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S. 625

To provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form of insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 1997

Mr. McCONNELL (for himself, Mr. MOYNIHAN, Mr. LIEBERMAN, Mr. GORTON, and Mr. GRAMS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form of insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Auto Choice Reform
5 Act of 1997”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the costs of operating a motor vehicle are
4 excessive due in substantial part to the legal and ad-
5 ministrative costs associated with the resolution of
6 claims under the tort liability insurance system;

7 (2) the tort liability insurance system often re-
8 sults in—

9 (A) the failure to provide compensation
10 commensurate with loss;

11 (B) an unreasonable delay in the payment
12 of benefits; and

13 (C) the expenditure of an excessive amount
14 for legal fees;

15 (3) the incentives of the tort liability insurance
16 system for motor vehicles are distorted, and result
17 in—

18 (A) significant fraud in the claims process,
19 which exacerbates the level of distrust of many
20 individuals in the United States with respect to
21 the legal process and the rule of law;

22 (B) significant, wasteful, fraudulent, and
23 costly overuse and abuse of scarce health care
24 resources and services;

25 (C) unbearable cost burdens on low-income
26 individuals, imposing on them the Hobson's

1 choice of driving on an unlawful, uninsured
2 basis or foregoing essential needs, such as food
3 and adequate shelter;

4 (D) significant reductions in, access to,
5 and purchases of, motor vehicles, which—

6 (i) damage the economic well-being of
7 many low-income individuals; and

8 (ii) cause unnecessary harm to a criti-
9 cal component of the economy of the Unit-
10 ed States;

11 (E) significant deterioration of the eco-
12 nomic well-being of the majority of major cities
13 in the United States through the imposition of
14 a massive tort tax that—

15 (i) places a disproportionate burden
16 on urban residents; and

17 (ii) contributes to the abandonment of
18 the cities by many taxpayers who are able
19 to achieve substantial after-tax savings on
20 automobile insurance premiums by moving
21 to adjacent suburban communities; and

22 (F) significant inability to achieve market-
23 based discounts in insurance rates for owners of
24 safer cars, which reduces the level of safety for
25 drivers and passengers of motor vehicles;

1 (4) insurance to indemnify individuals for per-
2 sonal injuries arising from motor vehicle collisions is
3 frequently unavailable at a reasonable cost because
4 of the potential liability for third-party tort claims;

5 (5) a system that gives consumers the oppor-
6 tunity to insure themselves and that separates eco-
7 nomic and noneconomic damages for the purposes of
8 purchasing insurance would provide significant cost
9 savings to drivers of motor vehicles;

10 (6) a system that enables individuals to choose
11 the form of motor vehicle insurance that best suits
12 their needs would—

13 (A) enhance individual freedom;

14 (B) reduce the cost of motor vehicle insur-
15 ance; and

16 (C) increase average compensation in the
17 event of an accident; and

18 (7) a system that targets and emphasizes the
19 scourge of those individuals who drive under the in-
20 fluence of drugs or alcohol will further deter such
21 dangerous and unlawful conduct.

22 **SEC. 3. PURPOSE.**

23 The purpose of this Act is to allow consumers of
24 motor vehicle insurance to choose between—

1 (1) an insurance system that provides substan-
2 tially the same remedies as are available under ap-
3 plicable State law; and

4 (2) a predominately first-party insurance sys-
5 tem that provides for—

6 (A) more comprehensive recovery of eco-
7 nomic loss in a shorter period of time; and

8 (B) the right to sue negligent drivers for
9 any uncompensated economic losses.

10 **SEC. 4. DEFINITIONS.**

11 In this Act:

12 (1) **ACCIDENT.**—The term “accident” means an
13 unforeseen or unplanned event that—

14 (A) causes loss or injury; and

15 (B) arises from the operation, mainte-
16 nance, or use of a motor vehicle.

17 (2) **ADD-ON LAW.**—The term “add-on law”
18 means a State law that provides that persons in-
19 jured in motor vehicle accidents—

20 (A) are compensated without regard to
21 fault for economic loss; and

22 (B) have the right to claim without any
23 limitation for noneconomic loss based on fault.

1 (3) ECONOMIC LOSS.—The term “economic
2 loss” means any objectively verifiable pecuniary loss
3 resulting from an accident, including—

4 (A) reasonable and necessary medical and
5 rehabilitation expenses;

6 (B) loss of earnings;

7 (C) burial costs;

8 (D) replacement services loss;

9 (E) costs of making reasonable accom-
10 modations to a personal residence to make the
11 residence more habitable for an injured individ-
12 ual; and

13 (F) loss of employment, and loss of busi-
14 ness or employment opportunities, to the extent
15 recovery for such losses is allowed under appli-
16 cable State law.

17 (4) FINANCIAL RESPONSIBILITY LAW.—The
18 term “financial responsibility law” means a law (in-
19 cluding a law requiring compulsory coverage) penal-
20 izing motorists for failing to carry defined limits of
21 tort liability insurance covering motor vehicle acci-
22 dents.

23 (5) INJURY.—The term “injury” means bodily
24 injury, sickness, disease, or death.

25 (6) INSURER.—The term “insurer” means—

1 (A) any person who is engaged in the busi-
 2 ness of issuing or delivering motor vehicle in-
 3 surance policies (including an insurance agent);
 4 or

5 (B) any person who is self-insured within
 6 the meaning of applicable State law.

7 (7) INTENTIONAL MISCONDUCT.—

8 (A) IN GENERAL.—Except as provided in
 9 subparagraph (B), the term “intentional mis-
 10 conduct” means conduct—

11 (i) with respect to which harm is in-
 12 tentiously caused or attempted to be
 13 caused by a person who acts or fails to act
 14 for the purpose of causing harm, or with
 15 knowledge that harm is substantially cer-
 16 tain to result from that action or failure to
 17 act; and

18 (ii) that causes or substantially con-
 19 tributes to the harm that is the subject of
 20 a claim.

21 (B) CLARIFICATION.—For purposes of this
 22 paragraph, a person does not intentionally
 23 cause or attempt to cause harm—

24 (i) solely because that person acts or
 25 fails to act with the understanding that the

1 action or failure to act creates a grave risk
2 of causing harm; or

3 (ii) if the act or omission by that per-
4 son causing bodily harm is for the purpose
5 of averting bodily harm to that person or
6 another person.

7 (8) MOTOR VEHICLE.—The term “motor vehi-
8 cle” means a vehicle of any kind required to be reg-
9 istered under the provisions of the applicable State
10 law relating to motor vehicles.

11 (9) NO-FAULT MOTOR VEHICLE LAW.—The
12 term “no-fault motor vehicle law” means a State law
13 that provides that—

14 (A) persons injured in motor vehicle acci-
15 dents are paid compensation without regard to
16 fault for their economic loss that results from
17 injury; and

18 (B) in return for the payment referred to
19 in subparagraph (A), claims based on fault in-
20 cluding claims for noneconomic loss, are limited
21 to a defined extent.

22 (10) NONECONOMIC LOSS.—The term “non-
23 economic loss” means subjective, nonmonetary losses
24 including pain, suffering, inconvenience, mental suf-
25 fering, emotional distress, loss of society and com-

panionship, loss of consortium, hedonic damages, injury to reputation, and humiliation.

(11) OCCUPY.—The term “occupy” means, with respect to the operation, maintenance, or use of a motor vehicle, to be in or on a motor vehicle or to be engaged in the immediate act of entering into or alighting from a motor vehicle before or after its use for transportation.

(12) OPERATION, MAINTENANCE, OR USE OF A MOTOR VEHICLE.—

(A) IN GENERAL.—The term “operation, maintenance, or use of a motor vehicle” means occupying a motor vehicle.

(B) EXCLUSIONS.—The term “operation, maintenance, or use of a motor vehicle” does not include—

(i) conduct within the course of a business of manufacturing, sale, repairing, servicing, or otherwise maintaining motor vehicles, unless the conduct occurs outside of the scope of the business activity; or

(ii) conduct within the course of loading or unloading a motor vehicle, unless the conduct occurs while occupying the motor vehicle.

1 (13) PERSON.—The term “person” means any
2 individual, corporation, company, association, firm,
3 partnership, society, joint stock company, or any
4 other entity, including any governmental entity.

5 (14) PERSONAL PROTECTION INSURANCE.—The
6 term “personal protection insurance” means insur-
7 ance that provides for—

8 (A) benefits to an insured person for eco-
9 nomic loss without regard to fault for injury re-
10 sulting from a motor vehicle accident; and

11 (B) a waiver of tort claims in accordance
12 with this Act.

13 (15) REPLACEMENT SERVICES LOSS.—The
14 term “replacement services loss” means expenses
15 reasonably incurred in obtaining ordinary and nec-
16 essary services from other persons who are not mem-
17 bers of the injured person’s household, in lieu of the
18 services the injured person would have performed for
19 the benefit of the household.

20 (16) RESIDENT RELATIVE OR DEPENDENT.—
21 The term “resident relative or dependent” means a
22 person who—

23 (A) is related to the owner of a motor vehi-
24 cle by blood, marriage, adoption, or otherwise

1 (including a dependent receiving financial serv-
2 ices or support from such owner); and

3 (B)(i) resides in the same household as the
4 owner of the motor vehicle at the time of the
5 accident; or

6 (ii) usually makes a home in the same
7 family unit as that owner, even though that
8 person may temporarily live elsewhere.

9 (17) STATE.—The term “State” means any
10 State of the United States, the District of Columbia,
11 the Commonwealth of Puerto Rico, Guam, the Unit-
12 ed States Virgin Islands, American Samoa, the Com-
13 monwealth of the Northern Mariana Islands, the
14 Trust Territories of the Pacific Islands, and any
15 other territory or possession of the United States.

16 (18) TORT LIABILITY.—The term “tort liabil-
17 ity” means the legal obligation to pay damages for
18 an injury adjudged to have been committed by a
19 tort-feasor.

20 (19) TORT LIABILITY INSURANCE.—The term
21 “tort liability insurance” means a contract of insur-
22 ance under which an insurer agrees to pay, on behalf
23 of an insured, damages that the insured is obligated
24 to pay to a third person because of the liability of
25 the insured to that person.

1 (20) TORT MAINTENANCE COVERAGE.—

2 (A) IN GENERAL.—The term “tort maintenance coverage” means insurance coverage
3 under which a person described in subparagraph (B), if involved in an accident with a person
4 covered by personal protection insurance, retains a right to claim for injury based on
5 fault for economic and noneconomic losses under applicable State law, without modification
6 by any other provision of this Act.
7

8 (B) TORT MAINTENANCE INSURED.—A
9 person described in this subparagraph is a person covered by the form of insurance described
10 in section 5(a)(2).
11

12 (C) RESPONSIBILITY FOR PAYMENT.—The
13 responsibility for payment for any claim under
14 subparagraph (A) is assumed by the insurer of
15 the person with tort maintenance coverage to
16 the extent of such coverage.
17

18 (21) UNCOMPENSATED ECONOMIC LOSS.—

19 (A) IN GENERAL.—The term “uncompensated economic loss” means economic loss payable
20 based on fault.
21

22 (B) ATTORNEYS’ FEES.—The term includes a reasonable attorney’s fee calculated on
23
24
25

1 the basis of the value of the attorney's efforts
2 as reflected in payment to the attorney's client.

3 (C) EXCLUSIONS.—The term does not in-
4 clude amounts paid under—

5 (i) personal protection insurance;

6 (ii) tort maintenance coverage;

7 (iii) no-fault or add-on motor vehicle
8 insurance;

9 (iv) Federal, State, or private disabil-
10 ity or sickness programs;

11 (v) Federal, State, or private health
12 insurance programs;

13 (vi) employer wage continuation pro-
14 grams; or

15 (vii) workers' compensation or similar
16 occupational compensation laws.

17 (22) UNINSURED MOTORIST.—The term “unin-
18 sured motorist” means the owner of a motor vehicle,
19 including the resident relatives or dependents of the
20 owner, who is uninsured under either the personal
21 protection system or the tort maintenance system
22 described in section 5(a)—

23 (A) at the limits prescribed by the applica-
24 ble State financial responsibility law; or

1 (B) an amount prescribed under section
2 5(b)(1)(A).

3 **SEC. 5. AUTO CHOICE INSURANCE SYSTEM.**

4 (a) OPERATION OF THE RIGHT TO CHOOSE.—Under
5 this Act, a person shall have the right to choose between
6 the following insurance systems:

7 (1) PERSONAL PROTECTION SYSTEM.—A person
8 may choose insurance under a system that provides
9 for personal protection insurance for that person
10 and any resident relative or dependent of that per-
11 son.

12 (2) TORT MAINTENANCE SYSTEM.—A person
13 may choose insurance under a system that provides
14 for the form of motor vehicle insurance (including
15 tort liability, no-fault, add-on, or uninsured motor
16 vehicle insurance) that is otherwise required in the
17 State in which the person is insured.

18 (b) PERSONAL PROTECTION SYSTEM.—

19 (1) MINIMUM POLICY REQUIREMENTS.—In
20 order for a personal protection insurance policy to be
21 covered by this Act, a motor vehicle insurance policy
22 issued by an insurer shall, at a minimum—

23 (A) provide personal protection insurance
24 coverage—

25 (i) with no per accident limit; and

1 (ii) in coverage amounts equal to the
 2 greater of—

3 (I) the minimum per person lim-
 4 its of liability insurance for personal
 5 injury under the applicable State fi-
 6 nancial responsibility law; or

7 (II) in a State covered by a no-
 8 fault motor vehicle insurance law, the
 9 minimum level of insurance required
 10 for no-fault benefits;

11 (B) contain provisions for a waiver of cer-
 12 tain tort rights in accordance with this Act; and

13 (C) contain provisions under the applicable
 14 State financial responsibility law relating to li-
 15 ability for—

16 (i) property damage; and

17 (ii) bodily injury to protect third par-
 18 ties whose rights to recover both economic
 19 and noneconomic loss are not affected by
 20 the immunities provided under this Act for
 21 those persons choosing personal protection
 22 insurance coverage.

23 (2) SUPERSEDING PROVISION.—This Act super-
 24 sedes a State law to the extent that, with respect to

1 the issuance of a personal protection insurance pol-
 2 icy, the State law—

3 (A) would otherwise bar a provision that
 4 provides for the personal protection authoriza-
 5 tions and accompanying immunities set forth in
 6 this Act; or

7 (B) is otherwise inconsistent with the re-
 8 quirements of this Act.

9 (3) PRIMACY OF PAYMENT.—

10 (A) IN GENERAL.—Personal protection in-
 11 surance benefits shall be reduced by an amount
 12 equal to any benefits provided or required to be
 13 provided under an applicable Federal or State
 14 law for workers' compensation or any State-re-
 15 quired nonoccupational disability insurance.

16 (B) REIMBURSEMENT OF PAYORS.—

17 (i) IN GENERAL.—A personal protec-
 18 tion insurer may take appropriate meas-
 19 ures to ensure that any person otherwise
 20 eligible for personal protection benefits
 21 who has been paid or is being paid for
 22 losses payable by personal protection insur-
 23 ance from a source other than the applica-
 24 ble personal protection insurer shall not re-
 25 ceive multiple payment for those losses.

1 (ii) ACCRUAL OF RIGHTS.—Any right
 2 to payment for losses referred to in clause
 3 (i) from a personal protection insurer ac-
 4 crues only to that payor. Payments by a
 5 payor referred to in clause (i) shall not be
 6 counted against personal protection limits
 7 for personal protection insurance until
 8 such time as the payor is reimbursed
 9 under this subparagraph.

10 (4) PROMPT AND PERIODIC PAYMENT.—

11 (A) IN GENERAL.—A personal protection
 12 insurer may pay personal protection benefits
 13 periodically as losses accrue.

14 (B) LATE PAYMENT.—Unless the treat-
 15 ment or expenses related to the treatment are
 16 in reasonable dispute, a personal protection in-
 17 surer who does not pay a claim for economic
 18 loss covered by a personal protection insurance
 19 policy issued under this Act within 30 days
 20 after payment is due, shall pay—

21 (i) the loss compounded at a rate of
 22 24 percent per annum, as liquidated dam-
 23 ages and in lieu of any penalty or exem-
 24 plary damages; and

1 (ii) a reasonable attorney's fee cal-
 2 culated on the basis of the value of the at-
 3 torney's efforts as reflected in payment to
 4 the attorney's client.

5 (C) ADMINISTRATION OF PERSONAL PRO-
 6 TECTION BENEFITS.—To the extent consistent
 7 with this Act, any applicable provision of a
 8 State no-fault motor vehicle law or add-on law
 9 governing the administration of payment of
 10 benefits without reference to fault shall apply to
 11 the payment of benefits under personal protec-
 12 tion insurance under this subsection.

13 (5) MOTOR VEHICLES WITH FEWER THAN 4
 14 LOAD-BEARING WHEELS.—A personal protection in-
 15 surer may offer, but shall not require, personal pro-
 16 tection coverage of any motor vehicle that has fewer
 17 than 4 load-bearing wheels, not including the wheels
 18 of an attachment to the motor vehicle.

19 (6) AUTHORIZATIONS FOR PERSONAL PROTEC-
 20 TION INSURERS.—A personal protection insurer may
 21 write personal protection coverage—

22 (A)(i) without any deductible; or

23 (ii) subject to a reasonable deductible, ap-
 24 plicable in an amount not to exceed \$1,000 per
 25 person per accident;

1 (B) with an exclusion of coverage for per-
 2 sons whose losses are caused by driving under
 3 the influence of alcohol or illegal drugs;

4 (C) at appropriately reduced premium
 5 rates, deductibles and exclusions reasonably re-
 6 lated to health, disability, and accident coverage
 7 on an insured person; and

8 (D) the deductibles and exclusions de-
 9 scribed in subparagraphs (A) and (C) shall
 10 apply only to—

11 (i) the person named in the applicable
 12 insurance policy; and

13 (ii) the resident relatives or depend-
 14 ents of the person described in clause (i).

15 (c) TORT MAINTENANCE SYSTEM.—

16 (1) REQUIRED TORT MAINTENANCE COV-
 17 ERAGE.—The coverage for a person who chooses in-
 18 surance under subsection (a)(2) shall include tort
 19 maintenance coverage at a level that is at least
 20 equivalent to the level of insurance required under
 21 the applicable State financial responsibility law for
 22 bodily injury liability.

23 (2) ADMINISTRATION OF TORT MAINTENANCE
 24 COVERAGE BENEFITS.—To the extent consistent
 25 with this Act, any applicable provision of a State law

1 governing the administration of payment of benefits
2 under uninsured or underinsured motorist coverage
3 applies to the payment of benefits under tort main-
4 tenance coverage under section 5(c).

5 (d) EFFECT OF CHOICE ON RESIDENT RELATIVES
6 AND DEPENDENTS.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), a person who chooses either personal pro-
9 tection insurance or tort maintenance coverage also
10 binds the resident relatives and dependents of that
11 person.

12 (2) EXCEPTION.—An adult resident relative or
13 a dependent of a person described in paragraph (1)
14 may select the form of insurance that that person
15 does not select if the adult relative makes that selec-
16 tion expressly in writing.

17 (3) IMPLIED CONSENT.—In any case in which
18 the resident relative or dependent is injured in a
19 motor vehicle accident, the coverage of such person
20 shall be the same as the person described in para-
21 graph (1).

22 (4) TERMS AND CONDITIONS.—Insurers may
23 specify reasonable terms and conditions governing
24 the commencement, duration, and application of the

1 chosen coverage depending on the number of motor
2 vehicles and owners thereof in a household.

3 (e) RULES TO ENCOURAGE UNIFORMITY OF
4 CHOICE.—In order to minimize conflict between the 2 op-
5 tions described in subsection (d), insurers may maintain
6 and apply underwriting rules that encourage uniformity
7 within a household.

8 (f) FAILURE TO ELECT TYPE OF INSURANCE.—

9 (1) IN GENERAL.—Any person who fails to elect
10 a type of insurance under this section shall be
11 deemed to have elected insurance under the tort
12 maintenance system in effect in that State.

13 (2) RULE OF CONSTRUCTION.—This subsection
14 shall not be construed to prevent a State from en-
15 acting a law that deems a person who fails to elect
16 a type of insurance under this section to have elect-
17 ed insurance under the personal protection system.

18 (g) CONSUMER INFORMATION PROGRAM.—The State
19 official charged with jurisdiction over insurance rates for
20 motor vehicles shall establish and maintain a program de-
21 signed to ensure that consumers are adequately informed
22 about—

23 (1) the comparative cost of insurance under the
24 personal protection system and the tort maintenance
25 system; and

1 (2) the benefits, rights, and obligations of in-
 2 surers and insureds under each system.

3 **SEC. 6. SOURCE OF COMPENSATION IN CASES OF ACCIDEN-**
 4 **TAL INJURY.**

5 (a) ACCIDENTS INVOLVING PERSONS CHOOSING THE
 6 TORT MAINTENANCE SYSTEM.—A person described in
 7 section 5(a)(2) who is involved in an accident with another
 8 person shall be subject to applicable tort law for injury
 9 except that, based on fault, that person—

10 (1) may claim against any person covered by
 11 personal protection insurance only for uncompen-
 12 sated economic loss; and

13 (2) may be claimed against by a person covered
 14 by personal protection insurance only for uncompen-
 15 sated economic loss.

16 (b) ACCIDENTS INVOLVING PERSONS WITH PER-
 17 SONAL PROTECTION INSURANCE.—

18 (1) RIGHT TO RECOVER ECONOMIC LOSS.—A
 19 person covered by a personal protection insurance
 20 policy who is injured in an accident is compensated
 21 under that policy only for economic loss, without re-
 22 gard to fault.

23 (2) RIGHT TO SUE FOR UNCOMPENSATED ECO-
 24 NOMIC LOSS BASED ON FAULT.—If a person who
 25 chooses personal protection insurance is—

1 (A) involved in an accident with a person
 2 insured under either the personal protection
 3 system or tort maintenance system under sec-
 4 tion 5(a); and

5 (B) sustains uncompensated economic loss,
 6 that person shall have the right to claim against the
 7 other person involved in the accident for that loss
 8 based on fault.

9 (c) ACCIDENTS INVOLVING PERSONS WITH PER-
 10 SONAL PROTECTION INSURANCE AND PERSONS WHO ARE
 11 UNLAWFULLY UNINSURED.—

12 (1) IN GENERAL.—A person covered by per-
 13 sonal protection insurance who is involved in an ac-
 14 cident with an uninsured motorist shall—

15 (A) be compensated under that insured
 16 person's insurance policy for economic loss
 17 without regard to fault; and

18 (B) have the right to claim against the un-
 19 insured motorist for economic loss and for non-
 20 economic loss based on fault.

21 (2) FORFEITURE OF RIGHTS.—An uninsured
 22 motorist forfeits the right to claim against a motor-
 23 ist who has chosen personal protection insurance
 24 for—

25 (A) noneconomic loss; and

1 (B) economic loss in an amount up to the
 2 amount of per-person bodily injury limits man-
 3 dated by the applicable State financial respon-
 4 sibility law.

5 (d) ACCIDENTS INVOLVING MOTORISTS UNDER THE
 6 INFLUENCE OF ALCOHOL OR ILLEGAL DRUGS OR ENGAG-
 7 ING IN INTENTIONAL MISCONDUCT.—A person who is in-
 8 sured under personal protection insurance shall have the
 9 right to claim, and be subject to a claim, for—

10 (1) driving under the influence of alcohol or ille-
 11 gal drugs (as those terms are defined under applica-
 12 ble State law); or

13 (2) intentional misconduct.

14 (e) PRIORITY OF BENEFITS.—A person who is in-
 15 sured under the personal protection system or tort mainte-
 16 nance system under section 5(a) may only claim benefits
 17 under such coverage up to the limits selected by or on
 18 behalf of such person in the following priority:

19 (1) The coverage under which the injured per-
 20 son was an insured at the time of the accident.

21 (2) The coverage of a motor vehicle involved in
 22 the accident, if the person injured was an occupant
 23 of, or was struck as a pedestrian by, such motor ve-
 24 hicle at the time of the accident, except that such

1 person shall not recover under the coverage of both
2 paragraph (1) and this paragraph.

3 (f) SUBROGATION RIGHTS.—A personal protection
4 insurer is subrogated, to the extent of the obligations of
5 that insurer, to all of the rights of the persons insured
6 with personal protection insurance issued by the insurer
7 with respect to an accident caused in whole or in part,
8 as determined by applicable State law, by—

9 (1) the negligence of an uninsured motorist;

10 (2) operating a motor vehicle under the influ-
11 ence of alcohol or illegal drugs;

12 (3) intentional misconduct; or

13 (4) any other person who is not affected by the
14 limitations on tort rights and liabilities under this
15 Act.

16 (g) RIGHTS OF LAWFULLY UNINSURED PERSONS.—
17 Nothing in this Act shall be construed to affect the tort
18 rights of any person lawfully uninsured under the terms
19 of an applicable State law for insurance under either the
20 personal protection system or tort maintenance system
21 under section 5(a).

22 (h) RIGHTS OF PERSONS OCCUPYING MOTOR VEHI-
23 CLES WITH FEWER THAN 4 LOAD-BEARING WHEELS.—
24 Nothing in this Act shall be construed to affect the tort
25 rights of a person who occupies a motor vehicle with fewer

1 than 4 load-bearing wheels or an attachment thereto, un-
 2 less an applicable contract for personal protection insur-
 3 ance under which that person is insured specifies other-
 4 wise. The preceding sentence applies without regard to
 5 whether the person is otherwise legally insured for per-
 6 sonal protection insurance or tort maintenance coverage.

7 (i) RENEWAL OR CANCELLATION.—An insurer shall
 8 not cancel, fail to renew, or increase the premium of a
 9 person insured by the insurer solely because that insured
 10 person or any other injured person made a claim—

11 (1) for personal protection insurance benefits;
 12 or

13 (2) if there is no basis for ascribing fault to the
 14 insured or one for whom the insured is vicariously
 15 liable, for tort maintenance coverage.

16 (j) IMMUNITY.—Unless an insurer or an insurance
 17 agent willfully misrepresents the available choices or
 18 fraudulently induces the election of one motor vehicle in-
 19 surance system described in paragraph (1) over the other,
 20 no insurer or insurance agent, employee of such insurer
 21 or agent, insurance producer representing a motor vehicle
 22 insurer, automobile residual market plan, or attorney li-
 23 censed to practice law within a State, shall be liable in
 24 an action for damages on account of—

25 (1) an election of—

1 (A) the tort maintenance system under
2 section 5(a); or

3 (B) the personal protection system under
4 section 5(a); or

5 (2) a failure to make a required election.

6 **SEC. 7. RULES OF CONSTRUCTION.**

7 Nothing in this Act shall be construed—

8 (1) to waive or affect any defense of sovereign
9 immunity asserted by any State under any law or by
10 the United States;

11 (2) to affect the awarding of punitive damages
12 under any State law;

13 (3) to preempt State choice-of-law rules with re-
14 spect to claims brought by a foreign nation or a citi-
15 zen of a foreign nation;

16 (4) to affect the right of any court to transfer
17 venue, to apply the law of a foreign nation, or to dis-
18 miss a claim of a foreign nation or of a citizen of
19 a foreign nation on the ground of inconvenient
20 forum;

21 (5) subject to paragraph (1), to create or vest
22 jurisdiction in the district courts of the United
23 States over any motor vehicle accident liability or
24 damages action subject to this Act which is not oth-
25 erwise properly in the United States District Court;

1 (6) to prevent insurers and insureds from con-
2 tracting to limit recovery for lost wages and income
3 under personal protection coverage in such manner
4 that only 60 percent or more of lost wages or income
5 is covered;

6 (7) to prevent an insurer from contracting with
7 personal protection insureds, as permitted by appli-
8 cable State law, to have submitted to arbitration any
9 dispute with respect to payment of personal protec-
10 tion benefits;

11 (8) to relieve a motorist of the obligations im-
12 posed by applicable State law to purchase tort liabil-
13 ity insurance for bodily injury to protect third par-
14 ties who are not affected by the immunities under
15 this Act;

16 (9) to preclude a State from enacting, for all
17 motor vehicle accident cases including cases covered
18 by this Act, a minimum dollar value for defined
19 classes of cases involving death or serious bodily in-
20 jury;

21 (10) to preclude a State from providing that
22 forms of insurance other than those listed in section
23 5(b)(3) shall be subtracted from personal protection
24 insurance benefits otherwise payable for injury;

1 (11) to preclude a State from enacting a law
2 that—

3 (A) allows litigation by tort maintenance
4 insureds against personal protection insureds
5 for economic and noneconomic loss; and

6 (B) assures through a reallocation device
7 that the advantage of tort claim waivers by per-
8 sonal protection insureds against tort mainte-
9 nance insureds is reflected in the premiums of
10 personal protection insureds; or

11 (12) to alter or diminish the authority or obli-
12 gation of the Federal courts to construe the terms
13 of this Act.

14 **SEC. 8. APPLICABILITY TO STATES; CHOICE OF LAW; AND**
15 **JURISDICTION.**

16 (a) ELECTION OF NONAPPLICABILITY BY STATES.—
17 This Act shall not apply with respect to a State if such
18 State enacts a statute that—

19 (1) cites the authority of this subsection;

20 (2) declares the election of such State that this
21 Act shall not apply; and

22 (3) contains no other provision.

23 (b) NONAPPLICABILITY BASED ON STATE FIND-
24 ING.—

1 (1) IN GENERAL.—This Act shall not apply
2 with respect to a State, if—

3 (A) the State official charged with jurisdic-
4 tion over insurance rates for motor vehicles
5 makes a finding that the statewide average
6 motor vehicle premiums for bodily injury insur-
7 ance in effect immediately before the effective
8 date of this Act will not be reduced by an aver-
9 age of at least 30 percent for persons choosing
10 personal protection insurance (without including
11 in the calculation for personal protection
12 insureds any cost for uninsured, underinsured,
13 or medical payments coverages);

14 (B) a finding described under subpara-
15 graph (A) is supported by evidence adduced in
16 a public hearing and reviewable under the appli-
17 cable State administrative procedure law; and

18 (C) a finding described under subpara-
19 graph (A) and any review of such finding under
20 subparagraph (B) occurs not later than 90 days
21 after the date of enactment of this Act.

22 (2) COMPARISON OF BODILY INJURY PRE-
23 MIUMS.—For purposes of making a comparison
24 under paragraph (1)(A) of premiums for personal
25 protection insurance with preexisting premiums for

1 bodily injury insurance (in effect immediately before
2 the date of enactment of this Act), the preexisting
3 bodily injury insurance premiums shall include pre-
4 miums for—

5 (A) bodily injury liability, uninsured and
6 underinsured motorists' liability, and medical
7 payments coverage; and

8 (B) if applicable, no-fault benefits under a
9 no-fault motor vehicle law or add-on law.

10 (c) CHOICE OF LAW.—In disputes between citizens
11 of States that elect nonapplicability under subsection (a)
12 and citizens of States that do not make such an election,
13 ordinary choice of law principles shall apply.

14 (d) JURISDICTION.—This Act shall not confer juris-
15 diction on the district courts of the United States under
16 section 1331 or 1337 of title 28, United States Code.

17 (e) STATUTES OF LIMITATIONS.—Nothing in this Act
18 shall supersede an applicable State law that imposes a
19 statute of limitations for claims related to an injury
20 caused by an accident, except that such statute shall be
21 tolled during the period wherein any personal protection
22 or tort maintenance benefits are paid.

1 **SEC. 9. EFFECTIVE DATE.**

2 This Act shall take effect 90 days after the date of
3 enactment of this Act.

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