

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1770

S. P. 580

In Senate, April 11, 1973

Approved by a Majority of the Committee on Reference of Bills pursuant to Joint Rule No. 10. Referred to the Committee on Business Legislation. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Marcotte of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Providing for No-fault Automobile Insurance.

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

Sec. 1. R. S, T. 29, c 5, sub-c. 1, Article 1-A, additional. Subchapter 1 of chapter 5 of Title 29 of the Revised Statutes, as amended, is further amended by adding a new Article 1-A to read as follows:

ARTICLE 1-A. INSURANCE

§ 131. Definitions

As used in this Article, unless the context otherwise indicates, the following words shall have the following meanings.

1. Highway. "Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

2. Injured. "Injured" means bodily harm and bodily malfunction, disease or aggravation of disease including death resulting therefrom at any time, arising out of an accident involving a motor vehicle, provided that the injury must occur within 2 years following the accident or it must be medically ascertainable within 2 years following the accident that an extension or complication of the original injury is reasonably certain to continue or develop.

3. Insured motor vehicle. "Insured motor vehicle" means the motor vehicle identified or described in the policy issued to the named insured.

4. Loss. "Loss" means economic detriment which accrued within 4 years following the date of the accident, as a result of injury, consisting only of

allowable expenses, work loss and survivor's loss if the injury caused death. Economic detriment such as loss of income, is loss if it arises from the interference with work caused by pain, or physical or mental impairment.

A. "Allowable expense" means reasonable charges incurred for reasonably needed products, services and accommodations, including reasonable expense for medical, hospital, dental, nursing, ambulance and prosthetic services and rehabilitation and rehabilitative occupational training and for any remedial treatment and that rendered in accordance with a recognized religious method of healing. Allowable expense does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other extended care facility in excess of reasonable and customary charge for semi-private accommodations unless intensive care is medically required; and does not include a total charge in excess of \$1,000 for expenses of all types in any way related to funeral and burial. "Extended care facility" means an institution primarily engaged in providing skilled nursing care and related services for patients who require post-hospital, medical or nursing care or rehabilitation services.

B. "Survivor's loss" means loss after decedent's death of contribution of money or tangible things of economic value, not including services, that his surviving next of kin would have received from the decedent had he not suffered the injury causing death and expenses reasonably incurred by them after decedent's death in obtaining ordinary and necessary services in lieu of things that decedent would have performed for their benefit had he not suffered the injury causing death.

C. "Work loss" means loss of income from work the injured person would have performed, including income from self-employment, had he not been injured, reduced by any income from substitute work actually performed by the injured person or by income the injured person would have earned in available and appropriate substitute work which he was capable of performing but unreasonably failed to undertake and expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those, had he not been injured, he would have performed not for income but for the benefit of himself or his family.

5. Motor vehicle "Motor vehicle" means a power-driven vehicle designed for operation upon the highway and intended for the carriage of a driver or passenger or property.

6. Net loss. "Net loss" means loss less subtractable benefits. "Subtractable benefits" means those benefits or advantages from sources other than no-fault insurance which are required by the provisions on subtractable benefits to be subtracted from loss in calculating net loss.

7. No-fault benefits. "No-fault benefits" means those benefits payable under the provisions on benefits provided by no-fault insurance, subject to deductions, exclusions, limitations and other conditions of this Article.

8. No-fault insured. "No-fault insured" means a person identified by name in a policy as an insured under that policy or a relative or a minor child

over whom a person named in the policy has custody, residing in the same household. A person resides in the same household if he usually makes his home in the same family unit, although temporarily living elsewhere.

9. Operation of a motor vehicle. "Operation of a motor vehicle" means the use of a motor vehicle for the transportation of one or more persons, or transportation of property, including occupancy of the vehicle by one or more persons when stopped or parked on a highway and the maintenance of a motor vehicle when the maintenance task is being conducted while the vehicle is on the highway.

10. Pedestrian. "Pedestrian" means any person who is not an occupant of a motor vehicle and includes any person who is entering into or alighting from a motor vehicle.

§ 132. Compulsory motor vehicle insurance coverage; limits

Every owner or registered owner of a motor vehicle registered or principally garaged in this State shall maintain motor vehicle liability insurance coverage, under provisions approved by the Insurance Commissioner insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of a motor vehicle and such coverage shall be at least in:

1. An amount limit of \$25,000 exclusive of interest and costs on account of injury to, or death of, one person in any one accident; and
2. An amount limit, subject to such limit for any one person so injured or killed, of \$50,000 exclusive of interest and costs, on account of injury to, or death of, more than one person in any one accident;
3. An amount or limit of \$5,000 exclusive of interest and costs, for damage to property in any one accident.

§ 133. Mandatory no-fault benefits

Every motor vehicle liability insurance policy insuring a motor vehicle, as defined in this Article against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of ownership, operation, maintenance or use of a motor vehicle, shall provide additional coverage, as hereinafter in this Article defined under provisions approved by the Insurance Commissioner for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured, members of his family residing in his household who sustained bodily injury as a result of an automobile accident, to other persons sustaining bodily injury while occupying the motor vehicle of the named insured or while using such motor vehicle with the permission of the named insured and to pedestrians, sustaining bodily injury caused by the named insured's motor vehicle, or struck by an object propelled by or from such motor vehicle.

The minimum limit of liability of the insurer obligated to pay no-fault benefits shall be in the amount of \$2,000 with respect to each person entitled to

receive benefits under this Article and without limit as to the total number of recipients of benefits.

§ 134. Benefits provided by no-fault benefit insurance

Except as provided in this Article, the no-fault benefit insurer is liable to pay benefits, without reference to fault, under the conditions stated in this Article, reimbursing persons suffering loss for the net loss suffered through injury arising out of the operation of a motor vehicle.

§ 135. Intentional injuries

A person intentionally causing or attempting to cause injury to himself or another is disqualified from no-fault benefits for injury arising from his acts, including benefits otherwise due him as a survivor. In the case of the death of a person intentionally causing or attempting to cause injury to himself, his survivors are not entitled to benefits for survivors' loss. A person intentionally causes or attempts to cause injury if he acts or fails to act for the purpose of causing injury. A person does not intentionally cause or attempt to cause injury 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 if the act or omission causing the injury is for the purpose of averting bodily harm to himself or another person.

§ 136. Converted vehicles

Except under an insurance policy in which the converter is himself a no-fault benefit insured, a person who converts a motor vehicle is disqualified from basic or added reparation benefits, including benefits otherwise due him as a survivor, for injuries arising from the maintenance or use of the converted vehicle, and, in the case of his death, his survivors are not entitled to benefits for survivors' loss. For the purpose of this section, a person is not a converter if he uses the motor vehicle with a good faith belief that he is legally entitled to use it.

§ 137. Subtractable benefits

In calculating net loss, the benefits or advantages a person receives or is entitled to receive because of the injury shall be subtracted only to the extent the beneficiary is entitled to receive or has received payment of the benefits or advantages from a state or federal workmen's compensation statutory plan or a public health statutory plan.

§ 138. Insurers' rights of reimbursement

1. Whenever a recipient of no-fault benefits recovers in tort for injury, the insurer paying the no-fault benefits has a right of reimbursement out of the tort recovery. The reimbursement shall be in the amount of no-fault benefits paid by the insurer. The tort recovery shall also be credited against no-fault benefits thereafter accruing. Attorneys' fees and costs, if any, shall be assessed against insurer and claimant in the proportion each benefits from the tort recovery.

2. The no-fault benefit insurer has no right of subrogation to any cause of action of a recipient of no-fault benefits or to bring such an action in its own name, nor may the policy of no-fault benefit insurance confer such rights upon the insurer.

§ 139. Priority of applicability of insurance policies

1. Except as otherwise provided in this section, the only no-fault benefit insurance applicable to an injury arising out of the operation of a motor vehicle is the insurance applicable to the motor vehicle in which the injured person was the operator or an occupant at the time of injury.

2. In the event a no-fault insured is injured when he is a pedestrian, or is operating or is an occupant of any motor vehicle which is not insured under a no-fault benefit policy, then the applicable policy is the policy issued to him as the named insured or for his benefit as a no-fault insured.

3. In the event a no-fault insured is insured under a policy which provides for additional no-fault benefits in the amount of \$4,000, \$6,000, \$8,000 or \$10,000 and is injured while occupying a motor vehicle covered by a no-fault benefit policy providing lower limits of coverage, then the policy applicable to the insured motor vehicle shall be primary up to the limits of its coverage, and the higher limits of the policy issued naming, or on behalf of, the no-fault insured shall be secondary; but the total recovery of no-fault benefits shall not exceed the highest limit of any applicable policy.

§ 140. Territorial coverage

No-fault benefit insurance applies to injury, arising from the operation of the insured motor vehicle, suffered by the operator of or an occupant of the insured vehicle, both within and outside the State of Maine.

§ 141. Approval of terms and forms

Terms and conditions of no-fault benefit insurance and of policy forms used by insurers in offering these coverages are subject to approval and regulation by the Insurance Commissioner. He shall approve only terms and conditions which are consistent with the purposes of this Article and fair and equitable to all persons whose interests may be affected and which limit the variety of coverages available to give insurance purchasers reasonable opportunity to compare the costs of insuring with various insurers.

§ 142. Payment of benefits

1. No-fault benefits are payable monthly as loss accrues. Loss accrues not when injury occurs, but as work loss, survivors' loss or allowable expense is incurred. Benefits are overdue if not paid within 30 days after the insurer receives reasonable proof of the fact and amount of loss realized, except that an insurer may accumulate claims for periods not exceeding one month and benefits are not overdue if paid 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 expenses may be paid by the insurer upon written

assignment by the claimant directly to persons supplying products, services or accommodations to the claimant.

2. A claim for work loss shall be paid as provided by this section without deduction for subtractable benefits if the subtractable benefits have not been paid to the claimant before benefits are overdue. The insurer is entitled to reimbursement from the person obligated to pay the subtractable benefits or from the claimant who later receives the subtractable benefits.

3. Overdue payments bear interest at the rate of 18% per year.

4. Every policy of insurance purporting to provide the benefits required under this Article shall plainly state an address where a demand for benefits may be mailed. A demand for benefits mailed to such address will be deemed conclusive proof that the demand for such benefits was communicated to the carrier and a certified or registered mail receipt will be deemed conclusive proof of the date of the demand. In the alternative, a demand for benefits may be mailed to any authorized agent of the carrier so licensed as an authorized agent by the Insurance Department of the State of Maine.

§ 143. Limitation of actions

If any no-fault benefit is not paid when due, an action for the recovery of the overdue benefits must be commenced within 2 years after the loss for which recovery is sought has accrued.

§ 144. Claims against wrong insurer

If timely action for no-fault benefits is commenced against an insurer and benefits are denied because of a determination that the insurer's coverage is not applicable to the claimant under the provisions on priority of applicability of no-fault benefit insurance policies, a claim against the next applicable insurer or assigned claims plan may be made within a reasonable time after such determination becomes final. An action by the claimant on the subsequent claim may not be commenced later than 90 days after such determination becomes final or the last date on which the action could otherwise have been commenced, whichever is later.

§ 145. Fees for claimant's attorney

In addition to other benefits, a reasonable attorney's fee for advising and representing a claimant on a claim or action for no-fault benefits shall be paid by the insurer if overdue benefits are recovered in an action against the insurer or if overdue benefits are paid by the insurer after receipt of notice of the attorney's representation.

§ 146. Fees of insurer's attorney

An insurer shall be allowed a reasonable attorney's fee for defending a claim that was fraudulent. This fee may be treated as an offset to benefits due or which thereafter accrue and judgment may be entered against the claimant for any part of the fee not offset or otherwise paid.

§ 147. Lump sum and installment settlements

Rights and obligations arising under no-fault benefit insurance as to a claim, inclusive of future loss arising from an injury or death, may be discharged at any time by a payment of the remaining balance of the applicable no-fault policy limit.

§ 148. Judgments for future benefits

If an action for no-fault benefits is commenced, a lump sum judgment may be entered for benefits that would accrue after the date of the award.

§ 149. Exemption of benefits

Benefits for work loss and survivors' loss payable under this Article are exempt from garnishment, attachment, execution and other process or claims to the extent provided in any law exempting earnings or wages from process or claims.

§ 150. Mental or physical examination of injured person

1. **Order for examination.** If the mental or physical condition of a person is material to any claim for past or future basic or added reparation benefits, the no-fault benefit insurer may petition the Superior Court for an order directing the person to submit to a mental or physical examination by a physician. The order may be made only for good cause shown and upon notice to the person to be examined and to all persons having an interest. The order shall specify the time, place, manner, conditions and scope of the examination and the physician by whom it is to be made.

2. **Reports.** If requested by the person examined, the insurer causing a mental or physical examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnosis 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 privileges he may have, in relation to the claim for no-fault benefits, regarding the testimony of every other person who has examined or may thereafter examine him respecting the same condition. This subsection applies to examinations made by agreement of the person examined and the insurer, unless the agreement provides otherwise. This subsection does not preclude discovery of a report of an examining physician or taking a deposition of the physician in accordance with any rule of court or other provision of law.

§ 150-A. Discovery of facts about an injured person

If relevant to a claim for no-fault benefits and upon request of a no-fault benefit claimant or insurer, information 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 insurer making the request and may include the entire period after, and a reasonable period before, the injury.

2. An injured person upon whose injury the claim is based shall deliver to the insurer, upon request, every written report available to him concerning any medical treatment, previously or thereafter made, connected to the injury upon which the claim is based and shall authorize the insurer to inspect and copy records connected with the injury upon which the claim is based of physicians, hospitals, clinics or other medical institutions.

3. A physician, hospital, clinic or other medical institution furnishing 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 injured person shall furnish a written report of the history, condition, diagnosis, medical tests, treatment, and dates and costs of treatment of the injured person, and permit inspection and copying of records as to the history, condition, treatment, and dates and cost of treatment.

4. Any person providing information under this section other than the claimant may charge the person requesting the information a reasonable amount for the cost of providing it.

5. In the case of a dispute as to the right of a claimant or insurer to discover this information, the claimant or insurer may petition the Superior Court for an order for discovery. The order may be made only for good cause shown and upon notice to all persons having an interest and it shall specify the time, place, manner, conditions and scope of the discovery. The court, in order to protect against annoyance, embarrassment or oppression, may enter an order refusing discovery or specifying conditions of discovery and order payment of costs and expenses of the proceeding, including reasonable attorneys' fees.

§ 150-B. Cancellation

Except for nonpayment of premiums, no licensed insurance carrier shall cancel or refuse to renew the required coverage stipulated by this Article, without the consent of the Insurance Commissioner, and except for nonpayment of premiums, no required coverage will be cancelled or renewal refused without 60 days written notice to the insured.

§ 150-C. Penalties for operating uninsured motor vehicle

Any owner, operator or registrant of a motor vehicle registered or principally garaged in this State who operates or causes to be operated a motor vehicle upon any public road or highway in this State knowingly without motor vehicle coverage as provided in this Article may, upon conviction, be punished by a fine of not more than \$500, or by imprisonment for not more than 6 months, or by both, and shall forthwith forfeit his right to operate a motor vehicle upon any public road or highway in this State for a period up to one year from the date of such conviction.

§ 150-D. Proof of insurance

The Secretary of State shall have the authority to suspend a license and registration at any time the registrant cannot furnish proof the vehicle is insured.

Sec. 2. R. S., T. 24-A, § 2902, sub-§ 2, amended. Subsection 2 of section 2902 of Title 24-A of the Revised Statutes, as enacted by section 1 of chapter 132 of the public laws of 1969, is amended by adding at the end a new sentence to read as follows:

Each insurer shall be obliged to furnish upon request of the insured, an amount of uninsured vehicle coverage equal to the limits for bodily injury liability insurance and property damage insurance provided in the policies of the insured.

STATEMENT OF FACT

The purpose of this bill is reflected in the title.