

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1407

S.P. 529

In Senate, April 1, 1991

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator COLLINS of Aroostook
Cosponsored by Representative DONNELLY of Presque Isle.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Institute a System of No-fault Automobile Insurance.



2 described in subsection 1. A policy of insurance represented or
3 sold as providing security is deemed to provide insurance for the
4 payment of benefits.

5 4. Equivalent security. Security required by subsection 1
6 may be provided by any other method approved by the
7 Superintendent of Insurance as providing security equivalent to
8 that provided by an insurance policy if proof of the security is
9 filed and continuously maintained with the Secretary of State
10 throughout the period the motor vehicle is driven or moved upon a
11 highway. A person filing the security has all the obligations
12 and rights of an insurer under this chapter. Unless the context
13 otherwise indicates, "insurer" as used in this chapter includes
14 any person filing security as provided in this section.

15 5. Amount of security. Security for payment of benefits
16 under personal protection insurance, property protection
17 insurance and residual liability insurance provided in compliance
18 with subsection 1 must be maintained in the amount of \$20,000 for
19 bodily injury or death to any one person, in the amount of
20 \$40,000 for bodily injury or death to 2 or more persons in any
21 one accident, subject to the limit respecting one person, and in
22 the amount of \$10,000 for injury to and destruction of property
23 in any one accident.

24 6. Exemption. A governmental vehicle in compliance with
25 section 256 is exempt from the requirement to maintain security
26 for payment of benefits under personal protection insurance,
27 property protection insurance and residual liability insurance.

28 **§843. Certificates of security**

29 1. Insurer to provide certificates. A motor vehicle insurer
30 shall provide 2 certificates of security in the form approved by
31 the Superintendent of Insurance to each policyholder. The
32 insurer shall mark one certificate as the Secretary of State's
33 copy, which must be submitted with the application for
34 registration and sent to the Secretary of State by the person
35 accepting the application.

36 2. Certificate required. Every operator or owner of a
37 motor vehicle registered in this State shall maintain at all
38 times the amounts of motor vehicle security specified in section
39 842, subsection 5, and shall have in the motor vehicle when it is
40 on the highway a certificate of security.

41 3. Agent immunity from liability. An insurance agent,
42 broker or agency may not be held liable for an inaccurate
43 certificate of security if the certificate was issued based on
44 information contained in the records of that agent, broker or
45 agency or on any false or misleading statements made by the
46 operator.

2 4. Failure to produce certificate of security. Any person
4 who fails to produce a valid certificate of security when asked
 to do so by a law enforcement officer is in violation of this
 section and is subject to the penalties of section 844.

6
8 **§844. Penalties**

10 1. Violation. An owner, registrant or operator of a motor
 vehicle for which security is required commits a Class D crime if
12 that person operates the motor vehicle or permits it to be
 operated upon a public highway in this State without having in
 effect security complying with this chapter.

14 2. False information. A person commits a Class D crime if
16 that person supplies false information to the Secretary of State
 under section 843 or issues or uses an invalid certificate of
18 security.

20 3. Suspension. No later than 30 days following the receipt
 of an abstract from the court of a conviction or an adjudication
22 of any person of a violation of this chapter, the Secretary of
 State shall suspend, in accordance with chapter 17, the license
24 of the person convicted or adjudicated; the right to operate and
 obtain a license of any person operating a motor vehicle; the
26 registration certificate and registration plates; and the right
 to register of any person owning a motor vehicle, trailer or
28 semitrailer until that person provides evidence of security as
 required by this chapter.

30 **§845. Application of provisions to nonresidents and accidents in**
32 **other states**

34 1. Nonresidents. This chapter applies to any person who is
 not a resident of this State. A nonresident who fails to give
36 proof of security as required by section 843 may not operate any
 motor vehicle in this State, nor may any motor vehicle owned by
38 the nonresident be operated within this State by any person. The
 Secretary of State may not issue to such a nonresident any
40 operator's license or register any motor vehicle owned by such a
 nonresident. The operation by a nonresident, or the use with the
42 express or implied consent of the nonresident owner, of a motor
 vehicle on a highway of the State is deemed equivalent to an
44 appointment by such a nonresident of the Secretary of State as
 that nonresident's true and lawful attorney upon whom may be
46 served all lawful processes in any action against the nonresident
 that results from any accident in which the nonresident may be
48 involved while operating or permitting to be operated a motor
 vehicle on a highway of the State.

50 2. Information to home state. When a nonresident's
52 operating privilege is suspended pursuant to section 844, the

2 Secretary of State shall transmit a certified copy of the record
4 of the action to the official in charge of the issuance of
6 licenses and registration certificates in the state in which the
8 nonresident resides if the law of that state provides for action
10 similar to that provided for in subsection 3.

12 3. Accidents in other states. Upon receipt of
14 certification that the operating privilege of a resident of this
16 State has been suspended or revoked in any other state pursuant
18 to a law providing for its suspension or revocation for failure
20 to provide proof of security, under circumstances that require
22 the Secretary of State to suspend a nonresident's operating
24 privilege had the accident occurred in this State, the Secretary
26 of State may suspend the license of that resident and all
28 registration certificates and registration plates. The suspension
30 may continue until that resident furnishes evidence of compliance
32 with the law of the other state and files proof of security if
34 required by that law.

20 §846. Catastrophic Claims Association

22 1. Establishment. The Catastrophic Claims Association,
24 referred to in this Act as the "association," is established as
26 an unincorporated, nonprofit association. Each insurer within
28 this State that writes insurance coverage providing the security
30 required by section 842 must be a member of the association and
32 is bound by the plan of operation of the association. The
34 association is subject to the laws of this State.

36 2. Indemnification. For losses occurring on or after
38 January 1, 1992, the association shall provide and each member
40 shall accept indemnification for 100% of the amount of ultimate
42 loss sustained under personal protection insurance coverages in
44 excess of \$250,000 in each loss occurrence. As used in this
46 section, "ultimate loss" means the actual loss amounts a member
48 is obligated to pay that are paid or payable by the member and
50 does not include claim expenses. An ultimate loss is incurred by
52 the association on the date on which the loss occurs.

40 3. Withdrawal. An insurer may withdraw from the
42 association when it ceases to write insurance in this State that
44 provides the security required by section 842.

44 4. Payment of premiums. An insurer whose membership in the
46 association has been terminated by withdrawal continues to be
48 bound by the plan of operation. Any unpaid premiums that have
50 been charged to the withdrawing member are payable on the date of
52 the withdrawal.

50 5. Unsatisfied liabilities. An unsatisfied net liability
52 to the association of an insolvent member must be assumed by and
apportioned among the remaining members of the association as

2 provided in the plan of operation. The association has all
3 rights allowed by law on behalf of the remaining members against
4 the estate or funds of the insolvent member for sums due the
5 association.

6 6. Merger or consolidation. When a member merges with or
7 is consolidated into another insurer or another insurer has
8 reinsured a member's entire business in this State providing the
9 security required by section 842, the member and successors in
10 interest of the member remain liable for the member's obligations.

12 7. Duties. The association shall, on behalf of the members
13 of the association:

14 A. Assume 100% of all the liability established in
15 subsection 2:

18 B. Establish procedures by which a member must promptly
19 report to the association each claim that, on the basis of
20 the injuries or damages sustained, may reasonably be
21 anticipated to involve the association if the member is
22 ultimately held legally liable for those injuries or
23 damages. Solely for the purpose of reporting claims, a
24 member shall in all instances consider itself legally liable
25 for injuries or damages. The member shall advise the
26 association of subsequent developments likely to materially
27 affect the interest of the association in a claim;

28 C. Maintain relevant loss and expense data relative to all
29 liabilities of the association and require each member to
30 furnish statistics in connection with liabilities of the
31 association at the times and in the form and detail required
32 by the plan of operation;

34 D. Calculate and charge to members of the association, as
35 provided by the plan of operation, a total premium
36 sufficient to cover the expected losses and expenses of the
37 association for the period to which the premium applies.
38 The premium must include an amount to cover incurred losses
39 not reported for the period and may be adjusted for any
40 excess or deficient premiums from previous periods.
41 Excesses or deficiencies from previous periods may be fully
42 adjusted in a single period or may be adjusted over several
43 periods as provided by the plan of operation. Each member
44 must be charged an amount equal to that member's total
45 earned motor vehicle years of insurance written in this
46 State providing the security required by section 842 during
47 the period to which the premium applies, multiplied by the
48 average premium per motor vehicle. The average premium per
49 motor vehicle is the total premium of all members during the
50 period to which the premium applies divided by the total

2 earned motor vehicle years of insurance written in this
3 State providing the security required by section 842;

4 E. Require and accept the payment of premiums from members
5 of the association as provided by the plan of operation in
6 one of 2 ways:

7 (1) In full within 45 days after the premium charge; or

8 (2) Periodically to cover the actual cash obligations
9 of the association;

10 F. Receive and distribute all sums required for the
11 operation of the association; and

12 G. Establish procedures for reviewing claims procedures and
13 practices of members of the association. If the claims
14 procedures or practices of a member are considered
15 inadequate to properly service the liabilities of the
16 association, the association may undertake or may contract
17 with another person, including another member, to adjust or
18 assist in the adjustment of claims for the member on claims
19 that create a potential liability to the association and may
20 charge the cost of the adjustment to the member.

21 8. Additional functions. In addition to other powers
22 granted to it by this section, the association may:

23 A. Sue and be sued in the name of the association. A
24 judgment against the association does not create any direct
25 liability against the individual members of the
26 association. The association may provide for the
27 indemnification of its members, members of the board of
28 directors of the association and officers, employees and
29 other persons lawfully acting on behalf of the association;

30 B. Reinsure all or any portion of its potential liability
31 with reinsurers licensed to transact insurance in this State
32 or approved by the Superintendent of Insurance;

33 C. Provide for appropriate housing, equipment and personnel
34 as necessary to ensure the efficient operation of the
35 association;

36 D. Adopt reasonable rules for the administration of the
37 association, enforce those rules and delegate authority as
38 the board of directors of the association considers
39 necessary to ensure the proper administration and operation
40 of the association consistent with the plan of operation;

41 E. Contract for goods and services, including actuarial,
42 investment, legal and independent claims management
43

2 services, from others within or without this State to ensure
3 the efficient operation of the association;

4 F. Hear and determine complaints of a company or other
5 interested party concerning the operation of the
6 association; or

8 G. Perform other acts not listed in this section that are
9 necessary or proper to accomplish the purposes of the
10 association and that are not inconsistent with this section
11 or the plan of operation.

12
13 9. Board of directors. A board of directors, referred to
14 in this Act as the "board," is established. The board is
15 responsible for the operation of the association consistent with
16 the plan of operation and this section.

18 A. The board consists of 5 directors and the Superintendent
19 of Insurance or the superintendent's designated
20 representative. Each director has the right to vote except
21 the superintendent or the superintendent's designee, who
22 serves ex officio and may not vote.

24 B. The board must include members who are insurers
25 contributing a total of at least 40% of the total premium
26 calculated pursuant to subsection 7, paragraph D.

28 C. The term of office of a director is 2 years. A director
29 may not serve more than 4 years consecutively. Two of the
30 initial directors must be appointed for one-year terms so
31 that the terms of directors are staggered.

32
33 D. Each director must be appointed by the Superintendent of
34 Insurance and serve until a successor is selected and
35 qualified. The board shall elect the chair. A vacancy on
36 the board must be filled by the superintendent consistent
37 with the plan of operation.

38
39 E. After the board is appointed, the board shall meet as
40 often as the chair, the Superintendent of Insurance or the
41 plan of operation requires, or at the request of any 3
42 members of the board. The chair retains the right to vote
43 on all issues. Four members of the board constitute a
44 quorum.

46 F. Not more than 30 days after the effective date of this
47 Act, the Superintendent of Insurance shall convene an
48 organizational meeting of the board.

50 10. Plan of operation. The plan of operation must provide
51 for all of the following:

- 2 A. The establishment of necessary facilities;
- 4 B. The management and operation of the association;
- 6 C. A preliminary premium, payable by each member in
proportion to its total first-year premium, for initial
expenses necessary to commence operation of the association;
- 8 D. Procedures to be utilized in charging premiums,
including adjustments for excess or deficient premiums from
prior periods;
- 10 E. Procedures governing the actual payment of premiums to
the association;
- 12 F. The reimbursement of each member of the board by the
association for actual and necessary expenses incurred on
association business;
- 14 G. The investment policy of the association; and
- 16 H. Any other matters required by or necessary to
effectively implement this section.
- 18
- 20 11. Annual report. An annual report of the operations of
the association in such form and detail as may be determined by
the board must be furnished to each member.
- 22
- 24 12. Adoption of plan. The proposed plan of operation and
amendments to the proposed plan of operation are subject to
majority approval by the board.
- 26
- 28 13. Submission of plan. Not more than 60 days after the
initial organizational meeting of the board, the board shall
submit to the Superintendent of Insurance for approval a proposed
plan of operation consistent with the objectives and provisions
of this section, which must provide for the economical, fair and
nondiscriminatory administration of the association and the
prompt and efficient provision of indemnity. If a plan is not
submitted by the board, the superintendent, after consultation
with the board, shall formulate and place into effect a plan
consistent with this section.
- 32
- 34 14. Approval and disapproval by Superintendent of
Insurance. The Superintendent of Insurance may approve or
disapprove the proposed plan of operation within 30 days after
the date of submission. If disapproving the plan, the
superintendent shall notify the board in what respect the plan
fails to meet the requirements and objectives of this section.
If the board fails to submit a revised plan that satisfies this
section within the initial 30-day period, the superintendent
shall enter an order disapproving the plan and immediately
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2 formulate and place into effect a plan consistent with this
3 section. The plan of operation approved by the superintendent is
4 subject to ratification by a majority of the association
5 membership having a vote, with voting rights being apportioned
6 according to the premiums charged in subsection 7, paragraph D.

7 15. Effect of plan. Upon approval or promulgation of the
8 plan of operation by the Superintendent of Insurance and
9 ratification by the members, each insurer authorized to write
10 insurance in this State providing the security required by
11 section 842 is bound by and must formally subscribe to and
12 participate in the approved plan as a condition of maintaining
13 authority to transact insurance in this State.

14 16. Reporting, loss reserve and investment requirements.
15 The association is subject to all the reporting, loss reserve and
16 investment requirements of the Superintendent of Insurance to the
17 same extent a member of the association is subject to those
18 requirements.

19 17. Recognition of premiums. A premium charged a member by
20 the association must be recognized in the rate-making procedures
21 for insurance rates in the same manner that expenses and premium
22 taxes are recognized.

23 18. Examination. The Superintendent of Insurance or an
24 authorized representative of the superintendent may visit the
25 association at any time and examine any of the association's
26 affairs.

27 §847. Accidental bodily injury

28 1. Payment of benefits. Benefits for accidental bodily
29 injury are governed by the following.

30 A. Under personal protection insurance an insurer is liable
31 to pay benefits for accidental bodily injury arising out of
32 the ownership, operation, maintenance or use of a motor
33 vehicle as a motor vehicle, subject to the provisions of
34 this chapter.

35 B. Personal protection insurance benefits are due under
36 this chapter without regard to fault.

37 C. Bodily injury includes death resulting from the injury
38 and damage to or loss of a person's prosthetic devices in
39 connection with the injury.

40 D. For a person claiming personal protection insurance
41 benefits, bodily injury is accidental unless suffered
42 intentionally by the injured person or caused intentionally
43 by the claimant. A person does not cause bodily injury
44

2 intentionally if the person acts or refrains from acting to
3 avert injury to property or to any person.

4 2. Parked vehicles. Benefits for accidental bodily injury
5 arising out of ownership, operation, maintenance or use as a
6 motor vehicle of a vehicle that is parked are governed by the
7 following.

8 A. Accidental bodily injury does not arise out of the
9 ownership, operation, maintenance or use as a motor vehicle
10 of a vehicle that is parked unless any of the following
11 occurs.

12 (1) The vehicle is parked in such a way as to cause
13 unreasonable risk of the bodily injury that occurs.

14 (2) Except as provided in paragraph B, the injury is a
15 direct result of physical contact with equipment
16 permanently mounted on the vehicle while the equipment
17 is being operated or used, or property being lifted
18 onto or lowered from the vehicle in the loading or
19 unloading process.

20 (3) Except as provided in paragraph B, the injury is
21 sustained by a person while occupying, entering into or
22 alighting from the vehicle.

23 B. Accidental bodily injury does not arise out of the
24 ownership, operation, maintenance or use as a motor vehicle
25 of a vehicle that is parked if benefits under the Workers'
26 Compensation Act or under a similar law of another state or
27 under a similar federal law are available to an employee who
28 sustains the injury in the course of employment while:

29 (1) Loading, unloading or doing mechanical work on a
30 vehicle unless the injury arises from the use or
31 operation of another vehicle; or

32 (2) Entering into or alighting from the vehicle unless
33 the injury is sustained while entering into or
34 alighting from the vehicle immediately after the
35 vehicle is disabled. This subparagraph does not apply
36 if the injury arises from the use or operation of
37 another vehicle.

38 As used in this paragraph, "another vehicle" does not
39 include a motor vehicle being loaded on, unloaded from or
40 secured to, as cargo or freight, a motor vehicle.

2 §848. Personal protection insurance benefits

4 1. Allowable expenses. Personal protection insurance
6 benefits are payable for allowable expenses consisting of all
8 reasonable charges incurred for reasonably necessary products,
10 services and accommodations for an injured person's care,
12 recovery or rehabilitation. Allowable expenses within personal
14 protection insurance coverage may not include charges for a
16 hospital room in excess of a reasonable and customary charge for
18 semiprivate accommodations.

20 Benefits for funeral and burial expenses are payable in the
22 amount set forth in the policy but may not be less than \$1,750
24 nor more than \$5,000.

26 2. Work loss. Personal protection insurance benefits are
28 payable for work loss consisting of loss of income from work an
30 injured person would have performed during the first 3 years
32 after the date of the accident and expenses, not to exceed \$20
34 per day, reasonably incurred in obtaining ordinary and necessary
36 services in lieu of those that the injured person would have
38 performed during the first 3 years after the date of the
40 accident, not for income but for the benefit of the injured
42 person or a dependent. Work loss does not include any loss after
44 the date on which the injured person dies. Because the benefits
46 received from personal protection insurance for loss of income
48 are not taxable income, those benefits must be reduced 15% unless
the claimant presents to the insurer reasonable proof of a lower
value of the income tax advantage, in which case the lower value
applies. Beginning January 1, 1992, the benefits payable for
work loss sustained in a single 30-day period together with the
income earned by an injured person for work during the same
period may not exceed \$1,000. That maximum applies pro rata to
any shorter period of work loss. Beginning January 1, 1993, the
maximum must be adjusted annually to reflect changes in the cost
of living under rules prescribed by the Superintendent of
Insurance, but any change in the maximum applies only to benefits
arising out of accidents occurring subsequent to the date of
change in the maximum.

42 §849. Work loss basis

44 Work loss for an injured person who is temporarily
46 unemployed at the time of the accident is based on earned income
48 for the last month that person was employed full time preceding
the accident multiplied by the number of weeks of employment in
the 52 weeks preceding the accident, divided by 52.

2 **§850. Survivor's benefits**

4 1. Survivor's loss. Except as provided in subsection 2,
6 personal protection insurance benefits are payable for a
8 survivor's loss that consists of a loss, after the date on which
10 the deceased died, of contributions of tangible things of
12 economic value, not including services, that dependents of the
14 deceased at the time of death would have received for support
16 during their dependency and expenses, not to exceed \$20 per day,
18 reasonably incurred by these dependents in obtaining ordinary and
 necessary services in lieu of those that the deceased would have
 performed for their benefit. Except as provided in subsection 2,
 the benefits payable in a single 30-day period may not exceed
 \$1,000 for deaths occurring before January 1, 1997 and may not
 exceed \$1,475 for deaths occurring on or after January 1, 1997.
 Benefits are not payable beyond the first 3 years after the date
 of the death.

20 2. Annual adjustment. The maximum payable must be adjusted
22 annually to reflect changes in the cost of living under rules
24 prescribed by the Superintendent of Insurance. A change in the
26 maximum applies only to benefits arising out of accidents
28 occurring subsequent to the date of change in the maximum. The
 maximum applies to the aggregate benefits payable under this
 section to all survivors on account of the death of any one
 person.

30 **§851. State or federal benefits**

32 Benefits provided or required to be provided under the laws
34 of any state or the Federal Government are subtracted from the
 personal protection insurance benefits otherwise payable for the
 injury.

36 **§852. Deductibles; exclusions**

38 An insurer providing personal protection benefits may offer
40 a deductible of a specified dollar amount not exceeding \$300 per
42 accident and must offer deductibles and exclusions reasonably
 related to coordination of benefits with other accident and
 health insurance if:

44 1. Approval by Superintendent of Insurance. The insurer
46 has received approval from the Superintendent of Insurance;

48 2. Reduced premium rates. The insurer has appropriately
 reduced premium rates; and

50 3. Application of deductibles and exclusions. The
52 deductibles and exclusions apply only to the policyholder, the
54 policyholder's spouse any relative of either domiciled in the
 same household.

2 §853. Dependents; accrual of benefits

4 1. Dependents. The following persons are conclusively
presumed to be dependents of a deceased person.

6 A. A wife is dependent on a husband with whom she lives at
the time of his death.

8 B. A husband is dependent on a wife with whom he lives at
10 the time of her death.

12 C. A child while under the age of 18 years, or over that
14 age but physically or mentally incapacitated from earning,
16 is dependent on the parent with whom the child lives or from
whom the child receives support regularly at the time of the
death of the parent.

18 2. Determination of dependency. In all other cases,
20 questions of dependency and the extent of dependency are
determined in accordance with the facts at the time of death.

22 3. Termination of dependency. The dependency of a
24 surviving spouse terminates upon death or remarriage. The
dependency of any other person continues only as long as the
26 person is under the age of 18 years, physically or mentally
incapacitated from earning or engaged full time in a formal
28 program of academic or vocational education or training.

30 4. Personal protection benefits. Personal protection
32 insurance benefits payable for accidental bodily injury accrue
not when the injury occurs but as the allowable expense, work
loss or survivor's loss is incurred.

34 §854. Accidents occurring out of state

36 Personal protection insurance benefits are payable for
38 accidental bodily injury suffered in an accident occurring out of
this State if the accident occurred within the United States, its
40 territories and possessions or in Canada and the person whose
injury is the basis of the claim was at the time of the accident
42 a named insured under a personal protection insurance policy, the
insured's spouse, a relative of either domiciled in the same
44 household or an occupant of a vehicle involved in the accident
whose owner, operator or registrant was insured under a personal
46 protection insurance policy or had provided security approved by
the Superintendent of Insurance under section 842.

48 §855. Payment of personal protection insurance benefits

50 Personal protection insurance benefits are payable to or for
52 the benefit of an injured person or, in the case of the injured
person's death, to or for the benefit of the injured person's

2 dependents. Payment by an insurer in good faith of personal
3 protection insurance benefits, to or for the benefit of a person
4 who it believes is entitled to the benefits, discharges the
5 insurer's liability to the extent of the payments unless the
6 insurer has been notified in writing of the claim of some other
7 person. If there is doubt about the proper person to receive the
8 benefits or the proper apportionment among the persons entitled
9 to those benefits, the insurer, the claimant or any other
10 interested person may apply to the Superior Court for an
11 appropriate order. The court may designate the payees and make
12 an equitable apportionment, taking into account the relationship
13 of the payees to the injured person and other factors the court
14 considers appropriate.

15 In the absence of a court order directing otherwise, the
16 insurer may pay:

17 1. Dependents. To the dependents of the injured person, if
18 an administrator or personal representative has not been
19 appointed, the personal protection insurance benefits accrued
20 before the injured person's death; and

21 2. Surviving spouse. To the surviving spouse the personal
22 protection insurance benefits due any dependent children living
23 with the spouse.

24 §856. Exemptions from payment

25 A person is not entitled to be paid personal protection
26 benefits for accidental bodily injury if at the time of the
27 accident any of the following circumstances existed.

28 1. Use of motor vehicle. The person was using a motor
29 vehicle that that person had taken unlawfully, unless the person
30 held a reasonable belief of entitlement to take and use the
31 vehicle.

32 2. Owner, registrant or operator. The person was the
33 owner, registrant or operator of a vehicle involved in the
34 accident for which the security required by section 842 was not
35 in effect.

36 3. Others. The person was not a resident of this State,
37 was an occupant of a motor vehicle not registered in this State,
38 and was not insured by an insurer that had filed a certificate in
39 compliance with section 878.

40 §857. Beneficiaries

41 1. Accidental bodily injury. Except as provided in
42 subsections 2 and 3, a personal protection insurance policy
43 described in section 842 applies to accidental bodily injury to
44 accidental bodily injury to

2 the person named in the policy, the person's spouse and a
3 relative of either domiciled in the same household if the injury
4 arises from a motor vehicle accident.

6 2. Accidental bodily injury; motor vehicle transporting
7 passengers. A person suffering accidental bodily injury while an
8 operator or a passenger of a motor vehicle operated in the
9 business of transporting passengers must be paid the personal
10 protection insurance benefits to which that person is entitled
11 from the insurer of the motor vehicle. This subsection does not
12 apply to a passenger in the following, unless that passenger is
13 not entitled to personal protection insurance benefits under any
14 other policy:

15 A. A school bus providing transportation not prohibited by
16 law;

17 B. A bus operating under a government-sponsored
18 transportation program; or

19 C. A bus operated by or providing service to a nonprofit
20 organization.

21 3. Employer's vehicle. An employee, an employee's spouse
22 or a relative of either domiciled in the same household who
23 suffers accidental bodily injury while an occupant of a motor
24 vehicle owned or registered by the employer must be paid the
25 personal protection insurance benefits to which the employee is
26 entitled from the insurer of the furnished vehicle.

27 4. Priority. Except as provided in subsections 1 to 3, a
28 person suffering accidental bodily injury arising from a motor
29 vehicle accident while an occupant of a motor vehicle shall claim
30 personal protection insurance benefits from insurers in the
31 following order of priority:

32 A. The insurer of the owner or registrant of the vehicle
33 occupied; and

34 B. The insurer of the operator of the vehicle occupied.

35 §858. Priority of claims; accidental bodily injury

36 1. Persons who are not occupants. Except as provided in
37 section 857, subsection 1, a person suffering accidental bodily
38 injury while not an occupant of a motor vehicle claims personal
39 protection insurance benefits from insurers in the following
40 order of priority:

41 A. Insurers of owners or registrants of motor vehicles
42 involved in the accident; and

2 B. Insurers of operators of motor vehicles involved in the
3 accident.

4 2. Priority. When 2 or more insurers are in the same order
5 of priority to provide personal protection insurance benefits, an
6 insurer paying benefits due is entitled to partial recoupment
7 from the other insurers in the same order of priority, together
8 with a reasonable amount of partial recoupment of the expense of
9 processing the claim, in order to accomplish equitable
10 distribution of the loss among such insurers.

11 3. Limitation. A limit upon the amount of personal
12 protection insurance benefits available because of accidental
13 bodily injury to one person arising from one motor vehicle
14 accident must be determined without regard to the number of
15 policies applicable to the accident.

16 §859. Indemnification of personal protection insurers

17 1. Value and claim. A subtraction from personal protection
18 insurance benefits may not be made because of the value of a
19 claim in tort based on the same accidental bodily injury.

20 2. Subtraction or reimbursement. A subtraction from or
21 reimbursement for personal protection insurance benefits paid or
22 payable under this chapter may be made only if recovery is
23 realized upon a tort claim arising from an accident occurring
24 outside this State, a tort claim brought within this State
25 against the owner or operator of a motor vehicle for which the
26 security required by section 842 was not in effect, or a tort
27 claim brought within this State based on intentionally caused
28 harm to persons or property. The subtraction or reimbursement may
29 be made only to the extent that the recovery realized by the
30 claimant is for damages for which the claimant has received or
31 would otherwise be entitled to receive personal protection
32 insurance benefits. A subtraction may be made only to the extent
33 of the recovery, exclusive of reasonable attorneys' fees and
34 other reasonable expenses incurred in effecting the recovery. If
35 personal protection insurance benefits have already been
36 received, the claimant shall repay to the insurers out of the
37 recovery a sum equal to the benefits received, but not more than
38 the recovery exclusive of reasonable attorneys' fees and other
39 reasonable expenses incurred in effecting the recovery. The
40 insurer has a lien on the recovery to this extent. A recovery by
41 an injured person or the injured person's estate for loss
42 suffered by the person may not be subtracted in calculating
43 benefits due a dependent after the death of the insured. A
44 recovery by a dependent for loss suffered by the dependent after
45 the death of the insured may not be subtracted in calculating
46 benefits due the injured person.

2 3. Indemnity. A personal protection insurer with a right
3 of reimbursement under subsection 2, if suffering loss for an
4 inability to collect reimbursement from a payment received by a
5 claimant as a result of a tort claim, is entitled to indemnity
6 from a person who, with notice of the insurer's interest, made
7 the payment to the claimant without making the claimant and the
8 insurer joint payees as their interests may appear or without
9 obtaining the insurer's consent to a different method of payment.

10 4. Noneconomic loss. A subtraction or reimbursement is not
11 due the claimant's insurer from that portion of any recovery, to
12 the extent that recovery is realized for noneconomic loss as
13 provided in section 865 or for allowable expenses, work loss and
14 survivor's loss as defined in sections 848 to 850, in excess of
15 the amount recovered by the claimant from the claimant's insurer.

16 §860. Property protection benefits

17 1. Damage to tangible property. Under property protection
18 insurance an insurer is liable to pay benefits for accidental
19 damage to tangible property arising out of the ownership,
20 operation, maintenance or use of a motor vehicle as a motor
21 vehicle subject to this section and sections 861 to 863.

22 2. No fault. Property protection insurance benefits are
23 due under the conditions stated in this chapter without regard to
24 fault.

25 3. Damage defined. Damage to tangible property consists of
26 physical injury to or destruction of the property and loss of use
27 of that property.

28 4. Accidental damage; intentional damage. Damage to
29 tangible property is accidental unless it is suffered or caused
30 intentionally by the person claiming property protection
31 insurance benefits. A person who knows that damage to tangible
32 property is substantially certain to be caused by that person's
33 act or omission does not cause or suffer such damage
34 intentionally if that person acts or refrains from acting for the
35 purpose of averting injury to any person or for the purpose of
36 averting damage to tangible property.

37 5. Benefits. Property protection insurance benefits
38 consist of the lesser of reasonable repair costs or replacement
39 costs less depreciation and, when applicable, the value of loss
40 of use. Property protection insurance benefits paid under one
41 policy for damage to all tangible property arising from one
42 accident may not exceed \$1,000,000.

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§861. Exclusions

1. Excluded damage. Damage to the following kinds of property is excluded from property protection insurance benefits:

A. Vehicles and their contents, including trailers, operated or designed for operation upon a public highway by power other than muscular power unless parked in a manner that does not cause unreasonable risk of damage; or

B. Property owned by a person named in a property protection insurance policy, the person's spouse or a relative of either domiciled in the same household, if the person named, the person's spouse or the relative is the owner, registrant or operator of a vehicle involved in the motor vehicle accident from which the property damage results.

2. Out-of-state accidents. Property protection insurance benefits are not payable for property damage arising from motor vehicle accidents occurring outside the State.

3. Utilities. Property protection insurance benefits are not payable for property damage to utility transmission lines, wires or cables arising from the failure of a municipality, utility company or cable television company to comply with the requirements of state law.

§862. Priority of claims; accidental property damage

For accidental property damage, a person shall claim property protection insurance benefits from insurers in the following order of priority: insurers of owners or registrants of vehicles involved in the accident; and insurers of operators of vehicles involved in the accident.

§863. Indemnification of property insurers

The provisions for distribution of loss and for reimbursement and indemnification among personal protection insurers as set forth in sections 858 and 859 also apply to property protection insurers.

§864. Residual liability coverage

Residual liability insurance covers bodily injury and property damage that occur within the United States, its territories and possessions and Canada. This insurance provides coverage equivalent to that required as evidence of automobile liability insurance under the financial responsibility laws of the place in which the injury or damage occurs. In this State this insurance affords coverage for automobile liability retained by section 865.

2 §865. Tort liability

4 1. Noneconomic loss. A person is subject to tort liability
6 for noneconomic loss caused by that person's ownership, operation
8 or maintenance of a motor vehicle involved in an accident that
results in injury only if the injured person has suffered death,
serious impairment of body function or permanent serious
disfigurement.

10 2. Liability. Notwithstanding any other provision of law,
12 tort liability arising from the ownership, operation or
14 maintenance within this State of a motor vehicle for which the
security required by section 842 was in effect is abolished
except for:

16 A. Intentional harm to persons or property. A person does
18 not cause harm intentionally if the person acts or refrains
from acting to avert injury to property or to any person;

20 B. Damages for noneconomic loss as provided in subsection 1;

22 C. Damages for allowable expenses, work loss and survivor's
24 loss as defined in sections 848 to 850 in excess of the
26 daily, monthly and 3-year limitations contained in those
28 sections. The party liable for damages is entitled to an
30 exemption reducing the party's liability by the amount of
taxes that would have been payable on account of income the
injured person would have received if the person had not
been injured; or

32 D. Damages up to \$400 to motor vehicles, to the extent that
34 the damages are not covered by insurance. An action for
damages pursuant to this paragraph must be conducted in
compliance with subsection 3.

36 3. Damages. In an action for damages pursuant to
38 subsection 2, paragraph D, the following apply.

40 A. Damages must be assessed on the basis of comparative
42 fault, except that damages may not be assessed in favor of a
party who is more than 50% at fault.

44 B. Liability may not be a component of residual liability,
46 as described in section 864, for which maintenance of
security is required by this Act.

48 4. Venue. Actions under subsection 2, paragraph D must be
50 commenced in the small claims division of the District Court. If
the defendant or plaintiff removes such an action to a higher
court and does not prevail, the judge may assess costs.

2 5. Effect of decision. A decision of a court made pursuant
to subsection 2, paragraph D is not res judicata in any
4 proceeding to determine any other liability arising from the same
circumstances as gave rise to the action brought pursuant to
subsection 2, paragraph D.

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8 **§866. Notice of accident**

An insurer may require written notice as soon as practicable
10 after an accident involving a motor vehicle for which the
insurer's policy affords the security required by this chapter.

12
14 **§867. Overdue personal protection benefits**

1. Benefits payable. Personal protection insurance
16 benefits are payable as loss accrues.

2. Benefits overdue. Personal protection insurance
18 benefits are overdue if not paid within 30 days after an insurer
receives reasonable proof of the claim and of the amount of loss
20 sustained. If reasonable proof is not supplied for the entire
claim, the amount supported by reasonable proof is overdue if not
22 paid within 30 days after the proof is received by the insurer.
Any part of the remainder of the claim that is later supported by
24 reasonable proof is overdue if not paid within 30 days after the
proof is received by the insurer. For the purpose of calculating
26 the extent to which benefits are overdue, payment is considered
made on the date a draft or other valid instrument is placed in
28 the United States mail in a properly addressed, postpaid envelope
or, if not posted, on the date of delivery.

3. Interest. An overdue payment bears simple interest at
32 the rate of 12% per annum.

34
36 **§868. Assignment of future benefits**

An agreement for assignment of a right to benefits payable
38 in the future is void.

40 **§869. Limitation of actions; recovery of benefits**

42 An action for recovery of personal protection insurance
benefits payable under this chapter for accidental bodily injury
44 may not be commenced later than one year after the date of the
accident causing the injury unless written notice of injury as
46 provided in this section has been given to the insurer within one
year after the accident or unless the insurer has previously made
48 a payment of personal protection insurance benefits for the
injury. If the notice has been given or a payment has been made,
50 the action may be commenced at any time within one year after the
most recent allowable expense, work loss or survivor's loss was
52 incurred. The claimant may not recover benefits for any portion

2 of the loss incurred more than one year before the date on which
3 the action was commenced. The notice of injury required by this
4 section may be given to the insurer or any of its authorized
5 agents by a person claiming to be entitled to benefits or by
6 someone in behalf of that person. The notice must give the name
7 and address of the claimant, the name of the person injured and
8 the time, place and nature of the injury.

10 **§870. Limitation of actions; indemnity**

12 An action by an insurer to enforce its rights of recovery or
13 indemnity may not be commenced later than one year after payment
14 has been received by a claimant as a result of a tort claim for
15 which the insurer has a right of reimbursement or recovery under
16 section 859.

18 **§871. Attorney's fees**

20 1. Overdue benefits. An attorney is entitled to a
21 reasonable fee for advising and representing a claimant in an
22 action for personal or property protection insurance benefits
23 that are overdue. The attorney's fee is a charge against the
24 insurer in addition to the benefits recovered if the court finds
25 that the insurer unreasonably refused to pay the claim or
26 unreasonably delayed in making proper payment.

28 2. Insurer's attorney's fee. An insurer may be allowed by
29 a court an award of a reasonable sum against a claimant as an
30 attorney's fee for the insurer's attorney in defense against a
31 claim that was fraudulent or so excessive that it had no
32 reasonable foundation. To the extent that personal or property
33 protection insurance benefits are then due or thereafter come due
34 to the claimant because of loss resulting from the injury on
35 which the claim is based, the attorney's fee may be offset
36 against those benefits. Judgment may be entered against the
37 claimant for the amount of any fee awarded against the claimant
38 and not offset in this way or otherwise paid.

40 **§872. Medical examinations**

42 When the mental or physical condition of a person is
43 material to a claim that has been or may be made for past or
44 future personal protection insurance benefits, the person shall
45 submit to mental or physical examination by physicians. An
46 insurer may include reasonable provisions in a personal
47 protection insurance policy for mental and physical examination
48 of persons claiming benefits under that policy.

50 **§873. Reports of medical examinations**

52 If requested by a person examined pursuant to section 872,
53 the party causing the examination shall deliver to that person a

2 copy of every written report concerning the examination rendered
4 by an examining physician. At least one of those reports must
6 set out findings and conclusions in detail. After that request
8 and delivery, the party causing the examination is entitled upon
10 request to receive from the person examined every written report
12 concerning any examination of the same mental or physical
14 condition that is relevant to the claim, regardless of when the
16 examination was made, and the names and addresses of physicians
18 and medical care facilities rendering diagnoses or treatment in
20 regard to the injury or to a relevant past injury. The person
22 causing the examination shall authorize the insurer to inspect
24 and copy records of physicians, hospitals, clinics or other
26 medical facilities relevant to the claim. By requesting and
28 obtaining a report of the examination made pursuant to section
30 872 or by taking the deposition of the examiner, the person
32 examined waives any privilege in relation to the claim for
34 benefits regarding the testimony of any other person who has
36 examined or may examine the person in respect to the same mental
38 or physical condition.

40 **§874. Refusal to submit to medical examination**

42 A court may make such orders regarding a refusal to comply
44 with sections 872 and 873 as are just, except that an order may
46 not be entered directing the arrest of a person for disobeying an
48 order to submit to a physical or mental examination. Orders that
50 may be made regarding such a refusal include, but are not limited
52 to:

1. Mental or physical condition. An order that the mental
2. or physical condition of the person is established for the
3. purposes of the claim in accordance with the contention of the
4. party obtaining the order;

2. Support or opposition of claims or defenses. An order
3. prohibiting the person from supporting or opposing designated
4. claims or defenses or from introducing evidence of mental or
5. physical condition;

3. Judgment by default. An order rendering judgment by
4. default against the person regarding the person's claim or a
5. designated part of it;

4. Reimbursement. An order requiring the person to
5. reimburse the insurer for reasonable attorneys' fees and expenses
6. incurred in defense against the claim; and

5. Delivery of a report. An order requiring delivery of a
6. report in conformity with section 873. If a physician fails or
7. refuses to make the report, a court may exclude the physician's
8. testimony if offered at trial.

2 §875. Medical services charges

4 A physician, hospital, clinic or other person or institution
6 lawfully rendering treatment to an injured person for an
8 accidental bodily injury covered by personal protection insurance
10 and a person or institution providing rehabilitative occupational
12 training following the injury may charge a reasonable amount for
14 the products, services and accommodations rendered. The charge
16 may not exceed the amount the person or institution customarily
18 charges for like products, services and accommodations in cases
20 not involving insurance.

22 §876. Record of medical treatment; earnings statement

24 1. Statement of earnings. When a request is made by a
26 personal protection insurer against whom a claim has been made,
28 an employer must immediately furnish, in a form approved by the
30 Superintendent of Insurance, a sworn statement of the earnings
32 since the time of the accidental bodily injury and for a
34 reasonable period before the injury, of the person upon whose
36 injury the claim is based.

38 2. Report. A physician, hospital, clinic or other medical
40 institution providing, before or after an accidental bodily
42 injury upon which a claim for personal protection insurance
44 benefits is based, any product, service or accommodation in
46 relation to that or any other injury, or in relation to a
48 condition claimed to be connected with that or any other injury,
50 if requested to do so by the insurer against whom the claim has
been made, must immediately:

A. Furnish a written report of the history, condition,
treatment and dates and costs of treatment of the injured
person; and

B. Produce and permit inspection and copying of its records
regarding the history, condition, treatment and dates and
costs of treatment.

40 §877. Order for discovery

42 In a dispute regarding an insurer's right to discovery of
44 facts about an injured person's earnings, history, condition,
46 treatment and dates and costs of treatment, a court may enter an
48 order for the discovery. The order must be made on motion for
50 good cause shown and upon notice to all persons having an
interest, and must specify the time, place, manner, conditions
and scope of the discovery. A court, in order to protect against
annoyance, embarrassment or oppression of the injured person, may
enter an order refusing discovery or specifying conditions of
discovery and may order payments of costs and expenses of the

2 proceeding, including reasonable fees for the appearance of
3 attorneys at the proceedings.

4 **§878. Certification**

6 1. Written certification required. All insurers authorized
7 to transact motor vehicle liability insurance, personal and
8 property protection insurance and residual liability insurance in
9 this State shall file and maintain written certification that any
10 accidental bodily injury or property damage occurring in this
11 State arising from the ownership, operation, maintenance or use
12 of a motor vehicle as a motor vehicle by out-of-state residents
13 who are insured under their insurance policies are subject to the
14 personal and property protection insurance system set forth in
15 this Act.

16 2. Voluntary filing. An insurer providing the insurance
17 described in subsection 1 that is not authorized to transact
18 insurance in this State may voluntarily file the certification
19 described in subsection 1.

20 3. Rights and immunities. When a certification filed under
21 subsection 1 or 2 applies to accidental bodily injury or property
22 damage, the insurer and its insureds with respect to that injury
23 or damage have the rights and immunities of personal and property
24 protection insureds under this Act, and claimants have the rights
25 and benefits of personal and property protection insurance
26 claimants, including the right to receive benefits from the
27 electing insurer as if it were a provider of personal and
28 property protection insurance applicable to the accidental bodily
29 injury or property damage.

30 **§879. Assigned Claims Facility; Assigned Claims Plan**

31 1. Establishment. The Superintendent of Insurance shall
32 organize and maintain the Assigned Claims Facility and the
33 Assigned Claims Plan. All self-insurers and insurers writing
34 insurance as provided by this chapter in this State shall
35 participate in the Assigned Claims Plan. Costs incurred in the
36 operation of the facility and the plan must be allocated fairly
37 among insurers and self-insurers. The superintendent shall adopt
38 rules to implement the Assigned Claims Facility and the Assigned
39 Claims Plan in accordance with the Maine Administrative Procedure
40 Act.

41 2. Beneficiaries of Assigned Claims Plan. Benefits under
42 the Assigned Claims Plan that are payable to beneficiaries and
43 insurer responsibilities are determined as follows.

44 A. A person entitled to a claim because of accidental
45 bodily injury arising out of the ownership, operation,
46 maintenance or use of a motor vehicle as a motor vehicle in
47

2 this State may obtain personal protection insurance benefits
3 through the Assigned Claims Plan if no personal protection
4 insurance is applicable to the injury, a personal protection
5 insurance applicable to the injury can not be identified,
6 the personal protection insurance applicable to the injury
7 can not be ascertained because of a dispute between 2 or
8 more automobile insurers concerning their obligation to
9 provide coverage or the equitable distribution of the loss,
10 or the only identifiable personal protection insurance
11 applicable to the injury is, because of financial inability
12 of one or more insurers to fulfill their obligations,
13 inadequate to provide benefits up to the maximum
14 prescribed. In such a case, unpaid benefits due or coming
15 due are subject to collection under the Assigned Claims
16 Plan, and the insurer to which the claim is assigned, or the
17 Assigned Claims Facility if the claim is assigned to it, is
18 entitled to reimbursement from the defaulting insurers to
19 the extent of its financial responsibility.

20 B. Except as otherwise provided in this subsection,
21 personal protection insurance benefits, including benefits
22 arising from accidents occurring before the effective date
23 of this subsection, payable through the Assigned Claims Plan
24 must be reduced to the extent that benefits covering the
25 same loss are available to the claimant from other sources,
26 regardless of the nature or number of benefit sources
27 available and the nature or form of the benefits. This
28 subsection applies only when the personal protection
29 insurance benefits are payable through the Assigned Claims
30 Plan because no personal protection insurance is applicable
31 to the injury, a personal protection insurance applicable to
32 the injury can not be identified, or the only identifiable
33 personal protection insurance applicable to the injury is,
34 because of financial inability of one or more insurers to
35 fulfill their obligations, inadequate to provide benefits up
36 to the maximum prescribed. As used in this subsection,
37 "sources" and "benefit sources" do not include the program
38 for medical assistance for the medically indigent or
39 insurance under the United States Health Insurance for the
40 Aged Act, Title XVIII of the Social Security Amendments of
41 1965.

42 C. If the obligation to provide personal protection
43 insurance benefits can not be ascertained because of a
44 dispute between 2 or more automobile insurers concerning
45 their obligation to provide coverage or the equitable
46 distribution of the loss, and if a method of voluntary
47 payment of benefits can not be agreed upon between the
48 disputing insurers, all of the following apply.

49 (1) The insurers who are parties to the dispute shall,
50 or the claimant may, immediately notify the Assigned
51 Claims Facility.

2 Claims Facility of their inability to determine their
3 statutory obligations.

4 (2) The claim must be assigned by the Assigned Claims
5 Facility to an insurer, who must immediately provide
6 personal protection insurance benefits to the claimant
7 or claimants entitled to benefits.

8 (3) An action must be immediately commenced in the
9 Superior Court on behalf of the Assigned Claims
10 Facility, by the insurer to whom the claim is assigned,
11 for the purpose of declaring the rights and duties of
12 any interested party.

13 (4) The insurer to whom the claim is assigned shall
14 join each insurer disputing either the obligation to
15 provide personal protection insurance benefits or the
16 equitable distribution of the loss among the insurers
17 as parties defendant.

18 (5) The Superior Court shall declare the rights and
19 duties of any interested party whether or not other
20 relief is sought or could be granted.

21 (6) After hearing the action, the Superior Court shall
22 determine the insurer or insurers, if any, obligated to
23 provide the applicable personal protection insurance
24 benefits and the equitable distribution, if any, among
25 the obligated insurers, and shall order reimbursement
26 to the Assigned Claims Facility from the insurer or
27 insurers to the extent of the responsibility as
28 determined by the court. The reimbursement ordered
29 under this subparagraph includes all benefits and costs
30 paid or incurred by the Assigned Claims Facility and
31 all benefits and costs paid or incurred by the insurers
32 that are determined not obligated to provide applicable
33 personal protection insurance benefits, including
34 reasonable attorneys' fees and interest at the rate
35 prescribed in section 867, subsection 3, as of December
36 31st of the year preceding the determination of the
37 court.

38 3. Disqualified persons. A person who because of
39 limitation or exclusion in sections 847 to 859 is disqualified
40 from receiving personal protection insurance benefits under a
41 policy otherwise applying to the accidental bodily injury is
42 disqualified from receiving benefits under the Assigned Claims
43 Plan.

44 4. Determination of eligibility. The Assigned Claims
45 Facility shall make an initial determination of the claimant's
46 eligibility for benefits under the Assigned Claims Plan and deny
47 eligibility for benefits under the Assigned Claims Plan and deny
48 eligibility for benefits under the Assigned Claims Plan and deny
49 eligibility for benefits under the Assigned Claims Plan and deny
50 eligibility for benefits under the Assigned Claims Plan and deny
51 eligibility for benefits under the Assigned Claims Plan and deny
52 eligibility for benefits under the Assigned Claims Plan and deny

2 any obviously ineligible claim. The claimant must be notified
3 promptly in writing of the determination and the reasons for
4 denial.

5 5. Notice of claim. A person claiming through the Assigned
6 Claims Plan must notify the facility of the claim within the time
7 that would have been allowed for filing an action for personal
8 protection insurance benefits if identifiable coverage applicable
9 to the claim had been in effect. The facility shall promptly
10 assign the claim in accordance with the plan and notify the
11 claimant of the identity and address of the insurer to which the
12 claim is assigned, or of the facility if the claim is assigned to
13 it. An action by the claimant may not be commenced more than 30
14 days after receipt of the assignment or the last date on which
15 the action could have been commenced against an insurer of
16 identifiable coverage applicable to the claim, whichever is later.

17 6. Assignment of claims. The assignment of claims and the
18 responsibilities of the insurer to preserve and enforce rights to
19 indemnity and reimbursement are determined as follows.

20
21
22 A. The assignment of claims must be made according to rules
23 that ensure fair allocation of the burden of assigned claims
24 among insurers doing business in this State on a basis
25 reasonably related to the volume of residual liability and
26 personal protection insurance the insurers write on motor
27 vehicles. An insurer to whom claims have been assigned
28 shall make prompt payment of loss in accordance with this
29 Act and upon payment is entitled to reimbursement by the
30 Assigned Claims Facility for the payments and the
31 established loss adjustment cost, together with an amount
32 determined by use of the average annual 90-day United States
33 Treasury bill yield rate, as reported by the Federal Council
34 of Economic Advisers as of December 31st of the year for
35 which reimbursement is sought, as follows.

36
37
38 (1) For the calendar year in which claims are paid by
39 the insurer, the amount is determined by applying the
40 annual yield rate specified in this subsection to 1/2
41 of the total claims payments and loss adjustment costs.

42 (2) For the period from the end of the calendar year
43 in which claims are paid by the insurer to the date
44 payments for the operation of the Assigned Claims
45 Facility and the Assigned Claims Plan are due, the
46 amount is determined by applying the annual yield rate
47 specified in this subsection to the total claims
48 payments and loss adjustment costs multiplied by a
49 fraction, of which the denominator is 365 and the
50 numerator is equal to the number of days that have
51 elapsed between the end of the calendar year and the

2 date payments for the operation of the Assigned Claims
Facility and the Assigned Claims Plan are due.

4 B. The insurer to whom claims have been assigned shall
preserve and enforce rights to indemnity or reimbursement
6 against 3rd parties, account to the Assigned Claims Facility
for those rights and assign such rights to the Assigned
8 Claims Facility upon reimbursement by the Assigned Claims
Facility. This section does not preclude an insurer from
10 entering into reasonable compromises and settlements with
3rd parties against whom rights to indemnity or
12 reimbursement exist. The insurer shall account to the
Assigned Claims Facility for such compromises and
14 settlements. The rules promulgated under this section must
establish reasonable standards for enforcing rights to
16 indemnity or reimbursement against 3rd parties, including a
standard establishing a value for such rights below which
18 actions to preserve and enforce the rights need not be
pursued.

20 C. An action to enforce rights to indemnity or
reimbursement against a 3rd party may not be commenced after
22 2 years after the assignment of the claim to the insurer or
one year after the date of the last payment to the claimant,
24 whichever is later.

26 D. Payments for the operation of the Assigned Claims
Facility and the Assigned Claims Plan not paid by the due
28 date bear interest at the rate of 20% per annum.

30 E. The Superintendent of Insurance through the Assigned
Claims Facility may enter into a written agreement with the
32 debtor permitting the payment of the judgment or
acknowledgment of debt in installments payable to the
34 facility.

36 **§880. Costs**

38 Reasonable costs incurred in the handling and disposition of
40 assigned claims, including amounts paid pursuant to assessments
under section 879, must be taken into account in making and
42 regulating rates for motor vehicle liability and personal
protection insurance.

44 **§881. Subrogation**

46 1. Uninsured owner, operator or registrant. An insurer
48 obligated to pay personal protection insurance benefits for
accidental bodily injury arising from the ownership, maintenance
50 or use of an uninsured motor vehicle as a motor vehicle may
recover such benefits paid and appropriate loss adjustment costs
52 incurred from the owner, operator or registrant of the uninsured

2 motor vehicle or that person's estate. Failure of such a person
3 to make payment within 30 days after judgment is grounds for
4 suspension or revocation of the person's motor vehicle
5 registration and license under section 2241. For the purpose of
6 this section, an uninsured motor vehicle is a motor vehicle for
7 which security as required by section 842 is not in effect at the
8 time of the accident.

10 2. Registration and license. If the debtor enters into a
11 written agreement with the Secretary of State permitting the
12 payment in installments of the judgment pursuant to subsection 1,
13 the debtor's motor vehicle registration and license may not be
14 suspended or revoked as long as the payment of installments is
15 not in default. If a person whose license and registration have
16 been suspended or revoked pursuant to subsection 1 enters into
17 such an agreement and if the payment of installments is not in
18 default, the license and registration may be restored.

20 3. Notice. The Secretary of State, upon receipt of a
21 certified abstract of a court record of a judgment or a notice
22 from the insurer of an acknowledgment of debt, shall notify the
23 owner or registrant of an uninsured vehicle, at that person's
24 last recorded address with the Secretary of State, of the
25 provisions of subsection 1 and inform that person of the right to
26 enter into a written agreement with the Secretary of State for
27 the payment of the judgment or debt in installments.

28 **§882. Insurance for vehicles for hire; vehicles used in**
29 **transporting students; dealers and transporters**

30 The owner or owners of any vehicle covered by this section
31 shall maintain at all times the required amounts of insurance or
32 bond during the term of the vehicle's registration. The
33 Secretary of State shall immediately suspend or revoke, pursuant
34 to chapter 17, the registration certificate and registration
35 plates of any vehicle for which the insurance or bond in the
36 amounts required is not maintained. Any person whose
37 registration certificate and plates have been suspended or
38 revoked pursuant to this section shall immediately return them to
39 the Secretary of State. Any person who fails or refuses to
40 return the certificate or plates to the Secretary of State is
41 guilty of a Class E crime.

44 1. Insurance for vehicles for hire. The Secretary of State
45 may not register any motor vehicle rented or leased on plans
46 commonly known as U-Drive, Drive Yourself or Driverless Car plans
47 or any motor vehicle used for livery or hire except as provided
48 in section 2708, and a person, firm or corporation may not
49 operate or cause to be operated upon any public highway in this
50 State any such motor vehicle, until the owner or owners have
51 procured insurance or a bond, with a surety company authorized to
52 transact business in this State or 2 individuals as sureties on

2 the bond, in an amount and type that meet the requirements of
3 section 842. The Secretary of State may not approve the policy
4 or bond unless it provides primary coverage for the operator as
5 well as the owner.

6 2. Insurance for vehicles used in transporting students.

7 The Secretary of State may not register any motor vehicle used as
8 a school bus or used in transporting students under contract with
9 any municipality or school district, and a person, firm or
10 corporation may not operate or cause to be operated upon any
11 public highway in this State any such motor vehicle, until the
12 owner or owners of the vehicle have procured insurance or a bond,
13 with a surety company authorized to transact business in this
14 State or 2 individuals as sureties on the bond, that meets the
15 requirements of section 842 and is at least in the amount of
16 \$100,000 for bodily injury or death to any one person, in the
17 amount of \$300,000 for bodily injury to or death to 2 or more
18 persons in any one accident, subject to the limit respecting one
19 person, and in the amount of \$50,000 for injury to and
20 destruction of property in any one accident. The insurance or
21 bond must be approved by the Secretary of State and indemnify the
22 insured against any legal liability for the death of any person,
23 personal injury or property damage that may result from or have
24 been caused by the operation of the motor vehicle described in
25 the contract of insurance or bond. The Secretary of State may
26 not approve the policy or bond unless it provides primary
27 coverage for the operator as well as the owner.

28 3. Insurance before registration for dealers and
29 transporters. The Secretary of State may not issue a license

30 or registration plates to any dealer, transporter, loaner,
31 motorcycle dealer or trailer dealer as defined in chapter 5,
32 subchapter III-A, with the exception of any equipment dealer or
33 dealer who is licensed to sell only trailers with a gross vehicle
34 weight rating of 3,000 pounds or less, who does not request
35 dealer registration plates in conjunction with the license, until
36 the applicant has procured and filed with the Secretary of State
37 a certificate showing that the applicant is covered with respect
38 to the vehicle for which the plates are issued by an accidental
39 bodily injury and property damage liability insurance policy
40 providing coverage that meets the requirements of section 842 and
41 this Title, approved by the Superintendent of Insurance, insuring
42 against any legal liability in accordance with the terms of that
43 policy for personal injury or death of any one person in the sum
44 of \$20,000 and for any number of persons in the sum of \$40,000,
45 subject to the limit respecting one person, and against property
46 damage in the sum of \$10,000 that may result from or have been
47 caused by the operation of any vehicle bearing such registration
48 plates. In lieu of such insurance, the applicant may file with
49 the Secretary of State a bond or bonds that meet the requirements
50 of section 842, issued by a surety company authorized to do
51 business in the State, in the amount of at least \$20,000 for
52 injury to or death of any one person, of at least \$40,000 for any

2 one accident resulting in injury to or death of more than one
3 person, subject to the limits respecting injury to or death of
4 one person, and of at least \$10,000 for damage to property to
5 others.

6 Notwithstanding Title 4, section 1151, subsection 2 and Title 5,
7 sections 10003 and 10051, the Secretary of State has authority to
8 suspend a motor vehicle dealer's license upon the dealer's
9 failure to maintain insurance as required by this subsection.

10 The operation, or the release for operation, of any vehicle
11 registered under chapter 5, subchapter III-A not in compliance
12 with this subsection is a Class E crime.

13 **Sec. 4. 29 MRSA §2708, sub-§1, as enacted by PL 1989, c. 866,**
14 **Pt. B, §24, is amended to read:**

15 **1. Insurance, bond or self-insurance required.** The
16 Secretary of State may not register any motor vehicle required to
17 be covered by an operating permit under this chapter nor issue a
18 permit covering the operation of any such motor vehicle or
19 vehicles until the applicant for that permit has satisfied the
20 requirements of this section by 842 and presents the following:

21 **A. Presenting-a A good and sufficient insurance policy from:**

22 (1) An insurance company authorized by the
23 Superintendent of Insurance to transact business in
24 this State; or

25 (2) With the approval of the Secretary of State, an
26 insurance company, authorized to transact business in
27 any state, that provides an indemnity bond bonding the
28 insurance company in an amount the Secretary of State
29 prescribes, and having as surety a surety company
30 authorized by the Superintendent of Insurance to
31 transact business in this State; or

32 **B. Presenting--a A good and sufficient indemnity bond,**
33 approved by the Secretary of State, bonding the applicant in
34 an amount the Secretary of State prescribes, and having as
35 surety a surety company authorized to transact business in
36 this State or 2 responsible individuals; or

37 **C. Presenting--a A declaratory judgment issued by the**
38 Interstate Commerce Commission authorizing the motor carrier
39 to self insure.

40 **Sec. 5. 29 MRSA §2709, sub-§1-A, as amended by PL 1989, c.**
41 **866, Pt. B, §25 and affected by §26, is further amended by**
42 **amending the first paragraph to read:**

1-A. Exemptions. There is exempt from this chapter the operation over the highways of motor vehicles transporting freight and merchandise for hire, except that sections 842, 2707 and 2711 shall apply to all motor carriers whether private or ~~for-hire~~ for hire:

Sec. 6. Effective date. This Act takes effect January 1, 1992.

STATEMENT OF FACT

This bill establishes no-fault automobile insurance in Maine based upon the well-recognized Michigan law. The Catastrophic Claims Association is established to share among insurers liability for claims in excess of \$250,000 for personal protection coverage in any one occurrence. The Assigned Claims Facility is established to provide a pool to cover otherwise uninsurable individuals. The no-fault insurance system provides coverage for personal protection, property protection and residual liability. Conventional tort liability is limited to specific circumstances. Noneconomic loss in excess of the insurance coverage is compensable only for death, serious impairment of bodily function or permanent serious disfigurement.