

# MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 2504

H. P. 1963

House of Representatives, February 12, 1974

Referred to the Committee on Business Legislature. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Tierney of Durham.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FOUR

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AN ACT Providing for Maine Motor Vehicle Insurance Reform.

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

**Sec. 1. 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.**

**Sec. 2. R. S., T. 24-A, § 2908, additional.** Title 24-A of the Revised Statutes is amended by adding a new section 2908 to read as follows:

**§ 2908. Informed choice for additional coverage**

**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.**

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

**Sec. 3. R. S., T. 24-A, c. 40-A, additional.** Title 24-A of the Revised Statutes is amended by adding a new chapter 40-A to read as follows:

CHAPTER 40-A

MAINE PLAN FOR MOTOR VEHICLE INSURANCE REFORM

§ 2951. Title

This chapter shall be known and may be cited as the "Maine Plan for Motor Vehicle Insurance Reform."

§ 2952. Purpose

The purpose of this chapter is to provide timely and assured personal injury benefits to Maine citizens who are involved in automobile accidents. These benefits are to be provided on a first-party basis without regard to fault and at the lowest possible cost. The intent of the legislation is to improve both the level and the means of compensation; to effectuate savings in automobile insurance; and discourage frivolous claims and lawsuits by reform of the tort system while preserving the rights of injured persons to full and fair recovery against negligent persons.

§ 2953. Definitions

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

1. 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.

2. Motor vehicle. "Motor vehicle" means any self-propelled vehicle which is not operated exclusively on tracks, but not including motorcycles as defined in Title 29, section 1, subsection 4, 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.

3. 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.

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

5. 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.

6. 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 Superintendent of Insurance.

7. **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.

8. **Security.** "Security" means the coverage set forth in section 2957.

#### § 2954. Requirement of coverage; self-insurers

1. Every resident owner of a motor vehicle shall maintain all the security described in section 2957 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 2957 in effect continuously throughout the period the motor vehicle remains within the State.

3. This State, its political subdivisions, municipalities and public agencies, including the University of Maine, shall continuously provide the security required by this Act or its equivalent for injury arising from maintenance or use of motor vehicles owned by these entities.

4. The security required by this Act may be provided by self-insurance, subject to the approval of the Superintendent of Insurance, by filing with the superintendent in satisfactory form:

A. A continuing undertaking by the owner or other appropriate person to pay the benefits required by this Act;

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

C. Evidence that reliable financial arrangements, deposits or commitments exist providing assurance, substantially equivalent to that afforded by the coverage required by this Act, for payment of the benefits required by this Act.

#### § 2955. Providers of security

1. Except as provided in section 2954, subsections 3 and 4 and in section 2956, the security for primary health benefits required under section 2957, subsection 1, may be provided by a company authorized to write health insurance contracts under chapters 33 and 35 or by a nonprofit hospital or medical service organization or by a company authorized to issue automobile insurance policies under chapter 40 or a combination thereof. Such companies or organizations are specifically authorized to provide such coverage, any statute or regulation to the contrary notwithstanding.

2. The security for primary health benefits required under section 2957, subsection 1, 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.

3. The security for primary health benefits required under section 2957, subsection 1, 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.

4. The security for economic protection benefits required in section 2957, subsection 2, and the security for supplemental health benefits in section 2957, subsection 3, shall be provided only by a company authorized to issue automobile insurance policies under chapter 40.

#### § 2956. Protection against needless coverage

1. The requirement of security for primary health benefits described in section 2957, subsection 1, is fulfilled by coverage under an existing individual or group health insurance contract under chapters 33 and 35 or under an existing individual or group hospital and medical service contract under Title 24 or under Social Security, Medicare, Medicaid, any health care program administered by the Department of Health and Welfare, the Veterans Administration or the Armed Services or under any other health care program under any state or federal statute, which provide the type and amount of benefits required under section 2957, subsection 1. The Superintendent of Insurance shall certify all contracts or programs which are adequate to meet the requirements as to the type and amount of benefits under section 2957, subsection 1.

2. No provider shall sell or charge any premium for the security for primary health benefits described in section 2957, subsection 1, to any named secured who is covered under Medicare, Medicaid, any health program administered by the Department of Health and Welfare, the Veterans Administration or the Armed Services or any other health care program under any state or federal statute which provides the type and amount of benefits described in section 2957, subsection 1, and which has been certified by the Superintendent of Insurance as adequate to meet these requirements.

3. A named secured who at the time of purchasing the security required by this Act states that he does not expect to be employed during the period for which the security is being purchased, by virtue of being a student, retired or disabled, shall not be required to purchase the security described in section 2957, subsection 2, paragraph A.

4. When, pursuant to subsections 2 and 3, a provider does not sell or charge any premium for the security for primary health benefits described in section 2957, subsection 1, or for the security for disability benefits described in section 2957, subsection 2, paragraph A, the provider shall offer the remainder of the security required by this Act at appropriately reduced premiums, determined independently and based strictly on the coverage provided.

5. Except as provided in subsection 1 and 2, nothing contained in this Act shall be construed to prohibit providing security greater than the minimum coverages and benefits required in section 2957.

§ 2957. 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, be provided without regard to fault to a minimum amount of \$5,000 with respect to each person entitled to receive benefits under this Act and without limit as to the total number of recipients of benefits. Such benefits shall be provided in order of priority in which the need is incurred, until the total coverage is furnished.

Said coverage shall consist of the following benefits.

1. Primary health benefits. Primary health benefits include all reasonable and necessary expenses of the secured incurred for hospital care, meaning care in a semiprivate room unless intensive care is medically indicated, for medical care, for physical therapy and for physical rehabilitation services.

2. Economic protection benefits. Economic protection benefits apply to the secured and to persons eligible for coverage under section 2958, subsection 1. Such benefits include:

A. Disability benefits. Seventy-five percent of any loss from inability to work, of gross weekly wages, earnings or salary from work the injured person would have performed if he had not been injured, including earnings from self-employment, not to exceed \$150 per week and for a period of not more than 26 weeks.

B. 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.

C. Survivor benefits. Five 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.

3. Supplemental health benefits. Supplemental health benefits are all reasonable and necessary expenses incurred by any person eligible for coverage under section 2958, subsection 1, paragraph B, for hospital care, meaning care in a semiprivate room unless intensive care is medically indicated, for medical care, for dental care, for physical therapy and for physical rehabilitation services.

§ 2958. Applicability of coverage

1. The coverages described in section 2957 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 2957 from more than one provider on a duplicative basis.

#### § 2959. Priority of benefits

1. The benefits payable to or on behalf of any injured person under section 2957, 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, Medicare, Medicaid, any health care program administered by the Department of Health and Welfare, the Veteran's Administration or any other health care program under any state or federal statute.

2. Providers of the benefits payable under section 2957 may, only at appropriately reduced premiums, offer coverages in which the benefits under section 2957 are reduced by any other wage protection or wage continuation plan or program existing by law or contract, except that survivor benefits shall not be so reduced.

#### § 2960. Claim procedure

Payment of the benefits provided for in section 2957 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.

#### § 2961. 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. Intentionally causing injury to himself or to other persons or
  - B. While committing a felony for which he is subsequently convicted.

#### § 2962. Limitation of attorney's fees

1. In any legal action arising from an accident involving a motor vehicle as a result of which benefits under this Act are furnished or are to be furnished, an attorney for the secured or for any person eligible for benefits under section 2958, subsection 1, paragraph B, or for the guardian, personal representative, estate, dependents or survivor of the secured or of said eligible person, 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 amount of benefits furnished by the provider and also the amount of benefits furnished under any wage protection or wage continuation plan or program, when, pursuant to section 2959, such benefits reduce the benefits payable under section 2957.

2. There shall be no adjustment of fees as to the remainder of any recovery. The Supreme Judicial Court shall promulgate appropriate rules to enforce this section.



**§ 2963. Tort reform**

In any legal action arising from an accident involving a motor vehicle as a result of which benefits under this Act are furnished or are to be furnished, evidence shall be presented to the court and to the jury of the amount of benefits furnished by the provider and of the amount of benefits furnished under any wage protection or wage continuation plan or program when, pursuant to section 2959, such benefits reduce the benefits payable under section 2956.

When such evidence is presented, recovery shall be determined without regard to benefits furnished under section 2957 or to benefits furnished under any wage protection or wage continuation plan or program when, pursuant to section 2959, such benefits reduce the benefits payable under section 2957, but the finder of fact shall reduce any recovery by the amount of benefits so furnished.

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

**§ 2964. Subrogation and reimbursement rights**

A provider does not have and may not directly or indirectly contract for a right of subrogation to or reimbursement from the proceeds of any claim for damages for personal injury resulting from any occurrence involving a motor vehicle. Any provision to the contrary in any contract or policy is void.

**§ 2965. Approval of terms and forms**

Terms and conditions of the security required by sections 2954 and 2957 and of policy forms or any other forms used by providers in offering these coverages are subject to approval and regulation by the Superintendent of Insurance. 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.

**§ 2966. Determination of coverage; discrimination in rates**

Providers of motor vehicle insurance shall, before any such policy is issued to an insured, ascertain whether or not the insured has obtained the security described in section 2957, subsection 1, and shall not issue a motor vehicle insurance policy unless the insured is also covered by said security.

**§ 2967. Prohibition of cancellation**

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

**§ 2968. 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 oper-

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

§ 2969. Requirements as to automobile insurance

After the effective date of this Act, no automobile insurance policy shall be delivered or issued for delivery in this State, with respect to any vehicle registered or principally garaged in this State which does not provide the benefits described in section 2957, subsections 2 and 3.

§ 2970. Premium reduction; energy crisis

1. On or before August 1, 1974, the Superintendent of Insurance shall hold a hearing or hearings to determine the extent of appropriate rate reductions due to decreased frequency and severity of automobile accidents resulting from legal speed limit reductions and decreased use of motor vehicles since November 28, 1973.

2. On or before September 1, 1974, the Superintendent of Insurance shall announce such reductions which he deems justified retroactive to November 28, 1973, and also to apply to said reductions regarding existing, new and reissued policies after the date of his determination.

3. The factors outlined in subsection 1 shall be considered prospectively in regard to all subsequent rate determinations.

Sec. 4. **Effective date.** Except for the Revised Statutes, Title 24-A, section 2970, this Act shall become effective on January 1, 1975. Accidents occurring before the effective date of this Act are not covered by or subject to this Act. Section 2970 shall become effective 90 days after adjournment of the Legislature. The Superintendent of Insurance shall exercise, prior to the effective date of this Act, the authority vested in him under this Act to do all things necessary to implement the Act on the effective date.

## STATEMENT OF FACT

The facts of the Maine Plan for Motor Vehicle Insurance Reform are outlined as follows:

### **No-Fault Benefits:**

Benefits provided on a no-fault basis total \$5,000 per person and include the costs of all medical and hospital care, wage replacement, homemaker and household assistance, funeral expenses and survivor benefits.

**No-Fault Coverage:**

Any person injured in an automobile accident, including a pedestrian, is entitled to a maximum \$5,000 benefit. Coverage does not extend to property damage or motorcycles.

**Promptness of Payments:**

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

**Costs:**

It is the philosophy of the Maine Plan that no person or corporation should derive extraordinary profits from the human suffering that arises from an automobile accident. For this reason, this bill insures lower premium rates by limiting attorneys and insurance companies rather than by depriving consumers of their rights. This is done by:

**a. Limiting attorney fees:**

Lawyers are prohibited from charging any fee for that portion of the recovery represented by medical and hospital care, wage loss, survivor benefits, etc. up to the limits of coverage (\$5,000) provided by this Act. The Supreme Court of Maine shall enforce this section.

**b. Insurer efficiency:**

Because medical and hospital costs amount to 75% of the economic costs for most accident victims, this coverage may be provided by those sections of the insurance industry which specialize in health insurance.

**c. Limiting duplication:**

The actuarial study commissioned by the Regular Session of the 106th Legislature showed that significant savings could be achieved by allowing accident victims to collect first from their own health insurance policy or from Medicare, Medicaid, Workman's Compensation or Veterans Assistance.

The savings of this alternate coverage goes to the consumer. Senior citizens benefit especially from the non-duplication sections of this Act. Other beneficiaries may include any citizens covered by a group health policy.

**Recovery for Innocent Accident Victims**

The rights of innocently injured Maine citizens are not abridged.

**Reduction of Minor Law Suits:**

Evidence from other states show a dramatic decline in small law suits when any kind of no-fault benefits are provided. With all economic losses up to \$5,000 automatically paid, few will need to go to court for compensation.

To further reduce minor suits, this bill limits legal fees, reforms the rules of evidence and adjusts jury verdicts downward by the amount of no-fault benefits received.

**Non-Cancellation :**

No-fault benefits provided under this bill cannot be cancelled except for non-payment of premiums. Thus, Maine drivers will be covered at all times. Any Maine driver who refuses to pay for coverage will not be allowed on the road.

**Informed-Choice :**

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

**Energy Crisis Premium Reduction :**

This Act requires the Superintendent of Insurance to hold a public hearing to determine the effects of the energy crisis on Maine's insurance premiums. If savings are justified, they are to be retroactive to the onset of the crisis so as to prohibit windfall profits for the insurance industry. This could mean insurance premium refunds to Maine people.

**Summary :**

In summary, the Maine Plan provides for increased benefits to consumers while maintaining the right of full recovery by innocent accident victims. Furthermore, the Maine Plan has been actuarially proven to provide these benefits at a lower premium cost.