

By: Senator(s) Hewes

To: Insurance; Judiciary

SENATE BILL NO. 2811

1 AN ACT TO CREATE THE MISSISSIPPI CONSUMER CHOICE IN MOTOR
2 VEHICLE INSURANCE ACT; TO DEFINE CERTAIN TERMS; TO CREATE A SYSTEM
3 OF MOTOR VEHICLE INSURANCE THAT OFFERS A CHOICE OF METHODS OF
4 PROTECTION AGAINST LOSSES FROM PERSONAL INJURY ARISING OUT OF THE
5 MAINTENANCE OR USE OF MOTOR VEHICLES; TO ABOLISH TORT LIABILITY IN
6 CERTAIN CASES; TO PROHIBIT STACKING OF COVERAGES; TO AUTHORIZE THE
7 COMMISSIONER OF INSURANCE TO ADOPT RULES AND REGULATIONS FOR THE
8 ADMINISTRATION OF THE ACT; AND FOR RELATED PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 SECTION 1. **Title.** This act may be cited as the Mississippi
11 Consumer Choice in Motor Vehicle Insurance Act.

12 SECTION 2. **Statement of Purpose.** (1) Controlling
13 Provisions. To the extent the provisions of Section 2 of this act
14 differ from the provisions of Section 3 of this act and
15 thereafter, the provisions of the subsequent sections control.

16 (2) Existing Law. Under existing law, the ability of a
17 person to recover losses incurred as a result of a motor vehicle
18 accident is limited by factors over which the accident victim has
19 no control. The recovery is dependent on, among other things, the
20 conduct of the other driver, the amount of liability insurance (if
21 any) carried by the other driver, and the financial resources (if
22 any) of the other driver. Under the current system, two (2)
23 individuals who have received identical injuries may recover
24 markedly different amounts. Therefore, many individuals,
25 particularly the large number of motorists involved in one-car
26 accidents, receive no compensation for their losses at all.

27 (3) The Right to Choose. This bill gives motorists (a) the
28 right to choose the kinds of personal injury protection which will
29 be available to themselves and their family members in case of an

30 automobile accident, and (b) the right to choose the amount of
31 financial protection they deem appropriate and affordable for
32 themselves and their families. Instead of being forced to buy
33 traditional tort liability insurance to protect strangers,
34 motorists will have the opportunity to buy a new Personal Injury
35 Protection coverage to protect themselves and their family members
36 in the event of a motor vehicle accident. As an alternative, they
37 will have the right to elect traditional Tort Liability Insurance
38 which will include an inverse liability coverage (entitled "Tort
39 Maintenance Coverage") to provide protection in the event of
40 injury caused by someone who has elected the Personal Injury
41 Protection Option.

42 (4) Tort Liability Insurance versus Personal Injury
43 Protection coverage.

44 (a) Motorists who choose the Tort Liability Insurance
45 and who are involved in an accident with another motorist will
46 retain the tort liability system, except that, based on fault, (i)
47 they can be sued by those who choose personal injury protection
48 but only for damages in excess of the limits of the Personal
49 Injury Protection policy and (ii) they cannot claim against those
50 who choose Personal Injury Protection coverage except for
51 uncompensated economic loss in excess of the limits of their own
52 first party Tort Maintenance Coverage.

53 (b) Motorists who choose Personal Injury Protection
54 coverage established by this act and who are involved in an
55 accident with a motorist who has chosen traditional Tort Liability
56 Insurance will be promptly compensated for their own losses,
57 without regard to fault, and can also claim against the other
58 motorist based on fault for uncompensated economic loss in excess
59 of the limits of the Personal Injury Protection policy.

60 (c) Two (2) motorists who each choose Personal Injury
61 Protection coverage and who are involved in an accident with each
62 other will be promptly compensated under their own policies for
63 their own losses without regard to fault. In this situation, the
64 two (2) motorists who have chosen the Personal Injury Protection
65 coverage lose the right to claim and sue for "pain and suffering"
66 and other noneconomic loss, but if either suffers economic loss in

67 excess of his/her policy's benefit levels, that person retains the
68 right to claim and sue for unreimbursed economic loss based on
69 fault.

70 (d) When two motorists who each choose Tort Liability
71 Insurance are involved in an accident with each other, their
72 rights against each other are unaffected by this act.

73 (e) If a motorist who has chosen Tort Liability
74 Insurance is involved in an accident with an uninsured motorist,
75 the policyholder will be compensated for losses under the
76 uninsured motorist provisions of his/her own policy based on fault
77 and has the right to sue for damages. The uninsured motorist
78 forfeits the right to claim for noneconomic loss against the
79 motorist who has chosen Tort Liability Insurance unless the tort
80 liability insured was driving under the influence of alcohol or
81 illegal drugs or was guilty of intentional misconduct.

82 (f) If a motorist who has chosen the Personal Injury
83 Protection policy is involved in an accident with an uninsured
84 motorist, the policyholder will be promptly compensated for losses
85 without regard to fault under his/her Personal Injury Protection
86 policy, and has the right to claim and sue the uninsured motorist
87 for damages based on fault. The uninsured motorist forfeits the
88 right to claim for noneconomic loss against the motorist who has
89 chosen the Personal Injury Protection policy except when the
90 Personal Injury Protection Insured was driving under the influence
91 of alcohol or illegal drugs or was guilty of intentional
92 misconduct.

93 (5) Property Damage. A motorist who purchased a Personal
94 Injury Protection policy will thereby procure Ten Thousand Dollars
95 (\$10,000.00) of property damage liability insurance as part of
96 his/her mandatory coverage. In order to keep the cost of property
97 damage liability insurance as low as possible, persons who have
98 chosen Personal Injury Protection policies have no cause of action
99 for damage to a motor vehicle to the extent such vehicle is

100 insured against collision damage in accidents involving other
101 Personal Injury Protection Insureds.

102 SECTION 3. Definitions. As used in this act, unless the
103 context requires otherwise, the following terms have the meaning
104 ascribed to them in this section:

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

109 (b) "Added personal injury protection" means coverage
110 for additional personal injury protection. Added personal injury
111 protection coverage includes benefits with an aggregate limit of
112 One Hundred Thousand Dollars (\$100,000.00) per person (including
113 Thirty Thousand Dollars (\$30,000.00) of Basic Personal Injury
114 Protection benefits), to consist of medical expenses, up to One
115 Thousand Dollars (\$1,000.00) per week of loss of income from work,
116 up to Three Hundred Dollars (\$300.00) per week of replacement
117 services loss, and if death is proximately and directly caused by
118 a motor vehicle and occurs within one (1) year of the date of the
119 accident, a death benefit of Twenty-five Thousand Dollars
120 (\$25,000.00) payable to the dependents, if any, or, if none, to
121 the heirs or estate of the decedent. Nothing contained in this
122 section prevents a Personal Injury Protection Insurer from also
123 making available other additional compensation benefits in
124 coverages and amounts other than those prescribed in this section.
125 No applicant or insured may be required to purchase a lesser
126 amount than those prescribed in this paragraph (b).

127 (c) "Basic Personal Injury Protection" means coverage,
128 for Personal Injury Protection which provides benefits for loss
129 resulting from accidental bodily injury. Basic Personal Injury
130 Protection benefits consist of the following elements with an
131 aggregate limit of Fifteen Thousand Dollars (\$15,000.00) per
132 person:

133 (i) Medical expenses, subject to a deductible of
134 Two Hundred Fifty Dollars (\$250.00) applicable only to the named
135 insured and to resident relatives of the named insured;

136 (ii) Loss of income from work, not to exceed Two
137 Hundred Dollars (\$200.00) per week;

138 (iii) Replacement services loss, not to exceed One
139 Hundred Dollars (\$100.00) per week;

140 (iv) A death benefit of Ten Thousand Dollars
141 (\$10,000.00), payable to the dependents, if any or, if none, to
142 the heirs or estate of the decedent, if the death of an injured
143 person is directly and proximately caused by an accidental bodily
144 injury and occurs within one (1) year of the date of such injury.

145 (d) "Cause of action for injury" means a claim for
146 accidental bodily injury for economic or noneconomic loss, or
147 both, caused by the negligent conduct or intentional misconduct of
148 another person (whether directly or vicariously), and includes a
149 claim by any person other than a person suffering accidental
150 bodily injury based on such injury, including, but not limited to,
151 loss of consortium, companionship, or any other derivative claim.

152 (e) "Collateral sources" means all benefits one
153 receives or is entitled to receive as reimbursement of loss
154 because of an injury from sources other than Personal Injury
155 Protection benefits. In such calculation, no subtraction is made
156 for amounts one receives or is entitled to receive:

157 (i) In discharge of familial obligations or
158 support;

159 (ii) By reason of another's death, except that
160 there is subtracted from loss in calculating net loss those
161 amounts received from social security or workers' compensation; or

162 (iii) As gratuities. In no event is any payment
163 made by an employer to his employee or an employee's survivors to
164 be regarded as a gratuity.

165 (f) "Commissioner" means the Commissioner of Insurance

166 of the State of Mississippi.

167 (g) "Coverage" means a policy or plan for insurance
168 benefits.

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

173 (i) "Driving under the influence of alcohol or illegal
174 drugs" refers to such conduct when it causes or substantially
175 contributes to the harm claimed for. A driver is deemed to be
176 driving under the influence of alcohol for the purposes of this
177 act only if a test of blood, breath or urine as called for under
178 the laws of this state shows an illegal blood or breath alcohol
179 content as defined by state law, or if a driver refuses to undergo
180 such tests as called for under the laws of this state.

181 (j) "Economic loss" means medical expenses, loss of
182 income from work, and replacement services loss incurred by or on
183 behalf of an injured person as the result of an accidental bodily
184 injury to such injured person.

185 (k) "Fault" is encompassed by the definition of "tort
186 liability."

187 (l) "Injured person" means a person who sustains
188 accidental bodily injury when eligible for benefits under a policy
189 providing personal injury protection or under the assigned claims
190 plan under Section 23 of this act. The term also includes where
191 appropriate the personal representative of an estate.

192 (m) "Intentional misconduct" means conduct whereby harm
193 is intentionally caused or attempted to be caused by one who acts
194 or fails to act for the purpose of causing harm or with knowledge
195 that harm is substantially certain to follow when such conduct
196 caused or substantially contributed to the harm claimed for. A
197 person does not intentionally cause or attempt to cause harm (i)
198 merely because his act or failure to act is intentional or done

199 with the realization that it creates a grave risk of causing harm
200 or (ii) if the act or omission causing bodily harm is for the
201 purpose of averting bodily harm to oneself or another person.

202 (n) "Loss of income from work" means eighty percent
203 (80%) of loss of income an injured person would have earned
204 through work during the period of disability, reduced by any
205 income from substitute work actually performed by the injured
206 person, or by any income the injured person would have earned in
207 available appropriate substitute work which such person was
208 capable of performing but unreasonably failed to undertake. Loss
209 of income from work does not include any loss after the death of
210 an injured person and payment for the period of disability is not
211 to exceed two (2) years from the date of the accident.

212 (o) "Medical expenses" means reasonable expenses
213 incurred by an injured person for necessary medical, surgical,
214 X-ray, dental, ambulance, hospital, medical rehabilitation, and
215 professional nursing services and includes expenses for
216 eyeglasses, hearing aids, and prosthetic devices. The words
217 "incurred by" include medical expenses incurred on behalf of an
218 injured person by a parent or guardian if the injured person is a
219 minor or incompetent, or by a surviving spouse if the injured
220 person be deceased. Personal Injury Protection Insurers are
221 authorized to review medical expenses prior to, during, and after
222 the course of treatment of an injured person, to assure that they
223 are both reasonable and necessary. Under Basic Personal Injury
224 Protection and under Added Personal Injury Protection, medical
225 expenses are payable for services provided to the injured person
226 within two (2) years of the date of accidental bodily injury.

227 "Medical expenses" does not include:

228 (i) that portion of the charge for a room in any
229 hospital, clinic, convalescent or nursing home, extended care
230 facility or any similar facility in excess of the reasonable and
231 customary charge for semi-private accommodations unless medically

232 required; or

233 (ii) treatment, services, products or procedures
234 that are experimental in nature, for research or not primarily
235 designed to serve a medical purpose, or not commonly and
236 customarily recognized throughout the medical profession and
237 within the United States as appropriate for treatment of
238 accidental bodily injury.

239 (p) "Medical rehabilitation" means rehabilitation
240 services reasonably necessary and designed to reduce the
241 disability and dependence of an injured person and to restore such
242 person, to the extent reasonably possible, to his or her
243 pre-accident level of physical functioning.

244 (q) "Motor vehicle" means:

245 (i) a vehicle of a kind required to be registered
246 under the laws of this state relating to motor vehicles, or

247 (ii) a vehicle with four (4) or more load bearing
248 wheels, including a trailer, designed for operation upon a public
249 roadway by other than muscular power, except a vehicle used
250 exclusively upon stationary rails or tracks. "Public roadway"
251 means a way open to the use of the public for purposes of
252 automobile travel.

253 (r) "Noneconomic loss" means any loss other than
254 economic loss and includes, but is not necessarily limited to,
255 pain, suffering, inconvenience, mental anguish, and all other
256 noneconomic damage whether otherwise recoverable under the law of
257 this state or not. Noneconomic loss does not include economic
258 loss caused by pain and suffering or by physical impairment.

259 (s) "Occupying" means to be in or upon a motor vehicle
260 or engaged in the immediate act of entering into or alighting from
261 the motor vehicle.

262 (t) "Operation or use" means operation or use of a
263 motor vehicle as a motor vehicle. Operation or use does not
264 include manufacturing, sale or maintenance of a motor vehicle,

265 including repairing, servicing, washing, loading or unloading,
266 unless the conduct occurs while occupying it.

267 (u) "Owner" means the person or persons in whose name
268 the motor vehicle has been registered. If no registration is in
269 effect at the time of an accident involving the motor vehicle,
270 "owner" means the person or persons holding legal title thereto,
271 or in the event the motor vehicle is the subject of a security
272 agreement or lease with option to purchase with the debtor or
273 lessee having the right of possession, "owner" means the debtor or
274 lessee. Owner does not include the United States of America or
275 any agency thereof except with respect to motor vehicles for which
276 it has elected to provide insurance.

277 (v) "Person" includes an organization, public or
278 private.

279 (w) "Personal Injury Protection" means coverage
280 providing Basic (and, if purchased, Added) benefits, regardless of
281 fault, for loss resulting from accidental bodily injury.

282 (x) "Personal Injury Protection Insured" means, the
283 first person identified by name as an insured under a policy
284 providing Personal Injury Protection benefits, the spouse of such
285 person if a resident of household, and any other resident relative
286 of the same household, and, with respect to accidents within this
287 state, any person who sustains accidental bodily injury while
288 occupying or through being struck by a motor vehicle insured for
289 Personal Injury Protection, unless such person is insured pursuant
290 to the Tort Liability Insurance option provided under Section 4 of
291 this act or is an uninsured motorist.

292 (y) "Personal Injury Protection Insurer" means an
293 insurer or qualified self-insurer providing Personal Injury
294 Protection benefits.

295 (z) "Replacement services loss" means expenses
296 reasonably incurred in obtaining ordinary and necessary services
297 from others, not members of the injured person's household, in

298 lieu of the services the injured person would have performed for
299 the benefit of the household. Replacement services loss are not
300 due if the injured person is entitled to receive Personal Injury
301 Protection benefits for loss of income from work for the same time
302 period. Replacement services loss does not include any loss after
303 the death of an injured person, and payment for the period of
304 disability under Basic Personal Injury Protection is not to exceed
305 two (2) years from the date of accidental bodily injury.

306 (aa) "Resident relative" means a person related to the
307 owner of a motor vehicle by blood, marriage, adoption, or
308 otherwise, and residing in the same household. A person resides
309 in the same household if he or she usually makes his or her home
310 in the same family unit, though temporarily living elsewhere.

311 (bb) "Tort liability" means the legal obligation for
312 payment of damages caused by one adjudged to have committed a
313 tort.

314 (cc) "Tort Maintenance Coverage" means coverage under
315 which a person who has chosen Tort Liability Insurance coverage
316 when involved in an accident with a Personal Injury Protection
317 insured, claims for tort liability against his/her own insurer to
318 the extent of such coverage.

319 (dd) "Uncompensated economic loss" means that portion
320 of economic loss arising out of an accidental bodily injury of an
321 injured person which exceeds the benefits provided by (i) Personal
322 Injury Protection coverage (except for loss on account of the
323 application of a deductible under such a policy), or (ii) Tort
324 Maintenance Coverage, and (iii) collateral sources. Such loss is
325 recoverable under the same terms and limitations as under Added
326 Personal Injury Protection, but shall not be subject to the
327 aggregate limit of liability of such coverage.

328 (ee) "Uninsured motorist" means the owner, or a
329 dependent thereof, of a motor vehicle uninsured for either Basic
330 Personal Injury Protection or Tort Liability Insurance at the

331 limits prescribed by this state's financial responsibility law, or
332 higher while such person is operating, using or occupying the
333 owned but uninsured motor vehicle.

334 SECTION 4. Insurance Requirements. Every motor vehicle
335 required to be registered in this state can be insured:

336 (a) For Basic Personal Injury Protection and the
337 property damage liability mandated under this state's financial
338 responsibility law, or

339 (b) For bodily injury and property damage liability as
340 described in this state's financial responsibility law.

341 (c) An insurance policy written by a Personal Injury
342 Protection Insurer pursuant to this act to provide Basic Personal
343 Injury Protection is deemed to include all Basic Personal Injury
344 Protection coverage required by this act. Coverage under Basic
345 Personal Injury Protection meets the requirements of this state's
346 financial responsibility law even though such policy does not
347 provide protection against bodily injury liability claims arising
348 out of accidents within this state.

349 (d) A Personal Injury Protection Insurer shall make
350 available, at the option of a named insured, Added Personal Injury
351 Protection on a policy providing Basic Personal Injury Protection.

352 The exercise of the option not to purchase Added Personal Injury
353 Protection by a named insured or an applicant shall be binding on
354 all Personal Injury Protection insureds covered under the policy.

355 (e) A Personal Injury Protection insurer is authorized
356 to write Personal Injury Protection without any deductible or
357 subject to reasonable deductibles pursuant to Section 28 of this
358 act.

359 (f) A Personal Injury Protection Insurer shall also
360 make available a pain and suffering coverage, pursuant to
361 regulations issued under Section 28 of this act, with a limit of
362 Fifty Thousand Dollars (\$50,000.00), payable if the injured person
363 sustains an accidental bodily injury resulting in death or

364 dismemberment or significant and permanent loss of important
365 bodily function or significant and permanent scarring or
366 disfigurement. Nothing contained herein shall preclude any
367 insurer from offering higher limits of pain and suffering coverage
368 or providing broader coverage.

369 (g) In addition to Added Personal Injury Protection
370 coverages, a Personal Injury Protection insurer shall make
371 available other insurance coverages with the approval of the
372 commissioner. Such coverages shall include, but are not limited
373 to, bodily injury liability insurance, collision coverage, and
374 comprehensive physical damage coverage.

375 (h) An insurance policy written by a motor vehicle
376 liability insurer pursuant to this act to provide coverage under
377 the Tort Liability Insurance option shall include Tort Maintenance
378 Coverage for accidental bodily injury of an insured under the Tort
379 Liability Insurance option, caused by the negligence, in whole or
380 in part, of a Personal Injury Protection insured. Such insurance
381 will pay such damages as might have been recovered against a
382 Personal Injury Protection insured but for the exemption from tort
383 liability provided by Section 14 of this act up to the liability
384 limits of the Tort Maintenance Coverage.

385 **SECTION 5. Required Limits of Liability Coverage.** Every
386 owner who chooses the Tort Liability Insurance Option must carry
387 liability insurance in an amount equal to the minimum liability
388 limits for accidental bodily injury and property damage as
389 specified by this state's financial responsibility law. Insurers
390 providing coverage for such persons shall include Tort Maintenance
391 Coverage required in Section 4 of this act in all policies
392 providing primary coverage for legal liability for motor vehicles
393 at limits equal to the bodily injury liability coverage carried by
394 the Tort Maintenance Coverage insured.

395 **SECTION 6. Election of Personal Injury Protection Option or**
396 **Tort Maintenance Coverage Option.** Upon the earliest and first

397 renewal of any applicable motor vehicle liability insurance policy
398 on or after the effective date of this act, or before the issuance
399 of a policy required by this act, a choice must be made of either
400 the Tort Maintenance Coverage option or the Personal Injury
401 Protection option. In order to minimize conflict between the two
402 (2) options, all motor vehicle insurers are authorized to maintain
403 underwriting rules which encourage uniformity within a household.
404 A choice made pursuant to this act is binding with respect to any
405 continuation, renewal, or reinstatement of an applicable motor
406 vehicle insurance policy, and continues with respect to any policy
407 which extends, supersedes, or replaces the policy unless the named
408 insured subsequently makes a different choice in writing.

409 SECTION 7. Application of Coverage. (1) If there is only
410 one (1) vehicle owned by the named insured or any member of the
411 household of the named insured, the choice made by the named
412 insured is applicable to his or her spouse and to any resident
413 relatives of the household. That choice also applies to all
414 persons insured under the policy while occupying other motor
415 vehicles or if struck by another motor vehicle.

416 (2) If there is more than one (1) motor vehicle in the
417 household, and the named insured chooses different options for
418 different vehicles, the choice applicable to the vehicle in use
419 governs not only the named insured, but also all other persons
420 insured under the policy whose injury arises out of the use of
421 that motor vehicle unless the named insured has specifically
422 identified family members who shall be Personal Injury Protection
423 Insureds. If the named insured is injured while occupying or
424 through being struck by another motor vehicle, the Tort
425 Maintenance Coverage option shall be deemed applicable and
426 Personal Injury Protection benefits shall not be provided. If any
427 other person insured under two (2) or more policies covering
428 different options is injured while occupying or through being
429 struck by another motor vehicle, and that insured has not been

430 specifically identified by the named insured as being a Personal
431 Injury Protection insured at all times, the Tort Maintenance
432 Coverage option shall be deemed applicable and personal benefits
433 shall not be provided.

434 (3) If there are two (2) or more vehicles in the household,
435 each owned by different persons, each such person shall have the
436 right to choose either the Personal Injury Protection option or
437 the Tort Maintenance Coverage option for himself or herself. That
438 person's choice shall determine that person's rights no matter
439 which vehicle he or she is occupying or which vehicle he or she
440 might be struck by. The rights of all members of the household
441 who are not motor vehicle owners shall be governed by the choice
442 applicable to the motor vehicle which they were occupying at the
443 time of the injury, if that vehicle was owned by a member of the
444 household.

445 (4) In the event of a bodily injury occurring prior to the
446 effective date of a required choice, if there are conflicting
447 choices within the household creating questions as to the
448 applicability of the Personal Injury Protection option or the Tort
449 Maintenance Coverage option, or if there is a failure to make a
450 choice as required by this act, Tort Maintenance insurance will be
451 applicable, and Personal Injury Protection benefits will not be
452 payable.

453 **SECTION 8. Geographic Application of Personal Injury**
454 **Protection Policies.** A Personal Injury Protection Insurer shall
455 pay Personal Injury Protection benefits for accidental bodily
456 injury of a Personal Injury Protection Insured sustained within
457 the United States of America, its territories or possessions, or
458 Canada. Any Personal Injury Protection insurance policy issued to
459 satisfy the financial responsibility law of this state shall be
460 conformed to satisfy the financial responsibility law of any
461 jurisdiction mentioned above in which the insured motor vehicle is
462 being operated with respect to an accident occurring in that

463 jurisdiction.

464 SECTION 9. **Persons Not Entitled to Personal Injury**

465 **Protection Benefits.** A Personal Injury Protection Insurer has no
466 obligation to provide Personal Injury Protection benefits to or on
467 behalf of any injured person who:

468 (a) Was involved in a motor vehicle accident while
469 committing a felony or while voluntarily occupying a motor vehicle
470 known by him or her to be stolen;

471 (b) Was driving under the influence of alcohol or
472 illegal drugs;

473 (c) Is injured while occupying a motor vehicle owned
474 by, or furnished or available for the regular use of the injured
475 person, or the injured person's resident spouse or relative, if
476 such motor vehicle is not described in the policy under which a
477 claim is made, or is not a newly acquired or replacement motor
478 vehicle covered under the terms of the policy;

479 (d) Was operating or occupying a motor vehicle with
480 three (3) or fewer load bearing wheels;

481 (e) Was guilty of intentional misconduct. (If a person
482 dies as a result of intentional misconduct aimed at himself or
483 herself, his or her survivors are not entitled to Personal Injury
484 Protection for loss arising from the decedent's injury or death.);

485 (f) Is injured pursuant to the Tort Maintenance
486 Coverage option described in Section 4(h) of this act, or

487 (g) Is an uninsured motorist, or a dependent of an
488 uninsured motorist who is not otherwise insured for Personal
489 Injury Protection.

490 Nothing contained herein prevents a Personal Injury
491 Protection Insurer from including in Personal Injury Protection
492 coverage persons mentioned in this section, but only if such is
493 done by language clearly manifesting an intent to provide such
494 coverage.

495 SECTION 10. **Payment of Personal Injury Protection Benefits.**

496 Personal Injury Protection benefits when due are payable at the
497 option of the Personal Injury Protection Insurer to any of the
498 following:

499 (a) The injured person;

500 (b) The parent or guardian of the injured person, if
501 the injured person is a minor or incompetent;

502 (c) A dependent survivor, executor or administrator of
503 the injured person; or

504 (d) Any other person or organization rendering the
505 services for which payment is due.

506 SECTION 11. Multiple Coverages. Regardless of the number of
507 motor vehicles involved, persons covered, claims made, motor
508 vehicles or premiums shown on the policy or premiums paid, in no
509 event shall the coverage limits under a motor vehicle insurance
510 policy for any one (1) coverage be added to, combined with, or
511 otherwise stacked upon any other coverage limit to determine the
512 maximum limit of coverage available to an injured person for any
513 one (1) accident. Unless the contract clearly provides otherwise,
514 policies or plans may also provide that if two (2) or more
515 policies, plans, or coverages apply equally to the same accident,
516 the highest limit of liability applicable shall be the maximum
517 amount available to an insured person under any one (1) of such
518 policies. Each such policy, plan or coverage shall bear its
519 proportionate share of the loss.

520 SECTION 12. Priority of Benefits. (1) Persons entitled to
521 Basic Personal Injury Protection benefits required or provided
522 pursuant to this act are entitled to at least the Personal Injury
523 Protection coverage under the policy insuring them and shall claim
524 such benefits from insurers in the following order of priority up
525 to the limits of Personal Injury Protection in the listed
526 category:

527 First: The Personal Injury Protection covering a motor
528 vehicle involved in the accident, if the person injured was an

529 occupant of or was struck by such motor vehicle at the time of the
530 accident.

531 Second: The Personal Injury Protection under which the
532 injured person is or was an insured.

533 Third: If no Personal Injury Protection is available under
534 the above priorities, a person injured as a result of a motor
535 vehicle accident may claim benefits under the Assigned Claims Plan
536 pursuant to Section 23 of this act, unless unqualified for
537 benefits under Section 6 of this act.

538 (2) If two (2) or more insurers are obligated to pay
539 Personal Injury Protection benefits in accordance with the
540 priorities set out in this section, the insurer against whom the
541 claim is first made shall pay the claim as if wholly responsible,
542 and may thereafter recover contribution pro rata from any other
543 insurer at the same priority level for the cost of the payments
544 and the processing of the claim. For purposes of this section, an
545 unoccupied parked motor vehicle is not a motor vehicle involved in
546 an accident unless it was parked in such a way as to cause
547 unreasonable risk of injury.

548 SECTION 13. **Coordination of Benefits.** A Basic Personal
549 Injury Protection Insurer has the primary obligation to indemnify
550 an injured person except to the extent of collateral sources paid
551 or payable to such person.

552 SECTION 14. **Tort Rights and Legal Liability Under this Act.**

553 (1) No Personal Injury Protection Insured has a cause of
554 action for injury against, nor is liable to, any other person on
555 account of an accident occurring within this state, except as
556 provided in subsections (2), (3), (4) and (5) and except for
557 injury caused other than by the ownership, operation, or use of a
558 motor vehicle.

559 (2) An injured person has a cause of action for accidental
560 bodily injury against any party driving under the influence of
561 alcohol or illegal drugs or guilty of intentional misconduct. Any

562 party providing Personal Injury Protection or Tort Maintenance
563 Coverage benefits to such injured person has a right of
564 subrogation under this subsection (2).

565 (3) A Personal Injury Protection Insured has a cause of
566 action for accidental bodily injury for uncompensated economic
567 loss against, and is liable for same, to, any person insured under
568 Personal Injury Protection or Tort Maintenance Coverage.

569 (4) Benefits under subsection (3) include reasonable
570 expenses incurred by the party in collecting such benefits,
571 including a reasonable attorney's fee for advising and
572 representing a claimant for such benefits. No part of the fee for
573 representing such party in connection with such benefits is a
574 charge against benefits otherwise due the claimant, and no
575 additional fee may be charged by an attorney to any party in
576 collecting such benefits. All or part of the fee may be deducted
577 from the benefits otherwise due the claimant if any significant
578 part of the claim for such benefits was fraudulent or so excessive
579 as to have no reasonable foundation. In any action brought
580 against an injured person by a Personal Injury Protection Insurer,
581 the court may award the injured person's attorney a reasonable
582 attorney's fee for defending the action if the injured person was
583 the prevailing party.

584 (5) A Personal Injury Protection Insured whose motor vehicle
585 is damaged by the fault of another Personal Injury Protection
586 Insured has a cause of action for damage to such motor vehicle
587 only to the extent such motor vehicle is not covered by collision
588 insurance.

589 (6) A person covered by Tort Maintenance Coverage has a
590 cause of action for injury against another person so covered.

591 (7) An uninsured motorist has no cause of action against a
592 Personal Injury Protection Insured for (a) injury other than for
593 uncompensated economic loss and (b) damage to property except
594 damage in excess of the property damage liability limits mandated

595 under this state's financial responsibility law unless the
596 Personal Injury Protection Insured was driving under the influence
597 of alcohol or illegal drugs or was guilty of intentional
598 misconduct. An uninsured motorist remains liable in tort to a
599 person insured for Personal Injury Protection benefits for
600 noneconomic loss, economic loss, and property damage.

601 SECTION 15. Insurer's Right of Subrogation. There is no
602 right of subrogation or contribution by a Personal Injury
603 Protection Insurer except under Sections 14, 16 and 23 of this
604 act, and except that a Personal Injury Protection Insurer is
605 subrogated, to the extent of its obligations, to all of the rights
606 of its Personal Injury Protection Insured with respect to an
607 accident caused in whole or in part by:

608 (a) The negligence of an uninsured motorist;

609 (b) The negligence of the owner or operator of a motor
610 vehicle having a gross weight of seven thousand (7000) pounds or
611 more;

612 (c) Driving under the influence of alcohol or illegal
613 drugs;

614 (d) Intentional misconduct; or

615 (e) Any person who is not affected by the limitations
616 on tort rights and liabilities pursuant to Section 14 of this act.

617 SECTION 16. Personal Injury Protection Benefits and Causes
618 **of Action for Injury.** No subtraction is made against Personal
619 Injury Protection benefits due because of the value of a cause of
620 action for injury preserved under this act, except that after
621 recovery is realized under such cause of action, a subtraction is
622 made to the extent of the net recovery, exclusive of reasonable
623 attorneys' fees and other reasonable expenses incurred in
624 effecting the recovery. If Personal Injury Protection benefits
625 have already been received, the recipient thereof shall repay to
626 the insurer paying Personal Injury Protection benefits out of such
627 recovery a sum equal to the Personal Injury Protection benefits

628 received but not more than the realized net recovery, and the
629 insurer shall have a lien on the recovery to this extent. Any
630 remainder of the net recovery from such a cause of action applies
631 periodically against loss as it accrues, until an amount equal to
632 the net recovery under such a cause of action has been subtracted.

633 SECTION 17. **Personal Injury Protection Benefits Payable**

634 **Periodically.** Personal Injury Protection benefits are payable
635 monthly as loss accrues. Such benefits are overdue if not paid
636 within thirty (30) days after the Personal Injury Protection
637 Insurer receives reasonable proof of the fact and the amount of
638 loss sustained, except that a Personal Injury Protection Insurer
639 may accumulate claims for periods not exceeding one (1) month, and
640 benefits are not overdue if paid within twenty (20) days after the
641 period of accumulation. If reasonable proof is not supplied as to
642 the entire claim, the amount supported by reasonable proof is
643 overdue if not paid within thirty (30) days after such proof is
644 received by the insurer, subject to the right of review specified
645 in Section 30 of this act. Any part or all of the remainder of
646 the claim that is later supported by reasonable proof if overdue
647 if not paid within thirty (30) days after such proof is received
648 by the insurer. For the purpose of calculating the extent to
649 which any benefits are overdue, payment is treated as made on the
650 date a draft or other valid instrument is placed in the United
651 States mail in a properly addressed postpaid envelope, or, if not
652 so posted, on the date of delivery. Personal Injury Protection
653 benefits may be paid by the Personal Injury Protection Insurer
654 directly to persons supplying necessary products, services, or
655 accommodations to the injured person. If overdue benefits are
656 recovered against a Personal Injury Protection Insurer or are paid
657 by a Personal Injury Protection Insurer, the provisions of
658 subsection (5) of Section 14 of this act pertaining to expenses
659 and an attorney's fee apply. In addition, the insurer is
660 obligated to pay interest on the overdue payment at one hundred

661 fifty percent (150%) of the prime rate in effect at the time the
662 payment became overdue.

663 SECTION 18. **Assignment or Garnishment of Personal Injury**

664 **Protection Benefits.** (1) Personal Injury Protection benefits,
665 other than those for medical expenses, are exempt from
666 garnishment, attachment, execution, and any other process or claim
667 to the extent that wages or earnings are exempt under any
668 applicable law exempting wages or earnings from process or claims.

669 (2) An agreement for assignment of any right to Personal
670 Injury Protection benefits payable in the future other than
671 medical expenses is unenforceable except to the extent that such
672 benefits are for the cost of products, services, or accommodations
673 provided or to be provided by the assignee or that benefits for
674 loss of income from work or replacement services are assigned to
675 secure payment of alimony, maintenance, or child support. Pain
676 and suffering coverage benefits may also be assigned.

677 SECTION 19. **No Penalty for Claims for Personal Injury**

678 **Protection Benefits.** An Insurer shall not cancel, fail to renew,
679 or increase the premium of its Insured solely on account of the
680 Insured or any other injured person making a claim for Personal
681 Injury Protection benefits or for collision damage to the insured
682 vehicle. Violation of this section is punishable by a fine of One
683 Thousand Dollars (\$1,0000.00) per offense, such punishment to be
684 exclusive of all other remedies permitted by law.

685 SECTION 20. **Limitation of Actions.** Subject to the

686 arbitration provisions which follow, if no Personal Injury
687 Protection benefits have been paid, an action therefore may be
688 commenced against the Personal Injury Protection Insurer not later
689 than two (2) years after the injured person suffers accidental
690 bodily injury. If Personal Injury Protection benefits have been
691 paid, an action for recovery of further benefits by either the
692 injured person or another claimant may be commenced not later than
693 two (2) years after the last payment of benefits.

694 SECTION 21. Mental and Physical Examinations. (1) Whenever
695 the mental or physical condition of an injured person is material
696 to any claim that has been made or may be made for past or future
697 Personal Injury Protection benefits, the insured person shall
698 submit to reasonable mental or physical examinations by a
699 physician or physicians designated by the insurer at a reasonably
700 convenient time and location, subject to regulations, if any,
701 promulgated by the commissioner. Personal Injury Protection
702 Insurers are authorized to include provisions of this nature in
703 policies providing Personal Injury Protection benefits.

704 (2) Where an insurer has requested of a person receiving
705 Personal Injury Protection benefits that such person undergo
706 medical or rehabilitation services, and such person unreasonably
707 refuses to comply with such request, the insurer may, upon written
708 notice, suspend all future such benefits until such person
709 complies with that request.

710 SECTION 22. Verification of Entitlement to Benefits. (1)
711 Every employer shall furnish pertinent information on a form
712 approved by the commissioner regarding an employee who has filed a
713 claim for Personal Injury Protection benefits if a request is made
714 by an insurer providing such benefits under this section.

715 (2) Every physician, hospital, clinic, or other medical
716 institution providing, before or after an injury resulting from a
717 motor vehicle accident upon which a claim for Personal Injury
718 Protection benefits is based, any products, services, or
719 accommodations in relation to that or any other injury, or in
720 relation to a condition claimed to be connected with that or any
721 other injury shall, if requested to do so by the Personal Injury
722 Protection Insurer against whom the claim has been made, furnish a
723 written report of the history, condition, and treatment, and the
724 dates and costs of such treatment of the injured person. Such
725 information shall be provided together with a sworn statement that
726 the treatment or services rendered were reasonable and necessary

727 with respect to the injury sustained and identifying which portion
728 of the expenses for such treatment or services were incurred as a
729 result of such injury. Every such physician, hospital, clinic, or
730 other medical institution shall also promptly produce and permit
731 the inspection and copying of its records regarding such history,
732 condition, and treatment, and the dates and costs of treatment.

733 The sworn statement required under this section reads as follows:

734 "Under penalty of perjury, I declare that I have read
735 the foregoing and the facts alleged are true, to the best of
736 my knowledge and belief."

737 No cause of action for violation of a physician-patient privilege
738 or invasion of the right of privacy is allowed against any
739 physician, hospital, clinic, or other medical institution
740 complying with the provisions of this section. The person
741 requesting records and a sworn statement under this subsection (2)
742 shall pay all reasonable costs connected therewith.

743 (3) In the event of any dispute regarding the Personal
744 Injury Protection Insurer's right to discovery of facts about an
745 injured person, if the dispute is not referred to arbitration
746 under Section 31 of this act, a court of record may enter an order
747 for such discovery as justice requires.

748 SECTION 23. Assigned Claims Plan. Insurers and qualified
749 self-insurers authorized to provide Personal Injury Protection
750 insurance under this act shall organize, participate in, and
751 maintain an assigned claims plan to provide Basic Personal Injury
752 Protection benefits to any person who is injured as a result of a
753 motor vehicle accident if:

754 (a) Basic Personal Injury Protection benefits are
755 payable but not applicable to the injury for some reason other
756 than those specified in Section 9 of this act; provided such
757 person shall have the right to reject Personal Injury Protection
758 benefits and to seek damages in tort. The election must be made
759 within ninety (90) days after the accident or ninety (90) days

760 after receiving written notice of the right of election.

761 (b) Basic Personal Injury Protection benefits are
762 unavailable, in whole or in part, because of financial inability
763 of an insurer to fulfill its obligations. Payments made by the
764 Assigned Claims Plan pursuant to this paragraph (b) constitute
765 covered claims of the Insurance Guaranty Association under the
766 laws of this state.

767 (c) The Assigned Claims Plan shall provide such rules
768 and agreements for the operation of the plan and for the equitable
769 distribution of costs as approved by the commissioner. Any claim
770 brought through the Assigned Claims Plan is assigned to an insurer
771 in accordance with such rules and agreements, and that insurer,
772 after such assignment, has the rights and obligations it would
773 have had if, prior to such assignment, it had issued a policy
774 providing Personal Injury Protection applicable to the loss. Any
775 person accepting Personal Injury Protection benefits under the
776 Assigned Claims Plan has such rights and obligations as he or she
777 would have had under a policy issued to him or her providing
778 Personal Injury Protection benefits.

779 (d) If a claim qualifies for assignment under this
780 section, the Assigned Claims Plan and any insurer to whom the
781 claim is assigned is subrogated to all of the rights of the
782 claimant against any person liable for such loss and against any
783 insurer, its successor in interest, or any other person or
784 organization legally obligated to provide Personal Injury
785 Protection benefits to the insured person for benefits provided by
786 the assignment.

787 SECTION 24. **Fraudulent Claims.** Any person, including an
788 insurer, who, with intent to defraud or deceive any other person
789 in connection with a claim for payment or other benefit pursuant
790 to an insurance policy providing benefits under this act, does or
791 attempts to do either of the following, knowing that such
792 statement contains any false, incomplete, or misleading

793 information concerning any fact or thing material to such claim:

794 (a) Presents or causes to be presented, or conspires to
795 present or cause to be presented, any written or oral statements
796 in connection with a claim for payment or other benefit; or

797 (b) Prepares or makes any written or oral statement
798 that is intended to be presented to any person in connection with
799 or in support of any claim for payment or other benefit, shall be
800 guilty of a felony punishable by a fine of not more than Ten
801 Thousand Dollars (\$10,000.00).

802 **SECTION 25. Non-Discrimination in Fees for Medical Services.**

803 A physician, hospital, clinic, or other person or institution
804 lawfully rendering treatment to an injured person, and a person or
805 institution providing medical rehabilitation services following an
806 injury to an injured person, may charge only a reasonable amount
807 for the products, services, and accommodations rendered. The
808 charge shall not exceed the amount the person or institution
809 customarily charges for like products, services, and
810 accommodations in cases not involving insurance.

811 **SECTION 26. Managed Care.** A Personal Injury Protection
812 Insurer, with the approval of the commissioner, may utilize, for
813 the payment of medical expenses provided under Personal Injury
814 Protection, managed care systems, including but not limited to,
815 health maintenance and preferred provider organizations, and may
816 require an injured person to obtain health care through a managed
817 care system designated by the Personal Injury Protection Insurer
818 if such injured person has opted to be subject to such a managed
819 care system at the time of purchase of Personal Injury Protection
820 coverage at an appropriately reduced premium.

821 **SECTION 27. Safety Equipment.** Each Personal Injury
822 Protection Insurer shall adopt an actuarially sound program which
823 provides incentives, in the form of increased benefits, reduced
824 premiums, or other means, for Personal Injury Protection Insureds
825 to install, maintain, and make use of injury reducing devices such

826 as, but not necessarily limited to, seat and harness belts, air
827 bags, and child restraint systems.

828 SECTION 28. Regulations. (a) The commissioner may adopt
829 additional regulations to provide effective administration of this
830 act that are consistent with its purposes and are fair and
831 equitable, including regulations which authorize Personal Injury
832 Protection Insurers to write Personal Injury Protection insurance
833 with reasonable deductibles higher or lower in amount than that
834 provided in Section 3(c) of this act, and regulations to permit
835 the offering of pain and suffering coverage.

836 (b) The commissioner shall develop an informational
837 brochure which must be provided by each insurer or agent to each
838 policyholder or applicant for motor vehicle insurance explaining
839 the Personal Injury Protection option and the Tort Liability
840 Insurance option as well as the consequence of selection of one
841 option over the other.

842 The commissioner shall establish, within the Department of
843 Insurance, a compliance unit which shall monitor all complaints
844 against insurers, health care providers, and attorneys arising out
845 of the provision of Personal Injury Protection benefits. The
846 commissioner shall report to the Legislature, at least annually,
847 on the nature of the complaints, the penalties levied against
848 insurers, and the final disposition of complaints. The report,
849 which will identify parties by name, will be a public record
850 available on request by any member of the public.

851 SECTION 29. Limitation of Liability for Advising on Options.

852 No insurer or any agent or employee of such insurer, no insurance
853 producer representing a motor vehicle insurer or any automobile
854 residual market plan, and no attorney licensed to practice law
855 within this state shall be liable in an action for damages on
856 account of an election of the Tort Liability Insurance option, an
857 election of the Personal Injury Protection option, or a failure to
858 make a required election, unless such person has willfully

859 misrepresented the available choices or has fraudulently induced
860 the election of one system over the other.

861 SECTION 30. Cost of Living Adjustment. Every two (2) years,
862 on the anniversary of the effective date of this act, the
863 commissioner shall report in writing to the Legislature on the
864 effect of changes in the relevant components of the cost of living
865 on levels of benefits, limits of liability, and deductibles
866 mentioned in this act.

867 SECTION 31. Arbitration. Any dispute with respect to
868 Personal Injury Protection coverage between a Personal Injury
869 Protection Insurer and an injured person, or the dependents of
870 such person, shall be submitted to arbitration. Such dispute
871 either shall be submitted to the American Arbitration Association,
872 or be submitted for determination in the following manner: Upon
873 the request for arbitration being made by either party, each party
874 to the dispute shall select an arbitrator and the two (2)
875 arbitrators so named shall select a third arbitrator. The written
876 decision of any two (2) arbitrators is binding on each party. If
877 arbitrators are not selected within forty-five (45) days from such
878 request, either party may require that such arbitration be
879 submitted to the American Arbitration Association.

880 SECTION 32. Out-of-State Vehicles. Each insurer authorized
881 to transact or transacting business in this state shall file with
882 the commissioner, as a condition of its continued transaction of
883 business within this state, a form approved by the commissioner
884 declaring that any contract of motor vehicle liability insurance,
885 wherever issued, covering the maintenance or use of a motor
886 vehicle while the motor vehicle is in this state, is deemed to
887 provide the insurance required by Section 5 of this act unless the
888 named insured, prior to a motor vehicle accident within this
889 state, has elected the Personal Injury Protection option pursuant
890 to Section 4 of this act. Any nonadmitted insurer may also file
891 such form. In the event a person is entitled to Personal Injury

892 Protection benefits or their equivalent under the requirements of
893 more than one (1) state, such person shall elect to recover under
894 the laws of any one (1) such state and such election shall
895 represent the exclusive source of recovery of all Personal Injury
896 Protection benefits, or their equivalent, paid or payable under
897 the financial responsibility requirements of that or any other
898 state.

899 SECTION 33. **Terms, Conditions, and Exclusions.** All
900 insurance coverages provided pursuant to this act are subject to
901 such terms, conditions, and exclusions as have been approved by
902 the commissioner.

903 SECTION 34. **Applicable Provisions to Tort Maintenance**
904 **Coverage.** As to matters covered in Sections 12, 15, 16, 18, 21,
905 22, 23, 26, 27, 29 and 32 of this act, and other related matters,
906 where appropriate laws and regulations of this state applicable to
907 uninsured motorist coverage are applicable to Tort Maintenance
908 Coverage, except that the commissioner may by regulation apply
909 pertinent provisions applicable to Personal Injury Protection to
910 Tort Maintenance Coverage.

911 SECTION 35. **Severability and Constitutionality.** If any
912 provision of this act or the application thereof to any person or
913 circumstance is held to be unconstitutional or otherwise invalid,
914 the remainder of this act and the application of such provision to
915 other persons or circumstances are not affected thereby, and it is
916 to be conclusively presumed that the Legislature would have
917 enacted the remainder of this act without such invalid or
918 unconstitutional provision, except that if Section 14 of this act
919 is found to be unconstitutional or invalid, it is to be
920 conclusively presumed that the Legislature would not have enacted
921 the remainder of this act without such limitations, and the entire
922 act is invalid. If Section 14 of this act is found to be
923 unconstitutional or invalid, Personal Injury Protection Insurers
924 have no obligation to pay Personal Injury Protection benefits with

925 respect to accidents occurring on or after the date of the finding
926 of such unconstitutionality or invalidity and, in addition, are
927 subrogated to all of the rights of Personal Injury Protection
928 Insureds for all previous such benefits paid.

929 SECTION 36. Declaratory Judgment. In addition to the
930 provisions of Section 35 of this act, because the Legislature
931 finds and declares that questions of law may exist with respect to
932 the constitutionality of some of the sections of this act, the
933 public welfare requires that such questions with respect to this
934 act be resolved with expedition prior to such time as its
935 mandatory provisions take effect in order to avoid disruption of
936 the orderly implementation of its provisions. Therefore, the
937 Legislature finds that the remedy of declaratory judgment to
938 determine the constitutionality of the provisions of this act
939 should immediately be made available to determine those important
940 questions, in order to avoid utter confusion by the public in the
941 event this act is declared unconstitutional. Therefore, any
942 resident of the state is authorized to forthwith bring an action
943 for a declaratory judgment against the commissioner to determine
944 the constitutionality of this act's provisions. Such court shall
945 reserve the questions of law for the advice of the Supreme Court
946 as provided by law. In the interest of expediting a decision, the
947 Supreme Court may suspend its rules as provided therein.

948 SECTION 37. This act shall take effect and be in force from
949 and after July 1, 1999.