent or child of the uninsured motorist referred to in subsection b. of this section, or the personal representative of such spouse, parent or child, or

f. The action or claim is not brought by or on behalf of an insurer.

#### 26.5 Application for benefits; payment

Any qualified person seeking to receive benefits as provided in section 7 and 10 of this act shall comply with the provisions of section 5 of P.L.1952, c. 174 (C. 39:6-65) and payment under these sections shall be payable to the qualified person entitled to receive such benefits, as the loss accrues, upon receipt of reasonable proof of such loss and without the need of a judgment as to damages, or a hearing as provided in section 10 of P.L.1954, c. 174 (C. 39:6-70) or an order for payment as provided in section 11 of P.L.1954, c. 174 (C. 39:6-71).

C. 39:6-86.5  
Application for  
benefits; payment.

#### 26.6 Recovery of benefits paid by fund.

The director shall be entitled to recover on behalf of the Unsatisfied Claim and Judgment Fund for all payments made by it pursuant to sections 7 and 10 of this act, regardless of fault, from any person who owned or operated the automobile involved in the accident and whose failure to have the required insurance coverage in effect at the time of the accident resulted in the payment of personal injury protection benefits. If the identity of the owner and operator is not ascertained until after personal injury protection benefits have been paid then the director shall be entitled to recover for such payments, regardless of fault, from the operator if he was driving without the owner's permission or from the operator and the owner if he was driving with the owner's

C. 39:6-86.6  
Recovery of bene-  
fits paid by fund.

permission or, in either case, from the insurer if there is an insurance policy providing personal injury protection benefits that was in effect at the time of the accident with respect to such automobile.

The director is authorized to bring an action, which shall be a summary proceeding, in the County Court of the Superior Court to reduce the right provided by this section to judgment.

27. Registration, etc., not restored until fund is reimbursed.

Where the license or privileges of any person, or the registration of a motor vehicle registered in his name, has been suspended or cancelled under the Motor Vehicle Security-Responsibility Law of this State, and the treasurer has paid from the fund any amount in settlement of a claim or towards satisfaction of a judgment against that person, or for the payment of personal injury protection benefits as provided in section 7 and section 10 of this act, the cancellation or suspension shall not be removed, nor the license, privileges, or registration, restored, nor shall any new license or privilege be issued or granted to, or registration be permitted to be made by, that person until he has

(a) Repaid in full to the treasurer the amount so paid by him together with interest thereon at 6% annum from the date of such payment; and

(b) Satisfied all requirements of said Motor Vehicle Security-Responsibility Law in respect of giving proof of ability to respond in damages for future accidents, provided, that the court in which such judgment was rendered may, upon 10 days' notice to the board, make an order permitting payment of the amount of such person's indebtedness to the fund, to be made in installments, or in the event the fund makes personal injury protection benefit payments, such person and the fund by agreement may provide for repayment to the fund to be made in installments, and in such case, such person's driver's license, or his driving privilege, or registration certificate, if the same have been suspended or revoked, or have expired, may be restored or renewed and shall

C. 39:6-87  
Registration, etc.,  
not restored until  
fund is reimbursed.

remain in effect unless and until such person defaults in making any installment payment specified in such order. In the event of any such default, the director shall upon notice of such default suspend such person's driver's license, or driving privileges or registration certificate until the amount of his indebtedness to the fund has been paid in full.

28. Fund to be held in trust.

C. 39:6-88  
Fund held in  
trust.

All sums paid to the director as Unsatisfied Claim and Judgment Fund Fees and as additional charges against owners of uninsured motor vehicles shall be remitted to the treasurer within thirty days after the receipt of the same. All sums received by the treasurer pursuant to any of the provisions of this act shall become part of the fund, and shall be held by the treasurer in trust for the carrying out of the purpose of this act and for the payment of the cost of administering this act. Said fund may be invested and reinvested in the same manner as other State funds and shall be disbursed according to the order of the treasurer, as custodian of the fund.

29. Reimbursement of General State Fund.

C. 39:6-89  
Reimbursement  
of General State  
Fund.

The treasurer shall, on or before the thirtieth day of June in each year in which this act has been operative, determine what amount, if any, shall be paid into the General State Fund in repayment, in whole or in part, of the cost paid or incurred by the General State Fund for administering this act during the current fiscal year and such amount shall be transferred from the fund to the General State Fund of the treasury accordingly.

30. Penalty for false statements.

C. 39:6-90  
Penalties.

Any person and any agent or servant of such person, who knowingly files with the fund, board or treasurer, or any or either of them, any notice, statement or other document required under this act, which is false or untrue or contains any material misstatement of fact shall be subject to a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), or imprisonment for not more than thirty days, at the discretion of the court.

30.1 Partial invalidity.

C. 39:6-90.1  
Partial  
invalidity.

In the event any section, term or provision of this act or of the act to which this act is amendatory and supplementary shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term or provision of said acts, but the remaining sections, terms, and provisions shall be and remain in full force and effect.

31. Effective date.

C. 39:6-91  
Effective date.

This act shall take effect April first, one thousand nine hundred and fifty-five, except that it shall become effective immediately, so far as to permit the treasurer and director to receive and collect the fees and assessments specified in section three, to permit the taking of such measures and making of such expenditures as shall be necessary to administer the provisions of this act prior to April first, one thousand nine hundred and fifty-five, and to make such preparations as may be necessary to provide for the administration of said act after said date.

## REGULATION

Number 1 - August 21, 1969

A Notice of Intention to Make Claim under N.J.S.A. 39:6-65, as amended by Chapter 81, Public Laws of 1963, approved June 4, 1963, shall contain the following information:

1. Claimant's name and address.
2. Date and place of accident.
3. Identity of the operators and the vehicles involved in the accident.

A Notice of Intention to Make Claim under N.J.S.A. 39:6-65 may be filed in a form of the Unsatisfied Claim and Judgment Fund Board designated as a Notice of Intention to Make Claim and Request to Process Claim (Form UCJ 201-72). A Notice of Intention shall be deemed given to the Board on the date a completed notice is received by the Board.

A written notice to the Board in any form that contains the information required in one through three above shall be acceptable as a Notice of Intention. To have the notice processed, the claimant is required to complete Form UCJ 201-72 entitled Notice of Intention to Make Claim and Request to Process Claim.

## REGULATION

Number 2 - January 20, 1959

Pursuant to the Formal Opinion No. 1, 1959 of the Attorney General the Unsatisfied Claim and Judgment Fund Board will recognize claims made by New York citizens for bodily injury or death, suffered in accidents occurring in New Jersey on or after January 1, 1959.

Property damage claims of New York citizens should not be recognized for payment from the New Jersey Unsatisfied Claim and Judgment Fund.

# St. of Washington - Dept of Licensing

## Chapter 46.29 RCW FINANCIAL RESPONSIBILITY

### Sections

#### ADMINISTRATION

- 46.29.010 Purpose.
- 46.29.020 Definitions.
- 46.29.030 Director to administer chapter.
- 46.29.040 Court review.
- 46.29.050 Driving record and evidence of ability to respond in damages to be furnished—Fees.
- 46.29.060 Application of sections requiring deposit of security and suspensions for failure to deposit security.
- 46.29.070 Department to determine amount of security required—Notices.
- 46.29.080 Exceptions as to requirement of security.
- 46.29.090 Requirements as to policy or bond.
- 46.29.100 Form and amount of security.
- 46.29.110 Failure to deposit security—Suspensions.
- 46.29.120 Release from liability.
- 46.29.130 Adjudication of nonliability.
- 46.29.140 Agreements for payment of damages.
- 46.29.150 Payment upon judgment.
- 46.29.160 Termination of security requirement.
- 46.29.170 Duration of suspension.
- 46.29.180 Application to nonresidents, unlicensed drivers, unregistered vehicles and accidents in other states.
- 46.29.190 Authority of department to decrease amount of security.
- 46.29.200 Correction of action by department.
- 46.29.210 Custody of security.
- 46.29.220 Disposition of security.
- 46.29.230 Return of deposit.
- 46.29.240 Matters not to be evidence in civil suits.

#### PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE

- 46.29.250 Application of sections requiring deposit of proof of financial responsibility for the future.
- 46.29.260 Meaning of "proof of financial responsibility for the future."
- 46.29.270 Meaning of "judgment" and "state."
- 46.29.280 Suspension continues until proof furnished.
- 46.29.290 Action in respect to unlicensed person.
- 46.29.300 Action in respect to nonresidents.
- 46.29.310 When courts to report nonpayment of judgments.
- 46.29.320 Further action with respect to nonresidents.
- 46.29.330 Suspension for nonpayment of judgments—Hearing after default judgment.
- 46.29.340 Exception in relation to government vehicles.
- 46.29.350 Exception when consent granted by judgment creditor.
- 46.29.360 Exception when insurer liable.
- 46.29.370 Suspension to continue until judgments paid and proof given.
- 46.29.390 Payments sufficient to satisfy requirements.
- 46.29.400 Installment payment of judgments—Default.
- 46.29.410 Action if breach of agreement.
- 46.29.420 Proof required in addition to deposit of security after accident.
- 46.29.430 Proof required in addition to deposit of security after accident—Suspension or revocation for failure to give proof.
- 46.29.440 Proof required in addition to deposit of security after accident—Suspension to continue until proof given and maintained.
- 46.29.450 Alternate methods of giving proof.
- 46.29.460 Certificate of insurance as proof.
- 46.29.470 Certificate furnished by nonresident as proof.
- 46.29.480 Default by nonresident insurer.
- 46.29.490 "Motor vehicle liability policy" defined.

- 46.29.500 Notice of cancellation or termination of certified policy.
- 46.29.510 Chapter not to affect other policies.
- 46.29.520 Bond as proof.
- 46.29.530 When bond shall constitute a lien.
- 46.29.540 Action on bond.
- 46.29.550 Money or securities as proof.
- 46.29.560 Application of deposit.
- 46.29.570 Owner may give proof for others.
- 46.29.580 Substitution of proof.
- 46.29.590 Other proof may be required.
- 46.29.600 Duration of proof—When proof may be canceled or returned.

#### VIOLATIONS OF THIS CHAPTER

- 46.29.605 Suspension of registration, notice—Surrender of license plates—Penalties.
- 46.29.610 Surrender of license—Penalty.
- 46.29.620 Forged proof—Penalty.
- 46.29.625 Driving when license suspended or revoked until proof of ability to respond in damages furnished—Penalty.

#### MISCELLANEOUS PROVISIONS RELATING TO FINANCIAL RESPONSIBILITY

- 46.29.630 Self-insurers.
- 46.29.640 Chapter not to prevent other process.
- 46.29.900 Construction—1963 c 169.
- 46.29.910 Severability—1963 c 169.
- 46.29.920 Repeals and saving.

*Revoked license not to be renewed or restored until proof of financial responsibility given: RCW 46.20.311.*

#### ADMINISTRATION

**RCW 46.29.010 Purpose.** It is the purpose of this chapter to adopt in substance the provisions of the uniform vehicle code relating to financial responsibility in order to achieve greater uniformity with the laws of other states and thereby reduce the conflicts in law confronting motorists as they travel between states. [1963 c 169 § 1.]

**RCW 46.29.020 Definitions.** (1) The term "owner" as used in this chapter shall mean registered owner as defined in RCW 46.04.460.

(2) The term "registration" as used in this chapter shall mean the certificate of license registration issued under the laws of this state. [1963 c 169 § 2.]

**RCW 46.29.030 Director to administer chapter.** (1) The director shall administer and enforce the provisions of this chapter and may make rules and regulations necessary for its administration.

(2) The director shall prescribe and provide suitable forms requisite or deemed necessary for the purposes of this chapter. [1963 c 169 § 3.]

**RCW 46.29.040 Court review.** Any order of the director under the provisions of this chapter shall be subject to review, at the instance of any party in interest, by appeal to the superior court of Thurston county, or at his option to the superior court of the county of his residence. The scope of such review shall be limited to that prescribed by RCW 7.16.120 governing review by certiorari. Notice of appeal must be filed within ten days after receipt of the notice of such order. The court shall determine whether the filing of the appeal shall operate as a stay of any such order of the director. Upon the filing the notice of appeal the court shall issue an order to the director to show cause why the order should not be reversed or modified. The order to show cause shall be returnable not less than ten nor more than thirty days after the date of service thereof upon the director. The court after hearing the matter may modify, affirm or reverse the order of the director in whole or in part. [1963 c 169 § 4.]

**RCW 46.29.050 Driving record and evidence of ability to respond in damages to be furnished—Fees.** (1) The department shall upon request furnish any person or his attorney a certified abstract of his driving record, which abstract shall include enumeration of any motor vehicle accidents in which such person has been involved. Such abstract shall indicate the total number of vehicles involved; whether the vehicles were legally parked or moving, and; whether such vehicles were occupied at the time of the accident; and reference to any convictions of said person for violation of the motor vehicle laws as reported to the department; and reference to any findings that the person has committed a traffic infraction which have been reported to the department; and a record of any vehicles registered in the name of such person. The department shall collect for each abstract the sum of one dollar and fifty cents which shall be deposited in the highway safety fund.

(2) The department shall upon request furnish any person who may have been injured in person or property by any motor vehicle, with an abstract of all information of record in the department pertaining to the evidence of the ability of any driver or owner of any motor vehicle to respond in damages. The department shall collect for each abstract the sum of one dollar and fifty cents which shall be deposited in the highway safety fund. [1979 ex.s. c 136 § 63; 1969 ex.s. c 40 § 1; 1967 c 174 § 1; 1963 c 169 § 5.]

*Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.*

*Effective date—1967 c 174: "Sections 1, 2, 3 and 4 of this amendatory act shall become effective July 1, 1967." [1967 c 174 § 7.]*

*Abstract of operating record to be furnished insurance company: RCW 46.57.130.*

## SECURITY FOLLOWING ACCIDENT

**RCW 46.29.060 Application of sections requiring deposit of security and suspensions for failure to deposit**

security. The provisions of this chapter, requiring deposit of security and suspensions for failure to deposit security, subject to certain exemptions, shall apply to the driver and owner of any vehicle of a type subject to registration under the motor vehicle laws of this state which is in any manner involved in an accident within this state, which accident has resulted in bodily injury or death of any person or damage to the property of any one person of three hundred dollars or more. [1977 ex.s. c 369 § 1; 1971 ex.s. c 22 § 2; 1963 c 169 § 6.]

**RCW 46.29.070 Department to determine amount of security required—Notices.** (1) The department, not less than twenty days after receipt of a report of an accident as described in the preceding section, shall determine the amount of security which shall be sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each driver or owner. Such determination shall not be made with respect to drivers or owners who are exempt under succeeding sections of this chapter from the requirements as to security and suspension.

(2) The department shall determine the amount of security deposit required of any person upon the basis of the reports or other information submitted. In the event a person involved in an accident as described in this chapter fails to make a report or submit information indicating the extent of his injuries or the damage to his property within one hundred eighty days after the accident and the department does not have sufficient information on which to base an evaluation of such injuries or damage, then the department after reasonable notice to such person, if it is possible to give such notice, otherwise without such notice, shall not require any deposit of security for the benefit or protection of such person.

(3) The department after receipt of report of any accident referred to herein and upon determining the amount of security to be required of any person involved in such accident or to be required of the owner of any vehicle involved in such accident shall give written notice to every such person of the amount of security required to be deposited by him and that an order of suspension will be made as hereinafter provided not less than twenty days and not more than sixty days after the sending of such notice unless within said time security be deposited as required by said notice. [1981 c 309 § 1; 1979 c 78 § 1; 1963 c 169 § 7.]

*Proof of financial security for the future required in addition to security after accident: RCW 46.29.420.*

**RCW 46.29.080 Exceptions as to requirement of security.** The requirements as to security and suspension in this chapter shall not apply:

(1) To the driver or owner if the owner had in effect at the time of the accident an automobile liability policy or bond with respect to the vehicle involved in the accident, except that a driver shall not be exempt under this subsection if at the time of the accident the vehicle was

being operated without the owner's permission, express or implied;

(2) To the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy or bond with respect to his driving of vehicles not owned by him;

(3) To the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy or bond as to which there is a bona fide dispute concerning coverage of such driver as evidenced by the pendency of litigation seeking a declaration of said driver's coverage under such policy or bond;

(4) To the driver, whether or not the owner, if there is a bona fide claim on the part of the driver that there was in effect at the time of the accident, an automobile liability policy or bond insuring or covering such driver;

(5) To any person qualifying as a self-insurer under RCW 46.29.630 or to any person operating a vehicle for such self-insurer;

(6) To the driver or the owner of a vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such driver or owner;

(7) To the driver or owner of a vehicle which at the time of the accident was parked, unless such vehicle was parked at a place where parking was at the time of the accident prohibited under any applicable law or ordinance;

(8) To the owner of a vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such vehicle without such permission, except if the vehicle was operated by his minor child or spouse;

(9) To the owner of a vehicle involved in an accident if at the time of the accident such vehicle was owned by or leased to the United States, this state or any political subdivision of this state or a municipality thereof, or to the driver of such vehicle if operating such vehicle with permission; or

(10) To the driver or the owner of a vehicle in the event at the time of the accident the vehicle was being operated by or under the direction of a police officer who, in the performance of his duties, shall have assumed custody of such vehicle. [1965 c 124 § 1; 1963 c 169 § 8.]

#### RCW 46.29.090 Requirements as to policy or bond.

(1) No policy or bond is effective under RCW 46.29.080 unless issued by an insurance company or surety company authorized to do business in this state, except as provided in subsection (2) of this section, nor unless such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than fifty thousand dollars because of

bodily injury to or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of, property to a limit of not less than ten thousand dollars because of injury to or destruction of property of others in any one accident.

(2) No policy or bond is effective under RCW 46.29.080 with respect to any vehicle which was not registered in this state or was a vehicle which was registered elsewhere than in this state at the effective date of the policy or bond or the most recent renewal thereof, unless the insurance company or surety company issuing such policy or bond is authorized to do business in this state, or if said company is not authorized to do business in this state, unless it executes a power of attorney authorizing the director of licensing to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident.

(3) The department may rely upon the accuracy of the information in a required report of an accident as to the existence of insurance or a bond unless and until the department has reason to believe that the information is erroneous. [1980 c 117 § 3; 1979 c 158 § 155; 1967 ex.s. c 3 § 1; 1963 c 169 § 9.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: "This amendatory act shall take effect on July 1, 1968." [1967 ex.s. c 3 § 6.]

#### RCW 46.29.100 Form and amount of security. (1)

The security required under this chapter shall be in such form and in such amount as the department may require, but in no case in excess of the limits specified in RCW 46.29.090 in reference to the acceptable limits of a policy or bond.

(2) Every depositor of security shall designate in writing every person in whose name such deposit is made and may at any time change such designation, but any single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident. [1963 c 169 § 10.]

#### RCW 46.29.110 Failure to deposit security—

**Suspensions.** In the event that any person required to deposit security under this chapter fails to deposit such security within ten days after the department has sent the notice as hereinbefore provided, the department shall thereupon suspend:

(1) The driver's license of each driver in any manner involved in the accident;

(2) The driver's license of the owner of each vehicle of a type subject to registration under the laws of this state involved in such accident;

(3) If the driver or owner is a nonresident, the privilege of operating within this state a vehicle of a type subject to registration under the laws of this state;

Such suspensions shall be made in respect to persons required by the department to deposit security who fail to deposit such security except as otherwise provided under succeeding sections of this chapter. [1967 c 32 § 37; 1963 c 169 § 11.]

**RCW 46.29.120 Release from liability.** (1) A person shall be relieved from the requirement for deposit of security for the benefit or protection of another person injured or damaged in the accident in the event he is released from liability by such other person.

(2) In the event the department has evaluated the injuries or damage to any minor the department may accept, for the purposes of this chapter only, evidence of a release from liability executed by a natural guardian or a legal guardian on behalf of such minor without the approval of any court or judge. [1965 c 124 § 2; 1963 c 169 § 12.]

**RCW 46.29.130 Adjudication of nonliability.** A person shall be relieved from the requirement for deposit of security in respect to a claim for injury or damage arising out of the accident in the event such person has been finally adjudicated not to be liable in respect to such claim. [1963 c 169 § 13.]

**RCW 46.29.140 Agreements for payment of damages.** (1) Any two or more of the persons involved in or affected by an accident as described in RCW 46.29.060 may at any time enter into a written agreement for the payment of an agreed amount with respect to all claims of any of such persons because of bodily injury to or death or property damage arising from such accident, which agreement may provide for payment in installments, and may file a signed copy thereof with the department.

(2) The department, to the extent provided by any such written agreement filed with it, shall not require the deposit of security and shall terminate any prior order of suspension, or, if security has previously been deposited, the department shall immediately return such security to the depositor or his personal representative.

(3) In the event of a default in any payment under such agreement and upon notice of such default the department shall take action suspending the license of such person in default as would be appropriate in the event of failure of such person to deposit security when required under this chapter.

(4) Such suspension shall remain in effect and such license shall not be restored unless and until:

(a) Security is deposited as required under this chapter in such amount as the department may then determine,

(b) When, following any such default and suspension, the person in default has paid the balance of the agreed amount,

(c) When, following any such default and suspension, the person in default has resumed installment payments under an agreement acceptable to the creditor, or

(d) Three years have elapsed following the accident and evidence satisfactory to the department has been filed with it that during such period no action at law upon such agreement has been instituted and is pending. [1981 c 309 § 2; 1963 c 169 § 14.]

**RCW 46.29.150 Payment upon judgment.** The payment of a judgment arising out of an accident or the payment upon such judgment of an amount equal to the maximum amount which could be required for deposit under this chapter shall, for the purposes of this chapter, release the judgment debtor from the liability evidenced by such judgment. [1963 c 169 § 15.]

**RCW 46.29.160 Termination of security requirement.** The department, if satisfied as to the existence of any fact which under RCW 46.29.120, 46.29.130, 46.29.140 or 46.29.150 would entitle a person to be relieved from the security requirements of this chapter, shall not require the deposit of security by the person so relieved from such requirement, or if security has previously been deposited by such person, the department shall immediately return such deposit to such person or to his personal representative. [1963 c 169 § 16.]

**RCW 46.29.170 Duration of suspension.** Unless a suspension is terminated under other provisions of this chapter, any order of suspension by the department under this chapter shall remain in effect and no license shall be renewed for or issued to any person whose license is so suspended until:

(1) Such person shall deposit or there shall be deposited on his behalf the security required under this chapter, or

(2) Three years have elapsed following the date of the accident resulting in such suspension and evidence satisfactory to the department has been filed with it that during such period no action for damages arising out of the accident resulting in such suspension has been instituted.

An affidavit of the applicant that no action at law for damages arising out of the accident has been filed against him or, if filed, that it is not still pending shall be prima facie evidence of that fact. The department may take whatever steps are necessary to verify the statement set forth in any said affidavit. [1981 c 309 § 3; 1963 c 169 § 17.]

**RCW 46.29.180 Application to nonresidents, unlicensed drivers, unregistered vehicles and accidents in other states.** (1) In case the driver or the owner of a vehicle of a type subject to registration under the laws of this state involved in an accident within this state has no driver's license in this state, then such driver shall not be allowed a driver's license until he has complied with the requirements of this chapter to the same extent that would be necessary if, at the time of the accident, he had held a license or been the owner of a vehicle registered in this state.

(2) When a nonresident's driving privilege is suspended pursuant to RCW 46.29.110, the department shall transmit a certified copy of the record or abstract of such action to the official in charge of the issuance of licenses and registration certificates in the state in which such nonresident resides, if the law of such other state

provided for action in relation thereto similar to that provided for in subsection (3) of this section.

(3) Upon receipt of such certification that the driving privilege of a resident of this state has been suspended or revoked in any such other state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the department to suspend a nonresident's driving privilege had the accident occurred in this state, the department shall suspend the license of such resident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such other state relating to the deposit of such security. [1967 c 32 § 38; 1963 c 169 § 18.]

**RCW 46.29.190 Authority of department to decrease amount of security.** The department may reduce the amount of security ordered in any case if in its judgment the amount ordered is excessive. In case the security originally ordered has been deposited, the excess deposit over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith. [1965 c 124 § 3; 1963 c 169 § 19.]

**RCW 46.29.200 Correction of action by department.** Whenever the department has taken any action or has failed to take any action under this chapter by reason of having received erroneous information, then upon receiving correct information within three years after the date of an accident the department shall take appropriate action to carry out the purposes and effect of this chapter. The foregoing, however, shall not be deemed to require the department to reevaluate the amount of any deposit required under this chapter. [1967 c 61 § 1; 1965 c 124 § 4; 1963 c 169 § 20.]

**RCW 46.29.210 Custody of security.** The department shall place any security deposited with it under this chapter in the custody of the state treasurer. [1963 c 169 § 21.]

**RCW 46.29.220 Disposition of security.** (1) Such security shall be applicable and available only:

(a) For the payment of any settlement agreement covering any claim arising out of the accident upon instruction of the person who made the deposit, or

(b) For the payment of a judgment or judgments, rendered against the person required to make the deposit, for damages arising out of the accident in an action at law begun not later than three years after the date of the accident.

(2) Every distribution of funds from the security deposits shall be subject to the limits of the department's evaluation on behalf of a claimant. [1981 c 309 § 4; 1963 c 169 § 22.]

**RCW 46.29.230 Return of deposit.** Upon the expiration of three years from the date of the accident resulting in the security requirement, any security remaining on deposit shall be returned to the person who made such deposit or to his personal representative if an affidavit or other evidence satisfactory to the department has been filed with it:

(1) That no action for damages arising out of the accident for which deposit was made is pending against any person on whose behalf the deposit was made, and

(2) That there does not exist any unpaid judgment rendered against any such person in such an action.

The foregoing provisions of this section shall not be construed to limit the return of any deposit of security under any other provision of this chapter authorizing such return. [1981 c 309 § 5; 1963 c 169 § 23.]

**RCW 46.29.240 Matters not to be evidence in civil suits.** The report required following an accident, the action taken by the department pursuant to this chapter, the findings, if any, of the department upon which such action is based, and the security filed as provided in this chapter, shall not be referred to in any way, and shall not be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. [1963 c 169 § 24.]

## PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE

**RCW 46.29.250 Application of sections requiring deposit of proof of financial responsibility for the future.** The provisions of this chapter requiring the deposit of proof of financial responsibility for the future, subject to certain exemptions, shall apply with respect to persons who have been convicted of or forfeited bail for certain offenses under motor vehicle laws, or who have failed to pay judgments upon causes of action arising out of ownership, maintenance or use of vehicles of a type subject to registration under the laws of this state, or who having driven or owned a vehicle involved in an accident are required to deposit security under the provisions of RCW 46.29.070. [1963 c 169 § 25.]

**RCW 46.29.260 Meaning of "proof of financial responsibility for the future."** The term "proof of financial responsibility for the future" as used in this chapter means: Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a vehicle of a type subject to registration under the laws of this state, in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the

amount of ten thousand dollars because of injury to or destruction of property of others in any one accident. Wherever used in this chapter the terms "proof of financial responsibility" or "proof" shall be synonymous with the term "proof of financial responsibility for the future." [1980 c 117 § 4; 1967 ex.s. c 3 § 2; 1963 c 169 § 26.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: See note following RCW 46.29.090.

**RCW 46.29.270 Meaning of "judgment" and "state."**

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section.

(1) The term "judgment" shall mean: Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any vehicle of a type subject to registration under the laws of this state, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(2) The term "state" shall mean: Any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada. [1963 c 169 § 27.]

**RCW 46.29.280 Suspension continues until proof furnished.** Whenever, under any law of this state, the license of any person is suspended or revoked by reason of a conviction, forfeiture of bail, or finding that a traffic infraction has been committed, the suspension or revocation hereinbefore required shall remain in effect and the department shall not issue to such person any new or renewal of license until permitted under the motor vehicle laws of this state, and not then unless and until such person shall give and thereafter maintain proof of financial responsibility for the future. [1979 ex.s. c 136 § 64; 1963 c 169 § 28.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

**RCW 46.29.290 Action in respect to unlicensed person.** If a person has no license, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, no license shall be thereafter issued to such person unless he shall give and thereafter maintain proof of financial responsibility for the future. [1965 c 124 § 5; 1963 c 169 § 29.]

**RCW 46.29.300 Action in respect to nonresidents.** Whenever the department suspends or revokes a nonresident's driving privilege by reason of a conviction, forfeiture of bail, or finding that a traffic infraction has been committed such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility for the future. [1979 ex.s. c 136 § 65; 1967 c 32 § 39; 1963 c 169 § 30.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

**RCW 46.29.310 When courts to report nonpayment of judgments.** Whenever any person fails within thirty days to satisfy any judgment, then it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state to forward immediately to the department the following:

- (1) A certified copy or abstract of such judgment;
- (2) A certificate of facts relative to such judgment;
- (3) Where the judgment is by default, a certified copy or abstract of that portion of the record which indicates the manner in which service of summons was effectuated and all the measures taken to provide the defendant with timely and actual notice of the suit against him. [1969 ex.s. c 44 § 1; 1963 c 169 § 31.]

**RCW 46.29.320 Further action with respect to nonresidents.** If the defendant named in any certified copy or abstract of a judgment reported to the department is a nonresident, the department shall transmit those certificates furnished to it under RCW 46.29.310 to the official in charge of the issuance of licenses and registrations of the state of which the defendant is a resident. [1969 ex.s. c 44 § 2; 1963 c 169 § 32.]

**RCW 46.29.330 Suspension for nonpayment of judgments—Hearing after default judgment.** The department upon receipt of the certificates provided for by RCW 46.29.310, on a form provided by the department, shall forthwith suspend the license and any nonresident's driving privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section or in other sections of this chapter.

When the certificates transmitted to the department under RCW 46.29.310 indicate that a default judgment has been entered against the defendant but do not indicate clearly that service of summons was on the person of the defendant, then the department shall promptly notify the defendant by first class mail addressed to the address in the department's records under RCW 46.20-.205 (if a nonresident, then to the comparable record in his home state) that within twenty-five days of the mailing date, which shall be indicated on the notice, he may request a hearing on the question of the suspension of his license or nonresident driving privilege. If the defendant does not make a timely request for a hearing, then the suspension shall be forthwith executed. Should

a hearing be timely requested, then the department shall convene a hearing in conformity with chapter 34.04 RCW, as now law or hereafter amended. The defendant's license or nonresident driving privilege shall not be suspended if at such hearing he overcomes the following presumptions:

(a) That he received actual and timely notice of the suit against him.

(b) That he would have received actual and timely notice had he conformed to the provisions of RCW 46.20.205.

(c) That he would have received actual and timely notice had he not thwarted the attempt or attempts to so notify him. [1969 ex.s. c 44 § 3; 1967 c 32 § 40; 1963 c 169 § 33.]

**RCW 46.29.340 Exception in relation to government vehicles.** The provisions of RCW 46.29.330 shall not apply with respect to any such judgment arising out of an accident caused by the ownership or operation, with permission, of a vehicle owned or leased to the United States, this state or any political subdivision of this state or a municipality thereof. [1963 c 169 § 34.]

**RCW 46.29.350 Exception when consent granted by judgment creditor.** If the judgment creditor consents in writing, in such form as the department may prescribe, that the judgment debtor be allowed a license or nonresident's driving privilege, the same may be allowed by the department, in its discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in RCW 46.29.400, provided the judgment debtor furnishes proof of financial responsibility. [1967 c 32 § 41; 1963 c 169 § 35.]

**RCW 46.29.360 Exception when insurer liable.** No license or nonresident's driving privilege of any person shall be suspended under the provisions of this chapter if the department shall find that an insurer was obligated to pay the judgment upon which suspension is based, at least to the extent and for the amounts required in this chapter, but has not paid such judgment for any reason. A finding by the department that an insurer is obligated to pay a judgment shall not be binding upon such insurer and shall have no legal effect whatever except for the purpose of administering this section. If the department finds that no insurer is obligated to pay such a judgment, the judgment debtor may file with the department a written notice of his intention to contest such finding by an action in the superior court. In such a case the license or the nonresident's driving privilege of such judgment debtor shall not be suspended by the department under the provisions of this chapter for thirty days from the receipt of such notice nor during the pendency of any judicial proceedings brought in good faith to determine the liability of an insurer so long as the proceedings are being diligently prosecuted to final judgment by

such judgment debtor. Whenever in any judicial proceedings it shall be determined by any final judgment, decree or order that an insurer is not obligated to pay any such judgment, the department, notwithstanding any contrary finding theretofore made by it, shall forthwith suspend the license and any nonresident's driving privilege of any person against whom such judgment was rendered, as provided in RCW 46.29.330. [1967 c 32 § 42; 1963 c 169 § 36.]

**RCW 46.29.370 Suspension to continue until judgments paid and proof given.** Such license and nonresident's driving privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in RCW 46.29.350, 46.29.360 and 46.29.400. [1967 c 32 § 43; 1963 c 169 § 37.]

**RCW 46.29.390 Payments sufficient to satisfy requirements.** (1) Judgments herein referred to are, for the purpose of this chapter only, deemed satisfied:

(a) When twenty-five thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

(b) When, subject to such limit of twenty-five thousand dollars because of bodily injury to or death of one person, the sum of fifty thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(c) When ten thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(2) Payments made in settlements of any claims because of bodily injury, death, or property damage arising from such accident shall be credited in reduction of the amounts provided for in this section. [1980 c 117 § 5; 1979 c 61 § 14; 1967 ex.s. c 3 § 3; 1963 c 169 § 39.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: See note following RCW 46.29.090.

**RCW 46.29.400 Installment payment of judgments—Default.** (1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying, such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(2) The department shall not suspend a license or nonresident's driving privilege, and shall restore any license or nonresident's driving privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtain such an order permitting the payment of such judgment in installments, and while the payment of any said installments is not in default. [1967 c 32 § 44; 1963 c 169 § 40.]

**RCW 46.29.410 Action if breach of agreement.** In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the department shall forthwith suspend the license or nonresident's driving privilege of the judgment debtor until such judgment is satisfied, as provided in this chapter. [1967 c 32 § 45; 1963 c 169 § 41.]

**RCW 46.29.420 Proof required in addition to deposit of security after accident.** Any person required to deposit security under RCW 46.29.070, for the benefit or protection of another person injured or damaged in an accident, shall in addition be required to give proof of financial responsibility for the future. The department shall give written notice of such additional requirement to every such person at the time and in the manner provided in RCW 46.29.070 for giving notice of the requirement for security. [1963 c 169 § 42.]

**RCW 46.29.430 Proof required in addition to deposit of security after accident—Suspension or revocation for failure to give proof.** In the event that any person required to give proof of financial responsibility under RCW 46.29.420 fails to give such proof within ten days after the department has sent notice as hereinbefore provided, the department shall suspend, or continue in effect any existing suspension or revocation of, the license or any nonresident's driving privilege of such person. [1967 c 32 § 46; 1963 c 169 § 43.]

**RCW 46.29.440 Proof required in addition to deposit of security after accident—Suspension to continue until proof given and maintained.** Such license or nonresident's driving privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until such person shall give and thereafter maintain proof of financial responsibility for the future. The furnishing of such proof shall permit such person to operate only a motor vehicle covered by such proof. The department shall endorse appropriate restrictions on the license held by such person or may issue a new license containing such restrictions. [1967 c 32 § 47; 1965 c 124 § 6; 1963 c 169 § 44.]

**RCW 46.29.450 Alternate methods of giving proof.** Proof of financial responsibility when required under

this chapter, with respect to such a vehicle or with respect to a person who is not the owner of such a vehicle, may be given by filing:

(1) A certificate of insurance as provided in RCW 46.29.460 or 46.29.470;

(2) A bond as provided in RCW 46.29.520;

(3) A certificate of deposit of money or securities as provided in RCW 46.29.550; or

(4) A certificate of self-insurance, as provided in RCW 46.29.630, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same amounts that an insurer would have been obliged to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer. [1963 c 169 § 45.]

**RCW 46.29.460 Certificate of insurance as proof.** Proof of financial responsibility for the future may be furnished by filing with the department the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle. [1963 c 169 § 46.]

**RCW 46.29.470 Certificate furnished by nonresident as proof.** A nonresident may give proof of financial responsibility by filing with the department a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the vehicle, or vehicles, owned by such nonresident is registered, or in the state in which such nonresident resides, if he does not own a vehicle, provided such certificate otherwise conforms with the provisions of this chapter, and the department shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

(1) Said insurance carrier shall execute a power of attorney authorizing the director to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state;

(2) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued therein. [1963 c 169 § 47.]

**RCW 46.29.480 Default by nonresident insurer.** If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the department shall not thereafter accept as proof any certificate of said carrier whether

theretofore filed or thereafter tendered as proof, so long as such default continues. [1963 c 169 § 48.]

**RCW 46.29.490 "Motor vehicle liability policy" defined.** (1) Certification. A "motor vehicle liability policy" as said term is used in this chapter means an "owner's policy" or an "operator's policy" of liability insurance, certified as provided in RCW 46.29.460 or 46.29.470 as proof of financial responsibility for the future, and issued, except as otherwise provided in RCW 46.29.470, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named in the policy as insured.

(2) Owner's policy. Such owner's policy of liability insurance:

(a) Shall designate by explicit description or by appropriate reference all vehicles with respect to which coverage is to be granted by the policy; and

(b) Shall insure the person named therein and any other person, as insured, using any such vehicle or vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such vehicle or vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such vehicle as follows: Twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident.

(3) Operator's policy. Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(4) Required statements in policies. Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided under the policy in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(5) Policy need not insure workers' compensation, etc. Such motor vehicle liability policy need not insure any liability under any workers' compensation law nor any liability on account of bodily injury or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(6) Provisions incorporated in policy. Every motor vehicle liability policy is subject to the following provisions which need not be contained therein:

(a) The liability of the insurance carrier with respect to the insurance required by this chapter becomes absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy defeats or voids said policy.

(b) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

(c) The insurance carrier may settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof is deductible from the limits of liability specified in subdivision (b) of subsection (2) of this section.

(d) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this chapter constitutes the entire contract between the parties.

(7) Excess or additional coverage. Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and such excess or additional coverage is not subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" applies only to that part of the coverage which is required by this section.

(8) Reimbursement provision permitted. Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(9) Proration of insurance permitted. Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(10) Multiple policies. The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carrier which policies together meet such requirements.

(11) Binders. Any binder issued pending the issuance of a motor vehicle liability policy is deemed to fulfill the requirements for such a policy. [1980 c 117 § 6; 1967 ex.s. c 3 § 4; 1963 c 169 § 49.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: See note following RCW 46.29.090.

**RCW 46.29.500 Notice of cancellation or termination of certified policy.** When an insurance carrier has certified a motor vehicle liability policy under RCW 46.29.460 or 46.29.470 the insurance so certified shall not

be canceled or terminated until at least ten days after a notice of cancellation or termination of the insurance so certified shall be filed in the department, except that such a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any vehicle designated in both certificates. [1963 c 169 § 50.]

**RCW 46.29.510 Chapter not to affect other policies.**

(1) This chapter shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are endorsed to conform with the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.

(2) This chapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of vehicles not owned by the insured. [1963 c 169 § 51.]

**RCW 46.29.520 Bond as proof.** Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state, or a bond with at least two individual sureties each owning real estate within this state, and together having equities equal in value to at least twice the amount of the bond, which real estate shall be scheduled in the bond approved by a judge of the superior court, which said bond shall be conditioned for payment of the amounts specified in RCW 46.29.260. Such bond shall be filed with the department and shall not be cancellable except after ten days written notice to the department. [1963 c 169 § 52.]

**RCW 46.29.530 When bond shall constitute a lien.** Before a bond with individual sureties is accepted by the department it shall be recorded as other instruments affecting real property in the county or counties wherein any real estate scheduled in such bond is located. Such bond shall constitute a lien from the date of such recording in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damage because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a vehicle of a type subject to registration under the laws of this state after such bond was filed. [1963 c 169 § 53.]

**RCW 46.29.540 Action on bond.** If a judgment, rendered against the principal on any bond described in RCW 46.29.520, shall not be satisfied within thirty days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an

action or actions in the name of the state against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond. Such an action to foreclose a lien shall be prosecuted in the same manner as an action to foreclose a mortgage on real estate. [1963 c 169 § 54.]

**RCW 46.29.550 Money or securities as proof.** Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named therein has deposited with him sixty thousand dollars in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of sixty thousand dollars. The state treasurer shall not accept any such deposit and issue a certificate therefor and the department shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides. [1980 c 117 § 7; 1967 ex.s. c 3 § 5; 1963 c 169 § 55.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: See note following RCW 46.29.090.

**RCW 46.29.560 Application of deposit.** Such deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a vehicle of a type subject to registration under the laws of this state after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid. Any interest or other income accruing to such money or securities, so deposited, shall be paid by the state treasurer to the depositor, or his order, as received. [1963 c 169 § 56.]

**RCW 46.29.570 Owner may give proof for others.** The owner of a motor vehicle may give proof of financial responsibility on behalf of his employee or a member of his immediate family or household in lieu of the furnishing of proof by any said person. The furnishing of such proof shall permit such person to operate only a motor vehicle covered by such proof. The department shall endorse appropriate restrictions on the license held by such person, or may issue a new license containing such restrictions. [1963 c 169 § 57.]

**RCW 46.29.580 Substitution of proof.** The department shall consent to the cancellation of any bond or certificate of insurance or the department shall direct

and the state treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter. [1963 c 169 § 58.]

**RCW 46.29.590 Other proof may be required.** Whenever any proof of financial responsibility filed under the provisions of this chapter no longer fulfills the purposes for which required, the department shall, for the purpose of this chapter, require other proof as required by this chapter and shall suspend the license and registration pending the filing of such other proof. [1963 c 169 § 59.]

**RCW 46.29.600 Duration of proof—When proof may be canceled or returned.** (1) The department shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the department shall direct and the state treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this chapter as proof of financial responsibility, or the department shall waive the requirement of filing proof, in any of the following events:

(a) At any time after three years from the date such proof was required when, during the three-year period preceding the request, the department has not received record of a conviction, forfeiture of bail, or finding that a traffic infraction has been committed which would require or permit the suspension or revocation of the license of the person by or for whom such proof was furnished; or

(b) In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(c) In the event the person who has given proof surrenders his license to the department;

(2) Provided, however, that the department shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has within one year immediately preceding such request been involved as a driver or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the department.

(3) Whenever any person whose proof has been canceled or returned under subdivision (1)(c) of this section applies for a license within a period of three years from the date proof was originally required, any such application shall be refused unless the applicant shall reestablish such proof for the remainder of such three-year period. [1979 ex.s. c 136 § 66; 1963 c 169 § 60.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

## VIOLATIONS OF THIS CHAPTER

**RCW 46.29.605 Suspension of registration, notice—Surrender of license plates—Penalties.** (1) Whenever the involvement in a motor vehicle accident in this state results in the driving privilege of a person being suspended for failure to pay a judgment or deposit security, the department shall suspend the Washington registration of the motor vehicle if the person driving at the time of the accident was also the registered owner of the motor vehicle.

(2) A notice of suspension shall be mailed by first class mail to the owner's last known address of record in the department and shall be effective notwithstanding the owner's failure to receive the notice.

(3) Upon suspension of the registration of a motor vehicle, the registered owner shall surrender all vehicle license plates registered to the vehicle. The department shall destroy the license plates and, upon reinstatement of the registration, shall issue new vehicle license plates as provided in RCW 46.16.270.

(4) Failure to surrender license plates under subsection (3) of this section is a misdemeanor punishable by imprisonment for not less than one day nor more than five days and by a fine of not less than fifty dollars nor more than two hundred fifty dollars.

(5) No vehicle license plates or certificate of ownership or registration for a motor vehicle may be issued and no vehicle license may be renewed during the time the registration of the motor vehicle is suspended.

(6) Any person who operates a vehicle in this state while the registration of the vehicle is suspended is guilty of a gross misdemeanor and upon conviction thereof shall be imprisoned for not less than two days nor more than five days and fined not less than one hundred dollars nor more than five hundred dollars. [1981 c 309 § 6.]

**RCW 46.29.610 Surrender of license—Penalty.** (1) Any person whose license shall have been suspended under any provision of this chapter, or whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated, shall immediately return his license to the department. If any person shall fail to return to the department the license as provided herein, the department shall forthwith direct any peace officer to secure possession thereof and to return the same to the department.

(2) Any person wilfully failing to return [a] license as required in paragraph (1) of this section shall be guilty of a misdemeanor. [1963 c 169 § 61.]

*Rules of court: Bail in traffic offense cases—Mandatory appearance—RCrR 2.09.*

**RCW 46.29.620 Forged proof—Penalty.** Any person who shall forge, or, without authority, sign any evidence of proof of financial responsibility for the future, or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be guilty of a gross misdemeanor. [1963 c 169 § 62.]

*Rules of court: Bail in traffic offense cases—Mandatory appearance—JCrR 2.09.*

**RCW 46.29.625 Driving when license suspended or revoked until proof of ability to respond in damages furnished—Penalty.** Any person whose driver's license or other privilege to operate a motor vehicle has been suspended or revoked and restoration thereof or issuance of a new license is contingent upon the furnishing of proof of ability to respond in damages and who in the absence of full authorization from the director, drives a motor vehicle upon any highway shall be punished by imprisonment for not less than ten days nor more than six months and there may be imposed in addition thereto a fine of not more than five hundred dollars. [1969 ex.s. c 281 § 21.]

*Rules of court: Bail in traffic offense cases—Mandatory appearance—JCrR 2.09.*

*Revoked license not to be renewed or restored until proof of financial responsibility given: RCW 46.20.311.*

### MISCELLANEOUS PROVISIONS RELATING TO FINANCIAL RESPONSIBILITY

**RCW 46.29.630 Self-insurers.** (1) Any person in whose name more than twenty-five vehicles are registered in this state may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department as provided in subsection (2) of this section.

(2) The department may, in its discretion, upon the application of such a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of ability to pay judgment obtained against such person. Such certificate may be issued authorizing a person to act as a self-insurer for either property damage or bodily injury, or both.

(3) Upon not less than five days' notice and a hearing pursuant to such notice, the department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance. [1963 c 169 § 63.]

**RCW 46.29.640 Chapter not to prevent other process.** Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for

relief upon the other processes provided by law. [1963 c 169 § 64.]

**RCW 46.29.900 Construction—1963 c 169.** RCW 46.29.010 through 46.29.640 shall be codified as a single chapter of the Revised Code of Washington. RCW 46.29.010 through 46.29.050 shall be captioned "ADMINISTRATION." RCW 46.29.060 through 46.29.240 shall be captioned "SECURITY FOLLOWING ACCIDENT." RCW 46.29.250 through 46.29.600 shall be captioned "PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE." RCW 46.29.610 through 46.29.620 shall be captioned "VIOLATIONS OF THIS CHAPTER." RCW 46.29.630 through 46.29.640 shall be captioned "MISCELLANEOUS PROVISIONS RELATING TO FINANCIAL RESPONSIBILITY." Such captions and subsection headings, as used in this chapter, do not constitute any part of the law. [1963 c 169 § 67.]

**RCW 46.29.910 Severability—1963 c 169.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1963 c 169 § 68.]

*Reviser's note:* Chapter 169, Laws of 1963 also amended RCW 46.52.130 and 46.52.140.

**RCW 46.29.920 Repeals and saving.** Sections 46.24.010 through 46.24.910 and sections 46.28.010 through 46.28.200, chapter 12, Laws of 1961 and RCW 46.24.010 through 46.24.910 and RCW 46.28.010 through 46.28.200 are each repealed.

Such repeals shall not be construed as affecting any existing right acquired under the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder. [1963 c 169 § 69.]

# ILLINOIS LEGISLATIVE COUNCIL

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## NO-FAULT MOTOR VEHICLE INSURANCE

### Summary

No-fault motor vehicle insurance is protection policyholders receive from their own insurance companies to compensate them for economic loss suffered as a result of motor vehicle accidents, regardless of the policyholders' fault in the accident. There are no-fault motor vehicle insurance laws in 23 states.

No-fault motor vehicle insurance coverages extend to the named insured, the insured's family, authorized occupants of the insured vehicle, and, except in Texas and Virginia, pedestrians struck by the insured motor vehicle. In 16 states all registered vehicles are required to carry no-fault insurance; 3 other states require only passenger motor vehicles to carry no-fault insurance. Many no-fault insurance states also limit coverage to accidents occurring in a specific territorial area. For example, pedestrians injured outside the state in which the insured vehicle is registered are not insured under the no-fault coverage of the vehicle.

No-fault motor vehicle insurance programs provide benefits to cover medical expenses, lost wages, expenses incurred in replacing household services provided by the injured beneficiary (except in Virginia), and survivors' benefits (in most of the states). These benefits are generally subject to various types of limits. Only Delaware requires motor vehicles to carry no-fault insurance that provides benefits to cover property damage.

There are other aspects of no-fault motor vehicle insurance prevalent in many no-fault plans.

-- Besides the minimum no-fault motor vehicle insurance benefits that each state requires, optional insurance coverage providing for additional benefits and deductibles often must be offered.

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- Benefits can often be reduced by collateral sources, such as workers' compensation benefits.
- Benefit payments must be made by an insurer within 30 days of notification of an expense.
- The right of a no-fault beneficiary to bring a lawsuit is limited in 15 states.
- Mandatory arbitration for certain types of disputes relating to no-fault insurance is imposed in 7 states.
- Subrogation and reimbursement of insurers is allowed.

The Illinois Supreme Court has held that a 1971 Illinois no-fault law violated the Illinois Constitution. The court stated that the law constituted special legislation because it applied to passenger automobiles only, and that mandatory arbitration violates the right to trial by jury and the prohibition against fee officers in the judicial system. Currently, bills to provide for no-fault automobile insurance are on the House Insurance Committee Interim Study Calendar and in the House Rules Committee.

Proponents of no-fault motor vehicle insurance attack the concept of negligence as applied to motor vehicle accidents. They argue that motor vehicle accident cases clog the court system and cost much more than they would under a no-fault system. A 1977 U.S. Department of Transportation study of existing systems concluded that "no-fault automobile insurance works."

Opponents of no-fault motor vehicle insurance argue that elimination of the fault system of recovery is a retrogression to the early common law notion of absolute liability, which was abandoned by the courts in the 19th century. They object to the deduction of collateral benefits under no-fault insurance laws from recovery, arguing that these collateral benefits rightfully belong to the beneficiary.

*Robert J. Welz*

Robert J. Welz  
Staff Attorney

RJW:lam

## NO-FAULT MOTOR VEHICLE INSURANCE

Contents

	<u>Page</u>
The "No-Fault" Insurance Concept . . . . .	4
No-Fault Motor Vehicle Insurance in Other States . .	4
No-Fault Coverage . . . . .	5
Persons Covered . . . . .	5
Vehicles Covered . . . . .	6
Territorial Coverage . . . . .	6
No-Fault Benefits . . . . .	7
Total Benefits . . . . .	8
Benefits for Medical Expenses . . . . .	8
Lost Wages . . . . .	10
Substituted Services . . . . .	12
Benefits for Survivors . . . . .	14
Property Damage . . . . .	16
Optional Benefits . . . . .	16
Treatment of Collateral Sources . . . . .	16
Payment of Claims . . . . .	17
Late Payments . . . . .	17
Tort Limitations . . . . .	17
Arbitration . . . . .	18
Subrogation and Reimbursement Provisions . . . . .	18
No-Fault Insurance Bills Introduced in Illinois . . .	19
Current Illinois Legislation . . . . .	20
Policy Questions . . . . .	22
1977 U.S. Department of Transportation Study . .	22
Public Opinion . . . . .	24
Notes . . . . .	24

Appendix

A. Major Provisions of 23 State No-Fault Motor Vehicle Insurance Systems and Three Illinois Bills . . . . .	A-1
B. Statutory Limitations on Tort Liability in 23 States . . . . .	B-1
C. 1974 Public Opinion Report . . . . .	C-1

The "No-Fault" Insurance Concept

Discontent with the system of assessing financial responsibility for the injuries resulting from automobile accidents on the basis of negligence reached such proportions during the 1970's that more than 100 "no-fault" automobile insurance proposals competed for adoption as public policy. These plans are called "no-fault" because they all embody in varying degrees the principle that bodily injury and property damage claims arising from motor vehicle accidents should be settled in the same way as collision and medical payments claims, that is, without regard to the negligence of the drivers and other parties involved. In short, they would extend direct or "first party" insurance to areas where "third party" insurance, protection against legal liability determined according to tort law rules, has long prevailed.

No-Fault Motor Vehicle Insurance in Other States

Twenty-five states enacted no-fault motor vehicle insurance legislation between 1970 and 1976. An Illinois no-fault insurance law was passed in 1971, but the Illinois Supreme Court held the law unconstitutional in 1972. Since 1976 no additional states have adopted no-fault insurance; and one state, Nevada, repealed its law.<sup>1</sup> In 20 of the 23 states motor vehicle insurance coverage is compulsory.<sup>2</sup>

<u>State</u>	<u>Year effec- tive</u>	<u>compul- sory</u>	<u>State</u>	<u>Year effec- tive</u>	<u>compul- sory</u>
Arkansas	1974	No	Massachusetts	1971	Yes
Colorado	1974	Yes	Michigan	1973	Yes
Connecticut	1973	Yes	Minnesota	1975	Yes
Delaware	1972	Yes	New Jersey	1972	Yes
Florida	1972	Yes	New York	1974	Yes
Georgia	1975	Yes	North Dakota	1976	Yes
Hawaii	1974	Yes	Oregon	1972	Yes
Kansas	1974	Yes	Pennsylvania	1975	Yes
Kentucky	1975	Yes	South Carolina	1974	Yes
Maryland	1973	Yes	South Dakota	1972	No
			Texas	1973	Yes
			Utah	1974	Yes
			Virginia	1973	No

Details of the provisions of the laws in these states and of three proposals pending in Illinois are summarized in Appendix A.

### No-Fault Coverage

The "faults" from which the new developments would largely absolve the motoring public are those of simple negligence or carelessness. The rationale for this is the theory that the negligence concept is difficult to apply with even-handed justice under modern driving conditions. However, there are exceptions for those who injure themselves and others intentionally or in the course of acting illegally or criminally.

Persons Covered. All no-fault motor vehicle insurance laws with some exceptions, require the insurer to pay for the economic loss of:

- the named insured;
- the insured's household family members;
- authorized occupants and operators of the insured's motor vehicle; and
- pedestrians struck by the insured's motor vehicle.

In Texas and Virginia the no-fault insurance law does not require the insurer to provide coverage to pedestrians struck by insured's motor vehicle.

In some states, insurers may refuse to provide benefits to individuals who are injured under the following circumstances.

People who intentionally caused the injury may be denied benefits in 15 states.

Arkansas	Massachusetts	Oregon
Florida	Minnesota	Pennsylvania
Kansas	New Jersey	South Carolina
Kentucky	New York	Texas
Maryland	North Dakota	Utah

People injured while in a known stolen vehicle or in a vehicle without the owner's consent may be denied benefits in 11 states.

Georgia	Michigan	Pennsylvania
Kansas	Minnesota	South Carolina
Kentucky	New York	Utah
Maryland	North Dakota	

People committing a crime or fleeing arrest at the time of injury may be denied benefits in 10 states.

Arkansas	Massachusetts	South Carolina
Florida	New Jersey	Texas
Hawaii	New York	Utah
Maryland		

People injured while competing in a race may be denied benefits in 4 states.

Minnesota	North Dakota	Oregon
New York		

People who were intoxicated at the time of the accident may be denied benefits in 3 states.

Florida	Massachusetts	New York
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In Georgia, people injured by a war, insurrection, or nuclear bomb may be denied benefits.

Vehicles Covered. Sixteen states have made no-fault insurance coverage mandatory for all registered motor vehicles, except that some states exempt motorcycles, mopeds, and primarily off-road vehicles from the mandatory coverage.

Colorado	Kentucky	New Jersey
Delaware	Maryland	New York
Florida	Massachusetts	North Dakota
Georgia	Michigan	Pennsylvania
Hawaii	Minnesota	Utah
Kansas		

Three states, Connecticut, Oregon, and South Carolina, require only pasenger motor vehicles to have no-fault insurance coverage.

Territorial Coverage. No-fault motor vehicle insurance coverage is often made madatory for accidents occurring in certain geographical areas. In Kansas and Florida, the insured and the insured's family must be covered for accidents in the United States and Canada; while in 8 other states the insured, insured's family, and occupants of insured's motor vehicle must be covered for accidents in the United States and Canada.

Connecticut	Kansas	Minnesota
Delaware	Kentucky	North Dakota
Georgia	Michigan	

Colorado, Kansas, New York, and Florida do not require no-fault coverage for pedestrians struck by the insured's vehicle or occupants of insured's vehicle injured outside of the state, unless the occupant is the insured or a member of insured's family. Nine additional states do not require coverage of pedestrians struck by insured's vehicle outside the state.

Connecticut	Hawaii	Michigan
Delaware	Kansas	Minnesota
Georgia	Kentucky	North Dakota

Utah limits no-fault coverage to motor vehicle accidents occurring in Utah.

#### No-Fault Benefits

All no-fault motor vehicle insurance laws mandate benefits covering medical expenses incurred and wages lost because of motor vehicle accidents. All states except Virginia require benefits for expenses for the cost of household services formerly provided by the injured beneficiaries. Certain types of expenses incurred by the deceased's heirs are also covered, such as funeral expenses. Only Delaware requires motor vehicle owners to carry no-fault insurance covering property damage.

Every state with a no-fault motor vehicle insurance program limits the amount of benefits recoverable by a beneficiary. Some limit the amount of benefits recoverable for specific types of expenses; others limit benefits recoverable for both total expenses and certain specific expenses.

The states with limits on total benefits have set dollar ceilings. Medical benefits are generally limited to a certain dollar amount; however, percentage limits and time limits are also used. Wage loss benefit limits consist of a combination of dollar limits, time limits, and percentage limits. Other types of specific benefits are generally subject to dollar limits and time limits.

Total Benefits. The amount of total benefits that an injured beneficiary may recover is not limited in 10 states.

Arkansas	New Jersey	South Dakota
Colorado	Oregon	Utah
Kansas	Pennsylvania	Virginia
Michigan		

In seven of these states benefits for specific expenses are limited as to the dollar amounts that can be collected: Arkansas, Colorado, Kansas, Oregon, South Dakota, Utah, and Virginia.

In Michigan, New Jersey, and Pennsylvania, benefits for lost wages and substituted services are limited as to the dollar amount that can be collected, while the amount of benefits for medical expenses is not limited.

The 13 remaining states with no-fault insurance provisions limit the amount of total benefits that beneficiaries can collect. These limits range from \$1,000 per person in South Carolina to \$50,000 per person in New York.

<u>State</u>	<u>Limit on total benefits (per person)</u>
Connecticut	\$ 5,000
Delaware	10,000; \$20,000 (per accident)
Florida	10,000
Georgia	5,000
Hawaii	15,000
Kentucky	10,000
Maryland	2,500
Massachusetts	2,000
Minnesota	30,000
New York	50,000
North Dakota	15,000
South Carolina	1,000
Texas	2,500

Benefits for Medical Expenses. A common feature of all no-fault insurance laws is the compensation of motor vehicle accident victims without regard to fault for medical expenses, which generally include medical, surgical, dental, nursing, hospital, ambulance, prosthetic, and rehabilitative expenses. The amount of benefits covering medical expenses is not limited as to the dollar amount in 12 states; however, in Florida,

only 80 percent of medical expenses need to be compensated and in New York, benefits are limited to expenses incurred or which are foreseeable within 1 year of the accident. In the remaining states except Michigan, New Jersey, and Pennsylvania, total benefits are limited and the amount of medical benefits may not exceed the limit on total benefits.

No Dollar Limits on Medical Benefits

<u>State</u>	<u>Limit on total benefits (per person)</u>	<u>Limit on medical benefits</u>
Connecticut	\$ 5,000	None
Delaware	\$10,000 \$20,000 (per accident)	None
Florida	\$10,000	80% of expenses
Hawaii	\$15,000	None
Maryland	\$ 2,500	None
Massachusetts	\$ 2,000	None
Michigan	None	None
New Jersey	None	None
New York	\$50,000	1 year
North Dakota	\$15,000	None
Pennsylvania	None	None
South Carolina	\$ 1,000	None

In the remaining 11 no-fault insurance states, dollar limits have been placed on the amount of benefits an individual can collect for medical expenses. The limits range from \$1,000 in Kentucky to \$25,000 in Colorado. Colorado also provides an additional amount, not to exceed \$25,000, to cover physical rehabilitation expenses incurred within 5 years of the accident.

Dollar Limits on Medical Benefits

<u>State</u>	<u>Limit on total benefits (per person)</u>	<u>Limit on medical benefits (per person)</u>
Arkansas	None	\$ 5,000
Colorado	None	\$25,000 for med. exp.; \$25,000 for rehab. exp.
Georgia	\$ 5,000	\$ 2,500
Kansas	None	\$ 2,000 for med. exp.; \$2,000 for rehab. exp.
Kentucky	\$10,000	\$ 1,000
Minnesota	\$30,000	\$20,000
Oregon	None	\$ 5,000
South Dakota	None	\$ 2,000
Texas	\$ 2,500	\$ 2,500
Utah	None	\$ 2,000
Virginia	None	\$ 2,000

Lost Wages. Injuries sustained as the result of a motor vehicle accident often result in the loss of wages for the injured person. All no-fault motor vehicle insurance states provide for the reimbursement of lost wages. Maryland, South Carolina, and Texas do not place limits on the amount that the injured person can collect. The remaining states place some sort of limit on the amount of benefits that the injured person can collect. These states impose percentage limits, dollar limits, time limits, or a combination of these on the collection of benefits to cover lost wages. Delaware, on the other hand, limits benefits for lost wages to an amount equivalent to the injured person's net wages. A summary of limits on benefits for lost wages follows.

<u>State</u>	<u>Limit on total benefits (per person)</u>	<u>Limit on benefits for lost wages (per person)</u>
Arkansas	None	70% of wages up to \$125/wk. for 1 yr.
Colorado	None	Up to \$125/wk. for 1 yr.
Connecticut	\$ 5,000	85% of wages up to \$200/wk.
Delaware	\$10,000 \$20,000 (per accident)	None--can recover net wages
Florida	\$10,000	60% of wages
Georgia	\$ 5,000	85% of wages up to \$200/wk.
Hawaii	\$15,000	Up to \$800/mo.
Kansas	None	80% of wages up to \$650/mo. for 1 yr.
Kentucky	\$10,000	Up to \$200/wk.
Maryland	\$ 2,500	None
Massachusetts	\$ 2,000	75% of wages
Michigan	None	Up to \$2,049/mo. for 3 yrs.
Minnesota	\$30,000	Up to \$200/wk.
New Jersey	None	Up to \$5,200 for 100 wks.
New York	\$50,000	Up to \$1,000/mo.
North Dakota	\$15,000	Up to \$150/wk.
Oregon	None	70% of wages up to \$750/mo. for 1 yr.
Pennsylvania	None	Up to \$1,000/mo. with a total limit of \$15,000
South Carolina	\$ 1,000	None
South Dakota	None	Up to \$60/wk. for 1 yr.
Texas	\$ 2,500	None
Utah	None	85% of wages up to \$150/wk. for 1 yr.
Virginia	None	Up to \$100/wk. for 1 yr.

Substituted Services. When a person is injured in a motor vehicle accident, the person is often unable to perform household services. All no-fault insurance states except Virginia require insurers to provide no-fault benefits to cover the cost of paying a person from outside the household to perform the household services normally provided by the injured beneficiary.

Six no-fault insurance states do not impose limits on the amount of benefits that can be collected to pay for the replacement of household services. The remaining states impose dollar limits, time limits, or a combination of dollar limits and time limits. A summary of limits on benefits for substituted services follows.

State	Limit on total benefits (per person)	Limit on benefits for substituted household services (per person)
Arkansas	None	Up to \$70/wk. for 1 yr.
Colorado	None	Up to \$15/day for 1 yr.
Connecticut	\$ 5,000	85% of the value of services up to \$200/wk.
Delaware	\$10,000 20,000 (per accident)	None
Florida	\$10,000	None
Georgia	\$ 5,000	Up to \$20/day for 24 mos.
Hawaii	\$15,000	Up to \$800/mo.
Kansas	None	Up to \$12/day for 1 yr.
Kentucky	\$10,000	Up to \$200/wk.
Maryland	\$ 2,500	None
Massachusetts	\$ 2,000	None
Michigan	None	Up to \$20/day for 3 yrs.
Minnesota	\$30,000	Up to \$15/day
New Jersey	None	Up to \$12/day; up to a total of \$4,380
New York	\$50,000	Up to \$25/day for 1 yr.
North Dakota	\$15,000	Up to \$150/wk.
Oregon	None	Up to \$18/day for 1 yr.
Pennsylvania	None	Up to \$25/day for 1 yr.
South Dakota	None	Up to \$30/wk. for 1 yr.
Texas	\$ 2,500	None
Utah	None	Up to \$12/day for 1 yr.
Virginia	None	No coverage

Benefits for Survivors. Nineteen of the 23 no-fault insurance states require benefits for the survivors of deceased motor vehicle accident victims. Insurers in 6 of these states must give survivors lump sum payments ranging from \$1,000 in Colorado to \$10,000 in South Dakota. The remaining 13 states provide the survivor with benefits to replace lost wages and household services that the deceased would have rendered to the survivors. Generally, the amount that can be collected by a survivor is subject to the same or similar dollar and time limits imposed on lost wages and replacement services benefits that can be collected by injured beneficiaries.

Payment specifically for burial expenses is provided in 19 states. Five of these 19 states do not impose any limits on the amount of benefits that can be used to cover burial expenses. The remaining 14 states have limits ranging from \$1,000 in 8 states to \$2,000 in Connecticut and Delaware. A summary of burial expenses and survivors' benefits follows.

<u>State</u>	<u>Benefits for burial expenses (per person)</u>	<u>Survivors' benefits (per person)</u>
Arkansas	None <sup>1/</sup>	\$5,000
Colorado	None <sup>1/</sup>	\$1,000
Connecticut	\$2,000	up to \$200/wk.
Delaware	\$2,000	None
Florida	\$1,750	None
Georgia	\$1,500	Lost wages and substituted household services
Hawaii	\$1,500	Lost wages and substituted household services
Kansas	\$1,000	Lost wages and substituted household services
Kentucky	\$1,000	Lost wages and substituted household services
Maryland	<sup>2/</sup>	Lost wages and substituted household services

<u>State</u>	<u>Benefits for burial expenses (per person)</u>	<u>Survivors' benefits (per person)</u>
Massachusetts	<u>2/</u>	Lost wages and substituted household services
Michigan	\$1,000	Lost wages and household services up to \$1,475 for 3 yrs.
Minnesota	\$1,250	Up to \$200/wk. for lost wages; up to \$200/wk. for household services
New Jersey	\$1,000	Whatever decedent could have collected
New York	None <sup>1/</sup>	\$2,000
North Dakota	\$1,000	Lost wages and substituted household services
Oregon	\$1,000	None
Pennsylvania	\$1,500	Lost wages and household services up to \$5,000
South Carolina	<u>2/</u>	None
South Dakota	None <sup>1/</sup>	\$10,000
Texas	<u>2/</u>	Lost wages and substituted household services
Utah	\$1,000	\$2,000
Virginia	<u>2/</u>	\$2,000 for expenses incurred within 1 yr. of death

1/ Lump-sum survivors' benefits provided instead.

2/ No limits are placed on funeral expenses, but such expenses may not exceed limits on total benefits.

Property Damage. Only Delaware requires motor vehicle owners to maintain no-fault insurance benefits covering expenses related to property damages. These benefits cover property damage other than damage to vehicles, trailers, boats, and like objects and are limited to \$5,000 for all property damage incurred in one accident.

Seven states require all no-fault insurers to offer insurance coverage with benefits to cover property damage, including damage to motor vehicles.

Colorado	Maryland	Pennsylvania
Georgia	Massachusetts	South Carolina
Hawaii		

In Colorado benefits can be collected if the accident occurs in the United States, Canada, or Mexico. In South Carolina benefits for property damage are subject to a \$200 deductible.

Optional Benefits. No-fault insurance states often require insurers to offer motor vehicle owners additional benefits or benefits subject to deductibles. For example, Colorado no-fault insurers must give motor vehicle owners the option of purchasing no-fault insurance that provides total benefits of \$100,000. Florida no-fault insurers must offer motor vehicle owners the option of purchasing no-fault insurance with up to a \$2,000 deductible to be assessed against the maximum benefits recoverable of \$10,000.

#### Treatment of Collateral Sources

The amount of no-fault benefits can be reduced by the amount of various collateral sources of benefits available to beneficiaries in 18 of the 23 no-fault insurance states:

Colorado	Kentucky	New York
Connecticut	Maryland	North Dakota
Florida	Massachusetts	Oregon
Georgia	Michigan	Pennsylvania
Hawaii	Minnesota	South Carolina
Kansas	New Jersey	Utah

In Michigan, benefits can be reduced by the amount of state and federal benefits that the beneficiary receives. Benefits can be reduced by the amount of workers' compensation benefits that the beneficiary receives in the 17 other states. Other collateral sources that can be used to reduce no-fault benefits

include various social security benefits, military benefits, and other governmental benefits.

### Payments of Claims

Payment procedures are specified in 20 states.

Arkansas	Kansas	New York
Colorado	Kentucky	North Dakota
Connecticut	Maryland	Oregon
Florida	Massachusetts	Pennsylvania
Georgia	Michigan	South Carolina
Hawaii	Minnesota	Texas
	New Jersey	Utah

Insurers must make payment of claims within a specified period of time after notice of the claim is received, unless the insurer, in good faith, challenges the claim. Oregon requires insurers to make "prompt" payments. In Connecticut, payments are late if not paid to the beneficiary within 15 working days of the claim.<sup>3</sup> In Utah, payments are late if not paid within 35 days of the claim. In the remaining 17 states, claims are late if they are not paid within 30 days of the claim, except that benefits for lost wages are late in Kansas if not paid within 2 weeks of the claim.

Late Payments. Interest rates or penalties on late payments by insurers are imposed by 14 states. Rates range from 10 percent in New Jersey to up to 25 percent in Georgia. Also, if payments are over 60 days late in Georgia, a beneficiary who sues the insurer can collect additional punitive damages if the insurer withheld payment in bad faith.

<u>State</u>	<u>Annual interest rate</u>	<u>State</u>	<u>Annual interest rate</u>
Connecticut	12%	Minnesota	15%
Florida	10	New Jersey	10
Georgia	up to 25	New York	24
Hawaii	18	North Dakota	18
Kansas	18	Pennsylvania	18
Maryland	18	Texas	12
Michigan	12	Utah	18

### Tort Limitations

The ability of a no-fault insurer to bring a tort action to recover for economic losses and noneconomic losses (pain and suffering) is limited in 15 states:

Colorado	Kansas	New Jersey
Connecticut	Kentucky	New York
Florida	Massachusetts	North Dakota
Georgia	Michigan	Pennsylvania
Hawaii	Minnesota	Utah

Generally, economic losses cannot be recovered in a tort action unless no-fault benefits, including the addition of deductibles, would be insufficient to cover economic losses arising from the accident. A no-fault beneficiary cannot bring a tort action to recover noneconomic loss unless the beneficiary suffers a serious injury or death. (See Appendix B.)

### Arbitration

Some insurance states provide for permissive, and sometimes mandatory, arbitration. Only 7 states have some form of mandatory arbitration:

Colorado	Massachusetts	New York
Delaware	Minnesota	Utah
Georgia		

All of these states, except Georgia, impose mandatory arbitration of disputes between insurers. In Colorado and New York, disputes between an insurer and a beneficiary must be arbitrated if the beneficiary requests arbitration. In Georgia, disputes between an insurer and a beneficiary must be arbitrated if either party requests arbitration.

### Subrogation and Reimbursement Provisions

In situations where the party collecting no-fault benefits also has some other legal claim, the no-fault insurer that pays the benefits often has the right to be subrogated to the claim or reimbursed in an amount equal to benefits received. When an insurer is subrogated to a beneficiary's legal claim, the insurer is placed in the same legal position as the insured beneficiary. Thus, if the insured has a right to bring a lawsuit against a person or has a right to workers' compensation benefits, the insurer also has a right, because of subrogation, to bring the lawsuit or collect the compensation benefits in the name of the insured beneficiary for the benefit of the insurer.

In Connecticut, Delaware, Hawaii, Massachusetts, New Jersey, and South Carolina, a no-fault insurer is subrogated to all the legal rights or claims of the no-fault beneficiary. However, in Hawaii the insurer is subrogated to the beneficiary's right to collect for liability in an amount equal to 50 percent of no-fault benefits paid. In South Carolina, an insurer is subrogated only if the beneficiary agrees to the subrogation in writing after the insurer provides the beneficiary with written notice of the beneficiary's right to deny the insurer of all rights to subrogation.

Kansas and Kentucky provide that the insurer is subrogated to the right of the beneficiary to bring a tort action. In Kansas, the insurer has only a right to collect judgment benefits and no right to bring a tort action in the name of the beneficiary until 18 months after the right to bring the lawsuit accrues, at which time the insurer receives the right to bring the lawsuit. Florida, Georgia, Minnesota, New York, and North Dakota provide that an insurer is subrogated to the beneficiary's right to bring a tort action but only if one of the vehicles involved in the accident is a commercial or large vehicle.<sup>4</sup>

Arkansas and Michigan require reimbursement of an insurer from tort liability benefits to the extent of benefits paid; Oregon and Utah require reimbursement of no-fault insurers by liability insurers; and Pennsylvania requires reimbursement from all sources. In Maryland and Texas insurers do not have a right of subrogation.

#### No-Fault Insurance Bills Introduced in Illinois

Illinois passed a no-fault insurance law in 1971, effective January 1, 1972.<sup>5</sup> On April 17, 1972 the Illinois Supreme Court held the law unconstitutional.<sup>6</sup> It was repealed in 1975.

The 1972 Illinois no-fault law required all passenger automobile motorists owning five or fewer automobiles to maintain no-fault insurance coverage that would provide benefits to (1) the insured; (2) members of the insured's household family; (3) occupants and drivers of insured's automobile; and (4) pedestrians struck by the automobile.

The law required reimbursement of (1) medical, hospital, and funeral expenses up to \$2,000; (2) 85 percent of lost income, up to \$150 a week for 1 year;

(3) lost household services provided by the injured party to the household, up to \$12 a day for 260 weeks; and survivors' benefits to replace lost income and household services. It did not provide for no-fault insurance benefits for property damage.

Under the Illinois no-fault law, insurers were exempted from paying any no-fault insurance benefits to insured and other individuals covered by the policy when, at the time of the accident, the beneficiary (1) intentionally caused the injury; (2) was operating the automobile while under the influence of liquor or drugs; (3) was operating the automobile without a license or with a suspended license; (4) was operating the automobile in a race for a wager or bet; (5) was eluding arrest; (6) was operating or occupying a known stolen automobile; (7) was committing a felony; or (8) was committing some other act, for which the director of the Department of Insurance had promulgated an exclusion.

The 1972 law did not prevent a person from bringing a tort action but did limit the amount recoverable for noneconomic loss to 50 percent of medical treatment expenses, up to \$500, and the total amount of medical expenses over \$500. It also provided for mandatory arbitration in actions in which the amount in controversy did not exceed \$3,000.

On April 17, 1972, less than 5 months after the no-fault law went into effect, the Illinois Supreme Court held it unconstitutional.<sup>7</sup> The court stated that (1) the law constituted invalid special legislation because it applied to owners of private passenger automobiles only; and (2) the mandatory arbitration provision violated the constitutional right to a trial by jury and the constitutional provision prohibiting fee officers in the judicial system.

#### Current Illinois Legislation

Three bills proposing no-fault motor vehicle insurance have been introduced in the 82nd General Assembly. House Bills 332 (Bradley et al.) and 2478 (Yourell) would require all motor vehicle owners, except motorcycle owners, to have no-fault motor vehicle insurance. House Bill 2573 (Van Duyne et al.) would require owners of passenger vehicles for 10 or fewer people except motorcycles and mopeds to have no-fault motor vehicle insurance. House Bill 332 was introduced on February 24, 1981 and was assigned to the House Insurance Committee on February 26. The bill is now on the House Insurance Committee Interim Study Calendar.

House Bill 2478 was introduced on April 1, 1982 and was assigned to the House Rules Committee. House Bill 2573 was introduced on April 13, 1982 and was assigned to the House Rules Committee.

House Bills 332 and 2478 would require an insurer to pay the following benefits to motor vehicle accident victims regardless of fault:

- medical expenses not to exceed \$25,000;
- 85 percent of lost income for 3 years;
- replacement service expenses (to replace services provided by the victim to the household) not to exceed \$20 a day for 3 years; and
- death benefits to the victim's estate not to exceed \$1,500.

House Bill 2478 would also require benefits for property damage in the amount of \$5,000.

House Bill 2573 would require insurers to pay medical expenses, 75 percent of lost wages, and substituted household service expenses incurred within 2 years of the accident regardless of fault. Insurers could limit total benefits covering these expenses to a \$10,000 maximum.

Under H.B. 332 and H.B. 2478, accident victims, eligible for no-fault benefits, would be prohibited from bringing a tort action:

- to the extent that the no-fault benefits covered expenses; and
- for noneconomic loss unless death, "serious and irreparable permanent disfigurement," or "serious and permanent injury," occurred.

Motor vehicle accident victims who intentionally cause the accident would be denied benefits under all three proposals. Under H.B. 332 and H.B. 2478 benefits could be denied to a victim who voluntarily occupied a known stolen vehicle. House Bill 332 states that an insurer does not have to provide benefits to a person in a vehicle with three or fewer load bearing wheels; H.B. 2573 states that benefits are not available for accident victims who contributed to the accident by operating a vehicle under the influence of alcohol or marijuana.

Policy Questions<sup>8</sup>

Proponents of no-fault motor vehicle insurance attack the concept of negligence as applied to motor vehicle accidents. They discount the moral value of the negligence concept in automobile accidents; the idea that awareness on the part of a driver that he will be penalized for carelessness will improve his driving habits. They point out that the negligent driver can insure himself against these consequences now and add that it is unlikely that anyone would be induced under a no-fault system to operate a motor vehicle so carelessly as to risk serious injury or death by knowing that expenses will be compensated.

Proponents further argue that motor vehicle negligence cases clog the court system; that small "nuisance value" personal injury claims are overcompensated, while meritorious claims based on serious injuries are undercompensated; and that third party liability insurance, because of legal fees, court costs, and other expenses, delivers no more than 45 cents of compensation for every premium dollar. They contend that no-fault insurance would mitigate all these shortcomings.

The opponents of no-fault insurance argue that the elimination of the rule that liability should follow negligence would in their view be a retrogression to the early common law notion of absolute liability, which the courts abandoned for the fault system in the 19th century. Under a system of absolute liability, parties are held liable or accountable whether or not they were at fault for the occurrence.

Restrictions of the right to sue for pain and suffering have also aroused opposition. Opponents of no-fault insurance claim that the flexibility of the courts allows judges and juries to "tailor justice to each individual case" while the no-fault system awards benefits on a "rigid structured, objective basis."

Other objections center on the treatment of collateral sources of recovery. It is argued that the deduction of collateral source benefits from recoveries under the no-fault policies will deprive accident victims of additional protection that rightfully belongs to them.

1977 U.S. Department of Transportation Study

In 1977 the U.S. Department of Transportation conducted a study of the existing no-fault systems, including a summary of studies done by individual states.<sup>9</sup>

Major conclusions of the report are as follows.

- All known evidence indicates that state no-fault plans, in varying degrees, provide more adequate and equitable benefits than the tort liability system.
- The goal of providing more prompt payment of economic loss appears to be achieved under the no-fault system.
- The effective coordination of benefits from various compensation systems affects the potential for savings in all such systems.
- The increase in the number of first-party, no-fault claims reflects a clear shift from inefficient third-party benefits towards more efficient first-party benefits. Although the quantitative evidence is meager, being reflected chiefly in the relative reduction in claims personnel, this would appear to indicate that cost efficiency has improved with no-fault.
- Available evidence indicates that the burden on the courts and the legal system is being reduced.
- Depending on the trade off between cost saving features and higher economic loss benefits, any particular no-fault plan can result in higher premiums, lower premiums, or no change at all. Benefit maximizing no-fault plans must be accompanied by strong cost saving features if insurance prices are to be held in check.

The report concluded:

In summary, State experience with no-fault automobile insurance would appear to confirm the basic soundness of the theory and the feasibility of the theory's implementation. No-fault plans of sharply varying objectives and character are widely seen as successes. No problem has arisen in the implementation of no-fault for which there does not appear to be a readily available and feasible solution, given the political will to make the necessary change. No-fault automobile insurance works.

## Public Opinion

A majority of people apparently favors the implementation of a no-fault insurance system, according to a 1974 public opinion study, conducted by Louis Harris and Associates and the Insurance Department, Wharton School, University of Pennsylvania. According to the authors of the study:

Public opinion apparently favors the concept of no fault insurance by 50 to 60%, with about 25% opposed. While this may seem to be a clear endorsement, there is evidence that the public wants it both ways. Nearly half (49%) of those surveyed, would reserve the right for accident victims to sue those responsible for amounts in excess of financial loss in order "to compensate them for the pain and suffering they have endured."<sup>10</sup>

For a more complete breakdown of the results, see Appendix C.

## Notes

1. The law was repealed, effective January 1, 1980, because of strong opposition from various interest groups.

2. The source of information for the section concerning the no-fault insurance laws of states other than Illinois is Commerce Clearing House, Inc., Automobile Law Reporter (looseleaf to date), par. 1935-1987C.

3. Insurers in Connecticut may accumulate payments of less than \$100 for up to 30 days.

4. Florida (one of the vehicles involved must be a commercial vehicle); Minnesota (one of the vehicles involved must be a commercial vehicle that weighs in excess of 5,500 pounds when empty); Georgia, New York, North Dakota (one of the vehicles must weigh in excess of 6,500 pounds when empty).

5. P.A. 77-1430.

6. *Grace v. Howlett*, 51 Ill. 2d 478, 283 N.E.2d 474 (1972).

7. Same as note 6.

8. The sources for this section are: Collins, James, "A Short Course on No-Fault's Faults," *Trial*, Mar. 1979, pp. 44-46; Gillespie, Paul and Miriam Klipper, No-Fault: What You Save, Gain, and Lose With the New Auto Insurance (1972); O'Connell, Jeffrey, "Operation of No-Fault Auto Laws: A Survey of the Surveys," *Insurance Law Journal*, p. 152, Mar. 1977;

O'Connell, Jeffrey, and Janet Beck, "An Update of the Survey on the Operation of No-Fault Auto Laws," Insurance Law Journal, p. 129, Mar. 1979.

9. U.S. Department of Transportation, "State No-Fault Automobile Insurance Experience, 1971-1977," June 1977.

10. Louis Harris and Associates and the Department of Insurance, the Wharton School, University of Pennsylvania, Sentry Insurance National Opinion Study: A Profile of Consumer Attitudes Toward Auto and Homeowner's Insurance, p. 67 (January, 1974).

## Appendix A

## Major Provisions of 23 State No-fault Motor Vehicle Insurance Systems and Three Illinois Bills

States <sup>1/</sup>	Compulsory	Total benefits	Benefits for medical expenses	Lost income benefits	Replacement service benefits	Benefits for burial expenses	Survivors' benefits
Arkansas	No	No limit	Limited to \$5,000	70% of income not to exceed \$125/week	up to \$70 per week	None <sup>2/</sup>	\$5,000
Colorado	Yes	No limit	\$25,000 limit add. \$25,000 allowed for rehab.	\$125/week limit	\$15/week limit	None <sup>2/</sup>	\$1,000
Connecticut	Yes	\$5,000 limit (includes funeral limited to \$2,000)	No limit	85% of income up to \$200/week	85% of value of service NTE \$200/wk	\$2,000	up to \$200/wk
Delaware	Yes	\$10,000 limit/person \$20,000 limit/accident	No limit	No limit	No limit	\$2,000	None
Florida	Yes	\$10,000 limit	80% of expenses	60%	No limit	\$1,750	None
Georgia	Yes	\$5,000 limit	\$2,500 limit	85% of income up to \$200/week	\$20/day limit	\$1,500	*
Hawaii	Yes	\$15,000 limit	No limit	\$800/month limit	\$800/month limit	\$1,500	*
Illinois		No limit	\$25,000 limit	85% of lost income for 3 years	up to \$20/day for 3 years	None <sup>2/</sup>	\$1,500
1981 H.B. 332	Yes					None <sup>2/</sup>	\$1,500
1982 H.B. 2478	Yes					None <sup>2/</sup>	\$1,500
1982 H.B. 2573	Yes	\$10,000 limit	No limit	75% of income for 2 years	All expenses for 2 years	No limit	None mentioned

Appendix A (cont'd)

<u>States<sup>1/</sup></u>	<u>Compulsory</u>	<u>Total benefits</u>	<u>Benefits for medical expenses</u>	<u>Lost income benefits</u>	<u>Replacement service benefits</u>	<u>Benefits for burial expenses</u>	<u>Survivors' benefits</u>
Kansas	Yes	No limit	\$2,000 limit \$2,000 limit for rehab.	80% of income up to \$650/month	\$12/day limit	\$1,000	•
Kentucky	Yes	\$10,000 limit	\$1,000 limit	\$200/week limit	\$200/week limit	\$1,000	•
Maryland	Yes	\$2,500 limit (includes funeral)	No limit	No limit	No limit	Benefits provided <sup>2/</sup>	•
Massachusetts	Yes	\$2,000 limit (includes funeral)	No limit	75% of income	No limit	Benefits provided <sup>2/</sup>	•
Michigan <sup>4/</sup>	Yes	No limit	No limit	\$2,049/month limit	\$20/day limit	\$1,000	for lost income and household services up to \$1,475 for 3 years
Minnesota	Yes	\$30,000 limit	\$20,000 limit	\$200/week limit	\$15/day limit	\$1,250	up to \$200/wk for lost income and up to \$200/wk for household services
New Jersey	Yes	No limit	No limit	\$5,200 limit for 100 weeks	\$4,380 limit \$12/day	\$1,000	Whatever decendent could have collected
New York	Yes	\$50,000 limit	No limit	\$1,000/month limit	\$25/day limit	None <sup>2/</sup>	\$2,000
North Dakota	Yes	\$15,000 limit	No limit	\$150/week limit	\$15/day limit	\$1,000	•
Oregon	Yes	No limit	\$5,000 limit	70% of income up to \$750/month	\$18/day limit	\$1,000	None

Appendix A (cont'd)

States <sup>1/</sup>	Compulsory	Total benefits	Benefits for medical expenses	Lost income benefits	Replacement service benefits	Benefits for burial expenses	Survivors' benefits
Pennsylvania	Yes	No limit	No limit	\$1,000/month limit total limit \$15,000	\$25/day limit	\$1,500	for lost income and household services up to \$5,000
South Carolina	Yes	\$1,000 limit (includes funeral)	No limit	No limit	No limit	Benefits provided <sup>2/</sup>	None
South Dakota	No	No limit	\$2,000 limit	\$60/week limit	\$30/week limit	None <sup>2/</sup>	\$10,000
Texas	Yes	\$2,500 limit (includes funeral)	\$2,500 limit	No limit	No limit	Benefits provided <sup>3/</sup>	"
Utah	Yes	No limit	\$2,000 limit	85% of income up to \$150/week	\$12/day limit	\$1,000	\$2,000
Virginia	No	No limit	\$2,000 limit; includes funeral	\$100/week limit	No coverage	Benefits provided <sup>3/</sup>	\$2,000 for expenses incurred within 1 year of death

A-3

Source: Commerce Clearing House, Inc., Automobile Law Reporter (looseleaf to date), par. 1935-1987C.

\* Benefits provided for lost income and substituted household services.

<sup>1/</sup> Benefits are generally limited to expenses incurred within 2 years of the accident; some states have a 3-year limit while some others have a 1-year limit.

<sup>2/</sup> Lump sum survivors' benefits provided instead.

<sup>3/</sup> No limits are placed on funeral expenses, but such expenses may not exceed limits on total benefits.

<sup>4/</sup> Michigan law provides that the maximum rates for work loss benefits should be adjusted annually to reflect changes in the cost of living under administrative rules. The maximums listed are current maximums that were administratively set.

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 Statutory Limitations on Tort Liability in 23 States
 

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State	Type of Limitation
Arkansas	None.
Colorado	Tort action not allowed (1) for economic loss to the extent that no-fault benefits cover the loss; (2) for noneconomic loss unless one of the following occurs: death, dismemberment, permanent disability, permanent disfigurement.
Connecticut	Tort action not allowed unless one of the following occurs: death; permanent injury; fracture of a bone; permanent significant disfigurement; permanent loss of bodily function; expense in excess of \$400.
Delaware	None.
Florida	Tort action not allowed (1) to the extent benefits cover the economic loss; (2) for noneconomic loss unless one of the following occurs: significant or permanent loss of bodily function, permanent injury, significant and permanent disfigurement, or death.
Georgia	Tort action not allowed unless one of the following occurs: expenses exceed benefits; death; fractured bone; permanent disfigurement; dismemberment; permanent loss of bodily function; permanent or partial loss of sight or hearing; injury resulting in medical expenses exceed \$500; injury resulting in disability for 10 or more consecutive days.
Hawaii	Tort action not allowed unless one of the following occurs: death; permanent injury; permanent disfigurement; or medical expenses exceed the no-fault benefits.
Illinois H.B. 332 H.B. 2478	Tort action for economic loss is not allowed if no-fault benefits cover the losses and not allowed for noneconomic loss unless death, serious and irreparable permanent injury, or serious and permanent injury results.

Appendix B (cont'd)

<u>State</u>	<u>Type of Limitation</u>
Illinois H.B. 2573	None.
Kansas	Tort action for noneconomic loss not allowed unless one of the following occurs; medical costs for injury exceed \$500; permanent disfigurement; fracture to a weightbearing bone; compound, comminuted, displaced, or compressed fracture; or permanent loss of bodily function.
Kentucky	Tort action not allowed unless: (1) no-fault benefits do not cover the loss; (2) for noneconomic loss unless one of the following occurs: medical costs exceed \$1,000; permanent disfigurement; fracture to a weightbearing bone; compound, comminuted, displaced, or compressed fracture; permanent injury; permanent loss of bodily function; or death.
Maryland	None.
Massachusetts	Tort action not allowed unless: (1) benefits do not cover the loss; (2) for noneconomic loss unless one of the following occurs: medical and funeral expenses exceed \$500; death; loss of a body part; sight or hearing loss; or fracture.
Michigan	Tort action not allowed unless: (1) for all actions unless one of the following occurs: intentional harm; damages exceed benefits; motor vehicle damages to extent not insured; (2) for noneconomic loss unless one of the following occurs: death; serious impairment of bodily function; or permanent serious disfigurement.
Minnesota	Tort action not allowed unless: (1) benefits do not cover expenses; (2) for noneconomic loss unless one of the following occurs: medical expenses exceed \$4,000, injury results in: permanent disfigurement, permanent injury, death, or disability for 60 days or more.

<u>State</u>	<u>Type of Limitation</u>
New Jersey	Tort liability is not allowed unless one of the following occurs: (1) the injury is to soft tissue of the body and treatment is less than \$200; (2) death; (3) permanent disability; (4) permanent significant disfigurement; or (5) permanent loss of bodily function or body member.
New York	Tort liability is not allowed unless: (1) benefits do not cover expenses; (2) for noneconomic loss unless one of the following occurs: death, dismemberment, significant disfigurement, fracture, or permanent loss of the use of a body organ.
North Dakota	Tort action not allowed: (1) for noneconomic loss unless the injury is serious; (2) for economic loss to the extent no-fault benefits cover the loss.
Oregon	None.
Pennsylvania	Tort liability not allowed unless: (1) motorist is unsecured; (2) action is against a person for repairing or manufacturing a vehicle; (3) intentional injury occurs; (4) the loss is uncompensated by no-fault benefits; (5) for noneconomic loss unless one of the following occurs: death or serious injury, medical costs exceed \$750, medical impairment, cosmetic disfigurement.
South Carolina	None.
South Dakota	None.
Texas	None.
Utah	Tort liability not allowed unless one of the following occurs: (1) death; (2) dismemberment or fracture; (3) permanent disability; (4) permanent disfigurement; or (5) medical expenses exceed \$500.
Virginia	None.

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Source: Commerce Clearing House, Inc., Automobile Law Reporter (looseleaf to date), par. 1935-1987C.

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## Appendix C

## 1974 Public Opinion Report

Attitude Toward All Auto Owners Being Required To  
Purchase Auto Insurance To Cover Their Own  
Personal Injuries

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
Total	66%	22%	12%
Have automobile insurance	67	23	10
Own automobile but no automobile insurance	60	23	17
Under \$5,000	61	20	19
\$ 5,000 to \$9,999	63	20	12
\$10,000 to \$14,999	69	22	9
\$15,000 and over	66	24	10

If Injured In An Automobile Accident And It Were  
The Other Driver's Fault, Would You Be Willing To  
Forego Your Right To Sue Him If Your Insurance  
Company Agreed To Pay All Medical Expenses  
And Wage Losses?

(Base: Own auto insurance = 78%)

	<u>Would Be Willing</u>	<u>Would Not Be Willing</u>	<u>Not Sure</u>
Total	55%	32%	13%
8th grade	41	41	18
High School	56	32	12
College	60	29	11
White	56	32	12
Non-white	51	35	14
Age 18 to 29	62	27	11
Age 30 to 49	54	33	13
Age 50 and over	52	35	13

To a similar question, 57-27 percent of the public said it would favor a state law requiring each auto insurance company to pay its own policyholders "regardless of who is to blame for the accident."

Appendix C (cont'd)

Attitude Toward Law Whereby Each Auto Insurance  
Company Pays Its Own Policyholder Regardless  
Of Who Was To Blame For The Accident

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
Total	57%	27%	16%
Have automobile insurance	59	28	13
Own automobile but no automobile insurance	61	26	13
East	61	24	15
South	49	31	20
Midwest	59	26	15
West	63	25	12
Cities	62	24	14
Suburbs	61	25	14
Towns	49	32	19
Rural	52	30	18
Under \$5,000	50	25	25
\$ 5,000 to \$ 9,999	56	27	17
\$10,000 to \$14,999	61	27	12
\$15,000 and over	61	28	11
Male	62	26	12
Female	49	28	23

Attitude Toward No-Fault Insurance Law In Your State

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
Total	52%	25%	23%
Have automobile insurance	55	25	20
Own automobile but no automobile insurance	47	35	28
East	59	23	18
South	41	29	30
Midwest	55	24	21
West	56	22	22
Cities	59	21	20
Suburbs	57	22	21
Towns	47	28	27
Rural	45	29	26
8th grade	37	26	37
High School	51	27	22
College	63	21	16

## Appendix C (cont'd)

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
White	54%	24%	22%
Non-white	46	26	28
Age 18 to 29	57	27	16
Age 30 to 49	53	24	23
Age 50 and over	49	23	28
Male	57	24	19
Female	44	25	31

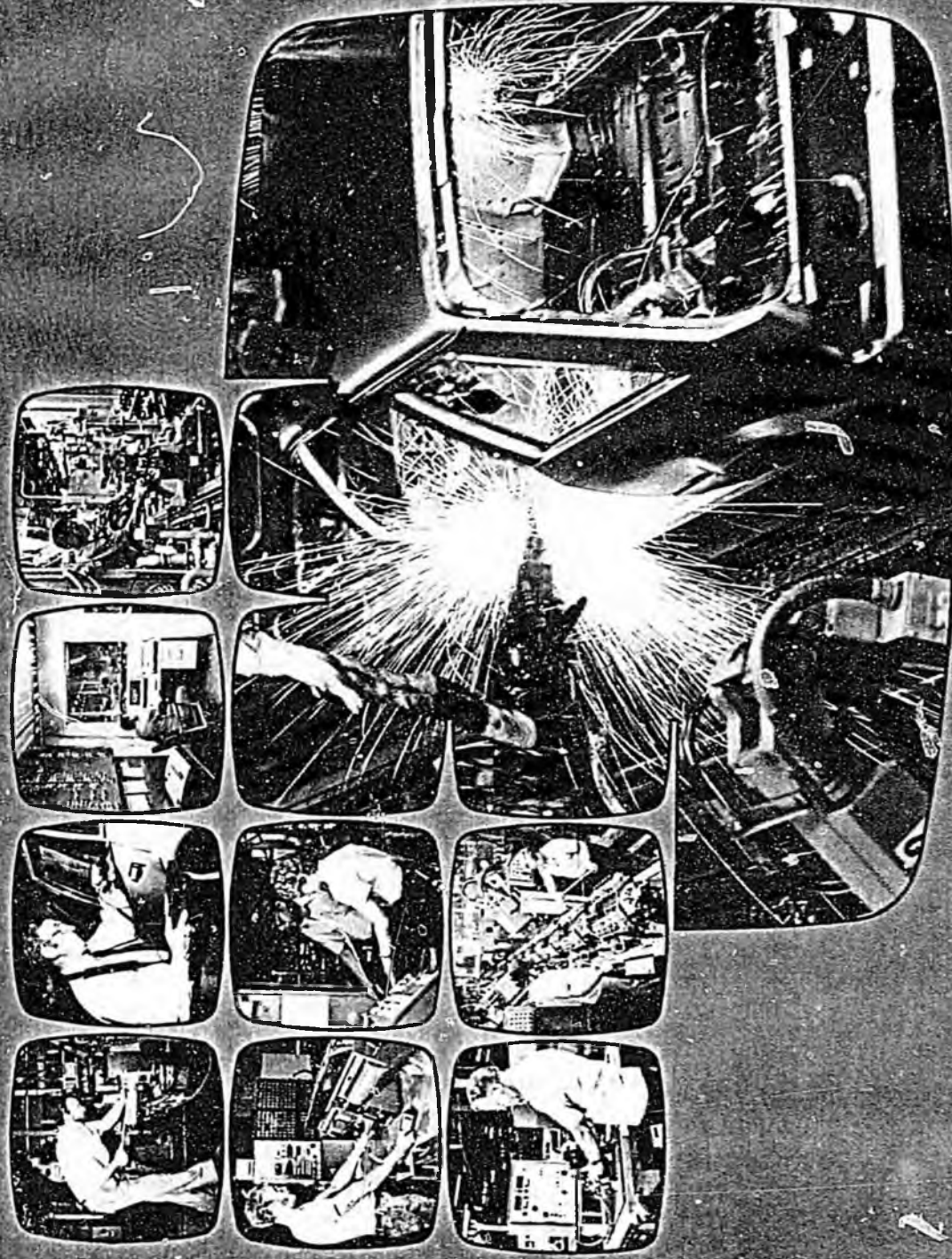
Attitude Toward Auto Accident Victims Being Able  
To Sue Those Responsible For The Accident, For  
Amounts In Excess Of Loss To Cover Suffering

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
Total	49%	38%	13%
Under \$5,000	51	30	19
\$ 5,000 to \$ 9,999	48	39	13
\$10,000 to \$14,999	52	38	10
\$15,000 and over	46	44	10
8th grade	54	29	17
High School	51	36	13
College	45	45	10
White	48	39	13
Non-white	55	32	13
Age 18 to 29	45	44	11
Age 30 to 49	52	37	11
Age 50 and over	51	33	16

Source: Louis Harris and Associates and the Department of Insurance, the Wharton School, University of Pennsylvania, Sentry Insurance National Opinion Study; A Profile of Consumer Attitudes Towards Auto and Homeowner's Insurance, pp. 65-68 (January, 1974).

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:  
COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.  
TITLE PAGE ONLY HAS BEEN FILMED.

in a motor vehicle  
**FACILITIES & FIGURES**  
**1985**



**2ND INDUSTRIAL REVOLUTION—  
PEOPLE AND HI-TECH**

# PRESIDENT'S MESSAGE

One of the most severe sales declines the motor vehicle industry has experienced plus record import sales penetration have combined to provide the catalyst for the industry's unequalled redevelopment many call the Second Industrial Revolution.

The domestic motor vehicle industry moves toward the middle of the Eighties after a decade of rebuilding its facilities, re-tooling its machines, incorporating robotics, re-thinking employer-employee relationships and coming to market with a more diversified, quality-oriented, fuel-efficient product line than ever before.

The result of this historical self-improvement project: U.S. car and truck makers are ready to regain their leadership role in world transportation.

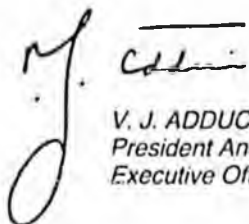
This year's *Facts & Figures*, from its cover and industry overview on "Second Industrial Revolution - People and Hi-Tech," to the 96 pages of statistics and charts, touches virtually every facet of the new motor vehicle industry.

I believe '83 *Facts & Figures* aptly explains this industry's story to the wide and varied audience it serves. Reporters, educators, government officials, statisticians, economic analysts - and men and women in the industry itself - will find it an excellent resource document.

In continually striving to improve this important publication, we have added information to make the book more comprehensive than ever before.

I know you will find *Facts & Figures* as reputable and as useful as it has been throughout its history. As always, we would appreciate your comments.



  
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President And Chief  
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**Motor Vehicle  
Manufacturers Association  
of the United States, Inc.**

300 New Center Building  
Detroit, Michigan 48202  
313/872-4311

1909 K Street, N.W.  
Washington, D.C. 20006  
202/862-3900

MVMA Regional Office Locations  
(See Back Cover)

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Correspondence should be addressed to the Communications Department, Motor Vehicle Manufacturers Association, 300 New Center Building, Detroit, Michigan 48202.

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