

Calendar No. 568

105TH CONGRESS
2^D SESSION
S. 2454

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.

SEPTEMBER 10, 1998

Read the second time and placed on the calendar

Calendar No. 568105TH CONGRESS
2^D SESSION**S. 2454**

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

SEPTEMBER 9, 1998

Mr. McCONNELL (for himself, Mr. MOYNIHAN, Mr. LIEBERMAN, Mr. NICKLES, Mr. GRAMS, and Mr. GORTON) introduced the following bill; which was read the first time

SEPTEMBER 10, 1998

Read the second time and placed on the calendar

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Auto Choice Reform
3 Act of 1997”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

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

10 (2) the tort liability insurance system often re-
11 sults in—

12 (A) the failure to provide compensation
13 commensurate with loss;

14 (B) an unreasonable delay in the payment
15 of benefits; and

16 (C) the expenditure of an excessive amount
17 for legal fees;

18 (3) the incentives of the tort liability insurance
19 system for motor vehicles are distorted, and result
20 in—

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

1 (B) significant, wasteful, fraudulent, and
2 costly overuse and abuse of scarce health care
3 resources and services;

4 (C) unbearable cost burdens on low-income
5 individuals, imposing on them the Hobson's
6 choice of driving on an unlawful, uninsured
7 basis or foregoing essential needs, such as food
8 and adequate shelter;

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

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

13 (ii) cause unnecessary harm to a criti-
14 cal component of the economy of the
15 United States;

16 (E) significant deterioration of the eco-
17 nomic well-being of the majority of major cities
18 in the United States through the imposition of
19 a massive tort tax that—

20 (i) places a disproportionate burden
21 on urban residents; and

22 (ii) contributes to the abandonment of
23 the cities by many taxpayers who are able
24 to achieve substantial after-tax savings on

1 automobile insurance premiums by moving
2 to adjacent suburban communities; and

3 (F) significant inability to achieve market-
4 based discounts in insurance rates for owners of
5 safer cars, which reduces the level of safety for
6 drivers and passengers of motor vehicles;

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

11 (5) a system that gives consumers the oppor-
12 tunity to insure themselves and that separates eco-
13 nomic and noneconomic damages for the purposes of
14 purchasing insurance would provide significant cost
15 savings to drivers of motor vehicles;

16 (6) a system that enables individuals to choose
17 the form of motor vehicle insurance that best suits
18 their needs would—

19 (A) enhance individual freedom;

20 (B) reduce the cost of motor vehicle insur-
21 ance; and

22 (C) increase average compensation in the
23 event of an accident; and

24 (7) a system that targets and emphasizes the
25 scourge of those individuals who drive under the in-

1 fluence of drugs or alcohol will further deter such
2 dangerous and unlawful conduct.

3 **SEC. 3. PURPOSE.**

4 The purpose of this Act is to allow consumers of
5 motor vehicle insurance to choose between—

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

9 (2) a predominately first-party insurance sys-
10 tem that provides for—

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

13 (B) the right to sue negligent drivers for
14 any uncompensated economic losses.

15 **SEC. 4. DEFINITIONS.**

16 In this Act:

17 (1) ACCIDENT.—The term “accident” means an
18 unforeseen or unplanned event that—

19 (A) causes loss or injury; and

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

22 (2) ADD-ON LAW.—The term “add-on law”
23 means a State law that provides that persons in-
24 jured in motor vehicle accidents—

1 (A) are compensated without regard to
2 fault for economic loss; and

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

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

8 (A) reasonable and necessary medical and
9 rehabilitation expenses;

10 (B) loss of earnings;

11 (C) burial costs;

12 (D) replacement services loss;

13 (E) costs of making reasonable accom-
14 modations to a personal residence to make the
15 residence more habitable for an injured individ-
16 ual; and

17 (F) loss of employment, and loss of busi-
18 ness or employment opportunities, to the extent
19 recovery for such losses is allowed under appli-
20 cable State law.

21 (4) FINANCIAL RESPONSIBILITY LAW.—The
22 term “financial responsibility law” means a law (in-
23 cluding a law requiring compulsory coverage) penal-
24 izing motorists for failing to carry defined limits of

1 tort liability insurance covering motor vehicle acci-
2 dents.

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

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

6 (A) any person who is engaged in the busi-
7 ness of issuing or delivering motor vehicle in-
8 surance policies (including an insurance agent);
9 or

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

12 (7) INTENTIONAL MISCONDUCT.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (B), the term “intentional mis-
15 conduct” means conduct—

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

23 (ii) that causes or substantially con-
24 tributes to the harm that is the subject of
25 a claim.

1 (B) CLARIFICATION.—For purposes of this
2 paragraph, a person does not intentionally
3 cause or attempt to cause harm—

4 (i) solely because that person acts or
5 fails to act with the understanding that the
6 action or failure to act creates a grave risk
7 of causing harm; or

8 (ii) if the act or omission by that per-
9 son causing bodily harm is for the purpose
10 of averting bodily harm to that person or
11 another person.

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

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

19 (A) persons injured in motor vehicle acci-
20 dents are paid compensation without regard to
21 fault for their economic loss that results from
22 injury; and

23 (B) in return for the payment referred to
24 in subparagraph (A), claims based on fault in-

1 including claims for noneconomic loss, are limited
2 to a defined extent.

3 (10) NONECONOMIC LOSS.—The term “non-
4 economic loss” means subjective, nonmonetary losses
5 including pain, suffering, inconvenience, mental suf-
6 fering, emotional distress, loss of society and com-
7 panionship, loss of consortium, hedonic damages, in-
8 jury to reputation, and humiliation.

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

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

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

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

23 (i) conduct within the course of a
24 business of manufacturing, sale, repairing,
25 servicing, or otherwise maintaining motor

1 vehicles, unless the conduct occurs outside
2 of the scope of the business activity; or

3 (ii) conduct within the course of load-
4 ing or unloading a motor vehicle, unless
5 the conduct occurs while occupying the
6 motor vehicle.

7 (13) PERSON.—The term “person” means any
8 individual, corporation, company, association, firm,
9 partnership, society, joint stock company, or any
10 other entity, including any governmental entity.

11 (14) PERSONAL PROTECTION INSURANCE.—The
12 term “personal protection insurance” means insur-
13 ance that provides for—

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

17 (B) a waiver of tort claims in accordance
18 with this Act.

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

1 (16) RESIDENT RELATIVE OR DEPENDENT.—

2 The term “resident relative or dependent” means a
3 person who—

4 (A) is related to the owner of a motor vehi-
5 cle by blood, marriage, adoption, or otherwise
6 (including a dependent receiving financial serv-
7 ices or support from such owner); and

8 (B)(i) resides in the same household as the
9 owner of the motor vehicle at the time of the
10 accident; or

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

14 (17) STATE.—The term “State” means any
15 State of the United States, the District of Columbia,
16 the Commonwealth of Puerto Rico, Guam, the
17 United States Virgin Islands, American Samoa, the
18 Commonwealth of the Northern Mariana Islands,
19 the Trust Territories of the Pacific Islands, and any
20 other territory or possession of the United States.

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

1 (19) TORT LIABILITY INSURANCE.—The term
2 “tort liability insurance” means a contract of insur-
3 ance under which an insurer agrees to pay, on behalf
4 of an insured, damages that the insured is obligated
5 to pay to a third person because of the liability of
6 the insured to that person.

7 (20) TORT MAINTENANCE COVERAGE.—

8 (A) IN GENERAL.—The term “tort mainte-
9 nance coverage” means insurance coverage
10 under which a person described in subpara-
11 graph (B), if involved in an accident with a per-
12 son covered by personal protection insurance,
13 retains a right to claim for injury based on
14 fault for economic and noneconomic losses
15 under applicable State law, without modifica-
16 tion by any other provision of this Act.

17 (B) TORT MAINTENANCE INSURED.—A
18 person described in this subparagraph is a per-
19 son covered by the form of insurance described
20 in section 5(a)(2).

21 (C) RESPONSIBILITY FOR PAYMENT.—The
22 responsibility for payment for any claim under
23 subparagraph (A) is assumed by the insurer of
24 the person with tort maintenance coverage to
25 the extent of such coverage.

1 (21) UNCOMPENSATED ECONOMIC LOSS.—

2 (A) IN GENERAL.—The term “uncompen-
3 sated economic loss” means economic loss pay-
4 able based on fault.

5 (B) ATTORNEYS’ FEES.—The term in-
6 cludes a reasonable attorney’s fee calculated on
7 the basis of the value of the attorney’s efforts
8 as reflected in payment to the attorney’s client.

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

11 (i) personal protection insurance;

12 (ii) tort maintenance coverage;

13 (iii) no-fault or add-on motor vehicle
14 insurance;

15 (iv) Federal, State, or private disabil-
16 ity or sickness programs;

17 (v) Federal, State, or private health
18 insurance programs;

19 (vi) employer wage continuation pro-
20 grams; or

21 (vii) workers’ compensation or similar
22 occupational compensation laws.

23 (22) UNINSURED MOTORIST.—The term “unin-
24 sured motorist” means the owner of a motor vehicle,
25 including the resident relatives or dependents of the

1 owner, who is uninsured under either the personal
2 protection system or the tort maintenance system
3 described in section 5(a)—

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

6 (B) an amount prescribed under section
7 5(b)(1)(A).

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

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

12 (1) PERSONAL PROTECTION SYSTEM.—A person
13 may choose insurance under a system that provides
14 for personal protection insurance for that person
15 and any resident relative or dependent of that per-
16 son.

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

23 (b) PERSONAL PROTECTION SYSTEM.—

24 (1) MINIMUM POLICY REQUIREMENTS.—In
25 order for a personal protection insurance policy to be

1 covered by this Act, a motor vehicle insurance policy
2 issued by an insurer shall, at a minimum—

3 (A) provide personal protection insurance
4 coverage—

5 (i) with no per accident limit; and

6 (ii) in coverage amounts equal to the
7 greater of—

8 (I) the minimum per person lim-
9 its of liability insurance for personal
10 injury under the applicable State fi-
11 nancial responsibility law; or

12 (II) in a State covered by a no-
13 fault motor vehicle insurance law, the
14 minimum level of insurance required
15 for no-fault benefits;

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

18 (C) contain provisions under the applicable
19 State financial responsibility law relating to li-
20 ability for—

21 (i) property damage; and

22 (ii) bodily injury to protect third par-
23 ties whose rights to recover both economic
24 and noneconomic loss are not affected by
25 the immunities provided under this Act for

1 those persons choosing personal protection
2 insurance coverage.

3 (2) SUPERSEDING PROVISION.—This Act super-
4 sedes a State law to the extent that, with respect to
5 the issuance of a personal protection insurance pol-
6 icy, the State law—

7 (A) would otherwise bar a provision that
8 provides for the personal protection authoriza-
9 tions and accompanying immunities set forth in
10 this Act; or

11 (B) is otherwise inconsistent with the re-
12 quirements of this Act.

13 (3) PRIMACY OF PAYMENT.—

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

20 (B) REIMBURSEMENT OF PAYORS.—

21 (i) IN GENERAL.—A personal protec-
22 tion insurer may take appropriate meas-
23 ures to ensure that any person otherwise
24 eligible for personal protection benefits
25 who has been paid or is being paid for

1 losses payable by personal protection insur-
2 ance from a source other than the applica-
3 ble personal protection insurer shall not re-
4 ceive multiple payment for those losses.

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

14 (4) PROMPT AND PERIODIC PAYMENT.—

15 (A) IN GENERAL.—A personal protection
16 insurer may pay personal protection benefits
17 periodically as losses accrue.

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

1 (i) the loss compounded at a rate of
2 24 percent per annum, as liquidated dam-
3 ages and in lieu of any penalty or exem-
4 plary damages; and

5 (ii) a reasonable attorney's fee cal-
6 culated on the basis of the value of the at-
7 torney's efforts as reflected in payment to
8 the attorney's client.

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

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

23 (6) AUTHORIZATIONS FOR PERSONAL PROTEC-
24 TION INSURERS.—A personal protection insurer may
25 write personal protection coverage—

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

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

5 (B) with an exclusion of coverage for inju-
6 ries incurred by a person with personal protec-
7 tion coverage whose injuries are caused by that
8 person's driving under the influence of alcohol
9 or an illegal drug (as those terms are defined
10 under applicable State law);

11 (C) at appropriately reduced premium
12 rates, deductibles and exclusions reasonably re-
13 lated to health, disability, and accident coverage
14 on an insured person; and

15 (D) the deductibles and exclusions de-
16 scribed in subparagraphs (A) and (C) shall
17 apply only to—

18 (i) the person named in the applicable
19 insurance policy; and

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

22 (7) RECOVERY AGAINST DRUNK DRIVERS.—

23 Nothing in this Act shall be construed to limit the
24 right of recovery for economic or noneconomic losses

1 of an injured person that are caused by a person
2 who was—

3 (A) driving under the influence of alcohol
4 or an illegal drug (as those terms are defined
5 under applicable State law); or

6 (B) engaging in intentional misconduct.

7 (c) TORT MAINTENANCE SYSTEM.—

8 (1) REQUIRED TORT MAINTENANCE COV-
9 ERAGE.—The coverage for a person who chooses in-
10 surance under subsection (a)(2) shall include tort
11 maintenance coverage at a level that is at least
12 equivalent to the level of insurance required under
13 the applicable State financial responsibility law for
14 bodily injury liability.

15 (2) ADMINISTRATION OF TORT MAINTENANCE
16 COVERAGE BENEFITS.—To the extent consistent
17 with this Act, any applicable provision of a State law
18 governing the administration of payment of benefits
19 under uninsured or underinsured motorist coverage
20 applies to the payment of benefits under tort main-
21 tenance coverage under section 5(c).

22 (d) EFFECT OF CHOICE ON RESIDENT RELATIVES
23 AND DEPENDENTS.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), a person who chooses either personal pro-

1 tection insurance or tort maintenance coverage also
2 binds the resident relatives and dependents of that
3 person.

4 (2) EXCEPTION.—An adult resident relative or
5 a dependent of a person described in paragraph (1)
6 may select the form of insurance that that person
7 does not select if the adult relative makes that selec-
8 tion expressly in writing.

9 (3) IMPLIED CONSENT.—In any case in which
10 the resident relative or dependent is injured in a
11 motor vehicle accident, the coverage of such person
12 shall be the same as the person described in para-
13 graph (1).

14 (4) TERMS AND CONDITIONS.—Insurers may
15 specify reasonable terms and conditions governing
16 the commencement, duration, and application of the
17 chosen coverage depending on the number of motor
18 vehicles and owners thereof in a household.

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

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

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

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

10 (g) CONSUMER INFORMATION PROGRAM.—

11 (1) STATE PROGRAM.—The State official
12 charged with jurisdiction over insurance rates for
13 motor vehicles may establish and maintain a pro-
14 gram designed to ensure that consumers are ade-
15 quately informed about—

16 (A) the comparative cost of insurance
17 under the personal protection system and the
18 tort maintenance system; and

19 (B) the benefits, rights, and obligations of
20 insurers and insureds under each system.

21 (2) INSURER PROGRAM.—An insurer that offers
22 a choice of insurance systems under subsection
23 (a)(1) shall provide to each consumer, before that
24 consumer chooses motor vehicle insurance, written

1 consumer information to ensure that consumers are
2 adequately informed about—

3 (A) the comparative cost of insurance
4 under the personal protection system and the
5 tort maintenance system; and

6 (B) the benefits, rights, and obligations of
7 insurers and insureds under each system.

8 **SEC. 6. SOURCE OF COMPENSATION IN CASES OF ACCIDEN-**
9 **TAL INJURY.**

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

15 (1) may claim against any person covered by
16 personal protection insurance only for uncompen-
17 sated economic loss; and

18 (2) may be claimed against by a person covered
19 by personal protection insurance only for uncompen-
20 sated economic loss.

21 (b) ACCIDENTS INVOLVING PERSONS WITH PER-
22 SONAL PROTECTION INSURANCE.—

23 (1) RIGHT TO RECOVER ECONOMIC LOSS.—A
24 person covered by a personal protection insurance
25 policy who is injured in an accident is compensated

1 under that policy only for economic loss, without re-
 2 gard to fault.

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

6 (A) involved in an accident with a person
 7 insured under either the personal protection
 8 system or tort maintenance system under sec-
 9 tion 5(a); and

10 (B) sustains uncompensated economic loss,
 11 that person shall have the right to claim against the
 12 other person involved in the accident for that loss
 13 based on fault.

14 (c) ACCIDENTS INVOLVING PERSONS WITH PER-
 15 SONAL PROTECTION INSURANCE AND PERSONS WHO ARE
 16 UNLAWFULLY UNINSURED.—

17 (1) RECOVERY FOR PERSONS WITH PERSONAL
 18 PROTECTION INSURANCE.—A person covered by per-
 19 sonal protection insurance who is involved in an ac-
 20 cident with an uninsured motorist shall—

21 (A) be compensated under that insured
 22 person's insurance policy for economic loss
 23 without regard to fault; and

1 (B) have the right to claim against the un-
2 insured motorist for economic loss and for non-
3 economic loss based on fault.

4 (2) RECOVERY FOR PERSONS WHO ARE UNLAW-
5 FULLY UNINSURED.—An uninsured motorist shall
6 have the right to claim against a motorist who has
7 chosen personal protection insurance only for eco-
8 nomic loss, without regard to fault.

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

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

17 (2) intentional misconduct.

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

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

1 (2) The coverage of a motor vehicle involved in
2 the accident, if the person injured was an occupant
3 of, or was struck as a pedestrian by, such motor ve-
4 hicle at the time of the accident, except that such
5 person shall not recover under the coverage of both
6 paragraph (1) and this paragraph.

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

13 (1) the negligence of an uninsured motorist;

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

16 (3) intentional misconduct; or

17 (4) any other person who is not affected by the
18 limitations on tort rights and liabilities under this
19 Act.

20 (g) RIGHTS OF LAWFULLY UNINSURED PERSONS.—

21 Nothing in this Act shall be construed to affect the tort
22 rights of any person lawfully uninsured under the terms
23 of an applicable State law for insurance under either the
24 personal protection system or tort maintenance system
25 under section 5(a).

1 (h) RIGHTS OF PERSONS OCCUPYING MOTOR VEHI-
2 CLES WITH FEWER THAN 4 LOAD-BEARING WHEELS.—
3 Nothing in this Act shall be construed to affect the tort
4 rights of a person who occupies a motor vehicle with fewer
5 than 4 load-bearing wheels or an attachment thereto, un-
6 less an applicable contract for personal protection insur-
7 ance under which that person is insured specifies other-
8 wise. The preceding sentence applies without regard to
9 whether the person is otherwise legally insured for per-
10 sonal protection insurance or tort maintenance coverage.

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

15 (1) for personal protection insurance benefits;

16 or

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

20 (j) IMMUNITY.—Unless an insurer or an insurance
21 agent willfully misrepresents the available choices or
22 fraudulently induces the election of one motor vehicle in-
23 surance system described in paragraph (1) over the other,
24 no insurer or insurance agent, employee of such insurer
25 or agent, insurance producer representing a motor vehicle

1 insurer, automobile residual market plan, or attorney li-
2 censed to practice law within a State, shall be liable in
3 an action for damages on account of—

4 (1) an election of—

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

7 (B) the personal protection system under
8 section 5(a); or

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

10 **SEC. 7. RULES OF CONSTRUCTION.**

11 Nothing in this Act shall be construed—

12 (1) to waive or affect any defense of sovereign
13 immunity asserted by any State under any law or by
14 the United States;

15 (2) to affect the awarding of punitive damages
16 under any State law;

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

20 (4) to affect the right of any court to transfer
21 venue, to apply the law of a foreign nation, or to dis-
22 miss a claim of a foreign nation or of a citizen of
23 a foreign nation on the ground of inconvenient
24 forum;

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

6 (6) to prevent insurers and insureds from con-
7 tracting to limit recovery for lost wages and income
8 under personal protection coverage in such manner
9 that only 60 percent or more of lost wages or income
10 is covered;

11 (7) to prevent an insurer from contracting with
12 personal protection insureds, as permitted by appli-
13 cable State law, to have submitted to arbitration any
14 dispute with respect to payment of personal protec-
15 tion benefits;

16 (8) to relieve a motorist of the obligations im-
17 posed by applicable State law to purchase tort liabil-
18 ity insurance for bodily injury to protect third par-
19 ties who are not affected by the immunities under
20 this Act;

21 (9) to preclude a State from enacting, for all
22 motor vehicle accident cases including cases covered
23 by this Act, a minimum dollar value for defined
24 classes of cases involving death or serious bodily in-
25 jury;

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

5 (11) to preclude a State from enacting a law
6 that—

7 (A) allows litigation by tort maintenance
8 insureds against personal protection insureds
9 for economic and noneconomic loss; and

10 (B) assures through a reallocation device
11 that the advantage of tort claim waivers by per-
12 sonal protection insureds against tort mainte-
13 nance insureds is reflected in the premiums of
14 personal protection insureds;

15 (12) to alter or diminish the authority or obli-
16 gation of the Federal courts to construe the terms
17 of this Act; or

18 (13) to preclude a State or State official
19 charged with regulatory authority over the business
20 of insurance from fully exercising that regulatory
21 authority, including adopting regulations and proce-
22 dures regarding—

23 (A) rates;

24 (B) policy forms;

25 (C) company solvency;

- 1 (D) consumer protection;
- 2 (E) underwriting and marketing practices;
- 3 and
- 4 (F) carrying out the requirements of this
- 5 Act.

6 **SEC. 8. APPLICABILITY TO STATES; CHOICE OF LAW; AND**

7 **JURISDICTION.**

8 (a) ELECTION OF NONAPPLICABILITY BY STATES.—

9 This Act shall not apply with respect to a State if such

10 State enacts a statute that—

- 11 (1) cites the authority of this subsection;
- 12 (2) declares the election of such State that this
- 13 Act shall not apply; and
- 14 (3) contains no other provision.

15 (b) NONAPPLICABILITY BASED ON STATE FIND-

16 ING.—

17 (1) IN GENERAL.—This Act shall not apply

18 with respect to a State, if—

- 19 (A) the State official charged with jurisdic-
- 20 tion over insurance rates for motor vehicles
- 21 makes a finding that the statewide average
- 22 motor vehicle premiums for bodily injury insur-
- 23 ance in effect immediately before the effective
- 24 date of this Act will not be reduced by an aver-
- 25 age of at least 30 percent for persons choosing

1 personal protection insurance (without including
2 in the calculation for personal protection in-
3 sureds any cost for uninsured, underinsured, or
4 medical payments coverages);

5 (B) a finding described under subpara-
6 graph (A) is supported by evidence adduced in
7 a public hearing and reviewable under the appli-
8 cable State administrative procedure law; and

9 (C) a finding described under subpara-
10 graph (A) and any review of such finding under
11 subparagraph (B) occurs not later than 180
12 days after the date of enactment of this Act.

13 (2) COMPARISON OF BODILY INJURY PRE-
14 MIUMS.—For purposes of making a comparison
15 under paragraph (1)(A) of premiums for personal
16 protection insurance with preexisting premiums for
17 bodily injury insurance (in effect immediately before
18 the date of enactment of this Act), the preexisting
19 bodily injury insurance premiums shall include pre-
20 miums for—

21 (A) bodily injury liability, uninsured and
22 underinsured motorists' liability, and medical
23 payments coverage; and

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

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

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

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

14 **SEC. 9. EFFECTIVE DATE.**

15 This Act shall take effect 180 days after the date of
16 enactment of this Act.