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93d Congress
1st Session

COMMITTEE PRINT

THE NATIONAL NO-FAULT MOTOR VEHICLE INSURANCE ACT

PREPARED AT THE DIRECTION OF

Honorable WARREN G. MAGNUSON, Chairman

FOR THE USE OF THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

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LETTER OF TRANSMITTAL

U.S. SENATE,
COMMITTEE ON COMMERCE,
December 15, 1972.

To Members of the Committee on Commerce, U.S. Senate:

Transmitted herewith is a print of the National No-Fault Motor Vehicle Insurance Act.

This print will facilitate the committee's consideration of automobile insurance reform.

WARREN G. MAGNUSON,
Chairman.

Introduction

In the 92d Congress the Senate Commerce Committee considered and favorably reported legislation that would have established a nationwide system of no-fault motor vehicle insurance. Floor consideration of the legislation was postponed and the bill was referred to the Senate Judiciary Committee for further study.

In the 93d Congress, this committee will again consider national no-fault motor vehicle insurance legislation. In anticipation of this consideration the no-fault sponsors have been preparing a new bill for introduction in the 93d Congress. In order to inform people of the form and content of the new bill, foster constructive comment and criticism, and facilitate the work of the committee, a copy of the bill and a textual description of it are contained herein.

The content of the new bill for the most part resembles the National No-Fault Motor Vehicle Insurance Act (S. 945) as reported by this committee in the 92d Congress. Several amendments which had been prepared for introduction and consideration by the full Senate have also been incorporated in the new bill. While the new bill resembles S. 945 in content, the language is substantially different. The new bill has incorporated the terminology and many of the provisions of the Uniform Motor Vehicle Accident Reparations Act (UMVARA) which was promulgated by the National Conference of Commissioners on Uniform State Laws in August 1972. This approach was adopted to effect technical improvements in the bill and to achieve uniformity in terminology between the Federal bill and yet-to-be-enacted State no-fault programs.

Brief Description

The bill would create an automobile insurance system which would pay the basic economic loss of persons injured in automobile accidents whether or not they were "at fault." While extending this *right to recover* to all persons, the bill would simultaneously restrict the *right to sue in tort.*

The bill would create this new system of automobile insurance by requiring each State to enact a no-fault motor vehicle insurance plan meeting certain specified national requirements; other details of the plan would be left for State determination. At a minimum, a State meeting national standards would have to enact a no-fault plan which required the payment of basic benefits up to at least the following levels:

(1) all reasonable medical and rehabilitative expenses;

(2) reimbursement for work loss at an approximate monthly rate of $1,000 up to a total limit of $50,000 (unless for cost reasons the State insurance commissioner adjusted that ceiling downward but not below $25,000); and

(3) all replacement services loss, survivor's loss, and survivor's replacement services loss subject to reasonable limits established by the State.

Lawsuits to recover economic loss would not be permitted unless the economic loss exceeded total basic benefit limits. Lawsuits for noneconomic detriment (pain and suffering) would not be permitted unless a person died or sustained serious permanent disfigurement, significant permanent injury, or more than 6 months of total disability—that is, inability to work.

In order for a State plan to meet national standards, it must incorporate provisions making the basic compulsory insurance available to all persons who own motor vehicles. Severe limitations on cancellation and notice protection for nonrenewal must also be provided.

If a State does not enact a plan which meets or exceeds the requirements in the bill, an alternative no-fault plan takes effect in the State until it adopts a plan meeting those requirements. The alternative plan places no limitations

on the total benefits receivable. Work loss benefits would be paid at a rate of approximately $1,000 per month until the injured person was able to return to work; benefits for replacement services, survivor's loss, and survivor's replacement services loss would be paid for as long as the loss occurs, subject only to a $200 per week ceiling. The right to sue in the hope of recovering damage for economic or noneconomic detriment in most situations would be eliminated. Compensation for economic detriment would be provided by the basic insurance. Compensation for noneconomic detriment could be realized through the purchase of insurance rather than through the lawsuit mechanism.

Who determines whether a State enacting a no-fault motor vehicle insurance plan "meets or exceeds" certain minimum requirements? If a State acted, the Secretary of Transportation would administratively determine whether or not its plan met or exceeded the minimum requirements.

The bill, while establishing a nationwide and basically uniform system of no-fault automobile insurance, does not place the State in a no-fault straitjacket. The bill specifically directs States to continue to regulate insurance and establish rates; and States are given latitude in determining benefit levels and other provisions affecting costs by establishing optional or mandatory deductibles, exclusions, or waiting periods.

Detailed Explanation

(1) glossary of terms

Basic reparation insurance is insurance by which the insurer, self-insurer, or governmental unit pays the insured, on a no-fault basis, basic reparation benefits for injury arising out of the maintenance or use of a motor vehicle.

Security covering a motor vehicle is basic reparation insurance and required tort liability insurance.

Basic reparation benefits are benefits required to be paid to an injured person for his net loss arising out of the maintenance or use of a motor vehicle.

Loss consists of five distinct elements:

(a) *Allowable expense* (medical and hospital expense, rehabilitation services expense, funeral expense);

(b) *Work loss* (wages and earnings from personal effort);

(c) *Replacement services loss* (cost of substitute services);

(d) *Survivors economic loss* (future earnings loss to survivors caused by death of a wage earner); and

(e) *Survivors replacement services loss* (cost of substitute services in case of death).

Added reparation benefits are the benefits and compensation paid to a person who purchases optional insurance coverages (including collision and comprehensive).

Noneconomic detriment is intangible damage including pain and suffering.

Reparation obligor is an insurance company or self-insurer, including a governmental unit, that provides basic or added reparation benefits.

(2) explanation

There are various stages at which the new automobile insurance system impacts the consumer of auto insurance.

Stage 1—Acquisition: The consumer is involved in the purchase of desired insurance coverage.

Stage 2—Claim and Payment: The consumer or other beneficiary sustains a loss covered by the insurance. The insurer is obligated to pay for the loss under the terms and conditions of the insurance contract.

Stage 3—Conflict Resolution: If the consumer and the insurer disagree as to the existence or amount of loss or the applicability of the insurance coverage, the consumer is thrown into another stage of the insurance process.

The following explanation describes how a person would proceed through the various stages of insurance purchase, claim and payment, and dispute resolution under the proposed National No-Fault Motor Vehicle Insurance Act.

(*a*) *Stage 1—Acquisition*

Every owner of a motor vehicle registered, required to be registered, or operating in a State is required to purchase security covering the motor vehicle. Security covering the motor vehicle includes basic reparation insurance and minimum tort liability insurance. That security may be provided by contracting with an insurer or by qualifying as a self-insurer.

The availability of this compulsory insurance is assured. If an individual is unable to obtain the required insurance in the voluntary market, he may obtain the insurance from a plan which the Commissioner of Insurance establishes and implements or approves and supervises.

The purchaser of compulsory liability and basic reparation insurance makes certain decisions about the coverage he desires. Should he elect deductibles, exclusions, or waiting periods permitted by the State insurance commissioner? Should he select tort liability limits higher than the minimum $25,000 per person per accident?

The purchaser also has to decide which, if any, added reparation benefits he should purchase. His insurance company is required to offer him collision insurance (subject to a deductible of $100) or coverage (inverse liability coverage discussed below) which pays for all collision and upset damage to the extent that the insured has a valid claim in tort against another identified person or would have had such a valid claim but for the abolition of tort liability for damages for harm to motor vehicles in use. In addition to purchasing collision or inverse liability insurance, the owner of a motor vehicle may want to purchase added reparation benefits compensating for losses excluded by limits on work loss, replacement services loss, survivors economic loss, and survivors replacement services loss. He may wish to purchase insurance also to cover noneconomic detriment. The availability of these and other coverages is assured through the same plan that guarantees the availability of basic reparation insurance.

If a person is fortunate, his only involvement with the automobile insurance system will be at the acquisition stage. If, however, the owner of a motor vehicle or a member of his family is injured in an automobile accident, that person will enter into the claim and payment stage of the new automobile insurance system.

(*b*) *Stage 2—Claim and Payment*

Persons making claims for the payment of benefits to compensate for detriment sustained by them during the maintenance or use of a motor vehicle can be divided into three distinct categories: (1) basic reparation insureds; (2) persons not owning motor vehicles; and (3) uninsured motorists. Each category of persons is entitled to basic benefits but from different sources and to varying degrees.

i. The basic reparation insured

A basic reparation insured is the owner of a motor vehicle or any member of his household. When a basic reparation insured sustains injury arising out of the operation or use of a motor vehicle, he claims basic reparation benefits from his own insurer. Traditionally, automobile insurance coverage has followed the vehicle rather than the family; this was true in S. 945. Under the proposed bill, as in UMVARA, basic reparation coverage follows the family unit. The basic reparation insured is entitled to basic reparation benefits provided for in a contract of basic reparation insurance. (See below for a detailed discussion of benefits.)

ii. A person not owning a car

A person not owning a motor vehicle and not a member of a household which owns a motor vehicle is entitled to basic reparation benefits if he sustains injury arising out of the maintenance or use of a motor vehicle. Such a person makes a claim against the reparation obligor providing security covering the motor vehicle in which he was riding when injured. If the person is a pedestrian, he may make a claim against any reparation obligor providing security covering any involved motor vehicle.

iii. The uninsured person

An uninsured person is an owner of a motor vehicle who has failed to provide the required security covering his motor vehicle. This person is entitled to basic reparation benefits from the assigned claims plan in the State, but these benefits must be reduced in the amount of $500 for each year that the owner of a motor vehicle has failed to provide the required security. In addition, any mandatory exclusion, deductibles, or waiting periods are subtracted from the net loss sustained by the uninsured motorist.

The assigned claims plan is also available to: (1) the basic reparation insured whose own insurance company is financially unable to pay or (2) to a person who is not a basic reparation insured (and not required to be) if a reparation obligor is (a) not able to meet its financial obligations or (b) not identifiable (e.g., hit-and-run accident).

iv. Submission and payment of claim

A person claiming basic reparation benefits must submit to the reparation obligor reasonable proof of the loss sustained on account of the injury arising out of the maintenance or use of a motor vehicle. Having received reasonable proof of the loss the reparation obligor is obligated to pay the loss within 15 days.

v. Basic reparation benefits

Basic reparation benefits are benefits providing reimbursement for net loss suffered through injury arising out of the maintenance or use of a motor vehicle. Under the terms of the bill "loss" means accrued economic detriment from injury arising out of the maintenance or use of a motor vehicle consisting of, and limited to allowable expense, work loss, replacement services loss, and if injury causes death, survivor's economic loss, and survivor's replacement services loss. (See glossary of terms.)

In determining the basic reparation benefits to which a person is entitled, the basic elements of loss must be determined. These elements of loss must then be reduced by benefits from social security (except Medicaid benefits), workman's compensation, State-required income disability or other Federal benefits available to the basic reparation insured because of the injury arising out of the maintenance or use of a motor vehicle. This net loss is subject to further reduction depending upon the exclusions, deductibles, monthly limitations and total benefit ceilings provided for within the contract of basic reparation insurance. The monthly limitations and total benefit ceilings in the basic reparation insurance will be determined by the State, but the bill requires a State to meet certain basic minimums as follows.

Benefits for medical and rehabilitation expenses may not be limited by monthly limitations or total benefit ceilings. They are not without limitation, however. For example, only *reasonable* medical and rehabilitation expenses constitute loss compensable by basic benefits.

Monthly and total limitations on work loss are permitted. A State may provide that payment for monthly work loss not exceed the quantity $1,000 times a fraction whose numerator is the average per capita income in the State and whose denominator is the average per capita income in the United States, according to the latest available United States Department of Commerce figures. A total benefit ceiling of $50,000 is permitted without a showing of special circumstance. If the commissioner of insurance, in accordance with State law, determines by regulation on the basis of a preponderance of actuarial information that cost under no-fault will exceed the costs of full coverage under the present insurance system, then he is authorized to reduce the $50,000, but in no event below a $25,000 ceiling.

Other elements of loss, namely replacement services loss, survivor's economic loss, and survivor's replacement services loss, may be subject under a State plan to reasonable exclusions or monthly or total limitations. Thus, the extent of benefits a person is entitled to receive under a contract of basic reparation insurance depends upon the particular provisions imposed by the State. Of course, a person can add to, or subtract, from, those benefits by purchasing added reparation coverage or electing certain optional deductibles and exclusions.

If a person owns or operates a vehicle in a State that has not adopted a plan which meets or exceeds the national standards, then the benefit levels in the basic reparation insurance are not subject to as many exclusions or benefit ceiling limitations. Under the alternative no-fault plan, basic reparation insurance would reimburse a person for his allowable expense, for his work loss subject to a monthly limitation of $1,000 times a fraction referred to above, and all his replacement services loss, survivor's loss, and survivor's replacement services loss up to $200 per week together.

vi. Tort claims

In addition to claims for basic and added reparation benefits, a person sustaining injury in a motor vehicle accident has a right to claim in tort against certain persons for the recovery of certain benefits. Although in general the tort claim is restricted, a person can claim recovery of benefits from the following negligent persons: (1) the owner of a motor vehicle not providing required security; (2) a person in the business of designing, manufacturing, repairing, servicing, or otherwise maintaining motor vehicles arising from a defect in a motor vehicle caused or not corrected by an act or omission in designing, manufacturing, repairing, servicing, or otherwise maintaining a motor vehicle in the course of business; (3) a person who intentionally causes injury to persons or harm to property; (4) a person who causes harm to property other than a motor vehicle in use and its contents; or (5) a person in the business of parking or storing motor vehicles if the liability arises in the course of that business for harm to a motor vehicle and its contents.

A person injured in an automobile accident has a claim in tort against any tort feasor for damages not covered by basic reparation insurance and not accruing as loss during the period for which basic reparation insurance is providing benefits for loss. In other words, if the State has established a benefit ceiling limitation on work loss of $50,000, detriment in excess of $50,000 can be sought in tort.

A certain category of injured persons may sue in tort for noneconomic detriment (in excess of $5,000) under the State plan but not the alternative plan. Those eligible are: (1) the survivors of persons who die after sustaining injury arising out of the maintenance or use of a motor vehicle; (2) injured persons sustaining significant permanent injury; (3) those persons sustaining serious permanent disfigurement; or (4) those persons completely unable to work for more than 6 months.

vii. Property damage claims

Detriment caused by damage to property can be recovered in several ways. If the property is not a motor vehicle in use, a person may claim recovery of benefits from a negligent person who caused the harm to the property. A "motor vehicle in use" is a motor vehicle in operation on a public roadway, including a motor vehicle moving, being driven, or standing on a public roadway.

Alternatively, compensation for harm to property may be provided for by purchasing added reparation coverage for that property. In other words, a person may submit a claim to his own insurance company to compensate him for harm to property, be it the contents of a motor vehicle or the motor vehicle itself. If a person has purchased such collision and comprehensive coverage, benefits are payable on a no-fault basis.

A person also has the further option to elect an alternative added reparation coverage (inverse liability coverage) to provide protection for harm to property on a fault basis. He can receive compensation from his own insurance company for damage to his motor vehicle or its contents if he can demonstrate that the damage was caused as the result of the negligence of another person. This insurance protection allows the individual to protect himself against harm to property in the same way he would have been protected himself had liability for damage to motor vehicles in use not been restricted. This coverage would be available at a cost comparable to the cost today of property damage liability insurance. This coverage will be particularly attractive to owners of older motor vehicles.

During the claim and payment stage of the insurance process, conflict may develop between the insured and the insurer or the claimant and the alleged tort feasor. In that situation, a person enters the conflict resolution stage of the insurance process.

(*c*) *Stage 3—Conflict Resolution*

i. Resolution of conflicts involving claims for basic and added reparation benefits

A person making a claim for basic or added reparation benefits will face a settlement environment much different than that which he often faces today in making a liability claim. Rather than dealing with someone's else's insurance company, he will be dealing with his own insurance company. If his insurance company refuses to pay the claim, and later pays it, the overdue payment bears interest at the rate of 18 percent per annum.

By the terms of the bill, a person has the opportunity to retain an attorney to pursue his claim against any reparation obligor who has refused to pay basic or added reparation benefits. If those benefits are finally paid, either voluntarily or by order of the court, the individual has a right to recover the costs of litigation and reasonable attorneys fees occasioned by the need to pursue his claim. If a claim is finally litigated, the individual has a right to obtain from the insurance company the cost of his attorney's fees so long as the claim was not fraudulent or so excessive as to have no reasonable foundation.

ii. Disputes in tort

Conflict resolution in those areas where claims in tort are still permitted are to be governed by the applicable law in the State in which a lawsuit is brought.

iii. Conflicts between insurance companies

Conflicts between insurance companies are substantially reduced by the provision in the bill prohibiting insurance companies from seeking reimbursement from one another for no-fault benefits they pay their policyholders for harm caused by the negligence of the other company's policyholder. By eliminating conflicts between insurance companies, the bill assures the consumer of insurance that he will not be brought into the middle of such conflicts.

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[COMMITTEE PRINT]

DECEMBER 15, 1972

93D CONGRESS
1ST SESSION

S.

IN THE SENATE OF THE UNITED STATES

JANUARY , 1973

Mr. _____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To establish a nationwide system of adequate and uniform motor vehicle accident reparation acts and to require no-fault motor vehicle insurance as a condition precedent to operating a motor vehicle on public roadways in order to promote and regulate interstate commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National No-Fault Motor Vehicle Insurance Act".

TITLE I—GENERAL PROVISIONS

DEFINITIONS

SEC. 101. As used in this Act—

(1) "Added reparation benefits" mean benefits provided by optional added reparation insurance.

(2) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, or the reasonable value of such products, services, and accommodations if no charges are incurred, including those for medical care, emergency medical and transportation services, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of $500 for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless intensive care is medically required. "Allowable expense" does not include any amount includable in work loss, replacement services loss, survivor's economic loss, or survivor's replacement services loss.

(3) "Basic reparation benefits" mean benefits providing reimbursement for net loss suffered through injury arising out of the maintenance or use of a motor vehicle, subject, where applicable, to the limits, deductibles, exclusions, disqualifications, and other conditions provided in this Act.

(4) "Basic reparation insurance" includes a contract, self-insurance, or other legal means under which the obligation to pay basic reparation benefits arises.

(5) "Basic reparation insured" means:

(i) a person identified by name as an insured in a contract of basic reparation insurance complying with this Act; and

(ii) while residing in the same household with a named insured, the following persons if they are not identified by name as an insured in any other contract of basic reparation insurance complying with this Act: a spouse or other relative of a name insured and a minor in the custody of a named insured or of a relative residing in the same household with a named insured. A person resides in the same household if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.

(6) "Commissioner" means the commissioner of insurance or the head of the department, commission, board, or other agency of a State which is charged by the law of that State with the supervision and regulation of the business of insurance.

(7) "Government" means the Government of the United States, or of any State or of any political subdivision of a State, or any agency, subdivision, or department of any government, including any corporation or other association organized by a government for the execution of a government program and subject to control by a government or any

corporation or agency established under an interstate compact or international treaty.

(8) "Injury" and "injury to person" mean bodily harm, sickness, disease, or death resulting from bodily harm.

(9) "Loss" means accrued economic detriment resulting from injury arising out of the maintenance or use of a motor vehicle consisting of, and limited to, allowable expense (subsection (2)), work loss (subsection (30)), replacement services loss (subsection (20)), and, in case of death, survivor's economic loss (subsection (27)) and survivor's replacement services loss (subsection (20)).

(10) "Loss of income" means income actually lost by a person as the result of an injury arising out of the maintenance or use of a motor vehicle or that would have been lost but for any income continuation plan providing income to the injured person. Loss of income does not include income from substitute work actually performed by an injured person, income he would have earned in available substitute work he was capable of performing but unreasonably failed to undertake, or income he would have earned by hiring an available substitute to perform self-employment services but unreasonably failed to do.

(11) "Maintenance or use of a motor vehicle" means maintenance or use of a motor vehicle as a vehicle, including, incident to its maintenance or use as a vehicle, occupying,

entering into and alighting from it. Maintenance or use of a motor vehicle does not include (i) conduct within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles unless the conduct occurs off the business premises, or (ii) conduct in the course of loading and unloading the vehicle unless the conduct occurs while occupying, entering into, or alighting from it.

(12) "Motor vehicle" means:

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

(ii) a vehicle, including a trailer, designed for operation upon a public roadway by other than muscular power, except a vehicle used exclusively upon stationary rails or tracks.

(13) "Motor vehicle in use," means a motor vehicle in operation on a public roadway, including a motor vehicle moving, being driven, or standing on a public roadway. Motor vehicle in use does not include a motor vehicle parked in an authorized area on a public roadway.

(14) "Net loss" means loss less benefits or advantages, from sources other than basic and added reparation insurance, required to be subtracted from loss in calculating net loss pursuant to section 209 of this Act.

(15) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary

damage recoverable under the tort law applicable to injury arising out of the ownership, maintenance, or use of a motor vehicle. The term does not include punitive or exemplary damages.

(16) "Owner" means a person, a government, an organization, or any entity considered as such in law, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, society, union, club, church, or any other group of persons organized for any purpose, other than a lienholder or secured party, that owns or has title to a motor vehicle or is entitled to the use and possession of a motor vehicle subject to a security interest held by another person. The term includes a lessee of a motor vehicle having the right to possession under a lease with option to purchase.

(17) "Probable annual income" means in the absence of proof that it is or would be some other amount:

(1) the average annual income from work received by the injured person during the years, not to exceed three, preceding the year in which the accident causing the injury occurs; or

(2) if the person has not previously earned income, the average annual income of a production or nonsupervisory worker on a private nonagricultural payroll in the State.

(18) "Public roadway" means a way open to the use of the public for purposes of automobile travel.

(19) "Reparation obligor" means an insurer, self-insurer, or obligated government providing basic or added reparation benefits in accordance with this Act.

(20) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

(21) "Secretary" means the Secretary of Transportation.

(22) "Secured vehicle" means the motor vehicle for which insurance or other security is provided in accordance with section 102 of this Act.

(23) "Security covering a motor vehicle" and "security covering the vehicle" is insurance or other security so provided pursuant to this Act.

(24) "Self-insurer" means an owner or any person providing security pursuant to subsections (b) and (c) of section 102 of this Act.

(25) "State" means any State and the District of Columbia.

(26) "Survivor" means a person identified in the statute of the State of domicile of the decedent concerning liability

for wrongful death as one entitled to receive benefits by reason of the death of another person.

(27) "Survivor's economic loss" means: (i) loss of income of a decedent following death resulting from injury arising out of the maintenance or use of a motor vehicle which the decedent would have contributed to a survivor or survivors if he had not suffered the fatal injury, (ii) less expenses of the survivor or survivors avoided by reason of decedent's death.

(28) "Survivor's replacement services loss" means expenses reasonably incurred by survivors after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of the decedent's death and not subtracted in calculating survivor's economic loss.

(29) "Without regard to fault" means irrespective of fault as a cause of injury or death, and without application of any principle of liability based on negligence.

(30) "Work loss" means: (i) loss of income resulting from the inability by reason of an injury arising out of the maintenance or use of a motor vehicle to perform work which an injured person would have performed if he had not been injured, and (ii) reasonable expenses for hiring

a substitute to perform self-employment services, thereby mitigating loss of income.

NECESSARY NO-FAULT INSURANCE

SEC. 102. (a) SECURITY COVERING A MOTOR VEHICLE.—Every owner of a motor vehicle registered, required to be registered, or operated in a State by him or with his permission, shall continuously provide with respect to that motor vehicle, while it is either present or registered in a State, security for the payment of basic reparation benefits in accordance with this Act and security for the payment of tort liabilities arising from maintenance or use of the motor vehicle. Security may be provided by a contract of insurance or by qualifying as a self-insurer. Any person other than the owner may provide such security with respect to any motor vehicle.

(b) SELF-INSURANCE.—Self-insurance, subject to approval of the commissioner, is effected by filing with the commissioner in satisfactory form—

(1) a continuing undertaking by the owner or other appropriate person to pay tort liabilities or basic reparation benefits or both, and to perform all other obligations imposed pursuant to this Act;

(2) evidence that appropriate provision exists for prompt and efficient administration of all claims, benefits, and obligations provided pursuant to this Act; and

(3) evidence that reliable financial arrangements, deposits, resources, or commitments exist providing assurance substantially equivalent to that afforded by a policy of insurance complying with this Act for payment of tort liabilities, basic reparation benefits, and all other obligations imposed pursuant to this Act.

(c) OBLIGATED GOVERNMENT.—A government may provide security by lawfully obligating itself to pay basic reparation benefits in accordance with this Act.

(d) PENALTY.—Any owner who knowingly violates the provisions of subsection (a) may be punished by such fine or otherwise as a State determines to impose.

AVAILABILITY OF INSURANCE

SEC. 103. (a) PLAN.—(1) The commissioner shall establish and implement or approve and supervise a plan assuring that liability and basic and added reparation insurance for motor vehicles will be conveniently and expeditiously available, subject only to payment or provision for payment of the premium, to all applicants for insurance required pursuant to this Act to provide security for payment of tort liabilities and basic reparation benefits and who cannot conveniently obtain insurance through ordinary methods at rates not in excess of those applicable to applicants under the plan. The plan may be by assignment of applicants among insurers, pooling, other joint insuring or reinsuring arrange-

ment, or any other method that will reasonably accomplish the purposes of this section, including any arrangement or undertaking by insurers that results in all applicants being conveniently afforded the insurance coverages on reasonable and not unfairly discriminatory terms through ordinary markets.

(2) The plan shall make available optional added reparation and tort liability coverages and other contract provisions the commissioner determines are reasonably needed by applicants and are commonly afforded in voluntary markets. The plan shall provide for the availability of financing or installment payment of premiums on reasonable and customary terms and conditions.

(3) All insurers authorized in a State to write motor vehicle liability, basic reparation, or optional added reparation coverages which the commissioner requires to be offered under paragraph (2) shall participate in the plan. The plan shall provide for equitable apportionment, among all participating insurers writing any insurance coverage required under the plan, of the financial burdens of insurance provided to applicants under the plan and costs of operation of the plan.

(4) Subject to the supervision and approval of the commissioner, insurers may consult and agree with each other and with other appropriate persons as to the organization,

administration, and operation of the plan and as to rates and rate modifications for insurance coverages provided under the plan. Rates and rate modifications adopted or charged for insurance coverages provided under the plan shall be first adopted or approved by the commissioner, be reasonable and not unfairly discriminatory among applicants for insurance under regulations established by the commissioner, and not be greater than 200 per centum of the cost of comparable insurance for similarly situated persons who are able to obtain insurance in the voluntary market as estimated by the commissioner.

(5) To carry out the objectives of this subsection, the commissioner may adopt rules, make orders, enter into agreements with other governmental and private entities and persons, and form and operate or authorize the formation and operation of bureaus and other legal entities.

(b) CANCELLATION, REFUSAL TO RENEW, OR OTHER TERMINATION OF INSURANCE.—(1) This subsection applies only to contracts of insurance providing security in accordance with this Act for a motor vehicle which is registered in a State and is not one of five or more motor vehicles under common ownership insured under a single insuring agreement.

(2) Any termination of insurance by an insurer, including any failure or refusal by the insurer to renew the insur-

ance at the expiration of its term and any modification by the insurer of the terms and conditions of the insurance unfavorable to the insured, is ineffective, unless—

(A) written notice of intention to modify, not to renew, or otherwise to terminate the insurance has been mailed or delivered to the insured at least twenty days before the effective date of the modification, expiration, or other termination of the insurance;

(B) the insurer has expressly stipulated in the insuring agreement either that:

(i) the insurance is for a stated term of at least one year after the inception of coverage and may not be modified or terminated during the term; or

(ii) if there is no stated term or the insurance is for a term of less than one year, the insurance may be modified, not renewed, or otherwise terminated by the insurer but only at specified dates or intervals which may not be less than one year after the original inception of coverage or thereafter less than one year apart; and

(C) in the case of termination by failure or refusal to renew, the insurer has offered to arrange for equivalent coverage with the plan, informs the consumer about the price of such coverage, and arranges for the coverage if instructed to do so by the basic reparation insured.

(3) A contract of insurance for basic or added reparation benefits may not be terminated by cancellation during the policy period unless:

(A) the requirements on termination in paragraph (2) of this subsection are complied with, and

(B) one of the following conditions pertains:

(i) the cancellation occurs at any time within seventy-five days after the original inception of coverage; or

(ii) the premium or any installment thereof has not been paid when due after reasonable demand therefor.

(4) An insurer who has canceled, refused to renew, or otherwise terminated insurance shall mail or deliver to the insured, within ten days after receipt of a written request, a statement of the reasons for the cancellation, refusal to renew, or other termination of the insurance coverage.

(5) For purposes of this subsection a cancellation or refusal to renew by or at the direction of any person acting pursuant to any power or authority under any premium finance plan, agreement, or arrangement, whether or not with power of attorney or assignment from the insured, constitutes a cancellation or refusal to renew by the insurer.

(6) This subsection does not limit or apply to any termination, modification, or cancellation of the insurance, or

to any suspension of insurance coverage, by or at the request of the insured.

(7) This subsection does not affect any right an insurer has under other law to rescind or otherwise terminate insurance because of fraud or other willful misconduct of the insured at the inception of the insuring transaction or the right of either party to reform the contract on the basis of mutual mistake of fact.

(8) An insurer, his authorized agents and employees, and any person furnishing information upon which he has relied, are not liable for any statement made in good faith pursuant to paragraph (4).

PAYMENT OF BENEFITS, CONDITIONS, AND LIMITATIONS

SEC. 104. (a) REPARATION OBLIGOR'S DUTY TO RESPOND TO CLAIMS.—(1) Basic and added reparation benefits are payable monthly as loss accrues. Loss accrues not when injury occurs, but as work loss, replacement services loss, survivor's economic loss, survivor's replacement services loss, or allowable expense is incurred. Benefits are overdue if not paid within thirty days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, unless the reparation obligor elects to accumulate claims for periods not exceeding thirty-one days and pays them within fifteen days after the period of accumulation. If reasonable proof is supplied as to only part of a claim, and

the part totals $100 or more, the part is overdue if not paid within the time provided by this section. Allowable expense benefits may be paid by the reparation obligor directly to persons supplying products, services, or accommodations to the claimant.

(2) Overdue payments bear interest at the rate of 18 per centum per annum.

(3) A claim for basic or added reparation benefits shall be paid without deduction for the benefits which are to be subtracted pursuant to the provisions on calculation of net loss (section 209), if these benefits have not been paid to the claimant before the reparation benefits are overdue or the claim is paid. The reparation obligor is entitled to reimbursement from the person obligated to make the payments or from the claimant who actually receives the payments.

(4) A reparation obligor may bring an action to recover benefits which are not payable, but are in fact paid, because of an intentional misrepresentation of a material fact, upon which the reparation obligor relies, by the insured or by a person providing an item of allowable expense. The action may be brought only against the person providing the item of allowable expense, unless the insured has intentionally misrepresented the facts or knew of the misrepresentation. An insurer may offset amounts he is entitled to recover from the

insured under this paragraph against any basic or added reparation benefits otherwise due.

(5) A reparation obligor who rejects a claim for basic reparation benefits shall give to the claimant prompt written notice of the rejection, specifying the reason and informing the claimant of the terms and conditions of his right to obtain an attorney pursuant to this Act. If a claim is rejected for a reason other than that the person is not entitled to the basic reparation benefits claimed, the written notice shall inform the claimant that he may file his claim with the assigned claims bureau and shall give the name and address of the bureau.

(b) LIMITATION OF ACTIONS.—(1) If no basic or added reparation benefits have been paid for loss arising otherwise than from death, an action therefor may be commenced not later than two years after the injured person suffers the loss and either knows, or in the exercise of reasonable diligence should know, that the loss was caused by the accident, or not later than four years after the accident, whichever is earlier. If basic or added reparation benefits have been paid for loss arising otherwise than from death, an action for further benefits, other than survivor's benefits, by either the same or another claimant, may be commenced not later than two years after the last payment of benefits.

(2) If no basic or added reparation benefits have been paid to the decedent or his survivors, an action for survivor's benefits may be commenced not later than one year after the death or four years after the accident from which death results, whichever is earlier. If survivor's benefits have been paid to any survivor, an action for further survivor's benefits by either the same or another claimant may be commenced not later than two years after the last payment of benefits. If basic or added reparation benefits have been paid for loss suffered by an injured person before his death resulting from the injury, an action for survivor's benefits may be commenced not later than one year after the death or four years after the last payment of benefits, whichever is earlier.

(3) If timely action for basic reparation benefits is commenced against a reparation obligor and benefits are denied because of a determination that the reparation obligor's coverage is not applicable to the claimant under the provisions on priority of applicability of basic reparation security, an action against the applicable reparation obligor or the assigned claims bureau may be commenced not later than sixty days after the determination becomes final or the last date on which the action could otherwise have been commenced, whichever is later.

(4) Except as paragraph (1), (2), or (3) prescribe a longer period, an action by a claimant on an assigned

claim which has been timely presented (section 106(c)) may be commenced not later than sixty days after the claimant receives written notice of rejection of the claim by the reparation obligor to which it was assigned.

(5) A calendar month during which a person does not suffer loss for which he is entitled to basic or added reparation benefits is not a part of the time limited for commencing an action, except that the months excluded for this reason may not exceed one hundred and twenty.

(c) ASSIGNMENT OF BENEFITS.—An assignment of or agreement to assign any right in accordance with this Act for loss accruing in the future is unenforceable except as to benefits for—

(1) work loss to secure payment of alimony, maintenance, or child support; or

(2) allowable expense to the extent the benefits are for the cost of products, services, or accommodations provided or to be provided by the assignee.

(d) DEDUCTION AND SETOFF.—Except as otherwise provided in this Act, basic reparation benefits shall be paid without deduction or setoff.

(e) EXEMPTION OF BENEFITS.—(1) Basic or added reparation benefits for allowable expense are exempt from garnishment, attachment, execution, and any other process or claim, except upon a claim of a creditor who has pro-

vided products, services, or accommodations to the extent benefits are for allowable expense for those products, services, or accommodations.

(2) Basic reparation benefits other than those for allowable expense are exempt from garnishment, attachment, execution, and any other process or claim to the extent that wages or earnings are exempt under any applicable law exempting wages or earnings from process or claims.

ATTORNEYS' FEES AND COSTS

SEC. 105. (a) FEES OF CLAIMANT'S ATTORNEY.—(1) If overdue benefits are paid by the reparation obligor after receipt of notice of representation of a claimant by an attorney or if an action is maintained (unless the court determines that the claim is fraudulent or so excessive as to have no reasonable foundation), a reasonable attorney's fee (based upon actual time expended) shall be paid by the reparation obligor to the attorney. No part of basic or added reparation benefits paid by the reparation obligor shall be applied in any manner as attorney's fees for advising and representing a claimant on a claim or in an action for basic or added reparation benefits.

(2) In any action brought against the insured by the reparation obligor, the court may award the insured's attorney a reasonable attorney's fee for defending the action.

(b) FEES OF REPARATION OBLIGOR'S ATTORNEY.—A reparation obligor shall be allowed a reasonable attorney's fee for defending a claim for benefits that is fraudulent or so excessive as to have no reasonable foundation. The fee may be treated as an offset against any benefits due or to become due to this claimant.

ASSIGNED CLAIMS

SEC. 106. (a) GENERAL.—(1) A person entitled to basic reparation benefits because of injury covered by this Act may obtain them through the assigned claims plan established pursuant to the provisions relating thereto (subsection (b)) and in accordance with the provisions on time for presenting claims under the assigned claims plan (subsection (c)) if—

(A) basic reparation insurance is not applicable to the injury for a reason other than those specified in the provisions on converted vehicles and intentional injuries (section 214);

(B) basic reparation insurance is not applicable to the injury because the injured person converted a motor vehicle while he was under fifteen years of age;

(C) basic reparation insurance applicable to the injury cannot be identified;

(D) basic reparation insurance applicable to the injury is inadequate to provide the contracted-for benefits

because of financial inability of a reparation obligor to fulfill its obligation; or

(E) a claim for basic reparation benefits is rejected by a reparation obligor for a reason other than that the person is not entitled in accordance with this Act to the basic reparation benefits claimed.

(2) If a claim qualifies for assignment under paragraph (1) (C), (1) (D), or (1) (E), the assigned claims bureau or any reparation obligor to whom the claim is assigned is subrogated to all rights of the claimant against any reparation obligor, its successor in interest or substitute, legally obligated to provide basic reparation benefits to the claimant, for basic reparation benefits provided by the assignee.

(3) Except in case of a claim assigned under paragraph (1) (D), if a person receives basic reparation benefits through the assigned claims plan, all benefits or advantages he receives or is entitled to receive as a result of the injury, other than by way of succession at death, death benefits from life insurance, or in discharge of familial obligations of support, are subtracted in calculating net loss.

(4) An assigned claim of a person who does not comply with the requirement of providing security for the payment of basic reparation benefits, or of a person as to whom the security is invalidated because of his fraud or willful mis-

conduct, is subject to (1) any optional deductibles and exclusions required to be offered, and (2) a deduction in the amount of $500 for each year or part thereof of the period of his continuous failure to provide security, applicable to any benefits otherwise payable.

(b) ASSIGNED CLAIMS PLAN.—(1) Reparation obligors providing basic reparation insurance in a State may organize and maintain, subject to approval and regulation by the commissioner, an assigned claims bureau and an assigned claims plan and adopt rules for their operation and for assessment of costs on a fair and equitable basis consistent with this Act. If they do not organize and continuously maintain an assigned claims bureau and an assigned claims plan in a manner considered by the commissioner to be consistent with this Act, he shall organize and maintain an assigned claims bureau and an assigned claims plan. Each reparation obligor providing basic reparation insurance in a State shall participate in the assigned claims bureau and the assigned claims plan. Costs incurred shall be allocated fairly and equitably among the reparation obligors.

(2) The assigned claims bureau shall promptly assign each claim and notify the claimant of the identity and address of the assignee of the claim. Claims shall be assigned so as to minimize inconvenience to claimants. The assignee thereafter has rights and obligations as if he had issued a policy

of basic reparation insurance complying with this Act applicable to the injury or, in case of financial inability of a reparation obligor to perform its obligations, as if the assignee had written the applicable basic reparation insurance, undertaken the self-insurance, or lawfully obligated itself to pay reparation benefits.

(c) TIME FOR PRESENTING CLAIMS UNDER ASSIGNED CLAIMS PLAN.—(1) Except as provided in paragraph (2), a person authorized to obtain basic reparation benefits through the assigned claims plan shall notify the bureau of his claim within the time that would have been allowed for commencing an action for those benefits if there had been identifiable coverage in effect and applicable to the claim.

(2) If timely action for basic reparation benefits is commenced against a reparation obligor who is unable to fulfill his obligations because of financial inability, a person authorized to obtain basic reparation benefits through the assigned claims plan shall notify the bureau of his claim within six months after his discovery of the financial inability.

CONSUMER INFORMATION

SEC. 107. (a) The commissioner shall provide the means to inform consumers about rates being charged by reparation obligors for basic and added reparation benefits in a manner adequate to permit consumers to compare prices.

(b) The commissioner, in accordance with applicable State law, shall continue to regulate reparation obligors.

(c) The rates charged for liability, basic, and added reparation coverages shall be established, determined, and modified only in accordance with the provisions of applicable State rating laws.

MOTOR VEHICLES IN INTERSTATE TRAVEL

SEC. 108. A contract of insurance providing security covering a motor vehicle for the payment of basic reparation benefits shall be deemed to contain—

(a) liability coverage to protect against any liability exposure to which the basic reparation insured would not be exposed in the State of registration of the vehicle but to which he is exposed in the State in which he is operating, or responsible for the operation of, a motor vehicle.

(b) inverse liability coverage to protect against any detriment that is not covered by a contract of insurance providing basic or added reparation benefits for which the basic reparation insured would have a right to bring suit to recover in the State of registration but for which he has no right to bring suit to recover in the State in which he is operating, or responsible for the operation of, a motor vehicle.

REIMBURSEMENT, SUBROGATION, AND INDEMNITY

SEC. 109. (a) GENERAL.—A reparation obligor does not have and may not directly or indirectly contract for a right of reimbursement from or subrogation to the proceeds of a claim for relief or cause of action for noneconomic detriment of a recipient of basic or added reparation benefits. A reparation obligor may not directly or indirectly contract for, or be granted by a State, any right of reimbursement from any other reparation obligor for basic or added reparation benefits which it has paid or is obligated to pay.

(b) SUBROGATION.—Whenever a person who receives or is entitled to receive basic or added reparation benefits for an injury has a claim or cause of action against any other person for breach of an obligation or duty causing the injury, the reparation obligor is subrogated to the rights of the claimant, and has a claim for relief or cause of action, separate from that of the claimant, to the extent that:

(1) elements of damage compensated for by basic or added reparation insurance are recoverable; and

(2) the reparation obligor has paid or become obligated to pay accrued or future basic or added reparation benefits.

(c) INDEMNITY.—A reparation obligor has a right of indemnity against a person who has converted a motor vehicle involved in an accident, or a person who has intentionally

caused injury to person or harm to property, for basic and added reparation benefits paid to other persons for the injury or harm caused by the conduct of that person, for the cost of processing claims for those benefits, and for reasonable attorney's fees and other expenses of enforcing the right of indemnity. For purposes of this subsection, a person is not a converter if he uses the motor vehicle in the good faith belief that he is legally entitled to do so.

JURISDICTION

SEC. 110. (a) FEDERAL.—No district court of the United States may entertain an action for breach of any contractual or other obligation of a reparation obligor for the payment of liability, basic or added reparation benefits unless the United States is a party to the action or the person bringing the action meets the jurisdictional requirements of section 1332 of title 28 of the United States Code. In any direct action against the reparation obligor, whether incorporated or unincorporated, such reparation obligor shall be deemed a citizen of the State of which the basic reparation insured is a citizen, as well as of any State by which the reparation obligor has been incorporated and of the State where it has its principal place of business.

(b) STATE.—Any person may bring suit for breach of any contractual or other obligation of a reparation obligor

for the payment of liability, basic or added reparation benefits in a State court of competent jurisdiction.

SEVERABILITY

SEC. 111. (a) Except as provided in subsection (b), if any provision of this Act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the involved provision or application, and to this end the provisions of this Act are severable.

(b) If any restriction on the retained tort liability in paragraph (6) of section 206(a) or 304, or application thereof to any person or circumstance, is held invalid, this Act shall be interpreted as if the paragraph containing the invalid restriction had not been enacted.

FEDERAL MOTOR VEHICLE

SEC. 112. Notwithstanding any other provision of law, a claim against the United States as a reparation obligor for injury arising from the maintenance or use of a motor vehicle owned by any Federal agency and operated with its permission in a State shall be governed by this Act. "Federal agency" includes the executive departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States. The level of basic reparation benefits which the Federal Government is obligated to provide shall be controlled by the applicable no-fault plan (if any) in the State in which

the injury arising out of the maintenance or use of a motor vehicle occurs.

TITLE II—NATIONAL STANDARDS FOR STATE NO-FAULT MOTOR VEHICLE INSURANCE

SEC. 201. (a) STATE ACTION.—By the completion of the first regular legislative session which commences after the enactment of this Act, a State may establish a plan for no-fault motor vehicle insurance designed to meet or exceed the requirements established by this title.

(b) Within ninety days after the enactment of any plan the Secretary shall determine, after affording the State and other interested parties a reasonable opportunity to present oral and written submission, whether that State has established a plan for no-fault motor vehicle insurance that meets or exceeds the requirements established by this title. Unless it is determined that a State plan does not meet the requirements of this title, the State plan shall go into effect on the date designated in the plan. The date in no event shall be less than nine months and no more than twelve months from the date of enactment of the plan.

(c) The Secretary shall periodically review the laws and regulations of each State pertaining to automobile insurance to determine whether or not they meet or exceed the requirements established by this title, and shall report thereon annually to the Congress.

(d) If at any time the Secretary determines that a State, following the completion of the first general legislative session following enactment of this Act, has not established or does not have in effect a plan for no-fault motor vehicle insurance that meets the requirements of this title, title III of this Act shall become applicable in that State on a date designated by the Secretary. The date in no event shall be less than six months and no more than nine months from the date of the Secretary's determination. If the Secretary finds, after title III is in effect, that a State has established a plan for no-fault motor vehicle insurance that meets or exceeds the requirements established by this title, the State plan shall go into effect and title III shall cease to be applicable on a date designated by the Secretary. The date in no event shall be less than six months and no more than nine months from the date of the enactment of the plan.

(e) The Secretary shall notify in writing the Governor of the affected State of any determinations made under this section and shall publish these determinations in the Federal Register.

(f) Any determinations by the Secretary under this section shall be subject to judicial review in accordance with chapter V of title 5 of the United States Code exclusively in the United States court of appeals for the circuit in which the State whose plan is subject to the Secretary's determina-

tion is located or in the United States Court of Appeals for the District of Columbia Circuit, and any such review must be instituted within sixty days from the date that the Secretary's determination is published in the Federal Register.

STATE IMPLEMENTATION OF FEDERAL LAW

SEC. 202. A law establishing a no-fault plan for motor vehicle insurance in accordance with this title, and approved by the Secretary pursuant to section 201, shall be deemed to implement and effectuate the laws and policies of the United States. Such a law, established by a State in accordance with this Act, shall have the full force and effect of the laws of the United States under article VI, clause 2 of the Constitution of the United States, in connection with any judicial challenge to such law under a State constitution or State law.

COORDINATION OF NATIONAL REQUIREMENTS

SEC. 203. A State establishing a no-fault plan for motor vehicle insurance shall enact a law which incorporates, at a minimum, the provisions of title I, except sections 110, 111, and 112, and title II, except sections 201, 202, and 203.

RIGHT TO BASIC REPARATION BENEFITS AND OBLIGATION TO PAY THEM

SEC. 204. (a) (1) If the accident causing injury occurs in the State, every person suffering loss from injury arising out of maintenance or use of a motor vehicle has a right to basic reparation benefits in accordance with this Act.

(2) If the accident causing injury occurs outside the State, but in a territorial area not less than the United States, its territories and possessions, Canada, and Mexico, the following persons and their survivors suffering loss from injury arising out of maintenance or use of a motor vehicle have a right to basic reparation benefits in accordance with this Act:

(A) basic reparation insureds; and

(B) the driver and other occupants of a secured vehicle, other than a vehicle which is regularly used in the course of the business of transporting persons or property and which is one of five or more vehicles under common ownership.

(b) (1) Basic reparation benefits shall be paid without regard to fault.

(2) Basic reparation obligors and the assigned claims plan shall pay basic reparation benefits, under the terms and conditions stated in this Act, for loss from injury arising out of maintenance or use of a motor vehicle. This obligation exists without regard to immunity from liability or suit which might otherwise be applicable.

PRIORITY OF APPLICABILITY OF SECURITY FOR PAYMENT OF BASIC REPARATION BENEFITS

SEC. 205. (a) In case of injury to the driver or other occupant of a motor vehicle, if the accident causing the injury occurs while the vehicle is being used in the business

of transporting persons or property, the security for payment of basic reparation benefits is the security covering the vehicle or, if none, the security under which the injured person is a basic reparation insured.

(b) In case of injury to an employee, or to his spouse or other relative residing in the same household, if the accident causing the injury occurs while the injured person is driving or occupying a motor vehicle furnished by the employer, the security for payment of basic reparation benefits is the security covering the vehicle or, if none, the security under which the injured person is a basic reparation insured.

(c) In all other cases, the following priorities apply—

(1) The security for payment of basic reparation benefits applicable to injury to a basic reparation insured is the security under which the injured person is a basic reparation insured.

(2) The security for payment of basic reparation benefits applicable to injury to the driver or other occupant of an involved motor vehicle who is not a basic reparation insured is the security covering that vehicle.

(3) The security for payment of basic reparation benefits applicable to injury to a person not otherwise covered who is not the driver or other occupant of an involved motor vehicle is the security covering any involved motor vehicle. An unoccupied parked vehicle is

not an involved motor vehicle unless it was parked so as to cause unreasonable risk of injury.

(d) If two or more obligations to pay basic reparation benefits are applicable to an injury under the priorities set out in this section, benefits are payable only once and the reparation obligor against whom a claim is asserted shall process and pay the claim as if wholly responsible, but he is thereafter entitled to recover contribution pro rata for the basic reparation benefits paid and the costs of processing the claim. Where contribution is sought among reparation obligors responsible under paragraph (3) of subsection (c) proration shall be based on the number of involved motor vehicles.

PARTIAL ABOLITION OF TORT LIABILITY

SEC. 206. (a) Tort liability with respect to accidents occurring in the State and arising from the ownership, maintenance, or use of a motor vehicle is abolished except as to—

(1) liability of the owner of a motor vehicle involved in an accident in a State if security covering the vehicle was not provided at the time of the accident;

(2) liability of a person in the business of designing, manufacturing, repairing, servicing, or otherwise maintaining motor vehicles arising from a defect in a motor vehicle caused or not corrected by an act or omission in

designing, manufacturing, repair, servicing, or other maintenance of a vehicle in the course of his business;

(3) liability of a person for intentionally caused injury to person or harm to property;

(4) liability of a person for harm to property other than a motor vehicle in use and its contents;

(5) liability of a person in the business of parking or storing motor vehicles arising in the course of that business for harm to a motor vehicle and its contents; and

(6) damages for economic detriment not covered by basic reparation insurance and not accruing as loss during the period that basic reparation insurance is providing benefits for loss pursuant to this Act;

(7) damages for noneconomic detriment in excess of $5,000, but only if the accident causes death, significant permanent injury, serious permanent disfigurement, or more than six months of complete inability of the injured person to work in an occupation. "Complete inability of an injured person to work in an occupation" means inability to perform, on even a part-time basis, even some of the duties required by his occupation or, if unemployed at the time of injury, by any occupation for which the injured person was qualified.

(b) For purposes of this section and the provisions on reparation obligor's rights of reimbursement, subrogation, and indemnity, a person does not intentionally cause harm merely because his act or failure to act is intentional or done with his realization that it creates a grave risk of harm.

(c) Nothing in this section shall be construed to immunize any person from liability to pay a civil penalty or fine on the basis of fault in a civil or criminal proceeding based upon any act or omission rising out of the maintenance or use of a motor vehicle: *Provided,* That such civil penalty or fine may not be paid or reimbursed by an insurer or reparation obligor.

INCLUDED COVERAGES

SEC. 207. (a) An insurance contract which purports to provide coverage for basic reparation benefits or is sold with representation that it provides security covering a motor vehicle has the legal effect of including all coverages required by this Act.

(b) Notwithstanding any contrary provision in it, every contract of liability insurance for injury, wherever issued, covering ownership, maintenance, or use of a motor vehicle registered in the State, except a contract which provides coverage only for liability in excess of required minimum tort liability coverages, includes basic reparation benefit

coverages and required minimum security for tort liabilities required by this Act, and qualifies as security covering the vehicle.

(c) An insurer authorized to transact or transacting business in the State may not exclude in any contract of liability insurance for injury, wherever issued, covering ownership, maintenance, or use of a motor vehicle while it is in the State, except a contract providing coverage only for liability in excess of required minimum tort liability coverage, the basic reparation benefit coverages and required minimum security for tort liabilities required by this Act.

REQUIRED MINIMUM TORT LIABILITY INSURANCE AND TERRITORIAL COVERAGE

SEC. 208. (a) The requirement of security for payment of tort liabilities is fulfilled by providing:

(1) liability coverage of not less than $25,000 for all damages arising out of bodily injury sustained by any one person as a result of any one accident applicable to each person sustaining injury caused by accident arising out of ownership, maintenance, use, loading, or unloading, of the secured vehicle;

(2) liability coverage of not less than $10,000 for all damages arising out of injury to or destruction of property, including the loss of use thereof, as a result

of any one accident arising out of ownership, maintenance, use, loading, or unloading, of the secured vehicle; and

(3) that the liability coverages apply to accidents during the contract period in a territorial area not less than the United States of America, its territories and possessions, and Canada.

(b) Subject to the approval of terms and forms, the requirement of security for payment of tort liabilities may be met by a contract of insurance the coverage of which is secondary or excess to other applicable valid and collectable liability insurance coverage. To the extent the secondary or excess coverage applies to liability within the minimum security required by this Act, it must be subject to reasonable conditions consistent with a system of compulsory liability insurance.

CALCULATION OF LOSS

SEC. 209. WORK LOSS.—(a) (1) The work loss of a person whose income is realized in regular increments shall be calculated by:

(A) determining his per diem income by dividing his annual income (periodically increased in a manner corresponding to annual compensation increases that would have resulted but for the injury) by 260, and

(B) multiplying that quantity by the number of

days the person sustains loss of income during the accrual period.

(2) The work loss of a person whose income is realized in irregular increments shall be calculated by:

(A) determining his probable per diem income by dividing his probable annual income by 260;

(B) multiplying that quantity by the number of days the person sustains loss of income during the accrual period; and

(C) subtracting from that product any amount not previously subtracted by which the person's actual income prior to the injury for the calendar year in which the loss of income occurs exceeds the product resulting from multiplying the per diem income by the number of working days from the beginning of the calendar year to the date of injury.

(3) The work loss of an unemployed person is calculated by determining his probable per diem income by dividing his probable annual income by 260 and multiplying that quantity by the number of days (if any) the person would reasonably have been expected to realize income during the accrual period.

(4) Whenever a dollar figure limits work loss, that figure shall be multiplied beginning in 1978, and at five year intervals thereafter, by a number whose numerator is

the Index of Real Wages for that year and whose denominator is the Index of Real Wages for the base year 1973, according to the latest available United States Department of Labor figures.

(b) NET LOSS.—(1) All benefits or advantages a person receives or is entitled to receive, because of the injury arising out of the maintenance or use of a motor vehicle, from social security (except those benefits provided under title XIX of the Social Security Act), workmen's compensation, any State-required temporary, nonoccupational disability insurance, and all other benefits (except the proceeds of life insurance) received because of the injury from the Government of the United States and its public agencies or a State or any of its political subdivisions or an instrumentality of two or more States, unless the law authorizing or providing for the benefits makes them excess or secondary to the benefits payable under this Act, are subtracted from loss in calculating net loss.

(2) If a benefit or advantage received to compensate for loss of income because of injury, whether from basic reparation benefits or from any source of benefits or advantages subtracted under subsection (a), is not taxable income, the income tax saving that is attributable to his loss of income because of injury is subtracted in calculating net loss. Sub-

traction may not exceed 15 per centum of the loss of income and shall be in such lesser amount as the insurer reasonably determines is appropriate based on a lower value of the income tax advantage.

BASIC REPARATION BENEFIT LIMITATIONS AND EXCLUSIONS

SEC. 210. A State may—

(a) provide for a limitation on work loss in the calculation of basic reparation benefits for all work loss sustained in excess of:

(1) a monthly amount equal to $1,000 times a fraction whose numerator is the average per capita income in the State and whose denominator is the average per capita income in the United States, according to the latest available United States Department of Commerce figures;

(2) a total amount of $50,000 unless the commissioner, in accordance with State law, determines by regulation on the basis of a preponderance of actuarial information a lesser sum, but in no event a sum less than $25,000, should be established in order that the average premium costs for the average person in the State for basic reparation benefits, required minimum tort liability insurance, optional

added reparation coverages for physical damage to motor vehicles, and comprehensive coverage are not greater than the average premium costs for the average person in the State prior to the establishment of the State no-fault plan for an automobile insurance policy which included coverage for bodily injury liability, uninsured motorist protection, property damage liability, medical pay, collision, and comprehensive coverage, subject to reasonable limitations; and

(b) provide for reasonable exclusions or monthly or total limitations on replacement services loss, survivor's economic loss, and survivor's replacement services loss in the calculation of basic reparation benefits.

DEDUCTIBLES AND EXCLUSIONS

SEC. 211. A State establishing a no-fault plan may provide that any contract for basic or added reparation benefits may contain additional coverages and benefits with respect to any detriment resulting from a motor vehicle accident and such terms, conditions, deductible clauses, and waiting periods consistent with this Act as are approved by the commissioner, in accordance with State law. The commissioner shall only approve terms, conditions, deductible clauses, and waiting periods: (a) which are fair and

equitable, and (b) which limit the variety of coverage available so as to give buyers of insurance reasonable opportunity to compare the cost of insuring with various reparation obligors.

PROPERTY DAMAGE EXCLUSION

SEC. 212. Basic reparation benefits do not include benefits for harm to property.

BENEFITS PROVIDED BY OPTIONAL ADDED REPARATION INSURANCE

SEC. 213. (a) Basic reparation insurers may offer optional added reparation coverages providing other benefits as compensation for injury or harm arising from ownership, maintenance, or use of a motor vehicle, including loss excluded by limits on hospital charges and funeral, cremation, and burial expenses, loss excluded by limits on work loss, replacement services loss, survivor's economic loss, and survivor's replacement services loss, benefits for harm to property, loss of use of motor vehicles, and noneconomic detriment. The commissioner may adopt rules requiring that specified optional added reparation coverages be offered by insurers writing basic reparation insurance.

(b) Basic reparation insurers shall offer the following optional added reparation coverages for physical damage to motor vehicles:

(1) a coverage for all collision and upset damage, subject to a deductible of $100; and

(2) a coverage for all collision and upset damage to the extent that the insured has a valid claim in tort against another identified person or would have had such a valid claim but for the abolition of tort liability for damages for harm to motor vehicles in use (section 206(a)(4)).

(c) Subject to the approval of terms and forms by the commissioner, basic reparation insurers may offer other optional added reparation coverages for harm to motor vehicles or their contents, or both, or other like coverages subject to different deductibles or without deductibles.

(d) An insurer of the insured's choice may write separately coverages for harm to motor vehicles.

(e) All added reparation coverages offered apply to injuries or harm arising out of accidents and occurrences during the contract period in a territorial area not less than the United States, its territories and possessions, and Canada.

CONVERTED MOTOR VEHICLES AND INTENTIONAL INJURIES

SEC. 214. (a) Except as provided for assigned claims, a person who converts a motor vehicle is disqualified from basic or added reparation benefits, including benefits otherwise due him as a survivor, from any source other than an insurance contract under which the converter is a basic or

added reparation insured, for injuries arising from maintenance or use of the converted vehicle. If the converter dies from the injuries, his survivors are not entitled to basic or added reparation benefits from any source other than an insurance contract under which the converter is a basic reparation insured. For the purpose of this section, a person is not a converter if he uses the motor vehicle in the good faith belief that he is legally entitled to do so.

(b) A person intentionally causing or attempting to cause injury to himself or another person is disqualified from basic or added reparation benefits for injury arising from his acts, including benefits otherwise due him as a survivor. If a person dies as a result of intentionally causing or attempting to cause injury to himself, his survivors are not entitled to basic or added reparation benefits for loss arising from his death. A person intentionally causes or attempts to cause injury if he acts or fails to act for the purpose of causing injury or with knowledge that injury is substantially certain to follow. A person does not intentionally cause or attempt to cause injury (1) merely because his act or failure to act is intentional or done with his realization that it creates a grave risk of causing injury or (2) if the act or omission causing the injury is for the purpose of averting bodily harm to himself or another person.

TITLE III—ALTERNATIVE NO-FAULT MOTOR VEHICLE INSURANCE PLAN

REQUIREMENTS

SEC. 301. (a) Title I, except sections 110, 111, and 112, and the following provisions of title II shall be incorporated in an alternative no-fault insurance plan applicable in those States not enacting a State plan of no-fault insurance pursuant to section 201—

(a) section 204 (right to basic reparation benefits and obligation to pay them) ;

(b) section 205 (priority of applicability of security for payment of basic reparation benefits) ;

(c) section 207 (included coverages) ;

(d) section 208 (required minimum tort liability insurance and territorial coverage) ;

(e) section 209 (calculation of net loss) ;

(f) section 211 (deductibles and exclusions) ;

(g) section 212 (property damage exclusion) ; or

(h) section 214 (converted motor vehicles and intentional injuries).

(b) The provisions in subsection (a) of this section, together with sections 302 through 304 of this title shall constitute the alternative no-fault plan. A State may establish additional requirements that are not inconsistent with the alternative no-fault plan.

STANDARD WEEKLY LIMIT ON BENEFITS FOR CERTAIN LOSSES

SEC. 302. Basic reparation benefits payable for work loss may not exceed $1,000 per month, and survivor's economic loss, replacement services loss, and survivor's replacement services loss arising from injury to one person and attributable to the calendar week during which the accident causing injury occurs and to each calendar week thereafter may not exceed $200.

PARTIAL ABOLITION OF TORT LIABILITY

SEC. 303. (a) Tort liability with respect to accidents occurring in the State and arising from the ownership, maintenance, or use of a motor vehicle is abolished except as to—

(1) liability of the owner of a motor vehicle involved in an accident in a State if security covering the vehicle was not provided at the time of the accident;

(2) liability of a person in the business of designing, manufacturing, repairing, servicing, or otherwise maintaining motor vehicles arising from a defect in a motor vehicle caused or not corrected by an act or omission in designing, manufacturing, repairing, servicing, or other maintenance of a vehicle in the course of his business;

(3) liability of a person for intentionally caused injury to person or harm to property;

(4) liability of a person for harm to property other than a motor vehicle and its contents;

(5) liability of a person in the business of parking or storing motor vehicles arising in the course of that business for harm to a motor vehicle and its contents.

(b) Nothing in this section shall be construed to immunize any person from liability to pay a civil penalty or fine on the basis of fault in a civil or criminal proceeding based upon any act or omission arising out of the maintenance or use of a motor vehicle: *Provided,* That such civil penalty or fine may not be paid or reimbursed by an insurer or reparation obligor.

BENEFITS PROVIDED BY OPTIONAL ADDED REPARATION INSURANCE

SEC. 304. (a) Basic reparation insurers may offer optional added reparation coverages providing other benefits as compensation for injury or harm arising from ownership, maintenance, or use of a motor vehicle, including loss excluded by limits on hospital charges and funeral, cremation, and burial expenses, loss excluded by limits on work loss, replacement services loss, survivor's economic loss, and survivor's replacement services loss, benefits for harm to property, and loss of use of motor vehicles. The commissioner may adopt rules requiring specified optional added reparation

coverages be offered by insurers writing basic reparation insurance.

(b) Basic reparation insurers shall offer optional added reparation coverages providing benefits, in such amounts and upon such conditions as offered by the insurer at the direction of the commissioner and as selected by the basic reparations insured, for noneconomic detriment caused by injury arising from the maintenance or use of a motor vehicle.

(c) Basic reparation insurers shall offer the following optional added reparation coverages for physical damage to motor vehicles—

(1) a coverage for all collision and upset damage, subject to a deductible of $100; and

(2) a coverage for all collision and upset damage to the extent that the insured has a valid claim in tort against another identified person or would have had such a valid claim but for the abolition of tort liability for damages for harm to motor vehicles; and

(d) Subject to the approval of terms and forms by the commissioner, basic reparation insurers may offer other optional added reparation coverages for harm to motor vehicles or their contents, or both, or other like coverages subject to different deductibles or without deductibles.

(e) An insurer of the insured's choice may write separately coverages for harm to motor vehicles.

[COMMITTEE PRINT]

DECEMBER 15, 1972

93D CONGRESS
1ST SESSION

S.

A BILL

To establish a nationwide system of adequate and uniform motor vehicle accident reparation acts and to require no-fault motor vehicle insurance as a condition precedent to operating a motor vehicle on public roadways in order to promote and regulate interstate commerce.

By Mr. _____

JANUARY , 1973

Read twice and referred to the Committee on _____