

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1801

H. P. 1282

House of Representatives, April 2, 1975

On Motion of Mrs. Clark of Freeport referred to Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Birt of East Millinocket.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Providing for No-Fault Motor Vehicle Insurance.

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

Sec. 1. 29 MRSA c. 5, sub-c. I, Art. 1-A, is enacted to read:

ARTICLE 1-A. NO-FAULT INSURANCE

§ 121. Definitions

As used in this subchapter, 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. Injury. "Injury" 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 accrues within 4 years following the date of the accident, as a result of injury, consisting only of allowable expense, work loss, and, if the injury caused death, survivor's loss.

A. "Allowable expense" means reasonable charges incurred for reasonably needed products, services and accommodations including those for medical, hospital, dental, x ray, nursing, ambulance and prosthetic services and rehabilitation and rehabilitative occupational training and for any other remedial treatment and care. Allowable expense 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 reasonable and customary charges for semiprivate 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, cremation and burial.

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 the decedent 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 80% of the 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 which, 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" shall mean any self-propelled vehicle not operated exclusively on tracks, but not including motorcycles as defined in 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.

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, section 127, to be subtracted from loss in calculating net loss.

7. 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 and the maintenance of a motor vehicle, except when the maintenance is within the course of a business of repairing, servicing or otherwise maintaining motor vehicles unless the conduct occurs off business premises. Any person who is entering into or alighting from a motor vehicle is an occupant of said vehicle.

8. Pedestrian. "Pedestrian" means any person who is not an occupant of a motor vehicle.

9. **No-fault benefits.** "No-fault benefits" means those benefits payable under the provisions on benefits provided by no-fault insurance, section 123, subject to exclusions, limitations and other conditions of this subchapter.

10. **No-fault insured.** "No-fault insured" means a person identified by name as an insured in an insurance contract with respect to which motor vehicle liability insurance required by this subchapter has been issued and while residing in the same household with a named insured, the following persons not identified by name as an insured in any other contract of motor vehicle liability insurance complying with this subchapter: A spouse or other relative of the named insured; and a minor in the custody of a named insured or of a relative residing in the same household with the named insured. A person resides in the same household if he usually makes his home in the same family unit, although temporarily living elsewhere.

§ 122. **Mandatory motor vehicle insurance coverage; limits**

1. **Coverage.** Every owner of a motor vehicle required to be registered in this State who operates it or permits it to be operated in this State is guilty of a misdemeanor if he fails to provide, prior to such operation, motor vehicle liability insurance coverage, under provisions approved by the Superintendent of Insurance, 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 an amount or limit of:

A. \$20,000, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident;

B. Subject to such limit for any one person so injured or killed, \$40,000, exclusive of interest and costs, on account of injury to, or death of, more than one person in any one accident; and

C. \$10,000, exclusive of interest and costs, for damage to property in any one accident.

In addition, every such owner further shall be required to provide the proof of financial responsibility required under section 787.

2. **Self-insurer.** Subject to approval of the Superintendent of Insurance, the motor vehicle liability insurance coverage required by this subchapter may be provided by self-insurance by filing with the Superintendent of Insurance in satisfactory form:

A. A continuing undertaking by the owner or other appropriate person to pay basic benefits and to perform all other obligations imposed by this subchapter;

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

C. Deposits or commitments exist providing assurance for payment of basic benefits and all other obligations imposed by this subchapter sub-

stantially equivalent to those afforded by a policy of insurance that would comply with this subchapter. A person who provides security under this subsection is a self-insurer.

3. Penalty. Any person convicted of a misdemeanor under this subchapter shall, upon such conviction, be punished by a fine of not more than \$500 and shall forthwith forfeit his right to operate a motor vehicle upon any highway in this State for a period up to one year from the date of such conviction.

§ 123. Mandatory no-fault benefits

Every motor vehicle liability insurance policy, insuring a motor vehicle as defined in this subchapter against loss resulting from liability imposed by law for injury and death sustained by any person arising out of ownership, operation, maintenance or use of a motor vehicle, shall provide additional coverage, as hereinafter in this subchapter defined under provisions approved by the Superintendent of Insurance, for the payment of benefits without regard to negligence, liability or fault of any kind, to the no-fault insured, to other persons sustaining injury while occupying the motor vehicle of the no-fault insured, or while using such motor vehicle with the permission of the no-fault insured, and to pedestrians sustaining injury caused by the no-fault 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, in this subchapter called "basic benefits," shall be in the amount of \$10,000 with respect to each person entitled to receive benefits under this subchapter and without limit as to the total number of recipients of benefits.

Each insurer who offers coverage for no-fault benefits in the minimum amount of \$10,000 per person shall offer additional coverage to each named insured, increasing the limit of the insurer's liability to each recipient of no-fault benefits in multiples of \$10,000 to each and including limits of \$100,000 to each recipient.

§ 124. Basic benefits provided by no-fault benefit insurance

Except as provided in this subchapter, the no-fault benefit insurer is liable to pay basic benefits, without reference to fault, under the conditions stated in this subchapter, reimbursing persons suffering net loss through injury arising out of the operation of a motor vehicle. Such benefits shall extend to pedestrians and to passengers sustaining injury caused by an uninsured or unidentified motor vehicle. Such pedestrian, in such event, shall recover under the terms of sections 144, 145 and 146.

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 surviving next of kin 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 intentionally causes or at-

tempts 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 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.

§ 126. Converted vehicles

A person who converts a motor vehicle is disqualified from basic benefits or any additional benefits under this subchapter, 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 surviving next of kin 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 in the good faith belief that he is legally entitled to use it.

§ 127. Subtractable benefits

1. Social security, workmen's compensation, medicare or medicaid. All benefits or advantages a person receives or is entitled to receive because of the injury from social security or any state or federal workmen's compensation plan or from medicare or medicaid plans, are subtracted in calculating net loss.

2. Nontaxable. If a benefit or advantage received to compensate for loss of income because of injury, whether from basic benefits or from any source of benefits or advantages subtracted under subsection 1, 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% of the loss of 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.

§ 128. Partial abolition of tort liability

Tort liability, up to \$2,000, 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 if the coverage required under section 122 was not provided at the time of the accident;

2. Liability of a person for intentionally caused harm to person or property;

3. Liability for loss, as defined in section 121, subsection 4, to an injured person, of \$2,000 or more;

4. Liability for an injured person's death, permanent disability or permanent serious disfigurement, permanent and significant loss of any important bodily function or loss of a significant body member in whole or in part, regardless of the right of such person to receive basic benefits under section 123; and

5. Liability for an injured person's costs of medical and hospital expenses of \$500 or more. For purposes of this section, "costs of medical and hospital expenses" are defined as the reasonable value for necessary services rendered for medical, hospital, dental, surgical, ambulance, professional nursing and rehabilitation services, but exempting diagnostic x rays in excess of \$100.

§ 129. Insurers' rights of reimbursement

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.

The no-fault benefits 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.

§ 130. Priority of applicability of insurance policies

1. Priorities. The following priorities shall apply:

A. The no-fault insurance for payment of no-fault benefits applicable to injury to a no-fault insured is the insurance under which the injured person is covered as a no-fault insured;

B. The no-fault insurance for payment of no-fault benefits applicable to injury to the driver or other occupant of an involved motor vehicle who is not covered as a no-fault insured shall be the insurance covering that vehicle;

C. The no-fault insurance for payment of no-fault 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 insurance 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.

2. Proration. If 2 or more obligations to pay no-fault benefits are applicable to an injury under the priorities set out in this section, benefits are payable only once and the insurer against whom a claim is asserted shall process and pay the claim as if wholly responsible, but is thereafter entitled to recover contribution pro rata for the no-fault benefits paid and the costs of processing the claim. When contribution is sought among insurers responsible under subsection 1, paragraph C, proration shall be based on the number of involved motor vehicles.

§ 131. Territorial coverage

No-fault benefit insurance applies to injury suffered by the no-fault insured both within and outside the State of Maine.

§ 132. 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 Superintendent of Insurance. He shall approve only terms and conditions which are consistent with the purposes of this subchapter 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 cost of insuring with various insurers.

§ 133. Payment of benefits

1. Time. No-fault benefits are payable semimonthly 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. Work loss. 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. Overdue payments bear interest at the rate of 12% per year.

4. Mailing. Every policy of insurance purporting to provide the benefits required under this subchapter 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 Bureau of Insurance.

§ 134. Limitation of action

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.

§ 135. 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 in section 130, 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.

§ 136. Fees of claimants' 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.

§ 137. Fees of insurers' 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.

§ 138. 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.

§ 139. 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.

§ 140. Exemption of benefits

Benefits for work loss and survivors' loss payable under this subchapter 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.

§ 141. 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 additional benefits hereunder, 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, 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.

§ 142. 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. **Work record and earnings.** 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. **Medical treatment.** 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. **Treatment.** 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. **Cost.** 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. **Order of discovery.** 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.

§ 143. Proof of insurance

The Secretary of State, upon receipt of notice that motor vehicle coverage as provided in this subchapter is not being maintained, or upon receipt of notice by the clerk of any court in this State that a person has been convicted of a misdemeanor under section 122, shall suspend the vehicle registration and driver's license of such person forthwith and shall maintain such suspension in effect until proof of insurance complying with this Act is supplied and until expiration of the period of suspension as provided in section 122.

§ 144. Assigned claims plan

1. Plan. A person entitled to basic benefits because of injury occurring in this State and covered by this subchapter may obtain basic benefits through the assigned claims plan or bureau established pursuant to the provisions relating thereto in section 145 and in accordance with the provisions for making assigned claims provided in section 146, if:

A. Basic benefits are not applicable to the injury for some reason other than those specified in sections 125 and 126;

B. Basic benefits for self-insurance applicable to the injury cannot be identified;

C. Basic benefits applicable to the injury, because of financial inability of an insurer or self-insurer to fulfill its obligation, are inadequate to provide the contracted for benefits; or

D. A claim for basic benefits is rejected by an insurer or self-insurer on some ground other than the person is not entitled to basic benefits under this subchapter.

2. Subrogation. If a claim qualified for assignment under subsection 1, paragraph B, C or D, subdivision (2), the assigned claims bureau or any insurer or self-insurer to whom the claim is assigned shall be subrogated to all of the rights of the claimant against any insurer or self-insurer, its successor in interest or substitute, legally obligated to provide benefits to the claimant, for no-fault basic benefits provided by the assignment.

3. Limitation. A person shall not be entitled to basic benefits through the assigned claims plan or from any insurer, with respect to injury which he has sustained, if at the time of such injury he was the owner of a motor vehicle for which motor vehicle liability insurance is required under this subchapter and he failed to have such security in effect.

§ 145. Assigned claims bureau

Self-insurers and insurers writing motor vehicle liability insurance in this State may organize and maintain, subject to approval and regulation by the Superintendent of Insurance, an assigned claims bureau and an assigned claims plan and adopt rules for their operation and for the assessment of costs on a fair and equitable basis consistent with this subchapter. If they do not organize and continuously maintain an assigned claims bureau and an

assigned claims plan in a manner considered by the superintendent to be consistent with this subchapter, the superintendent shall organize and maintain an assigned claims bureau and an assigned claims plan. Each self-insurer and insurer writing motor vehicle liability insurance in this State shall participate in the assigned claims bureau and the assigned claims plan. Costs incurred shall be allocated by the Superintendent of Insurance in a fair manner among insurers and self-insurers.

§ 146. Notification to assigned claims bureau

A person authorized to obtain basic benefits through the assigned claims plan shall notify the bureau of his claim within the time that would have been allowed for filing an action for basic benefits. If timely action for basic benefits is commenced against an insurer or self-insurer who, because of financial inability, is unable to fulfill his obligations, a claim through the assigned claims plan may be made within a reasonable time after discovery of the financial inability.

§ 147. Construction and severability

The provisions of this subchapter shall be severable and if any phrase, clause, sentence or provision of this subchapter is declared to be contrary to the Constitution of this State or of the United States, the applicability thereof to any person, government, agency or circumstances is held invalid, the invalidity of the remainder of this subchapter and the applicability thereof to any person, government, agency or circumstance, shall not be affected thereby, provided that if either section 122 or section 128 shall be declared to be contrary to the Constitution of this State or of the United States, then, and in that event, this entire subchapter shall be deemed as of the date of such declaration totally invalid, null and void.

Sec. 2. 24-A MRSA § 2902, sub-§ 2, as enacted by PL 1969, c. 132, § 1, is amended by adding at the end the following:

Each insurer shall be obliged to furnish an amount of uninsured vehicle coverage at least equal to the minimum limits for bodily injury liability insurance as defined in Title 29, section 122, subsections 1 and 2.

Sec. 3. **Effective date.** This Act shall take effect January 1, 1976.

STATEMENT OF FACT

The purpose of this bill is to provide a no-fault motor vehicle insurance for the State of Maine.