

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

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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.I. 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 which 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.

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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

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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."¹

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."²

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 45.³

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† 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.⁴ 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.⁵

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.⁶

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."⁷

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.⁸

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.⁹ Prior to no-fault in Massachusetts, approximately 80 per cent of successful claimants under liability insurance there were represented by attorneys.¹⁰ 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.¹¹ 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 . . ."¹² 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.¹³

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.¹⁴ It was one of the fastest rising items on the consumer price index.¹⁵

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.¹⁶ States with modified plans are Colorado,¹⁷ Connecticut,¹⁸ Florida,¹⁹ Georgia,²⁰ Hawaii,²¹ Kansas,²² Kentucky,²³ Massachusetts,²⁴ Minnesota,²⁵ Nevada,²⁶ New Jersey,²⁷ North Da-

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,²⁸ Pennsylvania,²⁹ and Utah.³⁰

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.³¹ Hence, the name *add-on*. The laws add on benefits but do not take anything away. States with add-on plans are Arkansas,³² Delaware,³³ Maryland,³⁴ Oregon,³⁵ South Carolina,³⁶ South Dakota,³⁷ Texas,³⁸ and Virginia.³⁹

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.⁴⁰ 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.⁴¹ 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 \$500.⁴² On the other hand, the federal no-fault bill⁴³ clearly approaches pure no-fault in both benefits and elimination of fault-based claims.⁴⁴

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-

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."⁴⁵

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.⁴⁶ 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?⁴⁷

*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 adjuster gives them a hard time.

Now, under Oregon no-fault the adjuster 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

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 toward 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

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.⁴⁸

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,⁴⁹ 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.⁵⁰

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

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."⁵¹ 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."⁵² 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.⁵³

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.⁵⁴ 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-

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."⁵⁵

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."⁵⁶ 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.⁵⁷

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, 1970, § 1, at 24, col. 5.

56. Loomis, *An Accident Report on Geico*, FORTUNE, June, 1970, at 120, 128.

57. Wall St. J., Sept. 16, 1970, 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."⁵⁸ 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 . . ."⁵⁹ 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.⁶⁰

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.⁶¹ 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.⁶² 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.⁶³

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.⁶⁴

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 study⁶⁵ 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.⁶⁶

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.⁶⁷ 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.⁶⁸ 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.⁶⁹ Little goes on to state that this

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.⁷⁰ 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.⁷¹

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]."⁷²

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.⁷³

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.⁷⁴

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."⁷⁵ 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."⁷⁶ 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."⁷⁷

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.⁷⁸

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!⁷⁹ 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.⁸⁰ 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."⁸¹

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.⁸² "[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.⁸³

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.⁸⁴ 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."⁸⁵

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.⁸⁶ According to Widiss, "No-fault insurance claims are usually paid without disputes over either the existence of coverage or the amount due the claimant."⁸⁷ 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.'"⁸⁸ In Florida, too, overall lawyer involvement per claim diminished.⁸⁹ 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."⁹⁰

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

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,"⁹¹ including a remarkable reduction of over 50 per cent in courts of unlimited jurisdiction, and an astonishing decline⁹² 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.⁹³

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."⁹⁴

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].⁹⁵

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.⁹⁶ While many such lawyers are able to handle a simple auto intersection accident,⁹⁷ 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. . . .

[I]t seems unlikely that many comparable systems exist in which the percentage of "fairly satisfied" and "very satisfied" consumers exceeds 80 percent.⁹⁸

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.⁹⁹

In only three states has no-fault insurance been extended to property damage. In Florida the state supreme court ruled such an extension unconstitutional;¹⁰⁰ in Michigan, a trial court's ruling to the same effect is on appeal;¹⁰¹ and in Massachusetts the no-fault property damage law has just been repealed.¹⁰²

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."¹⁰³ 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.¹⁰⁴

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.¹⁰⁵

Experience under workers' compensation also helps put the whole matter in context. Workers' compensation, in essence a no-

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.¹⁰⁶ 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.¹⁰⁷

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.¹⁰⁸ 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.¹⁰⁹

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."¹¹⁰

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

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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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.

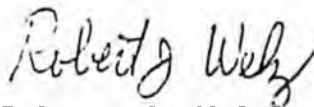
- Besides the minimum no-fault motor vehicle insurance benefits that each state requires, optional insurance coverage providing for additional benefit and deductibles often must be offered.
-

- 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.



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NO-FAULT MOTOR VEHICLE INSURANCE

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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.¹ In 20 of the 23 states motor vehicle insurance coverage is compulsory.²

<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 ^{1/}	\$5,000
Colorado	None ^{1/}	\$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 ^{1/}	\$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 ^{1/}	\$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.³ 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: