The meeting was called to order at 12:30 p.m. in Room 213 Senator Thomas R. C. Wilson was in the chair.

PRESENT: Senator Thomas R. C. Wilson, Chairman
Senator Richard E. Blakemore, Vice Chairman
Senator Don Ashworth
Senator Clifford E. McCorkle
Senator Melvin D. Close
Senator C. Clifton Young
Senator William H. Hernstadt

ABSENT: None

OTHERS PRESENT: Jo Ann Fuller, Nevada State Labor Commission
Orvis E. Reil, Chairman, Legislative Committee, National Retired Teachers of America, American Association of Retired Persons
John W. Hawkins, Nevada Trial Lawyers Association
George L. Vargas, American Insurance Association
Ed Vogel, Las Vegas Review-Journal
Frank King, Nevada Industrial Commission
W. C. Anthonisen, SUMMA Corporation
Jim Joyce, Nevada Trial Lawyers Association
I. R. Ashleman, Nevada Trial Lawyers Association
Peter Neumann, Nevada Trial Lawyers Association
Lester L. Rouls, Nevada Trial Lawyers Association
C. T. Bendorf, Association of Trial Lawyers of America
Virgil P. Anderson, American Automobile Association
Kent Robison, Nevada Trial Lawyers Association
Mae Lofthouse, Appeals Officer
Richard S. Bortolin, Appeals Officer
Richard H. Lance, The Gibbens Company, Incorporated
Don Heath, Insurance Division
Jim Wadhams, Commerce Department
G. P. Etcheverry, Nevada League of Cities
Daryl E. Capurro, Nevada Motor Transport Association
Patty Becker, State Industrial Attorney
Jack Godfrey, State Industrial Attorney

SB 350 Provides penalty for failure of producer-promoter of entertainment production to obtain permit and post bond with labor commissioner.

Jo Ann Fuller, Chief Assistant, Nevada State Labor Commission, testified that the Commission endorses SB 350. Ms. Fuller stated that presently the statute provides no penalties for noncompliannce and the Commission has trouble getting people to apply for producer-promoter permits which show where the financing comes from and requires the posting of a bond for twice the weekly wage of each of the artists and technicians.

Ms. Fuller explained to Senator Close that Nevada has a great deal of entertainers coming into the state and the Commission wants to insure that those people will get paid.

Senator Hernstadt stated that at the state and federal level there is a preference for wage claims that should be enough, thus there is no need for this legislation.

Ms. Fuller explained that if a company goes bankrupt, the employee can file a wage claim, but if there are government monies owed, they come out first and sometimes the employee can't get his pay. She stated that producer-promoters can just leave the state and not pay the salaries.

Senator McCorkle stated that there is no difference in instability with regard to producer-promoters and any other businessmen.

Senator Blakemore stated that SB 350 is a follow-up bill from one passed in 1977 to protect workers hired by promoters who would collect profits and then leave the state. He explained that the penalty would insure payment of wages, and that promoters are usually from out of state but technicians and musicians are usually residents.

Senator Hernstadt suggested if a bond were required, the cost of the shows might go up.

Mark Massagi, President, Nevada State AFL-CIO, President Musicians' Union, Las Vegas, stated that SB 350 would serve to enforce the bill passed in the previous session. Mr. Massagi explained that promoters can come into the state and take advantage of residents by leaving without paying salaries.

Senator Ashworth made the point that once the promoter goes out of the state, Nevada has no jurisdiction.

Chairman Thomas R. C. Wilson closed the public hearing on SB 350.

SB 313 Repeals Nevada Motor Vehicle Insurance Act and provides for optional reparation benefits.

Orvis E. Reil, Chairman, Legislative Committee, National Retired Teachers of America and the American Association for Retired Persons, stated that he opposes SB 313. Mr. Reil stated that no-fault insurance provides the immediate treatment and rehabilitation of physical injuries without financial hardship; no-fault replaces the chance to file a lawsuit with a certainty of payment for economic loss. He stated that the fault insurance system does nothing for medical expense and wage loss resulting from an accident, but no-fault requires prompt payment without legal proceedings; the fault insurance system overcompensates victims with minor injuries and undercompensates seriously injured; the

fault system is inefficient and unfair. Mr. Reil presented proposed amendments to NRS 698 (see Exhibit A) and suggested that they amend SB 313.

Kent Robison, President, Nevada Trial Lawyers Association introduced C. Thomas Bendorf, representing the Association of Trial Lawyers of America, who presented a position paper entitled A Psychological Threshold. . . An Alternative to Florida's No-Fault Law (see Exhibit B). Mr. Bendorf stated that SB 313 provides for first-party benefits which are mandatorily rejected; the insured must reject in writing; the bill provides no tort restriction or limitation and provides for wage loss within the medical payments. He explained that in automobile insurance expenses, such as typewriters, buildings, automobiles, run 40 to 50 percent. The remainder is the loss ratio which is sometimes called losses paid or losses incurred: a portion of the loss ratio is loss adjustment expense; the portion that is exclusive of loss adjustment expense is called pure loss ratio. He continued that included in pure loss ratio are the following three factors: Claims paid, which is broken down into claims paid during the year; claims paid for risks incurred in prior years but paid during this year; and claims incurred but not reported. He continued that a study had revealed that lawyers were used in 40 percent of cases and of the total claims closed, where lawyers were involved, 77 percent were represented by lawyers. He stated that the conclusion was made that lawyers had a contingent fee of 35 percent and that 27 percent of the 35 percent went to the lawyers. He continued that the insurance industry total premiums were $80 billion and the reserves were $70 billion. He explained that reserving impacts heavily on no-fault. Mr. Bendorf stated that in insurance language, property means collision and comprehensive auto property; auto liability means everything else: no-fault, property damage liability, bodily injury liability, etc. He continued that Michigan has a high first-party benefit no-fault bill which requires heavy reserves and the claims paid will be a much smaller percentage of the loss ratio than in South Carolina which has a $1,000 first-party benefit so that South Carolina's insurance costs $99 and the same policy in Michigan will cost $700 or $800.

In answer to Chairman Wilson's question, Mr. Bendorf replied that SB 313 is going in the right direction with the voluntary $5,000 which will lower premiums. He continued that the formula for raw cost is frequency times severity and this, in theory, is where no-fault is supposed to pay off; it should reduce the cost of bodily injury liability insurance, it should reduce tranaction costs, it should reduce legal fees.

Mr. Bendorf explained to Senator McCorkle that the acquisition of factual information about insurance is difficult, and the reason that state insurance commissioners exist is to protect the public against the insolvency of the insurer. He stated that the information needed for this protection is just not available so the costs of investigating are high. He said that attorney's fees usually are only paid on bodily injury claims

when the insurance company has refused to settle and the judgement has been that they should have settled.

Senator Hernstadt stated that 30 percent of the people in Nevada are uninsured, consequently rates are rising, and asked if there is some kind of compromise that could give the most efficient insurance for the lowest cost.

Mr. Bendorf stated that the theory regarding mandatory insurance is to mandate the availability of liability insurance at a level that the people want and to mandate the offering of uninsured and underinsured motorists to the level the people require liability. He questioned the mandating of no-fault insurance since most people are insured. He stated that the health insurer should be the carrier for accident insurance. Mr. Bendorf continued that, comparing Oregon which has no threshold and Florida, which has a $1,000 threshold, the frequency of bodily injury claims, after no-fault, was reduced by 25 percent in Oregon. He stated that the frequency was .75 and the severity went up 20 percent so the raw cost was decreased by 10 percent. He continued that Florida has a $1,000 threshold, and reduced the frequency by 65 percent leaving 35 percent as many bodily injury claims, the severity went up 340 percent.

Mr. Bendorf stated that the survey that compared Oregon and Florida pricing concluded that Oregon should be much more expensive by all theories, but it isn't. He stated that Michigan's is the best bill, and 56 percent of the people don't like no-fault insurance and newspaper and professional polls show that 80 to 90 percent of the people in the U.S. don't like no-fault insurance. He continued that most people believe that the person who is responsible for the accident should be the one to pay. Mr. Bendorf explained that the insurance industry's assets went from $17 billion to $135 billion in a 25-year period and the net worth of the policyholders' surplus went from $6 billion to $37 billion. Mr. Bendorf concluded that he does not suggest that reserves are too high, but that lawyers should not be blamed for high insurance rates and there should be more truth in insurance just as there is truth in lending.

Senator Hernstadt suggested that if auto accidents are included in health insurance, those rates will go up.

Mr. Bendorf explained to Sen. McCorkle that a study of insurance from 1959 to 1969 suggested that 96 percent of all injury accidents resulted in total net economic loss of less than $2,500 and that the cost of living from then until now has risen 204 percent, so that amount of money should solve 96 percent of all of the net economic losses in automobile accidents. He added that the return of the fault system, which this bill would essentially do, would provide that the seriously injured will use their own resources when they are, in fact, the person at

fault. Mr. Bendorf presented a document prepared by the Academy of Florida Trial Lawyers (see Catalogue #57.1.FL, 79-367, 1979), the Principal Provisions of the Florida Law (see Exhibit C) and the "Oregon Law" (see Exhibit D).

Peter Neumann, Nevada Trial Lawyers, stated that he supports SB 313 and opposes the raising of the threshold bill, SB 381, which would raise the threshold limitation from $750 to $5,000 before a person could make a claim. Mr. Neumann stated that the benefits which the Nevada no-fault law has extended to people who have insurance are open-ended, there is no time limit for application for a doctor bill or wage loss to be paid. He explained that Oregon does have limitations so they have been able to afford no-fault without having threshold limitation for the right of an Oregonian to file suit. He continued that in Oregon no-fault is mandatory but SB 313 would provide that there is no absolute requirement for no-fault insurance in Nevada but if the policyholder chooses not to carry it, he must state it in writing.

Lester L. Rouls, former Oregon Commissioner of Insurance, stated that in 1971 Oregon reviewed different types of no-fault such as the no-fault with thresholds and what he considers to be real no-fault which is a first-party benefit with the restriction to bring action against the person who causes the accident. He explained that the result of this study was the "Oregon Plan" which provides a first-party medical payment, a loss of income, a funeral expense, an account for essential services and, at the beginning, there was a $3,000 limit on medical. He continued that it was decided to increase the medical limit $5,000 and include $1,000 funeral benefits (which had been erroneously omitted when the original bill was drafted) to insure coverage for the greatest amount of policyholders, and this was passed in the 1973 legislature.

In answer to Senator Blakemore's question, Mr. Rouls stated that there has not been a question as to the constitutionality of no-fault insurance in Oregon. He continued that Oregon evidenced a decline in bodily injury suits and a decline in premiums; then rates went up in 1973 and have leveled off since then. He stated that his "PIP" (Personal Injury Protection) coverage at the time no-fault went into effect cost about $20 per year for two cars and that he is now paying $30 per year and has increased the benefits from $3,000 to $5,000 in income replacement. He stated that the insurance industry in Oregon supports the no-fault system. Mr. Rouls explained threshold as a "psychological threshold" in Oregon because the policyholder can sue or not. He stated that in Oregon if a $1,500 medical bill is incurred and action is brought against the responsible party, the $1,500 must be paid back to the insurer out of the recovery, but SB 313 does not provide for this.

Mr. Neumann explained to Senator McCorkle that this should reduce the premium. He stated that the present system in Nevada, where the no-fault carrier pays the insured but is reimbursed if there is a 3rd party action, is tantamount to a loan.

Mr. Rouls presented a Position Statement (see Exhibit E).

Mr. Neumann explained that NRS 690, which is the uninsured motorist chapter, would add SB 313 and NRS 698, the no-fault chapter, would be repealed. Mr. Neumann stated that approximately $1.2 million had just been appropriated by the Oregon legislature for the enforcement of the mandatory provision. He stated that NRS 686.B is the no-fault chapter. He explained that section puts no-fault into the old statute; section 2 states that the carrier must offer no-fault insurance but it is not required if the insured waives it in writing. He explained to Senator Ashworth that the minimum amount of basic reparation benefits are in section 3, paragraph 1. He stated that the policyholder could purchase multiples of no-fault if he so desired.

Mr. Neumann agreed to review the bill with David Guinan and report back to the Committee with an explanation of what SB 313 does, exactly.

Virgil P. Anderson, American Automobile Association, stated that he opposes SB 313. Mr. Anderson explained that AAA is a nonprofit reciprocal company organized under the state of Nevada and all premiums that are not used go back to the policyholders. He continued that claim losses in Nevada are rising and relief is needed. He commented that insurance is a bargain in Nevada compared to California and part of the reason for this is the present no-fault law. Mr. Anderson stated that between 1974 and 1976 there was a drop in frequency from 2.04 percent to 1.01 percent, but in the last year there has been an increase of about 50 percent in personal injury claims, and the reason for this rise is the breaking of the threshold. He explained that in 1978 the loss ratio was 69.2 percent and uninsured motorist insurance was up 145 percent; and unless there is some relief with respect to the threshold, rates will have to increase. He stated that rates have gone up about 16.9 percent which is not bad. He stated that it is a mistake to think that SB 313 will reduce rates. He referred to subsections 1 and 2 of section 3 and stated that they would cause a 50 percent increase over the present statute, because it increases the benefits but eliminates the threshold. He stated that he would favor an increase in the threshold but would prefer to leave the basic reparation benefits as they are with the option to go up to $50,000. He stated that there is no cap in the proposed bill.

Mr. Anderson concluded that SB 313 would result in a substantial increase in costs for the motorist.

Daryl E. Capurro, representing the Nevada Motor Transport Association and Nevada Franchised Auto Dealers, stated that the trucking

industry is close to 100 percent insured. Mr. Capurro stated that available insurance for the trucking industry has been drastically reduced because of rising costs and a lack of interest from carriers for trucking insurance. He stated that the rise in costs is directly related to the no-fault concept. He suggested that there are two possible routes that could be followed to solve the problem: the first being to raise the threshold to a limit that would eliminate cases from the court system; the second would be to eliminate no-fault, eliminate the option for additional first-party benefit coverage and go back to the tort system entirely. He explained to Senator Hernstadt that small carriers have had premiums double in the past two years.

Senator Young observed that truckers, by the nature of their business, are better drivers and asked why premiums wouldn't be lower.

Mr. Capurro explained that there is reduced frequency but higher severity and higher exposure. He explained to Senator Ashworth that the no-fault provisions in Nevada are not extended to vehicles based out of state.

George L. Vargas, representing the American Insurance Association stated that insurance companies either go broke or have adequate rates, so if there is more money going out, the rates will have to go up. He stated that with regard to reserves, the insurance commissioner watches reserves and the state law provides that rates shall not be excessive, inadequate or discriminatory. He stated that if SB 313 passes, the threshold, which was designed to prevent litigation, would be removed and would add to the benefits of the basic reparation system while at the same time maintaining the entire tort system. He continued that page 8, line 34, takes out the provision of uninsured motorist and would result in double payment. He stated that a system that works in Oregon would not necessarily work in Nevada.

Senator McCorkle asked Mr. Vargas' opinion of changing the bill to making no-fault optional, reducing the maximum benefits to the present statute and keeping the threshold.

Mr. Vargas replied that people seem to think that the Oregon system works because it is mandatory, but SB 313 is optional and would not have every policyholder contributing. He explained that the idea of the threshold is to keep suits out of court.

Jim Wadhams, Director, Department of Commerce, referred to Mr. Anderson's testimony and stated that there is no outside limit and that it is conceivable that the total payout under SB 313 would be $33,304; this would be a situation where there was $5,000 in medical expenses, a full year of work loss, two years of necessary replacement services and ultimate death. Mr. Wadhams

explained that the current statute has an outside limited based on a program of $10,000 and suggested that the bill could be amended to have a limit.

Chairman Wilson stated that if a person's right to sue is taken away and the threshold is raised, he is locked into the no-fault system.

Mr. Wadhams stated that a case in Michigan, which has the most comprehensive no-fault system, went to the state supreme court and the court ruled no-fault is constitutional but only if an adequate substitute is provided that would have adequate benefit limits in exchange for the right to sue and an adequate availability and affordability. He continued that if benefits are raised, rates will invariably rise. Mr. Wadhams explained that no-fault in Nevada is a result of social engineering that was popular in the 1960s.

Chairman Wilson stated that the situation is a frustrating one and the Committee is in an awkward position because it is faced with defining levels of benefits to be paid; a definition of threshold within which there is no right to sue in tort and as a result no right to recover in full; the alternative would be to eliminate no-fault totally and, mixed in with all of this, the impact it will have on premium levels.

Mr. Wadhams stated that the current system in Nevada is the worst possible. He explained that there are 13 separate ways to cross the threshold but the purpose of the no-fault was to displace the tort system and substitute a first-party system. Mr. Wadhams continued that there seems to be two courses to choose from; one would be to displace the overlap between the tort system and the first-party system; the other course would be to return to the original system.

Senator Ashworth stated that the insurance industry should be able to come up with statistics that would show what effects this legislation, or lack of it, will have on rates, benefits, etc. He observed that no matter what course is taken, rates will go up if for no other reason than the cost of living.

Mr. Wadhams stated that if the no-fault system were repealed in its entirety and there were a return to the tort system, premiums would reduce.

Chairman Wilson stated that, as Senator Ashworth had pointed out, the benefit levels would have to be adequate to make the injured party whole.

Mr. Wadhams explained that in Oregon there is a psychological threshold that doesn't have a dollar amount but there is no limitation on the right to sue.

Don Heath, Commissioner, Insurance Division, suggested that a way to solve part of the problem would be to eliminate the requirement for mandatory first-party benefits; that it should be made optional.

Senator Close suggested that the Committee send a letter to the insurance commission requesting information regarding costs, various types of insurance and different courses to follow that would be brought back to the Committee in the next session.

Mr. Heath agreed with Senator Close's suggestion and stated that the insurance division would welcome any kind of a subcommittee participation from the legislature. He also agreed to provide an index including changes in medical costs, hospital costs, doctor bills, etc. over the four years that Nevada has had no-fault insurance.

Bob Honey, Nevada Trial Lawyers, stated that he is against raising the threshold. He stated that people are taking advantage of the system to reach the threshold. Mr. Honey continued that the present system, the $750 threshold, is not satisfactory and that he hopes an interim study will help solve that problem.

Virgil Anderson presented statistics regarding premiums for medical costs for AAA policyholders as follows: 1974 provided a 15 percent reduction; by 1977 there was a 16.9 percent increase; January 1979 showed a 15 percent increase, which revealed a net increase of 16.9 percent over five years. Collision rates from 1974 to 1976 were up 36 percent and property damage from 1974 to 1976 increased 25.9 percent.

Chairman Thomas R. C. Wilson closed the hearing on SB 313.

SB 381 Raises threshold for tort liability based on medical benefits paid to injured person.

Chairman Wilson stated that all testimony on SB 313 regarding threshold would be incorporated with SB 381.

Chairman Thomas R. C. Wilson closed the hearing on SB 381.

SB 382 Provides procedure for certain hearings before Nevada industrial commission and requires budgets of appeals officers and state industrial attorney.

Patty Becker, Nevada State Industrial Attorney, presented prepared testimony and background information regarding SB 382 (see Exhibit F). For case histories which demonstrate how the present hearing system operates, see catalogue #53.6.NV, 79-366, 1979. Ms. Becker stated that a similar bill, AB 84, had passed in the Assembly today, so she was suggesting this amendment to SB 382 (see Exhibit).

Jack Godfrey, Nevada State Industrial Attorney, explained the present hearing system, referring to the charts in Exhibit F.

Ms. Becker stated that in the 1977 legislature, NRS 616.605 had been amended to delete line 5 which reads "Death of the employee terminates entitlement to permanent partial disability compensation." but that the Nevada Industrial Commission has neglected to delete it from the form. She continued that, essentially, her suggestion is to create a new division, NRS 619, which would take the hearings officers out of NIC so there would not be substantial impact excepting rent, etc. She explained that it would be hoped that the cases could be settled at the lay persons hearings officer's level so that a state attorney would not be needed. She said that there would still be the director. Ms. Becker explained that presently a first hearing cannot be obtained until NIC has terminated compensation and it can take six months to get to the level where the industrial attorney can be used. She continued that under AB 84 or SB 382, with the proposed amendments, a claimant could reach the attorney level within 45 days, but ideally the claimant would not get to the attorney level.

Mr. Godfrey explained that more people would be needed to administer the system but it would be a fairer system and the claimants would be more willing to accept a decision if they knew the system was impartial.

Ms. Becker explained that the amendment provides that the budget would have to go through Ways and Means in the Assembly and Finance in the Senate, who would justify the number of staff and billing would be proportionate to use. She continued that the amendment includes the proportionate cost of private carriers and self-insured carriers.

W. C. Anthonisen, Personnel Services Manager, SUMMA Corporation, Greater Las Vegas Chamber of Commerce, Southern Nevada Personnel Association, stated that he supports SB 382 with the proposed amendment. Mr. Anthonisen stated that presently the system is a "Catch 22" situation. He explained to Chairman Wilson that emloyers from southern Nevada would definitely be interested in self-insurance.

Senator Blakemore suggested that if private carriers and self-insured are allowed, NIC could go bankrupt.

Richard H. Lance, representing The Gibbens Company, Incorporated, stated that he supports SB 382 with the proposed amendment. Mr. Lance explained that the present system is biased, and is based on expediency which eliminates quality. He continued that the long delays in the present hearing system are costly to the employers.

Senator McCorkle suggested that an NIC attorney with a reputation of success could intimidate with resulting higher settlements, and wondered if this new system would alleviate that possibility.

Richard Bortolin, Appeals Officer, stated that delays in hearings are before they get to his level. He explained that in over five years he has been appealed only 26 times.

In reply to Chairman Wilson's question, Mr. Bortolin answered that he does not think a new division would be a good idea, and that the appeals officer should not be under a director. He continued that only two hearings officers is not enough to handle the case load. He referred to the 30 case histories presented by Patty Becker and stated that she had never reviewed his files, files that would explain delays.

Mr. Bortolin stated that he would not object to a new division if the appeals officer were autonomous. He continued that in talking with administrative law judges, he had learned that when they are under a director there is a limitation on their autonomy. He suggested that if the new division is created that the appeals officer should be answerable only to the district court. He explained that his position had been appointed by the Governor for a four-year term and that he reports directly to the Governor. He clarified that NIC hires hearings officers.

Chairman Wilson asked, with regard to AB 84 which would create a two-way insurance system, if there would be an advantage to have the hearings system separate. Mr. Bortolin stated that autonomy at that level would be good also.

Senator McCorkle stated that there should be no extra cost.

Mr. Bortolin stated that there would be two to three new hearings officers and a director, and that hearings officers are at the grade of "36".

Frank King, General Counsel, Nevada Industrial Commission, Las Vegas, stated that the case load of claims is not great.

Chairman Wilson clarified that the effect of the legislation of AB 84 and an amended SB 382 would be to create a hearings division that would deal with not just NIC, but Personnel and any other department that would need impartial decisions.

Mr. King suggested that the most economical way to deal with the problem would be to eliminate all low levels of appeals and have the claimants apply directly to the appeals officer.

Senator Hernstadt stated that that suggestion would be too burdensome to the appeals officer.

Chairman Wilson concluded that this legislature is faced with the task of deciding whether a new division of appeals should be created that would deal with all problems of state government and invited suggestions and additions to be presented on April 11 when AB 84 would be heard.

Mr. Bortolin stated that he had made a special study and discovered 20 hearings officers.

Chairman Wilson suggested that all of these officers could be centralized.

G. P. Etcheverry presented a prepared document (see Exhibit G).

Chairman Thomas R. C. Wilson closed the public hearing on SB 382.

SB 383 Requires Nevada industrial commission to simplify certain forms and provide appeal forms upon adverse determinations.

Jack Godfrey, State Industrial Attorney, explained that SB 383 provides forms for claimants that would explain what they should do in the pursuit of benefits due them.

Discussion followed as to whether it is necessary to legislate that good forms be made available.

Senator Ashworth suggested that the language in the bill is confusing and that a foreign-speaking person could interpret it to mean that the form be written in his language.

G. P. Etcheverry presented a prepared document (see Exhibit H).

Chairman Thomas R. C. Wilson closed the public hearing on SB 383.

SB 384 Sets requirements for notice and hearing before closing of certain cases by Nevada industrial commission.

Jack Godfrey, State Industrial Attorney, explained that presently it is possible to close a claim without notification to the claimant. Mr. Godfrey stated that SB 384 would provide that NIC advise the claimant that his claim is about to be closed.

Frank King, General Counsel, Nevada Industrial Commission, explained that in 99 percent of the cases the claimant has gone back to work and hasn't signed the bi-weekly form stating that he has been disabled for the past two weeks. He continued that after a period of six months of not receiving these forms, NIC closes the case. Mr. King suggested that SB 384 state that the claimant has the right to appeal rather than stating he has the right to appeal before a hearings officer.

Mr. Godfrey agreed to Mr. King's suggestion.

Richard H. Lance, The Gibbens Company, suggested that SB 384 be amended to include notification of the employer as well, and re-opening rights be stated in the notification.

G. P. Etcheverry presented a prepared document (see Exhibit I).

Chairman Thomas R. C. Wilson closed the public hearing on SB 384.

BDR 54-1529* Exempts members of clergy from provisions of law regulating practice of psychology.

Senator Young moved for Committee introduction.

Seconded by Senator Close.

Motion carried unanimously.

Senator McCorkle stated that he had been approached to introduce a resolution to resume the draft.

Senator Young moved for Committee introduction.

Seconded by Senator Blakemore.

Motion carried with Senator Hernstadt dissenting.

There being no further business, the meeting was adjourned at 5:30 p.m.

Respectfully submitted,

Betty Kalicki, Secretary

APPROVED:

Thomas R. C. Wilson, Chairman

*SB 425

SENATE Commerce and Labor COMMITTEE

GUEST LIST

DATE: Wednesday, April 4, 1979

NAME	AGENCY OR ORGANIZATION
ORVIS E. Reil	Chairman - NRTA/AARP - Nevada Joint State Legislative Committee
John W Hawkins	Nevada trial lawyers Association - member Bd of Governors -
George L Vargas	Amer Ins Ass'n
Ed Vogel	Las Vegas Review Journal
Frank Kris	NIC
N. C. Anthonisen	Summa Corp
Lew Joyce	Nevada Trial Lawyers
E.R. Ashleman	" " "
Peter Neumann	" " "
Hester L Rawls	
Virgil P. Anderson	AAH
Kent Robison	Nevada Trial Lawyers Assn
Mae Loftgause	Appeals Officer
Richard J. Bortolin	Appeals Officer
Richard H. Lance	Freg Hobbs Co. Inc
Knams	Insurance Division
Ron Heath	Insurance Division
Jim Williams	Commerce Dept
G P Etcheverry	Nev League of Cities
Daryl E. Capurro	Nevada Motor Transport Assn

698.070 1. "...26 U.S.C. 1371 et seq." The Commissioner of Insurance is hereby authorized and empowered to adjust, by regulation, the amounts and terms of the disability income benefits to be provided pursuant to this section. Said adjustments shall be promulgated annually, no later than October 31st to become effective on January 1st of the following year. Furthermore, said adjustments shall increase or decrease the disability income benefits to reflect the percentage change in the cost of living adjustment published by the U.S. Bureau of Labor statistics for the most populous region of the State of Nevada. Said adjustments in the amounts and terms of disability income benefits shall apply only to benefits arising out of accidents occurring subsequent to the effective date of the change.

2. "... Creation or burial per individual"

6. Subject to the provision of NRS 070 (1) and NRS 698.340, work loss for an injured person who is temporarily unemployed at the time of the accident or during the period of disability shall be based on the average earned income for the last immediate twelve months employed preceeding the accident.

698.110 "Net benefits payable" defined. "Net benefits payable" means benefits payable less all assistance or advantages a person receives or is entitled to receive from workmen's compensation ~~as calculated in NRS 698.330~~, medicare and/or social security benefits as provided under Federal law as calculated in NRS 698.330

485.380 (2) "The Division may upon the application of such a person, issue a certificate of self-insurance when it is satisfied that the person possesses and will continue to possess the ability to pay ~~judgements obtained against him and claims for basic reparation benefits as provided in Chapter 698 of NRS.~~" Basic reparation benefits, tort liabilities, and perform all other obligations imposed by Chapter 698 of NRS.

698.200 Liability insurance contracts to provide required coverage. Except as provided in NRS 698.225:

1. An insurance contract which purports to provide coverage for basic reparation benefits or is sold with representation that it provides security covering a motor vehicle has the legal effect of including all coverages required by this chapter.

2. Notwithstanding any contrary provision in it, every contract of liability insurance for injury, wherever issued, covering ownership,

maintenance or use of a motor vehicle, except a contract which provides coverage only for liability in excess of a required minimum tort liability coverage, or subject to the right of exclusion to provide security as required under NRS 698.190 to any motor vehicle owned by any person entitled to receive benefits under the Federal Health Insurance for the Aged Act, includes basic reparation benefit coverages and minimum security for tort liabilities required by this chapter, while it is in this state, and qualifies as security covering the vehicle.

3. An insurer authorized to transact or transacting business in this state may not exclude, in any contract of liability insurance for injury, wherever issued, covering ownership, maintenance or use of a motor vehicle, except a contract providing coverage only for liability in excess of required minimum tort liability coverage, or subject to the right of exclusion to provide security as required under NRS 698.190 to any motor vehicle owned by any person entitled to receive benefits under the Federal Health Insurance for the Aged Act, the basic reparation benefit coverages and required minimum security for tort liabilities required by this chapter, while the vehicle is in this state.

698.220 Exemption of certain vehicles.

1. The requirement to provide security under NRS 698.190 does not apply with respect to any motor vehicle owned by the United States, this state, any political subdivision of this state or any municipality of this state.

2. To the extent that an entity specified under subsection 1 does not provide security, this chapter does not apply to any motor vehicles owned by such entity.

3. The requirement to provide security for the payment of basic reparation benefits under NRS 698.190 does not apply with respect to

any motor vehicle owned by any person entitled to receive benefits under the Federal Health Insurance for the Aged Act, Public Law 89-97, Title I, July 30, 1965, 79 Stat. 290.

698.280 Tort liability abolished; exceptions.

1. Tort liability with respect to accidents occurring in this state and arising from the ownership, maintenance or use of a motor vehicle is abolished except as to:

(a) Liability of the owner of a motor vehicle involved in an accident if security covering the vehicle was not provided at the time of the accident;

(b) Liability of a person in the business of selling, manufacturing, repairing, servicing or otherwise maintaining motor vehicles arising from a defect in a motor vehicle caused or not corrected by an act or omission in selling, manufacturing, repairing, servicing or other maintenance of a vehicle in the course of his business;

(c) Liability of a person for intentially caused harm to person or property;

(d) Liability of a person for harm to property including, but not limited to a motor vehicle and its contents;

(e) Liability of a person from harm to an operator of or passenger on a motorcycle as defined in NRS 482.070;

(f) Liability of a person for harm to an operator of or passenger on a moped as defined in NRS 482.069;

(g) Liability of a person in the business of parking or storing motor vehicles arising in the course of that business for harm to a motor vehicle and its contents;

(h) Damages for any loss not recoverable as basic reparation benefits

by reason of the limitation on benefits for those losses, as provided in NRS 698.070; and

(i) Damage for noneconomic detriment but only if the medical benefits for the injured person exceeds ~~$750~~ $5,000, or if the accident causes death, ~~chronic or permanent injury, permanent partial~~ or permanent total disability ~~disfigurement~~, more than 180 days of inability of the injured person to work in his occupation ~~fracture of a major bone dismemberment or permanent loss of a body function~~.

2. Any person who receives medical and surgical benefits is considered in compliance with the requirements of paragraph (i) of subsection 1 upon a showing that the medical treatment received has a reasonable value of at least ~~$750~~ $5,000. Any person receiving ordinary and necessary services normally performed by a nurse from a relative or a member of his household may include the reasonable value of such services in meeting the requirements of that paragraph.

(a) The Commissioner of Insurance is hereby authorized and empowered to adjust, by regulation, the dollar amounts specified in paragraphs 1(i) and 2 above. Such adjustment shall be promulgated annually, no later than October 31st to become effective on January 1st of the following year. Such adjustments shall reflect the changes in the medical care index promulgated by the U.S. Bureau of Labor Statistics for the most populous region of the State of Nevada. Any such change in dollar amounts shall apply only to claims arising out of accidents occurring subsequent to the effective date of the change.

698.330 Basic benefits primary insurance; exceptions. All assistance or advantages a person receives or is entitled to receive from workmen's compensation, medicare and/or social security benefits as provided under

EXHIBIT A

Federal law by reason of an injury arising out of the use or maintenance of a motor vehicle are subtracted from benefits payable in calculating net benefits payable. Basic reparation benefits are primary in relation to all other insurance.

698.190 Required security.

NOTE: Some form of meaningful enforcement of this act is necessary in order for any of the following changes or the present act as it currently stands to secure a purposeful no-fault act.

EXHIBIT A

698.520 False and fraudulent claims. (Added)

1. (a) Any person who, with the intent to injure, defraud, or deceive any insurance company:

1. Presents or causes to be presented any written or oral statements as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim; or

2. Prepares to make any written or oral statement that is intended to be presented to any insurance company in connection with, or in support of,

EXHIBIT A

any claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim. is guilty of a felony.

(b) All claims forms shall contain a statement in a form approved by the Division that clearly states in substance the following: "Any person who knowingly and with intent to injure, defraud, or deceive any insurance company files a statement of claim containing any false, incomplete or misleading information is guilty of a felony."

(2.) Any physician licensed under NRS 630, osteopath licensed under NRS 633, chiropractor licensed uner NRS 634, or any other practitioner licensed under the laws of this state who knowlingly and willfully assists, conspires with, or urges any insured party to fraudulatly violate any of the provisions of this part, or any person who, due to such assistance, conspiracy, or urging by said physician, osteopath, chiropractor, or practioner, knowingly and willfully benefits from the proceeds derived from the use of such fraud, is guilty of a felony punishable as provided in NRS . In the event that a physician, osteopath, chiropractor, or practitioner is adjudicated guilty of a violation of this section, the appropriate licensing authority shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against said physician, osteopath chiropractor, or practitioner.

(3) Any attorney who knowingly and willfully assists, conspires with, or urges any claimant to fraudulently violate any of the provisions of this part, or any person who, due to such assistance, conspiracy, or urging on such attorney's part, knowingly and willfully benefits from the proceeds derived from the use of such fraud, is guilty of a felony punishable as provided in NRS .

(4) No person or governmental unit licensed under NRS 450, NRS 450B to maintain or operate a hospital, and no administrator or employee of any such hospital, shall knowingly and willfully allow the use of the facilities of said hospital by an insured party in a scheme or conspiracy to fraudulently violate any of the provisions of this part. Any hospital administrator or employee who violates this subsection is guilty of a felony punishable as provided in NRS . Any adjudication of guilt for a violation of this subsection, or the use of business practices demonstrating a pattern indicating that the spirit of this law set forth in this part is not being followed,

shall be grounds for suspension or revocation of the license to operate the hospital or the imposition of an administrative penalty of up to $[illegible] by the licensing agency as set forth in NRS 439.

(5) Any insurance company damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees at the trial and appellate courts.

(6) For the purpose of this section "statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescriptions, hospital or doctor records, x-ray, test result, or other evidence of loss, injury or expense.

(7) The provisions of this section shall also apply as to any insurer or adjusting firm or their agents or representatives who, with intent, injure, defraud, or deceive any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in this section.

(8) It is unlawful for any person, in his individual capacity or in his capacity as a public or private employee, or for any firm, corporation, partnership, or association, to solicit any business in or about city receiving hospitals, city and county receiving hospitals, county hospitals, justice courts, or municipal courts; in any public institution; in any public place; upon any public street or highway; in or about private hospitals, sanitariums or any private institution; or upon private property of any character whatsoever for the purpose of making motor vehicle tort claims. Any person who violates the provisions of this subsection is guilty of a felony punishable as provided in NRS .

(9) It is unlawful for any attorney to solicite any business relating to the representation of persons injured in a motor vehicle accident for the purpose of filing a motor vehicle tort claim. Any attorney who violates the provisions of this subsection is guilty of a felony punishable as provided in NRS . Whenever any circuit or special grievance committee acting under the jurisdiction of the Supreme Court shall find probable cause to believe that an attorney is guilty of a violation of this section, such committee shall forward to the State Attorney General a copy of the finding of probable cause and the report being filed in the matter.

EXHIBIT A

603.510 Construction and Severability (Added)

This act shall be liberally construed so as to effect the purpose thereof. The provisions of this act shall be severable and if any phrase, clause, sentence or provisions of this act is declared to be contrary to the constitution of this state or of the United States or the applicability thereof to any person, government, agency or circumstance is held invalid, the validity of the remainder of this act and the applicability thereof to any person, government, agency or circumstance shall not be affected thereby.

Revised 1978

Source: Position Papers of the Academy of Florida Trial Lawyers March 1979

A PSYCHOLOGICAL THRESHOLD . . . AN ALTERNATIVE TO FLORIDA'S NO-FAULT LAW

The early 1970's were marked by skyrocketing automobile insurance rates. In an effort to harness and reduce those rates the Florida Automobile No-Fault Law was enacted by the 1971 Legislature. Since the original law was passed, it has undergone a series of major revisions, all seeking to make it "workable." But none have satisfactorily succeeded in accomplishing No-Fault's original goal - - substantial reduction of rates. Yet the law continues to limit a person's right to sue for damages.

At the time it was enacted, the Academy predicted that the Florida version of No-Fault would not solve the premium rate problem. Year after year, since 1971, that has become increasingly clear. More and more restrictions on the right to sue have been imposed in an effort to cure the problem, to the end that now the industry is engulfed in an embarrassment of riches. There still has been no significant rate relief, creating substantial dissatisfaction with Florida No-Fault. That dissatisfaction was perhaps best reflected in the votes in 1976 in the House of Representatives and in 1977 in the Senate for repeal of the law in its entirety!

It would be a relatively simple matter to urge repeal of Florida No-Fault - the facts clearly support that result. But to do so without also offering a realistic alternative would be a less than responsible approach.

There is now much data available that was not present even as late as 1976. Fortunately, in 1976, the legislature enacted an insurance reporting bill which required the automobile insurers to disclose vital information necessary for intelligent decision making.

After studying the data, the Academy believes that a realistic alternative does exist. It is a No-Fault plan which would achieve the advertised benefits of that

type of system - - administrative handling of the small case - - and do so without depriving the citizens of this State of their right to sue. It is a plan modeled after the psychological threshold of Oregon's No-Fault law.

The facts behind Florida No-Fault and a comparison with Oregon's law follow.

THE FACTS

Shortly after enactment, it was clear that Florida's version of No-Fault with revisions occurring as recently as the 1978 session. But even with all the changes that have been made in the bill since its passage nearly seven years ago, it can still be judged a failure by a number of standards.

Premiums Have Not Been Reduced

First and foremost, Florida's No-Fault unfairly denies many automobile accident victims of their right to sue for damages - - while costing policyholders more money in the form of higher insurance rates than did the former tort (wrongful act) system.

In almost every year since the enactment of No-Fault, premium rates have continued upward at an alarming pace. The expense of No-Fault to drivers is evident, as Bob Shaw and John Van Gieson pointed out in a 1978 Miami Herald continuing study of automobile insurance in Florida:

> "Florida is officially in the midst of an insurance crisis.
>
> Admittedly, to some that may not be news. Indeed, South Floridians compelled to fork over $500 to $1,000 a year for auto insurance - - assuming they can find a company willing to sell it to them — may

feel justified in concluding that a crisis has existed for years."[1]

Stock Market Losses

Part of the reason why Florida No-Fault failed to reduce rates is the fact that much of the pressure for premium increases came from outside the system. It came from the tremendous losses the industry sustained in the stock market in 1973 and 1974 due to its mismanagement of investments. In that period the industry lost the staggering sum of $10 billion dollars.[2]

Somehow those losses had to be made up. The industry's reponse was simple and direct: raise premiums. And raise premiums is exactly what was done - by unprecedented amounts. Thus, the burden of industry's mismanagement was passed along to its policyholders and they, not understanding the cause, demanded rate relief.

Loss Adjustment Costs

Another reason why Florida No-Fault has failed is that the theorized savings - - supposed to result from preventing litigation in the "small cases" - - has never materialized. A basic justification for No-Fault was the savings which should result from a reduction in the insurance companies' loss adjustment costs - - that is, the costs involved in determining what a claim is worth and paying it. The argument was that under No-Fault there is no need to determine fault and because benefits are specified, there would be less legal and administrative costs necessary to pay the benefit. And it was reasoned that these savings would be passed along to the consumer in the form of premium reductions.

However, insurance figures show that these expected savings are not being realized and the probable explanation is insurance company inefficiency.

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1 Robert D. Shaw, Jr. and John Van Gieson, Miami Herald, February 5, 1978, at 6-E.

2 Forbes 30 (April 15, 1976).

The "savings" not being realized in loss adjustment costs as a result of No-Fault only came into focus after the passage of the automobile insurance reporting law. Data submitted for auto bodily injury liability (BI) and personal injury protection (PIP) lines of coverage for 1976 and 1977 by the nine largest insurance companies in Florida revealed no significant pattern of decreasing loss adjustment costs.

	Ratio of Loss Adjustment Expenses to Incurred Losses	
	1976	1977
Allstate - (BI)	.13	.13
(PIP)	.10	.10
Colonial Penn (BI & PIP combined)	.18	.19
Criterion -(BI)	.11	.17
(PIP)	.11	.27
Government Employees - (BI)	.21	.15
(PIP)	.22	.25
Liberty Mutual - (BI)	.17	.16
(PIP)	.15	.13
Nationwide Mutual - (BI)	.29	.17
(PIP)	.19	.13
Reserve - (BI)	.16	.27
(PIP)	.08	.10
State Farm Mutual - (BI)	.27	.31
(PIP)	.21	.21
Travelers Indemnity Co. - (BI)	.14	.13
(PIP)	.09	.09

Personal Injury Protection (PIP) is a first party No-Fault coverage which covers payment of medical bills and wage loss and, consequently, involves very little litigation. PIP covers all the "small cases" while Bodily Injury liability (BI) only covers the more serious and expensive cases. So, in contrast, the determination of BI coverage involves more litigation and greater dollar payouts. Therefore, the loss adjustment costs for PIP should be substantially lower than those for BI.

Accordingly to the table, PIP loss adjustment ratios for the companies range inconsistently from eight percent to 27 percent of the incurred losses. And, inexplicably, two companies - - Criterion and Government Employees - - show much higher loss adjustment ratios for PIP claims than BI claims in 1977.

Why doesn't PIP always show much lower loss adjustment expenses than BI? The answer seems to lie within the insurance companies themselves - - for they are managing to achieve greater loss adjustment savings in other similar types of insurance.

Workmen's compensation offers a good comparison because it provides coverage similar to PIP: medical coverage and wage benefits. Because it involves a much greater level of litigation than PIP, it should incur higher loss adjustment costs. But insurance figures show otherwise.

According to the 1977 Best's, the workmen's compensation loss adjustment to incurred loss ratio was 10.8 percent for stock companies nationally and 11.4 percent for mutual companies. These averages are generally lower than the statewide PIP averages shown on the table.

Whatever insurance companies are doing to keep their loss adjustment costs down for workmen's compensation should also be done for automobile insurance so rate reductions could be realized. Instead, the companies are simply charging policyholders higher premiums for mismanagement. There is no incentive for good management. The system in effect "awards" bad management by paying for its losses through higher premium rates.

No-Fault Thresholds

Depriving many injured parties of their right to sue a negligent driver for damages is another way No-Fault has failed consumers. It does this by establishing thresholds which require that an injured party have damages of a certain magnitude before he may sue the at-fault driver. The theory was that the "small case" would be removed from the tort system. However, since No-Fault was not working in Florida, the threshold was continually raised taking more and more cases out of the tort system and forcing them into No-Fault in an effort to make it work. The result: Today many

significant cases are barred from the tort system, denying those victims full compensation for their injuries.

Dollar Threshold

The first threshold under Florida's No-Fault Law was a dollar threshold which required $1,000 in medical bills before a suit could be filed.

The industry told us this type of threshold would reduce premiums by 15 percent for the combined bodily injury liability and personal injury protection benefits, but it failed miserably. The cost of insurance, other than the original legislatively-required rate reductions, did not go down. Rather, rate increases followed directly on the heels of the mandated reduction.

General dissatisfaction with that threshold resulted in a change in 1976. Replacing the dollar figure in the threshold was a verbal standard.

Verbal Threshold

The verbal threshold, amended in 1978 and still in effect, permits a suit for damages only if a party suffers a specified injury that consists of:

1) Significant and permanent loss of an important bodily function,

2) Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement,

3) Significant and permanent scarring or disfigurement, or

4) Death.

This threshold has resulted in some insurance savings. But it has done so by eliminating a very large percentage of cases - - much more than just the "small case."

According to the Miami Herald, however, the benefits of these savings have not necessarily been passed on to the consumers. In an editorial entitled, "Heads,

Auto Insurers Win - - Tails, Consumers Lose,"[3] the newspaper noted that although insurance companies were making large sums of money, they wanted a 43 percent rate increase for the Joint Underwriting Association. The editorial concluded:

> "To those engaged in other lines of work, a business where you can lose money and make windfall earnings at the same time looks like a lot of fun. And profit."[4]

Psychological Threshold

There is a third type of threshold that has not been used in Florida - - a psychological threshold.

With a psychological threshold, first-party coverage such as personal injury protection is compulsory, as it is now under Florida law, but there is no restriction on the right to sue. However, if a person does sue he is required to pay back everything he has received from PIP, in order to avoid double recovery. This effectively eliminates the small case but allows the significant case to proceed.

Unlike other thresholds, the positive psychological effect of this threshold is that the injured party does not feel deprived or cheated of his day in court if he is unhappy with the damages awarded him by an insurance company. For he knows that he can still exercise his right to sue if he chooses.

Unlike the verbal threshold, there is no incentive built into the psychological threshold which might encourage one to seek more medical treatment and magnify an injury just to qualify to sue.

It is the psychological threshold that The Academy of Florida Trial Lawers recommends be used in Florida, for not only would it give back the people's right to sue, it would also lower insurance rates, as shown by the case of Oregon.

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3 Miami Herald, August 27, 1977, at 6-A.

4 Id.

The Oregon Law

Based on the psychological threshold, Oregon's No-Fault Law has had impressive results. Perhaps most importantly, it has succeeded in providing that state's residents with more coverage, less expensively than Florida's No-Fault law.

Oregon's financial responsibility limits on auto insurance policies are currently $15,000/$30,000 with a $5,000 personal injury protection policy and $15,000/$30,000 uninsured motorist limits. Florida's rates are based on less coverage since its financial responsibility law requires only $10,000/$20,000 with a $5,000 personal injury protection policy.

Auto Insurance Cost Comparison - Oregon
v. Florida Rates as of September 12, 1978

Oregon			Florida			
	Portland	Salem		Miami	Orlando	Tallahassee
ISO	$204	$143	JUA	$626	$248	$196
Nation-Wide	119	80.60	State Farm	483.40	93.92	73.68
			Allstate	363	116	114

The above chart shows the relative cost of auto insurance coverage in varying areas of Oregon and Florida.

For rating purposes, many insurers have divided Oregon into two territories: Portland (higher rates) and the rest of the state, represented here by Salem. Shown are the rates for the two cities as of September 12, 1978 for Nationwide Insurance Company, which has highly competitive rates, and the Insurance Services Office (ISO), which sets relatively standard rates for its member companies to use.

For comparison in Florida, rates for State Farm Mutual, Allstate and the Joint Underwriting Association are shown for the cities of Tallahassee, Miami and Orlando.

Miami typically has the highest rates in Florida, Orlando represent average rates and Tallahassee has the lowest rates. The JUA is used in this comparison even though it has high rates, because it currently insures 15.5 percent of the state's insured drivers. State Farm Mutual is the largest private insurer in the state with 20.8 percent of the market and Allstate has 15.3 percent of the market. Both companies have competitive rates.

The rates shown on the chart are based on a typical adult driver who drives for pleasure only and has a clean record for the last three years.

Comparing the competitive rates (Nationwide versus Allstate and State Farm) in the two states shows that rates in Florida's average and low cost areas are generally higher than in Oregon's similar areas. The rates in Florida's high cost area (Miami), however, are three to four times more expensive than the rates for Oregon's high cost area (Portland).

Looking at the less competitive rates (ISO versus JUA), Oregon's are also substantially lower across the board, even though its rates are based on higher amounts of coverage.

Comparative pricing then shows that Oregon residents pay less for far more coverage than do Florida residents - - while retaining their right to sue!

The success of Oregon's No-Fault Law can be measured in other ways as well. For instance, Oregon No-Fault has been given the full endorsement of the Oregon Insurance Department:

> "One demonstrative indicator of Oregon's satisfaction with its plan is the 17.5% reduction noted by our office in automobile insurer trade practice complaints since the effectuation of our plan. Contrast this reduction to the 16% increase of automobile registrations in our state during the same corresponding four-year period."[5]

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5 Lester Rawls, "The Oregon Plan - - No Complaints," Trial Magazine, 62, 63 (April 1976).

Another way to measure its success is to compare rates in Florida and Oregon with states that retained the tort system.

In a report prepared for the American Insurance Association by the actuarial firm of Conning and Company, such an analysis was made. After factoring out effects of inflation and the gasoline shortage, it reported the effect that a given state's no-fault law had on its rates.

In three out of five years from 1972 to 1976, Oregon showed relative savings in No-Fault costs over tort costs of 7.1, 2.1 and 10.6 percent. Only two years showed increases, and they were only minimal increases of 1.9 and 3.7 percent.[6]

Contrast this positive result with the Florida experience reported in the same study. Florida had a cost savings of 17.9 percent for its first year of No-Fault resulting from the legislatively mandated rate reduction. But every succeeding year has seen only bigger and bigger cost increases. In accident year 1973, No-Fault costs exceeded tort costs by 5.3 percent, in 1974 by 15.5 percent, in 1975 by 28.5 percent and in 1976, No-Fault costs exceeded tort costs by 26 percent.[7]

Hence, in addition to depriving Florida's drivers of their right to sue, the State's No-Fault Law is costing them more money than the former tort system did.

Oregon and Florida: A Comparison

It has been argued that Oregon's No-Fault plan works well in that state, but would not work well in Florida because of the dissimilarities in the two states. Relevant insurance-oriented comparisons between the states, however, show that they are not significantly different.

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[6] Conning and Company, An Evaluation of No-Fault Automobile Insurance Costs 12 (1977).

[7] Id. at 11.

There is no doubt that statewide Florida has a greater population density than Oregon. In 1976, Florida's population per square mile was 155.7, while Oregon's was only 24.2.[8]

Closer examination of the population shows that the urban areas of both states are actually very similar. For most of Oregon's population is concentrated, with approximately two-thirds of its people living in urban areas.[9] In fact, an estimated half of that state's population lives in the Standard Metropolitan Statistical Area of Portland.[10]

What this data shows is that at least half of Oregon's population is more concentrated than most of Florida's urban population. In Oregon the population per square mile in Portland in 1970 was 1,218, while in Salem it was only 129.[11]

In contrast, the population per square mile in Florida's larger urban areas in 1970 was as follows:[12]

Pinellas	1,970.3
Duval	690.4
Dade	620.9
Broward	508.7
Orange	378.4
Leon	153.8

According to the 1970 figures then, urban population density in Portland is greater than in all areas of Florida with the exception of Pinellas County. Therefore, if population density is the key to insurance premiums, Portland should have the higher insurance rates.

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8 Bureau of the Census, Statistical Abstract of the United States 1977 11.

9 William G. Loy, A Preliminary Atlas of Oregon 3-7 (1972).

10 Id.

11 Id.

12 Division of Population Studies, Florida Estimates of Population 44 (1978).

A comparison of the two states' motor vehicle registration and motor vehicle death statistics - - which can also affect auto insurance rates - - reveals the following:[13]

Motor Vehicle Registrations - - 1975

Florida - 5,395.000

Oregon - 1,628,000

Deaths from Motor Vehicle Accidents - - 1975

Florida - 2,067

Oregon - 582

Oregon has 30.1 percent as many vehicles as Florida and 28.1 percent as many deaths from auto accidents. In terms of relative accident death frequency, Florida slightly outrates Oregon.

The severity of damage in all the auto accidents is another major component of insurance rates. And the cost of this factor should be related to the cost of living in the two states.

The cost of living in numerous American cities was tabulated by the American Chamber of Commerce Researchers in a composite index prepared for the third quarter of 1978. Based on a U.S. average of 100, this "Inter-City Index Report" provides a comparison of four cities in Florida and Oregon. Figures are not provided for Tallahassee, Orlando and Miami.

	Cost of Living For All Items	For Health
Fort Lauderdale	102.7	108.4
Lakeland	92.0	78.1
Portland	105.4	110.8
Corvallis	108.0	115.4

13 Bureau of the Census, supra note 8, at 635 and 638.

According to the index report, it costs more to live in Portland and Corvallis, Oregon than it does to live in either of the two Florida cities. Since the cost of living, and more particularly the cost of health care, affects insurance rates, automobile insurance should cost more in Oregon.

Some may argue that another measuring stick for the cost of auto insurance could be the number of attorneys and physicians in a state - - because they comprise the only two professional groups who could possibly directly affect insurance costs through litigation and medical care.

The number of active, in-state lawyers per 100,000 population is greater in Oregon, where there are 273 lawyers as compared to Florida's 214.[14] Thus, if the amount of litigation arising from auto accidents can be linked to the number of lawyers earning a living in a state, Oregon - - not Florida - - should be faced with the higher insurance rates.

On the other hand, the number of physicians in the two states is comparable, for per 100,000 population, Florida has 165 doctors and Oregon has 167.[15]

If these variables were considered without knowledge of the existing rates in either state, the only conclusion that could be drawn would be that Oregon's drivers must be paying equal or higher insurance rates than Florida's drivers. However, they are paying less than Florida's drivers - even though they still retain their right to sue for damages.

Oregon's psychological threshold has obviously been more successful than either the dollar or verbal thresholds in Florida. Consequently, its No-Fault plan offers a more effective alternative to Florida's No-Fault Law. If such a plan were adopted in Florida, coupled with aggressive review of any rate increase - - including

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[14] Phone calls to the Florida and Oregon Bar Associations on November 14, 1978. Active in-state Florida Bar members number 18,012; Oregon has approximately 5,290 active in-state members. The 1976 populations for the two states as reported in the Statistical Abstract was 8,421,000 for Florida and 2,239,000 for Oregon.

review of claims and handling investment management - - significant premium savings could be achieved. Such a plan would also have the added bonus of introducing an element of fairness into the system which is not present under the existing version of No-Fault.

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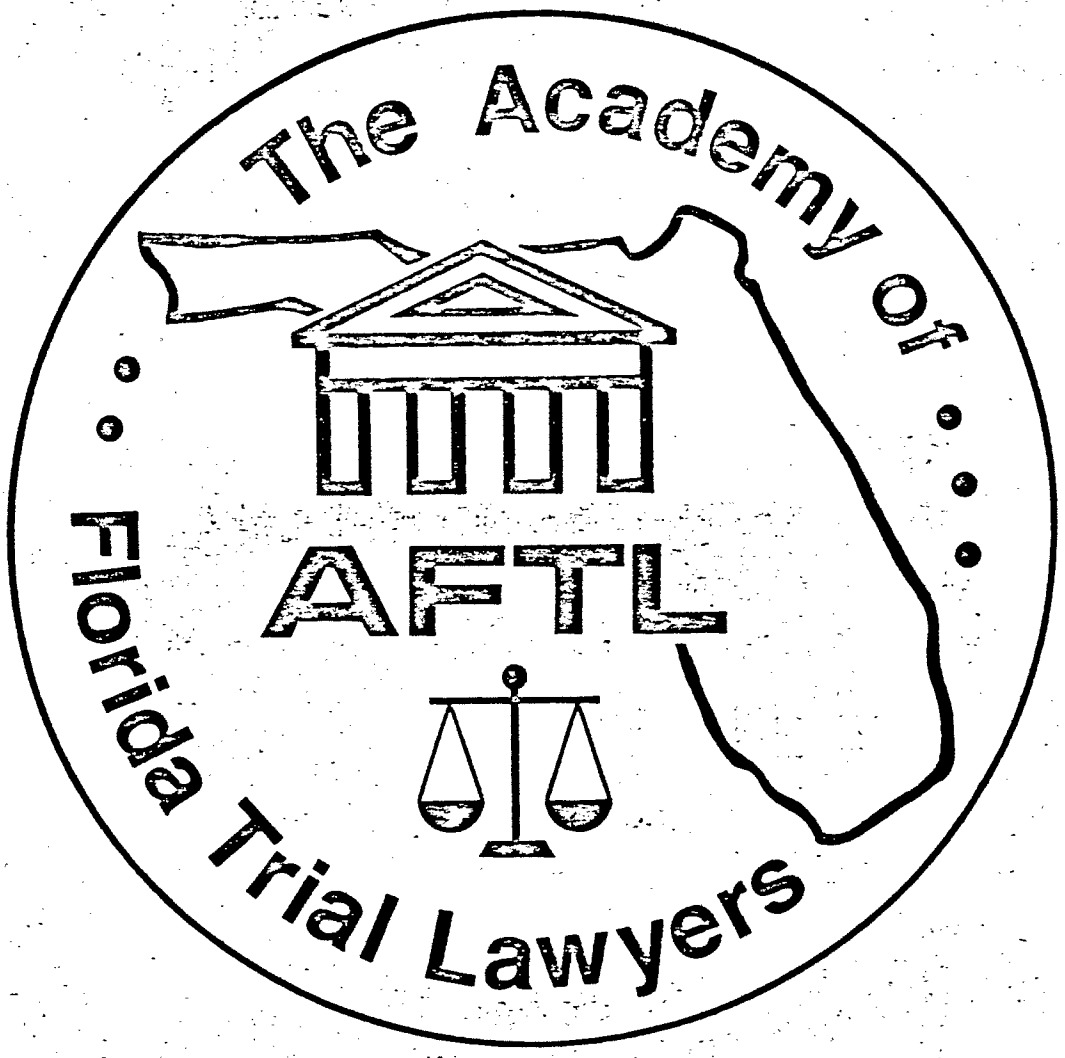
15 Bureau of the Census, supra note 8, at 100.

EXHIBIT B



PRINCIPAL PROVISIONS OF THE FLORIDA LAW

The Florida Automobile Reparations Reform Act took effect Jan. 1, 1972. It was altered in 1973 and 1974 by decisions of the Florida Supreme Court and was revised in 1976, 1977, and 1978 by the legislature. The latest version, effective Jan. 1, 1979, provides that an accident victim cannot recover general damages from a motorist carrying the required insurance unless the accident results in:

—Significant and permanent loss of an important body function;

—Injury that is permanent within a reasonable degree of medical probability, other than scarring or disfigurement;

—Significant and permanent scarring or disfigurement;

—Death.

Motorists are required to carry a first-party personal injury protection insurance coverage with an overall limit of $10,000. This coverage provides benefits for 80 percent of medical expenses, 60 percent of income loss, replacement services, and funeral costs (up to $1,000). If the loss exceeds this amount, the right to sue is available for the portion over $10,000.

Insurers must offer deductibles of $250, $500, $1,000, $2,000, $3,000, $4,000, $6,000 and $8,000 for the personal injury protection coverage. Deductibles can apply to the policyholder alone or to the policyholder and relatives living in his household, but not to others. Motorists can buy the coverage without benefits for income loss at a lower rate. Those eligible for Medicare can have Medicare benefits deducted from the no-fault benefits. Those eligible for military health benefits can do the same.

All motor vehicles with four or more wheels are covered by the law, which also applies to out-of-state vehicle owners who have their vehicles in Florida more than 90 days a year.

The 1976 amendments to the law provided extensive safeguards against claim fraud. Any physician, attorney, insurance adjuster, insurance company, or claimant that conspires to commit claim fraud is guilty of a third-degree felony. Any hospital administrator or employee who allows the use of hospital facilities by an insured person to commit claim fraud is also guilty of a third-degree felony.

The law established a Division of Fraudulent Claims (now called Division of Insurance Fraud) in the Florida Insurance Department to investigate suspected fraudulent activity. Insurance companies are required to report to the division any claims they suspect of being fraudulent. Insurance companies and their employees and agents are given immunity to lawsuits for libel that may arise because of the information they provide the division.

Doctors, hospitals, and other medical institutions are required to provide sworn statements that the treatment rendered to an accident victim was reasonable and necessary.

Historical Background

The original Florida law restricted tort liability in this way: An accident victim could not recover general damages unless his medical expenses exceeded $1,000, or the injuries resulted in permanent disfigurement, permanent injury, fracture of a weight-bearing bone, a compound, comminuted, displaced, or compressed fracture, loss of a body member or function, or death. On April 17, 1974, the Florida Supreme Court, in a decision upholding the basic constitutionality of the law, strengthened the tort restriction. Recovery of general damages was permitted only if the medical expenses exceeded $1,000, or the injuries resulted in permanent disfigurement or injury, loss of a body member or function, or death.

In 1977, the legislature amended the law to allow recovery of general damages only if the accident victim suffered loss of a body member, permanent loss of a body function, permanent injury other than scarring or disfigurement, significant permanent scarring or disfigurement, or a serious non-permanent injury that materially affected the victim's ability to resume his normal activity and life-style during all or substantially all of the 90-day period after the injury.

Until overturned by the courts, a provision of the Florida law restricted tort recovery for vehicle damage. It required insurers to offer two types of collision coverage to their policyholders. "Basic" collision coverage paid for damage to the policyholder's automobile only if the other driver was at fault. "Full" coverage was like the traditional collision coverage, but it eliminated the deductible if the other driver was at fault. A policyholder who chose to buy neither form of collision coverage was prohibited from suing the driver at fault unless the damage to his vehicle exceeded $550.

On July 11, 1973, the Florida Supreme Court, in a four-to-three decision, ruled this portion of the law unconstitutional. Since motorists were not compelled to purchase either form of collision coverage, the court said, the law abolished a long-standing right without providing a reasonable alternative. If an alternate remedy had been provided, or if the legislature had shown an overpowering public need for the reform, the abolition of the right might have been constitutionally permissible, the court said.

The original Florida law provided benefits for 100 percent of medical expenses and 85 percent of lost income (up to the $5,000 limit on the personal injury protection coverage). The amendments in 1977 cut these coverages to 80 percent of medical costs and 60 percent of income loss. Until 1977, the law permitted deductibles only up to $2,000. Until the 1978 amendments, the personal injury protection coverage was limited to $5,000.

Liability coverage was compulsory in Florida until July 1, 1977. Now only the no-fault coverage is required. But proof of financial responsibility for damages caused in an accident is still required by Florida law.

THE FLORIDA LAW

Section 1. Short title.—This act may be cited and known as the "Florida automobile reparations reform act."

Section 2. Purpose.—The purpose of this act is to require medical, surgical, funeral and disability insurance benefits to be provided without regard to fault under motor vehicle policies that provide bodily injury and property damage liability insurance, or other security, for motor vehicles registered in this state, and with respect to motor vehicle accidents, a limitation on the right to claim damages for pain, suffering, mental anguish and inconvenience.

Section 3. Definitions.—As used in this act:

(1) "Motor vehicle" means a sedan, station wagon or jeep type vehicle not used as a public livery conveyance for passengers, and includes any other four-wheel motor vehicle used as a utility automobile and a pickup or panel truck with a load capacity of 1,500 pounds or less which is not used primarily in the occupation, profession or business of the insured.

(2) "Owner" means a person who holds the legal title to a motor vehicle, or in the event a motor vehicle is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, then the debtor or lessee shall be deemed the owner for the purposes of this act.

(3) "Named insured" means a person, usually the owner of a vehicle, identified in a policy by name as the insured under the policy.

(4) "Relative residing in the same household" means a relative of any degree by blood or by marriage, who usually makes his home in the same family unit, whether or not temporarily living elsewhere.

Section 4. Required security.—

(1) Every owner or registrant of a motor vehicle required to be registered and licensed in this state shall maintain security as required by subsection (3) of this section in effect continuously throughout the registration or licensing period.

(2) Every nonresident owner or registrant of a motor vehicle which, whether operated or not, has been physically present within this state for more than ninety (90) days during the preceeding three hundred sixty-five (365) days, shall thereafter maintain security as defined by subsection (3) of this section in effect continuously throughout the period such motor vehicle remains within this state.

(3) Such security shall be provided by one of the following methods:

(a) Security by insurance may be provided with respect to such motor vehicle by an insurance policy delivered or issued for delivery in this state by an authorized or eligible insurer as otherwise defined in this code, which qualifies as evidence of automobile or motor vehicle liability insurance under chapter 324, Florida Statutes, "the financial responsibility law", except as modified to provide the benefits and exemptions contained in this act. Any such policy of liability insurance covering motor vehicles registered or licensed in this state and any policy of insurance represented or sold as providing the security required hereunder for registered and licensed motor vehicles under this act shall be deemed to provide insurance for the payment of such benefits; or

(b) Security may be provided with respect to any motor vehicle by any other method approved by the department of insurance as affording security equivalent to that afforded by a policy of insurance, provided such security is continuously maintained throughout the motor vehicle's registration or licensing period. The person filing such security shall have all of the obligations and rights of an insurer under this act.

(4) An owner of a motor vehicle with respect to which security is required by this act who fails to have such security in effect at the time of an accident shall have no immunity from tort liability, and be personally liable for the payment of benefits under section 7. With respect to such benefits, such an owner shall have all of the rights and obligations of an insurer under this act.

Section 5. Proof of security; security requirements; penalties.—

(1) The provisions of chapter 324, Florida Statutes, which pertain to the method of giving and maintaining proof of financial responsibility, and which govern and define a motor vehicle liability policy, shall apply to filing and maintaining proof of security or financial responsibility required by this act. It is intended that the provisions of chapter 324, Florida Statutes, relating to proof of financial responsibility required of each operator and each owner of any motor vehicle, shall continue in full force and effect.

(2) Any person who gives information required in a report or otherwise as provided for in this act, knowing or having reason to believe that such information is false, or who shall forge, or, without authority, sign any evidence of proof of security, or who files or offers for filing any such evidence of proof, knowing or having reason to believe that it is forged or signed without authority, shall, upon conviction, be punished by fine not to exceed one thousand dollars ($1,000) or imprisonment not to exceed one (1) year, or by both such fine and imprisonment.

(3) This act does not apply to any motor vehicle owned by the state or by a political subdivision of the state, nor to any motor vehicle owned by the federal government.

Section 5A. Subsection (2) of section 5 of this act is created to read:

Section 5. Proof of security; security requirements; penalties.—

(2) Any person who gives information required in a report or otherwise as provided for in this act, knowing or having reason to believe that such information is false or who shall forge, or, without authority, sign any evidence of proof of security, or who files or offers for filing any such evidence

of proof, knowing or having reason to believe that it is forged or signed without authority, shall be guilty of a misdemeanor of the first degree, punishable as provided in sections 775.082 or 775.083.

Section 5B. In the event CS for HB 935, introduced in the 1971 regular session of this act will stand repealed and be omitted from the Florida Statutes. In the event CS for HB 935 is not enacted into law, section 5A of this act will stand repealed and be omitted from the Florida Statutes.

Section 6. Operation of a motor vehicle illegal without security; penalties.–

(1) Any owner or registrant of a motor vehicle with respect to which security is required under subsection (1) or (2) of section 4 who operates such motor vehicle or permits it to be operated in this state without having in full force and effect security complying with the terms of said subsection (1) or (2) of section 4 shall have his operator's license and registration revoked.

(2) Any motor vehicle liability insurance policy which provides security required pursuant to subsection (3) of section 4 shall also be deemed to comply with the applicable limits of liability required under the financial responsibility or compulsory laws of any other state.

Section 7. Required personal injury protection benefits; exclusions; priority.–

(1) Every insurance policy complying with the security requirements of section 4 shall provide personal injury protection providing for payment of all reasonable expenses incurred for necessary medical, surgical, x-ray, dental and rehabilitative services, including prosthetic devices, necessary ambulance, hospital, nursing services, funeral and disability benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a motor vehicle or motorcycle, all as specifically provided in subsection (2) and paragraph (d) of subsection (4) of this section, to a limit of five thousand dollars ($5,000) for loss sustained by any such person as a result of bodily injury, sickness, disease or death arising out of the ownership, maintenance or use of a motor vehicle as follows:

(a) Medical benefits: all reasonable expenses for necessary medical, surgical, x-ray, dental and rehabilitative services, including prosthetic devices, necessary ambulance, hospital and nursing services. Such benefits shall include also, necessary remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing in accordance with his religious beliefs.

(b) Disability benefits: one hundred percent (100%) of any loss of gross income and loss of earning capacity per individual, unless such benefits are deemed not includable in gross income for federal income tax purposes, in which event such benefits shall be limited to eighty-five percent (85%), from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his household. All disability benefits payable under this provision shall be paid not less than every two weeks.

(c) Funeral, burial or cremation benefits: funeral, burial or cremation expenses in an amount not to exceed one thousand dollars ($1,000) per individual.

(2) Any insurer may exclude benefits:

(a) For injury sustained by the named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy, or for injury sustained by any person operating the insured motor vehicle without the express or implied consent of the insured.

(b) To any injured person, if such person's conduct contributed to his injury under any of the following circumstances:

1. Causing injury to himself intentionally;
2. Convicted of driving while under the influence of alcohol or narcotic drugs to the extent that his driving faculties are impaired;
3. While committing a felony.

(3) Insurer's rights of reimbursement and indemnity:

(a) No subtraction from personal protection insurance benefits will be made because of the value of a claim in tort based on the same bodily injury, but after recovery is realized upon such a tort claim, a subtraction will be made to the extent of the recovery, exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery, but only to the extent that the injured person has recovered said benefits from the tortfeasor or his insurer or insurers. If personal protection insurance benefits have already been received, the claimant shall repay to the insurer or insurers out of the recovery a sum equal to the benefits received, but not more than the recovery exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery, but only to the extent that the injured person has recovered said benefits from the tortfeasor or his insurers or insurer. The insurer or insurers shall have a lien on the recovery to this extent. No recovery by an injured person or his estate for loss suffered by him will be subtracted in calculating benefits due a dependent after the death, and no recovery by a dependent for loss suffered by the dependent after the death will be subtracted in calculating benefits due the injured person except as provided in paragraph (c) of subsection (1) of section 7.

(b) The insurer shall be entitled to reimbursement of any payments made under the provisions of subsection (3) of this section based upon such equitable distribution of the amount recovered as the court may determine less the pro rata share of all court costs expended by the plaintiff in the prosecution of the suit to recover such amount against a third-party tortfeasor including a reasonable attorney's fee for the plaintiff's attorney. The

proration of the reimbursement shall be made by the judge of a trial court handling the suit to recover damages in the third-party action against the tortfeasor upon application therefor and notice to the carrier.

(c) Indemnity from one paying in tort without regard for rights of insurer having reimbursement interest.—A personal protection insurer with a right of reimbursement under this section, if suffering loss from inability to collect such reimbursement out of a payment received by a claimant upon a tort claim is entitled to indemnity from one who, with notice of the insurer's interest, made such a payment to the claimant without making the claimant and the insurer joint payees as their interests may appear, or without obtaining the insurer's consent to a different method of payment.

(d) In the event an injured party or his legal representative is entitled to bring suit against a third party tortfeasor under the provisions of section 8, and fails to bring such suit against such third party tortfeasor within one year after the last payment of any benefits under subsection (1) of section 7, the insurer of such injured party, upon giving thirty (30) days written notice to such injured party, shall have the right to bring suit against such third party, in its own name or in the name of the injured person or his legal representative, to recover the amount of the benefits paid pursuant to the provisions of section 7 of this act to or for the benefit of such injured person; provided, however, that the prosecution or settlement of such suit without the consent of the injured person or his legal representative shall be without prejudice to such person.

(4) Benefits due from an insurer under this act shall be primary, except that benefits received under any workmen's compensation law shall be credited against the benefits provided by subsection (1) of section 7, and be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under this act.

(a) An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by this act.

(b) Personal injury protection insurance benefits shall be overdue if not paid within thirty (30) days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within thirty (30) days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within thirty (30) days after such written notice is furnished to the insurer; provided, however, that any payment shall not be deemed overdue where the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer. For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery.

(c) All overdue payments shall bear simple interest at the rate of ten percent (10%) per annum.

(d) The insurer of the owner of a motor vehicle shall pay personal injury protection benefits for:

1. Accidental bodily injury sustained in this state by the owner while occupying a motor vehicle, or while not an occupant of a motor vehicle or motorcycle if the injury is caused by physical contact with a motor vehicle.

2. Accidental bodily injury sustained outside this state but within the United States of America, its territories or possessions or Canada by the owner while occupying the owner's motor vehicle.

3. Accidental bodily injury sustained by a relative of the owner residing in the same household, under the circumstances described in subparagraph 1 or 2 of this paragraph (d), provided the relative at the time of the accident is domiciled in the owner's household and is not himself the owner of a motor vehicle with respect to which security is required under this act.

4. Accidental bodily injury sustained in this state by any other person while occupying the owner's motor vehicle or, if a resident of this state, while not an occupant of a motor vehicle or motorcycle, if the injury is caused by physical contact with such motor vehicle, provided the injured person is not himself:

a. The owner of a motor vehicle with respect to which security is required under this act, or

b. Entitled to personal injury benefits from the insurer of the owner of such a motor vehicle.

(e) If two or more insurers are liable to pay personal injury protection benefits for the same injury to any one person the maximum payable shall be as specified in subsection (1) of section 7, and any insurer paying the benefits shall be entitled to recover from each of the other insurers an equitable pro rata share of the benefits paid and expenses incurred in processing the claim.

(5) Charges for treatment of injured persons.—Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge only a reasonable amount for the products, services, and accommodations rendered. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like products, services, and accommodations in cases involving no insurance.

(6) Discovery of facts about an injured person; disputes.—

(a) Every employer shall, if a request is made by an insurer providing personal injury protection benefits under this act against whom a claim has been made, furnish forthwith, in a form approved by the department of insurance, a sworn statement of the earnings since the time of the bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

(b) Every physician, hospital, clinic, or other

medical institution providing, before or after bodily injury upon which a claim for personal injury protection insurance benefits is based, any products, services, or accommodations in relation to that or any other injury, or in relation to a condition claimed to be connected with that or any other injury, shall, if requested to do so by the insurer against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, and dates and costs of such treatment of the injured person, and produce forthwith and permit the inspection and copying of his or its records regarding such history, condition, treatment, and dates and costs of treatment. The person requesting such records shall pay all reasonable costs connected therewith.

(c) In the event of any dispute regarding an insurer's right to discovery of facts about an injured person's earnings or about his history, condition, treatment, and dates and costs of such treatment, the insurer may petition a court of competent jurisdiction to enter an order permitting such discovery. The order may be made only on motion for good cause shown and upon notice to all persons having an interest, and it shall specify the time, place, manner, conditions, and scope of the discovery. Such court may, in order to protect against annoyance, embarrassment, or oppression, as justice requires, enter an order refusing discovery or specifying conditions of discovery and may order payments of costs and expenses of the proceeding, including reasonable fees for the appearance of attorneys at the proceedings, as justice requires.

(e) The injured person shall be furnished upon demand a copy of all information obtained by the insurer under the provisions of this section, and shall pay a reasonable charge, if required by the insurer.

(7) Mental and physical examination of injured person; reports.–

(a) Whenever the mental or physical condition of an injured person covered by personal injury protection is material to any claim that has been or may be made for past or future personal injury protection insurance benefits, such person shall, upon request of an insurer, submit to mental or physical examination by a physician or physicians. The costs of any examinations requested by an insurer shall be borne entirely by the insurer. Such examination shall be conducted within the city of residence of the insured. If there is no qualified physician to conduct the examination within the city of residence of the insured, then such examination shall be conducted in an area of the closest proximity to the insured's residence. Personal protection insurers are authorized to include reasonable provisions in personal injury protection insurance policies for mental and physical examination of those claiming personal injury protection insurance benefits.

(b) If requested by the person examined, a party causing an examination to be made shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out his findings and conclusions in detail. After such request and delivery, the party causing the examination to be made is entitled upon request to receive from the person examined every written report available to him (or his representative) concerning any examination, previously or thereafter made, of the same mental or physical condition. By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the person examined waives any privilege he may have, in relation to the claim for benefits, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(8) With respect to any dispute under the provisions of this act between the insured and the insurer, the provisions of section 627.0127, Florida Statutes, shall apply.

Section 8. Tort exemption; limitation on right to damages.–

(1) Every owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required by this act, and every person or organization legally responsible for his acts or omissions, is hereby exempted from tort liability for damages because of bodily injury, sickness or disease arising out of the ownership, operation, maintenance or use of such motor vehicle in this state to the extent that the benefits described in subsection (1) of section 7 are payable for such injury, or would be payable but for any exclusion or deductible authorized by this act, under any insurance policy or other method of security complying with the requirements of section 4, or by an owner personally liable under section 4 for the payment of such benefits, unless a person is entitled to maintain an action for pain, suffering, mental anguish and inconvenience for such injury under the provisions of subsection (2) of this section.

(2) In any action of tort brought against the owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required by this act, or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish and inconvenience because of bodily injury, sickness or disease arising out of the ownership, maintenance, operation or use of such motor vehicle only in the event that the benefits which are payable for such injury under paragraph (a) of subsection (1) of section 7 or which would be payable but for any exclusion or deductible authorized by this act exceed one thousand dollars ($1,000), or the injury or disease consists in whole or in part of permanent disfigurement, a fracture to a weight-bearing bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of a bodily function, or death. Any person who is entitled to receive free medical and surgical benefits shall be deemed

in compliance with the requirements of this subsection upon a showing that the medical treatment received has an equivalent value of at least one thousand dollars ($1,000). Any person receiving ordinary and necessary services normally performed by a nurse from a relative or a member of his household shall be entitled to include the reasonable value of such services in meeting the requirements of this subsection.

Section 9. (1) The owner of a motor vehicle as defined in section 3 is not required to maintain security with respect to property damage to his motor vehicle, but may elect to purchase either full or basic coverage for accidental property damage to his motor vehicle.

(2) Every insurer providing security under this act shall offer the owner either full or basic coverage for accidental property damage to the insured motor vehicle as follows:

(a) Full coverage shall provide insurance without regard to fault for accidents occurring within the United States of America, its territories or possessions or Canada.

(b) Basic coverage shall be limited to insurance against damage caused by the fault of another resulting from contact between the insured vehicle and a vehicle with respect to which security is required under this act.

(3) The insurer may include within the terms and conditions applicable to full or basic coverage such other provisions as it customarily applies to collision coverage for private passenger automobiles in other states, including deductibles without limitation.

(4) Every owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required by this act, and every other person or organization legally responsible for the acts or omissions of such an owner, registrant, operator or occupant, is hereby exempted from tort liability for damages because of accidental property damage to motor vehicles arising out of the ownership, operation, maintenance or use of such motor vehicle in this state, provided that a person shall not be exempt from such liability if he was operating the motor vehicle without the express or implied consent of its owner or an insured under the owner's policy or if his willful and wanton misconduct was the proximate cause of the accident. This exemption applies only with respect to property damage to motor vehicles subject to this act but shall not be applicable as to a motor vehicle damaging a parked vehicle.

(5) Notwithstanding paragraph (4) above, an owner who has elected not to purchase insurance with respect to property damage to his motor vehicle may maintain an action of tort therefor against the owner, registrant, operator or occupant of a motor vehicle causing such damage if such damage exceeds five hundred and fifty dollars ($550), and the insurer of an owner who has elected to purchase full or basic collision coverage for his motor vehicle shall have the right, if the damage to such motor vehicle exceeds the above amount, to recover the amount of the benefits it has paid and, in behalf of its insured, any deductible amount from the insurer of the owner, registrant, operator or occupant of a motor vehicle causing such damage. The issues of liability in such a case and the amount of recovery shall be decided on the basis of tort law, and shall be determined by agreement between the insurers involved, or if they fail to agree by arbitration.

Section 10. Each insurer providing security as required by this act to any owner shall, at the election of the owner, issue a policy endorsement, approved as to content by the department of insurance and subject to such other reasonable regulations regarding said endorsement as the department may make after appropriate hearing, which endorsement shall provide that there shall be deducted from personal protection benefits that would otherwise be or become due to the policyholder alone or to the policyholder and relatives residing in his household, an amount of either two hundred and fifty dollars ($250), five hundred dollars ($500) or one thousand dollars ($1,000), again as the policyholder elects, said amount to be deducted from the amounts otherwise due each person subject to the deduction. Any person electing such an endorsement or subject to such an endorsement as a result of the policyholder's election shall have no right to claim or to recover any amount so deducted from any owner, registrant, operator or occupant of a motor vehicle or any person or organization legally responsible for any such person's acts or omissions who is made exempt from tort liability by this act.

Section 11. Notwithstanding any other provision of this act, the rights of residents of this state to claim damages in tort shall not be diminished when such residents are involved in motor vehicle accidents with persons not required to provide security under this act.

Section 12. Implementation of this act.–

(1) The department of insurance shall adopt rules and regulations necessary to implement the provisions of this act.

(2) Notwithstanding any other provision of law, all insurers issuing insurance coverage under this act shall comply with the following provisions:

(a) Within sixty (60) days after the effective date of this act, each insurer shall file its proposed manual, rules, rates and rating plans with the department for approval. Rates for required financial responsibility coverage after the effective date of sections 1 through 11 of this act shall be reduced by each insurer by not less than fifteen percent (15%), calculated as a percentage of the combined required financial responsibility rate of such insurer in effect on June 7, 1971, or of the combined required financial responsibility rate of such insurer approved by the commissioner and in effect at the time of the filing of the new rates required herein. There shall be no exception to the requirements of this provision, unless the department shall find that the use of the rates required

herein by any insurer will result in rates which are inadequate under section 627.082, Florida Statutes, to the extent that such rates jeopardize the solvency, as defined in section 631.011, Florida Statutes, of the insurer required to use such rates. Notwithstanding the provisions of Chapter 71-3(B), Laws 1971, no rate for the insurance required by this act shall be increased prior to January 1, 1973, unless the insurer proposing such rate increase shall show that the rates required herein are inadequate as defined in section 627.082, Florida Statutes.

(b) Within sixty (60) days from the date of filing by such insurer, the department may approve or disapprove the filing. If no action is taken by the department within sixty (60) days, the filing shall be deemed approved.

(c) If the department approves the filing or the filing otherwise become effective, the manual, rules, rates and rating plans shall take effect upon the effective date of sections 1 through 11 of this act. If the department disapproves the filing, the insurer shall revert to a rate level for required coverage which shall be lower, by not less than fifteen percent (15%), than the combined premiums for required financial responsibility coverage at the time such proposed new rates were filed.

(d) Upon complying with this subsection, any insurer appealing an order of disapproval may use the rates set forth in the disapproved filing during the pendency of the appeal, so long as such rates do not exceed its rates for required financial responsibility coverage at the time of its rate filing required herein. As a condition to the use of such disapproved rates, the insurer must enter into a legally binding agreement with the department to secure the repayment to the insurer's policyholders of the difference between the insurer's proposed rate and that rate which would be lower, by not less than fifteen percent (15%), than the combined premiums for required financial responsibility coverage at the time such proposed new rates were filed. In addition to the repayment of the difference in premium, the company shall agree to pay to the insured the legal rate of interest on any money refunded.

(e) Any private passenger automobile liability policy in force on January 1, 1972 and thereafter, shall reflect by endorsement any reduction in rates for the required coverage under this act as filed by the insurer and such reduction shall be computed on a pro rata basis for the remaining term of said policy. Such endorsement may be issued at the renewal date of the policy or the termination of the policy. Any return premium shall be credited to the renewal policy or if the policy is terminated the return premium shall be refunded to the insured.

(f) For the purposes of the implementation of this act, rating organizations as defined in chapter 627 shall be permitted until January 1, 1973, to develop and furnish rates and forms to their members or subscribers. Provided, however, that members and subscribers of rating organizations shall not participate in the decisions or deliberations of such organizations in the development of such rates under this act.

Section 13. If any provision of this act, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this and the provisions of this act are declared to be severable.

Section 14. This act shall become effective July 1, 1971; provided, however the provisions of sections 1 through 11 of this act shall not become effective until January 1, 1972, and shall not apply to accidents or injuries occurring before said date.

Chapter 76-266, Laws 1976

House Bill Nos. 2825, 3042, 3043, 3044, 3155

An act relating to liability and insurance therefor; amending s. 324.021 (7), Florida Statutes; changing the financial responsibility limits; amending s. 324.051(2), Florida Statutes, changing the property damage operative amount in the financial responsibility law; amending s. 627.727(1), Florida Statutes, and adding a subsection; providing for limits of uninsured motorist coverage; amending s. 627.736 (2), (3), (6) and (7), Florida Statues; providing for the tolling of the 30-day personal injury protection benefit payment period under certain conditions; providing that no insurer paying personal injury protection benefits shall have a lien on recoveries in tort; providing that a claimant in any tort claim for which personal injury protection benefits have been paid shall have no right to recover in tort any damages for personal injury protection benefits paid; providing for jury instructions relating to said damages; deleting language relating to equitable distribution and insurer actions; providing that a sworn statement relating to treatment, services, and costs be provided the insurer by a physician, hospital, clinic or other medical institution; providing that no cause of action for invasion of privacy or violation of the physician-patient privilege shall be due to compliance with the discovery provisions of said section; providing that notice to an insurer of the existence of a claim shall not be unreasonably withheld by an insured; providing for the withholding of personal injury protection benefits when an insured unreasonably refuses to submit to a medical examination upon the request of an insurer; amending s. 627.737 (2), Florida Statutes, and adding a subsection; providing for conditions under which a plaintiff may recover damages in tort for bodily injury or disease arising out of the ownership, maintenance, operation or use of a motor vehicle; providing for dismissal without prejudice if the threshold provi-

sions of said section are not met; amending s. 627.739, Florida Statutes, relating to deductibles for personal injury protection benefits; creating s. 627.7375, Florida Statutes; prohibiting fraud or intent to commit fraud to violate part x of chapter 627, Florida Statutes; providing penalties; adding subsection (7) to s. 20.13, Florida Statutes, and creating s. 626.989, Florida Statutes, creating a Division of Fraudulent Claims within the Department of Insurance; creating s. 627.4132, Florida Statues; prohibiting stacking of coverages; creating s. 627.7377, Florida Statutes; providing for physical damage deductibles; creating s. 627.7262, Florida Statutes; providing for nonjoinder of insurers and procedures for discovery of insurers; repealing s. 627.738, Florida Statutes, relating to tort liability for property damage; repealing s. 627.740, Florida Statutes, relating to tort claims; repealing s. 627.741 (2), Florida Statutes, relating to compliance with ss. 627.730-627.741, Florida Statutes, by insurers; providing that the Department of Insurance shall review the level of automobile insurance rates; providing for serverability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 324.021, Florida Statutes, is amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning.

(7) Proof of Financial Responsibility.—That proof of ability to respond in damages for liability on account of accidents arising out of the use of a motor vehicle in the amount of $10,000 because of bodily injury to, or death of, one person in any one accident; subject to said limits for one person, in the amount of $20,000 because of bodily injury to, or death of, two or more persons in any one accident; and in the amount of $5,000 because of injury to or destruction of property of others in any one accident.

Section 2. Subsection (2) of section 324.051, Florida Statutes, is amended to read:

324.051 Reports of accidents; suspensions of licenses and registrations.—

(2) (a) Thirty days after receipt of notice of any accident involving a motor vehicle within this state which has resulted in bodily injury or death to any person, or total damage of $500 or more to property, the department shall suspend the licenses of the operators and all registrations of the owners of the vehicles involved in such accident and in case of a nonresident owner or operator, shall suspend such nonresident's operating privilege in this state, unless such operator or owner shall prior to the expiration of such 30 days be found by the department to be exempt from the operation of this chapter, based upon evidence in its files satisfactory to the department that:

1. No injury was caused to the person or property of anyone other than such operator or owner, or

2. The motor vehicle was legally parked at the time of such accident, or

3. The motor vehicle was owned by the United States Government, this state, any political subdivision of this state or any municipality therein, or

4. Such operator or owner had been finally adjudicated not to be liable by a court of competent jurisdiction, or

5. Such operator or owner had secured a duly acknowledged written agreement providing for release from liability by all parties injured as the result of said accident and had complied with one of the provisions of s. 324.031, or

6. Such operator or owner has deposited with the Department of Insurance security to conform with s. 324.061, and has complied with one of the provisions of s. 324.031, or

7. One year has elapsed since such owner or operator was suspended pursuant to s. 324.051 (4), the owner or operator has complied with one of the provisions of s. 324.031, and no bill of complaint of which the department has notice has been filed in a court of competent jurisdiction.

(b) This subsection shall not apply:

1. To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

3. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the department, covered by any other form of liability insurance or bond; nor

4. To any person who has obtained from the department a certificate of self-insurance in accordance with s. 324.171 or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this subsection unless it contains limits of not less than those specified in s. 324.021 (7).

Section 3. Subsection (1) of section 627.727, Florida Statutes, is amended, subsections (2)-(4) are renumbered subsections (3)-(5), and a new subsection (2) is added to read:

627.727 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.—

(1) No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, however, that the coverage required under this section shall not be applicable when, or to the extent that, any insured named in the policy shall reject the coverage; and

provided further, that when a vehicle is leased for a period of 1 year or longer and the lessor of such vehicle by the terms of the lease contract provides liability coverage on the leased vehicle in a policy wherein the lessee is a named insured or on a certificate of a master policy issued to the lessor, the lessee of such vehicle shall have the sole privilege to reject uninsured motorist coverage. Unless the named insured, or lessee having the privilege of rejecting uninsured motorist coverage, requests such coverage in writing, the coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer. The coverage provided under this section shall be excess over but shall not duplicate the benefits available to an insured under any workmen's compensation law, personal injury protection benefits, disability benefits law, or any similar law; under any automobile liability or automobile medical expense coverages; or from the owner or operator of the uninsured motor vehicle or any other person or organization jointly or severally liable together with such owner or operator for the accident. Such coverage shall not inure directly or indirectly to the benefit of any workmen's compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workmen's compensation or disability benefits law or any similar law.

(2) The limits of uninsured motorist coverage shall be not less than the limits of bodily injury liability insurance purchased by the named insured or such lower limit complying with the company's rating plan as may be selected by the named insured, but in any event the insurer shall make available, at the written request of the insured, limits up to $100,000 each person, $300,000 each occurrence, irrespective of the limits of bodily injury liability purchased, in compliance with the company's rating plan.

Section 4. Subsections (2), (3), (6), and (7) of section 627.736, Florida Statutes, are amended to read:

627.736 Required personal injury protection benefits; exclusions; priority.—

(2) Authorized Exclusions.—Any insurer may exclude benefits:

(a) For injury sustained by the named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy, or for injury sustained by any person operating the insured motor vehicle without the express or implied consent of the insured.

(b) To any injured person, if such person's conduct contributed to his injury under any of the following circumstances:

1. Causing injury to himself intentionally;

2. Being convicted of driving while under the influence of alcohol or narcotic drugs to the extent that his driving faculties are impaired;

3. While committing a felony.

Whenever an insured is charged with conduct as set forth in subparagraphs 2. or 3., the 30-day payment provision of paragraph (b) of subsection (4) shall be held in abeyance and the insurer shall withhold payment of any personal injury protection benefits pending the outcome of the case at the trial level. If the charge is nolle prosequi or dismissed or the insured is acquitted, the 30-day payment provision shall run from the date the insurer is notified of such action.

(Substantial rewording of subsection. See s. 627.736(3), F.S., for present text.)

(3) Insured's rights to recovery of special damages in tort claims.—No insurer shall have a lien on any recovery in tort by judgment, settlement, or otherwise, for personal injury protection benefits, whether suit has been filed or settlement has been reached without suit. An injured party or his legal representative who is entitled to bring suit under the provisions of s. 627.737 shall have no right to recover any damages for which personal injury protection benefits are paid or payable. The plaintiff may prove all of his special damages notwithstanding this limitation, but if special damages are introduced in evidence, the trier of facts, whether judge or jury, shall not award damages for personal injury protection benefits paid or payable. In all cases in which a jury is required to fix damages, the court shall instruct the jury that the plaintiff shall not recover such special damages for personal injury protection benefits paid or payable.

(6) Discovery of Facts About An Injured Person; Disputes.—

(a) Every employer shall, if a request is made by an insurer providing personal injury protection benefits under ss. 627.730-627.741 against whom a claim has been made, furnish forthwith, in a form approved by the Department of Insurance, a sworn statement of the earnings, since the time of the bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

(b) Every physician, hospital, clinic, or other medical institution providing, before or after bodily injury upon which a claim for personal injury protection insurance benefits is based, any products, services, or accommodations in relation to that or any other injury, or in relation to a condition claimed to be connected with that or any other injury, shall, if requested to do so by the insurer against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, and dates and costs of such treatment of the injured person, together with a sworn statement that the treatment or services rendered were reasonable and necessary with respect to the bodily injury sustained and identifying which portion of the expenses for said treatment or services was incurred as a result of such bodily injury, and produce forthwith and permit the inspection and copying of his or its records regarding such history, condition, treatment, and dates and costs of treatment. Said sworn statement shall read as follows: "Under penalty of perjury I declare that I have read the foregoing and the facts alleged are true, to the best of my knowledge and belief." No cause of action for violation or physician-patient privilege or invasion of the right of privacy shall be against any physician, hospital, clinic or other medical institution com-

plying with the provisions of this section. The person requesting such records and said sworn statement shall pay all reasonable costs connected therewith.

(c) In the event of any dispute regarding an insurer's right to discovery of facts about an injured person's earnings or about his history, condition, treatment, and dates and costs of such treatment, the insurer may petition a court of competent jurisdiction to enter an order permitting such discovery. The order may be made only on motion for good cause shown and upon notice to all persons having an interest, and it shall specify the time, place, manner, conditions, and scope of the discovery. Such court may, in order to protect against annoyance, embarrassment, or oppression, as justice requires, enter an order refusing discovery or specifying conditions of discovery and may order payments of costs and expenses of the proceeding, including reasonable fees for the appearance of attorneys at the proceedings, as justice requires.

(d) The injured person shall be furnished upon request a copy of all information obtained by the insurer under the provisions of this section, and shall pay a reasonable charge, if required by the insurer.

(e) Notice to an insurer of the existence of a claim shall not be unreasonably withheld by an insured.

(7) Mental and Physical Examination of Injured Person; Reports.–

(a) Whenever the mental or physical condition of an injured person covered by personal injury protection is material to any claim that has been or
may be made for past or future personal injury protection insurance benefits, such person shall, upon request of an insurer, submit to mental or physical examination by a physician or physicians. The costs of any examinations requested by an insurer shall be borne entirely by the insurer. Such examination shall be conducted within the city of residence of the insured. If there is no qualified physician to conduct the examination within the city of residence of the insured, then such examination shall be conducted in an area of the closest proximity to the insured's residence. Personal protection insurers are authorized to include reasonable provisions in personal injury protection insurance policies for mental and physical examination of those claiming personal injury protection insurance benefits.

(b) If requested by the person examined, a party causing an examination to be made shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out his findings and conclusions in detail. After such request and delivery, the party causing the examination to be made is entitled upon request to receive from the person examined every written report available to him or his representative concerning any examination, previously or thereafter made, of the same mental or physical condition. By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the person examined waives any privilege he may have, in relation to the claim for benefits, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition. If a person unreasonably refuses to submit to an examination, the personal injury protection carrier is no longer liable for subsequent personal injury protection benefits.

Section 5. Subsection (2) of section 627.737, Florida Statutes, is amended and subsection (3) is added to read:

627.737 Tort exemption; limitation on right to damages.–

(2) In any action of tort brought against the owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.741, or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury, sickness, or disease arising out of the ownership, maintenance, operation, or use of such motor vehicle only in the event that the injury or disease consists in whole or in part in:

(a) loss of a body member, or

(b) permanent loss of a bodily function, or

(c) permanent injury within a reasonable degree of medical probability other than scarring or disfigurement, or

(d) significant permanent scarring or disfigurement, or

(e) a serious non-permanent injury which has a material degree of bearing on the injured person's ability to resume his normal activity and life-style during all or substantially all of the ninety day period after the occurrence of the injury, and the effects of which are medically or scientifically demonstrable at the end of such period, or

(f) death.

(3) when a defendant, in a proceeding brought pursuant to ss. 627.730-627.741, questions whether the plaintiff has met the requirements of s. 627.737(2), then the defendant may file an appropriate motion with the court and the court shall, on a one-time basis only, 30 days before the date set for the trial or the pre-trial hearing, whichever is first, by examining the pleadings and the evidence before it, ascertain whether the plaintiff will be able to submit some evidence that the plaintiff will meet the requirements of s. 627.737(2). If the court finds that the plaintiff will not be able to submit such evidence then the court shall dismiss the plaintiff's claim without prejudice.

Section 6. Section 627.739, Florida Statutes, is amended to read:

627.739 Deductible endorsement.–Each insurer providing security as required by ss. 627.730-627.741 to any owner shall, at the election of the owner, issue a policy endorsement, approved as to content by the Department of Insurance and subject to such other reasonable regulations regarding said endorsement as the department may make after appropriate hearing, which endorsement shall provide that there shall be deducted from personal protection benefits that would other-

wise be or become due to the policyholder alone or to the policyholder and relatives residing in his household an amount of either $250, $500, or $1,000, or $2,000 again as the policyholder elects, said amount to be deducted from the amounts otherwise due each person subject to the deduction. Any person electing such an endorsement or subject to such an endorsement as a result of the policyholder's election shall have no right to claim or to recover any amount so deducted from any owner, registrant, operator, or occupant of a motor vehicle or any person or oganization legally responsible for any such person's acts or omissions who is made exempt from tort liability by ss. 627.730-627.741.

Section 7. Section 627.7375, Florida Statutes, is created to read:

627.7375 Fraud.–

(1) Any insured party or insurer or insurance adjuster who, with intent, knowingly and willfully conspires to fraudulently violate any of the provisions of this part, or who, due to fraud on such person's part, does knowingly and willfully violate any of the provisions of this part is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any physician licensed under chapter 458, osteopath licensed under chapter 459, chiropractor licensed under chapter 460, or any other practitioner licensed under the laws of this state who knowingly and willfully assists, conspires with, or urges any insured party to fraudulently violate any of the provisions of this part or any person who, due to such assistance, conspiracy, or urging by said physician, osteopath, chiropractor or practitioner, knowingly and willfully benefits from the proceeds derived from the use of such fraud is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In the event that a physician, osteopath, chiropractor or practitioner is adjudicated guilty of a violation of this section, the State Board of Medical Examiners as set forth in chapter 458, the State Board of Osteopathic Medical Examiners as set forth in chapter 459, or the Florida State Board of Chiropractic Examiners as set forth in chapter 460, or other appropriate licensing authority, whichever is appropriate, shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against said physician, osteopath, chiropractor or practitioner.

(3) Any attorney who knowingly and willfully assists, conspires with, or urges any claimant to fraudulently violate any of the provisions of this part or any person who, due to such assistance, conspiracy, or urging on such attorney's part, knowingly and willfully benefits from the proceeds derived from the use of such fraud is guilty of a felony of the third degree, punishable as provided in s.775.082, s. 775.083, or s. 775.084.

(4) No person or governmental unit licensed under chapter 395 to maintain or operate a hospital, and no administrator or employee of any such hospital, shall knowingly and willfully allow the use of the facilities of said hospital by an insured party in a scheme or conspiracy to fraudulently violate any of the provisions of this part. Any hospital administrator or employee who violates this subsection is guilty of a felony of the third degree, punishable as provided in s.775.082, s. 775.083, or s. 775.084. Any adjudication of guilt for a violation of this section, or the use of business practices demonstrating a pattern indicating that the spirit of the law set forth in this part is not being followed, shall be grounds for suspension or revocation of the license to operate the hospital or the imposition of an administrative penalty of up to $5,000 by the licensing agency as set forth in chapter 395.

Section 8. Subsection (7) is added to Section 20.13, Florida Statutes, to read:

20.13 Department of Insurance.–There is created a Department of Insurance.

(7) There is created within the Department of Insurance a Division of Fraudulent Claims to enforce the provisions of s. 626.989.

Section 9. Section 626.989, Florida Statutes, is created to read:

626.989 Division of Fraudulent Claims; investigative powers; accident reports to division; personnel and expenses; division of costs.–

(1) The Division of Fraudulent Claims shall have authority to investigate allegedly fraudulent claims alleging loss or damages arising out of the ownership, operation, maintenance, or use of a motor vehicle, as defined in section 320.01, anywhere within the state, filed by a claimant against any person insured by an insurance company which has issued a policy of insurance providing protection or indemnity to the insured owner and to any other person operating, maintaining, or using such motor vehicle with the consent, expressed or implied, of the insured; and any other claim covered by insurance resulting from the ownership, operation, maintenance, or use of such motor vehicle.

(2) Any company which believes that such a fraudulent claim is being made shall, within 60 days of the receipt of such notice, send to the Division of Fraudulent Claims, on a form prescribed by the department, the information requested and such additional information relative to the accident and the parties claiming loss or damages because of the accident as the department may require. The Division of Fraudulent Claims shall review such reports and select such claims as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such claim to be made to determine the extent, if any, to which fraud, deceit, or intentional misrepresentation of any kind exists in the submission of the claim. The Division of Fraudulent Claims shall report any alledged violations of law which its investigations disclose to the appropriate licensing agency and state attorney having jurisdiction with respect to any such violation as provided in s. 624.310.

(3) No insurer, nor the employees or agents of any insurer, shall be subject to civil liability for libel or otherwise by virtue of the filing of reports or furnishing other information required by this section or required by the Division of Fraudulent

Claims as a result of the authority herein granted.

(4) All costs of administration and operation of said Division of Fraudulent Claims shall be borne by the insurers licensed to write motor vehicle insurance in this state. The Insurance Commissioner shall equally divide such costs among all such companies, charging each such company an identical amount adequate to provide the total cost of each fiscal year of operation. Such costs as derived by said assessment shall be allocated to the State Treasurer's and Insurance Commissioner's Regulatory Trust Fund. The total number of positions to be allocated to the Division of Fraudulent Claims shall not exceed 25 employees and the total cost shall not exceed $500,000 for said fiscal year.

Section 10. Section 627.4132, Florida Statutes, is created to read:

627.4132 Stacking of coverages prohibited.—If an insured or named insured is protected by any type of motor vehicle insurance policy for liability, uninsured motorist, personal injury protection, or any other coverage, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident; provided that if none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with applicable coverage. Coverage on any other vehicles shall not be added to or stacked upon that coverage. This section shall not apply to reduce the coverage available by reason of insurance policies insuring different named insureds.

Section 11. Section 627.7377, Florida Statutes, is created to read:

627.7377 Physical Damage Deductibles.—In providing collision coverage for physical damage to an insured's motor vehicle, insurers shall make available upon request deductibles of $500 or any other amount for which the parties may contract, subject to the insurer's filed rating plan.

Section 12. Section 627.7262, Florida Statutes, is created to read:

627.7262 Non-joinder of insurers.—(1) No motor vehicle liability insurer shall be joined as a party defendant in an action to determine the insured's liability; however, each insurer which does or may provide liability insurance coverage to pay all or a portion of any judgment which might be entered in the action shall file a statement, under oath of a corporate officer, setting forth the following information with regard to each known policy of insurance:

(a) The name of the insurer.

(b) The name of each insured.

(c) The limits of liability coverage.

(d) A statement of any policy or coverage defense which said insurer reasonably believes is available to said insurer filing the statement at the time of filing said statement.

(2) The statement required by subsection (1) shall be amended immediately upon discovery of facts calling for an amendment to said statement.

(3) If the statement or any amendment thereto indicates that a policy or coverage defense has been or will be asserted, then the insurer may be joined as a party.

(4) After the rendition of a verdict, or final judgment by the court if the case is tried without a jury, the insurer may be joined as a party and judgment may be entered by the court based upon the statement or statements herein required.

(5) The rules of discovery shall be available to discover the existence and policy provisions of liability insurance coverage.

Section 13. Sections 627.738, 627.740, and subsection (2) of section 627.741, Florida Statutes, are hereby repealed.

Section 14. Within 60 days after October 1, 1977, the Department of Insurance shall review the level of Florida automobile insurance rates for the purpose of insuring that premium or rate reductions resulting from the provisions of this act are being passed on to the insurance policy buyers.

Section 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, it is the legislative intent that the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 16. This act shall take effect October 1, 1976, and shall apply to all claims arising out of accidents occurring on or after said date.

Approved, June 27, 1976

1977, Senate Bill 1181*

Be it enacted by the Legislature of the State of Florida:

Section 1. Short Title.—This act shall be known and may be cited as "The Florida Insurance and Tort Reform Act of 1977."

Section 4. Subsection (3) is added to section 320.02, Florida Statutes, to read:

320.02 Application for registration; forms.—

(3) (a) Proof that personal injury protection benefits have been purchased when required under s. 627.733 shall be made by the applicant at the time of registration of any motor vehicle owned as defined in s. 627.732. The issuing agent shall refuse to issue registration if such proof of purchase is not made. Insurers shall furnish uniform proof

*NOTE: Only sections of bill dealing with no-fault are reproduced here.

of purchase cards in such form as prescribed by the Department of Highway Safety and Motor Vehicles, and such card, or an insurance policy, an insurance policy hinder, a certificate of insurance, or such proof as may be prescribed by the Department of Highway Safety and Motor Vehicles shall be accepted as such proof. As an aid in implementing Section 42 of this Act such cards shall also indicate the existence of any bodily injury liability insurance voluntarily purchased. The Department of Insurance shall require that such uniform cards as specified by the Department of Highway Safety and Motor Vehicles be furnished by insurers providing such benefits. Any person altering such card or duplicating or counterfeiting such card in order to furnish such proof or to permit another person to furnish such proof shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) When an operator owning a motor vehicle or motor vehicles comes under the operation of the financial responsibility requirements of chapter 324, such operator shall provide proof of compliance with such financial responsibility requirements at the time of registration of any such motor vehicle through the use of a uniform proof of purchase of insurance card specifying such coverage, or an insurance policy, an insurance policy binder, a certificate of insurance, or by such other method of furnishing such proof as may be required by the Department of Highway Safety and Motor Vehicles. The issuing agent shall refuse to issue registration of a motor vehicle if such proof of purchase is not made. The Department of Insurance shall require that such uniform cards as specified by the Department of Highway Safety and Motor Vehicles be furnished by insurers writing motor vehicle liability insurance in this state. Any person altering such card or duplicating or counterfeiting such card in order to furnish such proof or to permit another person to furnish such proof shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Subsections (1) and (2) of section 324.021, Florida Statutes, 1976 Supplement, are amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) Motor Vehicle.—Every self-propelled vehicle which is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any bicycle or "moped," as defined in s. 316.003 (2). However, the term "motor vehicle" shall not include any motor vehicle as defined in s. 627.732 (1), when the owner of such vehicle has complied with the requirements of ss. 627.730-627.741, inclusive, unless the provisions of s. 324.051 apply, and in such case until January 1, 1979, such owner shall establish proof of compliance with such sections in the manner provided for evidence of insurance as set forth in s. 325.19 (7) at the time of inspection of any such motor vehicle, and after such date the applicable proof of insurance provisions of s. 320.02 shall apply.

(2) Department.—The Department of Highway Safety and Motor Vehicles Insurance.

Section 20. Present subsections (2), (3) and (4) of section 626.989, Florida Statutes, 1976 Supplement, are renumbered as subsections (4), (5) and (6), respectively, and new subsections (1), (2), (3) and (4) are added to said section to read:

626.989 Division of Fraudulent Claims; investigative powers; subpoena powers; accident reports to division; personnel and expenses; division of costs.—

(1) If, by its own inquiries or as a result of complaints, the Division of Fraudulent Claims has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates s. 627.7375 or s. 624.15, it may administer oaths and affirmations, request the attendance of witnesses or proffering of matter, and collect evidence. The department shall not compel the attendance of any person or matter in any such investigation except pursuant to subsection (3).

(2) If matter that the division seeks to obtain by request is located outside the state, the person so requested may make it available to the division or its representative to examine the matter at the place where it is located. The division may designate representatives, including officials of the state in which the matter is located, to inspect the matter on its behalf and it may respond to similar requests from officials of other states.

(3) The division may request that an individual who refuses to comply with any such request be ordered by the circuit court to provide the testimony or matter. The court shall not order such compliance unless the division has demonstrated to the satisfaction of the court that the testimony of the witness or the matter under request has a direct hearing on a violation of s. 627.7375 or s. 624.155 or is pertinent and necessary to further such investigation. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination to which he is entitled by law may not be subjected to a criminal proceeding or to a civil penalty with respect to the act concerning which he is required to testify or produce relevant matter.

(4) The department's papers, documents, reports or evidence relative to the subject of an investigation under this section shall not be subject to public inspection for so long as the department deems reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, such papers, documents, reports or evidence relative to the subject of an investigation under this section shall not be subject to subpoena until opened for public inspection by the department,

unless the department consents; or after notice to the department and a hearing, the court determines the department would not be unnecessarily hindered by such subpoena.

Section 30. Subsection (3) of section 627.727, Florida Statutes, is amended and subsections (6) and (7) are added to said section to read:

627.727 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.–

(3) For the purpose of this coverage, the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle when the liability insurer thereof:

(a) Is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency; or

(b) Has provided limits of bodily injury liability for its insured which are less than the limits applicable to the injured person provided under his uninsured motorist's coverage, applicable to the injured person.

(6) If an injured person or in the case of death, the personal representative, agrees to settle a claim with a liability insurer and its insured for the limits of liability, and such settlement would not fully satisfy the claim for personal injuries or wrongful death so as to create an uninsured motorist claim against the uninsured motorist insurer, then such settlement agreement shall be submitted in writing to the uninsured motorist insurer, which shall have a period of 30 days from receipt thereof in which to agree to arbitrate the uninsured motorist claim and approve the settlement, waive its subrogation rights against the liability insurer and its insured, and authorize the execution of a full release. If the uninsured motorist insurer does not agree within 30 days to arbitrate the uninsured motorist claim and approve the proposed settlement agreement, waive its subrogation rights against the liability insurer and its insured, and authorize the execution of a full release, the injured person or in the case of death, the personal representative, may file suit joining the liability insurer's insured and the uninsured motorist insurer to resolve their respective liability for any damages to be awarded; provided, however, that in such action, the liability insurer's coverage shall first be exhausted before any award may be entered against the uninsured motorist insurer, and any such award against the uninsured motorist insurer shall be excess and subject to the provisions of s. 627.727 (1). Any award in such action against the liability insurer's insured shall be binding and conclusive as to the injured person and uninsured motorist insurer's liability for damages up to its coverage limits. The provisions of s. 627.428 shall not apply to any section brought pursuant to this section against the uninsured motorist insurer.

(7) The legal liability of an uninsured motorist coverage insurer shall not include damages in tort for pain, suffering, mental anguish and inconvenience unless the injury or disease is described in one or more of paragraphs (a) through (f) of s. 627.737 (2).

Section 33. Section 627.736, Florida Statutes, 1976 Supplement, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority.–

(1) Required Benefits.–Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection providing for payment of all reasonable expenses incurred for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices; necessary ambulance, hospital, nursing services; and funeral and disability benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle, and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a self-propelled motor vehicle or motorcycle, all as specifically provided in subsections (2) and (4) (d), to a limit of $5,000 for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) Medical benefits.–Eighty percent of all reasonable expenses for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices, and necessary ambulance, hospital, and nursing services. Such benefits shall also include necessary remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing, in accordance with his religious beliefs.

(b) Disability benefits.–Eighty percent of any loss of gross income and loss of earning capacity per individual, unless such benefits are deemed not includable in gross income for federal income tax purposes, in which event such benefits shall be limited to 60 percent, from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his household. All disability benefits payable under this provision shall be paid not less than every 2 weeks.

(c) Any insurer providing medical or disability benefits which have been reduced under this section shall also provide a corresponding rate reduction to the insured in proportion to reduction of benefits provided.

(d) Funeral, burial or cremation benefits.–Funeral, burial, or cremation expenses in an amount not to exceed $1,000 per individual.

(e) Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section and no such insurer shall require the purchase of any other motor vehicle coverage as a condition for providing such required benefits. Such insurers shall make such benefits available through normal marketing channels. Any insurer writing motor vehicle liability insurance in this state failing to comply with such availability requirement as a general business practice shall be deemed to have violated part VII of Chapter 626

and such violation shall constitute an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance, and any such insurer committing such violation shall be subject to the penalties afforded in such part as well as those which may be afforded elsewhere in the insurance code.

(2) Authorized Exclusions.—Any insurer may exclude benefits:

(a) For injury sustained by the named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy or for injury sustained by any person operating the insured motor vehicle without the express or implied consent of the insured.

(b) To any injured person, if such person's conduct contributed to his injury under any of the following circumstances:

1. Causing injury to himself intentionally;

2. Being convicted of driving while under the influence of alcohol or narcotic drugs to the extent that his driving faculties are impaired;

3. While committing a felony.

Whenever an insured is charged with conduct as set forth in subparagraphs 2. or 3., the 30-day payment provision of paragraph (4) (b) shall be held in abeyance, and the insurer shall withhold payment of any personal injury protection benefits pending the outcome of the case at the trial level. If the charge is nolle prossed or dismissed or the insured is acquitted, the 30-day payment provision shall run from the date the insurer is notified of such action.

(3) Insured's rights to recovery of special damages in tort claims.—No insurer shall have a lien on any recovery in tort by judgment, settlement, or otherwise for personal injury protection benefits, whether suit has been filed or settlement has been reached without suit. An injured party who is entitled to bring suit under the provisions of s. 627.737, or his legal representative, shall have no right to recover any damages for which personal injury protection benefits are paid or payable. The plaintiff may prove all of his special damages notwithstanding this limitation, but if special damages are introduced in evidence, the trier of facts, whether judge or jury, shall not award damages for personal injury protection benefits paid or payable. In all cases in which a jury is required to fix damages, the court shall instruct the jury that the plaintiff shall not recover such special damages for personal injury protection benefits paid or payable.

(4) Benefits; When Due.—Benefits due from an insurer under ss. 627.730-627.741 shall be primary, except that benefits received under any workmen's compensation law or Medicaid as provided under 42 USC 1396 et seq. shall be credited against the benefits provided by subsection (1) and be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.741.

(a) An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by ss. 627.730-627.741.

(b) Personal injury protection insurance benefits shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. However, any payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer. For the purpose of of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope or, if not so posted, on the date of delivery.

(c) All overdue payments shall bear simple interest at the rate of 10 percent per annum.

(d) The insurer of the owner of a motor vehicle shall pay personal injury protection benefits for:

1. Accidental bodily injury sustained in this state by the owner while occupying a motor vehicle, or while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with a motor vehicle.

2. Accidental bodily injury sustained outside this state but within the United States of America, its territories or possessions, or Canada by the owner while occupying the owner's motor vehicle.

3. Accidental bodily injury sustained by a relative of the owner residing in the same household, under the circumstances described in subparagraph 1. or subparagraph 2., provided the relative at the time of the accident is domiciled in the owner's household and is not himself the owner of a motor vehicle with respect to which security is required under ss. 627.730-627.741.

4. Accidental bodily injury sustained in this state by any other person while occupying the owner's motor vehicle or, if a resident of this state, while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with such motor vehicle, provided the injured person is not himself:

a. The owner of a motor vehicle with respect to which security is required under ss. 627.730-627.741, or

b. Entitled to personal injury benefits from the insurer of the owner or owners of such a motor vehicle.

(e) If two or more insurers are liable to pay personal injury protection benefits for the same injury to any one person the maximum payable shall be

as specified in subsection (1), and any insurer paying the benefits shall be entitled to recover from each of the other insurers an equitable pro rata share of the benefits paid and expenses incurred in processing the claim.

(5) Charges for treatment of injured persons.– Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge only a reasonable amount for the products, services, and accommodations rendered and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment if the insured receiving such treatment or his guardian has countersigned the invoice or bill upon which such charges are to be paid as being actually rendered to the best knowledge of the insured or his guardian. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like products, services, and accommodations in cases involving no insurance.

(6) Discovery of facts about an injured person; disputes.–

(a) Every employer shall, if a request is made by an insurer providing personal injury protection benefits under ss. 627.730-627.741 against whom a claim has been made, furnish forthwith, in a form approved by the Department of Insurance, a sworn statement of the earnings, since the time of the bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

(b) Every physician, hospital, clinic, or other medical institution providing, before or after bodily injury upon which a claim for personal injury protection insurance benefits is based, any products, services, or accommodations in relation to that or any other injury, or in relation to a condition claimed to be connected with that or any other injury, shall, if requested to do so by the insurer against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, dates, and costs of such treatment of the injured person, together with a sworn statement that the treatment or services rendered were reasonable and necessary with respect to the bodily injury sustained and identifying which portion of the expenses for said treatment or services was incurred as a result of such bodily injury, and produce forthwith, and permit the inspection and copying of, his or its records regarding such history, condition, treatment, dates, and costs of treatment. Said sworn statement shall read as follows: "Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief." No cause of action for violation of physician-patient privilege or invasion of the right of privacy shall be against any physician, hospital, clinic, or other medical institution complying with the provisions of this section. The person requesting such records and said sworn statement shall pay all reasonable costs connected therewith.

(c) In the event of any dispute regarding an insurer's right to discovery of facts about an injured person's earnings or about his history, condition, and treatment, and dates and costs of such treatment, the insurer may petition a court of competent jurisdiction to enter an order permitting such discovery. The order may be made only on motion for good cause shown and upon notice to all persons having an interest, and it shall specify the time, place, manner, conditions, and scope of the discovery. Such court may, in order to protect against annoyance, embarrassment, or oppression, as justice requires, enter an order refusing discovery or specifying conditions of discovery and may order payments of costs and expenses of the proceeding, including reasonable fees for the appearance of attorneys at the proceedings, as justice requires.

(d) The injured person shall be furnished, upon request, a copy of all information obtained by the insurer under the provisions of this section, and shall pay a reasonable charge, if required by the insurer.

(e) Notice to an insurer of the existence of a claim shall not be unreasonably withheld by an insured.

(7) Mental and physical examination of injured person; reports.–

(a) Whenever the mental or physical condition of an injured person covered by personal injury protection is material to any claim that has been or may be made for past or future personal injury protection insurance benefits, such person shall, upon request of an insurer, submit to mental or physical examination by a physician or physicians. The costs of any examinations requested by an insurer shall be borne entirely by the insurer. Such examination shall be conducted within the city of residence of the insured. If there is no qualified physician to conduct the examination within the city of residence of the insured, then such examination shall be conducted in an area of the closest proximity to the insured's residence. Personal protection insurers are authorized to include reasonable provisions in personal injury protection insurance policies for mental and physical examination of those claiming personal injury protection insurance benefits.

(b) If requested by the person examined, a party causing an examination to be made shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out his findings and conclusions in detail. After such request and delivery, the party causing the examination to be made is entitled, upon request, to receive from the person examined every written report available to him or his representative concerning any examination, previously or thereafter made, of the same mental or physical condition. By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the person examined waives any privilege he may have,

in relation to the claim for benefits, regarding the testimony of every other person who has examined, or may thereafter examine, him in respect to the same mental or physical condition. If a person unreasonably refuses to submit to an examination, the personal injury protection carrier is no longer liable for subsequent personal injury protection benefits.

(8) With respect to any dispute under the provisions of ss. 627.730-627.741 between the insured and the insurer, the provisions of s. 627.428 shall apply.

Section 36. Section 627.7375, Florida Statutes, 1976 Supplement, is amended to read:

627.7375 False and fraudulent claims.–

(1) Any person who, with the intent to injure, defraud or deceive any insurance company:

(a) Presents or causes to be presented any written or oral statement as part of or in support of a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim; or

(b) Prepares or makes any written or oral statement that is intended to be presented to any insurance company in connection with or in support of any claim for payment in other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) All claims forms shall contain a statement in a form approved by the department that clearly states in substance the following: "Any person who knowingly and with intent to injure, defraud or deceive any insurance company files a statement of claim containing any false, incomplete or misleading information is guilty of a felony of third degree."

(2) Any physician licensed under chapter 458, osteopath licensed under chapter 459, chiropractor licensed under chapter 460, or any other practitioner licensed under the laws of this state who knowingly and willfully assists, conspires with, or urges any insured party to fraudulently violate any of the provisions of this part, or any person who, due to such assistance, conspiracy, or urging by said physician, osteopath, chiropractor, or practitioner, knowingly and willfully benefits from the proceeds derived from the use of such fraud, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In the event that a physician, osteopath, chiropractor, or practitioner is adjudicated guilty of a violation of this section, the State Board of Medical Examiners as set forth in chapter 458, the State Board of Osteopathic Medical Examiners as set forth in chapter 459, or the Florida State Board of Chiropractic Examiners as set forth in chapter 460, or other appropriate licensing authority, whichever is appropriate, shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against said physician, osteopath, chiropractor, or practitioner.

(3) Any attorney who knowingly and willfully assists, conspires with, or urges any claimant to fraudulently violate any of the provisions of this part, or any person who, due to such assistance, conspiracy, or urging on such attorney's part, knowingly and willfully benefits from the proceeds derived from the use of such fraud, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) No person or governmental unit licensed under chapter 395 to maintain or operate a hospital, and no administrator or employee of any such hospital, shall knowingly and willfully allow the use of the facilities of said hospital by an insured party in a scheme or conspiracy to fraudulently violate any of the provisions of this part. Any hospital administrator or employee who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any adjudication of guilt for a violation of this section, or the use of business practices demonstrating a pattern indicating that the spirit of the law set forth in this part is not being followed, shall be grounds for suspension or revocation of the license to operate the hospital or the imposition of an administrative penalty of up to $5,000 by the licensing agency as set forth in chapter 395.

(5) Any insurance company damaged as a result of a violation of any provision of this section where there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses including attorneys' fees at the trial and appellate courts.

(6) For the purposes of this section "statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test result, or other evidence of loss, injury, or expense.

(7) The provisions of this section shall also apply as to any insurer or adjusting firm or their agents or representatives who with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in this section.

(8) It is unlawful for any person, in his individual capacity or in his capacity as a public or private employee, or for any firm, corporation, partnership, or association to solicit any business in and about city receiving hospitals, city and county receiving hospitals, county hospitals, justice courts, municipal courts, or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever for the purpose of making motor vehicle tort claims. Any person who violates the provisions of this subsec-

tion is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9) It is unlawful for any attorney to solicit any business relating to the representation of persons injured in a motor vehicle accident for the purpose of filing a motor vehicle tort claim. Any attorney who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Whenever any circuit or special grievance committee acting under the jurisdiction of the Supreme Court shall find probable cause to believe that an attorney is guilty of a violation of this section, such committee shall forward to appropriate state attorney a copy of the finding of probable cause and the report being filed in the matter.

Section 37. Section 627.739, Florida Statutes, 1976 Supplement, is amended to read:

627.739 Personal injury protection; optional limitations; deductibles.—In order to prevent duplication with other private or governmental insurance or benefits for senior citizens and others with access to such insurance or benefits, each insurer providing the coverage and benefits described in s. 627.736 (1) shall offer to the named insured's modified forms of personal injury protection as described in this section. Such election may be made by the named insured to apply to the named insured alone, or to the named insured and dependent relatives residing in the same household. Any person electing such modified coverage or subject to such modified coverage as a result of the named insured's election shall have no right to claim or to recover any amount so deducted from any owner, registrant, operator or occupant of a vehicle or any person or organization legally responsible for any such person's acts or omissions who is made exempt from tort liability by ss. 627.730-627.741. Premium reductions for each modification or combination of modifications shall be adequate to recognize the reduction in hazard and shall be subject to the approval of the Department of Insurance.

(1) Insurers shall offer to each applicant and to each policyholder upon the renewal of an existing policy, deductibles, in amounts of $250, $500, $1,000, and $2,000, $3,000 and $4,000 said amount to be deducted from the benefits otherwise due each person subject to the deduction and shall explain to each applicant or policyholder that if they have coverage under private or governmental disability plans they may avail themselves of deductibles or other modifications as provided in subsections (1), (2), and (3).

(2) Insurers shall offer coverage wherein at the election of the named insured all benefits payable under 42 USC 1395, the federal "medicare" program, or to active or retired military personnel and their dependent relatives shall be deducted from those benefits otherwise payable pursuant to s. 627.736 (1).

(3) Insurers shall offer coverage wherein at the election of named insured the benefits for loss of gross income and loss of earning capacity described in s. 627.736 (1) (b) shall be excluded.

(4) Insurers shall offer, at the election of the named insured, one of the following options:

(a) Either a direct payment to the policyholder or a payment to any person, corporation, association or other business entity which performs repair work upon the motor vehicle, or a combination of the foregoing; or

(b) A payment to any person, corporation, association, or other business entity performing repair work upon the motor vehicle, where the payee is under contract with the insurer to perform such work at stipulated rates which are no greater than eighty-five (85) percent of prevailing rates for similar work within the county where the payee performs the work upon the motor vehicle.

(5) Each insurer may prepare and distribute to each of its policyholders a listing of all business entities under contract with the insurer to perform motor vehicle repair work at the rates described in paragraph (1) (b) of this section. The listing shall include a clear and plain explanation of the options provided as required by this section, and shall further state that if the policyholder elects to have required motor vehicle repair work done by any such business entity, the rates stipulated in the contract with the insurer shall be all of the consideration which the business entity will demand for such work and shall be paid by the insurer.

(6) Insurers may offer coverage wherein at the election of the named insured medical services shall be limited to specified medical providers, including hospitals, which specified medical provider may be a health maintenance organization, as provided in chapter 641, part II, Florida Statutes.

Section 43. There shall be no private passenger motor vehicle insurance rate increases for bodily injury liability, personal injury protection benefits, or uninsured motorist coverage, excluding rates charged for coverage under the automobile joint underwriting association established under s. 627.351 (1), prior to January 1, 1978. The rate cap provided by this section shall take effect at 12:01 a.m., June 4, 1977. This shall not prevent rate reduction.

Section 44. If any provision of this act, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end the provisions of this act are declared to be severable.

Section 45. This act shall take effect July 1, 1977, and shall apply to all claims arising out of accidents ocurring after said date, except that: section 4 shall take effect January 1, 1978; sections 19, 21, 22, 23, 24, 25, 31, 32, 33, and 37 shall take effect September 1, 1977; and sections 43, 44, and 45 shall take effect upon becoming a law.

Became law July 5, 1977,
without governor's signature

Chapter 78-374, Laws 1978
Senate Bill No. 1308

An act relating to motor vehicle insurance; amending s. 627.727 (7), Florida Statutes; providing that uninsured motorist coverage shall not include damages for pain and suffering except for specified injuries or death; amending s. 627.732 (1), Florida Statutes; providing definitions of "motor vehicle", "private passenger motor vehicle", and "commercial motor vehicle"; amending s. 627.736 (1), Florida Statutes; providing for $10,000 in personal injury protection coverage; amending s. 627.737 (2), Florida Statutes; providing for limitations on rights to damages for pain, suffering, mental anguish, and inconvenience in tort actions arising out of use of a motor vehicle; amending s. 627.7372 (1), Florida Statutes; providing for the admission into evidence in certain actions the amount of all collateral sources paid or payable to the claimant, and prohibiting an award of damages which are otherwise paid or payable; amending s. 627.739 (1), Florida Statutes, relating to personal injury protection to revise amounts of deductibles; creating s. 627.7405, Florida Statutes; providing personal injury protection benefits for the insured, certain relatives, operators, and passengers of a commercial motor vehicle or other Florida residents struck by a commercial motor vehicle in Florida; repealing s. 627.735 (2), Florida Statutes, relating to the compliance of motor vehicle liability insurance policies with financial responsibility or compulsory insurance laws of other states; providing for review by the Department of Insurance of the rates of all licensed motor vehicle insurers; providing for issuance of orders by the Department of Insurance to require new rate schedules where existing rates are unfairly discriminatory; creating s. 627.343, Florida Statutes; requiring the Department of Insurance to promulgate a uniform statewide reporting system to classify risks for the purpose of evaluating motor vehicle insurance rates, premiums, competition, and availability; requiring insurers to file annual statements with the department; providing that the department may require insurers to report certain loss and expense experience; repealing s. 627.342, Florida Statutes, which provides for annual risk classification reporting by insurers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 627.727, Florida Statutes, is amended to read:

627.727 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.—

(7) The legal liability of an uninsured motorist coverage insurer shall not include damages in tort for pain, suffering, mental anguish, and inconvenience unless the injury or disease is described in one or more of paragraphs (a) through (d) of s. 627.737 (2).

Section 2. Subsection (1) of section 627.732, Florida Statutes, is amended to read:

627.732 Definitions.—As used in ss. 627.730-627.741:

(1) "Motor vehicle" means any self-propelled vehicle which is of a type both designed and required to be licensed for use on the highways of this state and any trailer or semi-trailer designed for use with such vehicle, except mopeds, as defined in s. 316.003 (2), and includes:

(a) A "private passenger motor vehicle" which is any motor vehicle which is a sedan, station wagon or jeep type vehicle not used at any time as a public or livery conveyance for passengers and, if not used primarily for occupational, professional or business purposes, a motor vehicle of the pickup, panel, van, camper or motor home type.

(b) A "commercial motor vehicle" which is any motor vehicle which is not a private passenger motor vehicle.

The term motor vehicle, however, does not include any self-propelled vehicle with less than four wheels or a mobile home.

Section 3. Subsection (1) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority.—

(1) REQUIRED BENEFITS.—Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection providing for payment of all reasonable expenses incurred for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices; necessary ambulance, hospital, and nursing services; and funeral and disability benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle, and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, all as specifically provided in subsection (2) and paragraph (4) (d), to a limit of $10,000 for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

Section 4. Subsection (2) of section 627.737, Florida Statutes, is amended to read:

627.737 Tort exemption; limitation on right to damages; punitive damages.—

(2) In any action of tort brought against the owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.741, or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury, sickness, or disease arising out of the ownership, maintenance, operation, or use of such motor vehicle only in the event that the injury or disease consists in whole or in part of:

(a) Significant and permanent loss of an important bodily function.

(b) Permanent injury within a reasonable degree of medical probability, other than scarring or dis-

figurement.

(c) Significant and permanent scarring or disfigurement.

(d) Death.

Section 5. Subsection (1) of section 627.7372, Florida Statutes, is amended to read:

627.7372 Collateral sources of indemnity.--

(1) In any action for personal injury or wrongful death arising out of the ownership, operation, use or maintenance of a motor vehicle, the court shall admit into evidence the total amount of all collateral sources paid to the claimant, and the court shall instruct the jury to deduct from its verdict the value of all benefits received by the claimant from any collateral source.

Section 6. Subsection (1) of section 627.739, Florida Statutes, is amended to read:

627.739 Personal injury protection; optional limitations; deductibles; optional methods of payment for repair work.--In order to prevent duplication with other private or governmental insurance or benefits for senior citizens and others with access to such insurance or benefits, each insurer providing the coverage and benefits described in s. 627.736 (1) shall offer to the named insureds modified forms of personal injury protection as described in this section. Such election may be made by the named insured to apply to the named insured alone, or to the named insured and dependent relatives residing in the same household. Any person electing such modified coverage, or subject to such modified coverage as a result of the named insured's election, shall have no right to claim or to recover any amount so deducted from any owner, registrant, operator, or occupant of a vehicle or any person or organization legally responsible for any such person's acts or omissions who is made exempt from tort liability by ss. 627.730-627.741. Premium reductions for each modification or combination of modifications shall be adequate to recognize the reduction in hazard and shall be subject to the approval of the Department of Insurance.

(1) Insurers shall offer to each applicant and to each policyholder, upon the renewal of an existing policy, deductibles, in amounts of $250, $500, $1,000, $2,000, $3,000, $4,000, $6,000 and $8,000, said amount to be deducted from the benefits otherwise due each person subject to the deduction, and shall explain to each applicant or policyholder that if they have coverage under private or governmental disability plans, they may avail themselves of deductibles or other modifications as provided in subsections (1), (2), and (3).

Section 7. Section 627.7405, Florida Statutes, is created to read:

627.7405 Subrogation.--Notwithstanding any other provisions of ss. 627.730-627.741, any insurer providing personal injury protection benefits on a private passenger motor vehicle shall have, to the extent of any personal injury protection benefits paid to any person as a benefit arising out of such private passenger motor vehicle insurance, a right of reimbursement against the owner or the insurer of the owner of a commercial motor vehicle, if the benefits paid result from such person having been an occupant of the commercial motor vehicle or having been struck by the commercial motor vehicle while not an occupant of any self-propelled vehicle.

Section 8. Within 30 days after January 1, 1980, the Department of Insurance shall commence a review of the rates of all licensed motor vehicle insurers in effect at the time. If, after the review, the department finds on a preliminary basis that the rate may be excessive, inadequate, or unfairly discriminatory, the department shall so notify the insurer. Upon being so notified, the insurer shall within 60 days file with the department all information which the insurer believes proves the reasonableness, adequacy, and fairness of the rate. In such instances, the insurer shall carry the burden of proof. In the event the department finds that a rate is excessive, inadequate, or unfairly discriminatory, the department may order that a new rate schedule be thereafter filed by the insurer and further specifying the manner in which noncompliance shall be corrected.

Section 9. Section 627.343, Florida Statutes, is created to read:

627.343 Uniform risk classification reporting system for motor vehicle insurance.--

(1) The department shall establish and promulgate a uniform statewide reporting system to classify risks for the purpose of evaluating rates and premiums and for the purpose of evaluating competition and the availability of motor vehicle insurance in the voluntary market. The system shall divide risks into classifications based upon variations in hazards or expense of claims. The classification system may include any difference among risks that can be demonstrated to have a probable effect upon losses or expenses, but in no event shall the system adopted by the department discriminate among risks based upon race, creed, color, or national origin. The classification system shall divide the state into geographical areas based upon hazards or expenses of claims.

(2) Each insurer shall annually file with the department a statement reflecting the total number of persons insured by the insurer within each classification by coverage, the premium volume in each classification by coverage, the paid and reserved losses incurred in each classification by coverage, the number of cancellations or nonrenewals by the insurer during the period and the number of new insureds during the period. This statement shall be filed annually on a date determined by the department and shall cover a 1-year period.

(3) The department may promulgate rules to require each insurer to report its loss and expense experience by classification, in such detail and as often as may be necessary to aid the department in determining the reasonableness of rates, the validity of loss projections and the validity of the risk classification system.

Section 10. Section 627.342, Florida Statues, as created by chapter 77-468, Laws of Florida, is hereby repealed.

Section 11. Subsection (2) of section 627.735, Florida Statutes, is hereby repealed.

Section 12. This act shall take effect on January 1, 1979, and shall apply to all accidents occurring on or after the effective date.

Approved, June 20, 1978

PRINCIPAL PROVISIONS OF THE NEVADA LAW

This law, enacted April 24, amended May 3, 1973, and effective Feb. 1, 1974, restricts tort liability in this way: An accident victim cannot recover for general damages unless his medical benefits exceed $750 or his injury results in chronic or permanent injury, permanent partial or permanent total disability, disfigurement, more than 180 days of inability to work in his occupation, fracture of a major bone, dismemberment, permanent loss of a body function, or death.

If the injured person receives necessary nursing services from a relative or a member of his household, he can include the reasonable value of the services in reaching the $750 threshold.

The law requires motorists (except motorcyclists) to buy a $10,000 package of first-party benefits to provide:

—Benefits for medical, hospital, nursing and rehabilitative expenses.

—Disability income benefits of up to $175 a week. If these benefits are excludable from gross income for tax purposes, the benefits are limited to 85 per cent of the lost income.

—Replacement service benefits up to $18 a day for up to 104 weeks.

—Survivor's benefits of not less than $5,000 and not more than the amount which the accident victim would have received in disability income benefits for one year if he had not died, less any expenses the survivors avoided because of his death.

—Funeral benefits of $1,000.

Insurers must offer deductibles to the first-party coverages.

Property damage is left under the tort system.

An insurance company can request a person who files a claim for no-fault benefits to submit to an independent mental or physical examination. The insurer presents the claimant a list of five doctors who specialize in a field appropriate for the claimant's injury. The claimant can select any one of the five. Expenses related to the examination are paid by the insurance company. If the injured person refuses to submit to the examination, the insurance company can withhold no-fault benefits.

Auto insurance is primary under the Nevada law except for workers' compensation.

When an insurer pays no-fault benefits to a person injured in an accident in which the other driver was at fault, it has the right of reimbursement from the other driver's insurance company. Disputes between insurance companies must be settled by binding intercompany arbitration.

The policyholder can agree with his insurer to exclude certain drivers from coverage by the policy. However, the exclusion may not be used with insurance contracts that can't be terminated by the insurer. The excluded drivers must be named in the policy or an endorsement to it.

Liability coverage with limits of $15,000 per person and $30,000 per accident for bodily injury and $5,000 per accident for property damage is required.

THE NEVADA LAW

An Act providing a plan of insurance for losses arising out of the maintenance or use of motor vehicles; defining terms; providing for the payment of certain benefits as they accrue and without regard to fault; providing priorities for payment of claims; abolishing tort liability in certain cases; specifying minimum limits of required tort liability coverage; requiring maintenance of security for certain motor vehicles; providing for subrogation and reimbursement of insurers in certain cases; providing for discovery procedures; providing for an assigned claims plan; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Section 1. Title 57 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 51, inclusive, of this act.

Sec. 2. This chapter shall be known as the Nevada Motor Vehicle Insurance Act.

Sec. 3. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 to 19, inclusive, of this act have the meanings ascribed to them in such sections.

Sec. 4. "Added reparation benefits" means benefits provided by optional added reparation insurance.

Sec. 5. 1. "Basic reparation benefits" means the net benefits payable for injury arising out of the maintenance or use of a motor vehicle.

2. "Basic reparation benefits" do not include benefits for harm to property.

Sec. 6. "Basic reparation insurance" includes a contract of insurance or self-insurance under which the obligation to pay basic reparation benefits arises.

Sec. 7. "Basic reparation insured" means:

1. A person identified by name as an insured in a contract of basic reparation insurance complying with this chapter; and

2. While residing in the same household with a named insured, the following persons not identified by name as an insured in any other contract of basic reparation insurance complying with this chapter:

(a) A spouse or other relative of a named insured; and

(b) A minor in the custody of a named insured or of a relative residing in the same household with a named insured.

A person resides in the same household if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.

Sec. 8. "Benefits payable" include the following defined benefits not to exceed $10,000 per person per accident:

1. "Disability income benefits" means payment, not to exceed $175 per week, for loss of income from work the injured person would have performed if he had not been injured and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income for substitute work actually performed by him or by income he would have earned in available appropriate substitute work he was capable of performing, but unreasonably failed to undertake. If disability income benefits are excludable from gross income for income tax purposes, "disability income benefits" means payment, not to exceed $175 per week, for 85 percent of loss of income as calculated in this subsection. As used in this subsection, "income" includes but is not limited to salary, wages, tips, commissions, professional fees, profits from an individually owned business or farm, or the profits or income from any partnership, or profits from a corporation which are taxed pursuant to 26 U.S.C. 1371 et seq.

2. "Funeral benefits" means payment for total charges not in excess of $1,000 for expenses in any way related to funerals, cremation or burial.

3. "Medical benefits" means payment for all reasonable charges incurred for necessary medical services, X-ray, dental and rehabilitative services, including but not limited to prosthetic devices, necessary ambulance, hospital and nursing services. Such benefits also include necessary remedial treatment and services recognized and permitted under the laws of this state for an injured person who relies upon spiritual means, through prayer alone, for healing in accordance with his religious beliefs. The term does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semi-private accommodation, unless intensive care is medically required.

4. "Replacement services benefits" means payment, not to exceed $18 per day nor to extend beyond 104 weeks, conditioned upon the nonpayment of disability income benefits, for expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family if he had not been injured.

5. "Survivor's benefits" means payment, in an amount not less than $5,000 and, except as provided in this subsection, not more than

the amount a decedent would have received in disability income benefits for a period of 1 year if he had survived, to compensate survivors for loss of contributions of things of economic value which the survivors would have received from the decedent if he had not suffered the fatal injury, less expenses the survivors avoided by reason of the decedent's death.

Sec. 9. "Injury" and "injury to person" mean bodily harm, sickness, disease or death.

Sec. 10. "Maintenance or use of a motor vehicle" means maintenance or use of a motor vehicle as a vehicle, including, incident to its maintenance or use as a vehicle, occupying, entering into and alighting from it. Maintenance or use of a motor vehicle does not include:

1. Conduct within the course of a business of repairing, servicing or otherwise maintaining motor vehicles unless the conduct occurs off the business premises.

2. Conduct in the course of loading and unloading the vehicle unless the conduct occurs while occupying, entering into or alighting from it.

Sec. 11. "Motor vehicle" means a motor vehicle as defined in NRS 482.075 which is designed and registered to be operated upon a highway, but does not include:

1. Motorcycles as defined in NRS 482.070.

2. Vehicles which are subject to the license fee and registration requirements of the Interstate Highway User Apportionment Act (NRS 706.801 to 706.861, inclusive) and which are not based in this state.

Sec. 12. "Net benefits payable" means benefits payable less all assistance or advantages a person receives or is entitled to receive from social security, the railroad retirement act, workmen's compensation or under the federal employer liability act as calculated in section 33 of this act.

Sec. 13. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and other nonpecuniary damage recoverable under the tort law of this state.

Sec. 14. "Owner" means a person, other than a lienholder or secured party, who owns or has title to a motor vehicle or is entitled to the use and possession of a motor vehicle subject to a security interest held by another person. The term does not include a lessee under a lease not intended as security.

Sec. 15. "Reparation obligor" means an insurer or self-insurer providing basic or added reparation benefits under this chapter.

Sec. 16. "Secured vehicle" means a motor vehicle for which security is provided as required by this chapter.

Sec. 17. "Security covering the vehicle" means the insurance or other security which is provided as required by this chapter.

Sec. 18. "Self-insurer" means a person who provides security pursuant to NRS 485.380.

Sec. 19. "Survivor" means a person identified in NRS 12.090 as one entitled to receive benefits by reason of the death of another person.

Sec. 20. 1. Every owner of a motor vehicle registered in this state, or operated in this state by him or with his permission, shall continuously provide with respect to the motor vehicle while it is either present or registered in this state, and any other person may provide with respect to any motor vehicle, by a contract of insurance or by qualifying as a self-insurer, security for the payment of basic reparation benefits in accordance with this chapter and security for payment of tort liabilities, arising from maintenance or use of the motor vehicle.

2. Security may be provided by a contract of insurance or by qualifying as a self-insurer in compliance with chapter 485 of NRS.

Sec. 21. 1. An insurance contract which purports to provide coverage for basic reparation benefits or is sold with representation that it provides security covering a motor vehicle has the legal effect of including all coverages required by this chapter.

2. Notwithstanding any contrary provision in it, every contract of liability insurance for injury, wherever issued, covering ownership, maintenance or use of a motor vehicle, except a contract which provides coverage only for liability in excess of required minimum tort liability coverages, includes basic reparation benefit coverages and minimum security for tort liabilities required by this chapter, while it is in this state, and qualifies as security covering the vehicle.

3. An insurer authorized to transact or transacting business in this state may not exclude, in any contract of liability insurance for injury, wherever issued, covering ownership, maintenance or use of a motor vehicle, except a contract providing coverage only for liability in excess of required minimum tort liability coverage, the basic reparation benefit coverages and required minimum security for tort liabilities required by this chapter, while the vehicle is in this state.

Sec. 21.5. Nothing in section 21 of this act limits the payment of benefits without regard to fault under the provisions of an insurance contract issued outside of this state and containing limits of coverage in excess of basic reparation benefit coverage.

Sec. 22. 1. The requirement to provide security under section 20 of this act does not apply with respect to any motor vehicle owned by the United States, this state, any political subdivision of this state or any municipality of this state.

2. To the extent that an entity specified in subsection 1 does not provide security, this chapter does not apply to any motor vehicles owned by such entity.

3. The requirement to provide security under section 20 of this act does not apply with respect to any motor vehicle owned by any person entitled to receive benefits under the federal Health Insurance for the Aged Act, Public Law 89-97, Title I, July 30, 1965, 79 Stat. 290.

Sec. 23. If the accident causing injury occurs

in this state, every person suffering loss from injury arising out of maintenance or use of a motor vehicle has a right to basic reparation benefits unless such benefits are excluded under the provisions of section 34 of this act.

Sec. 24. If the accident causing injury occurs outside this state, but in the United States of America, its territories and possessions, Mexico or Canada:

1. Basic reparation insureds, the driver or other occupants of a secured motor vehicle and the survivors of such persons suffering loss from injury arising out of maintenance or use of a motor vehicle have a right to basic reparation benefits, unless such benefits are excluded under the provisions of section 34 of this act.

2. A nonresident of this state who is an operator or occupant of a secured commercial motor vehicle has no right to basic reparation benefits. This exclusion also applies to the survivors of any such nonresident.

3. For the purpose of this section, "commercial motor vehicle" means a vehicle of a type required to be registered by the laws of this state and used or maintained for the transportation of persons for hire, compensation or profit, or designed, used or maintained primarily for the transportation of property.

Sec. 25. 1. Basic reparation benefits shall be paid without regard to fault.

2. Basic reparation obligors and the assigned claims plan shall pay basic reparation benefits, under the terms and conditions stated in this chapter, for loss from injury arising out of maintenance or use of a motor vehicle. This obligation exists without regard to immunity from liability or suit which might otherwise be applicable.

Sec. 26. Except as provided in section 27 of this act:

1. Any person who sustains an injury while an operator or occupant of a motor vehicle shall claim basic reparation benefits from insurers in the following order of priority:

(a) His insurer.

(b) The insurer of the owner of the motor vehicle.

(c) The insurer of the operator of the motor vehicle.

2. Any person who sustains an injury and is not an operator or occupant of a motor vehicle shall claim basic reparation benefits from insurers in the following order of priority:

(a) His insurer.

(b) The insurer of the owner of the motor vehicle.

(c) The insurer of the operator of the motor vehicle.

3. If a person described in subsection 2 is not covered by basic reparation insurance and the injuries sustained by him are proximately caused by two or more motor vehicles, he shall claim basic reparation benefits from the insurers of the owners and operators of each of the motor vehicles in the order of priority established in subsection 2. Any insurer paying basic reparation benefits shall be reimbursed by the other insurers for their proportionate share of the loss and the expense of processing the claim.

4. If two or more obligations to pay basic reparation benefits are applicable to an injury under the priorities set out in this section, benefits are payable only once and the reparation obligor against whom a claim is asserted shall process and pay the claim as if wholly responsible.

Sec. 27. 1. In case of injury to the driver or other occupant of a motor vehicle, if the accident causing the injury occurs while the vehicle is being used in the business of transporting persons or property, the security for payment of basic reparation benefits is the security covering the vehicle or, if none, the security under which the injured person is a basic reparation insured.

2. In case of injury to an employee, or to his spouse or other relative residing in the same household, if the accident causing the injury occurs while the injured person is driving or occupying a motor vehicle furnished by the employer, the security for payment of basic reparation benefits is the security covering the vehicle or, if none, the security under which the injured person is a basic reparation insured.

Sec. 28. 1. Tort liability with respect to accidents occurring in this state and arising from the ownership, maintenance or use of a motor vehicle is abolished except as to:

(a) Liability of the owner of a motor vehicle involved in an accident if security covering the vehicle was not provided at the time of the accident;

(b) Liability of a person in the business of selling, manufacturing, repairing, servicing or otherwise maintaining motor vehicles arising from a defect in a motor vehicle caused or not corrected by an act or omission in selling, manufacturing, repairing, servicing or other maintenance of a vehicle in the course of his business;

(c) Liability of a person for intentionally caused harm to person or property;

(d) Liability of a person for harm to property other than a motor vehicle and its contents;

(e) Liability of a person from harm to an operator of or passenger on a motorcycle as defined in NRS 482.070;

(f) Liability of a person in the business of parking or storing motor vehicles arising in the course of that business for harm to a motor vehicle and its contents;

(g) Damages for any loss not recoverable as basic reparation benefits by reason of the limitation on benefits for those losses, as provided in section 8 of this act; and

(h) Damages for noneconomic detriment, but only if the medical benefits for the injured person exceed $750, or if the accident causes death, chronic or permanent injury, permanent partial or permanent total disability, disfigure-

ment, more than 180 days of inability of the injured person to work in his occupation, fracture of a major bone, dismemberment or permanent loss of a body function.

2. Any person who receives medical and surgical benefits is considered in compliance with the requirements of paragraph (i) of subsection 1 upon a showing that the medical treatment received has a reasonable value of at least $750. Any person receiving ordinary and necessary services normally performed by a nurse from a relative or a member of his household may include the reasonable value of such services in meeting the requirements of that paragraph.

Sec. 29. 1. A reparation obligor does not have and may not directly or indirectly contract for a right of reimbursement from or subrogation to the proceeds of a claim for relief or cause of action for noneconomic detriment of a recipient of basic or added reparation benefits.

2. Except as provided in subsection 1, whenever a person who receives or is entitled to receive basic or added reparation benefits for an injury has a claim or cause of action against any other person for breach of an obligation or duty causing the injury, the reparation obligor is subrogated to the rights of the claimant, and has a claim for relief or cause of action, separate from that of the claimant, to the extent that:

(a) Elements of damage compensated for by basic or added reparation insurance are recoverable; and

(b) The reparation obligor has paid or become obligated to pay accrued or future basic or added reparation benefits.

3. The subrogation rights provided herein shall only be exercised in the manner provided in section 30.

4. A reparation obligor has a right of indemnity against a person who has converted a motor vehicle involved in an accident, or a person who has intentionally caused injury to person or harm to property, for basic and added reparation benefits paid to other persons for the injury or harm caused by the conduct of that person, for the cost of processing claims for those benefits and for reasonable attorney's fees and other expenses of enforcing the right of indemnity. For purposes of this subsection, a person is not a converter if he uses the motor vehicle in the good faith belief that he is legally entitled to do so.

Sec. 30. 1. Every reparation obligor shall, if its basic reparation insured is or would be held legally liable for damages for injuries sustained by a person to whom basic or added reparation benefits have been furnished by another reparation obligor, reimburse such other reparation obligors for the basic or added reparation benefits so furnished in an amount not to exceed the damages so recoverable. Disputes between reparation obligors as to the issues of liability and the amount of reimbursement shall be decided by compulsory, binding intercompany arbitration.

2. In any event in which the reparation obligor providing such benefits also has provided coverage to the same policyholder for collision or upset arising out of the same occurrence, such reparation obligor shall also submit the issue of recovery of any payment under that coverage to the mandatory, binding intercompany arbitration proceedings provided for in this subsection.

3. Findings, statements, testimony, and evidence admitted in and awards made in such arbitration proceedings required by subsections 1 and 2 are inadmissible in any court proceeding, and shall not be res judicata or operate as a collateral estoppel in any action brought by the claimant.

4. Where the recipient of basic or added reparation benefits or the reparation obligor or both have incurred legal expenses in prosecuting a claim for damages or in an arbitration proceeding for the recovery of payments which benefit both, the legal expenses shall be equitably apportioned.

5. Any person receiving basic or added reparation benefits shall cooperate and participate with the reparation obligor in any reimbursement or subrogation action on the part of such reparation obligor to recover payments from another reparation obligor or from a tortfeasor.

6. Every reparation obligor licensed to write automobile insurance in this state is deemed to have agreed, as a condition of doing business in this state or of renewing its certificate of authority after July 1, 1973, to the provisions of this section.

7. If a reparation obligor has paid basic reparation benefits required by this act and the insurer of a third party is not a signatory to a intercompany arbitration agreement, such reparation obligor shall be entitled to reimbursement of such payments from the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the claimant against any motorist legally responsible for the bodily injury because of which such payment is made. The claimant shall hold in trust for the benefit of the obligor all rights of recovery which he has against such motorist, but only to the extent that such claim is paid under the provisions of this act. The claimant shall take reasonable precautions to preserve such rights if the claimant has not taken action to recover such benefits prior to 6 months before the statute of limitations runs, and if in writing the reparation obligor shall demand that the claimant, through any representative not in conflict in interest with the claimant, take such action as may be necessary or appropriate to recover such payment as damages from such motorist. The action shall be taken in the name of the claimant, at the expense of the reparation obligor, but only to the extent of the payment made by the reparation obligor. If the claimant has previously taken action, he shall be reim-

bursed for expenses, costs and attorney's fees incurred by the claimant in connection therewith, and the claimant shall execute and deliver to the insurer or carrier such instruments and papers as may be appropriate to secure the rights and obligations of the claimant and the reparation obligor established by this provision.

Sec. 31. In any action in tort brought as a result of bodily injury, death, sickness or disease, caused by accident occurring on or after February 1, 1974, arising out of the ownership, maintenance or use of a motor vehicle within this state, contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not greater than the negligence of the person against whom recovery is sought; but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person recovering.

Sec. 32. The requirement of security for payment of tort liabilities, as provided in section 20 of this act, is fulfilled by providing:

1. Subject to subsection 2, liability coverage of not less than $15,000 for all damages arising out of bodily injury or death sustained by any one person as a result of any one accident applicable to each person sustaining injury caused by accident arising out of ownership, maintenance, use, loading or unloading of the secured vehicle;

2. Liability coverage of not less than $30,000 in aggregate for all damages arising out of bodily injury or death sustained by two or more persons as a result of any one accident arising out of ownership, maintenance, use, loading or unloading of the secured vehicle;

3. Liability coverage of not less than $5,000 for all damages arising out of injury to or destruction of property, including the loss of use thereof, as a result of any one accident arising out of ownership, maintenance, use, loading or unloading of the secured vehicle; and

4. That the liability coverages apply to accidents during the contract period in a territorial area not less than the United States of America, its territories and possessions and Canada.

Sec. 33. All assistance or advantages a person receives or is entitled to receive from social security, the railroad retirement act, workmen's compensation or under the federal employer liability act by reason of an injury arising out of the use or maintenance of a motor vehicle are subtracted from benefits payable in calculating net benefits payable. Basic reparation benefits are primary in relation to all other insurance.

Sec. 34. 1. A person who converts a motor vehicle is disqualified from basic or added reparation benefits, including benefits otherwise due him as a survivor, for injuries arising from maintenance or use of the converted vehicle. If the converter dies from his injuries, his survivors are not entitled to basic or added reparation benefits. For the purpose of this subsection, a person is not a converter if he uses the motor vehicle in the good faith belief that he is legally entitled to do so.

2. A person who is injured while perpetrating or attempting to perpetrate a felony is disqualified from basic or added reparation benefits for injuries arising from maintenance or use of a motor vehicle in the perpetration or attempted perpetration of such felony. If such person dies from his injuries, his survivors are not entitled to basic or added reparation benefits.

3. A person intentionally causing or attempting to cause injury to himself or another person is disqualified from basic or added reparation benefits for injury arising from his acts, including benefits otherwise due him as a survivor. If a person dies as a result of intentionally causing or attempting to cause injury to himself, his survivors are not entitled to basic or added reparation benefits for loss arising from his death.

4. A person who is injured while an operator of or a passenger on a motorcycle as defined in NRS 482.070 is disqualified from basic or added reparation benefits. If such person dies from the injuries, his survivors are not entitled to basic or added reparation benefits.

Sec. 35. In accordance with the rules and regulations promulgated by the commissioner of insurance, basic reparation insurers shall, at appropriately reduced premium rates, offer deductibles to basic or added reparation benefits applicable only to claims of basic reparation insureds and, in case of death of a basic reparation insured, of his survivors from all personal injury. If two basic reparation insureds to whom the deductible is applicable under the contract of insurance are injured in the same accident, the aggregate amount of the deductible applicable to all of them shall not exceed the specified deductible, which amount where necessary shall be allocated equally among them. Any basic reparation insured subject to such a deductible may not claim or recover any amount so deducted from any owner, registrant, operator or occupant of a motor vehicle or from any person or organization legally responsible for the acts or omissions of any such owner, registrant, operator or occupant, if such persons or organizations are exempt from tort liability under the provisions of this chapter.

Sec. 36. Basic reparation insurers shall offer such additional optional coverage for added reparation benefits as may be required by regulations promulgated by the commissioner of insurance. Added reparation benefits shall include without limitation:

1. Benefits payable in excess of the limitations provided in section 8 of this act.

2. Collision and upset damage.

Sec. 37. Terms and conditions of contracts

and certificates or other evidence of insurance coverage sold or issued in this state providing motor vehicle tort liability, basic reparation and added reparation insurance coverages, and of forms used by insurers offering these coverages, are subject to approval and regulation by the commissioner of insurance. The commissioner shall approve only terms and conditions consistent with the purposes of this chapter and fair and equitable to all persons whose interests may be affected. The commissioner may limit by rule the variety of coverages available in order to give insurance purchasers reasonable opportunity to compare the cost of insuring with various insurers.

Sec. 38. 1. A person entitled to basic reparation benefits because of injury covered by this chapter may obtain them through the assigned claims plan established pursuant to the provisions of section 39 of this act and in accordance with the provisions on time for presenting claims under the assigned claims plan as provided in section 40 of this act if:

(a) Basic reparation insurance is not applicable to the injury;

(b) Basic reparation insurance applicable to the injury cannot be identified;

(c) Basic reparation insurance applicable to the injury is inadequate to provide the contracted-for benefits because of financial inability of a reparation obligor to fulfill its obligation; or

(d) A claim for basic reparation benefits is rejected by a reparation obligor for a reason other than that the person is not entitled under this chapter to the basic reparation benefits claimed.

2. If a claim qualifies for assignment under paragraphs (b), (c) or (d) of subsection 1, the assigned claims bureau or any reparation obligor to whom the claim is assigned is subrogated to all rights of the claimant against any reparation obligor, its successor in interest or substitute, legally obligated to provide basic reparation benefits to the claimant, for basic reparation benefits provided by the assignee.

3. Except in case of a claim assigned under paragraph (c) of subsection 1, if a person receives basic reparation benefits through the assigned claims plan, all assistance or advantages he receives or is entitled to receive as a result of the injury, other than by way of succession at death, death benefits from life insurance or in discharge of familial obligations of support, are subtracted in calculating net benefits payable.

4. A person who does not comply with the requirement of providing security for the payment of basic reparation benefits, as provided in section 20 of this act, and a person as to whom such security is invalidated because he is disqualified from receiving basic reparation benefits under section 34 of this act, is not entitled to receive basic reparation benefits from the assigned claims plan.

Sec. 39. 1. Reparation obligors providing basic reparation insurance in this state may organize and maintain, subject to approval and regulation by the commissioner of insurance, an assigned claims bureau and an assigned claims plan and adopt rules for their operation and for assessment of costs on a fair and equitable basis consistent with this chapter. If they do not organize and continuously maintain an assigned claims bureau and an assigned claims plan in a manner considered by the commissioner of insurance to be consistent with this chapter, he shall organize and maintain an assigned claims bureau and and an assigned claims plan, except that if the commissioner of insurance organizes an assigned claims bureau and an assigned claims plan, he may designate representatives from reparation obligors to maintain such bureau and plan. Each reparation obligor providing basic reparation insurance in this state shall participate in the assigned claims bureau and the assigned claims plan. Costs incurred shall be allocated fairly and equitably among the reparation obligors on a basis reasonably related to the volume of basic reparation premiums they write in Nevada.

2. The assigned claims bureau shall promptly assign each claim and notify the claimant of the identity and address of the assignee of the claim. Claims shall be assigned so as to minimize inconvenience to claimants. The assignee thereafter has rights and obligations as if he had issued a policy of basic reparation insurance complying with this chapter applicable to the injury or, in case of financial inability of a reparation obligor to perform its obligations, as if the assignee had written the applicable basic reparation insurance, undertaken the self-insurance or lawfully obligated itself to pay reparation benefits. The exercise of this right by the reparations obligor shall not operate so as to diminish the minimum security in the amounts required in NRS 485.3091 for payment of tort liabilities to the recipient of basic benefits.

3. This section shall not apply to a self-insurer who provides security pursuant to NRS 485.380.

Sec. 40. 1. Except as provided in subsection 2, a person authorized to obtain basic reparation benefits through the assigned claims plan shall notify the assigned claims bureau of his claim within the time that would have been allowed for commencing an action for those benefits under the provisions of chapter 11 of NRS if there had been identifiable coverage in effect and applicable to the claim.

2. If timely action for basic reparation benefits is commenced against a reparation obligor who is unable to fulfill his obligations because of financial inability, a person authorized to obtain basic reparation benefits through the assigned claims plan shall notify the assigned claims bureau of his claim within 6 months after discovery of the financial inability.

Sec. 41. 1. Basic and added reparation benefits are payable biweekly as they accrue. Benefits are overdue if not paid within 30 days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, unless the reparation obligor elects to accumulate claims for periods not exceeding 15 days and pays them within 15 days after the period of accumulation. If reasonable proof is supplied as to only part of a claim, and the part totals $100 or more, the part is overdue if not paid within the time provided by this section. Allowable expense benefits may be paid by the reparation obligor directly to persons supplying products, services or accommodations to the claimant.

2. Overdue payments bear interest at the rate of 18 percent per annum.

3. A claim for basic or added reparation benefits shall be paid without deduction for the benefits which are to be subtracted pursuant to the provisions on the calculation of net benefits payable under section 33 of this act, if these benefits have not been paid to the claimant before the reparation benefits are overdue or the claim is paid. The reparation obligor is entitled to reimbursement from the person obligated to make the payments or from the claimant who actually receives the payments.

4. A reparation obligor may bring an action to recover benefits which are not payable, but are in fact paid, because of an intentional misrepresentation of a material fact, upon which the reparation obligor relies, by the insured or by a person providing an item of allowable expense covered under benefits payable. The action may be brought only against the person providing the item of allowable expense, unless the insured has intentionally misrepresented the facts or knew of the misrepresentation. An insurer may offset amounts he is entitled to recover from the insured under this subsection against any basic or added reparation benefits otherwise due.

5. A reparation obligor who rejects a claim for basic reparation benefits shall give to the claimant prompt written notice of the rejection, specifying the reason. If a claim is rejected for a reason other than that the person is not entitled to the basic reparation benefits claimed, the written notice shall inform the claimant that he may file his claim with the assigned claims bureau and shall give the name and address of the bureau.

Sec. 42. 1. If overdue benefits are recovered in an action against reparation obligor or paid by the reparation obligor after receipt of notice of the attorney's representation, a reasonable attorney's fee for advising and representing a claimant on a claim or in an action for basic reparation benefits shall be paid by the reparation obligor to the attorney. No part of the fee for representing the claimant in connection with these benefits is a charge against benefits otherwise due the claimant. All or part of the fee may be deducted from the benefits otherwise due to claimant if any significant part of his claim for benefits was fraudulent or so excessive as to have no reasonable foundation.

2. In any action brought against the insured by the reparation obligor, the court may award the insured's attorney a reasonable attorney's fee for defending the action.

Sec. 43. A reparation obligor shall be allowed a reasonable attorney's fee for defending a claim for benefits that is fraudulent or so excessive as to have no reasonable foundation. The fee may be treated as an offset to benefits due or which thereafter accrue. The reparation obligor may recover from the claimant any part of the fee not offset or otherwise paid.

Sec. 44. 1. If the reasonably anticipated net benefits payable subject to the settlement does not exceed $2,500, a claim of an individual for basic or added reparation benefits arising from injury, including a claim for future loss other than allowable expense, may be discharged by a settlement for an agreed amount payable in installments or in a lump sum. If the reasonably anticipated net benefits payable subject to the settlement exceeds $2,500, the settlement may be made with approval of the district court upon a finding by the court that the settlement is in the best interest of the claimant. Upon approval of the settlement, the court may make appropriate orders concerning the safeguarding and disposing of the proceeds of the settlement. A settlement agreement may also provide that the reparation obligor shall pay the reasonable cost of appropriate medical treatment or procedures, with reference to a specified condition, to be performed in the future.

2. A settlement agreement for an amount payable in installments may be modified as to amounts to be paid in the future, if it is shown that a material and substantial change of circumstances has occurred or that there is newly discovered evidence concerning the claimant's physical condition, loss or rehabilitation, which could not have been known previously or discovered in the exercise of reasonable diligence.

3. A settlement agreement may be set aside if it is procured by fraud or its terms are unconscionable.

Sec. 45. 1. In an action by a claimant, a lump sum or installment judgment may be entered for basic or added reparation benefits, other than medical benefits, that would accrue after the date of the award. A judgment for medical benefits that would accrue after the date of the award may not be entered. In an action for reparation benefits or to enforce rights under this chapter, however, the court may enter a judgment declaring that the reparation obligor is liable for the reasonable cost of appropriate medical treatment or procedures, with reference to a specified condition, to be performed in the

future if it is ascertainable or foreseeable that treatment will be required as a result of the injury for which the claim is made.

2. At the instance of the claimant, a court may commute future benefits payable, other than medical benefits, to a fixed sum, but only upon a finding of one or more of the following:

(a) That the award will promote the health and contribute to the rehabilitation of the injured person;

(b) That the present value of all benefits payable other than medical benefits to accrue thereafter does not exceed $1,000; or

(c) That the parties consent and the award is in the best interests of the claimant.

3. An installment judgment for benefits, other than medical benefits, that will accrue thereafter may be entered only for a period as to which the court can reasonably determine future net benefits payable. An installment judgment may be modified as to amounts to be paid in the future upon a finding that a material and substantial change of circumstances has occurred, or that there is newly discovered evidence concerning the claimant's physical condition, loss or rehabilitation, which could not have been known previously or discovered in the exercise of reasonable diligence.

4. The court may make appropriate orders concerning the safeguarding and disposing of funds collected under the judgment.

5. Appeals from a judgment for basic or added reparation benefits may be taken in accordance with the Nevada Rules of Civil Procedure.

Sec. 46. Except as otherwise provided in this chapter, basic reparation benefits shall be paid without deduction or setoff.

Sec. 47. 1. If the mental or physical condition of a person is material to a claim for past or future basic or added reparation benefits, the reparation obligor may petition the district court for an order directing the person to submit to a mental or physical examination by a physician. Upon notice to the person to be examined and all persons having an interest, the court may make the order for good cause shown. The order shall specify the time, place, manner, conditions, scope of the examination and the physician by whom it is to be made.

2. If requested by the person examined, the reparation obligor causing a mental or physical examination to be made shall deliver to the person examined a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, and reports of earlier examinations of the same condition. By requesting and obtaining a report of the examination ordered or by taking the deposition of the physician, the person examined waives any privilege he may have, in relation to the claim for basic or added reparation benefits, regarding the testimony of every other person who has examined or may thereafter examine him respecting the same condition. This subsection does not preclude discovery of a report of an examining physician, taking a deposition of the physician or other discovery procedures in accordance with any rule of court or other provision of law. This subsection applies to examinations made by agreement of the person examined and the reparation obligor.

3. If any person refuses to comply with an order entered under this section the court may make any just order as to the refusal, but may not find a person in contempt for failure to submit to a mental or physical examination.

Sec. 48. 1. Upon request of a basic or added reparation claimant or reparation obligor, information relevant to a claim for basic or added reparation benefits shall be disclosed as follows:

(a) An employer shall furnish a statement of the work record and earnings of an employee upon whose injury the claim is based. The statement shall cover the period specified by the claimant or reparation obligor making the request and may include a reasonable period before, and the entire period after, the injury.

(b) The claimant shall deliver to the reparation obligor a copy of every written report, previously or thereafter made, relevant to the claim, and delivered to him, concerning any medical treatment or examination of a person upon whose injury the claim is based and the names and addresses of physicians and medical care facilities rendering diagnoses or treatment in regard to the injury or to a relevant past injury, and the claimant shall authorize the reparation obligor to inspect and copy relevant records of physicians and of hospitals, clinics and other medical facilities.

(c) A physician or hospital, clinic or other medical facility furnishing examinations, services or accommodations to an injured person in connection with a condition alleged to be connected with an injury upon which a claim is based, upon authorization of the claimant shall permit inspection and copying of all records and reports as to the history, condition, treatment and dates and cost of treatment. The reparation obligor shall upon request furnish to the claimant copies of all such records and reports.

2. Any person other than the claimant providing information under this section may charge the person requesting the information for the reasonable cost of providing it.

Sec. 49. Ratemaking and regulation of rates for basic and added reparation insurance are governed by chapter 686B of NRS.

Sec. 50. The commissioner of insurance may adopt rules to provide effective administration of this chapter which are consistent with the provisions of NRS 679B.130 and with the purposes of this chapter and fair and equitable to all persons whose interests may be affected.

Sec. 51. The director of the department of motor vehicles may adopt rules to implement

and provide effective administration of the provisions on evidence of security and termination of security under chapter 485 of NRS.

Sec. 52. Chapter 686B of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. Unless such resulting rates would be inadequate as defined in subsection 3 of NRS 686B.050, no reparation obligor may impose rates for basic or added reparation benefits as provided in section 2 to 51, inclusive, of this act, which exceed 85 percent of the base rate as established by the commissioner, for the same class of coverage under a system of tort liability.

2. As used in this section, "class of coverage" means a classification of benefits payable, including without limitation reparations for personal injury, without regard to whether such benefits are payable under a system of tort liability or otherwise.

Sec. 53. NRS 485.200 is hereby amended to read as follows:

485.200 The requirements as to security and suspension in NRS 485.190 to 485.300, inclusive, shall not apply:

1. To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy and security as required by section 20 of this act with respect to the motor vehicle involved in such accident;

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond and security as required by section 20 of this act with respect to his operation of motor vehicles not owned by him;

3. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the division, covered by any other form of liability insurance policy or bond;

4. To any person qualifying as a self-insurer under NRS 485.380, or to any person operating a motor vehicle for such self-insured;

5. To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such operator or owner;

6. To the operator or the owner of a motor vehicle legally parked at the time of the accident;

7. To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission; or

8. If, prior to the date that the division would otherwise suspend the license registration or nonresident's operating privilege under NRS 485.190, there shall be filed with the division evidence satisfactory to it that the person who would otherwise have to file security has been released from liability or has been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident.

Sec. 54. NRS 485.308 is hereby amended to read as follows:

485.308 1. Proof of financial responsibility may be furnished by filing with the division the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy and security as required by section 20 of this act for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

2. No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such motor vehicle is so designated in such a certificate.

Sec. 55. NRS 485.3091 is hereby amended to read as follows:

485.3091 1. A "motor vehicle liability policy" as the term is used in this chapter shall mean an owner's or an operator's policy of liability insurance and of security as required by section 20 of this act issued, except as otherwise provided in NRS 485.309, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

2. Such owner's policy of liability insurance shall:

(a) Designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

(b) Insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: $15,000 because of bodily injury to or death of one person in any one accident, and, subject to such limit for one person, $30,000 because of bodily injury to or death of two or more persons in any one accident, and $5,000 because of injury to or destruction of property of others in any one accident.

3. Such operator's policy of liability insurance shall insure the person named as insured

therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

4. Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

5. Such motor vehicle liability policy need not insure any liability under any workmen's compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such motor vehicle, nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

6. Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(a) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by such motor vehicle liability policy occurs; the policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of the policy shall defeat or void the policy.

(b) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

(c) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in paragraph (b) of subsection 2 of this section.

(d) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this chapter shall constitute the entire contract between the parties.

7. Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

8. Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

9. The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers, which policies together meet such requirements.

10. Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

Sec. 56. NRS 485.380 is hereby amended to read as follows:

485.380 1. Any person in whose name more than 25 motor vehicles are registered in the State of Nevada may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the division as provided in subsection 2 of this section.

2. The division may, upon the application of such a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person and claims for basic reparation benefits as provided in sections 2 to 51, inclusive, of this act.

3. Upon not less than 5 days' notice and a hearing pursuant to such notice, the division may, upon reasonable grounds, cancel a certificate of self-insurance. Failure to pay any judgment within 30 days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

Sec. 57. NRS 690B.020 is hereby amended to read as follows:

690B.020 1. No policy insuring against liability arising out of the ownership, maintenance or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any such motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages, from owners or operators of uninsured or hit-and-run motor vehicles, for bodily injury, sickness or disease, including death, resulting from the ownership, maintenance or use of such uninsured or hit-and-run motor vehicle; but no such coverage shall be required in or supplemental to a policy issued to the State of Nevada or any political subdivision thereof, or where rejected in writing, on a form furnished by the insurer describing the coverage being rejected, by an insured named therein, or upon any renewal of such policy unless the coverage is then requested in writing by the named insured. The

coverage required in this section may be referred to as "uninsured vehicle coverage."

2. The amount of coverage to be so provided shall be not less than the minimum limits for bodily injury liability insurance provided for under the Motor Vehicle Safety Responsibility Act (chapter 485 of NRS), but may be in an amount not to exceed the bodily injury coverage purchased by the policyholder.

3. For the purposes of this section the term "uninsured motor vehicle" means a motor vehicle:

(a) With respect to which there is not available at the department of motor vehicles evidence of financial responsibility as required by chapter 485 of NRS;

(b) With respect to the ownership, maintenance or use of which there is no bodily injury liability insurance or bond applicable at the time of the accident, or, to the extent of such deficiency, bodily injury liability insurance or bond in force is less than the amount required by NRS 485.210;

(c) With respect to the ownership, maintenance or use of which the company writing any applicable bodily injury liability insurance or bond denies coverage or is insolvent;

(d) Used without the permission of its owner if there is no bodily injury liability insurance or bond applicable to the operator; or

(e) The owner or operator of which is unknown or after reasonable diligence cannot be found if:

(1) The bodily injury or death has resulted from physical contact of such automobile with the named insured or the person claiming under him or with an automobile which the named insured or such person is occupying; and

(2) The named insured or someone on this behalf has reported the accident within the time required by NRS 484.223 to 484.227, inclusive, to the police department of the city where it occurred, or if it occurred in an unincorporated area, to the sheriff of the county or to the Nevada highway patrol.

4. For the purposes of this section the term "uninsured motor vehicle" also includes, subject to the terms and conditions of such coverage, an insured other motor vehicle where:

(a) The liability insurer of such other motor vehicle is unable because of its insolvency to make payment with respect to the legal liability of its insured within the limits specified in its policy; and

(b) The occurrence out of which such legal liability arose took place while the uninsured motor vehicle coverage required under paragraph (a) was in effect; and

(c) The insolvency of the liability insurer of such other motor vehicle existed at the time of, or within 1 year after, such occurrence.

Nothing contained in this subsection shall be deemed to prevent any insurer from providing insolvency protection to its insureds under more favorable terms.

5. In the event of payment to any person under uninsured motor vehicle coverage, and subject to the terms of such coverage, to the extent of such payment the insurer shall be entitled to the proceeds of any settlement or recovery from any person legally responsible for the bodily injury as to which such payment was made, and to amounts recoverable from the assets of the insolvent insurer of the other motor vehicle.

6. A vehicle involved in a collision which results in bodily injury or death shall be presumed to be an uninsured motor vehicle if no evidence of financial responsibility is supplied to the department of motor vehicles in the manner required by chapter 485 of NRS within 60 days after the collision occurs.

7. To the extent that a person is entitled to basic or added reparation benefits under sections 2 to 51, inclusive, of this act, he may not recover payments under uninsured motor vehicle coverage.

Sec. 58. NRS 690B.030 is hereby repealed.

Sec. 59. 1. If section 52 of this act or its application to any person, thing or circumstance is held invalid, such invalidity shall cause the provisions of sections 1 to 60, inclusive, of this act or their application to be invalid.

2. Except as provided in subsection 1, if any provision of this act or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 60. This act shall take effect February 1, 1974. Accidents occurring before this date are not covered by or subject to this act. The commissioner of insurance and the director of the department of motor vehicles shall exercise, prior to the effective date of this act, the authority vested in them under this act to do all things necessary to implement the act on the effective date.

Amendments

An Act to amend an act entitled "An Act providing a plan of insurance for losses arising out of the maintenance or use of motor vehicles; defining terms; providing for the payment of certain benefits as they accrue and without regard to fault; providing priorities for payment of claims; abolishing tort liability in certain cases; specifying minimum limits of required tort liability coverage; requiring maintenance of security for certain motor

vehicles; providing for subrogation and reimbursement of insurers in certain cases; providing for discovery procedures; providing for an assigned claims plan; and providing other matters properly relating thereto," being Senate Bill No. 611 of the 57th session of the Nevada legislature.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Section 1. Section 12 of the above-entitled act is hereby amended to read as follows:

Section 12. "Net benefits payable" means benefits payable less all assistance or advantages a person receives or is entitled to receive from social security or workmen's compensation as calculated in section 33 of this act.

Section 2. Section 28 of the above-entitled act is hereby amended to read as follows:

Section 28. 1. Tort liability with respect to accidents occurring in this state and arising from the ownership, maintenance or use of a motor vehicle is abolished except as to:

(a) Liability of the owner of a motor vehicle involved in an accident if security covering the vehicle was not provided at the time of the accident;

(b) Liability of a person in the business of selling, manufacturing, repairing, servicing or otherwise maintaining motor vehicles arising from a defect in a motor vehicle caused or not corrected by an act or omission in selling, manufacturing, repairing, servicing or other maintenance of a vehicle in the course of his business;

(c) Liability of a person for intentionally caused harm to person or property;

(d) Liability of a person for harm to property including, but not limited to, a motor vehicle and its contents;

(e) Liability of a person from harm to an operator of or passenger on a motorcycle as defined in NRS 482.070;

(f) Liability of a person in the business of parking or storing motor vehicles arising in the course of that business for harm to a motor vehicle and its contents;

(g) Damages for any loss not recoverable as basic reparation benefits by reason of the limitation on benefits for those losses, as provided in section 8 of this act; and

(h) Damages for noneconomic detriment, but only if the medical benefits for the injured person exceed $750, or if the accident causes death, chronic or permanent injury, permanent partial or permanent total disability, disfigurement, more than 180 days of inability of the injured person to work in his occupation, fracture of a major bone, dismemberment or permanent loss of a body function.

2. Any person who receives medical and surgical benefits is considered in compliance with the requirements of paragraph (h) of subsection 1 upon a showing that the medical treatment received has a reasonable value of at least $750. Any person receiving ordinary and necessary services normally performed by a nurse from a relative or a member of his household may include the reasonable value of such services in meeting the requirements of that paragraph.

Section 3. Section 31 of the above-entitled act is hereby amended to read as follows:

Section 31. In any action in tort brought as a result of bodily injury, death, sickness or disease, caused by accident occurring on or after February 1, 1974, arising out of the ownership, maintenance or use of a motor vehicle within this state, contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to a person or persons if such negligence was not greater than the negligence of the person against whom recovery is sought; but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person recovering.

Section 4. Section 33 of the above-entitled act is hereby amended to read as follows:

Section 33. All assistance or advantages a person receives or is entitled to receive from social security or workmen's compensation by reason of an injury arising out of the use or maintenance of a motor vehicle are subtracted from benefits payable in calculating net benefits payable. Basic reparation benefits are primary in relation to all other insurance.

Section 5. This act shall become effective at 12:01 a.m. on February 1, 1974, only if Senate Bill No. 611 of the 57th session of the legislature becomes effective prior thereto.

Laws 1975
Assembly Bill 234

Section 1. Section 53 of the above-entitled act, being chapter 530, Statutes of Nevada 1973, at page 836, is hereby amended to read as follows:

Section 53. NRS 485.200 is hereby amended to read as follows:

485.200 The requirements as to security and suspension in NRS 485.190 to 485.300, inclusive, shall not apply:

1. To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy and security as required by section 20 of this act with respect to the motor vehicle involved in such accident;

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond and security as required by section 20 of this act with respect to his operation of motor vehicles not owned by him;

3. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the division, covered by any other form of liability insurance policy or bond;

4. To any person qualifying as a self-insurer under NRS 485.380, or to any person operating a motor vehicle for such self-insured;

5. To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such operator or owner;

6. To the operator or the owner of a motor vehicle legally parked at the time of the accident;

7. To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission; or

8. If, prior to the date that the division would otherwise suspend the license and registration or nonresident's operating privilege under NRS 485.190, there shall be filed with the division evidence satisfactory to it that the person who would otherwise have to file security has been released from liability or has received a determination in his favor at a hearing conducted pursuant to NRS 485.191, or has been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident.

Sec. 2. This act shall become effective upon passage and approval.

Approved, May 14, 1975

Assembly Bill No. 296

AN ACT relating to the Motor Vehicle Insurance Act; deleting the requirement for deduction of social security from benefits payable; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Section 1. NRS 698.110 is hereby amended to read as follows:

698.110 "Net benefits payable" means benefits payable less all assistance or advantages a person receives or is entitled to receive from workmen's compensation as calculated in NRS 698.330.

Section 2. NRS 698.330 is hereby amended to read as follows:

698.330 All assistance or advantages a person receives or is entitled to receive from workmen's compensation by reason of an injury arising out of the use or maintenance of a motor vehicle are subtracted from benefits payable in calculating net benefits payable. Basic reparation benefits are primary in relation to all other insurance.

Approved, April 12, 1977

Assembly Bill 323

AN ACT relating to motor vehicle insurance; creating a presumption of the violation of a penal statute; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Section 1. NRS 484.263 is hereby amended to read as follows:

484.263 1. It is unlawful for any person to operate a motor vehicle registered in this state without having security covering the vehicle as required by chapter 698 of NRS.

2. Failure to deposit security if so required by the provisions of NRS 485.190 is prima facie evidence of violation of the provisions of this section.

Sec. 2. This act shall become effective on February 1, 1978.

Approved, May 12, 1977

Laws 1977
Senate Bill No. 305

AN ACT relating to motor vehicle insurance; requiring certain claimants for motor vehicle accident reparation benefits to submit to medical examination; and providing other matters properly relating thereto.

The People of the State of Nevada, represented

in Senate and Assembly, do enact as follows:

Section 1. NRS 698.470 is hereby amended to read as follows:

698.470 1. If the mental or physical condition of a person is material to a claim for past or future basic or added reparation benefits, the person shall, upon request of the reparation obligor, submit to an independent mental or physical examination by a physician within a reasonable time after the claim is made. The person shall choose the examining physician from a list of five physicians supplied by the reparation obligor. The physicians shall be in the medical field most appropriate to the condition of the person to be examined. The examination shall be conducted at a reasonable time and place. Costs of the examination and reasonable costs of out-of-town transportation, food and lodging for the person examined shall be paid by the reparation obligor. The person examined is entitled to a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions. In addition the person examined shall request that a copy of the report be submitted to the reparation obligor. The reparation obligor may request such additional examinations as may be reasonably necessary. If the person refuses to submit to an examination authorized under this subsection, the reparation obligor:

(a) May withhold any payments to which the person is entitled under this chapter until such time as he submits to the examination; or

(b) May petition the district court for an order directing the person to submit to the examination. Upon notice to the person to be examined and all persons having an interest, the court may make the order for good cause shown. The order shall specify the time, place, manner, conditions, scope of the examination and the physician by whom it is to be made.

2. If requested by the person examined, the reparation obligor shall deliver to the person examined a copy of the detailed written report of the examining physician. By requesting and obtaining a report of the examination ordered or by taking the deposition of the physician, the person examined waives any privilege he may have, in relation to the claim for basic or added reparation benefits, regarding the testimony of every other person who has examined or may thereafter examine him respecting the same condition. This subsection does not preclude discovery of a report of an examining physician, taking a deposition of the physician or other discovery procedures in accordance with any rule of court or other provision of law. This subsection applies to examinations made by agreement of the person examined and the reparation obligor.

3. If any person refuses to comply with an order entered under this section the court may make any just order as to the refusal, but may not find a person in contempt for failure to submit to a mental or physical examination.

Approved, May 13, 1977

Assembly Bill No. 620

AN ACT relating to motor vehicle insurance; allowing insurers and insureds to agree to exclude certain named persons from coverage; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter 698 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. Except as provided in subsection 2, an insurer and a named insured may agree to provide, in a contract of insurance or in a separate writing made a part of the contract, that while an insured vehicle is actually operated by any natural person designated by name coverage under the insurance contract does not apply to the person so designated or to any other person who would otherwise be entitled to claim the benefits of coverage for:

(a) Damage to a motor vehicle or liability for damage to property;

(b) Basic reparation benefits; or

(c) Payment of tort liability.

2. This section does not apply if the contract of insurance cannot be terminated by the insurer.

Section 2. NRS 698.200 is hereby amended to read as follows:

698.200 Except as provided in section 1 of this act:

1. An insurance contract which purports to provide coverage for basic reparation benefits or is sold with representation that it provides security covering a motor vehicle has the legal effect of including all coverages required by this chapter.

2. Notwithstanding any contrary provision in it, every contract of liability insurance for injury, wherever issued, covering ownership, maintenance or use of a motor vehicle, except a contract which provides coverage only for liability in excess of required minimum tort liability coverages, includes basic reparation benefit coverages and minimum security for tort liabilities required by this chapter, while it is in this state, and qualifies as security covering the vehicle.

3. An insurer authorized to transact or transacting business in this state may not exclude, in any contract of liability insurance for injury, wherever issued, covering ownership, maintenance or use of a motor vehicle, except a contract providing coverage only for liability in excess of required minimum tort liability coverage, the basic reparation benefit coverages and required minimum security for tort liabilities required by this chapter, while the vehicle is in this state.

Approved, May 13, 1977

PRINCIPAL PROVISIONS OF THE OREGON LAW

This state's original law was effective Jan. 1, 1972. It did not change the liability system.

It required liability policies for private passenger cars to provide up to $3,000 in medical and hospital benefits for expenses incurred within one year of an accident; 70 per cent of wage loss up to $500 a month; and $12 a day for substitute services. Wage loss and substitute services benefits were limited to 52 weeks and began 14 days after the accident.

The law was amended on July 24, 1973, to increase the first-party benefits. Effective Jan. 1, 1974, benefits for medical and hospital expenses are $5,000 per person. Seventy per cent of wage loss will be paid up to $750 a month for not over one year. Benefits for substitute services are now limited to $18 a day for up to one year. Benefits for both wage loss and substitute services are now paid from the first day if the disability continues for at least 14 days. A funeral benefit of $1,000 is provided.

Insurers may offer deductibles of up to $250 for the medical and hospital coverage.

Motorcycles are not covered by this law.

EXHIBIT C

Section 1. Sections 2 to 9 of this Act are added to and made a part of ORS 743.786 to 743.792.

Section 2. Every motor vehicle liability policy issued for delivery in this state that covers any private passenger motor vehicle other than a motorcycle shall provide to the person insured thereunder and members of his family residing in the same household injured in a motor vehicle accident, guest passengers injured while occupying the insured motor vehicle and pedestrians struck by the insured motor vehicle, the following hospital, medical and disability benefits for each accident:

(1) All reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance and prosthetic services incurred within one year after the date of the accident, in the amount of $3,000 per person; and

(2) If the injured person is usually engaged in a remunerative occupation, 70 percent of the loss of income from work during the period commencing 14 days after the date of the accident and ending on the date the injured person is able to return to his usual occupation; or

(3) If the injured person is not usually engaged in a remunerative occupation, the expenses reasonably incurred for essential services in lieu of those the injured person would have performed without income during the period commencing 14 days after the date of the accident and ending on the date the injured person is reasonably able to perform such essential services.

(4) As used in this section, "income" includes but is not limited to salary, wages, tips, commissions, professional fees, and profits from an individually owned business or farm.

Section 3. (1) With respect to the insured and members of his family residing in the same household, an insurer may offer deductible forms up to $250, of coverage for the benefits required by subsection (1) of section 2 of this 1971 Act.

(2) Notwithstanding section 2 of this 1971 Act:

(a) The benefits referred to in subsection (2) of section 2 of this 1971 Act need not exceed $500 per month or be paid for a period exceeding 52 weeks.

(b) The benefits referred to in subsection (3) of section 2 of this 1971 Act need not exceed $12 per day or be paid for a period exceeding 52 weeks.

(3) All benefits required by section 2 of this 1971 Act shall be paid promptly after proof of loss has been submitted to the insurer.

(4) The existence of a potential cause of action in tort that arises out of an accident does not relieve an insurer of the duty to pay the benefits to the injured person as required by section 2 of this 1971 Act.

(5) Disputes between insurers and beneficiaries as to the amount of the benefits shall be decided by arbitration.

Section 4. The benefits required by section 2 of this 1971 Act, with respect to:

(1) Injuries to the insured and members of his family residing in the same household shall be primary, but such benefits may be reduced or eliminated if they are similarly provided under another motor vehicle liability policy that covers the injured person, or if the injured person is entitled to receive under the laws of this state or any other state or of the United States, workmen's compensation benefits or any other similar medical or disability benefits.

(2) Guest passengers injured while occupying the insured motor vehicle, and with respect to pedestrians injured by the insured motor vehicle, may be excess over any other collateral benefits to which the injured person is entitled, including but not limited to insurance benefits, governmental benefits or gratuitous benefits.

Section 5. (1) The insurer may exclude from coverage of the benefits required by section 2 of this 1971 Act any injured person:

(a) Who intentionally causes injury to himself; or

(b) Who is participating in any prearranged or organized racing or speed contest or in practice or preparation for any such contest.

(2) The insurer may exclude from coverage of the benefits required by subsection (2) of section 2 of this 1971 Act any person injured in an accident outside this state if that injured person is not the named insured, a member of the named insured's family residing in his household or a guest passenger in motor vehicle owned or operated by the named insured.

Section 6. Nothing in this 1971 Act is intended to prevent an insurer from providing more favorable benefits than those required by section 2 of this 1971 Act.

Section 7. (1) Every insurer that transacts motor vehicle liability insurance, if its insured is or would be held legally liable for damages for injuries sustained by a person to whom benefits required by section 2 of this 1971 Act have been furnished by another insurer, or for whom benefits have been furnished by a health insurer or health care service contractor, shall reimburse such other insurers and other contractors furnishing such benefits for the benefits so furnished in an amount not to exceed the damages so recoverable if the other insurer and contractor are entitled to such reimbursement by the terms of their policy or agreement. Disputes between insurers and contractors as to the issues of liability for and the amount of the reimbursement required by this subsection shall be decided by arbitration.

(2) Findings and award made in an arbitration proceeding referred to in subsection (1) of this section are not admissible in any action at law or suit in equity.

Section 8. If an insurer has paid benefits required by section 2 of this 1971 Act or a health insurer or health care service contractor has

furnished benefits to a claimant injured by a person who is not covered by a motor vehicle liability policy issued by an insurer authorized to issue such policies in this state:

(1) The insurer or contractor shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the claimant against any motorist legally responsible for the bodily injury because of which such payment is made;

(2) The claimant shall hold in trust for the benefit of the insurer or contractor all rights of recovery which he shall have against such person, but only to the extent that such claim is made or paid herein;

(3) The claimant shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;

(4) If requested in writing by the insurer or contractor, the claimant shall take, through any representative not in conflict in interest with the claimant, designated by the insurer or contractor, such action as may be necessary or appropriate to recover such payment as damages from such person, such action to be taken in the name of the claimant, but only to the extent of the payment made by the insured or contractor. In the event of a recovery, the insurer or contractor shall be reimbursed out of such recovery for expenses, costs and attorney fees incurred by it in connection therewith; and

(5) The claimant shall execute and deliver to the insurer or contractor such instruments and papers as may be appropriate to secure the rights and obligations of the claimant and the insurer or contractor established by this provision.

Section 9. Payment of any benefit required by section 2 of this 1971 Act to or for any insured and any payment required by section 7 of this 1971 Act to any health insurer or health care service contractor shall be applied in reduction of the amount of damage that the insured may be entitled to recover from any insurer under bodily liability or uninsured motorist coverage for the same accident.

Section 10. ORS 731.418 is amended to read:

731.418. (1) The commissioner may refuse to continue or may suspend or revoke an insurer's certificate of authority if he finds after a hearing that the insurer:

(a) Has violated or failed to comply with any lawful order of the commissioner, or any provision of the Insurance Code other than those for which suspension or revocation is mandatory;

(b) Is in unsound condition, or in such condition or using such methods and practices in the conduct of its business, as to render its further transaction of insurance in this state hazardous or injurious to its policyholders or to the public.

(c) Has failed, after written request by the commissioner, to remove or discharge an officer or director who has been convicted in any jurisdiction of an offense which, if committed in this state, constitutes a misdemeanor involving moral turpitude or a felony, or is punishable by death or imprisonment under the laws of the United States, in any of which cases the record of his conviction shall be conclusive evidence.

(d) Is affiliated with and under the same general management, interlocking directorate or ownership as another insurer that transacts direct insurance in this state without having a certificate of authority therefor, except as permitted under the Insurance Code.

(e) Refuses to be examined; or its directors, officers, employees or representatives refuse to submit to examination relative to its affairs, or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(f) Has failed to pay any final judgment rendered against it in this state upon any policy, bond, recognizance or undertaking issued or guaranteed by it, within 30 days after the judgment became final, or within 30 days after time for taking an appeal has expired, or within 30 days after dismissal of an appeal before final determination, whichever date is the later.

(g) Fails to comply with subsection (1) of section 7 of this 1971 Act.

(2) Without advance notice or a hearing thereon, the commissioner may suspend immediately the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings, have been commenced in any state by the public insurance supervisory official of such state.

Section 11. ORS 743.786 is amended to read:

743.786. As used in ORS (743.789) 743.786 to 743.792:

(1) "Uninsured motorist coverage" means coverage within the terms and conditions specified in ORS 743.792 insuring the insured, his heirs or his legal representative for all sums which he or they shall be legally entitled to recover as damages for bodily injury or death caused by accident and arising out of the ownership, maintenance or use of an uninsured motor vehicle in amounts or limits not less than the amounts or limits prescribed for bodily injury or death for a policy of insurance meeting the requirements of ORS chapter 486.

(2) "Motor vehicle" means every self-propelled device in, upon or by which any person or property is or may be transported or drawn upon a public highway, but does not include:

(a) Devices used exclusively upon stationary rails or tracks;

(b) Motor busses, motor trucks or taxicabs as defined in ORS 481.030, 481.035 and 481.050, when the insured has employees who operate such busses, trucks or taxicabs and such employees are covered by any workmen's compensation law, disability benefits law or any similar law; or

(c) Farm-type tractors or self-propelled equipment designed for use principally off public highways.

Section 12. This Act takes effect on January 1, 1972.

Approved, June 29, 1971

EXHIBIT C

Relating to insurance; creating new provisions; and amending ORS 743.800, 743.805, 743.810 and 743.815.

Be it enacted by the people of the State of Oregon:

Section 1. ORS 743.800 is amended to read:

743.800. Every motor vehicle liability policy issued for delivery in this state that covers any private passenger motor vehicle other than a motorcycle shall provide to the person insured thereunder and members of his family residing in the same household injured in a motor vehicle accident, guest passengers injured while occupying the insured motor vehicle and pedestrians struck by the insured motor vehicle, the following hospital, medical, disability and funeral benefits for each accident:

(1) All reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance and prosthetic services incurred within one year after the date of the accident, in the amount of $5,000 per person; and

(2) All reasonable and necessary funeral expenses incurred within one year after the date of the accident, in the amount of $1,000 per person; and

(3) If the injured person is usually engaged in a remunerative occupation, 70 percent of the loss of income from work during the period of disability if the disability continues for at least 14 days and ending on the date the injured person is able to return to his usual occupation; or

(4) If the injured person is not usually engaged in a remunerative occupation, the expenses reasonably incurred for essential services in lieu of those the injured person would have performed without income during the period of disability if the disability continues at least 14 days and ending on the date the injured person is reasonably able to perform such essential services.

(5) As used in this section, "income" includes but is not limited to salary, wages, tips, commissions, professional fees, and profits from an individually owned business or farm.

Section 2. ORS 743.805 is amended to read:

743.805. (1) With respect to the insured and members of his family residing in the same household, an insurer may offer deductible forms up to $250, of coverage for the benefits required by subsection (1) of ORS 743.800.

(2) Notwithstanding ORS 743.800:

(a) The benefits referred to in subsection (3) of ORS 743.800 need not exceed $750 per month or be paid for a period exceeding 52 weeks.

(b) The benefits referred to in subsection (4) of ORS 743.800 need not exceed $18 per day or be paid for a period exceeding 52 weeks.

(3) All benefits required by ORS 743.800 shall be paid promptly after proof of loss has been submitted to the insurer.

(4) The existence of a potential cause of action in tort that arises out of an accident does not relieve an insurer of the duty to pay the benefits to the injured person as required by ORS 743.800.

(5) Disputes between insurers and beneficiaries as to the amount of the benefits shall be decided by arbitration.

Section 3. ORS 743.815 is amended to read:

743.815. (1) The insurer may exclude from coverage of the benefits required by ORS 743.800 any injured person:

(a) Who intentionally causes injury to himself; or

(b) Who is participating in any prearranged or organized racing or speed contest or in practice or preparation for any such contest.

(2) The insurer may exclude from coverage of the benefits required by subsection (3) of ORS 743.800 any person injured in an accident outside of this state if that injured person is not the named insured, a member of the named insured's family residing in his household or a guest passenger in a motor vehicle owned or operated by the named insured.

Section 4. ORS 743.810 is amended to read:

743.810. The benefits required by ORS 743.800 with respect to:

(1) The insured members of his family residing in the same household and guest passengers injured while occupying the insured motor vehicle shall be primary, but such benefits except for guest passengers may be reduced or eliminated if they are similarly provided under another motor vehicle liability policy that covers the injured person, or if the injured person is entitled to receive under the laws of this state or any other state or of the United States, workmen's compensation benefits or any other similar medical or disability benefits.

(2) Pedestrians injured by the insured motor vehicle may be excess over any other collateral benefits to which the injured person is entitled, including but not limited to insurance benefits, governmental benefits or gratuitous benefits.

Section 5. This 1973 Act shall only apply to all policies after January 1, 1974.

Approved, July 24, 1973

Be it enacted by the People of the State of Oregon:

Section 1. ORS 743.800 is amended to read:

743.800. Every motor vehicle liability policy issued for delivery in this state that covers any private passenger motor vehicle other than a motorcycle shall provide to the person insured thereunder and members of his family residing in the same household injured in a motor vehicle accident, passengers injured while occupying the insured motor vehicle and pedestrians struck by the insured motor vehicle, the following hospital, medical, disability and funeral benefits for each accident:

(1) All reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance, and prosthetic services incurred within one year after the date of the accident, in the amount of $5,000 per person; and

(2) All reasonable and necessary funeral expenses incurred within one year after the date of the accident, in the amount of $1,000 per person; and

(3) If the injured person is usually engaged in a remunerative occupation, 70 percent of the loss of income from work during the period of disability if the disability continues for at least 14 days and ending on the date the injured person is able to return to his usual occupation; or

(4) If the injured person is not usually engaged in a remunerative occupation, the expenses reasonably incurred for essential services in lieu of those the injured person would have performed without income during the period of disability if the disability continues for at least 14 days and ending on the date the injured person is reasonably able to perform such essential services.

(5) As used in ORS 743.800 to 743.835 and sections 8 and 12 of this 1975 Act:

(a) "Income" includes, but is not limited to salary, wages, tips, commissions, professional fees, and profits from an individually owned business or farm.

(b) "Motor vehicle" means a self-propelled land motor vehicle or trailer, other than:

(A) A farm type tractor or other self-propelled equipment designed for use principally off public roads, while not upon public roads;

(B) A vehicle operated on rails or crawler-treads; or

(C) A vehicle located for use as a residence or premises.

(c) "Occupying" means in, or upon, or entering into or alighting from.

(d) "Pedestrian" means a person while not occupying a self-propelled vehicle.

(e) "Personal injury protection benefits" means the benefits required by this section and ORS 743.805.

(f) "Private passenger motor vehicle" means a four-wheel passenger or station wagon type motor vehicle not used as a public or livery conveyance, and includes any other four-wheel motor vehicle of the utility, pickup body, sedan delivery or panel truck type not used for wholesale or retail delivery other than farming, a self-propelled mobile home, and a farm truck.

Section 2. ORS 743.805 is amended to read:

743.805 (1) Notwithstanding ORS 743.800:

(a) With respect to the insured and members of his family residing in the same household, an insurer may offer forms of coverage for the benefits required by subsections (1), (3) and (4) of ORS 743.800 with deductibles of up to $250.

(b) The benefits referred to in subsection (3) of ORS 743.800 need not exceed $750 per month or be paid for a period exceeding 52 weeks.

(c) The benefits referred to in subsection (4) of ORS 743.800 need not exceed $18 per day or be paid for a period exceeding 52 weeks.

(2) All personal injury protection benefits shall be paid promptly after proof of loss has been submitted to the insurer.

(3) The potential existence of a cause of action in tort that arises out of an accident does not relieve an insurer of the duty to pay the personal injury protection benefits to the injured person.

(4) Disputes between insurers and beneficiaries as to the amount of the personal injury protection benefits shall be decided by arbitration.

Section 3. ORS 743.810 is amended to read:

743.810. (1) The personal injury protection benefits with respect to:

(a) The insured and members of his family residing in the same household injured while occupying the insured motor vehicle shall be primary.

(b) Passengers injured while occupying the insured motor vehicle shall be primary.

(c) The insured and members of his family residing in the same household injured as pedestrians shall be primary.

(d) The insured and members of his family residing in the same household injured while occupying a motor vehicle not insured under the policy shall be excess.

(e) Pedestrians injured by the insured motor vehicle other than the insured and members of his family residing in the same household, shall be excess over any other collateral benefits to which the injured person is entitled, including but not limited to insurance benefits, governmental

benefits or gratuitous benefits.

(2) The personal injury protection benefits may be reduced or eliminated, if it is so provided in the policy, when the injured person is entitled to receive, under the laws of this state or any other state or the United States, workmen's compensation benefits or any other similar medical or disability benefits.

Section 4. ORS 743.815 is amended to read:

743.815. (1) The insurer may exclude from the coverage for personal injury protection benefits any injured person:

(a) Who intentionally causes injury to himself; or

(b) Who is participating in any prearranged or organized racing or speed contest or in practice or preparation for any such contest.

(2) The insurer may exclude from the coverage for the benefits required by subsections (3) and (4) of ORS 743.800 any person injured as a pedestrian in an accident outside this state other than the insured or a member of his family residing in the same household.

Section 5. ORS 743.820 is amended to read:

743.820. Nothing in ORS 731.418, 743.786 to 743.792 and 743.800 to 743.835 is intended to prevent an insurer from providing more favorable benefits than those required by ORS 743.800 and 743.805.

Section 6. ORS 743.825 is amended to read:

743.825. (1) Every authorized motor vehicle liability insurer whose insured is or would be held legally liable for damages for injuries sustained in a motor vehicle accident by a person for whom personal injury protection benefits have been furnished by another such insurer, or for whom benefits have been furnished by an authorized health insurer, shall reimburse such other insurer for the benefits it has so furnished if it has requested such reimbursement, has not given notice as provided in section 8 of this 1975 Act that it elects recovery by lien in accordance with that section and is entitled to reimbursement under this section by the terms of its policy.

(2) In calculating such reimbursement, the amount of benefits so furnished shall be diminished in proportion to the amount of negligence attributable to the person for whom benefits have been so furnished, and the reimbursement shall not exceed the amount of damages legally recoverable by him.

(3) Disputes between insurers as to such issues of liability and the amount of reimbursement required by this section shall be decided by arbitration.

(4) Findings and awards made in such an arbitration proceeding are not admissible in any action at law or suit in equity.

Section 7. Section 8 of this Act is added to and made a part of ORS 743.800 to 743.835.

Section 8. (1) When an authorized motor vehicle liability insurer has furnished personal injury protection benefits, or an authorized health insurer has furnished benefits, for a person injured in a motor vehicle accident, if such injured person makes claim, or institutes legal action, for damages for such injuries against any person, such injured person shall give notice of such claim or legal action to the insurer by personal service or by registered or certified mail. Service of a copy of the summons and complaint or copy of other process served in connection with such a legal action shall be sufficient notice to the insurer, in which case a return showing service of such notice shall be filed with the clerk of the court but shall not be a part of the record except to give notice.

(2) The insurer may elect to seek reimbursement as provided in this section for benefits it has so furnished, out of any recovery under such claim or legal action, if the insurer has not been a party to an interinsurer reimbursement proceeding with respect to such benefits under ORS 743.825 and is entitled by the terms of its policy to the benefit of this section. The insurer shall give written notice of such election within 30 days from the receipt of notice or knowledge of such claim or legal action to the person making claim or instituting legal action and to the person against whom claim is made or legal action instituted, by personal service or by registered or certified mail. In the case of a legal action, a return showing service of such notice of election shall be filed with the clerk of the court but shall not be a part of the record except to give notice to the claimant and the defendant of the lien of the insurer.

(3) If the insurer so serves such written notice of election and, where applicable, such return is so filed:

(a) The insurer has a lien against such cause of action for benefits it has so furnished, less the proportion, not to exceed 100 percent, of expenses, costs and attorney fees incurred by the injured person in connection with the recovery that the amount of the lien before such reduction bears to the amount of the recovery.

(b) The injured person shall include as damages in such claim or legal action the benefits so furnished by the insurer.

(c) In the case of a legal action, the action shall be taken in the name of the injured person.

(4) As used in this section, "makes claim" or "claim" refers to a written demand made and delivered for a specific amount of damages and which meets other requirements reasonably established by the commissioner's rule.

Section 9. ORS 743.830 is amended to read:

743.830. If a motor vehicle liability insurer has furnished personal injury protection benefits or a health insurer has furnished benefits, for a person injured in a motor vehicle accident, and the interinsurer reimbursement benefit of ORS 743.825 is not available under the terms of that section, and the insurer has not elected recovery by lien as provided in section 8 of this 1975 Act, and is entitled by the terms of its policy to the benefit of this section:

(1) The insurer is entitled to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the injured person against any person legally responsible for the accident, to the extent of such benefits furnished by the insurer less the insurer's share of expenses, costs and attorney fees incurred by the injured person in connection with such recovery.

(2) The injured person shall hold in trust for the benefit of the insurer all such rights of recovery which he has, but only to the extent of such benefits furnished.

(3) The injured person shall do whatever is proper to secure, and shall do nothing after loss to prejudice, such rights.

(4) If requested in writing by the insurer, the injured person shall take, through any representative not in conflict in interest with him designated by the insurer, such action as may be necessary or appropriate to recover such benefits furnished as damages from such responsible person, such action to be taken in the name of the injured person, but only to the extent of the benefits furnished by the insurer. In the event of a recovery, the insurer shall also be reimbursed out of such recovery for the injured person's share of expenses, costs and attorney fees incurred by the insurer in connection with the recovery.

(5) In calculating respective shares of expenses, costs and attorney fees under this section, the basis of allocation shall be the respective proportions borne to the total recovery by:

(a) Such benefits furnished by the insurer; and

(b) The total recovery less (a).

(6) The injured person shall execute and deliver to the insurer such instruments and papers as may be appropriate to secure the rights and obligations of the insurer and him as established by this section.

(7) Any provisions in a motor vehicle liability insurance policy or health insurance policy giving rights to the insurer relating to subrogation or the subject matter of this section shall be construed and applied in accordance with the provisions of this section.

Section 10. ORS 743.835 is amended to read:

743.835. Payment by a motor vehicle liability insurer of personal injury protection benefits for its own insured shall be applied in reduction of the amount of damage that the insured may be entitled to recover from his insurer under uninsured motorist coverage for the same accident.

Section 11. Section 12 of this Act is added to and made a part of ORS 743.800 to 743.835.

Section 12. The commissioner shall have authority to issue such rules as are reasonably necessary to carry out the purposes of ORS 743.800 to 743.835.

Section 13. ORS 750.055, as amended by section 3, chapter 135, Oregon Laws 1975, and section 4, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill .117), is amended to read:

750.055. (1) The following provisions of the Insurance Code shall apply to health care service contractors to the extent so applicable and not inconsistent with the express provisions of ORS 750.005 to 750.065:

(a) ORS 731.004 to 731.026, 731.032 to 731.150, 731.162, 731.204 to 731.362, 731.382, 731.386, 731.390, 731.398 to 731.430, 731.450, 731.454, 731.504, 731.508, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.804 and 731.844 to 731.992.

(b) ORS 732.230, 732.245, 732.250 and 732.505 to 732.570.

(c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.700 to 733.780.

(d) ORS chapter 734.

(e) ORS 743.003 to 743.012, 743.018 to 743.030, 743.036 to 743.108, 743.114, 743.116, 743.558, 743.800 to 743.835, section 2, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 117) and sections 8 and 12 of this 1975 Act.

(f) ORS 743.492, 743.495 and 743.498, except that such sections do not apply to group health insurance.

(g) ORS 743.522, except that individual policies may be issued to the persons or families insured in lieu of issuance of a single group policy as referred to in such section.

(h) ORS 743.549 to 743.555.

(i) ORS 744.005 to 744.265.

(j) ORS 746.005 to 746.370.

(k) Section 2, chapter 135, Oregon Laws 1975.

(2) For the purposes of this section only, health care service contractors shall be deemed insurers.

Section 13a. If Senate Bill 574 (1975) becomes law and Senate Bill 220 (1975) does not become law, section 13 of this Act is repealed and ORS 750.055, as amended by section 3, chapter 135, Oregon Laws 1975 (Enrolled House Bill 2301), by section 4, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 117), and by section 8, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 574), is amended to read:

750.055. (1) The following provisions of the Insurance Code shall apply to health care service contractors to the extent so applicable and not inconsistent with the express provisions of this chapter:

(a) ORS 731.004 to 731.026, 731.032 to

731.150, 731.162, 731.204 to 731.362, 731.382, 731.386, 731.390, 731.398 to 731.430, 731.450, 731.454, 731.504, 731.508, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.804 and 731.844 to 731.992.

(b) ORS 732.230, 732.245, 732.250, 732.315 to 732.325 and 732.505 to 732.570.

(c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.700 to 733.780.

(d) ORS chapter 734.

(e) ORS 743.003 to 743.012, 743.018 to 743.030, 743.036 to 743.108, 743.114, 743.116, 743.558, 743.800 to 743.835, section 2, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 117) and sections 8 and 12 of this 1975 Act.

(f) ORS 743.492, 743.495 and 743.498, except that such sections do not apply to group health insurance.

(g) ORS 743.522, except that individual policies may be issued to the persons or families insured in lieu of issuance of a single group policy as referred to in such section.

(h) ORS 743.549 to 743.555.

(i) ORS 744.005 to 744.265.

(j) ORS 746.005 to 746.370.

(k) Section 2, chapter 135, Oregon Laws 1975.

(2) For the purposes of this section only, health care service contractors shall be deemed insurers.

Section 13b. The amendments to subsection (1) of ORS 750.055 and to paragraph (b) of subsection (1) of ORS 750.055 by section 8, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 574), take effect on the effective date of chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 574).

Section 13c. If Senate Bill 220 (1975) becomes law, sections 13, 13a and 13b of this Act are repealed, and ORS 750.055, as amended by section 3, chapter 135, Oregon Laws 1975 (Enrolled House Bill 2301), by section 4, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 117), and by section 4, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 220), is amended to read:

750.055. (1) The following provisions of the Insurance Code shall apply to health care service contractors to the extent so applicable and not inconsistent with the express provisions of this chapter:

(a) ORS 731.004 to 731.026, 731.032 to 731.150, 731.162, 731.204 to 731.362, 731.382, 731.386, 731.390, 731.398 to 731.430, 731.450, 731.454, 731.504, 731.508, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.804 and 731.844 to 731.992.

(b) ORS 732.230, 732.245, 732.250, 732.315 to 732.325 and 732.505 to 732.570.

(c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.700 to 733.780.

(d) ORS chapter 734.

(e) ORS 743.003 to 743.012, 743.018 to 743.030, 743.037 to 743.108, 743.114, 743.116, section 2, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 117) and sections 8 and 12 of this 1975 Act.

(f) ORS 743.492, 743.495 and 743.498, except that such sections do not apply to group health insurance.

(g) ORS 743.522, except that individual policies may be issued to the persons or families insured in lieu of issuance of a single group policy as referred to in such section.

(h) ORS 743.549 to 743.558, section 2, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 220), and 743.800 to 743.835.

(i) ORS 744.005 to 744.265.

(j) ORS 746.005 to 746.370.

(k) Section 2, chapter 135, Oregon Laws 1975 (Enrolled House Bill 2301).

(2) For the purposes of this section only, health care service contractors shall be deemed insurers.

Section 13d. The amendments to subsection (1) of ORS 750.055 and to paragraphs (b), (e) and (h) of subsection (1) of ORS 750.055 by section 4,chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 220), take effect on the effective date of chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 220).

Section 14. ORS 18.510 is amended to read:

18.510. (1) If judgment is entered against a party on whose behalf an advance payment referred to in ORS 41.960 or ORS 41.970 has been made and in favor of a party for whose benefit any such advance payment has been received, the amount of the judgment shall be reduced by the amount of any such payments in the manner provided in subsection (3) of this section. However, nothing in ORS 12.155, 41.950 to 41.980 and this section authorizes the person making such payments to recover such advance payment if no damages are awarded or to recover any amount by which the advance payment exceeds the award of damages.

(2) If judgment is entered against a party who is insured under a policy of liability insurance against such judgment and in favor of a party who has received benefits that have been the basis for a reimbursement payment by such insurer under ORS 743.825, the amount of the judgment shall be reduced by reason of such benefits in the manner provided in subsection (3) of this section.

(3) (a) The amount of any advance payment referred to in subsection (1) of this section may be submitted by the party making the payment in the manner provided in ORS 20.210 and 20.220 for the submission of disbursements.

(b) The amount of any benefits referred to in subsection (2) of this section, diminished in proportion to the amount of negligence attributable to the party in favor of whom the judgment was entered and diminished to an amount no greater

than the reimbursement payment made by the insurer under ORS 743.825, may be submitted by the insurer which has made the reimbursement payment, in the manner provided in ORS 20.210 and 20.220 for the submission of disbursements.

(c) Unless timely objections are filed as provided in ORS 20.210, the court clerk shall apply the amounts claimed pursuant to this subsection in partial satisfaction of the judgment. Such partial satisfaction shall be allowed without regard to whether the party claiming the reduction is otherwise entitled to costs and disbursements in the action.

Section 15. This Act shall become effective on January 1, 1976.

Approved, July 8, 1975

THE OREGON LAW

Section 1. Sections 2 to 9 of this Act are added to and made a part of ORS 743.786 to 743.792.

Section 2. Every motor vehicle liability policy issued for delivery in this state that covers any private passenger motor vehicle other than a motorcycle shall provide to the person insured thereunder and members of his family residing in the same household injured in a motor vehicle accident, guest passengers injured while occupying the insured motor vehicle and pedestrians struck by the insured motor vehicle, the following hospital, medical and disability benefits for each accident:

(1) All reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance and prosthetic services incurred within one year after the date of the accident, in the amount of $3,000 per person; and

(2) If the injured person is usually engaged in a remunerative occupation, 70 percent of the loss of income from work during the period commencing 14 days after the date of the accident and ending on the date the injured person is able to return to his usual occupation; or

(3) If the injured person is not usually engaged in a remunerative occupation, the expenses reasonably incurred for essential services in lieu of those the injured person would have performed without income during the period commencing 14 days after the date of the accident and ending on the date the injured person is reasonably able to perform such essential services.

(4) As used in this section, "income" includes but is not limited to salary, wages, tips, commissions, professional fees, and profits from an individually owned business or farm.

Section 3. (1) With respect to the insured and members of his family residing in the same household, an insurer may offer deductible forms up to $250, of coverage for the benefits required by subsection (1) of section 2 of this 1971 Act.

(2) Notwithstanding section 2 of this 1971 Act:

(a) The benefits referred to in subsection (2) of section 2 of this 1971 Act need not exceed $500 per month or be paid for a period exceeding 52 weeks.

(b) The benefits referred to in subsection (3) of section 2 of this 1971 Act need not exceed $12 per day or be paid for a period exceeding 52 weeks.

(3) All benefits required by section 2 of this 1971 Act shall be paid promptly after proof of loss has been submitted to the insurer.

(4) The existence of a potential cause of action in tort that arises out of an accident does not relieve an insurer of the duty to pay the benefits to the injured person as required by section 2 of this 1971 Act.

(5) Disputes between insurers and beneficiaries as to the amount of the benefits shall be decided by arbitration.

Section 4. The benefits required by section 2 of this 1971 Act, with respect to:

(1) Injuries to the insured and members of his family residing in the same household shall be primary, but such benefits may be reduced or eliminated if they are similarly provided under another motor vehicle liability policy that covers the injured person, or if the injured person is entitled to receive under the laws of this state or any other state or of the United States, workmen's compensation benefits or any other similar medical or disability benefits.

(2) Guest passengers injured while occupying the insured motor vehicle, and with respect to pedestrians injured by the insured motor vehicle, may be excess over any other collateral benefits to which the injured person is entitled, including but not limited to insurance benefits, governmental benefits or gratuitous benefits.

Section 5. (1) The insurer may exclude from coverage of the benefits required by section 2 of this 1971 Act any injured person:

(a) Who intentionally causes injury to himself; or

(b) Who is participating in any prearranged or organized racing or speed contest or in practice or preparation for any such contest.

(2) The insurer may exclude from coverage of the benefits required by subsection (2) of section 2 of this 1971 Act any person injured in an accident outside this state if that injured person is not the named insured, a member of the named insured's family residing in his household or a guest passenger in motor vehicle owned or operated by the named insured.

Section 6. Nothing in this 1971 Act is intended to prevent an insurer from providing more favorable benefits than those required by section 2 of this 1971 Act.

Section 7. (1) Every insurer that transacts motor vehicle liability insurance, if its insured is or would be held legally liable for damages for injuries sustained by a person to whom benefits required by section 2 of this 1971 Act have been furnished by another insurer, or for whom benefits have been furnished by a health insurer or health care service contractor, shall reimburse such other insurers and other contractors furnishing such benefits for the benefits so furnished in an amount not to exceed the damages so recoverable if the other insurer and contractor are entitled to such reimbursement by the terms of their policy or agreement. Disputes between insurers and contractors as to the issues of liability for and the amount of the reimbursement required by this subsection shall be decided by arbitration.

(2) Findings and award made in an arbitration proceeding referred to in subsection (1) of this section are not admissible in any action at law or suit in equity.

Section 8. If an insurer has paid benefits required by section 2 of this 1971 Act or a health insurer or health care service contractor has

furnished benefits to a claimant injured by a person who is not covered by a motor vehicle liability policy issued by an insurer authorized to issue such policies in this state:

(1) The insurer or contractor shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the claimant against any motorist legally responsible for the bodily injury because of which such payment is made;

(2) The claimant shall hold in trust for the benefit of the insurer or contractor all rights of recovery which he shall have against such person, but only to the extent that such claim is made or paid herein;

(3) The claimant shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;

(4) If requested in writing by the insurer or contractor, the claimant shall take, through any representative not in conflict in interest with the claimant, designated by the insurer or contractor, such action as may be necessary or appropriate to recover such payment as damages from such person, such action to be taken in the name of the claimant, but only to the extent of the payment made by the insured or contractor. In the event of a recovery, the insurer or contractor shall be reimbursed out of such recovery for expenses, costs and attorney fees incurred by it in connection therewith; and

(5) The claimant shall execute and deliver to the insurer or contractor such instruments and papers as may be appropriate to secure the rights and obligations of the claimant and the insurer or contractor established by this provision.

Section 9. Payment of any benefit required by section 2 of this 1971 Act to or for any insured and any payment required by section 7 of this 1971 Act to any health insurer or health care service contractor shall be applied in reduction of the amount of damage that the insured may be entitled to recover from any insurer under bodily liability or uninsured motorist coverage for the same accident.

Section 10. ORS 731.418 is amended to read:

731.418. (1) The commissioner may refuse to continue or may suspend or revoke an insurer's certificate of authority if he finds after a hearing that the insurer:

(a) Has violated or failed to comply with any lawful order of the commissioner, or any provision of the Insurance Code other than those for which suspension or revocation is mandatory;

(b) Is in unsound condition, or in such condition or using such methods and practices in the conduct of its business, as to render its further transaction of insurance in this state hazardous or injurious to its policyholders or to the public.

(c) Has failed, after written request by the commissioner, to remove or discharge an officer or director who has been convicted in any jurisdiction of an offense which, if committed in this state, constitutes a misdemeanor involving moral turpitude or a felony, or is punishable by death or imprisonment under the laws of the United States, in any of which cases the record of his conviction shall be conclusive evidence.

(d) Is affiliated with and under the same general management, interlocking directorate or ownership as another insurer that transacts direct insurance in this state without having a certificate of authority therefor, except as permitted under the Insurance Code.

(e) Refuses to be examined; or its directors, officers, employees or representatives refuse to submit to examination relative to its affairs, or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(f) Has failed to pay any final judgment rendered against it in this state upon any policy, bond, recognizance or undertaking issued or guaranteed by it, within 30 days after the judgment became final, or within 30 days after time for taking an appeal has expired, or within 30 days after dismissal of an appeal before final determination, whichever date is the later.

(g) Fails to comply with subsection (1) of section 7 of this 1971 Act.

(2) Without advance notice or a hearing thereon, the commissioner may suspend immediately the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings, have been commenced in any state by the public insurance supervisory official of such state.

Section 11. ORS 743.786 is amended to read:

743.786. As used in ORS (743.789) 743.786 to 743.792:

(1) "Uninsured motorist coverage" means coverage within the terms and conditions specified in ORS 743.792 insuring the insured, his heirs or his legal representative for all sums which he or they shall be legally entitled to recover as damages for bodily injury or death caused by accident and arising out of the ownership, maintenance or use of an uninsured motor vehicle in amounts or limits not less than the amounts or limits prescribed for bodily injury or death for a policy of insurance meeting the requirements of ORS chapter 486.

(2) "Motor vehicle" means every self-propelled device in, upon or by which any person or property is or may be transported or drawn upon a public highway, but does not include:

(a) Devices used exclusively upon stationary rails or tracks;

(b) Motor busses, motor trucks or taxicabs as defined in ORS 481.030, 481.035 and 481.050, when the insured has employees who operate such busses, trucks or taxicabs and such employees are covered by any workmen's compensation law, disability benefits law or any similar law; or

(c) Farm-type tractors or self-propelled equipment designed for use principally off public highways.

Section 12. This Act takes effect on January 1, 1972.

Approved, June 29, 1971

EXHIBIT D

Relating to insurance; creating new provisions; and amending ORS 743.800, 743.805, 743.810 and 743.815.

Be it enacted by the people of the State of Oregon:

Section 1. ORS 743.800 is amended to read:

743.800. Every motor vehicle liability policy issued for delivery in this state that covers any private passenger motor vehicle other than a motorcycle shall provide to the person insured thereunder and members of his family residing in the same household injured in a motor vehicle accident, guest passengers injured while occupying the insured motor vehicle and pedestrians struck by the insured motor vehicle, the following hospital, medical, disability and funeral benefits for each accident:

(1) All reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance and prosthetic services incurred within one year after the date of the accident, in the amount of $5,000 per person; and

(2) All reasonable and necessary funeral expenses incurred within one year after the date of the accident, in the amount of $1,000 per person; and

(3) If the injured person is usually engaged in a remunerative occupation, 70 percent of the loss of income from work during the period of disability if the disability continues for at least 14 days and ending on the date the injured person is able to return to his usual occupation; or

(4) If the injured person is not usually engaged in a remunerative occupation, the expenses reasonably incurred for essential services in lieu of those the injured person would have performed without income during the period of disability if the disability continues at least 14 days and ending on the date the injured person is reasonably able to perform such essential services.

(5) As used in this section, "income" includes but is not limited to salary, wages, tips, commissions, professional fees, and profits from an individually owned business or farm.

Section 2. ORS 743.805 is amended to read:

743.805. (1) With respect to the insured and members of his family residing in the same household, an insurer may offer deductible forms up to $250, of coverage for the benefits required by subsection (1) of ORS 743.800.

(2) Notwithstanding ORS 743.800:

(a) The benefits referred to in subsection (3) of ORS 743.800 need not exceed $750 per month or be paid for a period exceeding 52 weeks.

(b) The benefits referred to in subsection (4) of ORS 743.800 need not exceed $18 per day or be paid for a period exceeding 52 weeks.

(3) All benefits required by ORS 743.800 shall be paid promptly after proof of loss has been submitted to the insurer.

(4) The existence of a potential cause of action in tort that arises out of an accident does not relieve an insurer of the duty to pay the benefits to the injured person as required by ORS 743.800.

(5) Disputes between insurers and beneficiaries as to the amount of the benefits shall be decided by arbitration.

Section 3. ORS 743.815 is amended to read:

743.815. (1) The insurer may exclude from coverage of the benefits required by ORS 743.800 any injured person:

(a) Who intentionally causes injury to himself; or

(b) Who is participating in any prearranged or organized racing or speed contest or in practice or preparation for any such contest.

(2) The insurer may exclude from coverage of the benefits required by subsection (3) of ORS 743.800 any person injured in an accident outside of this state if that injured person is not the named insured, a member of the named insured's family residing in his household or a guest passenger in a motor vehicle owned or operated by the named insured.

Section 4. ORS 743.810 is amended to read:

743.810. The benefits required by ORS 743.800 with respect to:

(1) The insured members of his family residing in the same household and guest passengers injured while occupying the insured motor vehicle shall be primary, but such benefits except for guest passengers may be reduced or eliminated if they are similarly provided under another motor vehicle liability policy that covers the injured person, or if the injured person is entitled to receive under the laws of this state or any other state or of the United States, workmen's compensation benefits or any other similar medical or disability benefits.

(2) Pedestrians injured by the insured motor vehicle may be excess over any other collateral benefits to which the injured person is entitled, including but not limited to insurance benefits, governmental benefits or gratuitous benefits.

Section 5. This 1973 Act shall only apply to all policies after January 1, 1974.

Approved, July 24, 1973

Be it enacted by the People of the State of Oregon:

Section 1. ORS 743.800 is amended to read:

743.800. Every motor vehicle liability policy issued for delivery in this state that covers any private passenger motor vehicle other than a motorcycle shall provide to the person insured thereunder and members of his family residing in the same household injured in a motor vehicle accident, passengers injured while occupying the insured motor vehicle and pedestrians struck by the insured motor vehicle, the following hospital, medical, disability and funeral benefits for each accident:

(1) All reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance, and prosthetic services incurred within one year after the date of the accident, in the amount of $5,000 per person; and

(2) All reasonable and necessary funeral expenses incurred within one year after the date of the accident, in the amount of $1,000 per person; and

(3) If the injured person is usually engaged in a remunerative occupation, 70 percent of the loss of income from work during the period of disability if the disability continues for at least 14 days and ending on the date the injured person is able to return to his usual occupation; or

(4) If the injured person is not usually engaged in a remunerative occupation, the expenses reasonably incurred for essential services in lieu of those the injured person would have performed without income during the period of disability if the disability continues for at least 14 days and ending on the date the injured person is reasonably able to perform such essential services.

(5) As used in ORS 743.800 to 743.835 and sections 8 and 12 of this 1975 Act:

(a) "Income" includes, but is not limited to salary, wages, tips, commissions, professional fees, and profits from an individually owned business or farm.

(b) "Motor vehicle" means a self-propelled land motor vehicle or trailer, other than:

(A) A farm type tractor or other self-propelled equipment designed for use principally off public roads, while not upon public roads;

(B) A vehicle operated on rails or crawler-treads; or

(C) A vehicle located for use as a residence or premises.

(c) "Occupying" means in, or upon, or entering into or alighting from.

(d) "Pedestrian" means a person while not occupying a self-propelled vehicle.

(e) "Personal injury protection benefits" means the benefits required by this section and ORS 743.805.

(f) "Private passenger motor vehicle" means a four-wheel passenger or station wagon type motor vehicle not used as a public or livery conveyance, and includes any other four-wheel motor vehicle of the utility, pickup body, sedan delivery or panel truck type not used for wholesale or retail delivery other than farming, a self-propelled mobile home, and a farm truck.

Section 2. ORS 743.805 is amended to read:

743.805 (1) Notwithstanding ORS 743.800:

(a) With respect to the insured and members of his family residing in the same household, an insurer may offer forms of coverage for the benefits required by subsections (1), (3) and (4) of ORS 743.800 with deductibles of up to $250.

(b) The benefits referred to in subsection (3) of ORS 743.800 need not exceed $750 per month or be paid for a period exceeding 52 weeks.

(c) The benefits referred to in subsection (4) of ORS 743.800 need not exceed $18 per day or be paid for a period exceeding 52 weeks.

(2) All personal injury protection benefits shall be paid promptly after proof of loss has been submitted to the insurer.

(3) The potential existence of a cause of action in tort that arises out of an accident does not relieve an insurer of the duty to pay the personal injury protection benefits to the injured person.

(4) Disputes between insurers and beneficiaries as to the amount of the personal injury protection benefits shall be decided by arbitration.

Section 3. ORS 743.810 is amended to read:

743.810. (1) The personal injury protection benefits with respect to:

(a) The insured and members of his family residing in the same household injured while occupying the insured motor vehicle shall be primary.

(b) Passengers injured while occupying the insured motor vehicle shall be primary.

(c) The insured and members of his family residing in the same household injured as pedestrians shall be primary.

(d) The insured and members of his family residing in the same household injured while occupying a motor vehicle not insured under the policy shall be excess.

(e) Pedestrians injured by the insured motor vehicle other than the insured and members of his family residing in the same household, shall be excess over any other collateral benefits to which the injured person is entitled, including but not limited to insurance benefits, governmental

benefits or gratuitous benefits.

(2) The personal injury protection benefits may be reduced or eliminated, if it is so provided in the policy, when the injured person is entitled to receive, under the laws of this state or any other state or the United States, workmen's compensation benefits or any other similar medical or disability benefits.

Section 4. ORS 743.815 is amended to read:

743.815. (1) The insurer may exclude from the coverage for personal injury protection benefits any injured person:

(a) Who intentionally causes injury to himself; or

(b) Who is participating in any prearranged or organized racing or speed contest or in practice or preparation for any such contest.

(2) The insurer may exclude from the coverage for the benefits required by subsections (3) and (4) of ORS 743.800 any person injured as a pedestrian in an accident outside this state other than the insured or a member of his family residing in the same household.

Section 5. ORS 743.820 is amended to read:

743.820. Nothing in ORS 731.418, 743.786 to 743.792 and 743.800 to 743.835 is intended to prevent an insurer from providing more favorable benefits than those required by ORS 743.800 and 743.805.

Section 6. ORS 743.825 is amended to read:

743.825. (1) Every authorized motor vehicle liability insurer whose insured is or would be held legally liable for damages for injuries sustained in a motor vehicle accident by a person for whom personal injury protection benefits have been furnished by another such insurer, or for whom benefits have been furnished by an authorized health insurer, shall reimburse such other insurer for the benefits it has so furnished if it has requested such reimbursement, has not given notice as provided in section 8 of this 1975 Act that it elects recovery by lien in accordance with that section and is entitled to reimbursement under this section by the terms of its policy.

(2) In calculating such reimbursement, the amount of benefits so furnished shall be diminished in proportion to the amount of negligence attributable to the person for whom benefits have been so furnished, and the reimbursement shall not exceed the amount of damages legally recoverable by him.

(3) Disputes between insurers as to such issues of liability and the amount of reimbursement required by this section shall be decided by arbitration.

(4) Findings and awards made in such an arbitration proceeding are not admissible in any action at law or suit in equity.

Section 7. Section 8 of this Act is added to and made a part of ORS 743.800 to 743.835.

Section 8. (1) When an authorized motor vehicle liability insurer has furnished personal injury protection benefits, or an authorized health insurer has furnished benefits, for a person injured in a motor vehicle accident, if such injured person makes claim, or institutes legal action, for damages for such injuries against any person, such injured person shall give notice of such claim or legal action to the insurer by personal service or by registered or certified mail. Service of a copy of the summons and complaint or copy of other process served in connection with such a legal action shall be sufficient notice to the insurer, in which case a return showing service of such notice shall be filed with the clerk of the court but shall not be a part of the record except to give notice.

(2) The insurer may elect to seek reimbursement as provided in this section for benefits it has so furnished, out of any recovery under such claim or legal action, if the insurer has not been a party to an interinsurer reimbursement proceeding with respect to such benefits under ORS 743.825 and is entitled by the terms of its policy to the benefit of this section. The insurer shall give written notice of such election within 30 days from the receipt of notice or knowledge of such claim or legal action to the person making claim or instituting legal action and to the person against whom claim is made or legal action instituted, by personal service or by registered or certified mail. In the case of a legal action, a return showing service of such notice of election shall be filed with the clerk of the court but shall not be a part of the record except to give notice to the claimant and the defendant of the lien of the insurer.

(3) If the insurer so serves such written notice of election and, where applicable, such return is so filed:

(a) The insurer has a lien against such cause of action for benefits it has so furnished, less the proportion, not to exceed 100 percent, of expenses, costs and attorney fees incurred by the injured person in connection with the recovery that the amount of the lien before such reduction bears to the amount of the recovery.

(b) The injured person shall include as damages in such claim or legal action the benefits so furnished by the insurer.

(c) In the case of a legal action, the action shall be taken in the name of the injured person.

(4) As used in this section, "makes claim" or "claim" refers to a written demand made and delivered for a specific amount of damages and which meets other requirements reasonably established by the commissioner's rule.

Section 9. ORS 743.830 is amended to read:

743.830. If a motor vehicle liability insurer has furnished personal injury protection benefits or a health insurer has furnished benefits, for a person injured in a motor vehicle accident, and the interinsurer reimbursement benefit of ORS 743.825 is not available under the terms of that section, and the insurer has not elected recovery by lien as provided in section 8 of this 1975 Act, and is entitled by the terms of its policy to the benefit of this section:

(1) The insurer is entitled to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the injured person against any person legally responsible for the accident, to the extent of such benefits furnished by the insurer less the insurer's share of expenses, costs and attorney fees incurred by the injured person in connection with such recovery.

(2) The injured person shall hold in trust for the benefit of the insurer all such rights of recovery which he has, but only to the extent of such benefits furnished.

(3) The injured person shall do whatever is proper to secure, and shall do nothing after loss to prejudice, such rights.

(4) If requested in writing by the insurer, the injured person shall take, through any representative not in conflict in interest with him designated by the insurer, such action as may be necessary or appropriate to recover such benefits furnished as damages from such responsible person, such action to be taken in the name of the injured person, but only to the extent of the benefits furnished by the insurer. In the event of a recovery, the insurer shall also be reimbursed out of such recovery for the injured person's share of expenses, costs and attorney fees incurred by the insurer in connection with the recovery.

(5) In calculating respective shares of expenses, costs and attorney fees under this section, the basis of allocation shall be the respective proportions borne to the total recovery by:

(a) Such benefits furnished by the insurer; and

(b) The total recovery less (a).

(6) The injured person shall execute and deliver to the insurer such instruments and papers as may be appropriate to secure the rights and obligations of the insurer and him as established by this section.

(7) Any provisions in a motor vehicle liability insurance policy or health insurance policy giving rights to the insurer relating to subrogation or the subject matter of this section shall be construed and applied in accordance with the provisions of this section.

Section 10. ORS 743.835 is amended to read:

743.835. Payment by a motor vehicle liability insurer of personal injury protection benefits for its own insured shall be applied in reduction of the amount of damage that the insured may be entitled to recover from his insurer under uninsured motorist coverage for the same accident.

Section 11. Section 12 of this Act is added to and made a part of ORS 743.800 to 743.835.

Section 12. The commissioner shall have authority to issue such rules as are reasonably necessary to carry out the purposes of ORS 743.800 to 743.835.

Section 13. ORS 750.055, as amended by section 3, chapter 135, Oregon Laws 1975, and section 4, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill .117), is amended to read:

750.055. (1) The following provisions of the Insurance Code shall apply to health care service contractors to the extent so applicable and not inconsistent with the express provisions of ORS 750.005 to 750.065:

(a) ORS 731.004 to 731.026, 731.032 to 731.150, 731.162, 731.204 to 731.362, 731.382, 731.386, 731.390, 731.398 to 731.430, 731.450, 731.454, 731.504, 731.508, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.804 and 731.844 to 731.992.

(b) ORS 732.230, 732.245, 732.250 and 732.505 to 732.570.

(c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.700 to 733.780.

(d) ORS chapter 734.

(e) ORS 743.003 to 743.012, 743.018 to 743.030, 743.036 to 743.108, 743.114, 743.116, 743.558, 743.800 to 743.835, section 2, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 117) and sections 8 and 12 of this 1975 Act.

(f) ORS 743.492, 743.495 and 743.498, except that such sections do not apply to group health insurance.

(g) ORS 743.522, except that individual policies may be issued to the persons or families insured in lieu of issuance of a single group policy as referred to in such section.

(h) ORS 743.549 to 743.555.

(i) ORS 744.005 to 744.265.

(j) ORS 746.005 to 746.370.

(k) Section 2, chapter 135, Oregon Laws 1975.

(2) For the purposes of this section only, health care service contractors shall be deemed insurers.

Section 13a. If Senate Bill 574 (1975) becomes law and Senate Bill 220 (1975) does not become law, section 13 of this Act is repealed and ORS 750.055, as amended by section 3, chapter 135, Oregon Laws 1975 (Enrolled House Bill 2301), by section 4, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 117), and by section 8, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 574), is amended to read:

750.055. (1) The following provisions of the Insurance Code shall apply to health care service contractors to the extent so applicable and not inconsistent with the express provisions of this chapter:

(a) ORS 731.004 to 731.026, 731.032 to

731.150, 731.162, 731.204 to 731.362, 731.382, 731.386, 731.390, 731.398 to 731.430, 731.450, 731.454, 731.504, 731.508, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.804 and 731.844 to 731.992.

(b) ORS 732.230, 732.245, 732.250, 732.315 to 732.325 and 732.505 to 732.570.

(c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.700 to 733.780.

(d) ORS chapter 734.

(e) ORS 743.003 to 743.012, 743.018 to 743.030, 743.036 to 743.108, 743.114, 743.116, 743.558, 743.800 to 743.835, section 2, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 117) and sections 8 and 12 of this 1975 Act.

(f) ORS 743.492, 743.495 and 743.498, except that such sections do not apply to group health insurance.

(g) ORS 743.522, except that individual policies may be issued to the persons or families insured in lieu of issuance of a single group policy as referred to in such section.

(h) ORS 743.549 to 743.555.

(i) ORS 744.005 to 744.265.

(j) ORS 746.005 to 746.370.

(k) Section 2, chapter 135, Oregon Laws 1975.

(2) For the purposes of this section only, health care service contractors shall be deemed insurers.

Section 13b. The amendments to subsection (1) of ORS 750.055 and to paragraph (b) of subsection (1) of ORS 750.055 by section 8, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 574), take effect on the effective date of chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 574).

Section 13c. If Senate Bill 220 (1975) becomes law, sections 13, 13a and 13b of this Act are repealed, and ORS 750.055, as amended by section 3, chapter 135, Oregon Laws 1975 (Enrolled House Bill 2301), by section 4, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 117), and by section 4, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 220), is amended to read:

750.055. (1) The following provisions of the Insurance Code shall apply to health care service contractors to the extent so applicable and not inconsistent with the express provisions of this chapter:

(a) ORS 731.004 to 731.026, 731.032 to 731.150, 731.162, 731.204 to 731.362, 731.382, 731.386, 731.390, 731.398 to 731.430, 731.450, 731.454, 731.504, 731.508, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.804 and 731.844 to 731.992.

(b) ORS 732.230, 732.245, 732.250, 732.315 to 732.325 and 732.505 to 732.570.

(c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.700 to 733.780.

(d) ORS chapter 734.

(e) ORS 743.003 to 743.012, 743.018 to 743.030, 743.037 to 743.108, 743.114, 743.116, section 2, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 117) and sections 8 and 12 of this 1975 Act.

(f) ORS 743.492, 743.495 and 743.498, except that such sections do not apply to group health insurance.

(g) ORS 743.522, except that individual policies may be issued to the persons or families insured in lieu of issuance of a single group policy as referred to in such section.

(h) ORS 743.549 to 743.558, section 2, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 220), and 743.800 to 743.835.

(i) ORS 744.005 to 744.265.

(j) ORS 746.005 to 746.370.

(k) Section 2, chapter 135, Oregon Laws 1975 (Enrolled House Bill 2301).

(2) For the purposes of this section only, health care service contractors shall be deemed insurers.

Section 13d. The amendments to subsection (1) of ORS 750.055 and to paragraphs (b), (e) and (h) of subsection (1) of ORS 750.055 by section 4, chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 220), take effect on the effective date of chapter _____, Oregon Laws 1975 (Enrolled Senate Bill 220).

Section 14. ORS 18.510 is amended to read:

18.510. (1) If judgment is entered against a party on whose behalf an advance payment referred to in ORS 41.960 or ORS 41.970 has been made and in favor of a party for whose benefit any such advance payment has been received, the amount of the judgment shall be reduced by the amount of any such payments in the manner provided in subsection (3) of this section. However, nothing in ORS 12.155, 41.950 to 41.980 and this section authorizes the person making such payments to recover such advance payment if no damages are awarded or to recover any amount by which the advance payment exceeds the award of damages.

(2) If judgment is entered against a party who is insured under a policy of liability insurance against such judgment and in favor of a party who has received benefits that have been the basis for a reimbursement payment by such insurer under ORS 743.825, the amount of the judgment shall be reduced by reason of such benefits in the manner provided in subsection (3) of this section.

(3) (a) The amount of any advance payment referred to in subsection (1) of this section may be submitted by the party making the payment in the manner provided in ORS 20.210 and 20.220 for the submission of disbursements.

(b) The amount of any benefits referred to in subsection (2) of this section, diminished in proportion to the amount of negligence attributable to the party in favor of whom the judgment was entered and diminished to an amount no greater

than the reimbursement payment made by the insurer under ORS 743.825, may be submitted by the insurer which has made the reimbursement payment, in the manner provided in ORS 20.210 and 20.220 for the submission of disbursements.

(c) Unless timely objections are filed as provided in ORS 20.210, the court clerk shall apply the amounts claimed pursuant to this subsection in partial satisfaction of the judgment. Such partial satisfaction shall be allowed without regard to whether the party claiming the reduction is otherwise entitled to costs and disbursements in the action.

Section 15. This Act shall become effective on January 1, 1976.

Approved, July 8, 1975

PRINCIPAL PROVISIONS OF THE OREGON LAW

This state's original law was effective Jan. 1, 1972. It did not change the liability system.

It required liability policies for private passenger cars to provide up to $3,000 in medical and hospital benefits for expenses incurred within one year of an accident; 70 per cent of wage loss up to $500 a month; and $12 a day for substitute services. Wage loss and substitute services benefits were limited to 52 weeks and began 14 days after the accident.

The law was amended on July 24, 1973, to increase the first-party benefits. Effective Jan. 1, 1974, benefits for medical and hospital expenses are $5,000 per person. Seventy per cent of wage loss will be paid up to $750 a month for not over one year. Benefits for substitute services are now limited to $18 a day for up to one year. Benefits for both wage loss and substitute services are now paid from the first day if the disability continues for at least 14 days. A funeral benefit of $1,000 is provided.

Insurers may offer deductibles of up to $250 for the medical and hospital coverage.

Motorcycles are not covered by this law.

Position Statement in Opposition
to
Federal No-Fault Auto Insurance Legislation

"THE 'OREGON PLAN' PROVES
NEED TO LEAVE NO-FAULT
AUTO INSURANCE LEGISLATION
TO THE STATES"

In the 1950's and 60's as traffic accidents increased throughout the United States, so did resulting litigation to the point where court dockets became so overcrowded that it took as long as four years to get to trial in many metropolitan areas. The delay coupled with legal costs involved resulted in public disenchantment and disgust with the auto insurance industry and a demand for change became clearly audible as a result.

A solution emerged that was labled no-fault auto insurance and offered as a solution to the existing system of tort liability. Under pressure from the public and many legislators, various versions of this no-fault auto insurance coverage have been adopted by more than half of the states as of this date.

The enactment by these states demonstrates a point. In 1971 the federal government complaining about state regulation of insurance being slow and ineffective entered the no-fault controversy and the Hart-Magnuson bill was introduced as the federal government's version of no-fault insurance. That same year four states adopted no-fault including Oregon. Twenty more states have since enacted no-fault laws. The federal bill is still languishing in the halls of Congress.

The Oregon Plan covers every private passenger vehicle other than motorcycles. It mandates $5,000 medical, $1,000 funeral, $9,000 disability income and $6,552 essential services for the unemployed coverage for insured household family members, their passengers and pedestrians injured by the insured vehicle.

Unlike the proposed federal plans, our Oregon Plan takes no rights away from the people. We have no artificial threshold precluding Oregonians from seeking redress from the person injuring him as does pending federal legislation. This is the main reason for the success of our Plan. Uniquely, but realistically, our Plan keeps the key to the courtroom with the people. The option remains with the people. The no-fault beneficiary must reimburse the no-fault insurer from any settlement or judgment he may receive from the wrongdoer and therein lies his election.

It is my observation that Oregonians are well pleased with our Plan. It has reduced court congestion by a third according to an informal survey of the Multnomah County Bar conducted this week. The case load in Multnomah County alone was reduced by 300 cases between 1971 and 1973. Excessive and unnecessary legal expenses have been eliminated with the decline of attorney representation as concluded from approximately a 33 percent automobile bodily injury claim frequency decline noted in the first three operative years of the Oregon Plan. This decline is striking when contrasted with our 8.3 percent population growth and 16 percent increase in automobile registrations for the same period. A comparison of the most recent

year experience of 1977 with that of the 1971 pre no-fault year shows a 17.1 percent reduction in the frequency of automobile injury claim complaints to our Insurance Commissioner. A similar comparison of complaint experience on the Plan itself indicates there were 11 percent fewer complaints last year than in the pre no-fault period of 1971. A study release last December from an independent consulting firm evaluated the per car insurance cost of an average Oregonian as of 1976 relative to his pre no-fault cost in 1971. The findings after factoring out the affect of double digit inflation, the 1974 gas shortage's reduction on claim frequency, and other such external cost changes show that the Oregon Plan has effected a relative cost savings over the first five operational years of our Plan of 2.8 percent and 7.1 percent for 1976, the year of the most recent experience.

The Oregon Plan is working well for the people of Oregon. This Plan developed for Oregonians should not be supplanted by what is considered an overly restrictive federal program.

The people of this state are capable of solving its problems. We do not need federal regulation in this area. We realize that abrogation of our responsibility in insurance regulation to the federal government also means possible loss of $25,000,000 premium tax revenue and loss by the people in Oregon to voice their opinions to the regulator at the closest possible level.

SUPPORT PAPER:

THE "OREGON PLAN" PROVES NEED TO LEAVE NO-FAULT AUTO INSURANCE LEGISLATION TO THE STATES

Prepared by
Oregon Insurance Commissioner
W. W. Fritz

In the 1950's and 60's as traffic accidents increased throughout the United States, so did resulting litigation to the point where court dockets became so overcrowded that it took as long as four years to get to trial in many metropolitan areas. The delay coupled with legal costs involved resulted in public disenchantment and disgust with the auto insurance industry and a demand for change became clearly audible as a result.

A solution emerged that was labeled no-fault auto insurance and offered as a solution to the existing system of tort liability. Under pressure from the public and many legislators, various versions of this no-fault auto insurance coverage have been adopted by more than half of the states as of this date.[1]

The enactment by these states demonstrates a point. In 1971 the federal government complaining about state regulation of insurance being slow and ineffective entered the no-fault controversy and the Hart-Magnuson bill was introduced as the federal governments version of no-fault insurance. That same year four

states adopted no-fault including Oregon.[2] Twenty more states have since enacted no-fault laws. The federal bill is still languishing in the halls of Congress.

BACKGROUND

The Oregon law, effected January 1, 1972, applies to every motor vehicle liability policy issued for delivery in the state that covers any private passenger motor vehicle other than a motorcycle. It mandates that each such policy shall provide payment for the named insured and family members of the same household injured in an automobile accident, passengers injured in the insured vehicle, and pedestrians injured by the insured vehicles.

The 1971 coverage benefits have been updated by the Oregon Legislature at our 1973 and 1975 biennial sessions to the present following level of benefits:[3]

1. $5,000 for all reasonable medical and related expenses incurred within one year of the accident.
2. $1,000 for all reasonable funeral and related expenses incurred within one year of the accident.
3. $9,000 for seventy percent (70%) of income loss from a remunerative occupation if disabled for 14 days. Such benefits may be limited to $750 per month for 52 weeks.
4. $6,552 for persons not usually engaged in a remunerative occupation for essential service expenses reasonably incurred in lieu of services the beneficiary would have

performed without income during the disability period if disabled for 14 days. Such benefits may be limited to $18 per day for 52 weeks.

Currently our no-fault program has provided prompt full coverage for medical and economic loss to over 95 percent of all eligible persons injured in auto accidents in this state.[4]

The Oregon law has a TORT THRESHOLD - that is a restriction on the right to seek court tort liability relief. This is a most important fact to recognize.

No-fault proponents of the puritan concept that any law allowing tort recovery is not a no-fault law would acclaim the Oregon law a non no-fault plan. This notion is refuted by the Oregon experience of expeditiously settling to the public's satisfaction 95 percent of all automobile personal injury claims during the Plan's first four years without consideration of fault.

The reason for this success is attributed to in great part to our statutory reimbursement sections, expounded upon infra, and our double recovery preclusion section.[5]

EXPERIENCE OF LAW IN OPERATION
DEPARTMENTAL APPROVAL

In Oregon where it is estimated that 85 percent of the registered autos are covered by insurance, our mandatory program has worked with greater success than was ever dreamed. The plan has proven to be an effective tool in eliminating the inequities of the exclusive bodily injury liability insurance system. Its success is

largely attributable to its effectuation of prompt payment of medical bills and disability income and the excellent job of answering the problem of small law actions.[6] This success is reflected in the illustrated Department of Transportation figures showing that Oregon's no-fault $5,000 medical and $9,000 wage benefits would contain the economic loss of over 95 percent of all auto victims in the formative years of our Plan.[4]

PUBLIC SATISFACTION

The people of Oregon readily accepted their plan and as may be inferred from the following points are well pleased with it.

The people of Oregon had "pure no-fault" bills such as that now before Congress proposed in the 1971, 1973 and 1975 Oregon Legislatures. The purist proponents argued that the public was unhappy with delays in compensating injured auto victims. Their agitation enlivened our 1971 and 1973 committee hearings for the passage of such law. The hearings were silent in the session that recently adjourned. The purists predicted that the non-pure no-fault laws (non-threshold and/or non-pain and suffering coverage) would trigger additional litigation over the extent and meaning of coverage because of the plan's complexity. This prediction failed in Oregon for in the past six operational years the Oregon appellate courts have only recently been called upon to consider two facets of our statutory plan. There have been five cases to date. Three considered an insurer's responsibility for plaintiff's attorney fees expended in his personal injury action against a third party,[7] and two dealt with preclusion of double recoveries.[8]

Aside from benefit changes necessitated by inflation the representatives of the Oregon people have only legislated minor plan amendments refining the existing law. Such refinements, as our recent housekeeping legislation, have been: the ratification of our adminstrative declaratory ruling clarifying the "primary nature of benefits" (ORS 743.810),[9] the clarification of primary coverage between certain ORS 743.800 benefit recipients, and the clarification of inter-insurer reimbursement procedures and cost allocations such as attorney fees.[10]

One demonstrative indicator of Oregon's satisfaction with its plan is the 17.1 percent reduction noted by our office in automobile bodily injury claim complaints since the effectuation of our plan.[11] Contrast this reduction to the 38.2 percent increase in our state of automobile registration during the same corresponding six-year period.

Complaints to our office from our insurance-buying public on the plan itself are 11 percent fewer than complaints of six years ago on non no-fault insurance.[11] The limited dissatisfactions received queried why the plan failed to provide pain and suffering benefits or questioned disability benefits.

Respects public satisfaction with Oregon's no-fault law when pain and suffering is in issue, it is our observation that the vast majority of those injured auto victims with severe pain and suffering cases are well pleased with their right under Oregon law to seek tort remedies in court.

DECLINE OF AUTO BODILY INJURY CLAIMS

Since the institution of the Oregon plan auto bodily injury claims have dropped radically even though our law provides for tort recoveries in court.

In 1975 the major auto writers all advised that their bodily injury claim count had been reduced drastically. This is attributed to Oregon Plan's reimbursement section. When the injured party is reimbursed for his injury regardless of fault the impetus to make a bodily injury claim fades away in a large number of cases.

Our independent survey for the first 36 months of the plan's operation revealed a 33.4 percent decline in the frequency of auto bodily injury claims.[12] The decline is striking when compared with Oregon's 8.3 percent population growth and 16 percent increase in automobile registrations for the same period.

DECLINE OF AUTO ACCIDENT SUITS

The argument of court congestion fails in Oregon where in Multnomah County (the largest and most metropolitan county in the state) the plaintiff can go to trial four to six months after he files his first complaint.

We are told by our courts that there is no question about the reduction in court cases. Case load in Multnomah County has been reduced by 300 cases between 1971 and 1973. Auto personal injury cases tried represent 1 percent of total cases.[13]

The Multnomah County Bar reported in an informal telephonic survey of February 1978 that a dynamic one-third decrease in

automobile bodily injury court filings was attributable to the Oregon Plan. While the Plantiff's Bar believes such filings have leveled off since 1974, the majority of the Defendant's Bar report a noted continued decline in automobile injury tort filings.

A very important element in Oregon's laws which we believe is the real key to the reduction of lawsuits is Oregon's reimbursement statute. Briefly, it requires that an injured party reimburse his own insurance company fully from any settlement or judgment he may receive from the tort-feasor. Thus, if a person has a small injury and knows that he must pay his own insurer from any proceeds he receives, and that the attorney will not be reimbursed from that amount, he and his attorney takes a different look at the possibility of a judgment sufficient to take care of the court costs, filing fee, deposition, subpoena fees, doctors' fees and reimbursement of his carrier before he and his attorney receive anything.

In its counterparts, the arbitrary tort threshold, the plaintiff can achieve the threshold and then is home free, because he does not have to pay his carrier back. We believe this is the type of coverage which has proven to aid and assist the small law suit.

We submit that the decline of lawsuits in our state is logically and properly attributable in part to one of the intended side effects of the no-fault law - the elimination of excessive and unnecessary legal expenses. Lacking precise statistics on the

decline of attorney representation, we, nevertheless, believe the 33.4 percent A.B.I. claim frequency decline in our first three operational years and the noted Oregon court docket improvement are probative of a waning attorney representation in auto accident cases.

Although the effect is yet to be measured, another indication of the attorney representation decline is noted in the attitude of the Oregon State Bar. The Bar has advised its members that contingent fees should not be utilized for no-fault cases unless such arrangement would be beneficial to the client,[14] and that attorneys with notice of no-fault insurers' reimbursement claims who have third party recoveries in clients' trust accounts "should not disburse the remaining funds to client, but should seek a determination of the conflicting claims by appropriate legal proceedings."[15]

The Bar, in an informal opinion, has also taken the position that it would be improper for an attorney to advise his client to refrain from accepting or making a claim for no-fault benefits due the client when it appears that the only person to benefit from such advice is the attorney to the detriment and inconvenience of his client.

IMPACT OF OREGON PLAN'S OPERATION ON PERSONAL INJURY RATES

The initial effect of the Oregon plan upon the majority of companies doing business in this state, such as Safeco, Allstate,

State Farm, etc., was a respective 7 to 15 percent reduction in the bodily injury premiums. Our November 1974 36-month study indicated that on the average auto bodily injury premiums were cut 7 percent between late 1972 and 1973, and were cut by another 7 percent in late 1973 through 1974.[16] In earlier 1975, however, no-fault (PIP) rate increases of approximately 9 percent had been granted to offset the impact of inflation. Such increases to mid-1975 were modest in comparison to other states with 25 to 30 percent increases.

During the first four years of our no-fault law, insurance rates for most standard combinations of liability and no-fault coverages increased by approximately 10 percent (Exhibit 5). Contrast our 10 percent increase with U.S. Bureau of Labor Consumer Price Index (CPI) reportings of 37.3 percent general and 40.7 percent medical cost increases in the Portland, Oregon, area for the same four-year period (Exhibit No. 2 U.S. Bureau of Labor report). Furthermore, the maximum PIP benefits increased by over 50 percent during this period.

Since the end of 1975, liability and no-fault premium rates have risen at approximately the same extent as the Consumer Price Index (Exhibits 2 and 5).

It is noteworthy that not only has Oregon's no-fault auto plan allowed our insurance-buying public to escape the clout of inflation, but also, because of its progressing pricing, the cost of basic insurance protection has remained almost unaffected by inflation. In this respect Oregon's no-fault auto plan has proven

to be sort of a local social reform program acceptable to Oregonians.

We also wish to emphasize that inflation was not the sole justification for the recent rating relief granted our PIP carriers. The basic justification was the cumulative 54.3 percent legislative increase in PIP benefits. Effective January 1, 1974, our maximum benefits jumped from $13,320 to $20,552 with the $2,000 jump in medical benefits, the addition of $1,000 funeral benefits, the extreme $3,000 increase in employed disability benefits, and the $2,232 increase in unemployed disability benefits.[17]

At the present, the Oregon plan has effected a relative 2.8 percent reduction in automobile insurance cost over its first five operational years and a 7.1 percent relative reduction for 1976, the year of the most recent available experience. Such reductions were reported last December in "An Evaluation of No-Fault Automobile Insurance Costs" released by Conning & Company, an independent consulting firm of Hartford, Connecticut. This report evaluated the per car insurance cost of an average Oregonian as of 1976 relative to his pre no-fault cost in 1971. The findings factored out the effect of double digit inflation, 1974 gas shortage's reduction on claim frequency, and other such external cost changes. The loss costs (pure premium) per car relatives reported were:

> 1.9 percent increase for 1972, 10.6 percent reduction for 1973, 3.7 percent increase for 1974, 2.1 percent reduction for 1975, and 7.1 percent reduction for 1976.

CONCLUSION

The Oregon plan is people-oriented and takes no rights away from the people, whether rich or poor. The Oregon plan does not set

an artificial barrier conceived by someone other than the injured party to achieve before he can ask for redress against the person who injured him.

Many opponents of the Oregon plan have interests that are in conflict with the interest of the people. Considerable misinformation has been disseminated concerning the Oregon plan in an attempt to discredit it. It has worked well for the people of Oregon. Whether it would be as effective in other states is, of course, for the people of those states to decide.

FOOTNOTES

1. State Consumer Action summary 1974, DHEW, p. 149, Pub. No. (OS) 75-116.

2. State Consumer Action summary, supra.

3. Ch. 523, Oregon Laws 1971; Ch. 551, Oregon Laws 1973; Ch. 784, Oregon Laws 1975, codified in ORS 743.800, et seq.

4. This observation was drawn from the Department of Transportation table (Exhibit 1) with allowances for annual cost trends of 15 percent, but assuming the same distribution pattern.

5. ORS 743.825, 743.828, 743.830 and 743.835.

6. Exhibit No. 7.

7. Ridenour v. Nationwide Mutual Ins. Co., 273 Or 514, 541 P2d 1377 (1975)

   The Oregon Supreme Court grounded its decision upon the reimbursement section, ORS 743.825, in holding that in insurer who makes a recovery from a third party for moneys paid its insured is only required to pay attorney's fees which were reasonably and necessarily incurred to make the recovery, and absent an agreement to the contrary, an insurer is only obligated for attorney fees if it is benefitted.

   Lindsey v. Dairyland Ins. Co., 278 Or 681 (1977)

   In a situation prior to the ORS 743.828 effective date to determine whether the PIP insurer was required to pay certain attorney fees and expenses of the PIP beneficiary's third party action, the Court found that since the fees for the recovery of the moneys paid by PIP beneficiary's insurers were not reasonably and necessarily incurred, such beneficiary could not recover upon the basis set forth in "Ridenour," supra.

   Northwestern Pacific Indem. Co. v. Canutt et al, Hartford Accid. Indem. Co., 280 Or 375 (1977)

   The primary issue here was how to divide proceeds from a third party settlement as between the PIP beneficiary, his attorney, PIP insurer, and workers' compensation insurer. The Court applied ORS 743.810 in finding that the PIP insurer had an offset for workers' compensation (w.c.) benefits as against the w.c. insurer. Finding the PIP and w.c. statutory schemes in harmony, the Court affirmed the favorable distribution to the PIP beneficiary as against the w.c. insurer, and affirmed

adversely against the PIP beneficiary and his attorney on the attorney fee issue for failure to secure the PIP insurer's approval for such representation.

8. Southwestern Ins. C. v. Winn, 274 Or 695 (1976)

In an interpretation dispute over the application of the anti-double recovery section ORS 743.810 the Court found no ambiguity in this section's statutory phrase "may be replaced or eliminated."

Monaco v. U.S. Fidelity and Guaranty Co., 275 Or 183 (1976)

The Court confirmed that ORS 743.835 allows the PIP insurer to subtract PIP benefits paid to its insured from the amount due under the uninsured motorist coverage whether or not the insured is fully compensated for his or her loss.

9. Oregon Insurance Commissioner's Declaratory Ruling in the matter of U.S. Army v. Ohio Cas. Ins. Co. (May 15, 1975) ruling no-fault auto coverage primary to all other insurance except workmen's compensation type insurance; e.g., FELA.

10. Ch. 784, Oregon Laws 1975 (House Bill 3199). See also attached commentary as received by House Committee on Consumer and Business Affairs.

11. Oregon Insurance Division's Public Service Unit's computer printout readings (1970 compared with 1977).

12. Exhibit No. 3.

13. Exhibit No. 4.

14. Oregon State Bar, Opinions of Committee on Professional Responsibility No. 282, (Attorneys Fees re PIP coverage) (Feb. 15, 1975).

15. Oregon State Bar, Opinion of Professional Responsibility No. 296, PIP Benefits - Obligation of Attorney to Insurance Company (November 1975).

16. Exhibit No. 3.

17. Ch. 523, Oregon Laws 1973.

PERCENTAGE OF ECONOMIC LOSS CLAIMS COVERED BY THE OREGON NO-FAULT AUTOMOBILE INSURANCE PLAN

The below table from reportings of the U. S. Department of Transportation "Automobile Personal Injury Claims", Volume 1, July, 1970, at page 50, illustrates that the initial 1971 benefit schedule of the Oregon plan would contain approximately 95% of all economic losses resulting from automobile personal injuries.

TABLE
PERCENTAGE DISTRIBUTION OF PAID CLAIMANTS BY SIZE OF ECONOMIC LOSS TO DATE OF SETTLEMENT

Economic Loss to Date of Settlement	Percent of Claimants
None	6.9%
$1 - 500	72.0
501 - 1,000	10.2
1,001 - 1,500	4.0
1,501 - 2,500	3.2
2,501 - 5,000	2.2
5,001 - 10,000	1.1
10,001 - 25,000	.4
Over $25,000	.1
Total*	100.0%

* Detail may not add to totals due to rounding.

EXHIBIT 1

NATIONAL AND LOCAL CONSUMER PRICE INDEX

EXHIBIT E

The below Consumer Price Index (CPI) data for Portland and the United States, including the Medical Care component, have been compiled from U.S. Bureau of Labor statistics and Research and Statistics section of the Oregon State Employment Division.

CONSUMER PRICES
1967=100
Not Seasonally Adjusted

		National C.P.I.		Portland C.P.I.	
		Gen. CPI	Med. Comp.	Gen. CPI	Med. Comp.
1967		100.0		100.0	
1968		104.2		103.5	
1969		109.8	Not	108.6	Not
1970		116.3	Available	113.2	Available
1971		121.3		116.1	
* 1972	January	123.2	130.5	118.1	124.9
	April	134.3	131.7	118.4	125.8
	July	125.5	132.7	119.6	127.5
	October	126.6	133.9	120.6	129.5
	Jan.-Jan.-Δ	+3.65%	+3.37%	+3.13%	+4.70%
1973	January	127.7	134.9	121.8	130.8
	April	130.7	136.2	125.3	134.5
	July	132.7	137.3	127.1	134.5
	October	136.6	140.6	130.8	139.1
	Jan.-Jan.-Δ	+9.40%	+5.40%	+9.93%	+8.49%
1974	January	139.7	142.2	133.9	141.9
	April	143.9	145.6	139.2	144.6
	July	148.0	151.4	143.7	151.7
	October	153.0	156.3	148.2	153.6
	Jan.-Jan.-Δ	+11.74%	+13.22%	+13.89%	+12.05%
1975	January	156.1	161.0	152.5	159.0
	April	158.6	165.8	154.2	162.2
	July	162.3	169.8	157.1	168.1
	October	164.6	173.5	159.2	169.1
	Jan.-Jan.-Δ	+6.79%	+9.69%	+6.30%	+10.50%
1976	January	166.7	176.6	162.1	175.7
	April	168.2	181.6	164.4	176.7
	July	171.1	185.5	168.1	181.5
	October	173.3	188.9	169.8	183.5
	Jan.-Jan.-Δ	+5.16%	+9.91%	+6.35%	+9.45%
1977	January	175.3	194.1	172.4	192.3
	April	179.6	199.1	177.8	196.1
	July	182.6	203.5	181.5	200.8
	October	184.5	207.2	183.8	202.2

*Oregon Plan Became Operational

OREGON NO-FAULT INSURANCE EXPERIENCE - 36 MONTHS
(Five Carrier Survey Representing 37% of P.P. Auto Writings)

CARRIER	PERIOD	ABI CLAIM FREQUENCY	ABI SUIT FREQUENCY	COMMENTS
Writer #1 (Am.Agy.System)	1971	4,038	- -	37.1% ABI claim frequency decline between pre and post no-fault period ('71-'74)
	1972	3,950	- -	
	1973	2,540	114	
	1974 (9 mos(	1,905(2,540)*	84(112)*	1.8% ABI suit decline during previous no-fault year (73-7
Writer #2 (Am.Agy.System)	1971	1,548	168	51.7% ABI claim frequency decline between pre and post no-fault period ('71-74)
	1972	1,454	156	
	1973	816	180	
	1974(6 mos)	374(748)*	80(160)*	4.8% ABI suit decline betwee pre and post no-fault period ('71-74)
Writer #3 (Direct writer)	1972	459	65	16.6% ABI claim frequency during prior no-fault period ('72-'74).
	1973	439	62	
	1974(9 mos)	287(383)*	30(40)*	38.5% ABI suit frequency decline during prior no-fault period ('72-'74)
Writer #4 (Direct writer)	1972	2,958	- -	33.3% ABI claim frequency decline during prior no-fault period ('72-'74)
	1973	2,389	286	
	1974(8 mos)	1,315(1,972)*	181(271)*	5.2% ABI suit frequency decline during previous two no-fault years ('73-'74)
Writer #5 (Direct writer)	1971	22.8/1,000 car units	211	28.5% ABI claim frequency decline between pre and post no-fault period ('71-74)
	1972	22.8/1,000 car units	223	
	1973	19.4/1,000 car units	159	
	1974 (8 mos)	16.3/1,000 car units	198(297)*	6.2% ABI suit frequency decline between pre and post no-fault period ('71-'74)
		36 month composite (Unweighted average)		33.4% ABI claim frequency decline. 1.9% ABI suit frequency decli

*Projection to annual experience

EXHIBIT 3

EXHIBIT 3

OREGON NO-FAULT INSURANCE EXPERIENCE - 36 MONTH SURVEY (Cont'd)

CARRIER	PERIOD	E/I LOSS RATIO ABI	APIP		RATE REVISIONS
Writer #1	1973	47.3%	83.7%	5-15-73:	8.9% ABI DECREASE
	1974(9 mos)	59.5%	81.3%	1-1-74:	40% APIP INCREASE ($4/annum) for statutory benefit increases
				11-15-74:	7.8% ABI INCREASE for Increased Lim factors revision.
Writer #2	1973	50.9%	122.3%	9-1-73:	8.7% ABI DECREASE
	1974(6 mo)	49.2%	55.9%	12-1-74	7.8% ABI INCREASE for Increased Lim factors revision.
Writer #3	1973	79.2%	65.6%	7-74:	15% Good Student Driver Discount effecting a .4% premium reduction o auto book.
	1974(6 mo)	89.3%	29.2%		
Writer #4	1973	62.9%	72.2%		
	1974(8 mo)	67.8%	51.9%	1-1-74:	(Unknown)% APIP INCREASE for statutory benefit increase.
Writer #5	1973	49.9%	69.0%	1-1-74:	ABI DECREASE
	1974(8 mo)	55.0%	47.0%	1-1-74:	19.5% APIP INCREASE for statutory benefit increases.

EXHIBIT E

CASE FILINGS - MULTNOMAH COUNTY

	Law	Equity	Divorce	Criminal	Totals	% of all BI Cases as to all Cases Filed
1970	4,492 (1,549 - BI Cases)	1,312	5,367	2,633	13,804	11.22%
1971	4,133 (1,394 - BI Cases)	1,121	5,327	3,142	13,723	10.16%
1972	4,214 (1,212 - BI Cases)	1,125	5,572	3,117	14,028	8.64%

EXHIBIT E

AUTO BI FILINGS - MULTNOMAH COUNTY JURY TRIALS

	BI Cases Tried	Total Jury Trials	% of BI Cases Tried as to Total of all Jury Trials
1970	181	833	21.73%
1971	122	798	15.29%
1972	150	872	17.20%

eptember 9, 1971 - Comparative Negligence Becomes Effective

anuary 1, 1972 - PIP benefits applicable on all policies issued or renewed after this date.

EXHIBIT A

EXHIBIT E

1973 Automobile Accident Personal Injury Cases
Filed in Multnomah County

Month	Number	Six Month Totals
January	97	
February	94	
March	80	
April	80	
May	88	
June	72	511
July	78	
August	89	
September	101	
October	100	
November	107	
December	85	560
Total	1071	

9.4% of all cases filed are personal injury

Personal injury auto cases tried comprise approximately 1% of all cases filed.

Exhibit F

F

Introduction

The materials, case histories and information contained in this booklet were assembled and prepared to support passage of S.B. 382 as well as to propose an amendment thereto. All data and statistical information used herein was compiled on March 5, 1979.

This office would have to oppose S.B. 382 as presently written. The separation of funding for this office and the appeals officers, and a more efficient hearing system, are included in A.B. 84. S.B. 382, as presently written, would appear to be a duplication of effort. The amendment proposed to S.B. 382 would create a new hearing division. The Nevada Industrial Commission would no longer have the duty of hearing contested claims.

It is the position of the State Industrial Attorney's office that the present administrative appeals hearing system used by the Nevada Industrial Commission is too lengthy and too burdensome as the result of unnecessary repetitious hearing levels.

It is essential to remember that the industrial insurance system in Nevada is not a social welfare system. The industrial insurance concept was created with the purpose of relieving employers of the financial burdens of litigation and to eliminate the risk of liability to employees who were injured while working. The system was also created with the purpose of providing employees with speedy medical and financial assistance to sustain them and their families during periods of disability resulting from their work-related injuries.

The bureaucratic morass of the Nevada Industrial Commission's administrative hearings procedure frustrates these goals and is a disservice to employers and employees alike.

Since its inception in June 1977, the State Industrial Attorney's office has been appointed to represent claimants on 247 cases appealed to the Nevada Industrial Commission's Appeals Officer. The thirty case histories summarized in the materials were not selected because they were unusual in any respect. An arbitrary decision was made to summarize the first fifteen and the last fifteen cases in which the State Industrial Attorney's office was attorney of record and for which a decision was rendered by the Appeals Officer.

It is noteworthy that in 24 of the 30 cases summarized, the hearing or review at the Commission level affirmed the decision reached at the claims level hearing. In two of the remaining six decisions no claims level hearing was held.

These materials will be discussed, referred to, and elaborated upon during testimony before the Senate Commerce and Labor Committee on April 4, 1979.

DATED this 3rd day of April, 1979.

Respectfully submitted,

Patty Becker

Patricia Becker
State Industrial Attorney

EXHIBIT E

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EXHIBIT E

GLOSSARY

Administrative Closure - An NIC policy which permits a claim to be closed without notice or opportunity for hearing being provided to the claimant. Closure occurs when a physician, employed by NIC, determines that no permanent partial disability award is substantiated and the claimant has not sought medical treatment for an unspecified period of time.

Notice of closure of a claim is sent to the employer, treating physician, pharmacist, hospital and all interested parties except the claimant.

The claimants usually discover that their claim has been closed when they go to their physician for treatment. Thereafter claimants usually call NIC and are informed that their only recourse is to request that their claim be reopened.

A.M.A. Guides - This term refers to an American Medical Association publication entitled "Guides to the Evaluation of Permanent Impairment." The guidelines contained in this book are used to determine the extent or percentage of permanent partial disability which result from any particular type of injury.

Medical Investigation - An unwritten NIC policy which sends the claimant for medical treatment without paying temporary total disability compensation. Therefore, the claimants receive no money while they are not working but are under a doctor's care for an industrial injury.

Permanent Partial Disability Award (P.P.D.) - P.P.D. is the percentage of impairment which a claimant suffers as the result of his or her injury. The percentage of impairment which a claimant is determined to have can vary from 1% to 99% depending on the severity of the particular injury. The amount of the monetary payments received by the claimant is calculated from the percentage of impairment.

A claimant receiving a P.P.D. award of 12% or less may elect to receive payment in a lump sum. A P.P.D. award of over 12% is paid on a monthly or yearly basis. (An example of how an award is calculated will be presented at the hearing.)

P.P.D. awards are paid until the claimant reaches the age of 65, or for a period of five years, whichever is longer.

Permanent Total Disability (P.T.) - This is the highest disability award a claimant can receive. It means the person is 100% or totally disabled as the result of an industrial injury

and will never be able to work again. This award is paid on a monthly basis for life. The claimants receive 66-2/3% of 150% of the average state wage, whichever is less. (An example of this award will be given at the hearing.)

Rehabilitation Maintenance - This is money paid to the claimant while the claimant is "cooperating" with the NIC's rehabilitation department. It is paid every two weeks and cannot be greater than the amount the claimant was receiving while on temporary total disability compensation. Rehabilitation maintenance is paid totally at the discretion of the rehabilitation counselor.

Reopening - This term is used to define the rights a claimant has under NRS 616.545. Once a claim has been closed the claimant, if further medical treatment is required, must file a reopening request. Many reopening requests are made because a claimant's claim was an "administrative closure" and the claimant never got an opportunity to appeal the closure of the claim. The only manner by which claimant can obtain a hearing is to file a reopening request and when the request is denied, appeal the denial through the system.

All requests for reopening are submitted directly to the NIC Commissioners. If the request is denied, then the claimant must appeal the denial to the NIC claims department. If the claims department denies the request, the claimant must appeal to the NIC Commissioners. After the NIC Commissioners have re-denied what they already denied once, the claimant can appeal to the Appeals Officer.

Stipulated Settlement - This term is used to describe the situation where the claimant and the NIC, through their respective attorneys, agree on final disposition of the claim, thereby ending the appeal.

Temporary Total Disability Compensation (T.T.D.) - This is the money that is supposed to substitute for the injured worker's salary while he is under the auspices of NIC. T.T.D. is paid while a claimant is not working and is certified by a physician that he is physically unable to work due to the industrial injury. T.T.D. is paid biweekly.

T.T.D. is calculated at 66-2/3% of the actual wage earned on the date of the injury or 66-2/3% of 150% of the average state wage, whichever is less. T.T.D. is terminated when any physician states that the claimant is physically able to return to work.

EXHIBIT E

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c. Three way system

(1) State fund

(2) Self insurance

(3) Private insurance carriers

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S.B. 382

SECTION 1. Chapter 619 of NRS is hereby created by adding thereto the provisions set forth as sections 2 to 22, inclusive, of this act.

SECTION 2. The Workers' Compensation Hearing Division is hereby created.

SECTION 3. It is the purpose of this chapter to provide an independent and speedy hearing procedure to workers injured on the job.

SECTION 4. As used in this chapter, unless the context otherwise requires, the words and terms have the meaning ascribed to them as follows:

(a) "Division" means the Workers' Compensation Hearing Division.

(b) "Director" means the director of the workers' compensation hearing division.

(c) "Self-insured employer" means anyone qualified under NRS 616._____.

(d) "Private carrier" means any insurance company licensed to sell workers' compensation insurance in the State of Nevada.

SECTION 5. 1. The governor shall appoint a director for the worker's compensation hearing division who shall be in the unclassified service of the state. The director shall hold office for a term of 4 years from the date of his appointment and until his successor has been appointed.

2. The director is entitled to receive an annual salary in an amount determined pursuant to the provisions of NRS 284.182.

SECTION 6. 1. The director may employ:

(a) Hearing officers who shall be in the classified service of the state.

(b) Clerical and other necessary staff who shall be in the classified service of the state.

2. The director and his employees, and the appeals officers, are entitled to receive the travel expenses and subsistence allowances provided by law for state officers and employees.

SECTION 7. The director shall:

(a) Be in charge of all settings of hearings to be held within the division.

(b) Prepare the yearly budget for the division which shall include the appeals officers'.

(c) Bill the state insurance fund, self-insured employers, and private carriers for their proportionate share of costs for the division.

(d) Hire all personnel of the division except for the appeals officers.

(e) Supervise and regulate all matters relating to provisions of this chapter.

SECTION 8. The workers' compensation hearing division is not under the juridiction of the Nevada industrial commission.

SECTION 9. 1. All salaries and other expenses of administering NRS 619, within the legislative appropriation for this purpose, shall be paid by the state insurance fund, self-

insured employers, and private carriers.

2. Payment shall be assessed by the amount of usage by each of the aforementioned sources.

3. The funding of NRS 619 shall be administered through the state budget division. Payment from the state insurance fund, self-insured employers and private carriers shall be made to the state budget division.

SECTION 10. 1. The governor shall appoint two appeals officers to conduct hearings in contested claims for compensation under chapter 616 and chapter 617 of NRS. Each appeals officer shall hold office for a term of 4 years from the date of his appointment and until his successor is appointed and has qualified. Each appeals officer is entitled to receive an annual salary in an amount provided by law for employees in the unclassified service of the state.

2. Each appeals officer shall be an attorney who has been licensed to practice law before all the courts of this state for a period of at least 2 years. An appeals officer shall not engage in the private practice of law.

3. The appeals officers shall be under the jurisdiction of the division and the director. All monetary expenditures of the appeals officers shall be approved by the director pursuant to the legislative determinations set forth in the division's budget.

4. If an appeals officer determines that he has a personal

interest or a conflict of interest, directly or indirectly, in any case which is before him, he shall disqualify himself from hearing such case. The director shall request the governor to appoint a special appeals officer who is vested with the same powers as the regular appeals officer would possess. The special appeals officer shall be paid at an hourly rate determined by the director.

5. The decision of an appeals officer is the final administrative determination of a claim under chapter 616 or chapter 617 of NRS, and the whole record consists of all evidence taken at the hearing before the appeals officer and any findings of fact and conclusions of law based thereon.

SECTION 11. The hearing officers shall be hired for their expertise in the workers' compensation field or equivalent experience.

SECTION 12. Any determination made by the state insurance fund, self-insured employers, or private carriers affecting an injured worker's rights must be made in writing and sent to the injured worker along with an explanation of his rights. The explanation of an injured worker's rights shall be provided by the division.

SECTION 13. 1. Any person subject to the jurisdiction of chapters 616 or 617 of the Nevada Revised Statutes may request a hearing before the division by filing a notice of request for hearing.

2. The division shall provide "notice of request for hearing" forms to the state insurance fund, self-insured

employers, private carriers, and any party requesting said form.

SECTION 14. 1. Within five days after the receipt of the notice of request for hearing the division must cause the matter to be set before a hearing officer and the hearing must be held within 30 days.

2. Written notice of any hearing must be served upon or mailed to all interested parties at least 15 days before the matter is to be heard.

3. The hearing held by the hearing officer must be informal and a record need not be made. The rules of evidence do not apply but whoever holds the hearing may exclude or limit testimony which is immaterial or irrelevant to the proceedings.

4. Upon conclusion of the hearing the hearing officer must make a written finding of facts and render a decision within 15 days. A copy of said findings of facts and decision and a right to appeal form must be served upon or mailed to all interested parties. Upon proper service this decision is binding on all parties.

SECTION 15. 1. Any aggrieved party may appeal a decision of a hearing officer by filing a notice of appeal with the division within 60 days after the decision is filed.

2. Within five days after notice of appeal is filed the matter must be set for a hearing de novo before the appeals officer and the hearing must be held within 45 days. A matter may be continued upon written stipulation of all

parties but must be reset for a hearing to be held within 45 days after the stipulation. Immediately upon setting the hearing notice shall be sent to all interested parties.

SECTION 16. 1. The hearing before the appeals officer must be recorded.

2. Any relevant matter raised at the hearing before the appeals officer must be heard on its merits and new evidence may be introduced on any subject before the appeals officer.

3. Upon request of any party or the appeals officer the record must be transcribed and a transcript filed within 30 days after the hearing.

4. The appeals officer shall have 7 days after the hearing in which to order a transcript.

5. The appeals officer shall render a decision within 30 days after the transcript has been filed. If no transcript was ordered within the 7-day period following the hearing the appeals officer has 30 days from the date of hearing to render a decision.

6. The appeals officer may affirm, modify or reverse any decision made by the hearing officer and issue any necessary and proper order to effectuate his decision. The decision of the appeals officer becomes binding when filed with all parties.

7. An order of the appeals officer is enforceable upon application to the district court.

SECTION 17. At any time 10 or more days prior to a scheduled hearing before an appeals officer a party shall mail or deliver to the opposing party any affidavit which he proposes

to introduce into evidence and notice to the effect that unless the opposing party, within 7 days after the mailing or delivery of such affidavit, mails or delivers to the proponent a request to cross-examine the affiant, his right to cross-examine the affiant is waived and the affidavit, if introduced into evidence, will have the same effect as if the affiant had given sworn testimony before the appeals officer.

SECTION 18. An appeals officer and the hearing officers, in conducting hearings may:

(a) Issue subpenas requiring the attendance of any witness or the production of books, accounts, papers, records and documents.

(b) Administer oaths.

(c) Certify to official acts.

(d) Call and examine under oath any witness or party to a claim.

(e) Maintain order.

(f) Rule upon all questions arising during the course of a hearing or proceeding.

(g) Permit discovery by deposition or interrogatories.

(h) Initiate and hold conferences for the settlement or simplification of issues.

(i) Dispose of procedural requests or similar matters.

(j) Generally regulate and guide the course of a pending hearing or proceeding.

SECTION 19. 1. Each officer who serves a subpena shall receive the same fees as a sheriff.

2. Each witness who appears in obedience to a subpena before an appeals officer or hearing officers is entitled to receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record.

3. Claims for witnesses' fees shall be audited and paid from the state treasury in the same manner as other expenses are audited and paid upon the presentation of proper vouchers approved by the director.

4. A witness subpenaed at the instance of a party other than an appeals officer or the hearing officer is not entitled to compensation from the state treasury unless an appeals officer or the hearing officer certifies that his testimony was material to the matter investigated.

SECTION 20. If an appeal is taken to the district court from a final decision of an appeals officer and such appeal is found by the district court to be frivolous or brought without reasonable grounds, the district court may order costs and a reasonable attorney's fee to be paid by the party taking such appeal.

SECTION 21. 1. No judicial proceedings may be instituted for compensation for an injury or death under chapter 616 or 617 unless:

(a) A claim for compensation is filed as provided in NRS 616.500 or 617.330; and

(b) A final decision of an appeals officer has been rendered on such claim.

2. Judicial proceedings instituted for compensation for an injury, occupational disease, or death, under this chapter

are limited to judicial review of the decision of an appeals officer.

SECTION 22. NRS 616.218, 616.220(6)(a)(b), 616.226, 616.230, 616.235, 616.240, 616.245, 616.542, 616.5421, 616.543, 616.544, 617.165 and 617.405 are hereby repealed.

SECTION 23. This act shall become effective on July 1, 1979.

books of accounts and records, and of funds and securities of the commission. The commission is authorized to employ and fix the compensation of a competent accountant for the purpose of making the audit or audits. The expenses thereof shall be paid out of the state insurance fund.
[94:168:1947; 1943 NCL § 2680.94]

616.205 Commission to prosecute and defend actions; extraordinary writs; verifications; undertakings.
1. The commission is authorized and empowered to prosecute, defend and maintain actions in the name of the commission for the enforcement of the provisions of this chapter and shall have the right to all extraordinary writs provided by the constitution of the State of Nevada, the statutes of this state and the Nevada Rules of Civil Procedure in connection therewith for the enforcement thereof.
2. Verification of any pleading, affidavit or other paper required may be made by any commissioner or by the secretary.
3. In any action or proceeding or in the prosecution of any appeal by the commission, no bond or undertaking shall ever be required to be furnished by the commission.
[82:168:1947; 1943 NCL § 2680.82]—(NRS A 1969, 1101)

616.210 Sessions and business hours. The commission shall be in continuous session and open for the transaction of business during all the business hours of every day except Saturdays, Sundays and legal holidays. All sessions shall be open to the public, and shall stand and be adjourned without further notice thereof on its records. All proceedings of the commission shall be shown on its records which shall be a public record and shall contain a record of each case considered and the award made with respect thereto. All voting shall be had by the calling of each commissioner's name by the secretary, and each vote shall be considered as cast.
[40:168:1947; A 1949, 659; 1943 NCL § 2680.40]

616.215 Printing. Except in cases of emergency, all necessary printing, including forms, blanks, envelopes, letterheads, circulars, pamphlets, bulletins and reports required to be printed by the commission shall be done by the state printing and records division of the department of general services.
[Part 42:168:1947; 1943 NCL § 2680.42]—(NRS A 1969, 1529; 1973, 1477)

616.218 Procedures for determination of contested cases. The commission may by regulation provide for specific procedures for the determination of contested cases not inconsistent with this chapter.
(Added to NRS by 1973, 1596; A 1975, 761; 1977, 1389)

616.220 Powers and duties of commission. The commission shall:
1. Prescribe by regulation the time within which adjudications and awards shall be made.

2. Prepare, provide and regulate forms of notices, claims and other blank forms deemed proper and advisable.
3. Furnish blank forms upon request.
4. Provide by regulation the method of making investigations, physical examinations, and inspections.
5. Prescribe by regulation the methods by which the staff of the commission may approve or reject claims, and may determine the amount and nature of benefits payable in connection therewith. Every such approval, rejection and determination is subject to review by the commission.
6. Provide for adequate notice to each claimant of his right:
(a) To review by the commission of any determination or rejection by the staff.
(b) To judicial review of any final decision.
[Part 44:168:1947; 1943 NCL § 2680.44]—(NRS A 1969, 1101; 1973, 599, 1597; 1977, 83)

616.222 Power of commission to provide and require acceptance of rehabilitation services.
1. To aid in getting injured workmen back to work or to assist in lessening or removing any resulting handicap, the commission may take such measures and make such expenditures from the state insurance fund as it may deem necessary or expedient to accomplish such purpose, regardless of the date on which such workman first became entitled to compensation.
2. Any workman eligible for compensation other than accident benefits will not be paid those benefits if he refuses counseling, training or other rehabilitation services offered to him by the commission.
(Added to NRS by 1973, 362)

616.223 Cooperative agreements between commission and rehabilitation division, department of human resources for benefit of disabled employees; vocational rehabilitation fund.
1. Subject to the provisions of this section, the commission is authorized to enter into cooperative agreements with the rehabilitation division of the department of human resources for the benefit of disabled employees entitled to compensation and benefits pursuant to the provisions of this chapter.
2. Among other things such cooperative agreements may provide that:
(a) With the consent of the disabled employee, the compensation and money benefits due him under the provisions of this chapter shall be paid to the rehabilitation division of the department of human resources for deposit by such division in the vocational rehabilitation fund hereby created in the state treasury to be expended by such division for the benefit of such disabled employee.

(b) Within the limits of the money so made available to the rehabilitation division of the department of human resources such division shall:

(1) Provide allowances for living expenses while the disabled employee is undergoing examination or treatment or awaiting or receiving restorative or vocational training.

(2) Pay for such medical and psychological examinations and treatments and for such prosthetic appliances as are determined by the division, in its sole discretion, to be necessary for the disabled employee's rehabilitation.

3. The rehabilitation division may direct the apportionment of benefits between those provided under subparagraph (1) of paragraph (b) of subsection 2 and those provided under subparagraph (2) of paragraph (b) of subsection 2.

4. Compensation, benefits or any other payments required under any such authorized cooperative agreement shall not exceed the compensation and benefits authorized and provided for under this chapter.

(Added to NRS by 1965, 538; A 1967, 832; 1973, 1406)

616.224 Agreements, compacts with other states; insurance coverage against double liability of employers.

1. The commission may enter into agreements or compacts with appropriate agencies, bureaus, boards or commissions of other states concerning matters of mutual interest, extraterritorial problems in the administration of this chapter, and for the purpose of eliminating duplicate claims or benefits.

2. The commission may provide liability insurance coverage against any risks of double liability on the part of employers subject to this chapter, for the same accident or injury.

(Added to NRS by 1973, 368)

616.226 Power of commission, appeals officer in conducting hearings, other proceedings. An appeals officer and the commission, in conducting hearings or other proceedings pursuant to the provisions of this chapter or regulations promulgated under this chapter may:

1. Issue subpenas requiring the attendance of any witness or the production of books, accounts, papers, records and documents.
2. Administer oaths.
3. Certify to official acts.
4. Call and examine under oath any witness or party to a claim.
5. Maintain order.
6. Rule upon all questions arising during the course of a hearing or proceeding.
7. Permit discovery by deposition or interrogatories.
8. Initiate and hold conferences for the settlement or simplification of issues.
9. Dispose of procedural requests or similar matters.
10. Generally regulate and guide the course of a pending hearing or proceeding.

(Added to NRS by 1975, 761; A 1977, 313)

EXHIBIT F

616.230 District judge may compel obedience to order or subpena. If any person disobeys an order of an appeals officer or the commission or a subpena issued by the commissioners, inspectors or examiners, or either of them, or refuses to permit an inspection, or as a witness, refuses to testify to any matter for which he may be lawfully interrogated, then the district judge of the county in which the person resides, on application of the appeals officer or the commission, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpenas issued from the court on a refusal to testify therein.

[48:168:1947; 1943 NCL § 2680.48]—(NRS A 1975, 762; 1977, 313)

616.235 Fees: Officers serving subpenas and witnesses.

1. Each officer who serves a subpena shall receive the same fees as a sheriff.
2. Each witness who appears in obedience to a subpena before an appeals officer or the commission is entitled to receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record.
3. Claims for witnesses' fees shall be audited and paid from the state treasury in the same manner as other expenses are audited and paid upon the presentation of proper vouchers approved by an appeals officer or any two commissioners.
4. A witness subpenaed at the instance of a party other than an appeals officer or the commission is not entitled to compensation from the state treasury unless an appeals officer or the commission certifies that his testimony was material to the matter investigated.

[49:168:1947; 1943 NCL § 2680.49]—(NRS A 1975, 762; 1977, 313)

616.240 Depositions of witnesses.

1. In an investigation, the commission may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law and Nevada Rules of Civil Procedure for taking depositions in civil actions in courts of record.
2. After the initiation of a claim under the provisions of this chapter or chapter 617 of NRS, in which a claimant or other party is entitled to a hearing on the merits, any party to the proceeding may, in the manner prescribed by law and the Nevada Rules of Civil Procedure for taking written interrogatories and depositions in civil actions in courts of record:

(a) Serve upon any other party written interrogatories to be answered by the party served; or

(b) Take the testimony of any person, including a party, by deposition upon oral examination.

[50:168:1947; 1943 NCL § 2680.50]—(NRS A 1975, 762)

EXHIBIT F

616.245 Transcripts; introduction in evidence.

1. A transcribed copy of the evidence and proceedings, or any specific part thereof, of any final hearing or investigation, made by a stenographer appointed by an appeals officer or the commission, being certified by that stenographer to be a true and correct transcript of the testimony in the final hearing or investigation, or of a particular witness, or of a specific part thereof, and carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on the final hearing or investigation so purporting to be taken and transcribed, may be received in evidence with the same effect as if the stenographer had been present and testified to the facts so certified.

2. A copy of the transcript shall be furnished on demand to any party upon the payment of the fee required for transcripts in courts of record.

[51:168:1947; NCL § 2680.51]—(NRS A 1967, 39; 1973, 1597; 1975, 762; 1977, 314)

616.250 Prior acts of commission continued in effect; disposition of claims and causes of action existing in June 1947.

1. All premiums, contributions, penalties, moneys, properties, securities, funds, deposits, contracts and awards received, collected, acquired, established or made by the Nevada industrial commission prior to July 1, 1947, and under the provisions of chapter 111, Statutes of Nevada 1913, shall continue in full force and effect, and the rights, obligations and liabilities of the commission thereunder shall be assumed and performed by the commission created in this chapter.

2. All proceedings shall be had and rights determined under the provisions of chapter 111, Statutes of Nevada 1913, and acts amendatory thereof and supplemental thereto, on any claims or actions pending or causes of action existing on June 30, 1947.

[99:168:1947; 1943 NCL § 2680.99] + [Part 100:168:1947; 1943 NCL § 2680.100]

616.251 Commission to provide separate program of medical coverage for members of athletic teams of University of Nevada System. The Nevada industrial commission shall offer a program of unlimited medical coverage of freshman and varsity athletic teams of the University of Nevada System for injuries incurred while the members of such teams are engaged in organized practice or actual competition or any activity related thereto, which shall be funded separately from the state insurance fund, and for this purpose shall establish premium rates on the basis of man months of athletic participation by members of the athletic teams. Any participation by the member of an athletic team during a calendar month shall be counted as 1 man month for purposes of premium calculation. A team member so covered is not entitled to any other benefit under this chapter.

(Added to NRS by 1973, 288)

EXHIBIT F

3. Should such medical board not be in agreement as to the findings, conclusions and recommendations, the members of such medical board shall submit separate and individual reports, concerning medical questions only, to the appeals officer or the commission.

[Part 58:168:1947; 1943 NCL § 2680.58]—(NRS A 1971, 210, 1130; 1975, 763; 1977, 314)

616.542 Contested claims: Appointment, term, qualifications of appeals officers; finality of decision; record.

1. The governor shall appoint two appeals officers to conduct hearings in contested claims for compensation under this chapter and chapter 617 of NRS. Each appeals officer shall hold office for a term of 4 years from the date of his appointment and until his successor is appointed and has qualified. Each appeals officer is entitled to receive an annual salary in an amount provided by law for employees in the unclassified service of the state.

2. Each appeals officer shall be an attorney who has been licensed to practice law before all the courts of this state for a period of at least 2 years. An appeals officer shall not engage in the private practice of law.

3. If an appeals officer determines that he has a personal interest or a conflict of interest, directly or indirectly, in any case which is before him, he shall disqualify himself from hearing such case and the governor may appoint a special appeals officer who is vested with the same powers as the regular appeals officer would possess. The special appeals officer shall be paid at an hourly rate, based upon the appeals officer's salary.

4. An appeals officer shall render his final decision on a contested claim within 120 days after the hearing.

5. The decision of an appeals officer is the final administrative determination of a claim under this chapter or chapter 617 of NRS, and the whole record consists of all evidence taken at the hearing before the appeals officer and any findings of fact and conclusions of law based thereon.

(Added to NRS by 1973, 1595; A 1975, 764; 1977, 84, 315, 316)

616.5421 Contested claims: Use of affidavits. At any time 10 or more days prior to a scheduled hearing before an appeals officer or the commission, a party shall mail or deliver to the opposing party any affidavit which he proposes to introduce into evidence and notice to the effect that unless the opposing party, within 7 days after the mailing or delivery of such affidavit, mails or delivers to the proponent a request to cross-examine the affiant, his right to cross-examine the affiant is waived and the affidavit, if introduced into evidence, will have the same effect as if the affiant had given sworn testimony before the appeals officer or commission.

(Added to NRS by 1975, 761; A 1977, 84)

616.543 Contested claims: Judicial review.

1. No judicial proceedings may be instituted for compensation for an injury or death under this chapter unless:

(a) A claim for compensation is filed as provided in NRS 616.500; and

(b) A final decision of an appeals officer has been rendered on such claim.

2. Judicial proceedings instituted for compensation for an injury or death, under this chapter are limited to judicial review of the decision of an appeals officer.

(Added to NRS by 1973, 1596; A 1977, 84, 315, 317)

616.544 Contested claims: Costs, attorney fees in frivolous appeals. If an appeal is taken to the district court from a final decision of an appeals officer and such appeal is found by the district court to be frivolous or brought without reasonable grounds, the district court may order costs and a reasonable attorney's fee to be paid by the party taking such appeal.

(Added to NRS by 1975, 761; A 1977, 316)

616.545 Application for increase or rearrangement of compensation; limitation.

1. If change of circumstances warrants an increase or rearrangement of compensation, application shall be made therefor. The application shall be accompanied by the certificate of a physician, showing a change of circumstances which would warrant an increase or rearrangement of compensation. No increase or rearrangement shall be operative for any period prior to application therefor; but the commission may allow the cost of emergency treatment the necessity for which has been certified to by a physician and upon receipt of such other evidence as may be required by the commission.

2. No application shall be valid or claim thereunder enforcible unless filed within 1 year after the day upon which the injury occurred or the right thereto accrued.

[56:168:1947; 1943 NCL § 2680.56] + [57:168:1947; 1943 NCL § 2680.57]—(NRS A 1971, 770)

616.550 Compensation not assignable; exempt from attachment, garnishment, execution; accrued compensation payable to dependents. Compensation payable under this chapter, whether determined or due, or not, shall not, prior to the issuance and delivery of the warrant thereof, be assignable, shall be exempt from attachment, garnishment and execution, and shall not pass to any other person by operation of law; but in any case of the death of an injured employee covered by this chapter from causes independent from the injury for which compensation is payable, any compensation due such employee which was awarded or accrued but for which the warrant or warrants were not issued or delivered at the

2. Every person, firm, voluntary association, and private corporation, including any public service corporation, which has in service any employee under a contract of hire.

[Part 9:44:1947; A 1949, 365; 1951, 372]—(NRS A 1975, 1022)

617.120 "Independent contractor" defined. "Independent contractor" means any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.

[12:44:1947; 1943 NCL § 2800.12]

617.130 "Medical benefits" defined. "Medical benefits" shall be construed to mean medical, surgical, hospital or other treatments, nursing, medicine, medical and surgical supplies, crutches and apparatus, including artificial members.

[8:44:1947; 1943 NCL § 2800.08]

617.140 "Silicosis" defined. "Silicosis" shall mean a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules, distributed through the lungs and demonstrated by X-ray examination or by autopsy.

[Part 26:44:1947; A 1949, 365; 1953, 297]

617.145 "Sole proprietor" defined. "Sole proprietor" means a self-employed owner of an unincorporated business who has been domiciled in the State of Nevada for at least 6 months immediately prior to filing for coverage and includes working partners and members of working associations.

(Added to NRS by 1975, 1020)

617.150 "Subcontractors" defined. "Subcontractors" shall include independent contractors.

[15:44:1947; 1943 NCL § 2800.15]

ADMINISTRATION

617.160 Nevada industrial commission to administer chapter. This chapter shall be administered by the Nevada industrial commission in the same manner as provided for in chapter 616 of NRS.

[2:44:1947; 1943 NCL § 2800.02] + [Part 39:44:1947; A 1951, 372]—(NRS A 1973, 1597)

617.165 Procedures for determination of contested cases. The commission may by regulation provide for specific procedures for the determination of contested cases not inconsistent with this chapter.

(Added to NRS by 1973, 1596; A 1975, 764; 1977, 1390)

6. When an autopsy has been performed pursuant to an order of the commission, no cause of action shall lie against any person, firm or corporation for participating in or requesting such autopsy.
[38:44:1947; 1943 NCL § 2800.38]

617.390 Compensation for injury or disease.
1. Compensation shall not be awarded on account of both injury and disease.
2. If an employee claims to be suffering from both an occupational disease and an injury, the commission shall determine which is causing the disability and shall pay compensation therefor from the proper fund in accordance with the provisions of chapter 616 of NRS.
[30:44:1947; 1943 NCL § 2800.30]

617.400 Compensation: Effect of false representations, willful misconduct and self-exposure.
1. No compensation shall be awarded on account of disability or death from a disease suffered by an employee who, at the time of entering into the employment from which the disease is claimed to have resulted, shall have willfully and falsely represented himself as not having previously suffered from such disease.
2. No compensation shall be payable under this chapter when disability or death is wholly or in part caused by the willful misconduct or willful self-exposure of the employee.
[29:44:1947; 1943 NCL § 2800.29]

617.405 Judicial review of contested claims.
1. No judicial proceedings may be instituted for benefits for an occupational disease under this chapter, unless:
(a) A claim is filed within the time limits prescribed in NRS 617.330; and
(b) A final decision has been rendered on such claim.
2. Judicial proceedings instituted for benefits for an occupational disease under this chapter are limited to judicial review of that decision.
(Added to NRS by 1973, 1596; A 1977, 85)

617.410 Compensation paid from occupational diseases fund. Compensation for disability sustained on account of occupational disease by an employee, or the dependents of such employee as defined in this chapter, shall be paid from the occupational diseases fund.
[31:44:1947; 1943 NCL § 2800.31]

COMPENSATION FOR DISABILITY AND DEATH

617.420 Minimum duration of incapacity; payment of medical benefits. No compensation shall be paid under this chapter for disability which does not incapacitate the employee for a period of at least 5 days

TEMPORARY TOTAL DISABILITY COMPENSATION

Paid while a claimant cannot physically work.

Terminated when any doctor releases claimant to return to work.

Temporary Total Disability Compensation is 66-2/3% of 150% of the State Average Monthly Wage or 66-2/3% of the actual wage being earned on the date of injury, whichever is less.

The maximum compensation for 1979 fiscal year = $918.05/mo.

$918.05 X 150% = $1,377.08 X 66-2/3 = $918.05

The maximum compensation for 1978 fiscal year = $858.29/mo.
(injuries occurring between July 1, 1977 to June 30, 1978)

$858.29 X 150% = $1,287.44 X 66-2/3 = $858.29

The maximum compensation for 1977 fiscal year = $807.33/mo.
(injuries occurring between July 1, 1976 to June 30, 1977)

$807.33 X 150% = $1,211.00 X 66-2/3 = $807.33

The maximum compensation for 1976 fiscal year = $761.47/mo.
(injuries occurring between July 1, 1975 to June 30, 1976)

$761.47 X 150% = $1,142.21 X 66-2/3 = $761.47

The maximum compensation for 1975 fiscal year = $484.99/mo.
(injuries occurring between July 1, 1974 to June 30, 1975)

$484.99 X 150% = $727.48 X 66-2/3 = $484.99

PERMANENT PARTIAL DISABILITY AWARD

Permanent Partial Disability is the percentage of impairment which a claimant suffers as the result of the injury. All percentages of disability are rated according to the A.M.A. Guides.

Assume that the injury occurred on June 17, 1976. Claimant was earning $563.00/mo., female, born on Jan. 10, 1932. Temporary Total Disability Compensation was terminated on April 10, 1977 and a 5% Permanent Partial Disability has been assessed.

Monthly installment payment = % of impairment X .005 X average monthly wage.

_____% of impairment X .005 X _____ = _____

_____ X 12 = _____.

Claimant receives _____ a year until age 65.

OR

Calculation of PPD Lump Sum Award

(1) Effective Date of Award (year, month) _____ _____

(2) Date of Birth (year, month) _____ _____

(3) Claimant's Age at Award Effective Date = (1) minus (2) (year, months) _____ _____

(4) Monthly Award = _____ (mo. wage) X .005 X _____% BB = $_____

(5) Factor From Table Corresponding to Age and Sex of Claimant _____

(6) Calculation of Lump Sum:

a) (4) x (5) = $_____

b) Minimum lump sum = 1/2 X % of disability X average monthly wage * =

1/2 X _____ X _____ = $_____

c) greater of (a) and (b) = $_____

d) overpayments, advance payments, and lump sums previously paid $_____

e) Net Lump Sum Payable = (c) - (d) = $_____

EXHIBIT F

PERMANENT TOTAL DISABILITY COMPENSATION

Paid when a claimant is 100% or totally disabled as a result of the industrial injury and will never work again. Permanent Total Disability Compensation is also paid to the surviving spouse of a fatally injured worker.

Permanent Total Disability = Paid for Life

66-2/3% of 150% of average state wage
or
66-2/3% of salary on date of injury

Whichever is Less

Most claimant could receive:

If injured from July 1, 1978 to June 30, 1979	=	$918.05/mo.
If injured from July 1, 1977 to June 30, 1978	=	$858.29/mo.
If injured from July 1, 1976 to June 30, 1977	=	$807.33/mo.
If injured from July 1, 1975 to June 30, 1976	=	$761.47/mo.
If injured from July 1, 1974 to June 30, 1975	=	$484.99/mo.

Summary of the first of cases upon which the State Industrial Attorney was appointed.

#	Total Time	Cases Still Ongoing	Cases Which Were Original Appeals	Reopening Requests	Commission Affirmed Claims Level Decision	Continuances
1.	4 yrs., 6 mos.		X			0
2.	2 yrs., 1-1/2 mos.		X		X	3
3.	2 yrs., 3 mos.			X	X	0
4.	4 yrs., 10-1/2 mos.		X		X	1
5.	2 yrs., 1 mo.			X	X	2
6.	2 yrs., 2 mos.		X		X	1
7.	1 yr., 4 mos.		X			1
8.	2 yrs., 11 mos.+	X	X		X	2
9.	8 mos.			X	X	1
10.	2 yrs., 4-1/2 mos.+	X	X		X	1
11.	3 yrs., 10 mos.		X			0
12.	2 yrs., 8 mos.+	X		X	X	1
13.	1 yr., 7 mos.		X		X	0
14.	3 yrs., 7-1/2 mos.		X			1
15.	3 yrs., 4 mos.		X		X	1

EXHIBIT F

Summary of the last 15 decisions rendered by the Appeals Officer upon which the State Industrial Attorney has been appointed, as of February 28, 1979.

#	Total Time	Cases Still Ongoing	Cases Which Were Original Appeals	Reopening Requests	Commission Affirmed Claims Level Decision	Continuances
1.	1 yr., 11-1/2 mos.			X	X	0
2.	1 yr., 8 mos.+	X	X		X	2
3.	1 yr., 7-1/2 mos.		X		X	0
4.	1 yr., 8 mos.+	X	X			2
5.	1 yr., 1 mo.+	X	X		X	0
6.	2 yrs., 9-1/2 mos.			X	X	0
7.	5 yrs., 2 mos.+	X	X		X	0
8.	2 yrs., 6 mos.+	X	X		X	0
9.	2 yrs., 2-1/2 mos.+	X	X		X	0
10.	1 yr., 7 mos.+	X		X	X	0
11.	9 mos.+	X		X	X	0
12.	2 yrs., 3-1/2 mos.+	X	X		X	1
13.	4 yrs., 4-1/2 mos.		X		X	0
14.	9 mos.		X			0
15.	2 yrs., 7 mos.		X		X	1

EXHIBIT F

EXHIBIT F

616.595 Permanent partial disability: Loss or permanent damage to teeth. The following schedule shall apply in rating loss of, or permanent damage to, teeth:

Incisors	$20
Bicuspids	30
Molars	40

[Part 64:168:1947; A 1951, 485]

616.605 Permanent partial disability: Compensation; lump sum payments.

1. Every employee, in the employ of an employer within the provisions of this chapter, who is injured by an accident arising out of and in the course of employment is entitled to receive the compensation provided in this section for permanent partial disability. As used in this section "disability" and "impairment of the whole man" are equivalent terms.

2. The percentage of disability shall be determined by the commission. The determination shall be made by a physician designated by the commission, or board of physicians, in accordance with the current American Medical Association publication, "Guides to the Evaluation of Permanent Impairment."

3. No factors other than the degree of physical impairment of the whole man may be considered in calculating the entitlement to permanent partial disability compensation.

4. Each 1 percent of impairment of the whole man shall be compensated by monthly payment of 0.5 percent of the claimant's average monthly wage. Compensation shall commence on the date of the injury or the day following termination of temporary disability compensation, if any, whichever is later, and shall continue on a monthly basis for 5 years or until the 65th birthday of the claimant, whichever is later.

(a) The commission may pay compensation benefits annually to claimants with less than a 25 percent permanent partial disability.

(b) The commission may advance up to 1 year's permanent partial disability benefits to an injured workman who demonstrates a dire financial need that is not met by the ordinary monthly benefit. Monthly permanent partial disability benefits will not begin until the total advance is offset.

(c) A permanent partial disability award may be paid in a lump sum under the following conditions:

(1) A claimant injured on or after July 1, 1973, who incurs a disability that does not exceed 12 percent may elect to receive his compensation in a lump sum.

(2) A claimant injured on or after July 1, 1973, who incurs a disability that exceeds 12 percent may, upon demonstration of a need which is substantiated by a comprehensive evaluation of possible rehabilitation, be authorized by the commission to receive his compensation in lump sum.

EXHIBIT F

(3) The spouse, or in the absence of a spouse, any dependent child of a deceased claimant injured on or after July 1, 1973, who is not entitled to compensation in accordance with NRS 616.615 is entitled to a lump sum equal to the present value of the deceased claimant's undisbursed permanent partial disability award.

(d) The commission shall adopt regulations concerning the manner in which a comprehensive evaluation of possible rehabilitation will be conducted and defining the factors to be considered in the evaluation required to substantiate the need for a lump sum settlement.

(e) Any lump sum payment which has been paid on a claim incurred on or after July 1, 1973, shall be supplemented if necessary to conform to the provisions of this section.

(f) The total lump sum payment for disablement shall not be less than one-half the product of the average monthly wage multiplied by the percentage of disability.

5. The lump sum payable shall be equal to the present value of the compensation awarded, less any advance payment or lump sum previously paid. The present value shall be calculated using monthly payments in the amounts prescribed in subsection 4 and actuarial annuity tables adopted by the commission. The tables shall be reviewed annually by a consulting actuary.

6. (a) An employee receiving permanent total disability compensation is not entitled to permanent partial disability compensation during the period when he is receiving permanent total disability compensation.

(b) An employee receiving temporary total disability compensation is not entitled to permanent partial disability compensation during the period of temporary total disability.

(c) An employee receiving temporary partial disability compensation is not entitled to permanent partial disability compensation during the period of temporary partial disability.

7. Where there is a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

8. The commission may adopt a schedule for rating permanent disabilities and reasonable and proper rules to carry out the provisions of this section.

9. The increase in compensation and benefits effected by the amendment of this section is not retroactive for accidents which were incurred before July 1, 1973.

10. This section does not entitle any person to double payments on account of death of a workman and a continuation of payments for a permanent partial disability, or to a greater sum in the aggregate than if the injury had been fatal.

[63:168:1947; A 1949, 659; 1953, 292]—(NRS A 1959, 204; 1966, 46; 1967, 691; 1969, 475; 1971, 326; 1973, 531; 1975, 605; 1977, 1006)

10.056 Lump sum award for permanent partial disability; disability in excess of 12 percent.

1. A lump sum payment of an award for permanent partial disability, where the disablement is more than 12 percent, is authorized only if the commission determines that a lump sum payment would aid in accomplishing rehabilitation, which could not otherwise be accomplished.

2. The burden is upon the claimant to present to the commission a written statement setting forth in detail the factors upon which he relies to demonstrate his need for a lump sum.

10.057 Lump sum award; disability in excess of 12 percent, factors. The commission will consider the following factors in determining whether the claimant has demonstrated his need:

1. Whether the claimant has returned to the same or a similar job with the employer for whom he worked before the accident.

2. Whether the claimant has returned to employment with his preaccident employer.

3. Whether the claimant has returned to his preaccident job, or a similar job, with a different employer.

4. Whether the claimant has participated in on-the-job training or a rehabilitative program.

5. Whether the claimant has a plan for self-employment.

6. Whether the claimant has shown special circumstances justifying his need.

10.058 Lump sum award; disability in excess of 12 percent; evaluation of possible rehabilitation. If the commission determines that a need for a lump sum has been demonstrated, the industrial rehabilitation department shall make a comprehensive evaluation of the possibility of rehabilitating the claimant. The evaluation may include:

1. A physician's report of the nature and degree of impairment measured in accordance with the American Medical Association Guides to the Evaluation of Permanent Impairment. The physician should include in this report a detailed rationalization of the manner by which the degree of impairment of the whole man was ascertained or rated.

2. A physician's description of limitations with regard to the types of work for which the impaired worker is suited.

3. A vocational evaluator's report itemizing the types of employment for which the claimant has the requisite physical capacity, aptitude, and training or experience.

4. An evaluation of suitable employment showing:

(a) Worker interest;

(b) Job market;

(c) Preparatory education or training;

(d) Cost of placement;

(e) Job stability; and

(f) Opportunity for advancement.

5. A business consultant's report if self-employment is planned and the requested lump sum award is to be used toward that end. The report must relate to the proposed business and include:

(a) A statement of capital requirements for building, equipment, inventory, and working capital;

(b) A projected cash flow for the first 12 months of operation;

(c) An evaluation of the market for the proposed goods or services, including identification of competition, and the success or failure rate of similar enterprises;

(d) The experience, education or training required to manage the enterprise successfully; and

(e) An indication of the health and physical demands to be placed upon the owner or manager of the operation.

6. A rehabilitation counselor's report including:

(a) An evaluation of the claimant's record of performance in past employments during the course of his rehabilitative program;

(b) The claimant's report of his financial history;

(c) The claimant's credit history;

(d) The disposition and use of any previous lump sum awards by the claimant; and

(e) Other personal factors relating to the claimant's ability to manage his financial affairs.

7. A statement by the industrial rehabilitation department of its findings and recommendation for the granting or denial of the requested lump sum award.

(Revised 6-78)

STATE OF NEVADA

NEVADA INDUSTRIAL COMMISSION

EXHIBIT F

AWARD AND RECEIPT

WHEREAS, ..., hereinafter designated as the claimant, has heretofore filed a notice of injury and claim for compensation with the Nevada Industrial Commission for an injury sustained on or about the .....day of....., 197....., while in the employ of....., and such claim is acceptable to the Nevada Industrial Commission; and

WHEREAS, claimant now claims a permanent partial disability as a result of the foregoing injury and has requested that the percentage of permanent partial disability be ascertained and that payment be made to him as an award for such permanent partial disability.

THEREFORE, after examination of the claimant and consideration of all the records, files and evidence available to the Nevada Industrial Commission the said commission determined on the.....day of....., 197....., that as a result of such injury the above-named claimant has sustained a permanent partial disability of.....% of the whole man and is entitled to a payment of $....., per mo./year from..... to ....., or until rearrangement is made under NRS 616.545, such payment being determined as follows:

and that the Nevada Industrial Commission tenders such payment and award to claimant in consideration of the following:

KNOW ALL MEN BY THESE PRESENTS, that I, ..., of....., of the State of....., for and in consideration of the sum of $.....to me in hand paid by the Nevada Industrial Commission, the receipt of which is hereby acknowledged, and the payment of $.....to be paid to me from.....through....., first..... installment in.....of 19....., and a final installment of $.....to be paid in....., with full understanding of my reopening rights under NRS 616.545 as set forth on the back hereof, which has been fully explained to me.

DATED this.....day of....., 197.....

APPROVED..... .....Claimant

....Witness

Title

Form C-62 (Rev. 2-76) (Over) 1798

887

616.605 Permanent partial disability: Compensation.

EXHIBIT F

1. Every employee in the employ of an employer, within the provisions of this chapter, who is injured by an accident arising [illegible]of and in the course of employment is entitled to receive the compensation provided in this section for permanent partial disability [illegible]ed in this section "disability" and "impairment of the whole man" are equivalent terms.

2. The percentage of disability shall be determined by the commission. The determination shall be made by a physician designated by the commission, or board of physicians, in accordance with the current American Medical Association publication, "Guides to the Evaluation of Permanent Impairment."

3. No factors other than the degree of physical impairment of the whole man shall be considered in calculating the entitlement to permanent partial disability compensation.

4. Each 1 percent of impairment of the whole man shall be compensated by monthly payment of 0.5 percent of the claimant's average monthly wage. Compensation shall commence on the date of determination of the degree of permanent impairment by the commission and shall continue on a monthly basis for 5 years, or until the 65th birthday of the claimant, whichever is later. The commission may pay compensation benefits annually to claimants with less than a 25 percent permanent partial disability. The commission may advance up to 1 year's permanent partial disability benefits to an injured workman who demonstrates a dire financial need that is not met by the ordinary monthly benefit. Monthly permanent partial disability benefits will not begin until the total advance is offset.

5. (a) Death of the employee terminates entitlement to permanent partial disability compensation.

(b) An employee receiving permanent total disability compensation is not entitled to permanent partial disability compensation during the period when he is receiving permanent total disability compensation.

(c) An employee receiving temporary total disability compensation is not entitled to permanent partial disability compensation during the period of temporary total disability.

(d) An employee receiving temporary partial disability compensation is not entitled to permanent partial disability compensation during the period of temporary partial disability.

6. Where there is a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability [illegible]ercentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deduc[illegible] therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

7. The commission may adopt a schedule for rating permanent disabilities and reasonable and proper rules to carry out the provisions of this section.

8. The increase in compensation and benefits effected by the amendment of this section shall not be retroactive.

9. This section does not entitle any person to double payments on account of death of a workman and a continuation of payments for a permanent partial disability, or to a greater sum in the aggregate than if the injury had been fatal.

616.545 Application for increase or rearrangement of compensation; limitation.

1. If change of circumstances warrants an increase or rearrangement of compensation, application shall be made therefor. The application shall be accompanied by the certificate of a physician, showing a change of circumstances which would warrant an increase or rearrangement of compensation. No increase or rearrangement shall be operative for any period prior to application therefor; but the commission may allow the cost of emergency treatment the necessity for which has been certified to by a physician and upon recipt of such other evidence as may be required by the commission.

2. No application shall be valid or claim thereunder enforcible unless filed within 1 year after the day upon which the injury occurred or the right thereto accrued.

EXHIBIT F

PRESENT HEARING SYSTEM

INJURY

CLAIM FILED

No time limit for acceptance or denial of claim by N.I.C.

DENIED ACCEPTED REQUEST FOR REOPENING

N.I.C. DISABILITY PREVENTION TEAM

30 days to appeal **30 days to appeal**

N.I.C. CLAIMS LEVEL HEARING

(Now called Hearings Examiner.)

30 days to appeal

N.I.C. COMMISSION LEVEL

Commissioners have 30 days to have hearing or review.

HEARING OR REVIEW

1. Decision rendered within 30 days of hearing or review.
2. Only final determinations can be appealed.

Commission orders:
1. Medical Review Board or
2. Further medical investgation or
3. Out of state medical evaluation.

30 days to appeal

APPEALS OFFICER

1. Hearing held within 90 days of receipt of notice of appeal.
2. Decision rendered within 120 days from date of hearing.

Appeals Officer orders:
1. Medical review Board or
2. Further medical investigation or
3. Out of state medical evaluation or
4. Rehabilitation

30 days to appeal

DISTRICT COURT

GOVERNOR

NEVADA INDUSTRIAL COMMISSION

CHAIRMAN

EXHIBIT F

HAL G. CURTIS
COMMISSIONER REPRESENTING LABOR
JAMES S. LORIGAN
COMMISSIONER REPRESENTING INDUSTRY

ADDRESS ALL CORRESPONDENCE TO
NEVADA INDUSTRIAL COMMISSION

REPLY TO

515 East Musser Street
Carson City, Nevada 89714
January 23, 1979

Mr. _____
83 Volcano Avenue
Reno, NV 89506

Re: Claim No: 78-6695
Injured: 10-7-77

Dear Mr. _____:

Thank you for your letter of January 18, 1979.

We are sorry but we cannot schedule you for a hearing at the present time. Before a hearing can be scheduled, your treating physician must submit a written report that you are medically stable and the rehabilitation portion of your claim has to be in a closed status.

If you have any questions, please do not hesitate to contact me.

Sincerely,

(Mrs.) Stephana D. Vance
Claims Examiner

SDV:201m2744

cc: Mario E. Porras, M.D.

RECEIVED

FEB 7 1979

STATE INDUSTRIAL
ATTORNEY

O-157

890

EXHIBIT F

AMENDED A.B. 84 HEARING SYSTEM

INJURY

CLAIM FILED

Any time after claim is filed, aggrieved party can request hearing - notices supplied by N.I.C.

REQUEST FOR REOPENING

N.I.C.

1. Hearing held by Commissioners or designated agent.
2. Only one hearing on any issue.
3. Hearing set within 5 days of receipt of request.
4. Hearing held within 30 days of request.
5. Decision rendered within 15 days after hearing.

60 days to appeal

APPEALS OFFICER

1. Hearing set within 5 days of request.
2. Hearing held within 45 days of request.
3. Decision rendered within 30-67 days after hearing.

30 days to appeal

DISTRICT COURT

EXHIBIT F

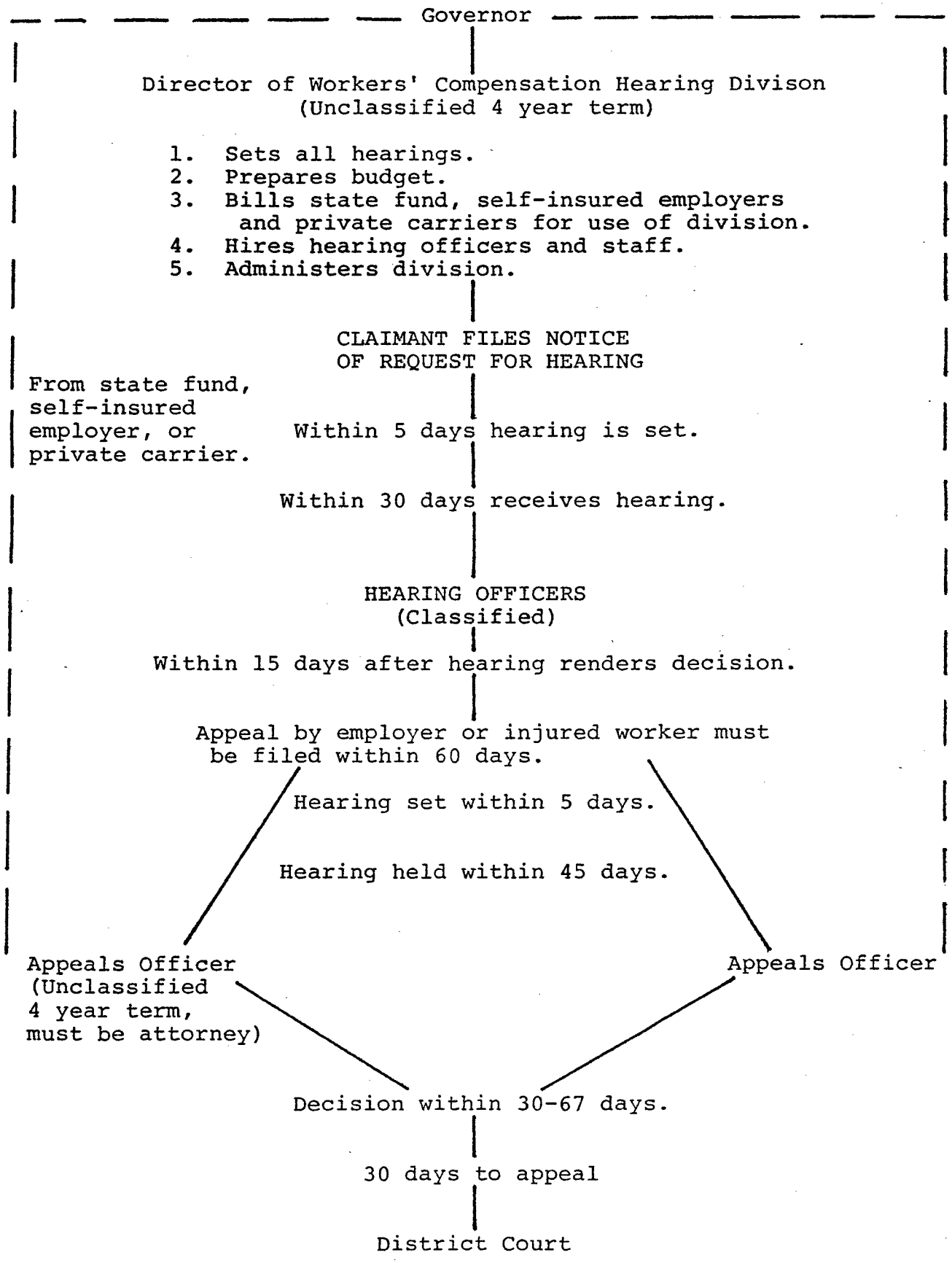
Governor
Director of Workers' Compensation Hearing Divison
(Unclassified 4 year term)
1. Sets all hearings.
2. Prepares budget.
3. Bills state fund, self-insured employers and private carriers for use of division.
4. Hires hearing officers and staff.
5. Administers division.
CLAIMANT FILES NOTICE OF REQUEST FOR HEARING
From state fund, self-insured employer, or private carrier.
Within 5 days hearing is set.
Within 30 days receives hearing.
HEARING OFFICERS
(Classified)
Within 15 days after hearing renders decision.
Appeal by employer or injured worker must be filed within 60 days.
Hearing set within 5 days.
Hearing held within 45 days.
Appeals Officer
(Unclassified 4 year term, must be attorney)
Appeals Officer
Decision within 30-67 days.
30 days to appeal
District Court

EXHIBIT F

CASE HISTORIES

Nevada (State) Industrial
Attorney's Office

SB 382

The concern here is that we do not set up a hearings procedure that would be in conflict with AB 84 that was recommended favorably from the Assembly Labor and Management Committee on April 2. As a result a number of employers are currently working on an amendment to SB 382 to set up a separate adjudicatory system that would be independent from the Nevada Industrial Commission. This would in effect be an amendment to SB 382 and is the version, once this is out, that we should support. The section having to do with the State industrial attorney and the appeals officers preparing and submitting their budgets is primarily a housekeeping item and is no major problem.

-Bob McPherson, 4/3/79-

SB 383

There is no problem with this bill requiring NIC to amend and simplify certain forms in providing for the submission of appeal forms to claimants.

-Bob McPherson, 4/3/79-

Exhibit I

2/5

12 50

SB 384

We have no problem with this bill that provides that when the NIC determines that a case should be closed the commission should notice the claimant with an indication that the claimant has a right to a hearing within 30 days. If the commission does not receive a request for a hearing, it may close the case. But if there is a request for a hearing, it is treated as a contested case for purposes of the appeal.

-Bob McPherson, 4/3/79-

SENATE BILL NO. 350—SENATOR BLAKEMORE

MARCH 21, 1979

Referred to Committee on Commerce and Labor

SUMMARY—Provides penalty for failure of producer-promoter of entertainment production to obtain permit and post bond with labor commissioner. (BDR 53-1494)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to compensation, wages and hours; providing a penalty for the failure of a producer-promoter of an entertainment production to obtain a permit from the labor commissioner and post a bond for payment of wages; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 608 of NRS is hereby amended by adding thereto a new section which shall read as follows:

Any person who fails to comply with the provisions of NRS 608.300 to 608.320, inclusive, is guilty of a misdemeanor.

SENATE BILL NO. 381—COMMITTEE ON COMMERCE AND LABOR

MARCH 27, 1979

Referred to Committee on Commerce and Labor

SUMMARY—Raises threshold for tort liability based upon medical benefits paid to injured person. (BDR 57-1896)
FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to motor vehicle insurance; raising the threshold for tort liability based upon medical benefits paid to the injured person; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 698.280 is hereby amended to read as follows:

698.280 1. Tort liability with respect to accidents occurring in this state and arising from the ownership, maintenance or use of a motor vehicle is abolished except as to:

(a) Liability of the owner of a motor vehicle involved in an accident if security covering the vehicle was not provided at the time of the accident;

(b) Liability of a person in the business of selling, manufacturing, repairing, servicing or otherwise maintaining motor vehicles arising from a defect in a motor vehicle caused or not corrected by an act or omission in selling, manufacturing, repairing, servicing or other maintenance of a vehicle in the course of his business;

(c) Liability of a person for intentionally caused harm to person or property;

(d) Liability of a person for harm to property including, but not limited to, a motor vehicle and its contents;

(e) Liability of a person from harm to an operator of or passenger on a motorcycle as defined in NRS 482.070;

(f) Liability of a person for harm to an operator of or passenger on a moped as defined in NRS 482.069;

(g) Liability of a person in the business of parking or storing motor vehicles arising in the course of that business for harm to a motor vehicle and its contents;

SENATE BILL NO. 313—COMMITTEE ON COMMERCE AND LABOR

MARCH 8, 1979

Referred to Committee on Commerce and Labor

SUMMARY—Repeals Nevada Motor Vehicle Insurance Act and provides for optional basic reparation benefits. (BDR 57-983)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to motor vehicle insurance; allowing the insured motorist to reject coverage for basic reparation benefits; prescribing the minimum protection to be afforded under such coverage if it is provided; repealing the Nevada Motor Vehicle Insurance Act and related provisions of law; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 690B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

SEC. 2. *1. Except as otherwise provided in subsection 1, no policy insuring against liability arising out of the ownership, maintenance or use of any motor vehicle may be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided in the policy or supplemental to it for basic reparation benefits payable to the persons insured thereunder for personal injury or death arising out of the maintenance or use of a motor vehicle.*

2. The coverage for basic reparation benefits is not required:

(a) If the insured person named in the policy rejects the coverage in writing on a form furnished by the insurer.

(b) Upon any renewal of the policy unless the coverage is then requested in writing by the named insured.

SEC. 3. *If coverage for basic reparation benefits is provided, the insurer shall include in the coverage the following benefits, to be paid without regard to fault to each person insured therefor:*

1. Medical benefits, which include payments of all reasonable expenses of not more than $5,000, incurred within 1 year after the accident, for necessary medical services, X-ray, dental and rehabilitative

SENATE BILL NO. 382—COMMITTEE ON COMMERCE AND LABOR

MARCH 27, 1979

Referred to Committee on Commerce and Labor

SUMMARY—Provides procedure for certain hearings before Nevada industrial commission and requires budgets of appeals officers and state industrial attorney. (BDR 53-1407)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to industrial insurance; providing a procedure for certain hearings before the Nevada industrial commission; requiring that the appeals officers and state industrial attorney prepare budgets; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 616 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

SEC. 2. *1. Any person subject to the jurisdiction of the commission pursuant to this chapter or chapter 617 of NRS may request a hearing before the commission by filing a notice of request for hearing within 30 days after the event of which the person is complaining.*

2. Within 3 days after the receipt of the notice of request for hearing the commission must cause the matter to be set for hearing within 30 days before a hearing officer and give notice as provided for in subsection 4.

3. The commission on its own motion may set any matter for hearing before a hearing officer upon giving notice as provided for in subsection 4.

4. Written notice of any hearing must be served upon or mailed to the employee and his designated representative, if any, and the employer and his designated representative, if any, at least 5 days before the matter is set to be heard.

5. The limitation of time for requesting a hearing may be waived by the commission upon a showing of good cause.

SEC. 3. *1. A hearing must be informal and a record need not be made. The rules of evidence do not apply but the hearing officer may*

SENATE BILL NO. 383—COMMITTEE ON COMMERCE AND LABOR

MARCH 27, 1979

Referred to Committee on Commerce and Labor

SUMMARY—Requires Nevada industrial commission to simplify certain forms and provide appeal forms upon adverse determinations. (BDR 53-1408)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to industrial insurance; requiring the Nevada industrial commission to amend certain forms; providing for the submission of appeal forms to certain claimants; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 616 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

SEC. 2. *The commission shall draft each form which:*

1. Must be submitted by a claimant or completed by him in order to claim, elect or receive benefits under this chapter or chapter 617 of NRS; and

2. May affect his right to a determination, hearing or benefit by reason of his submitting or completing it,

in a clear, concise format and in language which is easily understood by a person of reasonable intelligence and having an education which included the 12th grade.

SEC. 3. *The commission shall supply appeal forms to any claimant with notice of a decision or determination which affects his rights to benefits, or which may affect his rights to benefits in the future.*

SEC. 4. The Nevada industrial commission shall prepare and put the simplified forms required by section 2 of this act into use as soon as possible after July 1, 1979.

SENATE BILL NO. 384—COMMITTEE ON COMMERCE AND LABOR

MARCH 27, 1979

Referred to Committee on Commerce and Labor

SUMMARY—Sets requirements for notice and hearing before closing of certain cases by Nevada industrial commission. (BDR 53-1409)
FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to industrial insurance; requiring notice and an opportunity for the claimant to be heard before a claim for which full benefits have not been paid may be closed; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 616 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. When the commission determines that a case should be closed before all benefits to which the claimant may be entitled have been paid, the commission shall send a written notice of its intention to close the case to the claimant by United States mail addressed to the last known address of the claimant. The notice must include a statement that the claimant has a right to a hearing before an appeals officer on the closing of his case, and that he may request the hearing in writing, on a form provided with the notice, within 30 days after the date on which the notice was mailed by the commission.

2. If the commission does not receive a request for a hearing before an appeals officer within 30 days after mailing the notice, it may close the case. Upon receiving a request for a hearing, the commission shall treat the case as a contested case for the purposes of the appeal.