

By: Representative Montgomery (74th)

To: Insurance; Judiciary A

HOUSE BILL NO. 312

1 AN ACT TO CREATE THE MISSISSIPPI MOTORISTS' PERSONAL
 2 PROTECTION ACT; TO PROVIDE FOR ITS PURPOSES AND DEFINITIONS; TO
 3 PROVIDE FOR INSURANCE REQUIREMENTS, RATES, POLICY TERMS,
 4 LIMITATIONS AND APPLICABILITY; TO PROVIDE FOR PAYMENT OF "PERSONAL
 5 COMPENSATION" BENEFITS AND INELIGIBLE INSURED; TO PROVIDE FOR
 6 OPTIONAL COVERAGES INCLUDING SCHEDULED PAIN AND SUFFERING
 7 COVERAGE; TO PROVIDE FOR MULTIPLE COVERAGES, PRIORITY AND
 8 COORDINATION OF BENEFITS; TO PROVIDE FOR TORT AND LEGAL LIABILITY
 9 RESTRICTIONS; TO PROVIDE FOR SUBROGATION RIGHTS OF INSURERS; TO
 10 PROVIDE FOR PAYMENT, ASSIGNMENT AND GARNISHMENT OF BENEFITS; TO
 11 PROVIDE FURTHER LIMITATIONS OF ACTIONS; TO PROVIDE FOR MANDATORY
 12 MENTAL AND PHYSICAL EXAMINATIONS; TO PROVIDE FOR ESTABLISHMENT OF
 13 AN ASSIGNED CLAIMS PLAN; TO PROVIDE FOR REGULATIONS BY THE
 14 COMMISSIONER OF INSURANCE; TO PROVIDE FOR ARBITRATION; TO PROVIDE
 15 FOR DECLARATORY JUDGMENT BY ANY PERSON; TO REPEAL SECTIONS 63-15-1
 16 THROUGH 63-15-75, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE
 17 MISSISSIPPI MOTOR VEHICLE SAFETY-RESPONSIBILITY LAW; AND FOR
 18 RELATED PURPOSES.

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

20 **SECTION 1.** This act may be cited as the "Mississippi
 21 Motorists' Personal Protection Act."

22 **SECTION 2.** (1) Under existing law, motorists are required
 23 to have liability insurance primarily for the benefit of others.
 24 To protect themselves and their family members from motorists who
 25 choose not to comply with the law, consumers must purchase
 26 additional insurance coverage. Motorists who do not purchase the
 27 liability insurance as required by law are nonetheless permitted
 28 to make liability claims against motorists who have purchased
 29 liability insurance. The current system for compensating injured
 30 motorists in this state is inefficient and overcompensates persons
 31 with nonserious injuries. The costs of compensating injured
 32 persons are compounded by extraordinary litigation and
 33 claim-processing costs, costs which are ultimately borne by
 34 insurance consumers and taxpayers of this state.

35 (2) The purpose of this act is to:



36 (a) Permit motor vehicle owners to satisfy the laws of
37 this state relating to motor vehicles as defined in Section 3(1)
38 of this act by purchasing personal compensation coverage which
39 will provide, without regard to fault, certain benefits for
40 economic loss arising out of motor vehicle accidents and property
41 damage liability coverage.

42 (b) Require motor vehicle insurers to make available
43 scheduled pain and suffering coverage and other optional
44 coverages.

45 (c) Eliminate the right to seek damages for noneconomic
46 loss and compensated economic loss for motor vehicle accidents
47 except in certain cases as provided in Section 10 of this act.

48 (d) Encourage motorists to comply with the state's
49 motor vehicle insurance requirements by limiting rights of
50 uninsured motorists to collect for noneconomic and economic loss.

51 (e) Speed the administration of justice, ease the
52 burden of litigation on the courts of this state, decrease the
53 expenses associated with litigation and create a system of
54 arbitration of personal compensation claims.

55 (f) Correct imbalances and abuses in the operation of
56 the motor vehicle accident insurance system, discourage fraudulent
57 claim activity, encourage prompt medical treatment and
58 rehabilitation, provide offsets to avoid duplicate recovery and
59 require medical examinations.

60 **SECTION 3.** As used in this act, the following words and
61 phrases have the meaning ascribed to them in this section unless a
62 different meaning is plainly required by the context:

63 (a) "Accidental bodily injury" means bodily injury,
64 sickness or disease, including death resulting therefrom, arising
65 out of the operation, maintenance or use of a motor vehicle as a
66 motor vehicle and which is accidental to the injured person.

67 (b) "Cause of action for injury" means a claim for
68 accidental bodily injury caused by the negligent conduct or



69 intentional misconduct of another person or organization and
70 includes a claim by any person other than a person suffering
71 accidental bodily injury based on such injury, including, but not
72 limited to, lost of consortium, companionship or any other
73 derivative claims.

74 (c) "Commissioner" means the Commissioner of Insurance.

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

79 (e) "Driving under the influence of alcohol or illegal
80 drugs" means:

81 (i) The driver was convicted or has pleaded nolo
82 contendere to violating Section 63-11-1 et seq., or

83 (ii) The driver refused to undergo tests required
84 by law for a violation of Section 63-11-1 et seq.

85 (f) "Economic loss" means pecuniary loss and monetary
86 expenses incurred by or on behalf of an injured person as the
87 result of an accidental bodily injury to such injured person.

88 (g) "Injured person" means a person who sustains
89 accidental bodily injury, or where appropriate, the personal
90 representative of an estate of the injured person.

91 (h) "Intentional misconduct" means an act or failure to
92 act by a person for the purpose of causing harm to himself, or
93 herself or another person, or with the knowledge that harm is
94 likely to follow regardless of whether the results of the act or
95 failure to act are the results expected or unexpected by the
96 person causing the harm.

97 (i) "Loss of income from work" means eighty percent
98 (80%) of the loss of income an injured person would have earned,
99 except for the accidental bodily injury, through employment in his
100 usual occupation or profession, reduced by one (1) of the
101 following:



102 (i) Eighty percent (80%) of any income from
103 substitute employment actually performed by the injured person.

104 (ii) Any income the injured person would have
105 earned in available appropriate substitute employment which such
106 person was capable of performing but unreasonably failed to
107 undertake.

108 If the injured person was unemployed at the time of the
109 accident, the loss of income from work shall be based on the
110 unemployment compensation benefits the insured would have been
111 eligible to receive except for the accidental bodily injury.

112 Loss of income from work shall not include any loss of income
113 from work after the death of an injured person.

114 Benefits for loss of income from work shall not extend beyond
115 two (2) years from the date of the accident that caused the
116 accidental bodily injury.

117 (j) "Medical expenses" means reasonable expenses
118 incurred by or on behalf of an injured person for necessary
119 medical, chiropractic, surgical, x-ray, dental, ambulance,
120 hospital, medical rehabilitation and professional nursing
121 services, and also includes expenses for eyeglasses, hearing aids
122 and prosthetic devices. To assure that the treatment and expenses
123 are both reasonable and necessary, motor vehicle insurers may
124 review or obtain a review of treatment and expenses before, during
125 and after the course of treatment of an injured person. Benefits
126 for medical expenses shall be payable only if the accidental
127 bodily injury is discovered and treated within one (1) year of the
128 date of the accident and then only for services, products or
129 accommodations provided to the injured person within three (3)
130 years of the date of the accident causing the injuries. "Medical
131 expenses" shall not include:

132 (i) Any portion of the charge for a room in any
133 hospital, clinic, convalescent or nursing home, extended care
134 facility or any similar facility in excess of the reasonable and



135 customary charge for semiprivate accommodations unless otherwise
136 medically required.

137 (ii) Any portion of a charge or fee for any
138 treatments, services, products or procedures that are experimental
139 in nature, for research or not primarily designed to serve a
140 medical purpose or not commonly and customarily recognized
141 throughout the medical profession or, in the case of chiropractic
142 care, not commonly and customarily recognized throughout the
143 chiropractic profession in the United States as appropriate for
144 treatment of accidental bodily injury.

145 (iii) That portion of any charge for services,
146 products or accommodations which exceeds the amount the provider
147 customarily charges and accepts as payment in full for like
148 services, products or accommodations in cases not involving
149 personal compensation.

150 (k) "Medical rehabilitation" means rehabilitation
151 services reasonably necessary and designed to reduce the
152 disability and dependence of an injured person and to restore such
153 person, to the extent reasonably possible, to his preaccident
154 level of physical functioning.

155 (l) "Motor vehicle" means a self-propelled vehicle of a
156 kind required to be registered under the laws of this state for
157 use on public roadways, other than a vehicle with three (3) or
158 fewer load-bearing wheels. "Public roadway" means a way open to
159 the use of the public for purposes of motor vehicle travel.

160 (m) "Motor vehicle insurer" means an insurer or
161 qualified self-insurer providing insurance on motor vehicles under
162 this act.

163 (n) "Noneconomic loss" means any loss other than
164 economic loss and includes, but is not limited to, pain,
165 suffering, inconvenience, mental anguish and other noneconomic
166 damages otherwise recoverable under the laws of this state.



167 (o) "Occupying" means to be in or upon a motor vehicle
168 or engaged in the immediate act of entering into or alighting from
169 the motor vehicle.

170 (p) "Operation, maintenance or use" means operation,
171 maintenance or use of a motor vehicle as a motor vehicle.

172 "Operation, maintenance or use" shall not include:

173 (i) Conduct within the course of the business of
174 repairing, servicing, washing, selling, maintaining or
175 manufacturing a motor vehicle unless the conduct occurs off the
176 business premises.

177 (ii) Conduct in the course of loading or unloading
178 the motor vehicle unless the conduct occurs while occupying it.

179 (q) "Pedestrian" means any person not occupying a motor
180 vehicle.

181 (r) "Person" means a human being.

182 (s) "Personal compensation" means insurance coverage
183 with an aggregate limit of Fifteen Thousand Dollars (\$15,000.00)
184 per person per accident that provides benefits for economic loss
185 sustained by a personal compensation insured resulting from
186 accidental bodily injury, regardless of fault. "Personal
187 compensation" consists of the following elements:

188 (i) Medical expenses.

189 (ii) Loss of income from work not to exceed Two
190 Hundred Dollars (\$200.00) per week.

191 (iii) Replacement services loss not to exceed One
192 Hundred Dollars (\$100.00) per week.

193 (iv) A death benefit of Five Thousand Dollars
194 (\$5,000.00) payable to the dependents, if any, or, if none, to the
195 heirs or estate of the decedent if the death of the personal
196 compensation insured occurs within one (1) years of the date of
197 the accident causing the injuries.

198 (t) "Personal compensation benefits" means the benefits
199 available under personal compensation.



200 (u) "Personal compensation insured" means:

201 (i) The person identified by name as an insured

202 under a personal compensation policy and any other resident

203 relative;

204 (ii) Any person who sustains accidental bodily

205 injury while occupying the motor vehicle described on the

206 declarations page of a personal compensation policy; or

207 (iii) With respect to accidents within this state,

208 any person who sustains accidental bodily injury through being

209 struck as a pedestrian by the motor vehicle described on the

210 declarations page of a personal compensation policy.

211 (v) "Personal compensation policy" means a policy which

212 provides personal compensation.

213 (w) "Property damage liability" means liability

214 insurance coverage with a limit of at least Ten Thousand Dollars

215 (\$10,000.00), exclusive of interest and costs, for damage to

216 property in any one (1) accident.

217 (x) "Replacement services loss" means expenses

218 reasonably incurred for the ordinary and necessary services from

219 others in lieu of those the injured person would have performed,

220 not for income but for the benefit of his family, if he had not

221 been injured. "Replacement services loss" shall not include

222 expenses for services performed by any person residing in the

223 household of the injured person, or services performed by any

224 person related to the injured person. The benefits for

225 replacement services loss shall not be paid if the injured person

226 is entitled to receive personal compensation benefits for loss of

227 income from work for the same time period. "Replacement services

228 loss" shall not include any loss after the death of an injured

229 person. Benefits for replacement services loss shall not extend

230 beyond two (2) years from the date of the accident that caused the

231 accidental bodily injury.



232 (y) "Resident relative" means a person related to the
233 first person identified by name as an insured under a personal
234 compensation policy by blood, marriage or adoption and residing in
235 the same household. A person resides in the same household if he
236 primarily makes his home in the same family unit even though
237 temporarily living elsewhere.

238 (z) "Uncompensated economic loss" means that portion of
239 economic loss arising out of an accidental bodily injury which
240 exceeds the total of:

241 (i) The benefits provided by all applicable
242 personal compensation policies or the assigned claims plan; and

243 (ii) Any benefits the injured person receives or
244 is entitled to receive as reimbursement of loss because of an
245 accidental bodily injury from sources other than a life insurance
246 policy regardless of the nature or number of benefit sources
247 available or their form.

248 "Uncompensated economic loss" shall not include any loss on
249 account of the application of a deductible under a personal
250 compensation policy or any economic loss which would have been
251 paid under a personal compensation policy which the injured person
252 or resident relative of the injured person was required to
253 purchase by this act but failed to so purchase.

254 **SECTION 4.** (1) Every motor vehicle other than those owned
255 by the federal government or any federal agency, required to be
256 licensed for use on public roadways in this state shall be insured
257 by an insurance policy providing for personal compensation and
258 property damage liability coverages.

259 (2) A motor vehicle insurer shall also make available for
260 purchase the forms of insurance coverage provided in this
261 subsection (2). For motor vehicle policies in force on the
262 effective date of this act, motor vehicle insurers shall make
263 available these options as provided in Section 24 of this act. A
264 decision to purchase or not to purchase any such coverages by any



265 named insured or applicant shall be binding on all insureds
266 covered by the motor vehicle policy and shall apply to all
267 renewals and to all motor vehicle policies which extend, change,
268 supersede or replace an existing policy until a named insured
269 requests a change in coverage.

270 The forms of insurance coverage required to be made available
271 by this subsection shall be:

272 (a) Personal compensation benefit limits in excess of
273 Fifteen Thousand Dollars (\$15,000.00), but not more than One
274 Hundred Thousand Dollars (\$100,000.00). Except as provided in
275 subsection (2)(b) of this section, when the limit for personal
276 compensation is One Hundred Thousand Dollars (\$100,000.00), the
277 coverage limit for loss of income from work shall be at least Five
278 Hundred Dollars (\$500.00) per week.

279 (b) The option to exclude personal compensation
280 benefits for loss of income from work if no named insured or
281 resident relative under the policy has earned any income from
282 regular employment during the past thirty-one (31) days and does
283 not expect to earn any income from regular employment for at least
284 one hundred eighty (180) days from the date this option is
285 requested.

286 (c) Motor vehicle bodily injury liability insurance
287 with limits of at least Ten Thousand Dollars (\$10,000.00),
288 exclusive of interest and costs on account of injury to or death
289 of one (1) person in any one (1) accident. Subject to the limit
290 for any one (1) person, limits of at least Twenty Thousand Dollars
291 (\$20,000.00), exclusive of interest and costs on account of injury
292 to or death of more than one (1) person in any one (1) accident.

293 (d) Scheduled pain and suffering coverage with limits
294 of at least Ten Thousand Dollars (\$10,000.00), but not exceeding
295 One Hundred Thousand Dollars (\$100,000.00). Scheduled pain and
296 suffering coverage shall provide protection for noneconomic loss
297 sustained by the person identified by name as an insured under a



298 personal compensation policy and any other resident relative who
299 sustains accidental bodily injury while such person is occupying a
300 motor vehicle or if such person is a pedestrian struck by a motor
301 vehicle. Scheduled pain and suffering coverage shall be paid
302 according to the benefit table below, provided that no more than
303 the largest benefit applicable shall be paid for any person with
304 respect to all losses resulting from any one (1) accident.

305 (i) Loss of life: the principal sum;

306 (ii) Permanent and total disability: the
307 principal sum;

308 (iii) Loss of two (2) or more members: the
309 principal sum;

310 (iv) Loss of one (1) member: One-half (1/2) of
311 the principal sum;

312 (v) Loss of thumb and index finger on the same
313 hand: one-quarter (1/4) of the principal sum;

314 (vi) Permanent and total loss of hearing:
315 One-half (1/2) of the principal sum;

316 (vii) Permanent and total loss of a sense of smell
317 or taste: one-quarter (1/4) of the principal sum;

318 (viii) Loss of a finger or toe: one-eighth (1/8)
319 of the principal sum;

320 (ix) Serious permanent disfigurement: one-eighth
321 (1/8) of the principal sum; and

322 (x) Permanent and total loss of use of an internal
323 organ: one-eighth (1/8) of the principal sum.

324 (e) The following definitions shall apply to scheduled
325 pain and suffering coverage:

326 (i) "Loss" means, with regard to a hand or foot,
327 permanent paralysis of the hand or foot or actual severance of the
328 hand or foot through or above the wrist or ankle joints; with
329 regard to an eye, entire and irrecoverable loss of sight; with
330 regard to a thumb, permanent paralysis of the thumb or actual



331 severance of the thumb through the proximal phalanx or metacarpal;
332 with regard to the index finger or any other finger, permanent
333 paralysis of the particular finger or actual severance of the
334 particular finger through the middle or proximal phalanx or
335 metacarpal; with regard to any toe, actual severance through the
336 proximal phalanx or metacarpal of the particular toe.

337 (ii) "Member" means hand, foot or eye;

338 (iii) "Permanent and total disability" means for
339 persons who are either twenty-one (21) years of age or older or
340 working full time at the time of the accidental bodily injury, the
341 insured's complete inability after one (1) year of continuous
342 total disability to engage in an occupation or employment for
343 which the insured is fitted by reason of education, training or
344 experience for the remainder of the insured's life. "Continuous
345 total disability" means the insured's complete inability during
346 the first year thereof to perform every duty of the insured's
347 occupation, such inability beginning thirty (30) days after the
348 date of the accident. For persons who are both under twenty-one
349 (21) years of age and not working full time at the time of the
350 accidental bodily injury, permanent and total disability means for
351 two (2) years having an abnormal electroencephalography, an
352 abnormal brain magnetic resonance image or the presence of
353 seizures for two (2) consecutive years.

354 (iv) "Principal sum" means the coverage limits of
355 the policy for scheduled pain and suffering coverage.

356 (3) A motor vehicle insurer may elect to offer:

357 (a) Limits higher than those required by this section.

358 (b) Deductible and copayment options for the coverage
359 described in subsection (2)(a) of this section.

360 (c) Limits in increments approved by the commissioner
361 on the coverages in subsection (2)(c) on a combined limits basis
362 instead of a split limits basis; or



363 (d) Coverages in addition to those required by this
364 section.

365 (4) Any coverages provided under this section shall be
366 subject to the policy terms, limitations, conditions and
367 exclusions approved by the commissioner.

368 **SECTION 5.** (1) A personal compensation policy shall pay
369 personal compensation benefits for accidental bodily injury of a
370 personal compensation insured sustained within the United States
371 of America, its territories or possessions or Canada.

372 (2) A personal compensation policy issued to satisfy this
373 act shall, if an insured becomes subject to a compulsory motor
374 vehicle insurance, financial responsibility or similar law of
375 another state or Canada, provide the coverage required of
376 nonresidents by the laws of that state or Canada.

377 **SECTION 6.** (1) A motor vehicle insurer shall not be
378 obligated to provide personal compensation benefits to or on
379 behalf of any injured person who:

380 (a) Was injured in a motor vehicle accident while
381 committing a felony, while voluntarily operating or occupying a
382 motor vehicle known by him to be stolen or while driving under the
383 influence of alcohol or illegal drugs.

384 (b) Was injured while operating or occupying, or
385 through being struck as a pedestrian by a motor vehicle owned by
386 or furnished to or available for the regular use of the injured
387 person, or the resident relative of the injured person, if such
388 motor vehicle is not described in the policy under which a claim
389 is made or is not a newly acquired or replacement motor vehicle
390 covered under the terms of the policy.

391 (c) Was injured as a result of his or her intentional
392 misconduct. If a person dies as a result of his or her
393 intentional misconduct, his or her survivors are not entitled to
394 personal compensation benefits for loss arising from the injury or
395 death of the person.



396 (d) Was an uninsured motorist at the time of the
397 accident causing the injuries. For purposes of this paragraph,
398 "uninsured motorist" means a person who is the owner of a motor
399 vehicle which is subject to the insurance requirements of this
400 act, but who fails to purchase such coverage.

401 (e) Was injured while operating or occupying a motor
402 vehicle involved in an organized race or speed contest.

403 (2) There is no coverage under a personal compensation
404 policy for a person who is identified by name as an insured under
405 that policy, or for any resident relative of that person, injured
406 while operating or occupying a self-propelled vehicle of a kind
407 required to be licensed under the laws of this state for use on
408 public roadways with three (3) or fewer load-bearing wheels.

409 (3) Nothing contained herein shall prevent a motor vehicle
410 insurer from providing personal compensation benefits to or on
411 behalf of any injured person mentioned in this section, if there
412 is clear language in the personal compensation policy manifesting
413 an intent to provide such coverage.

414 **SECTION 7.** (1) Personal compensation benefits when due
415 shall be payable at the option of the motor vehicle insurer to any
416 of the following:

417 (a) The injured person.

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

420 (c) A dependent survivor or the executor or
421 administrator of the estate of the injured person.

422 (d) Any person or organization rendering the services,
423 products or accommodations for which payment is due.

424 (2) A motor vehicle insurer, with the approval of the
425 commissioner, may utilize managed care systems, including, but not
426 limited to, preauthorization plans, payment of medical expenses
427 covered under a personal compensation policy. The insurer may
428 require an injured person to obtain health care through a managed



429 care system designed by the motor vehicle insurer if such injured
430 person has opted at the time of purchase of personal compensation
431 at an appropriately reduced premium to be subject to such a
432 managed care system. The motor vehicle insurer may impose a One
433 Thousand Dollars (\$1,000.00) per person per accident deductible
434 for health care for products obtained outside of the managed care
435 system. The deductible shall not apply to care or products
436 provided, or expenses incurred, during the first twenty-four (24)
437 hours in which emergency treatment has been provided, or until the
438 injured person's emergency medical condition is stabilized,
439 whichever is longer.

440 **SECTION 8.** (1) Any person entitled to personal compensation
441 benefits required or provided under this act shall claim the
442 personal compensation benefits from motor vehicle insurers in the
443 following order of priority:

444 (a) The personal compensation policy covering a motor
445 vehicle involved in the accident if the injured person was an
446 occupant of such motor vehicle at the time of the accident.

447 (b) The personal compensation policy under which the
448 injured person qualifies as a personal compensation insured
449 because the person is a named insured under such policy.

450 (c) The personal compensation policy under which the
451 injured person qualifies as a personal compensation insured
452 because the person is a resident relative.

453 (d) The personal compensation policy under which the
454 injured person qualifies as a personal compensation insured other
455 than as described in paragraphs (a), (b) or (c) of this
456 subsection.

457 (2) If a personal compensation insured is entitled to
458 benefits under more than one (1) personal compensation policy or
459 coverage, the maximum recovery may not exceed the amount payable
460 under the policy or coverage with the highest limit.



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

471 **SECTION 9.** A motor vehicle insurer shall be primarily
472 obligated to indemnify a personal compensation insured who
473 sustains accidental bodily injury. However, personal compensation
474 benefits are excess over and shall not duplicate the amount of all
475 benefits an injured person recovers, or is entitled to recover,
476 under a state or federal mandated disability coverage or worker's
477 compensation law or similar occupational injury law because of the
478 same accidental bodily injury.

479 **SECTION 10.** (1) Except as provided in subsection (3) of
480 this section, there shall exist no cause of action for injury
481 caused, in whole or in part, by the operation, maintenance or use
482 of a motor vehicle subject to this act other than for
483 uncompensated economic loss.

484 (2) Except as provided in subsection (3) of this section, an
485 uninsured motorist, in addition to the limitations imposed by
486 subsection (1) of this section, shall not have a cause of action
487 to recover damages for:

488 (a) The first Fifteen Thousand Dollars (\$15,000.00) of
489 economic loss resulting from accidental bodily injury; and

490 (b) The first Ten Thousand Dollars (\$10,000.00) of
491 property damage resulting from an accident arising out of the
492 operation, maintenance or use of a motor vehicle.



493 For purposes of this subsection, "uninsured motorist" means a
494 person or organization who is the owner of a motor vehicle which
495 is subject to the insurance requirements of this act, but who
496 fails to purchase such coverage.

497 (3) A person shall have a cause of action for injury against
498 any negligent party who caused the injury while committing a
499 felony or while driving under the influence of alcohol or illegal
500 drugs. A person shall also have a cause of action for injury
501 caused by intentional misconduct of another person. It shall be
502 against the public policy of this state for a motor vehicle
503 insurer to pay under any liability coverage the damages assessed
504 against a party under this subsection except for compensatory
505 damages where such damages are assessed on account of the
506 vicarious liability of an insured.

507 **SECTION 11.** A motor vehicle insurer shall be subrogated, to
508 the extent of any personal compensation benefits to all of the
509 rights of its insured with respect to an accident caused in whole
510 or in part by any person or organization who is not protected by
511 the limitations on tort rights and liabilities pursuant to Section
512 10 of this act.

513 **SECTION 12.** (1) If personal compensation benefits have not
514 been paid, no offset shall be allowed against the personal
515 compensation benefits because of the value of a cause of action
516 for injury, except after a monetary recovery is gained under the
517 cause of action. A subtraction shall be undertaken, but for no
518 more than the amount of the net recovery, exclusive of reasonable
519 attorney fees and other expenses actually incurred in affecting
520 the recovery.

521 (2) If personal compensation benefits have already been
522 received, the recipient shall repay to the motor vehicle insurer,
523 out of such recovery, a sum equal to the personal compensation
524 benefits received but not more than the realized net recovery,
525 exclusive of reasonable attorney fees and other expenses actually



526 incurred in affecting the recovery. The motor vehicle insurer
527 shall have a lien on the recovery equal to the personal
528 compensation benefits received.

529 (3) Any remainder of the net recovery from such cause of
530 action applies periodically against loss as it accrues, until an
531 amount equal to the net recovery under such a cause of action has
532 been subtracted.

533 **SECTION 13.** (1) Personal compensation benefits are payable
534 as loss accrues. Loss accrues, not when the accidental bodily
535 injury occurs, but when medical expense, loss of income from work
536 or replacement services loss occurs, or when the injured person
537 dies. The benefits for accrued losses are overdue if not paid
538 within thirty (30) days after the motor vehicle insurer receives
539 reasonable proof of the fact and the amount of loss sustained,
540 except that a motor vehicle insurer may accumulate claims for
541 periods not exceeding thirty (30) days, and benefits are not
542 overdue if paid within twenty (20) days after the period of
543 accumulation, subject to the right of review specified in this
544 act. If reasonable proof is not supplied as to the entire claim,
545 the amount which is supported by reasonable proof shall be paid as
546 described herein, and any part of the remainder of the claim that
547 is later supported by reasonable proof shall at the time be paid
548 as described herein.

549 (2) For the purpose of calculating the extent to which any
550 personal compensation benefits are overdue, payment shall be
551 treated as made on the date a draft or other valid instrument is
552 placed in the United States mail in a properly addressed postpaid
553 envelope, or, if not so posted, on the date of personal delivery
554 to the insured.

555 (3) If a motor vehicle insurer is found after an
556 administrative hearing by the commissioner or upon review by a
557 court of competent jurisdiction to be in violation of this
558 section, the exclusive remedy shall be the recovery of the



559 personal compensation benefits in question with interest at a rate
560 of twelve percent (12%) per annum beginning from the date the
561 benefits in controversy were due, and court costs and reasonable
562 attorney fees. In the event of willful or wanton failure of a
563 motor vehicle insurer to comply with this section, the recovery
564 will be three (3) times the amount of the personal compensation
565 benefits which were determined to be overdue.

566 **SECTION 14.** (1) Personal compensation benefits are exempt
567 from garnishment, attachment, execution or any other process or
568 claim to the extent that wages or earnings are exempt under any
569 applicable law.

570 (2) An agreement for assignment of any right to personal
571 compensation benefits payable in the future shall be unenforceable
572 except to the extent that:

573 (a) Such benefits are for the cost of services,
574 products or accommodations provided or to be provided by the
575 assignee; or

576 (b) Benefits for loss of income from work or
577 replacement services loss are assigned to secure payment of
578 alimony, maintenance or child support.

579 **SECTION 15.** (1) Subject to the arbitration provisions in
580 Section 21 of this act, if no personal compensation benefits have
581 been paid, an action therefore may be commenced against the motor
582 vehicle insurer no later than two (2) years after the date of the
583 accident causing the injuries.

584 (2) Subject to the arbitration provisions in Section 21 of
585 this act, and subsection (3) of this section, if personal
586 compensation benefits have been paid, an action for recovery of
587 further personal compensation benefits may be commenced no later
588 than two (2) years after the last payment of personal compensation
589 benefits.

590 (3) In no event shall an action for personal compensation
591 benefits be commenced against a motor vehicle insurer more than



592 four (4) years after the date of the accident that caused the
593 injuries.

594 **SECTION 16.** (1) Whenever the mental or physical condition
595 of an injured person is material to any claim that has been or may
596 be made for personal compensation benefits, such injured person,
597 upon request of a motor vehicle insurer, shall submit to
598 reasonable mental or physical examinations by a physician,
599 chiropractor or other medical provider designated by the motor
600 vehicle insurer at a reasonably convenient time and location,
601 subject to regulations, if any, promulgated by the commissioner.
602 The cost of any such examination requested by a motor vehicle
603 insurer shall be borne entirely by the insurer.

604 (2) Where a motor vehicle insurer has requested in writing
605 that an injured person submit to mental or physical examinations
606 under subsection (1) of this section, and such person refuses to
607 comply with the request, the insurer may, upon written prior
608 notice, suspend all incurred but unpaid and future personal
609 compensation benefits until the injured person complies with the
610 request.

611 **SECTION 17.** (1) Upon request of a motor vehicle insurer, an
612 employer shall furnish a statement of the work record and earnings
613 of an employee who has filed a claim for personal compensation
614 benefits. The statement shall cover the period specified by the
615 motor vehicle insurer and may include a reasonable period before,
616 and the entire period after, the date of the accident causing the
617 injuries.

618 (2) Every physician, chiropractor, hospital, clinic or other
619 medical provider providing, before or after an injury upon which a
620 claim for personal compensation benefits is based, any services,
621 products or accommodations in relation to that or any other
622 injury, or in relation to a condition claimed to be connected with
623 that or any other injury, shall, if requested to do so by the
624 motor vehicle insurer against whom the claim has been made,



625 furnish a written report of the history, condition and treatment,
626 and the dates and costs of such treatment of the injured person.
627 The information shall be provided with a sworn statement that the
628 services, products or accommodations rendered were reasonable and
629 necessary with respect to the injury sustained and identifying
630 which portion of the expenses for such services, products or
631 accommodations were incurred as a result of such injury. Every
632 physician, chiropractor, hospital, clinic or other medical
633 provider shall also promptly produce and permit the inspection and
634 copying of its records regarding such history, condition and
635 treatment, and the dates and costs thereof. The person providing
636 a sworn statement required under this section shall attest to it
637 as follows:

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

641 (3) No cause of action for violation of a physician-patient
642 privilege or invasion of the right of privacy shall exist against
643 any physician, chiropractor, hospital, clinic or other medical
644 provider complying with the provisions of this section. The
645 person requesting records or the sworn statement under this
646 section shall pay all reasonable costs connected therewith.

647 (4) A dispute regarding the right to the discovery of facts
648 about an injured person by the motor vehicle insurer may be
649 resolved through arbitration as provided in this act or by a court
650 of competent jurisdiction by an order for the discovery.

651 **SECTION 18.** (1) Motor vehicle insurers authorized to
652 provide motor vehicle insurance under this act shall organize,
653 participate in, and maintain an assigned claims plan to provide
654 benefits equivalent to the minimum personal compensation required
655 by this act to any injured person covered by this act, if:



656 (a) Personal compensation benefits are not applicable
657 to the injury for a reason other than a reason specified in
658 Section 6 of this act.

659 (b) Personal compensation benefits are unavailable, in
660 whole or in part, because of the financial inability of a motor
661 vehicle insurer to fulfill its obligations. Payments by the
662 assigned claims plan under this paragraph shall constitute covered
663 claims of the Mississippi Guaranty Association under the laws of
664 this state.

665 (2) The assigned claims plan shall provide for rules and
666 agreements for the operation of the plan and equitable
667 distribution of costs as approved by the commissioner.

668 (3) Any claim brought through the assigned claims plan shall
669 be assigned to a motor vehicle insurer in accordance with such
670 rules and agreements, and that insurer, after such assignments,
671 shall have the rights and obligations it would have had if, before
672 such assignment, it had issued a personal compensation policy
673 containing the minimum personal compensation required by law.

674 (4) Any person accepting personal compensation benefits
675 under the assigned claims plan shall have the rights and
676 obligations he would have had under a policy issued to him
677 providing the minimum personal compensation required by law.

678 (5) Notwithstanding any other provision in this act to the
679 contrary, benefits available through the assigned claims plan
680 shall be reduced to the extent that benefits covering the same
681 loss are available from other sources, regardless of the nature or
682 number of benefit sources available and regardless of the nature
683 or form of the benefits.

684 (6) If a claim qualifies for assignment under this section,
685 the assigned claims plan and the motor vehicle insurer to whom the
686 claim is assigned shall be subrogated to all of the rights of the
687 claimant against any person or organization liable for such loss
688 and against any insurer, its successor in interest, or any other



689 person or organization legally obligated to provide personal
690 compensation benefits to the injured person for benefits provided
691 by the assignment.

692 **SECTION 19.** Each motor vehicle insurer shall adopt an
693 actuarially sound program which provides incentives, in the form
694 of increased benefits, reduced premiums, or other methods for
695 insureds to purchase motor vehicles equipped with automatic seat
696 and harness belts or air bags.

697 **SECTION 20.** The commissioner may adopt necessary regulations
698 to provide for the effective administration of this act that are
699 consistent with its purposes.

700 **SECTION 21.** (1) Any dispute with respect to personal
701 compensation benefits between a motor vehicle insurer and an
702 injured person, or the dependents or estate of such person, may be
703 submitted to arbitration if the insurer and such person agree.
704 Only the dispute which the parties have agreed to arbitrate may be
705 addressed by the arbitration.

706 (2) Upon agreement for arbitration, each party shall select
707 a competent arbitrator and the two arbitrators so named shall
708 select a third arbitrator. If unable to agree on the third
709 arbitrator within thirty (30) days, either may request a judge of
710 a court of record in the county in which the arbitration is
711 pending to select a third one. The written decision of any two
712 arbitrators shall be binding on each party.

713 (3) The cost of the arbitrator and any expert witness shall
714 be paid by the party who selected them. The cost of the third
715 arbitrator and other expenses of arbitration shall be shared
716 equally by both parties.

717 (4) The arbitration shall take place in the county in which
718 the insured resides unless the parties agree to another location.
719 State court rules governing procedure and admission of evidence
720 shall be used. Any final decision of the arbitrators shall be
721 subject to judicial review if filed in a court of competent



722 jurisdiction within thirty (30) days of the date of the decision
723 of the arbitrators.

724 **SECTION 22.** Each motor vehicle insurer authorized to
725 transact, or transacting business in this state, shall file with
726 the commissioner, as a condition of its continued transaction of
727 business within this state, a form approved by the commissioner
728 declaring that any contract of primary motor vehicle insurance,
729 wherever issued, covering the operation, maintenance or use of a
730 motor vehicle while the motor vehicle is in this state, is deemed
731 to provide at least personal compensation and property damage
732 liability coverages at the minimum limit required by the laws of
733 this state. Any nonadmitted insurer may also file such form.

734 **SECTION 23.** Any person involved in any motor vehicle
735 accident in this state is subject to the tort and liability
736 limitations set forth in this act.

737 **SECTION 24.** (1) The changes in motor vehicle insurance
738 coverage requirements and the limitation of tort rights and
739 liabilities as provided in this act shall become operative six (6)
740 months after the declaratory judgment provided in Section 26 of
741 this act is rendered. At least thirty (30) days before the
742 operative date, motor vehicle insurers shall notify policyholders
743 who hold motor vehicle liability policies on the date of such
744 mailing of the new limitation on tort rights. At the same time
745 motor vehicle insurers shall provide those policyholders the
746 opportunity to purchase the options required to be made available
747 by Section 4 of this act. If the policyholder does not request
748 optional coverage prior to the operative date of this act, the
749 policy will include personal compensation with the minimum limits
750 required by this act. All other coverages previously purchased by
751 a named insured shall remain in effect, with the exception that
752 motor vehicle insurers may delete any coverage they provide which
753 would essentially duplicate the coverage provided under personal
754 compensation benefits on the date personal compensation benefits



755 are added to a policy. If the policy holder requests any of the
756 optional coverages, the requested coverage shall be effective on
757 the operative date of this act if the request is received by the
758 motor vehicle insurer prior to the operative date of this act. If
759 received by the motor vehicle insurer on or after the operative
760 date of this act, the requested coverage shall be effective at
761 12:01 a.m. on the day after the request was received.

762 (2) For any motor vehicle liability insurance policies in
763 force on the operative date of this act, the policyholder shall be
764 credited with the pro rata portion of any rate reduction due to
765 the reduction in hazard because of the limitation on tort rights
766 and liabilities effective for motor vehicle accidents occurring on
767 or after the operative date of this act, and assessed a pro rata
768 charge for the coverage provided under subsection (1) of this
769 section. Any net credit which results can be made to the
770 policyholder at the option of the motor vehicle insurer by:

771 (a) A refund to the policyholder mailed or paid on or
772 before the expiration of the policy;

773 (b) A credit against the policyholder's renewal premium
774 with a refund being made to the policyholder if the policyholder
775 refuses the renewal offer; or

776 (c) A credit against any premium due on the policy.

777 **SECTION 25.** (1) Except as provided in subsection (2) of
778 this section, if any provision of this act or the application
779 thereof to any person or circumstance is held to be
780 unconstitutional or otherwise invalid, the remainder of this act
781 and the application of such provision to other persons or
782 circumstances shall not be affected thereby and is to be
783 conclusively presumed that the Legislature would have enacted the
784 remainder of this act without the invalid or unconstitutional
785 provision.

786 (2) If Section 10(1) of this act is found to be
787 unconstitutional or invalid, it is to be conclusively presumed



788 that the Legislature would not have enacted the remainder of this
789 act without such limitations and the entire act is invalid.

790 **SECTION 26.** (1) Because the Legislature finds and declares
791 that questions of law may be raised by some parties with respect
792 to the constitutionality of some of the sections of this act, the
793 public welfare requires that such questions with respect to this
794 act be resolved with expedition prior to such time as its
795 mandatory provisions take effect in order to avoid disruption of
796 the orderly implementation of its provisions. Therefore, the
797 Legislature finds that the remedy of declaratory judgment to
798 determine the constitutionality of the provisions of this act
799 should be immediately made available to determine those important
800 questions in order to avoid confusion by the public.

801 (2) Any resident of the state may institute an action for a
802 declaratory judgment against the commissioner to determine the
803 constitutionality of the provisions of this act. The court shall
804 reserve the questions of law for the advice of the Supreme Court
805 as provided by law. In the interest of expediting a decision, the
806 Supreme Court may suspend its rules.

807 **SECTION 27.** (1) (a) Option 1: One of the purposes of this
808 act is to lower the cost of motor vehicle insurance. Therefore,
809 each motor vehicle insurer's statewide average premiums for
810 minimum personal compensation coverage during the first year
811 following the effective date of this act shall be at least twenty
812 percent (20%) less than the motor vehicle insurer's statewide
813 average premium for Ten Thousand Dollars (\$10,000.00)/Twenty
814 Thousand Dollars (\$20,000.00) bodily injury liability coverage on
815 the day preceding the effective date of this act, unless the motor
816 vehicle insurer can demonstrate at a rate hearing that such a
817 decrease will result in inadequate rates for the motor vehicle
818 insurer; or

819 (b) Option 2: One of the purposes of this act is to
820 lower the costs of motor vehicle insurance. Therefore, each motor



821 vehicle insurer's statewide average premium for the minimum
822 personal compensation coverage and Ten Thousand Dollars
823 (\$10,000.00) property damage liability insurance during the first
824 year following the effective date of this act shall be at least
825 thirty percent (30%) less than the motor vehicle insurer's
826 statewide average premiums for the insurance required by the
827 financial responsibility laws of this state and Ten Thousand
828 Dollars (\$10,000.00)/Twenty Thousand Dollars (\$20,000.00)
829 uninsured motorist coverage, on the day preceding the effective
830 date of this act, unless the motor vehicle insurer can demonstrate
831 at a rate hearing that such a decrease will result in inadequate
832 rates for the motor vehicle insurer.

833 (2) The Department of Insurance shall promulgate additional
834 rules and regulations to implement this act. If Section 10(1) of
835 this is ruled unconstitutional in whole or in part, motor vehicle
836 insurers may recoup any resulting losses actually incurred.

837 (3) All motor vehicle insurers who write policies under this
838 act shall file appropriate rates for personal compensation, bodily
839 injury liability, property damage liability and uninsured motorist
840 coverage with the Mississippi Department of Insurance no later
841 than two (2) months after the declaratory judgment provided in
842 Section 26 of this act is rendered.

843 **SECTION 28.** Sections 63-15-1 through 63-15-75, Mississippi
844 Code of 1972, which provides for the Mississippi Motor Vehicle
845 Safety Responsibility Law, are repealed.

846 **SECTION 29.** This act shall take effect and be in force from
847 and after July 1, 2003.

