

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1425

S. P. 419

In Senate, March 7, 1973

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Berry of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Relating to the Uniform Motor Vehicle Accident Reparations Act.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 29-A, additional. The Revised Statutes are amended by adding a new Title to be numbered 29-A, to read as follows:

TITLE 29-A

**UNIFORM MOTOR VEHICLE ACCIDENT
REPARATIONS ACT**

CHAPTER I

§ 1. Definitions

(a) In this Act:

(1) "Added reparation benefits" mean benefits provided by optional added reparation insurance (section 16).

(2) "Basic reparation benefits" mean benefits providing reimbursement for net loss suffered through injury arising out of the maintenance or use of a motor vehicle, subject, where applicable, to the limits (section 13), deductibles (sections 14 and 18), exclusions (sections 12, 14 and 15), disqualifications (sections 21 and 22), and other conditions provided in this Act.

(3) "Basic reparation insured" means:

(i) A person identified by name as an insured in a contract of basic reparation insurance complying with this Act (section 7 (d)); and

(ii) While residing in the same household with a named insured, the following persons not identified by name as an insured in any other con-

tract of basic reparation insurance complying with this Act: a spouse or other relative of a named insured; and a minor in the custody of a named insured or of a relative residing in the same household with a named insured. A person resides in the same household if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.

(4) "Injury" and "injury to person" mean accidentally sustained bodily harm to a person, and that person's sickness, disease, or death resulting therefrom.

(5) "Loss" means accrued economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, survivor's economic loss and survivor's replacement services loss. Noneconomic detriment is not loss. However, economic detriment is loss although caused by pain and suffering or physical impairment.

(i) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of \$500 for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless intensive care is medically required. It does not include any amount includable in work loss, replacement services loss, survivor's economic loss or survivor's replacement services loss.

(ii) "Work loss" means loss of income the injured person would have received from work he would have performed if he had not been injured, and expenses reasonably incurred by him in obtaining substitute services to avoid part or all of the loss of income reduced by any income from substitute work actually performed by him. Work loss does not include loss of income attributable to the injured person's unreasonable failure to perform other work or to engage substitute services of another. "Loss of income" includes income that would have been lost but for any income continuation plan providing income to the injured person.

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

(iv) "Survivor's economic loss" means loss after decedent's death of contributions of things of economic value to his survivors, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of decedent's death.

(v) "Survivor's replacement service loss" means expenses reasonably incurred by survivors after decedent's death in obtaining ordinary and nec-

essary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of the decedent's death and not subtracted in calculating survivor's economic loss.

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

(7) "Motor vehicle" means:

(i) A vehicle of a kind required to be registered under [the laws of this State relating to motor vehicles] or

(ii) A vehicle, including a trailer, designed for operation upon a public roadway by other than muscular power, except a vehicle used exclusively upon stationary rails or tracks. "Public roadway" means a way open to the use of the public for purposes of automobile travel.

(8) "Net loss" means loss less benefits or advantages, from sources other than basic and added reparation insurance, required to be subtracted from loss in calculating net loss (section 11).

(9) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage recoverable under the tort law of this State. The term does not include punitive or exemplary damages.

(10) "Owner" means a person, other than a lienholder or secured party, who owns or has title to a motor vehicle or is entitled to the use and possession of a motor vehicle subject to a security interest held by another person. The term does not include a lessee under a lease not intended as security.

(11) "Reparation obligor" means an insurer, self-insurer, obligated government, or assigned claims bureau providing basic or added reparation benefits under this Act.

(12) "Survivor" means a person identified as one entitled to receive benefits by reason of the death of another person.

(b) Other definitions appearing in this Act and the sections in which they appear are:

(1) Basic reparation insurance—section 7 (i).

(2) Obligated government—section 7 (g).

(3) Secured vehicle—section 7 (h).

- (4) Security covering the vehicle—section 7 (h).
- (5) Self-insurer—section 7 (g).

§ 2. Right to basic reparation benefits

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

(b) If the accident causing injury occurs outside this State, the following persons and their survivors suffering loss from injury arising out of maintenance or use of a motor vehicle have a right to basic reparation benefits:

(1) Basic reparation insureds; and

(2) The driver and other occupants of a secured vehicle, other than (i) a vehicle which is regularly used in the course of the business of transporting persons or property and which is one of 5 or more vehicles under common ownership, or (ii) a vehicle owned by an obligated government other than this State, its political subdivisions, municipal corporations, or public agencies.

§ 3. Obligation to pay basic reparation benefits

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

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

§ 4. Priority of applicability of security for payment of basic reparation benefits

(a) In case of injury to the driver or other occupant of a motor vehicle, if the accident causing the injury occurs while the vehicle is being used in the business of transporting persons or property, the security for payment of basic reparation benefits is the security covering the vehicle or, if none, the security under which the injured person is a basic reparation insured.

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

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

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

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

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

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

(e) Where a reparation obligor pays basic reparation benefits which another reparation obligor is obligated to pay under the priority provided in this Section, the reparation obligor is subrogated to all rights of the person to whom benefits are paid, including the rights to recover interest (section 23 (b)) and attorney's fees (section 24 (a)), for basic reparation benefits paid.

§ 5. Partial abolition of tort liability

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

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

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

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

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

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

(6) Damages for any work loss, replacement services loss, survivor's economic loss, and survivor's replacement services loss, not recoverable as basic reparation benefits by reason of the limitation contained in the provisions on standard weekly limit on benefits for those losses (section 13), that occur after the injured person is disabled by the injury for more than 6 months or after his death caused by the injury; and

(7) Damages for noneconomic detriment in excess of \$5,000, but only if the accident causes death, significant permanent injury, serious permanent disfigurement, or more than 6 months of complete inability of the injured person to work in an occupation. "Complete inability of an injured person to work in an occupation" means inability to perform, on even a part-time basis, even some of the duties required by his occupation or, if unemployed at the time of injury, by any occupation for which the injured person was qualified.

(b) For purposes of this section and the provisions on reparation obligor's rights of reimbursement, subrogation, and indemnity (section 6), a person does not intentionally cause harm merely because his act or failure to act is intentional or done with his realization that it creates a grave risk of harm.

§ 6. Reparation obligor's rights of reimbursement, subrogation and indemnity

(a) A reparation obligor does not have and may not directly or indirectly contract for a right of reimbursement from or subrogation to the proceeds of a claim for relief or cause of action for noneconomic detriment (section 5 (a) (7)) of a recipient of basic or added reparation benefits.

(b) Except as provided in subsection (a), whenever a person who receives or is entitled to receive basic or added reparation benefits for an injury has a claim or cause of action against any other person for breach of an obligation or duty causing the injury, the reparation obligor is subrogated to the rights of the claimant, and has a claim for relief or cause of action, separate from that of the claimant, to the extent that (i) elements of damage compensated for by basic or added reparation insurance are recoverable and (ii) the reparation obligor has paid or become obligated to pay accrued or future basic or added reparation benefits.

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

§ 7. Security covering motor vehicle

(a) This State, its political subdivisions, municipal corporations, and public agencies shall continuously provide pursuant to subsection (d) security

for the payment of basic reparation benefits in accordance with this Act for injury arising from maintenance or use of motor vehicles owned by those entities.

(b) The United States and its public agencies and any other state, its political subdivisions, municipal corporations, and public agencies, who own motor vehicles operated in this State with their permission, may provide pursuant to subsection (d) security for the payment of basic reparation benefits in accordance with this Act for injury arising from maintenance or use of those motor vehicles.

(c) Except for entities described in subsections (a) and (b), every owner of a motor vehicle registered in this State, or operated in this State by him or with his permission, shall continuously provide with respect to the motor vehicle while it is either present or registered in this State, and any other person may provide with respect to any motor vehicle, by a contract of insurance or by qualifying as a self-insurer, security for the payment of basic reparation benefits in accordance with this Act and security for payment of tort liabilities, arising from maintenance or use of the motor vehicle.

(d) Security may be provided by a contract of insurance or by qualifying as a self-insurer or obligated government in compliance with this Act.

(e) Self-insurance, subject to approval of the commissioner, is effected by filing with the commissioner in satisfactory form:

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

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

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

(f) An entity described in subsection (a) or (b) may provide security by lawfully obligating itself to pay basic reparation benefits in accordance with this Act.

(g) A person providing security pursuant to subsection (e) is a "self-insurer." An entity described in subsections (a) or (b) that has provided security pursuant to subsection (d) is an "obligated government."

(h) "Security covering the vehicle" is the insurance or other security so provided. The vehicle for which the security is so provided is the "secured vehicle."

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

(j) A motor vehicle may not be registered in this State unless evidence satisfactory to the Secretary of State is furnished that security has been provided as required by this section.

§ 8. Obligations upon termination of security

(a) An owner of a motor vehicle registered in this State who ceases to maintain security as required by the provisions on security (section 7) shall immediately surrender the registration certificate and license plates for the vehicle to the Secretary of State and may not operate or permit operation of the vehicle in this State until security has again been provided and proof of the security furnished as required by this Act.

(b) An insurer who has issued a contract of insurance and knows or has reason to believe the contract is for the purpose of providing security (section 7 (d)) shall immediately give notice to the Secretary of State of the termination of the insurance.

(c) If the Insurance Commissioner withdraws approval of security provided by a self-insurer or knows that the conditions for self-insurance have ceased to exist, he shall immediately give notice thereof to the Secretary of State.

(d) The requirements of subsections (b) and (c) may be waived or modified by rule of the Secretary of State.

§ 9. Included coverages

(a) An insurance contract which purports to provide coverage for basic reparation benefits or is sold with representation that it provides security covering a motor vehicle (section 7) has the legal effect of including all coverages required by this Act.

(b) Notwithstanding any contrary provision in it, every contract of liability insurance for injury, wherever issued, covering ownership, maintenance, or use of a motor vehicle, except a contract which provides coverage only for liability in excess of required minimum tort liability coverages (section 10), includes basic reparation benefit coverages and minimum security for tort liabilities required by this Act, while the vehicle is in this State, and qualifies as security covering the vehicle.

(c) An insurer authorized to transact or transacting business in this State may not exclude, in any contract of liability insurance for injury, wherever issued, covering ownership, maintenance, or use of a motor vehicle, except a contract providing coverage only for liability in excess of required minimum tort liability coverage (section 10), the basic reparation benefit coverages and required minimum security for tort liabilities required by this Act, while the vehicle is in this State.

§ 10. Required minimum tort liability insurance and territorial coverage

(a) The requirement of security for payment of tort liabilities (section 7) is fulfilled by providing:

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

(2) Liability coverage of not less than \$10,000 for all damages arising out of injury to or destruction of property, including the loss of use thereof, as a result of any one accident arising out of ownership, maintenance, use, loading, or unloading, of the secured vehicle; and

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

(b) The tort liability coverages required by this Act need not include coverage for the tort liability of a converter. For the purposes of this section, a person is not a converter if he uses the motor vehicle in the good faith belief he is legally entitled to do so.

(c) Subject to the provisions on approval of terms and forms (section 17), the requirement of security for payment of tort liabilities (section 7) may be met by a contract the coverage of which is secondary or excess to other applicable valid and collectible liability insurance. To the extent the secondary or excess coverage applies to liability within the minimum security required by this Act, it must be subject to conditions consistent with the system of compulsory liability insurance established by this Act.

§ 11. Calculation of net loss

(a) All benefits or advantages, reduced by reasonably incurred collection costs, that a person receives or is entitled to receive because of the injury from social security, workmen's compensation, and any state-required temporary, nonoccupational disability insurance are subtracted in calculating net loss.

(b) If a benefit or advantage received to compensate for loss of income because of injury, whether from basic reparation benefits or from any source of benefits or advantages subtracted under subsection (a), is not taxable income, the income tax saving that is attributable to his loss of income because of injury is subtracted in calculating net loss. Subtraction may not exceed 15 per cent of the net loss of taxable income and shall be in a lesser amount if the claimant furnishes to the insurer reasonable proof of a lower value of the income tax advantage.

§ 12. Standard replacement services loss exclusion

All replacement services loss sustained on the date of injury and the first 7 days thereafter is excluded in calculating basic reparation benefits.

§ 13. Standard weekly limit on benefits for certain losses

(a) Basic reparation benefits payable for work loss, survivor's economic loss, replacment services loss, and survivor's replacement services loss aris-

ing from injury to one person and attributable to the calendar week during which the accident causing injury occurs and to each calendar week thereafter may not exceed \$200. If the injured person's earnings or work are seasonal or irregular, the weekly limit shall be equitably adjusted or apportioned on an annual basis.

(b) Beginning in 1978 and at 5-year intervals thereafter, the \$200 per week standard weekly limit on benefits provided in subsection (a) shall be adjusted by multiplying \$200 by a number whose numerator is the Index of Real Wages for that year and whose denominator is the Index of Real Wages for the base year 1973, according to the latest available United States Department of Labor figures.

§ 14. Optional deductibles and exclusions

(a) At appropriately reduced premium rates, basic reparation insurers shall offer each of the following deductibles and exclusions, applicable only to claims of basic reparation insureds and, in case of death of a basic reparation insured, of his survivors:

(1) Deductibles in the amounts of \$100, \$300, and \$500 from all basic reparation benefits otherwise payable, except that if 2 or more basic reparation insureds to whom the deductible is applicable under the contract of insurance are injured in the same accident, the aggregate amount of the deductible applicable to all of them shall not exceed the specified deductible, which amount where necessary shall be allocated equally among them;

(2) An exclusion, in calculation of net loss, of 10 per cent of work loss and survivor's economic loss;

(3) An exclusion, in calculation of net loss, of all replacement services loss and survivor's replacement services loss; and

(4) A deductible, in the amount of \$1,000 per accident from all basic reparation benefits otherwise payable for injury to a person which occurs while he is operating or is a passenger on a two-wheeled motor vehicle.

(b) Subject to the provisions on approval of terms and forms (section 17), basic reparation insurers may offer the following additional exclusions, applicable only to claims of some or all basic reparation insureds and, in case of death of a basic reparation insured, of his survivors:

(1) Exclusions, in calculation of net loss, of a part of replacement services loss and survivor's replacement services loss; and

(2) Exclusions, in calculation of net loss, of any of those amounts and kinds of loss otherwise compensated by benefits or advantages a person receives or is unconditionally entitled to receive from any other specified source, if the other source has been approved specifically or as to type of source by the commissioner of insurance by rule or order adopted upon a determination by the commissioner (i) that the other source or type of source is reliable and that approval of it is consonant with the purposes of

this Act, and (ii) if the other source is a contract of insurance, that it provides benefits for accidental injuries generally and in amounts at least as great for other injuries as for injuries resulting from motor vehicle accidents.

§ 15. Property damage exclusion

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

§ 16. Benefits provided by optional added reparation insurance

(a) Basic reparation insurers may offer optional added reparation coverages providing other benefits as compensation for injury or harm arising from ownership, maintenance, or use of a motor vehicle, including benefits for loss excluded by limits on hospital charges and funeral, cremation, and burial expenses, loss excluded by limits on work loss, replacement services loss, survivor's economic loss, and survivor's replacement services loss, harm to property, loss of use of motor vehicles, and noneconomic detriment. The insurance commissioner may adopt rules requiring that specified optional added reparation coverages be offered by insurers writing basic reparation insurance, or that specified coverages be governed by terms similar to those required by this Act in the case of basic reparation benefits in the provisions on reparation obligor's duty to respond to claims (section 23), fees of claimant's attorney (section 24), fees of reparation obligor's attorney (section 25), settlements (section 26), and judgments (section 27).

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

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

(2) A coverage for all collision and upset damage to the extent that the insured has a valid claim in tort against another identified person or would have had such a valid claim but for the abolition of tort liability for damages for harm to motor vehicles (section 5 (a) (4)); and

(3) The same coverage as in paragraph (2), but subject to a deductible of \$100.

(c) Subject to the provision on approval of terms and forms (section 17), basic reparation insurers may offer other optional added reparation coverages for harm to motor vehicles or their contents, or both, or other like coverages subject to different deductibles or without deductibles.

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

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

§ 17. Approval of terms and forms

Terms and conditions of contracts and certificates or other evidence of insurance coverage sold or issued in this State providing motor vehicle tort liability, basic reparation, and added reparation insurance coverages, and of forms used by insurers offering these coverages, are subject to approval and regulation by the Insurance Commissioner. The commissioner shall approve only terms and conditions consistent with the purposes of this Act and fair and equitable to all persons whose interests may be affected. The commissioner may limit by rule the variety of coverages available in order to give insurance purchasers reasonable opportunity to compare the cost of insuring with various insurers.

§ 18. Assigned claims

(a) A person entitled to basic reparation benefits because of injury covered by this Act may obtain them through the assigned claims plan established pursuant to the provisions relating thereto (section 19) and in accordance with the provisions on time for presenting claims under the assigned claims plan (section 20) if:

(1) Basic reparation insurance is not applicable to the injury for a reason other than those specified in the provisions on converted vehicles (section 21) and intentional injuries (section 22);

(2) Basic reparation insurance is not applicable to the injury because the injured person converted a motor vehicle while he was under 15 years of age;

(3) Basic reparation insurance applicable to the injury cannot be identified;

(4) Basic reparation insurance applicable to the injury is inadequate to provide the contracted-for benefits because of financial inability of a reparation obligor to fulfill its obligation; or

(5) A claim for basic reparation benefits is rejected by a reparation obligor for a reason other than that the person is not entitled under this Act to the basic reparation benefits claimed.

(b) If a claim qualifies for assignment under paragraphs (3), (4), or (5) of subsection (a), the assigned claims bureau or any reparation obligor to whom the claim is assigned is subrogated to all rights of the claimant, including the right to recover interest (section 23 (b)) and attorney's fees (section 24 (a)), against any reparation obligor, its successor in interest or substitute, legally obligated to provide basic reparation benefits to the claimant, for basic reparation benefits provided by the assignee.

(c) Except in case of a claim assigned under subsection (a) (4), if a person receives basic reparation benefits through the assigned claims plan, all benefits or advantages he receives or is entitled to receive as a result of the injury, other than by way of succession at death, death benefits from life insurance, or in discharge of familial obligations of support, are subtracted in calculating net loss.

(d) An assigned claim of a person who does not comply with the requirement of providing security (section 7 (c) and (d)) for the payment of basic reparation benefits, or of a person as to whom the security is invalidated because of his fraud or willful misconduct, is subject to (1) all the optional deductibles and exclusions to the maximum required to be offered under this Act (section 14 (a)) and (2) a deduction in the amount of \$500 for each year or part thereof of the period of his continuous failure to provide security, applicable to any benefits otherwise payable.

§ 19. Assigned claims plan

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

(b) The assigned claims bureau shall promptly assign each claim and notify the claimant of the identity and address of the assignee of the claim. Claims shall be assigned so as to minimize inconvenience to claimants. The assignee thereafter has rights and obligations as if he had issued a policy of basic reparation insurance complying with this Act applicable to the injury or, in case of financial inability of a reparation obligor to perform its obligations, as if the assignee had written the applicable basic reparation insurance, undertaken the self-insurance, or lawfully obligated itself to pay reparation benefits.

§ 20. Time for presenting claims under assigned claims plan

(a) Except as provided in subsection (b), a person authorized to obtain basic reparation benefits through the assigned claims plan shall notify the bureau of his claim within the time that would have been allowed for commencing an action for those benefits (section 28) if there had been identifiable coverage in effect and applicable to the claim.

(b) If timely action for basic reparation benefits is commenced against a reparation obligor who is unable to fulfill his obligations because of financial inability, a person authorized to obtain basic reparation benefits through the assigned claims plan shall notify the bureau of his claim within 6 months after discovery of the financial inability.

§ 21. Converted motor vehicles

Except as provided for assigned claims (section 18 (a) (2)), a person who converts a motor vehicle is disqualified from basic or added reparation bene-

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

§ 22. Intentional injuries

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

§ 23. Reparation obligor's duty to respond to claims

(a) Basic reparation benefits are payable monthly as loss accrues. Loss accrues not when injury occurs, but as work loss, replacement services loss, survivor's economic loss, survivor's replacement services loss, or allowable expense is incurred. Benefits are overdue if not paid within 30 days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, unless the reparation obligor elects to accumulate claims for periods not exceeding 31 days and pays them within 15 days after the period of accumulation. If reasonable proof is supplied as to only part of a claim, and the part totals \$100 or more, the part is overdue if not paid within the time provided by this section. Allowable expense benefits may be paid by the reparation obligor directly to persons supplying products, services, or accommodations to the claimant.

(b) Overdue payments of basic reparation benefits bear interest at the rate of 18 per cent per annum.

(c) A claim for basic reparation benefits shall be paid without deduction for the benefits which are to be subtracted pursuant to the provisions on calculation of net loss (section 11 (a)) and to the exclusions authorized under section 14 (b) (2), if these benefits have not been paid to the claimant before the reparation benefits are overdue or the claim is paid. The reparation obligor is entitled to reimbursement from the person obligated to make the payments or from the claimant who actually receives the payments.

(d) A reparation obligor may bring an action to recover basic reparation benefits which are not payable, but are in fact paid, because of an intentional

misrepresentation of a material fact, upon which the reparation obligor relies, by the insured or by a person providing an item of allowable expense. The action may be brought only against the person providing the item of allowable expense, unless the insured has intentionally misrepresented the facts or knew of the misrepresentation. An insurer may offset amounts he is entitled to recover from the insured under this subsection against any basic or added reparation benefits otherwise due.

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

§ 24. Fees of claimant's attorney

(a) If overdue benefits are recovered in an action against the reparation obligor or paid by the reparation obligor after receipt of notice of the attorney's representation, a reasonable attorney's fee for advising and representing a claimant on a claim or in an action for basic reparation benefits shall be paid by the reparation obligor to the attorney. No part of the fee for representing the claimant in connection with these benefits is a charge against benefits otherwise due the claimant. All or part of the fee may be deducted from the benefits otherwise due the claimant if any significant part of his claim for benefits was fraudulent or so excessive as to have no reasonable foundation.

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

§ 25. Fees of reparation obligor's attorney

A reparation obligor shall be allowed a reasonable attorney's fee for defending a claim for basic reparation benefits that is fraudulent or so excessive as to have no reasonable foundation. The fee may be treated as an offset to benefits due or which thereafter accrue. The reparation obligor may recover from the claimant any part of the fee not offset or otherwise paid.

§ 26. Lump sum and installment settlements

(a) If the reasonably anticipated net loss subject to the settlement does not exceed \$2,500, a claim of an individual for basic reparation benefits arising from injury, including a claim for future loss other than allowable expense, may be discharged by a settlement for an agreed amount payable in installments, or in lump sum. If the reasonably anticipated net loss subject to the settlement exceeds \$2,500, the settlement may be made with approval of the Superior Court upon a finding by the court that the settlement is in the best interest of the claimant. Upon approval of the settlement, the court may make appropriate orders concerning the safeguarding and disposing of the proceeds of the settlement. A settlement agreement may also provide that the reparation obligor shall pay the reasonable cost of appropriate medi-

cal treatment or procedures, with reference to a specified condition, to be performed in the future.

(b) A settlement agreement for an amount payable in installments may be modified as to amounts to be paid in the future, if it is shown that a material and substantial change of circumstances has occurred or that there is newly-discovered evidence concerning the claimant's physical condition, loss, or rehabilitation, which could not have been known previously or discovered in the exercise of reasonable diligence.

(c) A settlement agreement may be set aside if it is procured by fraud or its terms are unconscionable.

§ 27. Judgments for future benefits

(a) In an action by a claimant, a lump sum or installment judgment may be entered for basic reparation benefits, other than allowable expense, that would accrue after the date of the award. A judgment for benefits for allowable expense that would accrue after the date of the award may not be entered. In an action for reparation benefits or to enforce rights under this Act, however, the court may enter a judgment declaring that the reparation obligor is liable for the reasonable cost of appropriate medical treatment or procedures, with reference to a specified condition, to be performed in the future if it is ascertainable or foreseeable that treatment will be required as a result of the injury for which the claim is made.

(b) At the instance of the claimant, a court may commute all or part of future losses, other than allowable expense, to a fixed sum, but only upon a finding of one or more of the following:

(1) That the award will promote the health and contribute to the rehabilitation of the injured person;

(2) That the present value of all benefits other than allowable expense to accrue thereafter does not exceed \$1,000; or

(3) That the parties consent and the award is in the best interest of the claimant.

(c) An installment judgment for benefits, other than allowable expense, that will accrue thereafter may be entered only for a period as to which the court can reasonably determine future net loss. An installment judgment may be modified as to amounts to be paid in the future upon a finding that a material and substantial change of circumstances has occurred, or that there is newly-discovered evidence concerning the claimant's physical condition, loss, or rehabilitation, which could not have been known previously or discovered in the exercise of reasonable diligence.

(d) The court may make appropriate orders concerning the safeguarding and disposing of funds collected under the judgment.

(e) Appeals from a judgment for basic or added reparation benefits may be taken in accordance with Rules of Civil Procedure of this State.

§ 28. Limitation of actions

(a) If no basic or added reparation benefits have been paid for loss arising otherwise than from death, an action therefor may be commenced not later than 2 years after the injured person suffers the loss and either knows, or in the exercise of reasonable diligence should know, that the loss was caused by the accident, or not later than 4 years after the accident, whichever is earlier. If basic or added reparation benefits have been paid for loss arising otherwise than from death, an action for further benefits, other than survivor's benefits, by either the same or another claimant, may be commenced not later than 2 years after the last payment of benefits.

(b) If no basic or added reparation benefits have been paid to the decedent or his survivors, an action for survivor's benefits may be commenced not later than one year after the death or 4 years after the accident from which death results, whichever is earlier. If survivor's benefits have been paid to any survivor, an action for further survivor's benefits by either the same or another claimant may be commenced not later than 2 years after the last payment of benefits. If basic or added reparation benefits have been paid for loss suffered by an injured person before his death resulting from the injury, an action for survivor's benefits may be commenced not later than one year after the death or 4 years after the last payment of benefits, whichever is earlier.

(c) If timely action for basic reparation benefits is commenced against a reparation obligor and benefits are denied because of a determination that the reparation obligor's coverage is not applicable to the claimant under the provisions on priority of applicability of basic reparation security (section 4), an action against the applicable reparation obligor or the reparation obligor to whom a claim is assigned under the assigned claims plan (section 19) may be commenced not later than 60 days after the determination becomes final or the last date on which the action could otherwise have been commenced, whichever is later.

(d) Except as subsections (a), (b), or (c) prescribe a longer period, an action by a claimant on an assigned claim which has been timely presented (section 20) may be commenced not later than 60 days after the claimant receives written notice of rejection of the claim by the reparation obligor to which it was assigned.

(e) A calendar month during which a person does not suffer loss for which he is entitled to basic or added reparation benefits is not a part of the time limited for commencing an action, except that the months excluded for this reason may not exceed 120.

(f) If a person entitled to basic or added reparation benefits is under legal disability when the right to bring an action for the benefits first accrues, the period of his disability is not a part of the time limited for commencement of the action.

§ 29. Assignment of benefits

An assignment of or agreement to assign any right to benefits under this Act for loss accruing in the future is unenforceable except as to benefits for:

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

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

§ 30. Deduction and set-off

Except as otherwise provided in this Act, basic reparation benefits shall be paid without deduction or set-off.

§ 31. Exemption of benefits

(a) Basic or added reparation benefits for allowable expense are exempt from garnishment, attachment, execution, and any other process or claim, except upon a claim of a creditor who has provided products, services, or accommodations to the extent benefits are for allowable expense for those products, services, or accommodations.

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

§ 32. Mental or physical examinations

(a) If the mental or physical condition of a person is material to a claim for past or future basic or added reparation benefits, the reparation obligor may petition the Superior Court for an order directing the person to submit to a mental or physical examination by a physician. Upon notice to the person to be examined and all persons having an interest, the court may make the order for good cause shown. The order shall specify the time, place, manner, conditions, scope of the examination, and the physician by whom it is to be made.

(b) If requested by the person examined, the reparation obligor causing a mental or physical examination to be made shall deliver to the person examined a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses, and conclusions, and reports of earlier examinations of the same condition. By requesting and obtaining a report of the examination ordered or by taking the deposition of the physician, the person examined waives any privilege he may have, in relation to the claim for basic or added reparation benefits, regarding the testimony of every other person who has examined or may thereafter examine him respecting the same condition. This subsection does not preclude discovery of a report of an examining physician, taking a deposition of the physician, or other discovery procedures in accordance with any rule of court or other provision of law. This subsection applies to examinations made by agreement of the person examined and the reparation obligor, unless the agreement provides otherwise.

(c) If any person refuses to comply with an order entered under this section the court may make any just order as to the refusal, but may not

find a person in contempt for failure to submit to a mental or physical examination.

§ 33. Disclosure of facts about injured person

(a) Upon request of a basic or added reparation claimant or reparation obligor, information relevant to a claim for basic or added reparation benefits shall be disclosed as follows:

(1) An employer shall furnish a statement of the work record and earnings of an employee upon whose injury the claim is based. The statement shall cover the period specified by the claimant or reparation obligor making the request and may include a reasonable period before, and the entire period after, the injury.

(2) The claimant shall deliver to the reparation obligor a copy of every written report, previously or thereafter made, relevant to the claim, and available to him, concerning any medical treatment or examination of a person upon whose injury the claim is based and the names and addresses of physicians and medical care facilities rendering diagnoses or treatment in regard to the injury or to a relevant past injury, and the claimant shall authorize the reparation obligor to inspect and copy relevant records of physicians and of hospitals, clinics, and other medical facilities.

(3) A physician or hospital, clinic, or other medical facility furnishing examinations, services, or accommodations to an injured person in connection with a condition alleged to be connected with an injury upon which a claim is based, upon authorization of the claimant, shall furnish a written report of the history, condition, diagnoses, medical tests, treatment, and dates and cost of treatment of the injured person, and permit inspection and copying of all records and reports as to the history, condition, treatment, and dates and cost of treatment.

(b) Any person other than the claimant providing information under this section may charge the person requesting the information for the reasonable cost of providing it.

(c) In case of dispute as to the right of a claimant or reparation obligor to discover information required to be disclosed, the claimant or reparation obligor may petition the Superior Court for an order for discovery including the right to take written or oral depositions. Upon notice to all persons having an interest, the order may be made for good cause shown. It shall specify the time, place, manner, conditions, and scope of the discovery. To protect against annoyance, embarrassment, or oppression, the court may enter an order refusing discovery or specifying conditions of discovery and directing payment of costs and expenses of the proceeding, including reasonable attorney's fees.

§ 34. Rehabilitation treatment and occupational training

(a) A basic reparation obligor is responsible for the cost of a procedure or treatment for rehabilitation or a course of rehabilitative occupational

training if the procedure, treatment, or training is reasonable and appropriate for the particular case, its cost is reasonable in relation to its probable rehabilitative effects, and it is likely to contribute substantially to rehabilitation, even though it will not enhance the injured person's earning capacity.

(b) An injured person who has undertaken a procedure or treatment for rehabilitation or a course of rehabilitative occupational training, other than medical rehabilitation procedure or treatment, shall notify the basic reparation obligor that he has undertaken the procedure, treatment, or training within 60 days after an allowable expense exceeding \$1,000 has been incurred for the procedure, treatment, or training, unless the basic reparation obligor knows or has reason to know of the undertaking. If the injured person does not give the required notice within the prescribed time, the basic reparation obligor is responsible only for \$1,000 or the expense incurred after the notice is given and within the 60 days before the notice, whichever is greater, unless failure to give timely notice is the result of excusable neglect.

(c) If the injured person notifies the reparation obligor of a proposed specified procedure or treatment for rehabilitation, or a proposed specified course of rehabilitative occupational training, and the reparation obligor does not promptly thereafter accept responsibility for its cost, the injured person may move the court in an action to adjudicate his claim, or, if no action is pending, bring an action in the Superior Court, for a determination that the reparation obligor is responsible for its cost. A reparation obligor may move the court in an action to adjudicate the injured person's claim, or, if no action is pending, bring an action in the Superior Court, for a determination that it is not responsible for the cost of a procedure, treatment, or course of training which the injured person has undertaken or proposes to undertake. A determination by the court that the reparation obligor is not responsible for the cost of a procedure, treatment, or course of training is not res judicata as to the propriety of any other proposal or the injured person's right to other benefits. This subsection does not preclude an action by the basic reparation obligor or the injured person for declaratory relief under any other law of this State, nor an action by the injured person to recover basic reparation benefits.

(d) If an injured person unreasonably refuses to accept a rehabilitative procedure, treatment, or course of occupational training, a basic reparation obligor may move the court, in an action to adjudicate the injured person's claim, or if no action is pending, may bring an action in the Superior Court, for a determination to limit recovery of benefits to an amount equal to benefits that in reasonable probability would be due if the injured person had submitted to the procedure, treatment, or training, and for other reasonable orders. In determining whether an injured person has reasonable ground for refusal to undertake the procedure, treatment, or training, the court shall consider all relevant factors, including the risks to the injured person, the extent of the probable benefit, the place where the procedure, treatment, or training is offered, the extent to which the procedure, treatment, or training is recognized as standard and customary, and whether the imposition of sanctions because of the person's refusal would abridge his right to the free exercise of his religion.

§ 35. Availability of insurance

(a) The Insurance Commissioner shall establish and implement or approve and supervise a plan assuring that liability and basic and added reparation insurance for motor vehicles will be conveniently and expeditiously afforded, subject only to payment or provision for payment of the premium, to all applicants for insurance required by this Act to provide security for payment of tort liabilities and basic reparation benefits and who cannot conveniently obtain insurance through ordinary methods at rates not in excess of those applicable to applicants under the plan. The plan may be by assignment of applicants among insurers, pooling, other joint insuring or reinsuring arrangement, or any other method that will reasonably accomplish the purposes of this section, including any arrangement or undertaking by insurers that results in all applicants being conveniently afforded the insurance coverages on reasonable and not unfairly discriminatory terms through ordinary markets.

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

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

(d) Subject to supervision and approval of the Insurance Commissioner, insurers may consult and agree with each other and with other appropriate persons as to the organization, administration, and operation of the plan and as to rates and rate modifications for insurance coverages provided under the plan. Rates and rate modifications adopted or charged for insurance coverages provided under the plan shall be first adopted or approved by the Insurance Commissioner and be reasonable and not unfairly discriminatory among applicants for insurance under the plan.

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

§ 36. Termination or modification of insurance by insurer

(a) Every contract of insurance providing security under this Act (section 7) for a motor vehicle which is registered in this State and is not one of 5 or more motor vehicles under common ownership insured under a single insuring agreement, except as provided by subsections (b) and (f), may be

canceled, modified, not renewed, or otherwise terminated by the insurer only at specified dates or intervals which may not be less than one year after the inception of coverage or thereafter less than one year apart.

(b) An insurer may terminate insurance if written notice of termination is mailed or delivered to the insured at least 15 days before the effective date of termination:

(1) By cancellation at any time within 75 days after the inception of initial coverage; or

(2) For nonpayment of premium when due.

(c) Except as permitted in subsection (b), any termination of insurance by an insurer which is permitted by the insurance contract and not prohibited by subsection (a), including any refusal by the insurer to renew the insurance at the expiration of its term and any modification by the insurer of the terms and conditions of the insurance unfavorable to the insured, is nevertheless ineffective, unless written notice of intention to modify, not to renew, or otherwise to terminate the insurance has been mailed or delivered to the insured at least 20 days before the effective date of the modification, expiration, or other termination of the insurance.

(d) An insurer who has canceled, refused to renew, or otherwise terminated insurance shall mail or deliver to the insured, within 10 days after receipt of a written request, a statement of the reasons for the cancellation, refusal to renew, or other termination of the insurance coverage.

(e) For purposes of this section only:

(1) "Nonpayment of premium when due" includes the nonpayment when due of any installment of premium or of any financial obligation to any person who has financed the payment of the premium under any premium finance plan, agreement, or arrangement; and

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

(f) Except as otherwise stated in subsection (e), this section does not limit or apply to any termination, modification, or cancellation of the insurance, or to any suspension of insurance coverage, by or at the request of the insured or upon the sale or other transfer of the secured vehicle to a person who is not a basic reparation insured under that contract.

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

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

§ 37. Penalties

An owner of a motor vehicle who operates the vehicle or permits it to be operated in this State when he knows or should know that he has failed to comply with the requirement that he provide security covering the vehicle (section 7) is guilty of a misdemeanor and upon conviction may be fined not more than \$300 or imprisoned for not more than 90 days, or both.

§ 38. Equitable allocation of burdens among insurers

(a) Reparation obligors paying basic or added reparation benefits and owners of motor vehicles suffering uninsured physical damage to the vehicles are entitled to proportionate reimbursement from other reparation obligors to assure that the allocation of the financial burden of losses will be reasonably consistent with the propensities of different vehicles to affect probability and severity of injury to persons or physical damage to vehicles because the vehicles are of different weight or have different devices for the protection of occupants, other different characteristics, or different regular uses. Reparation obligors paying basic or added reparation benefits for loss arising from injury to persons, and self-insurers who are natural persons bearing equivalent losses arising from their own injuries, are entitled to proportionate reimbursement from basic reparation obligors of other involved vehicles. Insurers paying added reparation benefits for physical damage to vehicles and owners of motor vehicles suffering uninsured physical damage to vehicles are entitled to proportionate reimbursement from reparation obligors who provide property damage liability coverage on other involved vehicles.

(b) Reparation obligors shall maintain in accordance with rules of the Insurance Commissioner statistical records from which can be determined the propensities of different vehicles to affect probability and severity of injury to persons and physical damage to vehicles.

(c) When the Insurance Commissioner determines that adequate supporting information is available he may establish by rule and maintain a system under which rights of reimbursement are determined through pooling, reinsurance, or other form of reallocation procedure in lieu of case-by-case reimbursement. The system may apply to (1) all reparation obligors or (2) all reparation obligors except those who are parties to an agreement entered into under this subsection and approved by the Insurance Commissioner. Two or more reparation obligors, with approval of the Insurance Commissioner, may enter into an agreement for settlement of their rights of proportionate reimbursement through a system of pooling, reinsurance, or other reallocation procedure in lieu of case-by-case reimbursement.

(d) The Insurance Commissioner may not approve or establish case-by-case proportionate reimbursement on the basis of fault in cases involving only privately owned passenger motor vehicles designed to carry 10 or fewer passengers.

(e) All claims for case-by-case proportionate reimbursement between insurers, if not settled by agreement, shall be submitted to binding intercompany arbitration in accordance with the arbitration laws of this State.

§ 39. Allocation of burdens until system established

If, in a particular case, there is no applicable system of proportionate reimbursement as authorized by the provisions on equitable allocation of burdens among insurers (section 38 (c)) and the Insurance Commissioner has not adopted by rule other criteria for proportionate reimbursement consistent with those provisions (section 38 (a)), the following standards for case-by-case proportionate reimbursement apply:

(1) In accidents involving motor vehicles in different weight classes, burdens of losses shall be adjusted among reparation obligors and owners of the vehicles in accordance with this section. Adjustments apply to burdens of losses of basic and added reparation benefits and to burdens of losses of physical damage to the vehicles.

(2) The Insurance Commissioner shall adopt rules classifying motor vehicles into a number of classes according to weight, including cargo capacity. All passenger vehicles weighing less than 5,000 pounds and other vehicles weighing less than 4,000 pounds apart from cargo capacity shall be included in a single class. For the purposes of this section, a vehicle in this class is a "low-weight vehicle." The commissioner shall assign by rule to each class, except the low-weight class, a number of percentages determined as hereinafter provided. The highest percentage for a class applies to accidents between vehicles in that class and low-weight vehicles. Other percentages apply to accidents between vehicles of each lighter weight class and vehicles of the class to which the percentage is assigned.

(3) In an accident involving a vehicle of a lighter class and a vehicle of a heavier class, a proportion of costs which would otherwise fall on the owner of the lighter vehicle or the reparation obligors paying or obligated to pay added reparation benefits for physical damage to the lighter vehicle or basic or added reparation benefits for injury to the owner, driver, or other occupant of the lighter vehicle is imposed upon the reparation obligor of the heavier vehicle. The proportion of costs to be transferred is the percentage assigned under paragraph (2).

(4) Percentages assigned under paragraph (2) shall be based on evidence of the average increase in severity of occupant injury and vehicle damage sustained by vehicles of the various lighter classes in accidents involving the class of heavier vehicles to which the percentage is assigned. Percentages shall be set to provide that reparation obligors and owners of vehicles shall bear, on the average, the costs which would result from accidents involving other vehicles of the same class and that reparation obligors and owners of vehicles in each heavier class shall have transferred to them the percentages of costs which on the average arise from the greater weight of vehicles of their class.

(5) Until the Insurance Commissioner, in accordance with paragraph (2), has adopted rules classifying motor vehicles into classes according to weight and assigning percentages to each class, the percentage presumptively applying between a low-weight vehicle and a vehicle not a low-weight vehicle, or between 2 vehicles not low-weight vehicles, shall be de-

terminated by subtracting the weight of the lighter vehicle from the weight of the heavier vehicle, including cargo capacity, dividing the difference by the combined weight of the vehicles, and multiplying by 100 to convert to percentage. However, another percentage applies if a party claiming or defending against a claim for reimbursement under this paragraph proves that the other percentage is more consistent with allocating the financial burden of losses according to the propensities of vehicles of the different classes to affect probability and severity of injury to persons or physical damage to vehicles.

(6) In accidents involving more than 2 vehicles each lighter vehicle shall have transferred from it to reparation obligors of the heavier vehicles involved the percentage of cost designated for transfer to the heaviest of those vehicles. Reparation obligors of the heavier vehicles shall contribute to the transferred cost in proportion to the respective percentages designated for them in accidents with vehicles of the class of the lighter vehicle from which the cost is transferred.

§ 40. Rates

Rate making and regulation of rates for basic and added reparation insurance are governed by the laws relating to motor vehicle tort liability.

§ 41. Rules

The Insurance Commissioner may adopt rules to provide effective administration of this Act which are consistent with the purposes of this Act and fair and equitable to all persons whose interests may be affected.

§ 42. Rules of Secretary of State

The Secretary of State may adopt rules to implement and provide effective administration of the provisions on evidence of security (section 7 (j)) and termination of security (section 8).

§ 43. Uniformity of application and construction

This Act shall be so applied and construed as to effectuate its general purpose and to make uniform the law with respect to the subject of this Act among those states which enact it.

§ 44. Severability

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

(b) If any restriction on the retained tort liability in paragraph (6) or paragraph (7) of subsection (a) of section 5, or application thereof to any person or circumstance, is held invalid, this Act shall be interpreted as if the paragraph containing the invalid restriction had not been enacted.

§ 45. Short title

This Act may be cited as the "Uniform Motor Vehicle Accident Reparations Act."

§ 46. Time of taking effect

Accidents occurring before the effective date of this Act are not covered by or subject to this Act. The Insurance Commissioner and the Secretary of State shall exercise, prior to the effective date of this Act, the authority vested in them under this Act to do all things necessary to implement the Act on the effective date.

STATEMENT OF FACT

The purpose of this bill is reflected in the title.