

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1260

6
7 S.P. 457

In Senate, April 9, 1985

8 Reference to the Committee on Business and Commerce suggested and
9 ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Baldacci of Penobscot.

Cosponsored by Representative Duffy of Bangor.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Make Liability Auto Insurance
18 Mandatory.
19

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

22 Sec. 1. 24 MRSA §2332 is enacted to read:

23 §2332. Coordination of benefits

24 Nonprofit hospital or medical service organiza-
25 tions shall file plans with the Superintendent of In-
26 surance to provide for deductibles or to coordinate
27 payments for all or any part of medical or health re-
28 lated no-fault benefits as required by Title 24-A,
29 chapter 40-A and if approved by the superintendent
30 the plans shall be implemented. If not approved, the
31 superintendent shall set forth in writing the reasons
32 for his disapproval. Insurers who offer coverage for
33 all or any part of no-fault benefits must, upon dis-
34 approval, resubmit a plan or plans to meet the re-
35 quirements of this section.

1 Sec. 2. 24-A MRSA §2748 is enacted to read:

2 §2748. Coordination of benefits

3 Insurers providing health insurance pursuant to
4 this chapter shall file plans with the Superintendent
5 of Insurance to provide for deductibles or to coordi-
6 nate payments for all or any part of medical or
7 health related no-fault benefits as required by chap-
8 ter 40-A. If approved by the superintendent, the
9 plans shall be implemented. If not approved, the su-
10 perintendent shall set forth in writing the reasons
11 for his disapproval. Insurers who offer coverage for
12 all or any part of no-fault benefits must, upon dis-
13 approval, resubmit a plan or plans to meet the re-
14 quirements of this section.

15 Sec. 3. 24-A MRSA §2844 is enacted to read:

16 §2844. Coordination of benefits

17 Insurers providing group or blanket health insur-
18 ance pursuant to this chapter shall file plans with
19 the Superintendent of Insurance to provide for de-
20 ductibles or to coordinate payments for all or any
21 part of medical or health related no-fault benefits
22 as required by chapter 40-A. If approved by the su-
23 perintendent, the plans shall be implemented. If not
24 approved, the superintendent shall set forth in writ-
25 ing the reasons for his disapproval. Insurers who
26 offer coverage for all or any part of no-fault bene-
27 fits must, upon disapproval, resubmit a plan or plans
28 to meet the requirements of this section.

29 Sec. 4. 24-A MRSA §2902, sub-§2, as amended by
30 PL 1975, c. 676, is further amended to read:

31 2. The amount of coverage to be so provided
32 shall not be less than the minimum limits for bodily
33 injury liability insurance provided for under Title
34 29, section 787, subsection 1. Each insurer shall be
35 obliged to furnish an amount of uninsured vehicle
36 coverage at least equal to the minimum limits for
37 bodily injury liability insurance as defined in sec-
38 tion 2953, subsections 1 and 2.

39 Sec. 5. 24-A MRSA c. 40-A is enacted to read:

1 CHAPTER 40-A

2 MAINE PLAN FOR MOTOR VEHICLE INSURANCE REFORM

3 §2951. Title

4 This chapter may be cited as the "Maine Plan for
5 Motor Vehicle Insurance Reform."

6 §2952. Definitions

7 As used in this chapter, unless the context oth-
8 erwise indicates, the following words have the fol-
9 lowing meanings.

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

14 2. Injury. "Injury" means bodily harm and bodi-
15 ly malfunction, disease or aggravation of disease,
16 including death resulting from the disease at any
17 time arising out of an accident involving a motor ve-
18 hicle, provided that the injury must appear within 2
19 years following the accident or it must be medically
20 ascertainable within 2 years following the accident
21 that an extension or complication of the original in-
22 jury is reasonably expected to continue or develop.

23 3. Insured motor vehicle. "Insured motor vehi-
24 cle" means the motor vehicle identified or described
25 in the policy issued to the name insured.

26 4. Loss. "Loss" means economic detriment which
27 accrues within 4 years following the date of the ac-
28 cident as a result of injury consisting only of al-
29 lowable expense, work loss, replacement services loss
30 and, if the injury caused death, survivor's loss.

31 A. "Allowable expense" means reasonable charges
32 incurred for reasonably needed products, services
33 and accommodations, including those for medical,
34 hospital, dental, chiropractic, x-ray, nursing,
35 ambulance and prosthetic services and rehabilita-
36 tion and rehabilitative occupational training and
37 education and for any other remedial treatment

1 and care, including any nonmedical remedial
2 treatment and care rendered in accordance with a
3 recognized religious method of healing. Allowa-
4 ble expense does not include that portion of a
5 charge for a room in a hospital, clinic, conva-
6 lescent or nursing home, or any other institution
7 engaged in providing nursing care and related
8 services, in excess of reasonable and customary
9 charges for semiprivate accommodations, unless
10 intensive care is medically required; and does
11 not include a total charge in excess of \$1,000
12 for expenses of all types in any way related to
13 funeral, cremation and burial.

14 B. "Survivor's loss" means loss after decedent's
15 death of contribution of money or tangible things
16 of economic value, not including services that
17 his surviving next of kin would have received
18 from the decedent had the decedent not suffered
19 the injury causing death.

20 C. "Work loss" means 80% of the loss of gross
21 income from work the injured person would have
22 performed, including income from self-employment,
23 had he not been injured, reduced by any income
24 from substitute work actually performed by the
25 injured person or by income the injured person
26 would have earned in available and appropriate
27 substitute work which he was capable of perform-
28 ing but unreasonably failed to undertake, and ex-
29 penses reasonably incurred in obtaining ordinary
30 and necessary services in lieu of those which,
31 had he not been injured, he would have performed
32 not for income but for the benefit of himself or
33 his family.

34 The work loss of an injured person who is
35 seasonally employed shall be calculated by deter-
36 mining his probable weekly income by dividing his
37 probable annual income by the number of weeks he
38 normally works and multiplying that quantity by
39 the number of work weeks, or fraction of a work
40 week, the injured person was unable to perform
41 work during the accrual period, but for the in-
42 jury.

1 The work loss of an injured person who is not em-
2 ployed when the accident resulting in injury oc-
3 currs shall be calculated by determining his prob-
4 able weekly income by dividing his probable annu-
5 al income by 52 and multiplying that quantity by
6 the number of work weeks, or fraction of the work
7 week, if any, the victim would reasonably have
8 been expected to realize income during the accru-
9 al period.

10 As used in this section, "probable annual income"
11 means:

12 (1) For an injured person regularly em-
13 ployed at the time of the accident, 12 times
14 the monthly gross income earned by the in-
15 jured person from work in the month preced-
16 ing the month in which the accident result-
17 ing in injury occurs or the average annual
18 income earned by the injured person from
19 work during the years, not to exceed 3, pre-
20 ceding the year in which the accident re-
21 sulting in injury occurs, whichever is
22 greater.

23 (2) For an injured person seasonally em-
24 ployed or not employed at the time of the
25 accident, the average annual gross income
26 earned by the injured person from work dur-
27 ing the years in which he was employed, not
28 to exceed 3 years, preceding the year in
29 which the accident resulting in injury oc-
30 currs.

31 Sums for work loss shall be periodically in-
32 creased in a manner corresponding to annual com-
33 penetration increases that would predictably have
34 resulted but for injury. In no event may basic
35 benefits provided for work loss pursuant to this
36 chapter exceed \$400 per week.

37 D. "Replacement services loss" means 75% of all
38 reasonable and necessary expenses incurred for
39 replacement of essential services in lieu of
40 those that, but for the injury, the injured per-
41 son would have performed without income for the
42 benefit of his household.

1 5. Motor vehicle. "Motor vehicle" means any
2 self-propelled vehicle not operated exclusively on
3 tracks, but not including motorcycles as defined in
4 Title 29, section 1, subsection 4, snowmobiles as de-
5 defined in Title 12, section 7821, aircraft or any ve-
6 hicle prohibited by law from operating on the public
7 highways.

8 6. Net loss. "Net loss" means loss less
9 subtractable benefits. "Subtractable benefits" means
10 those benefits or advantages from sources other than
11 no-fault insurance which are required by the provi-
12 sion on subtractable benefits, section 2959, to be
13 subtracted from loss in calculating net loss.

14 7. No-fault benefits. "No-fault benefits" means
15 those benefits payable under the provisions on bene-
16 fits provided by no-fault insurance, section 2954,
17 subject to exclusions, limitations and other condi-
18 tions of this chapter.

19 8. No-fault insured. "No-fault insured" means a
20 person identified by name as an insured in an insur-
21 ance contract with respect to which motor vehicle li-
22 ability insurance required by this chapter has been
23 issued and while residing in the same household with
24 a named insured, the following persons not identified
25 by name as an insured in any other contract of motor
26 vehicle liability insurance complying with this chap-
27 ter: A spouse or other relative of the name insured;
28 and a minor in the custody of a named insured or of a
29 relative residing in the same household with the
30 named insured. A person resides in the same house-
31 hold if he usually makes his home in the same family
32 unit, although temporarily living elsewhere.

33 9. Operation of a motor vehicle. "Operation of
34 a motor vehicle" means the use of a motor vehicle for
35 the transportation of one or more persons, or trans-
36 portation of property, including occupancy of the ve-
37 hicle by one or more persons when stopped or parked
38 and the maintenance of a motor vehicle, except when
39 the maintenance is within the course of a business of
40 repairing, servicing or otherwise maintaining motor
41 vehicles unless the conduct occurs off the business
42 premises. Any person who is entering into or alight-
43 ing from a motor vehicle is an occupant of the vehi-
44 cle.

1 10 Pedestrian. "Pedestrian" means any person
2 who is not an occupant of a motor vehicle or a motor-
3 cycle.

4 §2953. Mandatory motor vehicle insurance coverage;
5 limits

6 1. Coverage. Every owner of a motor vehicle
7 principally garaged in this State for more than 4
8 months of any year or which vehicle is required to be
9 registered in this State who operates it or permits
10 it to be operated in this State shall provide, prior
11 to the operation, motor vehicle liability insurance
12 coverage, under provisions approved by the Superin-
13 tendent of Insurance, insuring against loss resulting
14 from liability imposed by law for bodily injury,
15 death and property damage sustained by any person
16 arising out of the ownership, maintenance, operation
17 or use of a motor vehicle and the coverage shall be
18 at least in an amount or limit of:

19 A. Twenty thousand dollars, exclusive of inter-
20 est and costs on account of injury to, or death
21 of, one person, in any one accident;

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

26 C. Ten thousand dollars, exclusive of interest
27 and costs, for damage to property in any one ac-
28 cident.

29 In addition, every such owner further shall be re-
30 quired to provide the proof of financial responsibil-
31 ity under Title 29, chapter 9, subchapter I.

32 2. Self-insurer. Subject to approval of the
33 Secretary of State, the motor vehicle liability in-
34 surance coverage required by this chapter may be pro-
35 vided by self-insurance by filing with the Superin-
36 tendent of Insurance in satisfactory form:

37 A. A continuing undertaking by the owner or oth-
38 er appropriate person to pay basic benefits and
39 to perform all other obligations imposed by this
40 chapter;

1 B. Evidence that appropriate provision exists
2 for the prompt and efficient administration of
3 all claims, benefits and obligations provided by
4 this chapter; and

5 C. Deposits or commitments exist providing as-
6 urance for payment of basic benefits and all
7 other obligations imposed by this chapter sub-
8 stantially equivalent to those afforded by a pol-
9 icy of insurance that would comply with this
10 chapter. A person who provides security under
11 this subsection is a self-insurer.

12 3. Penalty. It is unlawful for any owner, oper-
13 ator or registrant of a motor vehicle registered or
14 principally garaged in this State to operate or cause
15 to be operated a motor vehicle upon any public road
16 or highway in this State knowingly without motor ve-
17 hicle liability insurance coverage as required by
18 this chapter. A violation of this chapter is a civil
19 violation for which, upon judgment, a person shall
20 forfeit not more than \$100 and shall forthwith forfeit
21 his right to operate a motor vehicle upon any
22 public road or highway in this State for a period up
23 to 3 months from the date of that judgment. Upon pe-
24 tition and filing of proof of the required coverage,
25 the Secretary of State shall restore to that person
26 his right to operate a motor vehicle in this State
27 prior to the expiration of the period of suspension.

28 §2954. Mandatory no-fault benefits

29 Every motor vehicle liability insurance policy,
30 insuring a motor vehicle, as defined in this chapter,
31 against loss resulting from liability imposed by law
32 for injury and death sustained by any person arising
33 out of ownership, operation, maintenance or use of a
34 motor vehicle, shall provide additional coverage, as
35 defined in this chapter under provision approved by
36 the Superintendent of Insurance, for the payment of
37 benefits without regard to negligence, liability or
38 fault of any kind, to the no-fault insured, to other
39 persons sustaining injury while occupying the motor
40 vehicle of the no-fault insured, or while using the
41 motor vehicle with the permission of the no-fault in-
42 sured, and to pedestrians sustaining injury caused by
43 the no-fault insured's motor vehicle or struck by an
44 object propelled by or from that motor vehicle.

1 The minimum limit of liability of the insurer ob-
2 ligated to pay no-fault benefits, in this chapter
3 called "basic benefits," shall be in the amount of
4 \$5,000 with respect to each person entitled to re-
5 ceive benefits under this chapter and without limit
6 as to the total number of recipients of benefits.

7 Each insurer who offers coverage for no-fault
8 benefits in the minimum amount of \$5,000 per person
9 shall offer additional coverage to each named in-
10 jured, increasing the limit of the insurer's liabili-
11 ty to each recipient of no-fault benefits in multi-
12 ples of \$10,000 to each and including limits of
13 \$50,000 to each recipient.

14 §2955. Protection against duplication of benefits

15 1. Work loss. A named insured who at the time
16 of purchasing the coverage required under section
17 2954 states that he does not expect to be employed,
18 by virtue of being a student, retired or disabled or
19 that he does not expect to receive any earned income
20 during the period for which the coverage is being
21 purchased shall not be required to purchase coverage
22 for his own work loss as defined in section 2952,
23 subsection 4, paragraph C. When such coverage is ex-
24 cluded, the coverage required under section 2954
25 shall be offered at appropriately reduced premiums.

26 2. Submission of plans. Insurers who offer cov-
27 erage, including those nonprofit hospital or medical
28 service organizations subject to Title 24, for all or
29 any part of no-fault benefits required by this chap-
30 ter, shall file a plan or plans with the Superintend-
31 ent of Insurance, to provide for deductibles or to
32 coordinate no-fault benefits with other benefits pro-
33 vided by other insurers.

34 If approved by the superintendent, those plans shall
35 be implemented. If not approved, the superintendent
36 shall set forth in writing the reasons for his disap-
37 proval. Insurers who offer coverage for all or any
38 part of no-fault benefits must, upon disapproval,
39 resubmit plan or plans to meet the requirements of
40 this section.

1 3. Other benefits. To the extent a named insured is covered by Medicare, Medicaid, any system of national health insurance, any health program administered by the Veterans' Administration or the Armed Forces of the United States, the named insured shall not be required to purchase additional or duplicate coverage in regard to any benefits provided by this program or programs. The Superintendent of Insurance shall certify the extent to which any such program meets the requirements of this chapter.

11 Insurers shall ascertain of a named insured, prior to the sale of any insurance to the named insured providing all or part of the benefits required by this chapter and on forms provided by the Superintendent of Insurance, whether or not the named insured is covered by any of the programs as set forth in paragraph A. If the named insured indicated that coverage, no insurer may sell any policy of insurance to the named insured which duplicates the coverage of the program or programs, as set forth in paragraph A, unless the named insured requests the duplicate coverage on a form or forms approved by the Superintendent of Insurance.

24 4. The superintendent shall, within 14 months following the effective date of this Act, report to the Legislature concerning the operation of this section.

28 §2956. Basic benefits provided by no-fault benefit insurance

30 Except as provided in this chapter, the no-fault benefit insurer is liable to pay basic benefits, without reference to fault, under the conditions stated in this chapter, reimbursing persons suffering net loss through injury arising out of the operation of a motor vehicle. The benefits shall extend to pedestrians and to passengers sustaining injury caused by an uninsured or unidentified motor vehicle. The pedestrian, in that event, shall recover under the terms of sections 2976, 2977 and 2978.

40 §2957. Intentional injuries

1 A person intentionally causing or attempting to
2 cause injury to himself or another is disqualified
3 from no-fault benefits for injury arising from his
4 acts, including benefits otherwise due him as a sur-
5 vivor. In the case of the death of a person inten-
6 tionally causing or attempting to cause injury to
7 himself, his surviving next of kin are not entitled
8 to benefits for survivors' loss. A person intention-
9 ally causes or attempts to cause injury, if he acts
10 or fails to act for the purpose of causing injury. A
11 person intentionally causes or attempts to cause in-
12 jury, if he acts or fails to act for the purpose of
13 causing injury or with knowledge that injury is sub-
14 stantially certain to follow. A person does not in-
15 entionally cause or attempt to cause injury merely
16 because his act or failure to act is intentional, or
17 done with his realization that it creates a grave
18 risk of causing injury, or if the act or omission
19 causing the injury is for the purpose of averting
20 bodily harm to himself or another person.

21 §2958. Converted vehicle

22 A person who converts a motor vehicle is disqual-
23 ified from basic benefits or any additional benefits
24 under this chapter, including benefits otherwise due
25 him as a survivor, for injuries arising from the
26 maintenance or use of the converted vehicle, and, in
27 the case of his death, his surviving next of kin are
28 not entitled to benefits for survivors' loss. For
29 the purpose of this section, a person is not a con-
30 verter if he uses the motor vehicle in the good faith
31 belief that he is legally entitled to use it.

32 §2959. Subtractable benefits

33 1. United States Social Security, Workers' Com-
34 ensation Act; health care. All benefits or advan-
35 tages a person receives, or is entitled to receive,
36 because of the injury, from the United States Social
37 Security, Medicare, Medicaid, any health care program
38 administered by the Department of Human Services,
39 the United States Veterans' Administration or any
40 other health care program under any state or federal
41 law, pursuant to the Workers' Compensation Act or any
42 similar law, shall be subtracted in calculating net
43 loss under this chapter.

1 2. Nontaxable. If a benefit or advantage re-
2 ceived to compensate for loss of income because of
3 injury, whether from basic benefits or from any
4 source of benefits or advantages subtracted under
5 subsection 1, is not taxable income, the income tax
6 saving that is attributable to his loss of income be-
7 cause of injury is subtracted in calculating net
8 loss. Subtraction may not exceed 15% of the loss of
9 income and shall be in a lesser amount if the claim-
10 ant furnishes to the insurer reasonable proof of a
11 lower value of the income tax advantage.

12 §2960. Partial abolition of tort liability

13 Tort liability with respect to accidents occur-
14 ring in this State and arising from the ownership,
15 maintenance or use of a motor vehicle is abolished,
16 except under the following circumstances in which re-
17 covery may be had for all damages recognized by law:

18 1. Liability for injury. That a person in the
19 business of designing, manufacturing, repairing, ser-
20 vic-ing or otherwise maintaining motor vehicles re-
21 remains liable for injury arising out of a defect in
22 the motor vehicle which is caused or not corrected by
23 an act or omission in the course of that business,
24 other than a defect in a motor vehicle which is oper-
25 ated by that business;

26 2. Required coverage not provided at time of ac-
27 cident. The coverage required under section 2953 was
28 not provided at the time of the accident;

29 3. Intentional damage or harm. The damage or
30 harm to person or property was intentionally caused;

31 4. Death or certain serious injuries. The in-
32 jured person dies or suffers permanent disability or
33 permanent serious disfigurement, permanent and sig-
34 nificant loss of any important bodily function or
35 loss of a body member in whole or in part, regardless
36 of the right of that person to receive basic benefits
37 under section 2954; or

38 5. Medical and hospital costs of \$500 or more.
39 An injured person's costs of medical and hospital ex-
40 penses are \$500 or more. For purposes of this sub-

1 section, "costs of medical and hospital expenses" are
2 defined as the reasonable value for necessary ser-
3 vices rendered for medical, hospital, dental, surgi-
4 cal, ambulance, professional nursing and rehabilita-
5 tion services, chiropractic services, but exempting
6 diagnostic x rays in excess of \$100;

7 The term "costs of medical and hospital expenses"
8 may also mean costs for any nonmedical remedial care
9 and treatment rendered in accordance with a recog-
10 nized religious method of healing; or

11 6. Property damage. Property damage.

12 §2961. Insurers' rights of reimbursement

13 Whenever a recipient of no-fault benefits recov-
14 ers in tort for injury, the insurer, including those
15 nonprofit hospital or medical service organizations
16 subject to Title 24, paying the no-fault benefits has
17 a right of reimbursement out of the tort recovery.
18 The reimbursement shall be in the amount of no-fault
19 benefits paid by the insurer. The tort recovery
20 shall also be credited against no-fault benefits ac-
21 curring after the recovery.

22 The no-fault benefit insurer has no right of sub-
23 rogation to any cause of action of a recipient of
24 no-fault benefits or to bring such an action in its
25 own name, nor may the policy of no-fault benefit in-
26 surance confer those rights upon the insurer.

27 §2962. Priority of applicability of insurance poli-
28 cies

29 1. Priorities. The following priorities shall
30 apply:

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

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

1 C. The no-fault insurance for payment of
2 no-fault benefits applicable to injury to a per-
3 son not otherwise covered, who is not the driver
4 or other occupant of an involved motor vehicle,
5 is the insurance covering any involved motor ve-
6 hicle. An unoccupied parked vehicle is not an
7 involved motor vehicle unless it was parked so as
8 to cause unreasonable risk of injury.

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

20 §2963. Territorial coverage

21 No-fault benefit insurance applies to injury suf-
22 fered by the no-fault insured within the State, the
23 United States, its territories and possessions, the
24 Dominion of Canada and the Republic of Mexico.

25 §2964. Approval of terms and forms

26 Terms and conditions of no-fault benefit insur-
27 ance and of policy forms used by insurers in offering
28 these coverages are subject to approval and regula-
29 tion by the Superintendent of Insurance. He shall
30 approve only terms and conditions which are consist-
31 ent with the purposes of this chapter and fair and
32 equitable to all persons whose interests may be af-
33 ected and which limit the variety of coverages
34 available to give insurance purchasers reasonable op-
35 portunity to compare the cost of insuring with vari-
36 ous insurers.

37 §2965. Payment of benefits

38 1. Time. No-fault benefits are payable semi-
39 monthly as loss accrues. Loss accrues not when in-
40 jury occurs, but as work loss, survivors' loss, re-

1 placement services loss or allowable expense is in-
2 curring. Benefits for work loss, survivors' loss and
3 replacement services loss are overdue if not paid
4 within 15 days after the insurer receives reasonable
5 proof of the fact and amount of loss realized. Bene-
6 fits for allowable expenses are overdue if not paid
7 within 30 days after the insurer receives reasonable
8 proof of the fact and amount of loss realized. If
9 reasonable proof is supplied as to only one part of a
10 claim time is as provided by this section. Allowable
11 expenses may be paid by the insurer upon written as-
12 signment by the claimant directly to persons supply-
13 ing products, services or accommodations to the
14 claimant.

15 2. Work loss. A claim for work loss shall be
16 paid as provided by this section without deduction
17 for subtractable benefits, if the subtractable bene-
18 fits have not been paid to the claimant before bene-
19 fits are overdue. The insurer is entitled to reim-
20 bursement from the person obligated to pay the
21 subtractable benefits or from the claimant who later
22 receives the subtractable benefits.

23 3. Overdue payments. Overdue payments bear in-
24 terest at the rate of 18% per year.

25 4. Mailing. Every policy of insurance purport-
26 ing to provide the benefits required under this chap-
27 ter shall plainly state an address where a demand for
28 benefits may be mailed. A demand for benefits mailed
29 to that address will be deemed conclusive proof that
30 the demand for those benefits was communicated to the
31 carrier and a certified or registered mail receipt
32 will be deemed conclusive proof of the date of the
33 demand. In the alternative, a demand for benefits
34 may be mailed to any authorized agent of the carrier
35 licensed as an authorized agent by the Bureau of In-
36 surance.

37 §2966. Limitation of action

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

1 §2967. Claims against wrong insurer

2 If timely action for no-fault benefits is com-
3 menced against an insurer and benefits are denied be-
4 cause of a determination that the insurer's coverage
5 is not applicable to the claimant under the provi-
6 sions in section 2962, a claim against the next ap-
7 plicable insurer or assigned claims plan may be made
8 within a reasonable time after that determination be-
9 comes final. An action by the claimant on the subse-
10 quent claim may not be commenced later than 120 days
11 after the determination becomes final or the last
12 date on which the action could otherwise have been
13 commenced, whichever is later.

14 §2968. Fees of claimants' attorney

15 1. Contingent fee; other fee. In any legal ac-
16 tion arising from an accident involving a motor vehi-
17 cle as a result of which benefits under this chapter
18 are furnished or are to be furnished, an attorney
19 representing or acting on behalf of any claimant of
20 the benefits shall be entitled to a contingent fee or
21 any other fee only as to the amount by which any dam-
22 ages recovered in that action exceeds the amount of
23 benefits furnished pursuant to this chapter.

24 2. Adjustment of fees. There shall be no ad-
25 justment of fees as to the remainder of any recovery.

26 3. Rules. The Supreme Judicial Court shall
27 promulgate appropriate rules to enforce this section.

28 §2969. Fees of insurers' attorney

29 An insurer shall be allowed a reasonable attor-
30 ney's fee for defending a claim that was fraudulent.
31 This fee may be treated as an offset to benefits due
32 or which accrue, and judgment may be entered against
33 the claimant for any part of the fee not offset or
34 otherwise paid.

35 §2970. Lump-sum and installment settlements

36 Rights and obligations arising under no-fault
37 benefit insurance as to a claim, inclusive of future
38 loss arising from an injury or death, may be dis-

1 charged at any time. Any payment pursuant to this
2 section must be approved by the District Court.

3 §2971. Judgments for future benefits

4 If an action for no-fault benefits is commenced,
5 a lump-sum judgment by a court of proper jurisdiction
6 may be entered for benefits that would accrue after
7 the date of the award.

8 §2972. Exemption of benefits

9 Benefits for work loss and survivors' loss pay-
10 able under this chapter are exempt from garnishment,
11 attachment, execution and other process or claims to
12 the extent provided in any law exempting earnings or
13 wages from process or claims.

14 §2973. Mental or physical examination of injured
15 person

16 1. Order for examination. If the mental or
17 physical condition of a person is material to any
18 claim for past or future basic or additional benefits
19 under this chapter, the no-fault benefit insurer may
20 petition the Superior Court for an order directing
21 the person to submit to a mental or physical examina-
22 tion by a physician. The order may be made only for
23 good cause shown and upon notice to the person to be
24 examined and to all persons having an interest. The
25 order shall specify the time, place, manner, condi-
26 tions and scope of the examination and the physician
27 by whom it is to be made.

28 2. Reports. The insurer causing a mental or
29 physical examination to be made shall deliver to the
30 person examined a copy of a detailed written report
31 of the examining physician setting out his findings,
32 including results of all tests made, diagnosis, con-
33 clusions and reports of earlier examination of the
34 same condition. This subsection applies to examina-
35 tions made by agreement of the person examined and
36 the insurer, unless the agreement provides otherwise.
37 This subsection does not preclude discovery of a re-
38 port of an examining physician or taking a deposition
39 of the physician in accordance with any rule of court
40 or or other provision of law. In making the order,

1 the court shall take into account whether refusal to
2 submit to a mental or physical examination is based
3 upon the person's right to the free exercise of his
4 religion.

5 §2974. Discovery of facts about an injured person

6 If relevant to a claim for no-fault benefits and
7 upon request of a no-fault benefit claimant or insurer,
8 information shall be disclosed as follows.

9 1. Work record and earnings. An employer shall
10 furnish a statement of the work record and earnings
11 of an employee upon whose injury the claim is based.
12 The statement shall cover the period specified by the
13 claimant or insurer making the request and may in-
14 clude the entire period after, and a reasonable peri-
15 od before, the injury.

16 2. Medical treatment. An injured person upon
17 whose injury the claim is based shall deliver to the
18 insurer, upon request every written report available
19 to him concerning any medical treatment, previously
20 or thereafter made, connected to the injury upon
21 which the claimant is based and shall authorize the
22 insurer to inspect and copy records connected with
23 the injury upon which the claim is based of physi-
24 cians, hospitals, clinics or other medical institu-
25 tions.

26 3. Treatment. A physician, hospital, clinic or
27 other medical institution furnishing services or ac-
28 commodations to an injured person in connection with
29 a condition alleged to be connected with an injury
30 upon which a claim is based upon authorization of the
31 injured person shall furnish a written report of the
32 history, condition, diagnosis, medical tests, treat-
33 ment and dates and costs of treatment of the injured
34 person, and permit inspection and copying of records
35 as to the history, condition, treatment and dates and
36 cost of the treatment.

37 4. Cost. Any person providing information under
38 this section, other than the claimant, may charge the
39 person requesting the information a reasonable amount
40 for the cost of providing it.

1 5. Order of discovery. In the case of a dispute
2 as to the right of a claimant or insurer to discover
3 this information, the claimant or insurer may peti-
4 tion the Superior Court for an order for discovery.
5 The order may be made only for good cause shown and
6 upon notice to all persons having an interest and it
7 shall specify the time, place, manner, conditions and
8 scope of the discovery. The court in order to pro-
9 tect against annoyance, embarrassment or oppression,
10 may enter an order refusing discovery or specifying
11 conditions of discovery and order payment of costs
12 and expenses of the proceeding, including reasonable
13 attorneys' fees.

14 §2975. Proof of insurance

15 The Secretary of State, upon receipt of notice
16 from the clerk of any court in this State that a per-
17 son has been found in violation under section 2953,
18 shall suspend the license or the right to obtain a
19 license, or right of that person to operate, and all
20 the registration certificates and registration plates
21 of that person until proof of insurance complying
22 with this chapter is supplied.

23 §2976. Assigned claims plan

24 1. Plan. A person entitled to basic benefits
25 because of injury occurring in this State and covered
26 by this chapter may obtain basic benefits through the
27 assigned claims plan or bureau established pursuant
28 to section 2977 and in accordance with the provision
29 for making assigned claims as provided in section
30 2978, if:

31 A. Basic benefits are not applicable to the in-
32 jury for some reason other than those specified
33 in sections 2957 and 2958;

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

36 C. Basic benefits applicable to the injury, be-
37 cause of financial inability of an insurer or
38 self-insurer to fulfill its obligation, are inad-
39 equat e to provide the contracted for benefits; or

1 D. A claim for basic benefits is rejected by an
2 insurer or self-insurer on some ground other than
3 the person is not entitled to basic benefits un-
4 der this chapter.

5 2. Subrogation. If a claim qualified for as-
6 signment under subsection 1, paragraph B, C or D, the
7 assigned claims bureau of any insurer or self-insurer
8 to whom the claim is assigned shall be subrogated to
9 all of the rights of the claimant against any insurer
10 or self-insurer, its successor in interest or substi-
11 tute, legally obligated to provide benefits to the
12 claimant, for no-fault basic benefits provided by the
13 assignment.

14 3. Limitations. A person shall not be entitled
15 to basic benefits through the assigned claims plan or
16 from any insurer, with respect to injury which he has
17 sustained, if at the time of the injury he was the
18 owner of a motor vehicle for which motor vehicle lia-
19 bility insurance is required under this chapter and
20 he failed to have that security in effect.

21 §2977. Assigned claims bureau

22 Self-insurers and insurers writing motor vehicle
23 liability insurance in this State may organize and
24 maintain, subject to approval and regulation by the
25 Superintendent of Insurance, an assigned claims bu-
26 reau and an assigned claims plan and adopt rules for
27 their operation and for the assessment of costs on a
28 fair and equitable basis consistent with this chap-
29 ter. If they do not organize and continuously main-
30 tain an assigned claims bureau and an assigned claims
31 plan in a manner considered by the superintendent to
32 be consistent with this chapter, the superintendent
33 shall organize and maintain an assigned claims bureau
34 and an assigned claims plan. Each self-insurer and
35 insurer writing motor vehicle liability insurance in
36 this State shall participate in the assigned claims
37 bureau and the assigned claims plan. Costs incurred
38 shall be allocated by the Superintendent of Insurance
39 in a fair manner among insurers and self-insurers.

40 §2978. Notification to assigned claims bureau

