

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1139 Session of  
1979

INTRODUCED BY COPPERSMITH, LYNCH, HOLL AND HESS,  
DECEMBER 3, 1979

REFERRED TO INSURANCE, DECEMBER 3, 1979

AN ACT

1 Amending the act of July 19, 1974 (P.L.489, No.176), entitled  
2 "An act providing for a compensation system for persons  
3 injured in motor vehicle accidents; requiring insurance for  
4 all motor vehicles required to be registered in Pennsylvania;  
5 defining compensable damage in motor vehicle accident cases;  
6 establishing an assigned claims plan; providing for  
7 arbitration; imposing powers and duties on courts, the  
8 Department of Transportation and the Insurance Commissioner;  
9 prohibiting certain discrimination; and providing penalties,"  
10 redefining certain terms; imposing a maximum limit on basic  
11 loss benefits; authorizing temporary suspension of coverage;  
12 further providing for assigned claims plan coverage; further  
13 providing for collateral and basic loss benefits; and  
14 changing the liability of a person for damages for non-  
15 economic detriment under certain circumstances.

16 The General Assembly of the Commonwealth of Pennsylvania  
17 hereby enacts as follows:

18 Section 1. The definitions of "added loss benefits," "loss  
19 of income," "survivor's loss" and "work loss" in section 103,  
20 act of July 19, 1974 (P.L.489, No.176), known as the  
21 "Pennsylvania No-fault Motor Vehicle Insurance Act," are amended  
22 to read:

23 § 103. Definitions.

24 As used in this act:

1 "Added loss benefits" means benefits provided by added loss  
2 insurance in accordance with section 207 of this act. Added loss  
3 benefits shall include benefits for net loss sustained by an  
4 operator or passenger of a motorcycle.

5 \* \* \*

6 "Loss of income" means gross income actually lost by a victim  
7 during his lifetime or that would have been lost but for any  
8 income continuation plan, reduced by:

9 (A) eighty per cent (80%) of any income which such  
10 individual earns from substitute work;

11 (B) income which such individual would have earned  
12 in available substitute work he was capable of performing  
13 but unreasonably failed to undertake; or

14 (C) any income which such individual would have  
15 earned by hiring an available substitute to perform self-  
16 employment services but unreasonably failed to do. Such a  
17 "loss of income" shall be recoverable from an obligor by  
18 a victim or his estate but shall not be recoverable as a  
19 survivor's loss.

20 \* \* \*

21 "Survivor's loss" means the:

22 (A) [loss of] income of a deceased victim which  
23 would probably have been contributed to a survivor or  
24 survivors, if such victim had not sustained the fatal  
25 injury; and

26 (B) expenses reasonably incurred by a survivor or  
27 survivors, after a victim's death resulting from injury,  
28 in obtaining ordinary and necessary services in lieu of  
29 those which the victim would have performed, not for  
30 income, but for their benefit, if he had not sustained

1           the fatal injury,  
2 reduced by expenses which the survivor or survivors would  
3 probably have incurred but avoided by reason of the victim's  
4 death resulting from injury.

5       "Victim" means an individual who suffers injury arising out  
6 of the maintenance or use of a motor vehicle; "deceased victim"  
7 means a victim suffering death resulting from injury.

8       \* \* \*

9       "Work loss" means:

10           (A) loss of gross income of a victim during his  
11 lifetime, as calculated pursuant to the provisions of  
12 section 205 of this act; and

13           (B) reasonable expenses of a victim for hiring a  
14 substitute to perform self-employment services, thereby  
15 mitigating loss of income, or for hiring special help,  
16 thereby enabling a victim to work and mitigate loss of  
17 income. Work loss" shall not be recoverable as a  
18 "survivor's loss."

19       Section 2. Subsection (a) of section 104 is amended and a  
20 subsection is added to read:

21   § 104. Required motor vehicle insurance.

22       (a) Security covering a motor vehicle.--Every owner of a  
23 motor vehicle which is registered or which is operated in this  
24 Commonwealth by the owner or with his permission, shall  
25 continuously provide security covering such motor vehicle while  
26 such vehicle is either present or registered in the  
27 Commonwealth. Security shall be provided for the payment of  
28 basic loss benefits[, and for the payment of sums up to a total  
29 limit of thirty thousand dollars (\$30,000) which the owner or  
30 any person operating the vehicle with the express or implied

1 permission of the owner may become liable to pay as damages  
2 because of bodily injury or death arising out of any one  
3 accident (subject to a sublimit of fifteen thousand dollars  
4 (\$15,000) for damages arising out of the bodily injury or death  
5 of any one person) and for the payment of damages for injury to  
6 or destruction of property in any one accident of amounts up to  
7 a total limit of five thousand dollars (\$5,000)]. The owner or  
8 any other person may provide security covering a motor vehicle  
9 by a contract of insurance with an insurer or by qualifying as a  
10 self-insurer or as an obligated government.

11 (a.1) Temporary suspension of coverage.--An owner of a motor  
12 vehicle, who has provided security in accordance with the  
13 provisions of subsection (a) and who has one or more vehicles  
14 not in use for periods of time in excess of forty-five  
15 consecutive calendar days, may obtain from his insurer an  
16 agreement to the policy of insurance suspending temporarily all  
17 coverages for the duration of time such vehicle may not be in  
18 use: Provided, however, That such owner shall maintain basic  
19 loss benefits coverage for at least one of the vehicles during  
20 the period of suspension. In all such cases, an owner of such a  
21 motor vehicle shall not be required to surrender the  
22 registration certificate and license plates to the department as  
23 provided in subsection (d). The commissioner shall promulgate  
24 reasonable and necessary rules and regulations governing such  
25 agreements between an owner and his insurer including provisions  
26 for an equitable reduction from the annual policy premium of the  
27 insurer.

28 \* \* \*

29 Section 3. Subsection (b) of section 105, clause (2) of  
30 subsection (a) of section 106, subsection (a) of section 108,

1 subsections (b) and (c) of section 110, clause (1) of subsection  
2 (a) of section 111, subsections (a) and (b) of section 202,  
3 section 203, subsection (a) of section 207, clause (1) of  
4 subsection (a) of section 208, clause (5) of subsection (a) of  
5 section 301 and section 501 of the act are amended to read:

6 § 105. Availability of insurance.

7 \* \* \*

8 (b) Cancellation, refusal to renew, or other termination of  
9 insurance.--Cancellation, refusal to renew and other termination  
10 of insurance shall be provided for in accordance with the  
11 provisions of the act of June 5, 1968 (P.L.140, No.78), entitled  
12 "An act regulating the writing, cancellation of or refusal to  
13 renew policies of automobile insurance; and imposing powers and  
14 duties on the Insurance Commissioner therefor" as from time to  
15 time amended.

16 § 106. Payment of claims for no-fault benefits.

17 (a) In general.--

18 \* \* \*

19 (2) No-fault benefits are overdue if not paid within  
20 thirty days after the receipt by the obligor of each  
21 submission of reasonable proof of the fact and amount of loss  
22 sustained, unless the obligor designates, upon receipt of an  
23 initial claim for no-fault benefits, periods not to exceed  
24 thirty-one days each for accumulating all such claims  
25 received within each such period, in which case such benefits  
26 are overdue if not paid within fifteen days after the close  
27 of each such period. If reasonable proof is supplied as to  
28 only part of a claim, but the part amounts to one hundred  
29 dollars (\$100) or more, benefits for such part are overdue if  
30 not paid within the time mandated by this paragraph. An

obligation for basic loss benefits for an item of allowable expense may be discharged by the obligor by reimbursing the victim or by making direct payment to the supplier or provider of products, services, or accommodations within the time mandated by this paragraph. Overdue payments bear interest at the rate of eighteen per cent (18%) per annum if said payments are unreasonably withheld. Overdue payment, not unreasonably withheld, shall bear interest at the rate of six per cent (6%) per annum.

\* \* \*

§ 108. Assigned claims plan.

(a) General.--

(1) If this act is in effect on the date when the accident resulting in injury occurs, a victim or the survivor or survivors of a deceased victim may obtain basic benefits through the assigned claims plan established pursuant to subsection (b) of this section, if basic loss insurance:

(A) is not applicable to the injury for a reason other than those specified in the provisions on ineligible claimants;

[(B) is not applicable to the injury because the victim converted a motor vehicle while he was under fifteen years of age;

(C)] (B) applicable to the injury cannot be identified;

[(D)] (C) applicable to the injury is inadequate to provide the contracted-for benefits because of financial inability of an obligor to fulfill its obligations; or

[(E)] (D) benefits are refused by an obligor for a reason other than that the individual is not entitled in

1           accordance with this act to receive the basic loss  
2           benefits claimed.

3           (2) If a claim qualifies for assignment under paragraph  
4           (1)[(C), (D), or (E)] (B), (C) or (D) of this subsection, the  
5           assigned claims bureau or any [insurer] entity to whom the  
6           claim is assigned is subrogated to all rights of the claimant  
7           against the obligor legally obligated to provide basic  
8           benefits to the claimant, or against any successor in  
9           interest to or substitute for such obligor for such benefits  
10          as are provided by the assignee.

11          (3) If an individual receives basic loss benefits  
12          through the assigned claims plan for any reason other than  
13          because of the financial inability of an obligor to fulfill  
14          its obligation, all benefits or advantages that such  
15          individual receives or is entitled to receive as a result of  
16          such injury, other than life insurance benefits or benefits  
17          by way of succession at death or in discharge of familial  
18          obligations of support, shall be subtracted from loss in  
19          calculating net loss.

20          (4) An assigned claim of an individual who does not  
21          comply with the requirement of providing security for the  
22          payment of basic restoration benefits, or of an individual as  
23          to whom the security is invalidated because of his fraud or  
24          willful misconduct, is subject to:

25                (A) all the maximum optional deductibles and  
26                exclusions required to be offered; and

27                (B) a deduction in the amount of five hundred  
28                dollars (\$500) for each year or part thereof of the  
29                period of his continuous failure to provide security,  
30                applicable to any benefits otherwise payable except basic

1           benefits for allowable expense.

2           \* \* \*

3   § 110. Motor vehicles in interstate travel.

4           \* \* \*

5           (b) [Conforming coverage.--

6           (1) An obligor providing security for the payment of  
7           basic loss benefits shall be obligated to provide, and each  
8           contract of insurance for the payment of basic loss benefits  
9           shall be construed to contain, coverage sufficient to satisfy  
10          the requirements for security covering a motor vehicle in any  
11          state in which any victim who is a claimant or whose  
12          survivors are claimants is domiciled or is injured.

13          (2) An obligor providing security for the payment of  
14          basic loss benefits shall include in each contract of  
15          insurance for the payment of basic loss benefits, coverage to  
16          protect the owner or operator of a motor vehicle from tort  
17          liability to which he is exposed through application of the  
18          law of any state in which the motor vehicle may be operated  
19          and arising out of the ownership, maintenance or use of a  
20          motor vehicle.

21          (c) Applicable law.--

22          (1) The basic loss benefits available to any victim or  
23          to any survivor of a deceased victim shall be determined  
24          pursuant to the provisions of the state no-fault plan for  
25          motor vehicle insurance in effect in the state of domicile of  
26          the victim on the date when the motor vehicle accident  
27          resulting in injury occurs. If there is no such state no-  
28          fault plan in effect or if the victim is not domiciled in any  
29          state, then basic loss benefits available to any victim shall  
30          be determined pursuant to the provisions of the state no-



1 fault plan for motor vehicle insurance, if any, in effect in  
2 the state in which the accident resulting in injury occurs.

3 (2) The right of a victim or of a survivor of a deceased  
4 victim to sue in tort shall be determined by the law of the  
5 state of domicile of such victim. If a victim is not  
6 domiciled in a state, such right to sue shall be determined  
7 by the law of the state in which the accident resulting in  
8 injury or damage to property occurs.]

9 Accidents occurring outside of Pennsylvania.--Basic loss  
10 benefits other than survivors benefits, payable as a result of  
11 an accident which occurs outside of the Commonwealth of  
12 Pennsylvania may be reduced by a sum equal to any tort recovery  
13 of the same elements of loss by the claimant, exclusive of  
14 reasonable attorney's fees and other reasonable expenses  
15 incurred in effecting the recovery.

16 § 111. Rights and duties of obligors.

17 (a) Reimbursement and subrogation.--

18 (1) Except as provided in paragraphs (2) and (3) of this  
19 subsection and section 110, an obligor:

20 (A) does not have and may not contract, directly or  
21 indirectly, in whole or in part, for a right of  
22 reimbursement from or subrogation to the proceeds of a  
23 victim's claim for relief or to a victim's cause of  
24 action for noneconomic detriment; and

25 (B) may not directly or indirectly contract for any  
26 right of reimbursement based upon a determination of  
27 fault from any other obligor not acting as a reinsurer  
28 for no-fault benefits which it has paid or is obligated  
29 to pay as a result of injury to a victim.

30 \* \* \*

1 § 202. Basic loss benefits.

2 (a) Allowable expense limits.--Allowable expense, as defined  
3 in section 103 of this act [shall be provided] or the equivalent  
4 in the form of a contract to provide for services required up to  
5 an amount of one hundred thousand dollars (\$100,000) per victim.

6 (b) Work loss limits.--Work loss, as defined in section 103  
7 shall be provided:

8 (1) up to a monthly maximum of:

9 (A) one thousand dollars (\$1,000) multiplied by a  
10 fraction whose numerator is the average per capita income  
11 in this Commonwealth and whose denominator is the average  
12 per capita income in the United States, according to the  
13 latest available United States Department of Commerce  
14 figures; or

15 (B) [the] a lesser disclosed amount, in the case of  
16 a named insured who, prior to the accident resulting in  
17 injury, voluntarily discloses his actual monthly earnings  
18 to his obligor and agrees in writing with such obligor  
19 that such sum shall measure work loss; and

20 (2) up to a total amount of fifteen thousand dollars  
21 (\$15,000).

22 \* \* \*

23 § 203. Collateral benefits.

24 (a) [If benefits other than no-fault benefits are provided  
25 to an individual through a program, group, contract or other  
26 arrangement for which some other person pays in whole or in part  
27 that would inure to the benefit of a victim or the survivor of a  
28 deceased victim injured as a result of an accident in the  
29 absence of no-fault benefits, then any reduction or savings in  
30 the direct or indirect cost to such person of such benefits

1 resulting from the existence of no-fault benefits shall be  
2 returned to such individual or utilized for his benefit.

3 (b) The owner or operator of a motor vehicle may elect]

4 Obligors providing security for the payment of basic loss  
5 benefits shall offer options reducing the cost of basic loss  
6 insurance for the named insured who elects to provide for  
7 security in whole or in part for the payment of basic loss  
8 benefits through a program, group, contract or other arrangement  
9 that would pay to or on behalf of the victim or members of his  
10 family residing with him or the survivor of a deceased victim,  
11 allowable expense, loss of income, work loss, replacement  
12 services loss and survivors loss. In all such instances, each  
13 contract of insurance issued by an insurer shall be construed to  
14 contain a provision that all basic loss benefits provided  
15 therein shall be in excess and not in duplication of any valid  
16 and collectible benefits otherwise provided through such  
17 program, group, contract or other arrangement as designated at  
18 the election of the [owner or operator] named insured which  
19 shall be primary. In the absence of such election, a group  
20 contract, that would otherwise pay in whole or in part allowable  
21 expense, loss of income, work loss, replacement services loss or  
22 survivors loss benefits thereunder, shall be construed to  
23 contain a provision that all such benefits shall be in excess  
24 and not in duplication of any valid and collectible basic loss  
25 benefits contained in the contract of insurance which, because  
26 of the absence of such selection, shall be primary.

27 [(c) An insurer providing basic loss benefits and tort  
28 liability in accordance with the provisions of subsection (b)  
29 above shall reduce the cost of such contract of insurance to  
30 reflect the anticipated reduction in basic loss benefits payable

by the insurer by reason of the election of the owner or operator to provide substitute security.]

(b) A named insured who elects such an option shall be afforded an appropriately reduced premium in accordance with the rates filed with the Insurance Commissioner. Basic loss insurers may require the policyholder to certify as to existence of coverage and reasonable information as to the extent of such coverage. A named insured and resident spouse eligible to receive benefits from Medicare Parts (A) and (B) shall automatically be afforded an appropriately reduced premium in accordance with the rates filed with the commissioner.

(c) The commissioner may adopt rules and regulations with respect to this section.

§ 207. Added loss benefits.

(a) Mandatory offering.--[Obligors providing security for the payment of basic loss benefits shall offer or obligate themselves to provide added loss benefits for injury or damage arising out of the ownership, maintenance, or use of a motor vehicle, including:

(1) loss excluded from basic loss benefits by limits on allowable expense, work loss, replacement services loss, and survivor's loss;

(2) benefits for damage to property;

(3) benefits for loss of use of a motor vehicle;

(4) benefits for expense for remedial religious treatment and care;

(5) for physical damage to a motor vehicle, a coverage for all collision and upset damage, subject to an optional deductible; and

(6) for economic detriment, a coverage for work loss

1 sustained by a victim in excess of limitations on basic loss  
2 benefits for work loss.] Obligors providing security for the  
3 payment of basic loss benefits shall offer or obligate  
4 themselves to provide added loss benefits for injury or  
5 damage arising out of the ownership, maintenance or use of a  
6 motor vehicle, including:

7 (1) increased limits on work loss, replacement services  
8 loss and survivor's loss and increased limits up to at least  
9 two hundred fifty thousand dollars (\$250,000) in regular  
10 increments on allowable expense;

11 (2) for injury or damage for which the person injured is  
12 liable, caused to one or more person or persons or their  
13 property in an amount sufficient to meet the requirements of  
14 financial security as set forth in Chapter 17 of Title 75  
15 Pa.C.S. known as the "Vehicle Code" for detriment resulting  
16 from an accident caused by an individual operating a motor  
17 vehicle without liability insurance;

18 (3) loss of use of a motor vehicle;

19 (4) coverage for expense for remedial religious  
20 treatment and care; and

21 (5) for physical damage to a motor vehicle, a coverage  
22 for all collision and upset damage and comprehensive material  
23 damage, subject to an optional deductible.

24 \* \* \*

25 § 208. Ineligible claimants.

26 (a) Converter.--

27 (1) [Except as provided for assigned claims, a] A  
28 converter of a motor vehicle is ineligible to receive no-  
29 fault benefits, including benefits otherwise due him as a  
30 survivor, from any source other than a contract of insurance

1 under which he is an insured, for any injury arising out of  
2 the maintenance or use of the converted vehicle. If a  
3 converter dies from such injuries, his survivor or survivors  
4 are not entitled to no-fault benefits for survivor's loss  
5 from any source other than a contract of insurance under  
6 which the converter is an insured.

7 \* \* \*

8 § 301. Tort liability.

9 (a) Partial abolition.--Tort liability is abolished with  
10 respect to any injury that takes place in this State in  
11 accordance with the provisions of this act if such injury arises  
12 out of the maintenance or use of a motor vehicle, except that:

13 \* \* \*

14 (5) A person remains liable for damages for non-economic  
15 detriment if [the accident] the injury sustained results in:

16 (A) death or serious and permanent injury; [or

17 (B) the reasonable value of reasonable and necessary  
18 medical and dental services, including prosthetic devices  
19 and necessary ambulance, hospital and professional  
20 nursing expenses incurred in the diagnosis, care and  
21 recovery of the victim, exclusive of diagnostic x-ray  
22 costs and rehabilitation costs in excess of one hundred  
23 dollars (\$100) is in excess of seven hundred fifty  
24 dollars (\$750). For purposes of this subclause, the  
25 reasonable value of hospital room and board shall be the  
26 amount determined by the Department of Health to be the  
27 average daily rate charged for a semi-private hospital  
28 room and board computed from such charges by all  
29 hospitals in the Commonwealth; or

30 (C)] (B) medically determinable [physical or mental]

1           impairment which prevents the victim from performing all  
2           or substantially all of the material acts and duties  
3           which constitute his usual and customary daily activities  
4           and which continues for more than [sixty] ninety  
5           consecutive days; or

6           [(D)] (C) injury which [in whole or in part]  
7           consists of cosmetic disfigurement which is permanent,  
8           irreparable and severe.

9           \* \* \*

10   § 501. Uninsured motorists.

11       (a) An insurer under uninsured motorists coverage shall not  
12 be liable for damages for non-economic detriment unless the  
13 injury is described in one or more paragraphs of section  
14 301(a)(5) nor shall the insurer be liable under said uninsured  
15 motor coverage for basic loss or added loss benefits paid to the  
16 insured victim.

17       (b) The obligor obligated to pay basic loss benefits for  
18 accidental bodily injury to a person occupying a motor vehicle,  
19 the owner of which is uninsured pursuant to this act or to the  
20 spouse or relative resident in the household of the owner or  
21 registrant of such motor vehicle, shall be entitled to recover  
22 all the benefits paid and appropriate loss adjustments costs  
23 incurred from the owner or registrant of such motor vehicle or  
24 from his estate. The failure of the person to make payment  
25 within thirty days shall be grounds for suspension or revocation  
26 of his motor vehicle registration and operator's license.

27       Section 4. This act shall take effect immediately.