

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1510 Session of
2007

INTRODUCED BY SHIMKUS, DERMODY, BELFANTI, BISHOP, BLACKWELL,
CALTAGIRONE, CARROLL, HALUSKA, JAMES, MANDERINO, McCALL,
MELIO, PALLONE, READSHAW, SANTONI, SIPTROTH, WALKO AND
YOUNGBLOOD, JUNE 7, 2007

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 7, 2007

AN ACT

1 Amending Title 75 (Vehicles) of the Pennsylvania Consolidated
2 Statutes, further providing for election of tort options in
3 financial responsibility.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Section 1705 heading and (a)(1), (2), (3), (4)
7 and (5), (b), (c), (d) and (e) of Title 75 of the Pennsylvania
8 Consolidated Statutes are amended to read:

9 § 1705. Election of [tort] right to sue options.

10 (a) Financial responsibility requirements.--

11 (1) Each insurer, not less than 45 days prior to the
12 first renewal of a private passenger motor vehicle liability
13 insurance policy on and after July 1, 1990, shall notify in
14 writing each named insured of the availability of two
15 alternatives of full [tort] right to sue insurance and
16 limited [tort] right to sue insurance described in
17 subsections (c) and (d). The notice shall be a standardized

1 form adopted by the commissioner and shall include the
2 following language:

3 NOTICE TO NAMED INSUREDS

4 A. "Limited [Tort] Right to Sue" Option--The laws of the
5 Commonwealth of Pennsylvania give you the right to choose
6 a form of insurance that limits your right and the right
7 of resident relative members of your household to seek
8 financial compensation for injuries caused by other
9 drivers. Under this form of insurance, you and other
10 household [members] relatives covered under this policy
11 may seek recovery for all medical and other out-of-pocket
12 expenses, but not for pain and suffering or other
13 nonmonetary damages unless the injuries suffered fall
14 within the definition of "serious injury" as set forth in
15 the policy or unless one of several other exceptions
16 noted in the policy and enumerated in subsection (d)
17 applies. The annual premium for basic coverage as
18 required by law under this "limited [tort] right to sue"
19 option is \$.

20 Additional coverages under this option are available at
21 additional cost.

22 B. "Full [Tort] Right to Sue" Option--The laws of the
23 Commonwealth of Pennsylvania also give you the right to
24 choose a form of insurance under which you maintain an
25 unrestricted right for you and the resident relative
26 members of your household to seek financial compensation
27 for injuries caused by other drivers. Under this form of
28 insurance, you and other household [members] relatives
29 covered under this policy may seek recovery for all
30 medical and other out-of-pocket expenses and may also

1 seek financial compensation for pain and suffering and
2 other nonmonetary damages as a result of injuries caused
3 by other drivers. The annual premium for basic coverage
4 as required by law under this "full [tort] right to sue"
5 option is \$.

6 Additional coverages under this option are available at
7 additional cost.

8 C. You may contact your insurance agent, broker or
9 company to discuss the cost of other coverages.

10 D. If you wish to choose the "limited [tort] right to
11 sue" option described in paragraph A, you must sign this
12 notice where indicated below and return it. If you do not
13 sign and return this notice, you will be considered to
14 have chosen the "full [tort] right to sue" coverage as
15 described in paragraph B and you will be charged the
16 "full [tort] right to sue" premium. In the event the cost
17 comparisons in paragraphs A and B are incomplete, even if
18 you sign for the "limited right to sue" option under this
19 section, you will be considered to have chosen the "full
20 right to sue" option.

21 I wish to choose the "limited [tort] right to sue" option
22 described in paragraph A:

23

24 Named Insured

Date

25 E. If you wish to choose the "full [tort] right to sue"
26 option described in paragraph B, you may sign this notice
27 where indicated below and return it. However, if you do
28 not sign and return this notice or if the cost
29 comparisons in paragraphs A and B are incomplete, you
30 will be considered to have chosen the "full [tort] right

to sue" coverage as described in paragraph B and you will be charged the "full [tort] right to sue" premium.

I wish to choose the "full [tort] right to sue" option described in paragraph B:

.....

Named Insured	Date
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(2) Insurers shall print the [above notice] right to sue option notices under paragraph (1) containing both options on one sheet in prominent type and place in a prominent location. Any person signing, or otherwise bound by, a document containing such terms is bound by such election and is precluded from claiming liability of any person based upon being inadequately informed in making the election between full [tort] right to sue or limited [tort] right to sue alternatives. Where there are two or more named insureds on a policy, any named insured may make the full or limited [tort] right to sue election provided for in this section for all named insureds on the policy.

(3) If a named insured who receives [a] notice under paragraph (1) does not indicate a choice within 20 days, the insurer shall send a second notice. The second notice shall be in a form identical to the first notice, except that it shall be identified as a second and final notice. If a named insured has not responded to either notice ten days prior to the renewal date, the named insured and those he is empowered by this section to bind by his choice are conclusively presumed to have chosen the full [tort] right to sue alternative. All notices required by this section shall advise that if no [tort] right to sue election is made, the named insured and those he is empowered to bind by his choice

1 are conclusively presumed to have chosen the full [tort]
2 right to sue alternative. Any person subject to the limited
3 [tort] right to sue option by virtue of this section shall be
4 precluded from claiming liability of any person based upon
5 being inadequately informed.

6 (4) Each insurer, prior to the first issuance of a
7 private passenger motor vehicle liability insurance policy on
8 and after July 1, 1990, shall provide each applicant with the
9 [notice] notices required by paragraph (1). A policy may not
10 be issued until the applicant has been provided an
11 opportunity to elect a [tort] right to sue option.

12 (5) An owner of a currently registered private passenger
13 motor vehicle who does not have financial responsibility
14 shall be deemed to have chosen the limited [tort] right to
15 sue alternative if the owner is the driver of the uninsured
16 motor vehicle at the time of the owner's injury.

17 * * *

18 (b) Application of [tort] right to sue options.--

19 (1) The [tort] right to sue option elected by a named
20 insured shall apply to all private passenger motor vehicle
21 policies of the named insured issued by the same insurer and
22 shall continue in force as to all subsequent renewal
23 policies, replacement policies and any other private
24 passenger motor vehicle policies under which the individual
25 is a named insured until the insurer, or its authorized
26 representative, receives a properly executed form electing
27 the other [tort] right to sue option.

28 (2) The [tort] right to sue option elected by a named
29 insured shall apply to all insureds under the private
30 passenger motor vehicle policy who are not named insureds

1 under another private passenger motor vehicle policy. In the
2 case where more than one private passenger motor vehicle
3 policy is applicable to an insured and the policies have
4 conflicting [tort] right to sue options, the insured is bound
5 by the [tort] right to sue option of the policy associated
6 with the private passenger motor vehicle in which the insured
7 is an occupant at the time of the accident if he is an
8 insured on that policy and bound by the full [tort] right to
9 sue option otherwise.

10 (3) An individual who is not an owner of a currently
11 registered private passenger motor vehicle and who is not a
12 named insured or insured under any private passenger motor
13 vehicle policy shall not be precluded from maintaining an
14 action for noneconomic loss or economic loss sustained in a
15 motor vehicle accident [as the consequence of the fault of
16 another person pursuant to applicable tort law.] and is,
17 therefore, deemed to have selected the full right to sue
18 option.

19 (c) Full [tort] right to sue alternative.--Each person who
20 is bound by the full [tort] right to sue election remains
21 eligible to seek compensation for noneconomic loss claimed and
22 economic loss sustained in a motor vehicle accident as the
23 consequence of the fault of another person pursuant to
24 applicable tort law.

25 (d) Limited [tort] right to sue alternative.--Each person
26 who elects the limited [tort] right to sue alternative remains
27 eligible to seek compensation for economic loss sustained in a
28 motor vehicle accident as the consequence of the fault of
29 another person pursuant to applicable tort law. Unless the
30 injury sustained is a serious injury, each person who is bound

1 by the limited [tort] right to sue election shall be precluded
2 from maintaining an action for any noneconomic loss, except
3 that:

4 (1) An individual otherwise bound by the limited [tort]
5 right to sue election who sustains damages in a motor vehicle
6 accident as the consequence of the fault of another person
7 may recover damages as if the individual damaged had elected
8 the full [tort] right to sue alternative whenever the person
9 at fault:

10 (i) is convicted or accepts Accelerated
11 Rehabilitative Disposition (ARD) for driving under the
12 influence of alcohol or a controlled substance in that
13 accident;

14 (ii) is operating a motor vehicle registered in
15 another state;

16 (iii) intends to injure himself or another person,
17 provided that an individual does not intentionally injure
18 himself or another person merely because his act or
19 failure to act is intentional or done with his
20 realization that it creates a grave risk of causing
21 injury or the act or omission causing the injury is for
22 the purpose of averting bodily harm to himself or another
23 person; or

24 (iv) has not maintained financial responsibility as
25 required by this chapter, provided that nothing in this
26 paragraph shall affect the limitation of section
27 1731(d)(2) (relating to availability, scope and amount of
28 coverage).

29 (2) An individual otherwise bound by the limited [tort]
30 right to sue election shall retain full [tort] rights to sue

1 with respect to claims against a person in the business of
2 designing, manufacturing, repairing, servicing or otherwise
3 maintaining motor vehicles arising out of a defect in such
4 motor vehicle which is caused by or not corrected by an act
5 or omission in the course of such business, other than a
6 defect in a motor vehicle which is operated by such business.

7 (3) An individual otherwise bound by the limited [tort]
8 right to sue election shall retain full [tort] rights to sue
9 if injured while an occupant of a motor vehicle other than a
10 private passenger motor vehicle.

11 (e) Nondiscrimination.--No insurer shall cancel, refuse to
12 write or refuse to renew a motor vehicle insurance policy based
13 on the [tort] right to sue option election of the named insured.
14 Any violation of this subsection shall be deemed a violation of
15 [the Automobile Insurance Policy Act] Article XX of the act of
16 May 17, 1921 (P.L.682, No.284), known as The Insurance Company
17 Law of 1921.

18 * * *

19 Section 2. This act shall take effect in 60 days.