

By: Representative Chism

To: Insurance

HOUSE BILL NO. 397

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

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

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

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

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

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



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

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

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

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

61 (c) Two (2) motorists who each choose personal injury  
62 protection coverage and who are involved in an accident with each  
63 other will be promptly compensated under their own policies for



64 their own losses without regard to fault. In this situation, the  
65 two (2) motorists who have chosen the personal injury protection  
66 coverage lose the right to claim and sue for "pain and suffering"  
67 and other noneconomic loss, but if either suffers economic loss in  
68 excess of his/her policy's benefit levels, that person retains the  
69 right to claim and sue for unreimbursed economic loss based on  
70 fault.

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

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

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

94 (5) Property damage. A motorist who purchased a personal  
95 injury protection policy will thereby procure Ten Thousand Dollars  
96 (\$10,000.00) of property damage liability insurance as part of



97 his/her mandatory coverage. In order to keep the cost of property  
98 damage liability insurance as low as possible, persons who have  
99 chosen personal injury protection policies have no cause of action  
100 for damage to a motor vehicle to the extent such vehicle is  
101 insured against collision damage in accidents involving other  
102 personal injury protection insureds.

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

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

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

128 (c) "Basic personal injury protection" means coverage,  
129 for personal injury protection which provides benefits for loss



130 resulting from accidental bodily injury. Basic personal injury  
131 protection benefits consist of the following elements with an  
132 aggregate limit of Fifteen Thousand Dollars (\$15,000.00) per  
133 person:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

193 (m) "Intentional misconduct" means conduct whereby harm  
194 is intentionally caused or attempted to be caused by one who acts  
195 or fails to act for the purpose of causing harm or with knowledge



196 that harm is substantially certain to follow when such conduct  
197 caused or substantially contributed to the harm claimed for. A  
198 person does not intentionally cause or attempt to cause harm (i)  
199 merely because his act or failure to act is intentional or done  
200 with the realization that it creates a grave risk of causing harm  
201 or (ii) if the act or omission causing bodily harm is for the  
202 purpose of averting bodily harm to oneself or another person.

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

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

228 "Medical expenses" does not include:



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

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

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

245 (q) "Motor vehicle" means:

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

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

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





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

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

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

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

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

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



293           (y) "Personal injury protection insurer" means an  
294 insurer or qualified self-insurer providing personal injury  
295 protection benefits.

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

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

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

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

320           (dd) "Uncompensated economic loss" means that portion  
321 of economic loss arising out of an accidental bodily injury of an  
322 injured person which exceeds the benefits provided by (i) personal  
323 injury protection coverage (except for loss on account of the  
324 application of a deductible under such a policy), or (ii) tort  
325 maintenance coverage, and (iii) collateral sources. Such loss is



326 recoverable under the same terms and limitations as under added  
327 personal injury protection, but shall not be subject to the  
328 aggregate limit of liability of such coverage.

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

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

337 (a) For basic personal injury protection and the  
338 property damage liability mandated under this state's financial  
339 responsibility law.

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

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

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

356 (e) A personal injury protection insurer is authorized  
357 to write personal injury protection without any deductible or



358 subject to reasonable deductibles pursuant to Section 28 of this  
359 act.

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

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

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

386 **SECTION 5. Required limits of liability coverage.** Every  
387 owner who chooses the tort liability insurance option must carry  
388 liability insurance in an amount equal to the minimum liability  
389 limits for accidental bodily injury and property damage as  
390 specified by this state's financial responsibility law. Insurers



391 providing coverage for such persons shall include tort maintenance  
392 coverage required in Section 4 of this act in all policies  
393 providing primary coverage for legal liability for motor vehicles  
394 at limits equal to the bodily injury liability coverage carried by  
395 the tort maintenance coverage insured.

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

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

417       (2) If there is more than one (1) motor vehicle in the  
418 household, and the named insured chooses different options for  
419 different vehicles, the choice applicable to the vehicle in use  
420 governs not only the named insured, but also all other persons  
421 insured under the policy whose injury arises out of the use of  
422 that motor vehicle unless the named insured has specifically  
423 identified family members who shall be personal injury protection



424 insureds. If the named insured is injured while occupying or  
425 through being struck by another motor vehicle, the tort  
426 maintenance coverage option shall be deemed applicable and  
427 personal injury protection benefits shall not be provided. If any  
428 other person insured under two (2) or more policies covering  
429 different options is injured while occupying or through being  
430 struck by another motor vehicle, and that insured has not been  
431 specifically identified by the named insured as being a personal  
432 injury protection insured at all times, the tort maintenance  
433 coverage option shall be deemed applicable and personal benefits  
434 shall not be provided.

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

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

454 **SECTION 8. Geographic application of personal injury**  
455 **protection policies.** A personal injury protection insurer shall  
456 pay personal injury protection benefits for accidental bodily



457 injury of a personal injury protection insured sustained within  
458 the United States of America, its territories or possessions, or  
459 Canada. Any personal injury protection insurance policy issued to  
460 satisfy the financial responsibility law of this state shall be  
461 conformed to satisfy the financial responsibility law of any  
462 jurisdiction mentioned above in which the insured motor vehicle is  
463 being operated with respect to an accident occurring in that  
464 jurisdiction.

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

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

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

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

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

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

486 (f) Is injured pursuant to the tort maintenance  
487 coverage option described in Section 4(h) of this act, or



488 (g) Is an uninsured motorist, or a dependent of an  
489 uninsured motorist who is not otherwise insured for personal  
490 injury protection.

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

496 **SECTION 10. Payment of personal injury protection benefits.**

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

500 (a) The injured person;

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

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

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

507 **SECTION 11. Multiple coverages.** Except as otherwise  
508 provided in Section 83-11-101 et seq., regardless of the number of  
509 motor vehicles involved, persons covered, claims made, motor  
510 vehicles or premiums shown on the policy or premiums paid, in no  
511 event shall the coverage limits under a motor vehicle insurance  
512 policy for any one (1) coverage be added to, combined with, or  
513 otherwise stacked upon any other coverage limit to determine the  
514 maximum limit of coverage available to an injured person for any  
515 one (1) accident. Unless the contract clearly provides otherwise,  
516 policies or plans may also provide that if two (2) or more  
517 policies, plans, or coverages apply equally to the same accident,  
518 the highest limit of liability applicable shall be the maximum  
519 amount available to an insured person under any one (1) of such





520 policies. Each such policy, plan or coverage shall bear its  
521 proportionate share of the loss.

522 **SECTION 12. Priority of benefits.** (1) Persons entitled to  
523 basic personal injury protection benefits required or provided  
524 pursuant to this act are entitled to at least the personal injury  
525 protection coverage under the policy insuring them and shall claim  
526 such benefits from insurers in the following order of priority up  
527 to the limits of personal injury protection in the listed  
528 category:

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

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

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

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

550 **SECTION 13. Coordination of benefits.** A basic personal  
551 injury protection insurer has the primary obligation to indemnify



552 an injured person except to the extent of collateral sources paid  
553 or payable to such person.

554 **SECTION 14. Tort rights and legal liability under this act.**

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

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

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

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



584 attorney's fee for defending the action if the injured person was  
585 the prevailing party.

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

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

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

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

610 (a) The negligence of an uninsured motorist;

611 (b) The negligence of the owner or operator of a motor  
612 vehicle having a gross weight of seven thousand (7,000) pounds or  
613 more;

614 (c) Driving under the influence of alcohol or illegal  
615 drugs;

616 (d) Intentional misconduct; or



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

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

635 **SECTION 17. Personal injury protection benefits payable**  
636 **periodically.** Personal injury protection benefits are payable  
637 monthly as loss accrues. Such benefits are overdue if not paid  
638 within thirty (30) days after the personal injury protection  
639 insurer receives reasonable proof of the fact and the amount of  
640 loss sustained, except that a personal injury protection insurer  
641 may accumulate claims for periods not exceeding one (1) month, and  
642 benefits are not overdue if paid within twenty (20) days after the  
643 period of accumulation. If reasonable proof is not supplied as to  
644 the entire claim, the amount supported by reasonable proof is  
645 overdue if not paid within thirty (30) days after such proof is  
646 received by the insurer, subject to the right of review specified  
647 in Section 30 of this act. Any part or all of the remainder of  
648 the claim that is later supported by reasonable proof is overdue  
649 if not paid within thirty (30) days after such proof is received



650 by the insurer. For the purpose of calculating the extent to  
651 which any benefits are overdue, payment is treated as made on the  
652 date a draft or other valid instrument is placed in the United  
653 States mail in a properly addressed postpaid envelope, or, if not  
654 so posted, on the date of delivery. Personal injury protection  
655 benefits may be paid by the personal injury protection insurer  
656 directly to persons supplying necessary products, services, or  
657 accommodations to the injured person. If overdue benefits are  
658 recovered against a personal injury protection insurer or are paid  
659 by a personal injury protection insurer, the provisions of  
660 subsection (5) of Section 14 of this act pertaining to expenses  
661 and an attorney's fee apply. In addition, the insurer is  
662 obligated to pay interest on the overdue payment at one hundred  
663 fifty percent (150%) of the prime rate in effect at the time the  
664 payment became overdue.

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

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

679 **SECTION 19. No penalty for claims for personal injury**  
680 **protection benefits.** An insurer shall not cancel, fail to renew,  
681 or increase the premium of its insured solely on account of the  
682 insured or any other injured person making a claim for personal



683 injury protection benefits or for collision damage to the insured  
684 vehicle. Violation of this section is punishable by a fine of One  
685 Thousand Dollars (\$1,000.00) per offense, such punishment to be  
686 exclusive of all other remedies permitted by law.

687 **SECTION 20. Limitation of actions.** Subject to the  
688 arbitration provisions which follow, if no personal injury  
689 protection benefits have been paid, an action therefor may be  
690 commenced against the personal injury protection insurer not later  
691 than two (2) years after the injured person suffers accidental  
692 bodily injury. If personal injury protection benefits have been  
693 paid, an action for recovery of further benefits by either the  
694 injured person or another claimant may be commenced not later than  
695 two (2) years after the last payment of benefits.

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

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

712 **SECTION 22. Verification of entitlement to benefits.** (1)  
713 Every employer shall furnish pertinent information on a form  
714 approved by the commissioner regarding an employee who has filed a



715 claim for personal injury protection benefits if a request is made  
716 by an insurer providing such benefits under this section.

717 (2) Every physician, hospital, clinic, or other medical  
718 institution providing, before or after an injury resulting from a  
719 motor vehicle accident upon which a claim for personal injury  
720 protection benefits is based, any products, services, or  
721 accommodations in relation to that or any other injury, or in  
722 relation to a condition claimed to be connected with that or any  
723 other injury shall, if requested to do so by the personal injury  
724 protection insurer against whom the claim has been made, furnish a  
725 written report of the history, condition, and treatment, and the  
726 dates and costs of such treatment of the injured person. Such  
727 information shall be provided together with a sworn statement that  
728 the treatment or services rendered were reasonable and necessary  
729 with respect to the injury sustained and identifying which portion  
730 of the expenses for such treatment or services were incurred as a  
731 result of such injury. Every such physician, hospital, clinic, or  
732 other medical institution shall also promptly produce and permit  
733 the inspection and copying of its records regarding such history,  
734 condition, and treatment, and the dates and costs of treatment.  
735 The sworn statement required under this section reads as follows:

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

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

745 (3) In the event of any dispute regarding the personal  
746 injury protection insurer's right to discovery of facts about an  
747 injured person, if the dispute is not referred to arbitration



748 under Section 31 of this act, a court of record may enter an order  
749 for such discovery as justice requires.

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

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

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

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





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

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

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

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

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



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

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

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

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

844           The commissioner shall establish, within the Department of  
845 Insurance, a compliance unit which shall monitor all complaints



846 against insurers, health care providers, and attorneys arising out  
847 of the provision of personal injury protection benefits. The  
848 commissioner shall report to the Legislature, at least annually,  
849 on the nature of the complaints, the penalties levied against  
850 insurers, and the final disposition of complaints. The report,  
851 which will identify parties by name, will be a public record  
852 available on request by any member of the public.

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

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

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

869 **SECTION 31. Arbitration.** Any dispute with respect to  
870 personal injury protection coverage between a personal injury  
871 protection insurer and an injured person, or the dependents of  
872 such person, shall be submitted to arbitration. Such dispute  
873 either shall be submitted to the American Arbitration Association,  
874 or be submitted for determination in the following manner: Upon  
875 the request for arbitration being made by either party, each party  
876 to the dispute shall select an arbitrator and the two (2)  
877 arbitrators so named shall select a third arbitrator. The written  
878 decision of any two (2) arbitrators is binding on each party. If



879 arbitrators are not selected within forty-five (45) days from such  
880 request, either party may require that such arbitration be  
881 submitted to the American Arbitration Association.

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

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

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



912           **SECTION 35. Severability and constitutionality.** If any  
913 provision of this act or the application thereof to any person or  
914 circumstance is held to be unconstitutional or otherwise invalid,  
915 the remainder of this act and the application of such provision to  
916 other persons or circumstances are not affected thereby, and it is  
917 to be conclusively presumed that the Legislature would have  
918 enacted the remainder of this act without such invalid or  
919 unconstitutional provision, except that if Section 14 of this act  
920 is found to be unconstitutional or invalid, it is to be  
921 conclusively presumed that the Legislature would not have enacted  
922 the remainder of this act without such limitations, and the entire  
923 act is invalid. If Section 14 of this act is found to be  
924 unconstitutional or invalid, personal injury protection insurers  
925 have no obligation to pay personal injury protection benefits with  
926 respect to accidents occurring on or after the date of the finding  
927 of such unconstitutionality or invalidity and, in addition, are  
928 subrogated to all of the rights of personal injury protection  
929 insureds for all previous such benefits paid.

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



945 the constitutionality of this act's provisions. Such court shall  
946 reserve the questions of law for the advice of the Supreme Court  
947 as provided by law. In the interest of expediting a decision, the  
948 Supreme Court may suspend its rules as provided therein.

949         **SECTION 37.** This act shall take effect and be in force from  
950 and after July 1, 2003.

