HOUSE BILL NO. 1607

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

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

SECTION 1. Title. This act may be cited as the Mississippi

SECTION 2. Statement of purpose. (1) Controlling
provisions. To the extent the provisions of Section 2 of this act
differ from the provisions of Section 3 of this act and
thereafter, the provisions of the subsequent sections control.

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

(3) The Right to choose. This bill gives motorists (a) the
right to choose the kinds of personal injury protection which will
be available to themselves and their family members in case of an
automobile accident, and (b) the right to choose the amount of
financial protection they deem appropriate and affordable for
themselves and their families. Instead of being forced to buy
traditional tort liability insurance to protect strangers,
motorists will have the opportunity to buy a new personal injury
protection coverage to protect themselves and their family members
in the event of a motor vehicle accident. As an alternative, they
will have the right to elect traditional tort liability insurance
which will include an inverse liability coverage (entitled "tort
maintenance coverage") to provide protection in the event of
injury caused by someone who has elected the personal injury
protection option.

(4) Tort liability insurance versus personal injury
protection coverage.

(a) Motorists who choose the tort liability insurance
and who are involved in an accident with another motorist will
retain the tort liability system, except that, based on fault, (i)
they can be sued by those who choose personal injury protection
but only for damages in excess of the limits of the personal
injury protection policy and (ii) they cannot claim against those
who choose personal injury protection coverage except for
uncompensated economic loss in excess of the limits of their own
first party tort maintenance coverage.

(b) Motorists who choose personal injury protection
coverage established by this act and who are involved in an
accident with a motorist who has chosen traditional tort liability
insurance will be promptly compensated for their own losses,
without regard to fault, and can also claim against the other
motorist based on fault for uncompensated economic loss in excess
of the limits of the personal injury protection policy.

(c) Two (2) motorists who each choose personal injury
protection coverage and who are involved in an accident with each
other will be promptly compensated under their own policies for
their own losses without regard to fault. In this situation, the
two (2) motorists who have chosen the personal injury protection coverage lose the right to claim and sue for "pain and suffering" and other noneconomic loss, but if either suffers economic loss in excess of his/her policy's benefit levels, that person retains the right to claim and sue for unreimbursed economic loss based on fault.

(d) When two (2) motorists who each choose tort liability insurance are involved in an accident with each other, their rights against each other are unaffected by this act.

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

(f) If a motorist who has chosen the personal injury protection policy is involved in an accident with an uninsured motorist, the policyholder will be promptly compensated for losses without regard to fault under his/her personal injury protection policy, and has the right to claim and sue the uninsured motorist for damages based on fault. The uninsured motorist forfeits the right to claim for noneconomic loss against the motorist who has chosen the personal injury protection policy except when the personal injury protection insured was driving under the influence of alcohol or illegal drugs or was guilty of intentional misconduct.

(5) Property damage. A motorist who purchased a personal injury protection policy will thereby procure Ten Thousand Dollars ($10,000.00) of property damage liability insurance as part of his/her mandatory coverage. In order to keep the cost of property damage liability insurance at a reasonable level, the motorist must report to the insurance company any losses or damages he/she incurs to property, regardless of whether recovery, if any, is made from the tortfeasor or an uninsured motorist.
damage liability insurance as low as possible, persons who have chosen personal injury protection policies have no cause of action for damage to a motor vehicle to the extent such vehicle is insured against collision damage in accidents involving other personal injury protection insureds.

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

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

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

(c) "Basic personal injury protection" means coverage, for personal injury protection which provides benefits for loss resulting from accidental bodily injury. Basic personal injury protection protection includes benefits with an aggregate limit of Fifty Thousand Dollars ($50,000.00) per person (including Twenty Thousand Dollars ($20,000.00) of personal injury protection benefits), to consist of medical expenses, up to Five Thousand Dollars ($5,000.00) per week of loss of income from work, up to Three Hundred Dollars ($300.00) per week of replacement services loss, and if death is proximately and directly caused by a motor vehicle and occurs within one (1) year of the date of the accident, a death benefit of Ten Thousand Dollars ($10,000.00) payable to the dependents, if any, or, if none, to the heirs or estate of the decedent. Nothing contained in this section prevents a personal injury protection insurer from also making available other additional compensation benefits in coverages and amounts other than those prescribed in this section. No applicant or insured may be required to purchase a lesser amount than those prescribed in this paragraph (c).
protection benefits consist of the following elements with an aggregate limit of Fifteen Thousand Dollars ($15,000.00) per person:

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

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

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

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

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

(e) "Collateral sources" means all benefits one receives or is entitled to receive as reimbursement of loss because of an injury from sources other than personal injury protection benefits. In such calculation, no subtraction is made for amounts one receives or is entitled to receive:

(i) In discharge of familial obligations or support;

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

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

(f) "Commissioner" means the Commissioner of Insurance of the State of Mississippi.

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

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

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

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

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

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

(m) "Intentional misconduct" means conduct whereby harm is intentionally caused or attempted to be caused by one who acts or fails to act for the purpose of causing harm or with knowledge that harm is substantially certain to follow when such conduct
caused or substantially contributed to the harm claimed for. A person does not intentionally cause or attempt to cause harm (i) merely because his act or failure to act is intentional or done with the realization that it creates a grave risk of causing harm or (ii) if the act or omission causing bodily harm is for the purpose of averting bodily harm to oneself or another person.

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

(o) "Medical expenses" means reasonable expenses incurred by an injured person for necessary medical, surgical, x-ray, dental, ambulance, hospital, medical rehabilitation, and professional nursing services and includes expenses for eyeglasses, hearing aids, and prosthetic devices. The words "incurred by" include medical expenses incurred on behalf of an injured person by a parent or guardian if the injured person is a minor or incompetent, or by a surviving spouse if the injured person be deceased. Personal injury protection insurers are authorized to review medical expenses prior to, during, and after the course of treatment of an injured person, to assure that they are both reasonable and necessary. Under basic personal injury protection and under added personal injury protection, medical expenses are payable for services provided to the injured person within two (2) years of the date of accidental bodily injury.

"Medical expenses" does not include:
(i) That portion of the charge for a room in any hospital, clinic, convalescent or nursing home, extended care facility or any similar facility in excess of the reasonable and customary charge for semi-private accommodations unless medically required; or

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

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

(q) "Motor vehicle" means:

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

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

(r) "Noneconomic loss" means any loss other than economic loss and includes, but is not necessarily limited to, pain, suffering, inconvenience, mental anguish, and all other noneconomic damage whether otherwise recoverable under the law of this state or not. Noneconomic loss does not include economic loss caused by pain and suffering or by physical impairment.
(s) "Occupying" means to be in or upon a motor vehicle or engaged in the immediate act of entering into or alighting from the motor vehicle.

(t) "Operation or use" means operation or use of a motor vehicle as a motor vehicle. Operation or use does not include manufacturing, sale or maintenance of a motor vehicle, including repairing, servicing, washing, loading or unloading, unless the conduct occurs while occupying it.

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

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

(w) "Personal injury protection" means coverage providing basic (and, if purchased, added) benefits, regardless of fault, for loss resulting from accidental bodily injury.

(x) "Personal injury protection insured" means, the first person identified by name as an insured under a policy providing personal injury protection benefits, the spouse of such person if a resident of household, and any other resident relative of the same household, and, with respect to accidents within this state, any person who sustains accidental bodily injury while occupying or through being struck by a motor vehicle insured for personal injury protection, unless such person is insured pursuant to the tort liability insurance option provided under Section 4 of this act or is an uninsured motorist.
(y) "Personal injury protection insurer" means an insurer or qualified self-insurer providing personal injury protection benefits.

(z) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services from others, not members of the injured person's household, in lieu of the services the injured person would have performed for the benefit of the household. Replacement services loss is not due if the injured person is entitled to receive Personal injury protection benefits for loss of income from work for the same time period. Replacement services loss does not include any loss after the death of an injured person, and payment for the period of disability under basic personal injury protection is not to exceed two (2) years from the date of accidental bodily injury.

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

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

(cc) "Tort maintenance coverage" means coverage under which a person who has chosen tort liability insurance coverage when involved in an accident with a personal injury protection insured, claims for tort liability against his/her own insurer to the extent of such coverage.

(dd) "Uncompensated economic loss" means that portion of economic loss arising out of an accidental bodily injury of an injured person which exceeds the benefits provided by (i) personal injury protection coverage (except for loss on account of the application of a deductible under such a policy), or (ii) tort maintenance coverage, and (iii) collateral sources. Such loss is
recoverable under the same terms and limitations as under added
personal injury protection, but shall not be subject to the
aggregate limit of liability of such coverage.

(ee) "Uninsured motorist" means the owner, or a
dependent thereof, of a motor vehicle uninsured for either Basic
Personal injury protection or tort liability insurance at the
limits prescribed by this state's financial responsibility law, or
higher while such person is operating, using or occupying the
owned but uninsured motor vehicle.

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

(a) For basic personal injury protection and the
property damage liability mandated under this state's financial
responsibility law, or

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

(c) An insurance policy written by a personal injury
protection insurer pursuant to this act to provide basic personal
injury protection is deemed to include all basic personal injury
protection coverage required by this act. Coverage under basic
personal injury protection meets the requirements of this state's
financial responsibility law even though such policy does not
provide protection against bodily injury liability claims arising
out of accidents within this state.

(d) A personal injury protection insurer shall make
available, at the option of a named insured, added personal injury
protection on a policy providing basic personal injury protection.
The exercise of the option not to purchase added personal injury
protection by a named insured or an applicant shall be binding on
all personal injury protection insureds covered under the policy.

(e) A personal injury protection insurer is authorized
to write personal injury protection without any deductible or
subject to reasonable deductibles pursuant to Section 28 of this act.

(f) A personal injury protection insurer shall also make available a pain and suffering coverage, pursuant to regulations issued under Section 28 of this act, with a limit of Fifty Thousand Dollars ($50,000.00), payable if the injured person sustains an accidental bodily injury resulting in death or dismemberment or significant and permanent loss of important bodily function or significant and permanent scarring or disfigurement. Nothing contained herein shall preclude any insurer from offering higher limits of pain and suffering coverage or providing broader coverage.

(g) In addition to added personal injury protection coverages, a personal injury protection insurer shall make available other insurance coverages with the approval of the commissioner. Such coverages shall include, but are not limited to, bodily injury liability insurance, collision coverage, and comprehensive physical damage coverage.

(h) An insurance policy written by a motor vehicle liability insurer pursuant to this act to provide coverage under the tort liability insurance option shall include tort maintenance coverage for accidental bodily injury of an insured under the tort liability insurance option, caused by the negligence, in whole or in part, of a personal injury protection insured. Such insurance will pay such damages as might have been recovered against a personal injury protection insured but for the exemption from tort liability provided by Section 14 of this act up to the liability limits of the tort maintenance coverage.

SECTION 5. Required limits of liability coverage. Every owner who chooses the tort liability insurance option must carry liability insurance in an amount equal to the minimum liability limits for accidental bodily injury and property damage as specified by this state's financial responsibility law. Insurers
providing coverage for such persons shall include tort maintenance
coverage required in Section 4 of this act in all policies
providing primary coverage for legal liability for motor vehicles
at limits equal to the bodily injury liability coverage carried by
the tort maintenance coverage insured.

SECTION 6. Election of personal injury protection option or
tort maintenance coverage option. Upon the earliest and first
renewal of any applicable motor vehicle liability insurance policy
on or after the effective date of this act, or before the issuance
of a policy required by this act, a choice must be made of either
the tort maintenance coverage option or the personal injury
protection option. In order to minimize conflict between the two
(2) options, all motor vehicle insurers are authorized to maintain
underwriting rules which encourage uniformity within a household.
A choice made pursuant to this act is binding with respect to any
continuation, renewal, or reinstatement of an applicable motor
vehicle insurance policy, and continues with respect to any policy
which extends, supersedes, or replaces the policy unless the named
insured subsequently makes a different choice in writing.

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

(2) If there is more than one (1) motor vehicle in the
household, and the named insured chooses different options for
different vehicles, the choice applicable to the vehicle in use
governs not only the named insured, but also all other persons
insured under the policy whose injury arises out of the use of
that motor vehicle unless the named insured has specifically
identified family members who shall be personal injury protection
insureds. If the named insured is injured while occupying or through being struck by another motor vehicle, the tort maintenance coverage option shall be deemed applicable and personal injury protection benefits shall not be provided. If any other person insured under two (2) or more policies covering different options is injured while occupying or through being struck by another motor vehicle, and that insured has not been specifically identified by the named insured as being a personal injury protection insured at all times, the tort maintenance coverage option shall be deemed applicable and personal benefits shall not be provided.

(3) If there are two (2) or more vehicles in the household, each owned by different persons, each such person shall have the right to choose either the personal injury protection option or the tort maintenance coverage option for himself or herself. That person's choice shall determine that person's rights no matter which vehicle he or she is occupying or which vehicle he or she might be struck by. The rights of all members of the household who are not motor vehicle owners shall be governed by the choice applicable to the motor vehicle which they were occupying at the time of the injury, if that vehicle was owned by a member of the household.

(4) In the event of a bodily injury occurring prior to the effective date of a required choice, if there are conflicting choices within the household creating questions as to the applicability of the personal injury protection option or the tort maintenance coverage option, or if there is a failure to make a choice as required by this act, tort maintenance insurance will be applicable, and personal injury protection benefits will not be payable.

SECTION 8. Geographic application of personal injury protection policies. A personal injury protection insurer shall pay personal injury protection benefits for accidental bodily
injury of a personal injury protection insured sustained within
the United States of America, its territories or possessions, or
Canada. Any personal injury protection insurance policy issued to
satisfy the financial responsibility law of this state shall be
conformed to satisfy the financial responsibility law of any
jurisdiction mentioned above in which the insured motor vehicle is
being operated with respect to an accident occurring in that
jurisdiction.

SECTION 9. Persons not entitled to personal injury
protection benefits. A personal injury protection insurer has no
obligation to provide personal injury protection benefits to or on
behalf of any injured person who:

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

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

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

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

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

(f) Is injured pursuant to the tort maintenance
coverage option described in Section 4(h) of this act, or
(g) Is an uninsured motorist, or a dependent of an uninsured motorist who is not otherwise insured for personal injury protection.

Nothing contained herein prevents a personal injury protection insurer from including in personal injury protection coverage persons mentioned in this section, but only if such is done by language clearly manifesting an intent to provide such coverage.

SECTION 10. Payment of personal injury protection benefits.

Personal injury protection benefits when due are payable at the option of the personal injury protection insurer to any of the following:

(a) The injured person;

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

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

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

SECTION 11. Multiple coverages. Regardless of the number of motor vehicles involved, persons covered, claims made, motor vehicles or premiums shown on the policy or premiums paid, in no event shall the coverage limits under a motor vehicle insurance policy for any one (1) coverage be added to, combined with, or otherwise stacked upon any other coverage limit to determine the maximum limit of coverage available to an injured person for any one (1) accident. Unless the contract clearly provides otherwise, policies or plans may also provide that if two (2) or more policies, plans, or coverages apply equally to the same accident, the highest limit of liability applicable shall be the maximum amount available to an insured person under any one (1) of such policies. Each such policy, plan or coverage shall bear its proportionate share of the loss.
SECTION 12. Priority of benefits. (1) Persons entitled to basic personal injury protection benefits required or provided pursuant to this act are entitled to at least the personal injury protection coverage under the policy insuring them and shall claim such benefits from insurers in the following order of priority up to the limits of personal injury protection in the listed category:

First: The personal injury protection covering a motor vehicle involved in the accident, if the person injured was an occupant of or was struck by such motor vehicle at the time of the accident.

Second: The personal injury protection under which the injured person is or was an insured.

Third: If no personal injury protection is available under the above priorities, a person injured as a result of a motor vehicle accident may claim benefits under the assigned claims plan pursuant to Section 23 of this act, unless unqualified for benefits under Section 6 of this act.

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

SECTION 13. Coordination of benefits. A basic personal injury protection insurer has the primary obligation to indemnify an injured person except to the extent of collateral sources paid or payable to such person.

SECTION 14. Tort rights and legal liability under this act.
(1) No personal injury protection insured has a cause of action for injury against, nor is liable to, any other person on account of an accident occurring within this state, except as provided in subsections (2), (3), (4) and (5) and except for injury caused other than by the ownership, operation, or use of a motor vehicle.

(2) An injured person has a cause of action for accidental bodily injury against any party driving under the influence of alcohol or illegal drugs or guilty of intentional misconduct. Any party providing personal injury protection or tort maintenance coverage benefits to such injured person has a right of subrogation under this subsection (2).

(3) A personal injury protection insured has a cause of action for accidental bodily injury for uncompensated economic loss against, and is liable for same, to, any person insured under personal injury protection or tort maintenance coverage.

(4) Benefits under subsection (3) include reasonable expenses incurred by the party in collecting such benefits, including a reasonable attorney's fee for advising and representing a claimant for such benefits. No part of the fee for representing such party in connection with such benefits is a charge against benefits otherwise due the claimant, and no additional fee may be charged by an attorney to any party in collecting such benefits. All or part of the fee may be deducted from the benefits otherwise due the claimant if any significant part of the claim for such benefits was fraudulent or so excessive as to have no reasonable foundation. In any action brought against an injured person by a personal injury protection insurer, the court may award the injured person's attorney a reasonable attorney's fee for defending the action if the injured person was the prevailing party.

(5) A personal injury protection insured whose motor vehicle is damaged by the fault of another personal injury protection...
insured has a cause of action for damage to such motor vehicle
only to the extent such motor vehicle is not covered by collision
insurance.

(6) A person covered by tort maintenance coverage has a
cause of action for injury against another person so covered.

(7) An uninsured motorist has no cause of action against a
personal injury protection insured for (a) injury other than for
uncompensated economic loss and (b) damage to property except
damage in excess of the property damage liability limits mandated
under this state's financial responsibility law unless the
personal injury protection insured was driving under the influence
of alcohol or illegal drugs or was guilty of intentional
misconduct. An uninsured motorist remains liable in tort to a
person insured for personal injury protection benefits for
noneconomic loss, economic loss, and property damage.

SECTION 15. Insurer's right of subrogation. There is no
right of subrogation or contribution by a personal injury
protection insurer except under Sections 14, 16 and 23 of this
act, and except that a personal injury protection insurer is
subrogated, to the extent of its obligations, to all of the rights
of its personal injury protection insured with respect to an
accident caused in whole or in part by:

(a) The negligence of an uninsured motorist;
(b) The negligence of the owner or operator of a motor
vehicle having a gross weight of seven thousand (7,000) pounds or
more;
(c) Driving under the influence of alcohol or illegal
drugs;
(d) Intentional misconduct; or
(e) Any person who is not affected by the limitations
on tort rights and liabilities pursuant to Section 14 of this act.

SECTION 16. Personal injury protection benefits and causes
of action for injury. No subtraction is made against personal
injury protection benefits due because of the value of a cause of action for injury preserved under this act, except that after recovery is realized under such cause of action, a subtraction is made to the extent of the net recovery, exclusive of reasonable attorney's fees and other reasonable expenses incurred in effecting the recovery. If personal injury protection benefits have already been received, the recipient thereof shall repay to the insurer paying personal injury protection benefits out of such recovery a sum equal to the personal injury protection benefits received but not more than the realized net recovery, and the insurer shall have a lien on the recovery to this extent. Any remainder of the net recovery from such a cause of action applies periodically against loss as it accrues, until an amount equal to the net recovery under such a cause of action has been subtracted.

SECTION 17. Personal injury protection benefits payable periodically. Personal injury protection benefits are payable monthly as loss accrues. Such benefits are overdue if not paid within thirty (30) days after the personal injury protection insurer receives reasonable proof of the fact and the amount of loss sustained, except that a personal injury protection insurer may accumulate claims for periods not exceeding one (1) month, and benefits are not overdue if paid within twenty (20) days after the period of accumulation. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty (30) days after such proof is received by the insurer, subject to the right of review specified in Section 30 of this act. Any part or all of the remainder of the claim that is later supported by reasonable proof if overdue if not paid within thirty (30) days after such proof is received by the insurer. For the purpose of calculating the extent to which any benefits are overdue, payment is treated as made on the date a draft or other valid instrument is placed in the United States mail in a properly addressed postpaid envelope, or, if not
so posted, on the date of delivery. Personal injury protection
benefits may be paid by the personal injury protection insurer
directly to persons supplying necessary products, services, or
accommodations to the injured person. If overdue benefits are
recovered against a personal injury protection insurer or are paid
by a personal injury protection insurer, the provisions of
subsection (5) of Section 14 of this act pertaining to expenses
and an attorney's fee apply. In addition, the insurer is
obligated to pay interest on the overdue payment at one hundred
fifty percent (150%) of the prime rate in effect at the time the
payment became overdue.

SECTION 18. Assignment or garnishment of personal injury
protection benefits. (1) Personal injury protection benefits,
other than those for medical expenses, are exempt from
garnishment, attachment, execution, and any other process or claim
to the extent that wages or earnings are exempt under any
applicable law exempting wages or earnings from process or claims.

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

SECTION 19. No penalty for claims for personal injury
protection benefits. An insurer shall not cancel, fail to renew,
or increase the premium of its insured solely on account of the
insured or any other injured person making a claim for personal
injury protection benefits or for collision damage to the insured
vehicle. Violation of this section is punishable by a fine of One
Thousand Dollars ($1,000.00) per offense, such punishment to be
exclusive of all other remedies permitted by law.
SECTION 20. Limitation of actions. Subject to the arbitration provisions which follow, if no personal injury protection benefits have been paid, an action therefor may be commenced against the personal injury protection insurer not later than two (2) years after the injured person suffers accidental bodily injury. If personal injury protection benefits have been paid, an action for recovery of further benefits by either the injured person or another claimant may be commenced not later than two (2) years after the last payment of benefits.

SECTION 21. Mental and physical examinations. (1) Whenever the mental or physical condition of an injured person is material to any claim that has been made or may be made for past or future personal injury protection benefits, the insured person shall submit to reasonable mental or physical examinations by a physician or physicians designated by the insurer at a reasonably convenient time and location, subject to regulations, if any, promulgated by the commissioner. Personal injury protection insurers are authorized to include provisions of this nature in policies providing personal injury protection benefits.

(2) Where an insurer has requested of a person receiving personal injury protection benefits that such person undergo medical or rehabilitation services, and such person unreasonably refuses to comply with such request, the insurer may, upon written notice, suspend all future such benefits until such person complies with that request.

SECTION 22. Verification of entitlement to benefits. (1) Every employer shall furnish pertinent information on a form approved by the commissioner regarding an employee who has filed a claim for personal injury protection benefits if a request is made by an insurer providing such benefits under this section.

(2) Every physician, hospital, clinic, or other medical institution providing, before or after an injury resulting from a motor vehicle accident upon which a claim for personal injury
protection benefits is based, any products, services, or
accommodations in relation to that or any other injury, or in
relation to a condition claimed to be connected with that or any
other injury shall, if requested to do so by the personal injury
protection insurer against whom the claim has been made, furnish a
written report of the history, condition, and treatment, and the
dates and costs of such treatment of the injured person. Such
information shall be provided together with a sworn statement that
the treatment or services rendered were reasonable and necessary
with respect to the injury sustained and identifying which portion
of the expenses for such treatment or services were incurred as a
result of such injury. Every such physician, hospital, clinic, or
other medical institution shall also promptly produce and permit
the inspection and copying of its records regarding such history,
condition, and treatment, and the dates and costs of treatment.
The sworn statement required under this section reads as follows:
"Under penalty of perjury, I declare that I have
read the foregoing and the facts alleged are true, to
the best of my knowledge and belief."
No cause of action for violation of a physician-patient privilege
or invasion of the right of privacy is allowed against any
physician, hospital, clinic, or other medical institution
complying with the provisions of this section. The person
requesting records and a sworn statement under this subsection (2)
shall pay all reasonable costs connected therewith.

(3) In the event of any dispute regarding the personal
injury protection insurer's right to discovery of facts about an
injured person, if the dispute is not referred to arbitration
under Section 31 of this act, a court of record may enter an order
for such discovery as justice requires.

SECTION 23. Assigned claims plan. Insurers and qualified
self-insurers authorized to provide personal injury protection
insurance under this act shall organize, participate in, and
maintain an assigned claims plan to provide basic personal injury protection benefits to any person who is injured as a result of a motor vehicle accident if:

(a) Basic personal injury protection benefits are payable but not applicable to the injury for some reason other than those specified in Section 9 of this act; provided such person shall have the right to reject personal injury protection benefits and to seek damages in tort. The election must be made within ninety (90) days after the accident or ninety (90) days after receiving written notice of the right of election.

(b) Basic personal injury protection benefits are unavailable, in whole or in part, because of financial inability of an insurer to fulfill its obligations. Payments made by the assigned claims plan pursuant to this paragraph (b) constitute covered claims of the Insurance Guaranty Association under the laws of this state.

(c) The assigned claims plan shall provide such rules and agreements for the operation of the plan and for the equitable distribution of costs as approved by the commissioner. Any claim brought through the assigned claims plan is assigned to an insurer in accordance with such rules and agreements, and that insurer, after such assignment, has the rights and obligations it would have had if, prior to such assignment, it had issued a policy providing personal injury protection applicable to the loss. Any person accepting personal injury protection benefits under the assigned claims plan has such rights and obligations as he or she would have had under a policy issued to him or her providing personal injury protection benefits.

(d) If a claim qualifies for assignment under this section, the assigned claims plan and any insurer to whom the claim is assigned is subrogated to all of the rights of the claimant against any person liable for such loss and against any insurer, its successor in interest, or any other person or
organization legally obligated to provide personal injury
protection benefits to the insured person for benefits provided by
the assignment.

SECTION 24. Fraudulent claims. Any person, including an
insurer, who, with intent to defraud or deceive any other person
in connection with a claim for payment or other benefit pursuant
to an insurance policy providing benefits under this act, does or
tries to do either of the following, knowing that such
statement contains any false, incomplete, or misleading
information concerning any fact or thing material to such claim:
(a) Presents or causes to be presented, or conspires to
present or cause to be presented, any written or oral statements
in connection with a claim for payment or other benefit; or
(b) Prepares or makes any written or oral statement
that is intended to be presented to any person in connection with
or in support of any claim for payment or other benefit, shall be
guilty of a felony punishable by a fine of not more than Ten
Thousand Dollars ($10,000.00).

SECTION 25. Nondiscrimination in fees for medical services.
A physician, hospital, clinic, or other person or institution
lawfully rendering treatment to an injured person, and a person or
institution providing medical rehabilitation services following an
injury to an injured person, may charge only a reasonable amount
for the products, services, and accommodations rendered. The
charge shall not exceed the amount the person or institution
customarily charges for like products, services, and
accommodations in cases not involving insurance.

SECTION 26. Managed care. A personal injury protection
insurer, with the approval of the commissioner, may utilize, for
the payment of medical expenses provided under personal injury
protection, managed care systems, including but not limited to,
health maintenance and preferred provider organizations, and may
require an injured person to obtain health care through a managed
care system designated by the personal injury protection insurer
if such injured person has opted to be subject to such a managed
care system at the time of purchase of personal injury protection
coverage at an appropriately reduced premium.

SECTION 27. Safety equipment. Each personal injury
protection insurer shall adopt an actuarially sound program which
provides incentives, in the form of increased benefits, reduced
premiums, or other means, for personal injury protection insureds
to install, maintain, and make use of injury reducing devices such
as, but not necessarily limited to, seat and harness belts, air
bags, and child restraint systems.

SECTION 28. Regulations. (a) The commissioner may adopt
additional regulations to provide effective administration of this
act that are consistent with its purposes and are fair and
equitable, including regulations which authorize personal injury
protection insurers to write personal injury protection insurance
with reasonable deductibles higher or lower in amount than that
provided in Section 3(c) of this act, and regulations to permit
the offering of pain and suffering coverage.

(b) The commissioner shall develop an informational
brochure which must be provided by each insurer or agent to each
policyholder or applicant for motor vehicle insurance explaining
the personal injury protection option and the tort liability
insurance option as well as the consequence of selection of one
(1) option over the other.

The commissioner shall establish, within the Department of
Insurance, a compliance unit which shall monitor all complaints
against insurers, health care providers, and attorneys arising out
of the provision of personal injury protection benefits. The
commissioner shall report to the Legislature, at least annually,
on the nature of the complaints, the penalties levied against
insurers, and the final disposition of complaints. The report,
which will identify parties by name, will be a public record available on request by any member of the public.

**SECTION 29. Limitation of liability for advising on options.**

No insurer or any agent or employee of such insurer, no insurance producer representing a motor vehicle insurer or any automobile residual market plan, and no attorney licensed to practice law within this state shall be liable in an action for damages on account of an election of the tort liability insurance option, an election of the personal injury protection option, or a failure to make a required election, unless such person has willfully misrepresented the available choices or has fraudulently induced the election of one (1) system over the other.

**SECTION 30. Cost of living adjustment.** Every two (2) years, on the anniversary of the effective date of this act, the commissioner shall report in writing to the Legislature on the effect of changes in the relevant components of the cost of living on levels of benefits, limits of liability, and deductibles mentioned in this act.

**SECTION 31. Arbitration.** Any dispute with respect to personal injury protection coverage between a personal injury protection insurer and an injured person, or the dependents of such person, shall be submitted to arbitration. Such dispute either shall be submitted to the American Arbitration Association, or be submitted for determination in the following manner: Upon the request for arbitration being made by either party, each party to the dispute shall select an arbitrator and the two (2) arbitrators so named shall select a third arbitrator. The written decision of any two (2) arbitrators is binding on each party. If arbitrators are not selected within forty-five (45) days from such request, either party may require that such arbitration be submitted to the American Arbitration Association.

**SECTION 32. Out-of-state vehicles.** Each insurer authorized to transact or transacting business in this state shall file with
the commissioner, as a condition of its continued transaction of
business within this state, a form approved by the commissioner
declaring that any contract of motor vehicle liability insurance,
wherever issued, covering the maintenance or use of a motor
vehicle while the motor vehicle is in this state, is deemed to
provide the insurance required by Section 5 of this act unless the
named insured, prior to a motor vehicle accident within this
state, has elected the personal injury protection option pursuant
to Section 4 of this act. Any nonadmitted insurer may also file
such form. In the event a person is entitled to personal injury
protection benefits or their equivalent under the requirements of
more than one (1) state, such person shall elect to recover under
the laws of any one (1) such state and such election shall
represent the exclusive source of recovery of all personal injury
protection benefits, or their equivalent, paid or payable under
the financial responsibility requirements of that or any other
state.

SECTION 33. Terms, conditions, and exclusions. All
insurance coverages provided pursuant to this act are subject to
such terms, conditions, and exclusions as have been approved by
the commissioner.

SECTION 34. Applicable provisions to tort maintenance
coverage. As to matters covered in Sections 12, 15, 16, 18, 21,
22, 23, 26, 27, 29 and 32 of this act, and other related matters,
where appropriate laws and regulations of this state applicable to
uninsured motorist coverage are applicable to tort maintenance
coverage, except that the commissioner may by regulation apply
pertinent provisions applicable to personal injury protection to
tort maintenance coverage.

SECTION 35. Severability and constitutionality. If any
provision of this act or the application thereof to any person or
circumstance is held to be unconstitutional or otherwise invalid,
the remainder of this act and the application of such provision to

H. B. No. 1607
02/HR03/R1601
PAGE 28 (MS\LN)
other persons or circumstances are not affected thereby, and it is
to be conclusively presumed that the Legislature would have
enacted the remainder of this act without such invalid or
unconstitutional provision, except that if Section 14 of this act
is found to be unconstitutional or invalid, it is to be
conclusively presumed that the Legislature would not have enacted
the remainder of this act without such limitations, and the entire
act is invalid. If Section 14 of this act is found to be
unconstitutional or invalid, personal injury protection insurers
have no obligation to pay personal injury protection benefits with
respect to accidents occurring on or after the date of the finding
of such unconstitutionality or invalidity and, in addition, are
subrogated to all of the rights of personal injury protection
insureds for all previous such benefits paid.

SECTION 36. Declaratory judgment. In addition to the
provisions of Section 35 of this act, because the Legislature
finds and declares that questions of law may exist with respect to
the constitutionality of some of the sections of this act, the
public welfare requires that such questions with respect to this
act be resolved with expedition prior to such time as its
mandatory provisions take effect in order to avoid disruption of
the orderly implementation of its provisions. Therefore, the
Legislature finds that the remedy of declaratory judgment to
determine the constitutionality of the provisions of this act
should immediately be made available to determine those important
questions, in order to avoid utter confusion by the public in the
event this act is declared unconstitutional. Therefore, any
resident of the state is authorized to forthwith bring an action
for a declaratory judgment against the commissioner to determine
the constitutionality of this act's provisions. Such court shall
reserve the questions of law for the advice of the Supreme Court
as provided by law. In the interest of expediting a decision, the
Supreme Court may suspend its rules as provided therein.
SECTION 37. This act shall take effect and be in force from and after July 1, 2002.