

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1882

H. P. 1453

House of Representatives, April 23, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Tierney of Durham.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Providing for a Maine Motor Vehicle Injury Compensation Plan and for Motor Vehicle Insurance Reform.

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

Sec. 1. R. S., T. 24-A, c. 40, additional. Title 24-A of the Revised Statutes is amended by adding a new chapter 40 to read as follows:

CHAPTER 40

MAINE MOTOR VEHICLE INJURY COMPENSATION ACT

§ 2951. Title

This chapter shall be known and may be cited as the "Maine Motor Vehicle Injury Compensation Act."

§ 2952. Purpose

The purpose of this Act to provide for timely, assured motor vehicle accident personal injury benefits required to be paid in respect to motor vehicle accidents in this State through either a nonprofit hospital or medical service corporation, or, on a first-party basis, through insurance or other approved security, at the lowest possible cost to the consumer, while preserving the right of an innocent person to full recovery against responsible parties. The intention of the Legislature is to improve compensation for personal injuries resulting from motor vehicle accidents and to effectuate savings in automobile insurance and to provide protection for the consumer in automobile insurance.

§ 2953. Definitions

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

1. Cost benefit ratio. "Cost benefit ratio" means the ratio between gross premiums earned and gross claim losses incurred, not including overhead and claims adjusting expense.

2. Injury. "Injury" means bodily harm, sickness, disease or death which is caused by a motor vehicle accident and which is manifested within 3 years of the date of the accident.

3. Motor vehicle. "Motor vehicle" means any self-propelled vehicle which is not operated exclusively on tracks, including motorcycles, but not including snowmobiles as defined in Title 12, section 1971, aircraft or any vehicle prohibited by law from operating on the public highways and which is required to be registered in this State as a motor vehicle.

4. Owner. "Owner" means a person who holds the legal title to a motor vehicle, or in the event a motor vehicle is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, then the debtor or lessee shall be deemed the owner for the purposes of this Act.

5. Named secured. "Named secured" means the secured person in whose name the security required by this Act is issued.

6. Person. "Person" means every natural person, firm, partnership, association or corporation, excluding agencies and political subdivisions of the United States and the State of Maine.

7. Provider. "Provider" means a legally constituted entity, other than a self-insurer or an obligated government, which is authorized and qualifies under the statutes and regulations of this State to provide some or all of the security required under this Act and is approved by the Insurance Commissioner.

8. Secured. "Secured" means the named secured and the spouse and other relatives of the named secured who are domiciled in the same household as the named secured and unrelated minor dependents of the named who are domiciled in the same household as the named secured and who are not named secured in a contract complying with this Act.

9. Security. "Security" means the coverages set forth in section 2956.

§ 2954. Requirement of coverage

1. Every resident owner of a motor vehicle shall maintain all the security described in section 2956 in effect continuously throughout the registration period of the motor vehicle.

2. Every nonresident owner of a motor vehicle which, whether operated or not, has been physically present in this State for more than 90 days during

the preceding 365 days shall thereafter maintain all the security required in section 2956 in effect continuously throughout the period the motor vehicle remains within the State.

§ 2955. Providers of security

1. The security required in section 2956 shall be provided only by a company authorized to write health insurance contracts under chapters 33 and 35 or a nonprofit hospital or medical service organization authorized to issue contracts pursuant to Title 24, chapter 19, or a combination thereof.

Said security may be provided by plans or policies issued to groups which are authorized under Title 24 to contract with nonprofit hospital or medical service organizations or which are provided for in this Title, chapter 35 or section 4501.

Said security may be provided as an amendment to existing hospital or medical service contracts under Title 24 or to existing health insurance contracts under this Title and may be provided in combination with such hospital or medical service contracts.

2. Nothing contained in this Act shall be construed to prohibit providing security greater than the minimum coverages and benefits required in section 2956.

3. No additional security which duplicates in whole or in part the coverage required by this Act shall be offered or sold to an insured.

§ 2956. Benefits

The security required to be maintained in section 2954 for personal injury expense or loss arising out of motor vehicle accident personal injury shall, except as otherwise provided in this Act, consist of and be provided without regard to fault in a minimum amount of \$10,000 with respect to each person entitled to receive benefits under this Act and without limit as to the total number of recipients of benefits.

Said benefits shall consist of, in order of priority in which the need is incurred:

1. Medical benefits. All reasonable and necessary expenses incurred for hospital care, meaning care in a semi-private room unless intensive care is medically indicated, for medical care, for dental care, for physical therapy and for physical rehabilitation services.

2. Disability benefits. Seventy-five percent of any loss, from inability to work, of average gross weekly wages, earnings or salary, not to exceed \$150 per week and only for a period of not more than 26 weeks.

3. Substitute service benefits. Seventy-five percent of all reasonable and necessary expenses incurred for substitute essential services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his household, not to exceed \$50 per week and only for a period of not more than 26 weeks.

4. Occupational services benefits. All reasonable and necessary expenses incurred for occupational therapy, occupational rehabilitation and rehabilitative occupational training.

5. Survivor benefits. Ten thousand dollars, less any amount already paid or to be paid pursuant to this section, to or on behalf of the deceased secured, in regard to the same accident, said survivor benefits to be paid to the dependents of the deceased secured, if any, as defined in Title 39, section 2, subsection 4; otherwise to his executor or administrator.

§ 2957. Applicability of coverage

1. The coverages described in section 2956 shall be applicable to:

A. Personal injury expense and loss sustained by a secured when injured in an accident involving any motor vehicle, regardless of whether the accident occurs in this State or in any other jurisdiction of the United States or in any Canadian province or jurisdiction.

B. Personal injury expense and loss sustained by any occupant of the named secured's motor vehicle or pedestrian when injured in an accident involving the named secured's motor vehicle, if the accident occurs in this State.

2. When a person injured is a secured party under any contract complying with this Act, primary coverage shall be afforded by the contract under which the injured person is a secured, otherwise under the contract securing the motor vehicle out of the use of which the injury arose.

3. When a person is injured by or while occupying a motor vehicle owned by a person, firm or corporation in the business of transporting persons or property or by or while occupying a vehicle owned by an employer, primary coverage shall be afforded by the contract securing the motor vehicle out of the use of which the injury arose, otherwise under the contract complying with this Act under which the injured person is a secured.

4. When a person is injured by a motor vehicle which is owned or operated by the United States, the State of Maine or any political or other subdivision thereof and which is not secured by a contract under this Act or the equivalent thereof, coverage shall be afforded by the contract under which the injured person is a secured.

5. No person shall recover any of the security benefits required in section 2956 from more than one provider on a duplicative basis.

§ 2958. Priority of benefits

1. The benefits payable to or on behalf of any injured person under section 2956, except for survivor benefits, shall be reduced by, in order of priority as listed, any such benefits which that person receives or is entitled to receive under:

A. Workmen's Compensation or any similar law;

B. Social Security, categorical assistance programs administered by the Department of Health and Welfare, Medicare, Medicaid, Veteran's Administration or Armed Services.

2. Providers of the benefits payable under section 2956 may, at appropriately reduced premiums, offer coverages in which the benefits under section 2956 are reduced by:

A. Any other general health or accident or health and accident program or plan; or,

B. Any other wage protection or continuation plan or program existing by law or contract, except that survivor benefits shall not be so reduced.

§ 2959. Claim procedure

Payment of the benefits provided for in section 2956 shall be made on a semimonthly or more frequent basis as expenses are incurred. Benefits for any period of time are overdue if not paid within 30 days after the provider receives reasonable proof of the fact and amount of expenses incurred during the period. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after such proof is received by the provider. Any part or all of the remainder of the claim that is later supported by reasonable proof is also overdue if not paid within 30 days after such proof is received by the provider. In the event the provider fails to pay such expenses when due, the amount of these expenses shall bear interest at the rate of 2% per month after the due date.

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 provider if overdue benefits are recovered in an action against the insurer or if overdue benefits are paid by the provider after receipt of notice of the attorney's representation.

A provider 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.

§ 2960. Exclusion from benefits

Any provider may exclude benefits:

1. For any injury sustained by any person operating the secured motor vehicle without the express or implied consent of the secured.

2. To any injured person whose conduct contributed to his injury under any of the following circumstances:

A. Causing injury to himself or other persons intentionally; or,

B. While committing a felony for which he is subsequently convicted.

§ 2961. Recovery of benefits; attorney's fees

In any case in which a provider furnishes benefits to a secured under this Act, under circumstances creating a tort liability upon some 3rd person to

pay damages therefor, the provider shall have a right to recover pro rata from said 3rd person the value of the benefits so furnished or to be furnished and shall, as to this right, be subrogated pro rata to any right or claim that the secured, his guardian, personal representative, estate, dependents or survivors has against such 3rd person to the extent of the value of the benefits so furnished or to be furnished.

The provider may also require the secured, his guardian, personal representative, estate, dependents or survivors, as appropriate, to assign his claim or cause of action against the 3rd person to the pro rata extent of that right or claim.

The provider may, to enforce such right, intervene or join in any action or proceeding brought by the secured, his guardian, personal representative, estate, dependents or survivors, against the 3rd person who is liable; or, if such action or proceeding is not commenced by the secured within 6 months after written demand by the provider to the secured to commence legal action, institute and prosecute legal proceedings against said 3rd person, either alone in its own name or in the name of the secured, his guardian, personal representative, estate, dependents or survivors or in conjunction with the secured, his guardian, personal representative, estate, dependents or survivors.

In any such action, evidence may be presented to the jury of the amount of benefits furnished or to be furnished to the secured and of the right of the provider, under this section, to recover pro rata the value of said benefits.

In any action brought pursuant to this section, or in any settlement of such action, in which the total damages recoverable by a secured, his guardian, personal representative, estate, dependents or survivors are reduced because of the secured's share in the responsibility for the damage, that portion of the damages to which a provider is entitled under this section, equal to the value of benefits furnished or to be furnished by said provider, shall be reduced on a pro rata basis.

Except as stated in the preceding paragraph, the provider shall be entitled to receive the entire amount of benefits furnished. An attorney for the secured or his guardian, personal representative, estate, dependents or survivors shall be entitled to a contingent fee or any other fee only as to the amount by which any damages recovered in such action exceeds the pro rata amount of benefits furnished by the provider and also the pro rata amount of benefits furnished to the secured or his guardian, personal representative, estate, dependents or survivors under any general health or accident or health and accident program or plan or under any contractual wage protection or continuation plan, when, pursuant to section 2958, benefits furnished under said programs or plans reduce the benefits payable under section 2956. There shall be no adjustment of attorneys' fees as to the remainder of the recovery.

The Supreme Judicial Court shall promulgate appropriate rules to enforce this section.

No action taken or settlement made by a provider in connection with the rights afforded under this section shall operate to deny to the secured the recovery for that portion of his damage not covered hereunder.

Nothing in this section shall be construed to deny to the secured and the provider the right to settle separately any claims with such 3rd person.

§ 2962. Approval of terms and forms

Terms and conditions of the security required by sections 2954 and 2956 and of policy forms used by providers 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 Act and fair and equitable to all persons whose interests may be affected, and which limit the variety of coverages available to give purchasers reasonable opportunity to compare the cost of coverages with various providers.

§ 2963. Rates

Rates for coverage under this Act shall be made in accordance with section 2303 and in accordance with the provision that rates shall be set so that commencing on January 1, 1975, the overall cost benefit ratio of contracts under this Act shall be at least 80%.

§ 2964. Other security savings

In making rates for security required under this Act, due consideration shall be given to the right to recovery pursuant to section 2961.

§ 2965. Determination of coverage; discrimination in rates

1. Underwriters of motor vehicle insurance shall, before any such policy is issued to an insured, ascertain whether or not the insured has obtained the security required by section 2954 and shall not issue a motor vehicle insurance policy unless the insured is also covered by said security.

2. The rates, terms and other conditions of coverage for motor vehicle insurance and for security provided for under this Act must be determined independently and based strictly on the coverage provided.

3. No person shall be denied motor vehicle insurance by any insurance company by reason of his purchasing the security provided for under this Act from another provider.

§ 2966. Cancellation

Except for nonpayment of premiums, no provider shall cancel or refuse to renew the required coverage stipulated by this Act.

§ 2967. Penalties for operating unsecured motor vehicles

It shall be unlawful for any owner, operator or registrant of a motor vehicle registered or principally garaged in this State to operate or cause to be operated a motor vehicle upon any public road or highway in this State knowingly without security coverage as provided in this Act, and, upon conviction, such person shall be fined not more than \$100, 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 3 months from the date of such conviction. Upon petition and filing of proof of the required coverage, the Secretary of State may restore to

such person his right to operate a motor vehicle in this State prior to the expiration of said period of suspension.

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 a new paragraph at the end to read as follows :

A provider must offer in writing to any purchaser of such security said coverage in amounts equal to the coverage provided for liability for bodily injury or death in the policy sold or offered to said purchaser, and must advise said purchaser of any additional premium to be charged for any such coverage. A purchaser's rejection of such additional coverage must be in writing on a form to be promulgated by the Insurance Commissioner. Without such rejection in writing, all such policies shall be construed as if the coverage which this section requires to be offered were provided.

Sec. 3. R. S., T. 24-A, §§ 2907 to 2910, additional. Title 24-A of the Revised Statutes is amended by adding 4 new sections 2907, 2908, 2909 and 2910, to read as follows :

§ 2907. Nonprofit groups

All motor vehicle insurance policies may be issued to groups which are authorized under Title 24 to contract with nonprofit medical or hospital service organizations or which are provided for in this Title, chapter 35, section 4501.

§ 2908. Options

Companies offering motor vehicle insurance shall offer in writing to their insured the options to purchase coverage for liability for bodily injury or death to any one person, in the amounts of \$50,000 or \$100,000 and, subject to said limit respecting one person, for liability for bodily injury or death to 2 or more persons in any one accident, in the amount of \$100,000 or \$300,000. Said offer shall state the additional premium cost, if any, of such coverage.

A rejection of said options shall be in writing and a copy of said rejection shall be attached to any such policy. If such copy is not attached, said policy shall be construed as providing coverage to the insured for said liabilities to the higher amounts stated in the preceding paragraph.

The Insurance Commissioner shall promulgate forms which shall be employed to demonstrate the premiums involved in said options and the election or rejection of said option.

§ 2909. Statements; reports

No policy insuring against liability arising out of the ownership, maintenance or use of any motor vehicle and no contract for the security required by section 2954 and section 2956 shall be delivered or issued for delivery in this State with respect to any such vehicle registered or principally garaged in this State, unless there is attached thereto a statement, for each form of coverage provided, of the cost benefit ratio, as defined in section 2953, for this State.

All firms or corporations authorized to issue such policies or contracts shall report each year, on or before July 1st to the Insurance Commissioner, on such forms as he shall promulgate, the information necessary for him to readily determine the cost benefit ratio in Maine and to approve the publication of such ratio in all such policies and contracts. The commissioner may promulgate such rules and regulations as necessary to carry out the purpose of this section.

§ 2910. Rates

Rates for coverage for motor vehicle insurance shall be made in accordance with section 2303 and, in addition, due consideration shall be given to 75% of subrogation recoveries and 75% of investment income.

Sec. 4. **Effective date.** This Act shall become effective on January 1, 1974.

STATEMENT OF FACT

The facts concerning this bill are outlined as follows:

Benefits

The benefits provided on a first-party no-fault basis total \$10,000 and include the costs of hospital and medical care, wage replacement, homemaker and household assistance replacement, funeral expenses and survivor benefits.

Promptness of Payment

All payments under the no-fault benefit package must be made within 15 days of the receipt of the bill. Current delays in bill payments are thus abolished.

Full recovery for innocent accident victims

This bill in no way reduces the rights to full recovery for human suffering to an innocent victim and his family arising out of a motor vehicle collision. Rather, it seeks to achieve savings by the regulation and control of insurers and attorneys instead of seeking to achieve premium savings by deprivation of the rights of innocent injured parties.

Although full recovery is permitted, duplicate recovery is prohibited, thus resulting in a significant cost savings to the public.

Computation of Costs

It is the philosophy of this bill that no person or corporation should derive significant profit out of the payment of expenses related to personal injuries arising out of a motor vehicle accident. To this effect, several elements of this bill insure the minimization of insurance premiums. They are:

a. Attorneys fees.

Lawyers are prohibited from charging any fee on that portion of the recovery represented by wage loss, survivor benefits, medical and hospital care, etc., up to the limits of coverage (\$10,000) provided by this bill.

b. Insurer efficiency

Insurance companies are controlled by a provision that the cost/benefit ratio shall be at least 80%. This means that at least 80¢ out of every \$1 collected for no-fault insurance premiums must be returned to the public in the form of benefits. Under current experience, experience with automobile medical payment insurance, 50 to 60% and more of the premiums paid are retained by insurance companies in the form of profits, overhead, etc. Only 40 to 50¢ of every \$1 premium goes to the public in the form of benefits.

c. Alternate coverage.

This bill recognizes that most citizens, including union members, public employees, senior citizens and the poor, have already provided for their health insurance protection and wage continuation programs. It would, therefore, be unfair to cause these citizens, who constitute a significant majority of our population, to pay an additional insurance premium for benefits already paid. Thus, citizens with these forms of health insurance and wage protection insurance will be able to purchase their no-fault automobile benefits at significantly reduced cost.

d. Insurer investment.

Premium cost will be further reduced by the requirement of this bill that the insurance commission consider the investment income of insurance companies in setting premium rates. Under the current law, investment income is not considered and the public is, in effect, lending money to insurance companies with no interest being paid to the consumer. Thus, some insurance companies delay payment of claims in order to increase their investment income.

e. Subrogation.

This bill also requires the insurance commission to consider subrogate recoveries by insurance companies in setting rates on their collision and other forms of automobile insurance. Thus again, the cost to the consumer on these types of automobile insurance will be reduced.

Insurer Reform

No-fault coverage provided under this bill is noncancellable without limitation as to time.

When purchasing policies, citizens are guaranteed the opportunity to obtain cost information which will enable them to intelligently purchase higher limits of both liability and uninsured motorist insurance.

This bill introduces the cost/benefit ratio to the field of automobile insurance. This concept is akin to the "truth-in-lending" concept in the field of

finance. The insurance carrier will be obligated to disclose to the consumer the cost/benefit ratio prior to the purchase so that comparison shopping will be a meaningful consumer protection device not only to the premium cost but also as to the practice of the particular insurance company regarding payment of claims.

Summary

In summary, the Maine plan provides for reduced cost and increased benefits by realistic and consumer oriented control of insurance companies and lawyers while preserving the rights to full recovery for human losses on innocent accident victims.