

107TH CONGRESS
1ST SESSION

H. R. 1704

To enable drivers to choose a more affordable form of auto insurance that also provides for more adequate and timely compensation for accident victims, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2001

Mr. ARMEY (for himself, Mr. MORAN of Virginia, and Mr. COX) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To enable drivers to choose a more affordable form of auto insurance that also provides 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 AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Auto Choice Reform Act of 2001”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.

- Sec. 4. Auto choice insurance system.
- Sec. 5. Personal injury protection system.
- Sec. 6. Tort maintenance system.
- Sec. 7. Protection against insurance fraud.
- Sec. 8. Source of compensation in cases of accidental injury.
- Sec. 9. Preservation of State and private rights.
- Sec. 10. Applicability to States.

1 **SEC. 2. FINDINGS AND PURPOSES**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) Auto insurance premiums are too high,
 4 largely because the current auto liability insurance
 5 system (referred to in this subsection as the
 6 “present system”)—

7 (A) encourages costly fraudulent claims
 8 and unnecessarily contentious behavior by both
 9 claimants and defendants; and

10 (B) often requires expensive lawyers on
 11 both sides of a dispute to settle claims.

12 (2) The adversarial tort system that is in effect
 13 in 35 States poorly compensates the most needy in-
 14 dividuals, in that the system—

15 (A) pays no liability benefits to more than
 16 30 percent of all accident victims;

17 (B) takes too long to pay victims when it
 18 does pay them;

19 (C)(i) pays victims with minor injuries an
 20 average of two to three times the cost of their
 21 medical bills and lost wages; but

1 (ii) pays victims with serious injuries an
2 average of less than 50 percent of those bills
3 and lost wages; and

4 (D) pays twice as much for plaintiff and
5 defense lawyers combined as it pays for victims'
6 medical bills and lost wages.

7 (3) The chance of winning the lawsuit lottery in
8 the present system—

9 (A) results in the filing of billions of dol-
10 lars of fraudulent or otherwise unnecessary
11 auto insurance claims annually;

12 (B) generates billions of dollars in unnec-
13 essary health care costs for private, Federal,
14 and State health care programs;

15 (C) raises auto insurance premiums for all
16 drivers, including drivers operating business ve-
17 hicles; and

18 (D) makes auto insurance premiums
19 unaffordable for many low-income individuals.

20 (4) The present system harms cities by—

21 (A) encouraging the filing of frivolous and
22 inflated claims that cities pay at the expense of
23 all taxpayers; and

24 (B) contributing to the abandonment of
25 cities by taxpayers who can achieve substantial

1 reductions in their auto insurance premiums by
2 moving to the suburbs.

3 (5) The present system provides individuals lit-
4 tle incentive to purchase safer automobiles.

5 (6) All of the no-fault insurance reform laws
6 that exist in 13 States provide more timely and equi-
7 table compensation for medical bills and lost wages
8 to more accident victims.

9 (7) Some of those no-fault insurance reform
10 laws, however, have not been successful in control-
11 ling insurance premiums, in large part because oppo-
12 nents of such reform have weakened the laws by cre-
13 ating loopholes for unnecessary and costly lawsuits.

14 (8) The alternative form of insurance, personal
15 injury protection, that may be offered to drivers by
16 reason of this Act, gives drivers the ability to—

17 (A)(i) insure themselves in all accidents for
18 their own medical bills and lost wages; and

19 (ii) sue other drivers on the basis of fault
20 for any economic losses that are not covered by
21 their insurance; and

22 (B) forgo lawsuits against other drivers for
23 noneconomic damages on the basis of fault in
24 return for being free from suit for noneconomic
25 damages by other drivers.

1 (9) Personal injury protection, by reducing the
2 need for auto liability lawsuits and the incentives for
3 fraudulent and otherwise questionable claims,
4 could—

5 (A) save drivers billions of dollars annu-
6 ally; and

7 (B) enable them to receive more adequate
8 and timely compensation when they are seri-
9 ously injured.

10 (10) Personal injury protection would benefit
11 society by—

12 (A) increasing respect for the law by elimi-
13 nating the incentives of the adversarial present
14 system for fraudulent claims and unnecessarily
15 contentious behavior by both claimants and de-
16 fendants;

17 (B) saving precious health care resources;

18 (C) making it more affordable for low-in-
19 come individuals to operate an automobile to
20 get to better paying jobs;

21 (D) reducing the incentives for individuals
22 to abandon cities, by providing greater savings
23 for drivers who reside in cities;

24 (E) freeing city taxpayers' dollars for re-
25 ductions in taxes or expanded city programs by

1 reducing the amount of frivolous and unneces-
2 sary lawsuits against cities;

3 (F) encouraging drivers to own safer auto-
4 mobiles by giving insurers the opportunity to
5 reduce premiums for the owners of safe auto-
6 mobiles; and

7 (G) helping to free up court dockets that
8 are currently overburdened with personal injury
9 lawsuits fueled by the incentives for lawsuits
10 under the present system.

11 (11) A new auto insurance system that allows
12 drivers to select the form of auto insurance that best
13 meets their needs, by choosing between—

14 (A) a modified version of the present sys-
15 tem, or

16 (B) the personal injury protection system
17 described in paragraph (9),

18 would enable drivers to reduce the cost of auto in-
19 surance, increase the amount of average compensa-
20 tion in the event of a serious accident, and enhance
21 individual freedom.

22 (12) The Federal Government should encourage
23 consumer choice, but not exercise regulatory author-
24 ity over the business of auto insurance, including

1 rates and insurer solvency, as that authority is ap-
2 propriately exercised by the States.

3 (13) During the period beginning January 1,
4 1957, and ending December 31, 1996—

5 (A) the Federal Government spent more
6 than \$400 billion to facilitate highway construc-
7 tion in the United States; and

8 (B) hundreds of thousands of individuals
9 have been killed in motor vehicle accidents on
10 highways constructed with those funds.

11 (14) The auto insurers who operate in inter-
12 state commerce pay greater than 70 percent of the
13 compensation paid to accident victims.

14 (15) Through programs such as medicare, med-
15 icaid, and social security, the Federal Government
16 pays a significant amount of the costs for compen-
17 sating motor vehicle accident victims.

18 (16) It is necessary and proper for the Con-
19 gress, in the exercise of its authority to establish
20 post roads and regulate commerce under section 8 of
21 article I of the Constitution, to provide drivers
22 throughout the United States with an alternative to
23 address the problems of the adversarial present sys-
24 tem and the inadequate no-fault insurance reforms.

1 (b) PURPOSES.—The purposes of this Act are as fol-
2 lows:

3 (1) To enable consumers of auto insurance to
4 choose between two insurance systems, which are—

5 (A) a tort maintenance system based on
6 applicable State law that provides for substan-
7 tially similar insurance premiums and com-
8 pensation for injuries as compared to the auto
9 insurance system in existence in that State on
10 the date of enactment of this Act; and

11 (B) a personal injury protection system
12 that compensates accident victims directly for
13 their medical bills and lost wages with substan-
14 tially less need to pursue lawsuits and provides
15 the opportunity for—

16 (i) substantial reductions in auto in-
17 surance premiums;

18 (ii) more comprehensive recovery of
19 medical bills and lost wages in a shorter
20 period of time; and

21 (iii) the right to sue negligent drivers
22 for any uncompensated medical bills or lost
23 wages.

24 (2) To preserve the rights of States to regulate
25 the business of auto insurance.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

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

5 (A) causes injury; and

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

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

11 (A) are compensated without regard to
12 fault for economic loss; and

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

15 (3) COLLATERAL SOURCE.—The term “collat-
16 eral source” means a person, other than a tortfeasor
17 or a motor vehicle insurer, that has a legal obliga-
18 tion to pay compensation for economic loss to a per-
19 son who is injured in an accident.

20 (4) COMMON CARRIER.—The term “common
21 carrier” means a motorized vehicle of any kind, li-
22 censed for highway use, that is—

23 (A) required to be registered under the
24 provisions of applicable State law relating to
25 motor vehicles; and

1 (B) used in the business of transporting
2 persons.

3 (5) ECONOMIC LOSS.—The term “economic
4 loss” means objectively verifiable pecuniary loss
5 caused by an accident for—

6 (A) reasonable and necessary medical and
7 rehabilitation expenses;

8 (B) loss of earnings;

9 (C) funeral costs; and

10 (D) replacement services loss.

11 (6) ELECTRONIC SIGNATURE.—The term “elec-
12 tronic signature” means any letters, characters, or
13 symbols executed or adopted by a party with an in-
14 tent to authenticate a writing that are—

15 (A) manifested by—

16 (i) electronic means; or

17 (ii) any other similar means; and

18 (B) logically associated with that writing.

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

1 (8) FIRST PARTY BENEFITS.—The term “first
2 party benefits” means benefits paid or payable by an
3 insurer to an insured of that insurer under a per-
4 sonal injury protection policy or a tort maintenance
5 coverage policy applicable to that insured.

6 (9) INJURY.—The term “injury” means bodily
7 injury, sickness, disease, or death.

8 (10) INSURER.—The term “insurer” means any
9 person who is engaged in the business of issuing or
10 delivering motor vehicle insurance policies (including
11 an insurance agent, if appropriate) under applicable
12 State law.

13 (11) MOTOR CARRIER.—The term “motor car-
14 rier” means—

15 (A) a person who—

16 (i) transports by motor vehicle goods
17 for another person or entity for compensa-
18 tion; and

19 (ii) is liable for the operation of the
20 vehicle under part 387 of title 49, Code of
21 Federal Regulations; or

22 (B) a person who transports such person’s
23 goods by a motor vehicle that such person owns
24 or leases.

1 (12) MOTOR VEHICLE.—The term “motor vehi-
2 cle” means a vehicle with 4 or more wheels licensed
3 for highway use that is required to be registered
4 under the provisions of the applicable State financial
5 responsibility law relating to motor vehicles.

6 (13) NAMED INSURED.—The term “named in-
7 sured” means a person designated by name in a per-
8 sonal injury protection policy or tort maintenance
9 coverage policy as the insured.

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

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

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

21 (15) NONECONOMIC LOSS.—The term “non-
22 economic loss” means subjective, nonmonetary losses
23 recognized under applicable State tort law.

24 (16) OCCUPY.—The term “occupy” means, with
25 respect to the operation, maintenance, or use of a

1 motor vehicle, to be in or on a motor vehicle or to
2 be engaged in the immediate act of entering into or
3 alighting from a motor vehicle.

4 (17) OPERATION, MAINTENANCE, OR USE OF A
5 MOTOR VEHICLE.—(A) The term “operation, main-
6 tenance, or use of a motor vehicle” means any activ-
7 ity involving or related to the transportation by a
8 motor vehicle.

9 (B) Such term includes occupying or being en-
10 gaged in the immediate act of entering into or
11 alighting from a motor vehicle before or after its use
12 for transportation.

13 (C) Such term does not include—

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

19 (ii) conduct within the course of loading or
20 unloading a motor vehicle, unless the conduct
21 occurs while occupying or being engaged in the
22 immediate act of entering into or alighting from
23 a motor vehicle before or after its use for trans-
24 portation.

1 (18) 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 (19) PERSONAL INJURY PROTECTION.—The
6 term “personal injury protection” means insurance
7 that provides for—

8 (A) benefits to a personal injury protection
9 insured for economic loss without regard to
10 fault for injury resulting from a motor vehicle
11 accident in accordance with this Act;

12 (B) a waiver of tort claims against other
13 drivers, other than—

14 (i) claims for uncompensated eco-
15 nomic loss based on fault; and

16 (ii) other tort claims exempted from
17 such a waiver under this Act;

18 (C) coverage against claims for uncompen-
19 sated economic losses based on fault by another
20 party that is entitled to recover those losses
21 under this Act; and

22 (D) coverage against claims for economic
23 or noneconomic losses of a third party with re-
24 spect to which the recovery of those losses is
25 not covered under this Act.

1 (20) PERSONAL INJURY PROTECTION IN-
2 SURED.—The term “personal injury protection in-
3 sured” means a person covered by the form of insur-
4 ance described in section 5.

5 (21) PERSONAL INJURY PROTECTION IN-
6 SURER.—The term “personal injury protection in-
7 surer” means an insurer who is engaged in the busi-
8 ness of providing personal injury protection.

9 (22) PERSONAL INJURY PROTECTION SYS-
10 TEM.—The term “personal injury protection sys-
11 tem” means the insurance system described in sec-
12 tion 5.

13 (23) 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 (24) RESIDENT RELATIVE OR DEPENDENT.—

21 (A) The term “resident relative or dependent”
22 means a person—

23 (i) who is related to the named insured by
24 blood, marriage, adoption, or otherwise (includ-

1 ing a dependent receiving financial services or
2 support from such insured); and

3 (ii) who—

4 (I) resides in the same household as
5 the named insured at the time of the acci-
6 dent; or

7 (II) usually makes a home in the
8 same family unit as the named insured,
9 even though that person may temporarily
10 live elsewhere.

11 (B) Such term does not include any person who
12 maintains or is required to maintain insurance for a
13 motor vehicle that such person owns.

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

21 (26) TORT LIABILITY.—The term “tort liabil-
22 ity” means the legal obligation to pay damages for
23 an injury in an accident adjudged to have been
24 caused by a tortfeasor, under applicable State law.

1 (27) 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 (28) TORT MAINTENANCE COVERAGE.—The
8 term “tort maintenance coverage” means insurance
9 coverage under which a tort maintenance insured, if
10 involved in an accident with a personal injury pro-
11 tection insured, may recover first party benefits for
12 economic and noneconomic losses from the insurer of
13 that insured, based on fault under applicable State
14 law.

15 (29) TORT MAINTENANCE INSURED.—The term
16 “tort maintenance insured” means a person covered
17 by the form of insurance described in section 6.

18 (30) TORT MAINTENANCE SYSTEM.—The term
19 “tort maintenance system” means an insurance sys-
20 tem described in section 6.

21 (31) UNCOMPENSATED ECONOMIC LOSS.—(A)
22 The term “uncompensated economic loss” means
23 any objectively verifiable pecuniary loss payable
24 based on fault under applicable State tort law, ex-
25 cept for any such loss that is determined by a court

1 of competent jurisdiction to be, in whole or in part,
2 a product of fraudulent activity by the person mak-
3 ing the claim.

4 (B) Such term includes a reasonable attorney's
5 fee calculated on the basis of the time actually ex-
6 pended and the value of the attorney's efforts as re-
7 flected in payment to the attorney's client, other
8 than any attorney's fees when the uncompensated
9 economic loss is attributable only to a deductible for
10 coverage specified in subparagraph (C)(i).

11 (C) Subject to section 8(j)(2), such term does
12 not include amounts paid or payable under—

13 (i) personal injury protection;

14 (ii) tort maintenance coverage;

15 (iii) no-fault or add-on motor vehicle insur-
16 ance;

17 (iv) Federal, State, or private disability or
18 sickness programs;

19 (v) Federal, State, or private health insur-
20 ance programs;

21 (vi) employer wage continuation programs;

22 or

23 (vii) workers' compensation or similar oc-
24 cupational compensation laws.

1 (32) UNINSURED MOTORIST.—The term “unin-
2 sured motorist” means the owner of a motor vehicle,
3 including the resident relatives or dependents of the
4 owner, who is uninsured under either the personal
5 injury protection system described in section 5 or
6 the tort maintenance system described in section
7 6—

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

10 (B) an amount prescribed under section
11 5(a)(1).

12 **SEC. 4. AUTO CHOICE INSURANCE SYSTEM.**

13 (a) OPERATION OF THE RIGHT TO CHOOSE.—

14 (1) IN GENERAL.—Under this Act, an insurer
15 may offer a choice between—

16 (A) the personal injury protection system
17 described in section 5; and

18 (B) the tort maintenance system described
19 in section 6.

20 (2) ELECTION BY SELF-INSURED PERSONS.—A
21 self-insured person, as determined under an applica-
22 ble State law, may elect coverage under paragraph
23 (1) by filing a notice with the appropriate State or
24 Federal agency.

1 (3) EFFECT OF ELECTION BY ELECTRONIC
2 MEANS.—For purposes of making an election of an
3 insurance system under this subsection, unless pro-
4 hibited by applicable State law, an electronic signa-
5 ture shall have the same force and effect as a hand-
6 written signature.

7 (b) EFFECT OF CHOICE ON RESIDENT RELATIVES
8 OR DEPENDENTS.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2), a person who chooses either the personal
11 injury protection system or the tort maintenance
12 system also binds the resident relatives or depend-
13 ents of that person.

14 (2) EXCEPTION.—An adult resident relative or
15 dependent of a person described in paragraph (1)
16 may select the form of insurance that such person
17 does not select if the adult resident relative or de-
18 pendent makes that selection expressly in writing to
19 the insurer.

20 (3) TERMS AND CONDITIONS.—Insurers may
21 specify reasonable terms and conditions governing
22 the commencement, duration, and application of the
23 chosen coverage, depending on the number of motor
24 vehicles and owners of such vehicles in a household.

25 (c) UNIFORMITY RULES.—

1 (1) IN GENERAL.—Notwithstanding subsection
2 (b)(2) and in order to minimize conflict between the
3 insurance options, an insurer may maintain and
4 apply underwriting rules that encourage uniformity
5 in the provision of insurance benefits within a house-
6 hold.

7 (2) UNIFORMITY IN INSURANCE IN EMPLOY-
8 MENT.—Except as provided in paragraph (6), an
9 employer that elects an insurance option described in
10 subparagraph (A) or (B) of subsection (a)(1) binds
11 the employees of that employer for purposes of cov-
12 erage of that employee in the course of employment
13 by that employer.

14 (3) UNIFORMITY IN INSURANCE FOR MOTOR
15 CARRIERS.—Except as provided in paragraph (6), a
16 motor carrier that elects an insurance option de-
17 scribed in subparagraph (A) or (B) of subsection
18 (a)(1) binds any owner, operator, or occupant of a
19 motor vehicle operated by that motor carrier.

20 (4) UNIFORMITY IN INSURANCE FOR COMMON
21 CARRIERS.—Except as provided in paragraph (6), an
22 owner of a common carrier that elects an insurance
23 option described in subparagraph (A) or (B) of sub-
24 section (a)(1) binds the owner and any operator or
25 occupant of that common carrier.

1 (5) UNIFORMITY IN INSURANCE FOR MOTOR
2 VEHICLE RENTALS.—

3 (A) IN GENERAL.—Except as provided in
4 subparagraph (B), a person who is engaged in
5 the business of renting motor vehicles and who
6 elects an insurance option described in subpara-
7 graph (A) or (B) of subsection (a)(1) binds any
8 operator or occupant of the rented motor vehi-
9 cle with respect to the operation of that vehicle.

10 (B) EXCEPTION.—Subparagraph (A) shall
11 not apply if a customer who rents a motor
12 vehicle—

13 (i) specifically elects to obtain cov-
14 erage within the rental agreement other
15 than the coverage elected by the person en-
16 gaged in the business of renting the motor
17 vehicle; and

18 (ii) pays a separate charge for that
19 optional coverage.

20 (6) RIGHT OF EMPLOYEES, OPERATORS, AND
21 CERTAIN OCCUPANTS TO PURCHASE ADDITIONAL
22 COVERAGE.—

23 (A) EMPLOYEES.—An employee under
24 paragraph (2) may elect to purchase separate
25 personal injury protection or tort maintenance

1 coverage in excess of the insurance provided by
2 the employer in the scope of the employment of
3 that employee.

4 (B) OPERATORS AND OCCUPANTS OF
5 MOTOR CARRIERS.—An operator or occupant of
6 a motor carrier under paragraph (3) may elect
7 to purchase separate personal injury protection
8 or tort maintenance coverage in excess of the
9 insurance provided to that operator or occupant
10 by the motor carrier as an operator or occupant
11 of that motor carrier.

12 (C) OPERATORS AND OCCUPANTS OF COM-
13 MON CARRIERS.—An operator or occupant of a
14 common carrier under paragraph (4) may elect
15 to purchase separate personal injury protection
16 or tort maintenance coverage in excess of the
17 insurance provided to that operator or occupant
18 by the owner of the common carrier as an oper-
19 ator or occupant of the common carrier.

20 (D) EFFECT OF ELECTION.—The election
21 by an employee, operator, or occupant to pur-
22 chase insurance coverage under this paragraph
23 shall not affect the liability of an employer,
24 motor carrier, or common carrier.

25 (d) FAILURE TO ELECT TYPE OF INSURANCE.—

1 (1) IN GENERAL.—Except as provided in sub-
2 section (b)(1), any person who fails to elect a type
3 of insurance under subsection (a)(1) shall be deemed
4 to have elected insurance under the tort mainte-
5 nance system in effect in the State of that person’s
6 residence.

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

13 (e) CONSUMER INFORMATION PROGRAM.—

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

19 (A) the comparative cost of insurance
20 under the personal injury protection system and
21 the tort maintenance system; and

22 (B) the benefits, rights, and obligations of
23 insurers and insureds under each such system.

24 (2) INSURER PROGRAM.—An insurer that offers
25 a choice of insurance systems under subsection

1 (a)(1) shall provide to each consumer, before that
2 consumer chooses motor vehicle insurance, written
3 consumer information to ensure that consumers are
4 adequately informed about—

5 (A) the comparative cost of insurance
6 under the personal injury protection system and
7 the tort maintenance system; and

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

10 (3) ADEQUATE NOTICE.—If an insurer files
11 consumer information forms under paragraph (2)
12 with the State official charged with jurisdiction over
13 insurance rates for motor vehicles and such forms
14 are not disapproved within a reasonable period of
15 time after that filing, such filing and use of the in-
16 formation in accordance with paragraph (2) shall be
17 presumed to be adequate notice.

18 (f) SUPERSEDING PROVISION.—Subject to section
19 10, this Act supersedes a State law to the extent that the
20 State law is otherwise inconsistent with the requirements
21 of this Act.

22 **SEC. 5. PERSONAL INJURY PROTECTION SYSTEM.**

23 (a) MINIMUM POLICY REQUIREMENTS.—In order to
24 constitute a personal injury protection policy covered by

1 this Act, a motor vehicle insurance policy issued by an in-
2 surer shall, at a minimum—

3 (1) for each accident, provide personal injury
4 protection benefits to each personal injury protection
5 insured in amounts equal to—

6 (A) the minimum per-person limits of li-
7 ability insurance for personal injury under the
8 relevant State financial responsibility law appli-
9 cable to private passenger vehicles; or

10 (B) in a State covered by a no-fault motor
11 vehicle law, the minimum level of insurance re-
12 quired for no-fault benefits;

13 (2) contain provisions for a waiver of tort
14 claims against drivers other than the insured,
15 except—

16 (A) claims for uncompensated economic
17 loss based on fault; or

18 (B) other tort claims exempted from such
19 a waiver under this Act;

20 (3) contain provisions for third party liability
21 coverage in amounts equal to the minimum limits re-
22 quired under applicable Federal or State financial
23 responsibility law for—

24 (A) property damage; and

25 (B) bodily injury to cover—

1 (i) uncompensated economic losses for
2 parties who are entitled to recover such
3 losses under this Act; and

4 (ii) economic and noneconomic losses
5 of third parties whose recovery is not af-
6 fected by this Act.

7 (b) PRIMACY OF PAYMENT.—

8 (1) IN GENERAL.—

9 (A) PERSONAL INJURY PROTECTION BENE-
10 FITS.—

11 (i) IN GENERAL.—Except as provided
12 in subparagraph (B), in any case in which
13 a personal injury protection insurer and a
14 collateral source are obligated to pay bene-
15 fits for the same economic loss under this
16 Act, the personal injury protection insurer
17 shall be liable for the primary payment of
18 benefits to cover that economic loss.

19 (ii) LIABILITY OF COLLATERAL
20 SOURCES.—A collateral source shall be lia-
21 ble for economic loss only to the extent
22 that the loss exceeds benefits paid or pay-
23 able by an insurer under an applicable per-
24 sonal injury protection insurance policy.

1 (B) EXCEPTION.—Personal injury protec-
2 tion benefits shall be reduced by an amount
3 equal to any benefits provided or required to be
4 provided under—

5 (i) an applicable Federal or State law
6 for workers' compensation;

7 (ii) any State-required nonoccupa-
8 tional disability insurance; or

9 (iii) any occupational disability insur-
10 ance covering professional drivers of motor
11 vehicles who are independent contractors.

12 (2) REIMBURSEMENT OF PAYORS.—

13 (A) IN GENERAL.—A personal injury pro-
14 tection insurer may take appropriate measures
15 to ensure that any person otherwise eligible for
16 personal injury protection benefits who has
17 been paid or is being paid for losses payable by
18 personal injury protection from a source other
19 than the applicable personal injury protection
20 insurer shall not receive multiple payment for
21 those losses.

22 (B) ACCRUAL OF RIGHTS.—Any right to
23 payment for losses referred to in subparagraph
24 (A) from a personal injury protection insurer
25 accrues only to that payor. Payments by a

1 payor referred to in subparagraph (A) shall not
2 be counted against personal injury limits for
3 personal injury protection until such time as
4 the payor is reimbursed under this subpara-
5 graph.

6 (3) PROTECTION AGAINST DUPLICATION.—

7 Upon receipt of reasonable notice, a personal injury
8 protection insurer shall reimburse a collateral source
9 for payments made by that collateral source for eco-
10 nomic loss for injury resulting from a motor vehicle
11 accident, to the extent that the personal injury pro-
12 tection insurer is obligated to pay for that economic
13 loss.

14 (c) PROMPT AND PERIODIC PAYMENT.—

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

18 (2) LATE PAYMENT.—Except as provided in
19 section 7, a personal injury protection insurer that
20 does not pay a claim for personal injury protection
21 benefits during the 30-day period beginning on the
22 date on which that insurer receives a submission of
23 reasonable proof of the loss for which those benefits
24 are payable, shall pay—

1 (A) the loss compounded at a rate of 24
2 percent per annum as liquidated damages; and

3 (B) a reasonable attorney's fee calculated
4 on the basis of the time actually expended or
5 the value of the attorney's efforts as reflected
6 in payment to the attorney's client.

7 (3) ADMINISTRATION OF PERSONAL INJURY
8 PROTECTION BENEFITS.—To the extent consistent
9 with this Act, any applicable provision of a State no-
10 fault motor vehicle law or add-on law governing the
11 administration of payment of benefits without ref-
12 erence to fault shall apply to the payment of benefits
13 under personal injury protection under this sub-
14 section.

15 (d) AUTHORIZATIONS FOR DEDUCTIONS AND EXCLU-
16 SIONS.—

17 (1) IN GENERAL.—A personal injury protection
18 insurer may write personal injury protection—

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

20 (ii) subject to a reasonable deductible; and

21 (B) with an exclusion of coverage for first
22 party benefits to cover the losses of the per-
23 sonal injury protection insured caused by that
24 insured's—

- 1 (i) driving under the influence of alco-
2 hol or illegal drugs; or
3 (ii) driving while seeking to inten-
4 tionally injure another person.

5 (2) **APPLICABILITY OF DEDUCTIBLES.**—The
6 deductibles and exclusions described in paragraph
7 (1) shall apply only to—

- 8 (A) the person named in the applicable in-
9 surance policy; and
10 (B) the resident relatives or dependents of
11 the person described in subparagraph (A).

12 **SEC. 6. TORT MAINTENANCE SYSTEM.**

13 (a) **MINIMUM POLICY REQUIREMENTS.**—

14 (1) **IN GENERAL.**—The coverage for a person
15 who chooses insurance under section 4(a)(1)(B)
16 shall include—

17 (A) the type of motor vehicle insurance
18 that is otherwise required under applicable
19 State law; and

20 (B) tort maintenance coverage at a level
21 that is at least equivalent to the level of insur-
22 ance required under the applicable State finan-
23 cial responsibility law for bodily injury liability.

24 (2) **RESPONSIBILITY FOR PAYMENT UNDER**
25 **TORT MAINTENANCE COVERAGE.**—The responsibility

1 for payment for any claim under tort maintenance
2 coverage is assumed by the insurer of the tort main-
3 tenance insured to the extent of such coverage.

4 (b) ADDITIONAL PAYMENTS FROM UNINSURED MO-
5 TORIST COVERAGE AND UNDERINSURED MOTORIST COV-
6 ERAGE.—A tort maintenance insured who also purchases
7 an insurance policy that provides uninsured motorist cov-
8 erage or underinsured motorist coverage may recover
9 under the terms of that policy for any economic or non-
10 economic loss arising from an accident involving a per-
11 sonal injury protection insured, in any case in which the
12 amount of those economic or noneconomic losses exceed
13 the aggregate amount recovered or recoverable from the—

14 (1) tort maintenance coverage of the tort main-
15 tenance insured; and

16 (2) personal injury protection insured.

17 **SEC. 7. PROTECTION AGAINST INSURANCE FRAUD.**

18 (a) TIMELY SUBMISSION OF CLAIMS FOR FIRST
19 PARTY BENEFITS.—(1) No insurer shall be obligated to
20 pay first party benefits to a personal injury protection in-
21 sured for any economic loss that occurred more than 60
22 days prior to the submission of a claim for such loss.

23 (2) The time for submission of a claim shall be tolled
24 during any period during which the insured can show
25 that—

1 (A) the insured was physically unable—
 2 (i) to submit proof of the claim; or
 3 (ii) to supply the identity of the insurer to
 4 the provider of services; or
 5 (B) the insured was unable to identify the in-
 6 surer despite good faith efforts to do so.

7 (b) LOSS OF FIRST PARTY BENEFITS.—No insurer
 8 shall be obligated to pay any first party benefits to a per-
 9 sonal injury protection insured for any economic loss that
 10 a court of competent jurisdiction determines is, in whole
 11 or in part, the product of fraudulent activity by the in-
 12 sured with respect to an accident.

13 (c) LOSS OF ENTITLEMENT TO PURCHASE INSUR-
 14 ANCE.—An insurer may cancel, decline to renew, or refuse
 15 to issue a personal injury protection policy to any person
 16 who a court of competent jurisdiction has determined has
 17 engaged in fraudulent activity with respect to an accident
 18 during the previous three years.

19 **SEC. 8. SOURCE OF COMPENSATION IN CASES OF ACCI-**
 20 **DENTAL INJURY.**

21 (a) ACCIDENTS INVOLVING PERSONS CHOOSING THE
 22 TORT MAINTENANCE SYSTEM.—

23 (1) IN GENERAL.—A tort maintenance insured
 24 who is involved in an accident with another person
 25 shall be subject to applicable State law for injury,

1 except that, based on fault, that person may, upon
2 submission of proof of insurance—

3 (A) recover from any personal injury pro-
4 tection insured for uncompensated economic
5 loss (and not for noneconomic loss); and

6 (B) be liable to a personal injury protec-
7 tion insured for uncompensated economic loss
8 (and not for noneconomic loss).

9 (2) ALLOCATION OF TORT MAINTENANCE PAY-
10 MENTS.—In determining the extent of recovery of a
11 tort maintenance insured from a personal injury
12 protection insured under subsection (b), the pay-
13 ments made to the tort maintenance insured from
14 tort maintenance coverage shall first be allocable to
15 economic loss, and any remainder may be allocable
16 to noneconomic loss.

17 (b) ACCIDENTS INVOLVING PERSONS CHOOSING THE
18 PERSONAL INJURY PROTECTION SYSTEM.—

19 (1) RIGHT TO RECOVER ECONOMIC LOSS.—A
20 personal injury protection insured who is injured in
21 an accident may recover under the policy of that in-
22 sured only for economic loss, without regard to fault.

23 (2) RIGHT TO SUE FOR UNCOMPENSATED ECO-
24 NOMIC LOSS BASED ON FAULT.—A personal injury
25 protection insured who is involved in an accident

1 with a tort maintenance insured, or another personal
2 injury protection insured, may recover based on fault
3 from that other insured for uncompensated economic
4 loss (and not for noneconomic loss).

5 (c) ALLOCATION OF COMPARATIVE FAULT.—In any
6 case in which a claim is made under this Act for uncom-
7 pensated economic loss on the basis of comparative fault
8 under applicable State law, the recovery of damages shall
9 be based on the percentage of fault with respect to the
10 amount of uncompensated economic loss.

11 (d) ACCIDENTS INVOLVING PERSONS CHOOSING THE
12 PERSONAL INJURY PROTECTION SYSTEM AND PERSONS
13 WHO ARE UNLAWFULLY UNINSURED.—

14 (1) RIGHTS OF PERSONAL INJURY PROTECTION
15 INSUREDS.—A personal injury protection insured
16 who is involved in an accident with an uninsured
17 motorist—

18 (A) shall be compensated under the in-
19 sured person's policy for economic loss without
20 regard to fault; and

21 (B) may recover from the uninsured mo-
22 torist (other than under uninsured or under-
23 insured motorist coverage) for economic loss
24 and for noneconomic loss based on fault.

1 (2) LIMITATIONS ON LAWSUITS BY UNINSURED
2 MOTORISTS.—An uninsured motorist may not re-
3 cover from a personal injury protection insured for
4 noneconomic loss.

5 (e) ACCIDENTS INVOLVING MOTORISTS UNDER THE
6 INFLUENCE OF ALCOHOL OR ILLEGAL DRUGS OR IN-
7 FLICTING INTENTIONAL INJURY.—Notwithstanding any
8 other provision of this Act, a personal injury protection
9 insured who is in an accident may—

10 (1) recover all damages based on fault under
11 applicable State law from a person who—

12 (A) at the time of the accident, was driving
13 under the influence of alcohol or illegal drugs
14 (as those terms are defined under applicable
15 State law); or

16 (B) caused an injury while seeking to in-
17 tentionally injure another person; and

18 (2) be liable for all damages based on fault
19 under applicable State law, if such insured—

20 (A) at the time of the accident, was driving
21 under the influence of alcohol or illegal drugs
22 (as those terms are defined under applicable
23 State law); or

24 (B) caused an injury while seeking to in-
25 tentionally injure another person.

1 (f) RIGHTS OF LAWFULLY UNINSURED PERSONS.—
2 Nothing in this Act shall be construed to affect the tort
3 rights or obligations of any person lawfully uninsured
4 under the terms of an applicable State law for insurance
5 under either the personal injury protection system or tort
6 maintenance system under section 4(a)(1).

7 (g) RIGHTS OF PERSONS OCCUPYING MOTOR VEHI-
8 CLES WITH FEWER THAN FOUR LOAD-BEARING
9 WHEELS.—Nothing in this Act shall be construed to af-
10 fect the tort rights or obligations of a person who occupies
11 a motor vehicle with fewer than 4 load-bearing wheels or
12 an attachment thereto, unless an applicable contract for
13 personal injury protection under which that person is in-
14 sured specifies otherwise. The preceding sentence applies
15 without regard to whether the person is otherwise legally
16 insured for personal injury protection or tort maintenance
17 coverage.

18 (h) FORFEITURE OF FRAUDULENT CLAIMS.—An
19 owner, operator, or occupant of a motor vehicle involved
20 in an accident forfeits the right to make a claim against
21 an insured motorist for economic or noneconomic loss re-
22 sulting from injury incurred by that owner, operator, or
23 occupant if that owner, operator, or occupant knowingly
24 participated in a scheme to obtain insurance payments for

1 any accident that was staged with the intent to commit
2 insurance fraud.

3 (i) PRIORITY OF BENEFITS.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), a personal injury protection insured or a
6 tort maintenance insured may recover first party
7 benefits only under the coverage of that insured in
8 effect at the time of the accident.

9 (2) EXCEPTIONS.—

10 (A) IN GENERAL.—Except as provided in
11 subparagraph (B), with respect to an accident
12 that occurred while an injured individual was
13 occupying a motor vehicle—

14 (i) furnished by an employer, the pri-
15 mary coverage shall be the coverage appli-
16 cable to the motor vehicle; or

17 (ii) that was being used in the busi-
18 ness of transporting individuals or prop-
19 erty, the primary coverage shall be the cov-
20 erage applicable to that motor vehicle.

21 (B) CERTAIN CLAIMANTS.—A claimant
22 may claim first party benefits in an amount
23 greater than the amounts determined under the
24 limits under the primary insurance coverage de-
25 scribed in clause (i) or (ii) of subparagraph (A),

1 if that claimant would otherwise be able to re-
2 ceive those increased benefits by reason of in-
3 surance coverage of that claimant that would
4 otherwise apply, but for the operation of sub-
5 paragraph (A).

6 (j) REIMBURSEMENT RIGHTS OF PERSONAL INJURY
7 PROTECTION INSURERS AND COLLATERAL SOURCES.—

8 (1) REIMBURSEMENT RIGHTS OF PERSONAL IN-
9 JURY PROTECTION INSURERS.—

10 (A) IN GENERAL.—A personal injury pro-
11 tection insurer may seek reimbursement under
12 subparagraph (B), from—

13 (i) an uninsured motorist who is liable
14 for damages caused by the accident;

15 (ii) a motorist who was under the in-
16 fluence of alcohol or illegal drugs at the
17 time of the accident and whose conduct
18 was the proximate cause of the accident;

19 (iii) a person who caused an injury
20 while seeking to intentionally injure an-
21 other person; or

22 (iv) any other person who is not af-
23 fected by the limitations on tort rights and
24 liabilities under this Act and whose con-

1 duct was the proximate cause of the acci-
2 dent.

3 (B) REIMBURSEMENT.—A personal injury
4 protection insurer may seek reimbursement
5 under this subparagraph to the extent of the
6 obligations of that insurer, with respect to pay-
7 ments for a personal injury protection insured
8 of that insurer with respect to an accident
9 caused in whole or in part, as determined in ac-
10 cordance with applicable State law, from a per-
11 son referred to in subparagraph (A), for the
12 losses that insurer—

- 13 (i) has paid or reimbursed; or
14 (ii) under applicable law, is obligated
15 to pay.

16 (2) REIMBURSEMENT RIGHTS OF COLLATERAL
17 SOURCES.—With respect to an accident, a collateral
18 source may seek reimbursement from an insurer in
19 a civil action based on fault.

20 (3) PROHIBITION ON MULTIPLE RECOVERY.—In
21 any action to recover losses arising out of an acci-
22 dent, a person may not recover or introduce into evi-
23 dence in a civil action against another person any
24 amount of a loss that a collateral source or personal
25 injury protection insurer—

1 (A) has paid or reimbursed; or

2 (B) is obligated to pay.

3 (k) CHOICE OF LAW.—

4 (1) APPLICABLE LAW.—With respect to a claim
5 relating to a motor vehicle accident involving persons
6 from different States, the choice-of-law principles
7 applicable under the law of the State of competent
8 jurisdiction shall apply.

9 (2) APPLICABLE COVERAGE IN AN AUTO
10 CHOICE STATE.—With respect to an accident that
11 involves a person from a State in which this Act
12 does not apply and a person from a State in which
13 this Act applies, in any case in which the accident
14 occurs in a State in which this Act applies, the cov-
15 erage of the person from the State in which this Act
16 does not apply shall be deemed to be the form of in-
17 surance (whether personal injury protection or tort
18 maintenance coverage) that most closely reflects the
19 form of insurance that the person maintains in the
20 State of residence of the person.

21 (l) JURISDICTION.—This Act shall not confer juris-
22 diction on the district courts of the United States under
23 section 1331 or 1337 of title 28, United States Code.

24 (m) STATUTES OF LIMITATIONS.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 nothing in this Act shall supersede an applicable
3 State law that imposes a statute of limitations for
4 claims related to an injury caused by an accident,
5 except that such statute shall be tolled during the
6 period during which any personal injury protection
7 or tort maintenance coverage benefits are paid.

8 (2) CLAIMS.—Unless otherwise provided by
9 State law, a claim for personal injury protection
10 benefits under this Act shall be filed not later than
11 two years after the economic loss that is the subject
12 of the claim is incurred.

13 (n) LIMITATIONS ON NONRENEWAL, CANCELLATION,
14 AND PREMIUM INCREASES.—An insurer shall not cancel,
15 decline to renew, or increase the premium of a person in-
16 sured by the insurer solely because that insured person
17 or any other injured person made a claim for—

18 (1) personal injury protection benefits; or

19 (2) tort maintenance coverage benefits in any
20 case in which there is no basis for ascribing fault to
21 the insured or one for whom the insured is vicari-
22 ously liable.

23 (o) NEGLIGENT DRIVER RATINGS.—Nothing in this
24 Act shall be construed to limit insurers from canceling,
25 failing to renew, or increasing premiums for an insured

1 person if there is a basis for ascribing moving traffic viola-
2 tions or fault for an accident caused by that insured or
3 any resident relative or dependent, or employee of that in-
4 sured.

5 (p) IMMUNITY.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), no insurer, insurance agent or broker, in-
8 surance producer representing a motor vehicle in-
9 surer, automobile residual market plan, or attorney
10 licensed to practice law within a State, or any em-
11 ployee of any such person or entity, shall be liable
12 in an action for damages on account of—

13 (A) an election of—

14 (i) the tort maintenance system under
15 section 4(a)(1)(B); or

16 (ii) the personal injury protection sys-
17 tem under section 4(a)(1)(A); or

18 (B) a failure to make a required election.

19 (2) EXCEPTION.—Paragraph (1) shall not
20 apply in any case in which—

21 (A) a person described in that
22 paragraph—

23 (i) willfully and intentionally mis-
24 represents the insurance choices available
25 to a customer or client of that person; or

1 (ii) willfully and with the intent to de-
2 fraud, induces the election of one motor ve-
3 hicle insurance system described in para-
4 graph (1)(A) over the other motor vehicle
5 insurance system described in that para-
6 graph; and

7 (B) the misrepresentation or inducement
8 under subparagraph (A) was the proximate
9 cause of that customer or client's electing or
10 failing to make an election of an insurance sys-
11 tem under subparagraph (A) or (B) of section
12 4(a)(1).

13 **SEC. 9. PRESERVATION OF STATE AND PRIVATE RIGHTS.**

14 (a) RIGHTS OF STATES.—Nothing in this Act shall
15 be construed—

16 (1) to waive or affect any defense of sovereign
17 immunity asserted by any State under any law or by
18 the United States;

19 (2) to preempt State choice-of-law rules with re-
20 spect to claims brought by a foreign nation or a cit-
21 izen of a foreign nation;

22 (3) to affect the right of any court to transfer
23 venue, to apply the law of a foreign nation, or to dis-
24 miss a claim of a foreign nation or of a citizen of

1 a foreign nation on the ground of inconvenient
2 forum;

3 (4) to preclude a State from establishing a
4 schedule of payments for medical protocols for treat-
5 ment of an injury that arises from an accident;

6 (5) to preclude a State from requiring personal
7 injury protection insurers to offer first party insur-
8 ance that establishes a dollar value for noneconomic
9 loss in objectively verifiable defined classes of cases
10 involving death or serious and permanent bodily in-
11 jury;

12 (6) to preclude a State from enacting a law ap-
13 plicable to all motor vehicle accident cases, including
14 cases covered by this Act, to establish a minimum
15 dollar value for economic losses for defined classes
16 of cases involving death or serious bodily injury;

17 (7) to preclude a State from providing that
18 forms of insurance other than those listed in section
19 5(b) shall be subtracted from personal injury protec-
20 tion insurance benefits otherwise payable for injury;
21 or

22 (8) to preclude a State from enacting a law
23 that—

1 (A) allows litigation by tort maintenance
2 insureds against personal injury protection in-
3 sureds for economic and noneconomic loss; and

4 (B) assures through a reallocation device
5 that the advantage of tort claim waivers by per-
6 sonal injury protection insureds against tort
7 maintenance insureds is reflected in the pre-
8 miums of personal injury protection insureds.

9 (b) PRESERVATION OF STATE REGULATORY AU-
10 THORITY.—Nothing in this Act may be construed—

11 (1) to preclude a State or State official charged
12 with regulatory authority over the business of insur-
13 ance from fully exercising that regulatory authority,
14 including adopting regulations and procedures
15 regarding—

16 (A) rates;

17 (B) policy forms;

18 (C) company solvency;

19 (D) consumer protection;

20 (E) underwriting and marketing practices;

21 and

22 (F) carrying out the requirements of this
23 Act; or

24 (2) to allow or provide for Federal regulation of
25 motor vehicle insurance.

1 (c) RIGHTS OF PRIVATE PARTIES.—Nothing in this
2 Act may be construed—

3 (1) to require a personal injury protection in-
4 surer to offer, or a personal injury protection in-
5 sured to purchase, any coverage for bodily injury in
6 addition to the coverage required under this Act, in-
7 cluding uninsured motorist coverage, underinsured
8 motorist coverage, or coverage for medical payments;

9 (2) to prevent insurers and insureds from con-
10 tracting to limit recovery for the loss of earnings
11 under personal injury protection by—

12 (A) limiting such recovery to only 60 per-
13 cent or more of lost wages or income;

14 (B) limiting the amount of such recovery
15 payable per week; or

16 (C) limiting the period of time after an ac-
17 cident during which the benefits referred to in
18 this paragraph are payable to a period of not
19 less than one year;

20 (3) to prevent insurers and insureds from
21 contracting—

22 (A) to limit recovery for economic loss for
23 medical and rehabilitation expenses to the aver-
24 age amount actually paid for a particular
25 course of treatment; or

1 (B) to provide medical or rehabilitation
2 services through designated health care pro-
3 viders;

4 (4) to prevent an insurer from contracting with
5 insureds, as permitted by applicable State law, to
6 have submitted to arbitration any dispute with re-
7 spect to payment of personal injury protection or
8 tort maintenance coverage;

9 (5) to affect the worker classification of a per-
10 son, either as an employee or an independent con-
11 tractor, on the basis of the election of an employer
12 or motor carrier of an insurance system under sec-
13 tion 4(a); or

14 (6) to affect the awarding of punitive damages,
15 or damages for bad faith refusal to pay a claim,
16 under any applicable State law.

17 **SEC. 10. APPLICABILITY TO STATES.**

18 (a) ELECTION OF NONAPPLICABILITY BY STATES.—
19 Subject to subsections (c) through (e), this Act shall apply
20 with respect to a State, unless—

21 (1) by not later than the earlier of the date that
22 is one year after the date of enactment of this Act
23 or the expiration of the first regular legislative ses-
24 sion of the State beginning after the date of enact-
25 ment of this Act, the State enacts a statute that—

1 (A) cites the authority of this subsection;

2 (B) declares the election of that State that
3 this Act shall not apply with respect to that
4 State; and

5 (C) contains no other provision; or

6 (2)(A) the State official charged with jurisdic-
7 tion over insurance rates for motor vehicles makes a
8 finding that this Act does not apply by reasons of
9 the applicability of the conditions described in sub-
10 section (b)(1)(A); and

11 (B) that finding is made and any review de-
12 scribed in subsection (b)(1)(B) is completed not
13 later than the date specified in subsection (b)(1)(C).

14 (b) NONAPPLICABILITY BASED ON STATE FIND-
15 ING.—

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

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

1 in the amounts required under section 5 (with-
2 out including in the calculation for personal in-
3 jury protection insureds any costs for unin-
4 sured, underinsured, or medical payments cov-
5 erages);

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

10 (C) the finding described under subpara-
11 graph (A) is made, and any review of such find-
12 ing under subparagraph (B) is completed, not
13 later than 120 days after the date of enactment
14 of this Act.

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

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

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

3 (c) IMPLEMENTATION PERIOD.—Except as provided
4 in subsection (d), if a State fails to enact a law by the
5 applicable date specified in paragraph (1) of subsection
6 (a) or if a finding described in paragraph (2) of that sub-
7 section is not made and reviewed by the date specified in
8 subsection (b)(1)(C), this Act shall apply to that State be-
9 ginning on the date that is 270 days after the later of
10 those dates.

11 (d) ACCELERATED APPLICABILITY.—

12 (1) IN GENERAL.—Subject to paragraph (2), a
13 State may enact a law that provides for the imple-
14 mentation of the provisions of this Act in that State
15 before an otherwise applicable date determined
16 under subsection (a).

17 (2) APPLICABILITY.—If a State makes an elec-
18 tion under paragraph (1), this Act shall apply to
19 that State beginning on the date that is 270 days
20 after the date of such election.

21 (e) ELECTION OF NONAPPLICABILITY BY A STATE
22 AFTER THIS ACT BECOMES APPLICABLE WITH RESPECT
23 TO THE STATE.—After this Act becomes applicable with
24 respect to a State under subsection (c) or (d), this Act
25 shall cease to apply with respect to that State if the State

- 1 enacts a statute that meets the requirements of subpara-
- 2 graphs (A) through (C) of subsection (a)(1).

○