

By: Representative Chism

To: Insurance; Judiciary A

HOUSE BILL NO. 232

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) of this section and
559 except for injury caused other than by the ownership, operation,
560 or use of a 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) of this section include
572 reasonable expenses incurred by the party in collecting such
573 benefits, 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.** (1) 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 (2) The commissioner shall develop an informational brochure
839 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, 2006.