

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

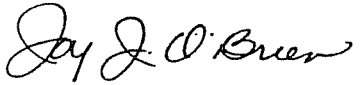
No. 2047

S.P. 799

In Senate, December 29, 1989

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Received by the Secretary of the Senate on December 29, 1989. Referred to the Committee on Banking and Insurance and 1,600 ordered printed pursuant to Joint Rule 14.


JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator THERIAULT of Aroostook.

Cosponsored by Senator COLLINS of Aroostook, Representative KETOVER of Portland and Representative GARLAND of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Promote Consumer Choice in Automobile Insurance.



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

4 **Sec. 1. 24-A MRSA c. 40-A is enacted to read:**

6 **CHAPTER 40-A**

8 **CONSUMER CHOICE AUTOMOBILE INSURANCE**

10 **§2951. Short title**

12 This chapter may be known and cited as the "Maine Consumer Choice Automobile Insurance Act."

14 **§2952. Purpose**

16 The purpose of this chapter is to offer the residents of the State an alternative to traditional fault-based automobile insurance. The basic goal of this alternative no-fault system is to provide individuals who are injured in motor vehicle accidents prompt and adequate benefits at the least cost to the insured and the system.

22 **§2953. Election of personal protection insurance**

24 1. When purchasing auto insurance, a consumer must be offered by the insurance company or its agent the option of either purchasing personal protection insurance pursuant to this chapter or purchasing traditional liability insurance.

30 2. All insureds shall submit, on a form acceptable to the Bureau of Insurance, written acknowledgement of the insured's election of coverage. This form must be submitted to and retained by the insurer and the insured's agent. The form must acknowledge that the insured understood the differences between the 2 types of insurance. The form must be provided by the insurer upon written request by anyone who claims to have suffered damages arising out of the ownership, operation, maintenance or use of the insured's motor vehicle. Election by an insured is voluntary and an insured may not hold any agent or insurer liable for damages resulting from the insured's election.

42 3. Personal protection insurance authorized under this chapter is available only for motor vehicles, which are defined as any self-propelled vehicle with 4 or more wheels designed for operation upon a public highway.

46 **§2954. Personal protection insurance**

48 1. Except as provided in subsection 3, persons covered by personal protection insurance waive their right to sue for any damages arising out of the ownership, operation, maintenance or use of a motor vehicle within this State.

2 2. Except as provided in subsection 3, a person covered by
4 personal protection insurance is not liable for any damages
arising out of the ownership, operation, maintenance or use of
6 that person's motor vehicle within this State.

8 3. The provisions of subsections 1 and 2 do not apply in
the following circumstances:

10 A. When the damages sustained by the claimant were
12 intentionally caused. For the purposes of this section, a
14 person does not intentionally cause injury if that person
knowingly causes injury attempting to avert or minimize
16 injury to that person or other persons and that person or
other persons are actually injured;

18 B. Damages caused in the commission of a felony;

20 C. Damages arising out of the manufacture, sale, repair,
22 servicing or maintenance of a motor vehicle by motor vehicle
manufacturers, dealers, repair shops, garages or service
stations;

24 D. Damages arising out of the loading and unloading of a
motor vehicle;

26 E. Damages arising out of the parking or storage of a motor
28 vehicle by those in the business of parking or storing motor
vehicles;

30 F. When the claimant was not an occupant of a motor vehicle
32 at the time of the injury;

34 G. When the property damaged was not within a motor vehicle
at the time it was damaged; or

36 H. Whenever the total economic damages exceed the \$25,000
38 limit under personal protection insurance, in which case the
40 receipt of \$25,000 of personal protection insurance by the
42 person bringing the claim must be deducted from the award
and the award must be limited to economic damages and must
44 not include compensation for noneconomic damages such as
pain and suffering.

46 4. Personal protection insurance shall provide residual
48 liability coverage in an amount not less than that required under
Title 29, chapter 9, for the out-of-state operation of the
insured's motor vehicle and for those circumstances in subsection
50 3 where personal protection insurance does not apply.

52 §2955. Coverage under personal protection insurance

2 Subject to reasonable exclusions and deductions approved by
3 the Superintendent of Insurance and a total limit of \$25,000 per
4 claim, personal protection insurance shall provide the following
5 coverage to the insured and, subject to the priority of claims
6 under section 2957, to any authorized occupants of the insured's
7 motor vehicle injured as a result of the ownership, operation,
8 maintenance or use of the insured's motor vehicle within this
9 State:

10 1. Payment for reasonable and necessary medical expenses
11 incurred for the care, recovery or rehabilitation of bodily
12 injuries sustained by any person covered by personal protection
13 insurance;

14 2. Payment of 80% of the loss of gross income resulting
15 from bodily injuries which caused the injured person covered by
16 personal protection insurance to be unable to perform work which
17 the injured person would have performed if the injured person had
18 not been injured reduced by any income for substitute work
19 actually performed by the injured person or by income the injured
20 person would have earned in available appropriate substitute work
21 the injured person was capable of performing, but reasonably
22 failed to undertake. As used in this section, "income" means
23 income from salary, wages, tips, commissions, professional fees,
24 profits from an individually owned business or farm, profits or
25 income from any partnership, or profits from a corporation which
26 is taxed pursuant to 26 United States Code, Sections 1361 to 1379;

27 3. Payment for the replacement or repair of the insured's
28 motor vehicle and other property contained within the insured's
29 motor vehicle which is damaged as a result of the ownership,
30 operation, maintenance or use of the insured's motor vehicle
31 within this State;

32 4. Payment for total charges not exceeding \$3,500 per
33 person for expenses in any way related to a funeral, cremation or
34 burial. An insurer may pay funeral benefits to the executor or
35 administrator of the deceased, to any of the deceased's relatives
36 by blood, legal adoption or marriage, to any person appearing to
37 the insurer to be equitably entitled to the benefits, or to any
38 person who has incurred expenses for the burial of the deceased;

39 5. Payment, not exceeding \$35 per day for a period not
40 exceeding 1 year, for expenses reasonably incurred in obtaining
41 ordinary and necessary services in lieu of those the injured
42 person would have performed, not for income, but for the benefit
43 of the injured person or the injured person's family if the
44 injured person had not been injured; and

45 6. Payment for one year of an amount not exceeding the
46 amount a decedent would have received in disability income
47 benefits under subsection 2 if the decedent had survived, to
48

2 compensate dependents of a deceased person for the loss of things
4 of economic value the dependents would have received from the
6 decedent if the decedent had not suffered a fatal injury, less
8 expenses the dependents avoid by reason of the decedent's death.

10 Personal protection insurance may not apply in those
12 circumstances described in section 2954, subsection 3, paragraphs
14 A through G. In the event an insurer in good faith pays personal
16 protection insurance benefits and it is later determined that the
18 recipient was not entitled to such benefits because the damages
20 arose under circumstances described in section 2954, subsection
22 3, paragraphs A through G, the insurer shall have subrogation
24 rights against the party at fault to recover the benefits paid.

26 **§2956. Coordination with health insurance**

28 Subject to the approval of the superintendent, personal
30 protection insurance must include optional deductibles and
32 exclusions reasonably related to other health and accident
34 coverage on the insured. The deductibles and exclusions required
36 to be offered by this section shall apply only to personal
38 protection benefits payable to the person named in the policy,
40 the spouse of the insured and any relative of either domiciled in
42 the same household.

44 **§2957. Priority of claims**

46 1. For private passenger motor vehicles the priority of
48 claims is as follows.

50 A. An occupant of a private passenger motor vehicle who
suffers bodily injury or property damage must be covered
under the occupant's own automobile policy.

B. In the event an occupant does not own an insurance
policy, the occupant shall collect under the operator's
policy.

C. In the event neither the occupant nor the operator own
an insurance policy, the occupant shall collect under the
motor vehicle owner's policy.

2. For commercial vehicles, including vehicles used in the
business of transporting business or property, the priority of
claims is as follows.

A. An occupant of a commercial motor vehicle who suffers
bodily injury or property damage shall collect under the
motor vehicle owner's automobile insurance policy.

2 B. In the event the owner does not own an automobile
insurance policy, the occupant shall collect under the
4 operator's policy.

6 C. In the event neither the owner nor operator own an
insurance policy, the occupant shall collect under the
8 occupant's own automobile insurance policy.

10 **§2958. Recovery under traditional liability insurance**

12 In the event a person covered by personal protection
insurance would be liable to a person covered by traditional
14 liability insurance but for the provisions of section 2954,
subsection 2, the person covered by personal protection insurance
16 is considered an uninsured motorist for purposes of coverage
under the traditional liability insurance.

18 **§2959. Rates for personal protection insurance**

20 No insurer may charge premiums for personal protection
insurance that exceed 80% of the premium charged by the insurer
22 for the same class of coverage under a traditional liability
insurance policy.

24 **Sec. 2. Effective date.** This Act takes effect on January 1,
26 1991. Claims arising before that date are not subject to this
28 Act. Prior to the effective date of this Act, the Superintendent
of Insurance shall adopt any rules necessary to implement this
30 Act on the effective date.

32
34 **STATEMENT OF FACT**

36 This bill gives Maine consumers the option of purchasing
38 personal protection automobile insurance or traditional liability
insurance. Under personal protection insurance the insured may
40 not sue or be sued as a result of the operation of his or her
automobile. Instead, the insured is guaranteed reimbursement of
42 automobile repair costs, medical costs and certain lost wages
without regard to fault.

44 There are exceptions to personal protection insurance for
intentionally caused injuries; injuries arising out of the
46 commission of a felony; and economic damages in excess of \$25,000.

48 Those who elect not to be covered by personal protection
insurance, will continue to be able to sue or be sued for

injuries arising out of automobile accidents. In the event the party at fault in the accident had elected to be covered by personal protection insurance, the injured party will recover under the uninsured motorist protection in his or her own insurance policy.

It is expected that the price of the standard personal protection policy would be significantly less than the price of the standard traditional liability policy. This would help those who may be experiencing financial difficulty in paying for their automobile insurance.