

1 *House* BILL NO. *651*  
 2 INTRODUCED BY *Robert Sienton (by Request)*  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO BE KNOWN AS THE  
 5 MONTANA AUTO ACCIDENT REPARATIONS ACT; PROVIDING A NO-FAULT  
 6 INSURANCE SYSTEM FOR THE STATE OF MONTANA."  
 7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Short title. This article shall be known  
 10 and may be cited as the "Montana Auto Accident Reparations  
 11 Act".

12 Section 2. Purpose. The legislature declares that its  
 13 purpose in enacting this article is to avoid inadequate  
 14 compensation to victims of motor vehicle accidents, to  
 15 require registrants of motor vehicles in this state to  
 16 procure insurance covering legal liability arising out of  
 17 ownership or use of such motor vehicles and also providing  
 18 benefits to persons occupying such motor vehicles and to  
 19 persons injured in accidents involving such motor vehicles;  
 20 to limit the right to claim damages for pain, suffering,  
 21 mental anguish and inconvenience; and to organize and  
 22 maintain an assigned claims plan.

23 Section 3. Definitions. As used in this act, unless  
 24 the context clearly requires otherwise:

25 (1) "Accidental bodily injury" means bodily injury,

1 sickness or disease, including death resulting therefrom,  
 2 arising out of the operation of a motor vehicle, and which  
 3 is accidental as to the person claiming no-fault benefits.

4 (2) "Basic no-fault benefits" means benefits for  
 5 economic loss resulting from accidental bodily injury. The  
 6 maximum amount of basic no-fault benefits payable for all  
 7 economic loss incurred within one (1) year and resulting  
 8 from accidental bodily injury to any one person as the  
 9 result of any one (1) accident shall not exceed ten thousand  
 10 dollars (\$10,000), regardless of the number of persons  
 11 entitled to such benefits or the number of insurers  
 12 obligated to pay such benefits. Basic no-fault benefits  
 13 payable shall not exceed:

14 (a) one hundred fifty dollars (\$150) per week, per  
 15 person prorated for any lesser period for work loss or  
 16 survivors income loss, or

17 (b) one thousand dollars (\$1,000) for funeral,  
 18 cremation and burial expenses.

19 (3) "Basic no-fault insurer" means an insurer or a  
 20 qualified self-insurer.

21 (4) "Dependent survivors" of a deceased injured person  
 22 include the following survivors only:

23 (a) the surviving spouse if residing in the deceased's  
 24 household at the time of his death; and

25 (b) other persons receiving support from the deceased

1 at the time of his death which would qualify them as  
2 dependents of the deceased for federal income tax purposes  
3 under the Internal Revenue Code of 1954.

4 The dependency of a surviving spouse shall terminate  
5 upon remarriage.

6 (5) "Economic loss" means one or more of the  
7 following:

8 (a) medical expenses and reasonable and necessary  
9 rehabilitation expenses; and

10 (b) work loss, replacement services loss, survivors'  
11 income loss, survivors' replacement services loss, and  
12 funeral, cremation and burial expenses.

13 (6) "Injured person" means a person who sustains  
14 accidental bodily injury.

15 (7) "Medical expenses" means reasonable charges  
16 incurred for necessary medical, surgical, x-ray, dental,  
17 prosthetic, ambulance, hospital or professional nursing  
18 services or services for remedial treatment and care  
19 rendered in accordance with a recognized religious healing  
20 method. Medical expenses do not include that portion of the  
21 charge for a room in any hospital, clinic, convalescent or  
22 nursing home, extended care facility or any similar facility  
23 in excess of the reasonable and customary charge for  
24 semi-private accommodations unless intensive care is  
25 medically needed.

1 (8) "Motor vehicle" means a vehicle having more than  
2 three (3) load bearing wheels, of a kind required to be  
3 registered under the laws of this state relating to motor  
4 vehicles, designed primarily for operation upon the public  
5 streets, roads and highways, and driven by power other than  
6 muscular power, and includes a trailer drawn by or attached  
7 to such a vehicle.

8 (9) "Noneconomic loss" means pain, suffering,  
9 inconvenience and other nonpecuniary damage recoverable  
10 under the tort law of this state.

11 (10) "Occupying" means to be in or upon a motor vehicle  
12 or engaged in the immediate act of entering into or  
13 alighting from the motor vehicle.

14 (11) "Operation of a motor vehicle" means operation,  
15 maintenance or use of a motor vehicle as a vehicle.  
16 Operation of a motor vehicle does not include:

17 (a) conduct within the course of a business of  
18 repairing, servicing, or otherwise maintaining motor  
19 vehicles unless the injury occurs off the business premises,  
20 or

21 (b) conduct in the course of loading and unloading the  
22 vehicle unless the injury occurs while occupying it.

23 (12) "Owner" means the person in whose name the motor  
24 vehicle has been registered. If no registration is in  
25 effect at the time of an accident involving the motor

1 vehicle, "owner" means the person who holds the legal title  
 2 thereto, or in the event the motor vehicle is the subject of  
 3 a security agreement or lease with option to purchase with  
 4 the debtor or lessee having the right to possession, "owner"  
 5 means the debtor or lessee.

6 (13) "Pedestrian" means any person not occupying a  
 7 vehicle designed to be driven or drawn by power other than  
 8 muscular power.

9 (14) "Relative" means any of the following residing in  
 10 the same household as the owner: a person related to the  
 11 owner by blood, marriage, or adoption, or a foster child. A  
 12 person resides in the same household if he usually makes his  
 13 home in the same family unit, even though he temporarily  
 14 lives elsewhere.

15 (15) "Replacement services loss" means expenses not  
 16 exceeding fifteen dollars (\$15) per day in obtaining  
 17 ordinary and necessary services from others not members of  
 18 the injured person's household in lieu of those that the  
 19 injured person would have performed had he not been injured,  
 20 not for income but for the benefit of himself or his  
 21 household. Replacement services loss does not include any  
 22 loss after the death of an injured person.

23 (16) "Secured motor vehicle" means a motor vehicle with  
 24 respect to which the security required by this act was in  
 25 effect at the time of its involvement in the accident

1 resulting in accidental bodily injury.

2 (17) "Secured person" means the owner, operator or  
 3 occupant of the secured motor vehicle, and any other person  
 4 or organization legally responsible for the acts or  
 5 omissions of such owner, operator or occupant.

6 (18) "Serious injury" means an accidental bodily injury  
 7 which results in death, dismemberment, serious and permanent  
 8 disfigurement or disability, or medical expenses in excess  
 9 of one thousand dollars (\$1,000). An injured person who is  
 10 furnished the services in subsection (g) of this section  
 11 without charge or at less than the average reasonable charge  
 12 therefor in this state shall be deemed to have sustained a  
 13 serious injury if the court determines that the fair and  
 14 reasonable value of such services exceeds one thousand  
 15 dollars (\$1,000).

16 (19) "Survivors income loss" means loss sustained after  
 17 an injured person's death by his dependent survivors during  
 18 their dependency and consisting of the loss of the  
 19 contributions they would have received for their support  
 20 from the decedent out of income from work he would normally  
 21 have performed had he not died.

22 (20) "Survivors replacement services loss" means  
 23 expenses not to exceed fifteen dollars (\$15) per day after  
 24 the injured person's death by his dependent survivors in  
 25 obtaining ordinary and necessary services from others not

1 members of the decedent's household in lieu of the services  
2 he would have performed not for income but for the benefit  
3 of his household.

4 (21) "Work loss" means eighty-five percent (85%) of  
5 loss of income from work an injured person who would  
6 normally be employed in gainful activity during the period  
7 of his disability, would have performed had he not been  
8 injured, reduced by any income from substitute work actually  
9 performed by the injured person or by income the injured  
10 person would have earned in available appropriate substitute  
11 work which he was capable of performing but unreasonably  
12 failed to undertake. Work loss does not include any loss  
13 after the death of an injured person.

14 Section 4. Security requirements -- authority of motor  
15 vehicle division administrator. (1) The owner of a motor  
16 vehicle required to be registered in this state, or the  
17 owner of a motor vehicle operated in this state by him or  
18 with his permission, shall continuously provide with respect  
19 to such motor vehicle while it is either present or  
20 registered in this state security in accordance with this  
21 act for payment of basic no-fault benefits and the  
22 liabilities covered under motor vehicle liability insurance.

23 (2) The security required by this act may be provided  
24 by a policy of insurance complying with this act issued by  
25 an insurer authorized to transact business in this state,

1 or, by self-insurance as approved by the commissioner of  
2 insurance.

3 (3) If the vehicle is registered in another state, the  
4 security required by this act may be provided by a policy of  
5 insurance issued by an insurer authorized to transact  
6 business in either this state or the state in which the  
7 vehicle is registered, or, by self-insurance as approved by  
8 the insurance department of the state in which the vehicle  
9 is registered.

10 (4) The owner of any motor vehicle required to be  
11 registered in this state who operates it or permits it to be  
12 operated in this state when he knows or should know that he  
13 has failed to comply with the requirement that he provide  
14 security under this act shall have his operator's license  
15 and his motor vehicle registration revoked or suspended in  
16 accordance with procedures established by the administrator  
17 of the motor vehicle division under the motor vehicle law of  
18 this state until he provides the security required by this  
19 act.

20 (5) An owner of a motor vehicle with respect to which  
21 security is required who fails to have such security in  
22 effect at the time of an accident shall be absolutely liable  
23 at law for payment of basic no-fault benefits, and shall  
24 have all the rights and obligations of an insurer under this  
25 act. This remedy shall be in addition to any other remedy

1 that an injured person may have against such an owner.

2 (6) An insurance policy which purports to provide  
3 coverage for basic no-fault benefits or is sold with the  
4 representation that it fulfills the requirements of security  
5 as required by this act is deemed to include all coverage  
6 required by this act.

7 (7) The administrator of the motor vehicle division  
8 may supervise the enforcement of the compulsory security  
9 requirements of this act and promulgate any rules necessary  
10 in respect to the maintenance thereof.

11 Section 5. Authority of insurance commissioner. (1)  
12 The commissioner of insurance may approve or disapprove:

13 (a) the form of the policy of insurance used as  
14 security in compliance with this act; and

15 (b) the self-insurance used as security required by  
16 this act, which may be provided by filing in satisfactory  
17 form:

18 (i) a continuing undertaking by the owner or other  
19 appropriate person to pay basic no-fault benefits and the  
20 liabilities covered by motor vehicle liability insurance and  
21 to perform all other obligations imposed by this act;

22 (ii) evidence that appropriate provision exists for  
23 the prompt and efficient administration of all claims,  
24 benefits, and obligations provided by this act; and

25 (iii) evidence that reliable financial arrangements,

1 deposits or commitments exist providing assurance for  
2 payment of basic no-fault benefits and the liabilities  
3 covered by motor vehicle liability insurance and all other  
4 obligations imposed by this act substantially equivalent to  
5 those afforded by a policy of insurance that would comply  
6 with this act.

7 (2) Every insurance company authorized to transact the  
8 business of motor vehicle liability insurance in this state  
9 shall file with the commissioner of insurance as a condition  
10 of its continued transaction of such business within this  
11 state a form declaring that its motor vehicle liability  
12 policies wherever issued shall be deemed to provide the  
13 security required by this act when the vehicle is operated  
14 in this state. Any nonadmitted insurer may file such a  
15 form.

16 (3) The commissioner shall issue and promulgate all  
17 necessary rules not inconsistent with the provisions of this  
18 act. He shall also have the authority, after notice and  
19 hearing thereon, to provide schedules of reasonable maximum  
20 benefits payments for specified medical services and  
21 rehabilitation expenses which insurers may incorporate into  
22 their policies of basic or optional coverages afforded  
23 pursuant to this act.

24 Section 6. Optional excess no-fault benefits. Each  
25 basic no-fault insurer of the owner of a motor vehicle

1 required to be registered in this state shall also make  
 2 available excess no-fault benefits for excess economic loss  
 3 commencing upon the exhaustion of basic no-fault benefits,  
 4 up to a total of thirty-five thousand dollars (\$35,000) in  
 5 no-fault benefits payable to the owner and members of his  
 6 family residing in his household for accidental bodily  
 7 injury to any one person in any one accident. Nothing  
 8 contained herein shall prevent any insurer from also  
 9 offering benefits and limits other than those prescribed  
 10 herein nor shall this section be construed as preventing any  
 11 insurer from incorporating in such optional excess no-fault  
 12 coverage such terms, conditions, and exclusions as may be  
 13 consistent with the premiums charged. The amounts payable  
 14 under optional excess no-fault benefits may be duplicative  
 15 of benefits received from any collateral sources or may be  
 16 written in excess of such collateral source benefits, or may  
 17 provide for reasonable waiting period, deductibles or  
 18 coinsurance provisions. The optional excess no-fault  
 19 benefits insurer may provide that it be subrogated to the  
 20 insured's right of recovery against any responsible third  
 21 party.

22 Section 7. Persons entitled to benefits. The insurer  
 23 of a motor vehicle with respect to which security is  
 24 required under this act shall pay basic no-fault benefits  
 25 without regard to fault for economic loss resulting from:

1 (1) accidental bodily injury sustained within the  
 2 United States of America, its territories or possessions or  
 3 Canada by the owner of the motor vehicle or any relative of  
 4 the owner:

5 (a) while occupying any motor vehicle, or  
 6 (b) while a pedestrian as the result of being struck  
 7 by a motor vehicle which, for the purpose of this subsection  
 8 (1)(b), shall also include a motorcycle.

9 (2) accidental bodily injury sustained by any other  
 10 person while occupying the motor vehicle if the accident  
 11 occurs within the United States of America, its territories  
 12 or possessions or Canada; and

13 (3) accidental bodily injury sustained by any other  
 14 person as a result of being struck by the motor vehicle  
 15 while a pedestrian in this state.

16 Section 8. Persons not entitled to benefits. Basic or  
 17 optional no-fault benefits shall not be payable to or on  
 18 behalf of any person who sustains accidental bodily injury  
 19 while:

20 (1) occupying the secured motor vehicle without the  
 21 expressed or implied consent of the owner or while not in  
 22 lawful possession of the secured motor vehicle; or

23 (2) occupying a motor vehicle owned by such person  
 24 which is not insured for the benefits required by this act  
 25 unless uninsured solely because the liability insurer of

1 such owner has not filed a form pursuant to section [5,  
2 subsection (b) of this act] to provide the basic no-fault  
3 benefits required by this act.

4 (3) in the course of a racing or speed contest, or in  
5 practice or preparation thereof; or

6 (4) intentionally causing or attempting to cause  
7 injury to himself or another person.

8 Section 9. Payment of basic and optional excess  
9 no-fault benefits. (1) Basic and optional excess no-fault  
10 benefits are payable monthly for economic loss sustained by  
11 an injured person or his dependent survivors or incurred on  
12 his behalf by his spouse, relatives, or guardian. An  
13 insurer may pay basic or optional excess no-fault benefits  
14 when due to any of the above persons whom it believes has  
15 sustained or incurred the loss or at its option to the  
16 person or organization rendering, for a charge, the services  
17 for which such benefits are payable. In the event the  
18 injured person dies, an insurer may pay the benefits due  
19 directly to those entitled thereto without the appointment  
20 of an administrator or executor and unless a court directs  
21 otherwise, may pay all benefits for survivors loss to the  
22 surviving spouse for the use and benefits of all dependent  
23 survivors. An insurer's payments made in good faith in  
24 accordance with the provisions shall discharge the insurer's  
25 liability to the extent of such payments unless the insurer

1 has been notified in writing of the claim of some other  
2 person prior to the making of any such payment.

3 (2) Basic and optional excess no-fault benefits are  
4 overdue if not paid within thirty (30) days after the  
5 insurer receives reasonable proof of the fact and the amount  
6 of loss sustained except that an insurer may accumulate  
7 claims for periods not exceeding one (1) month, and benefits  
8 are not overdue if paid within twenty (20) days after the  
9 period of accumulation. If reasonable proof is not supplied  
10 as to the entire claim, the amount supported by reasonable  
11 proof is overdue if not paid within thirty (30) days after  
12 such proof is received by the insurer. Any part or all of  
13 the remainder of the claim that is later supported by  
14 reasonable proof is overdue if not paid within thirty (30)  
15 days after such proof is received by the insurer. Payment  
16 is deemed made on date of mailing. All overdue payments  
17 shall bear interest at the rate of eighteen percent (18%)  
18 per year.

19 Section 10. Priority of applicable security. (1) A  
20 basic no-fault insurer has the primary obligation to make  
21 payment for economic loss because of accidental bodily  
22 injury arising out of the operation, maintenance or use of a  
23 motor vehicle; provided, that the amount of all benefits a  
24 claimant recovered or is entitled to recover for the same  
25 elements of loss under any workmen's compensation act shall

1 be subtracted from the basic no-fault benefits otherwise  
2 payable for the injury.

3 (2) As between applicable policies, basic no-fault  
4 benefits are payable as follows:

5 (a) As to any person injured while occupying an  
6 automobile insured for such benefits, or injured as a  
7 pedestrian by such an automobile, the benefits shall be  
8 payable by the insurer of the automobile.

9 (b) As to any person insured under a policy providing  
10 such benefits who is injured while occupying an automobile  
11 not insured for such benefits, or while being struck as a  
12 pedestrian by a motor vehicle not insured for such benefits,  
13 the benefits shall be payable by the insurer affording the  
14 benefits to the injured person.

15 Section 11. Motor vehicle liability insurance --  
16 extra-territorial provision. (1) Motor vehicle liability  
17 insurance applies to the amounts which the owner or insured  
18 is legally obligated to pay as damages because of accidental  
19 bodily injury and accidental property damage arising out of  
20 the ownership, operation, maintenance or use of a motor  
21 vehicle, if the accident occurs within the United States of  
22 America, its territories or possessions or Canada. Motor  
23 vehicle liability insurance shall afford limits of liability  
24 not less than those required under the financial  
25 responsibility laws of the various states and Canada.

1 Customary terms and conditions applicable to motor vehicle  
2 liability insurance also apply.

3 (2) If the accident occurs outside this state but  
4 within the United States of America, its territories or  
5 possessions or Canada:

6 (a) and the limits of liability of the financial  
7 responsibility or compulsory insurance laws of the  
8 applicable jurisdiction exceed the limits of liability of  
9 the financial responsibility laws of the place of accident,  
10 such motor vehicle liability insurance shall be deemed to  
11 comply with the limits of liability of the laws of the  
12 applicable jurisdiction; and

13 (b) the limits of no-fault benefits of the applicable  
14 jurisdiction exceed the limits provided under this act for  
15 no-fault benefits, such no-fault benefits shall be deemed to  
16 comply with the limits of such benefits of the laws of the  
17 applicable jurisdiction.

18 Section 12. Secured person exemption. (1) In any  
19 action against a secured person to recover damages because  
20 of accidental bodily injury arising out of the ownership,  
21 operation, maintenance or use of a secured motor vehicle in  
22 this state, the secured person shall be exempt from  
23 liability to pay damages for:

24 (a) noneconomic loss unless the injury is a serious  
25 injury;



1 (b) economic loss to the extent of all basic no-fault  
2 benefits paid or to become payable for such injury under  
3 this act after subtracting the same elements of loss  
4 recoverable under any workmen's compensation act.

5 (2) The exemption described in subsection (1) of this  
6 section does apply unless the person who has sustained  
7 accidental bodily injury is a person who may qualify for  
8 basic no-fault benefits pursuant to section [7 of this act]  
9 and who is not excluded under section [8 of this act].

10 Section 13. Insurer's right of subrogation. A basic  
11 no-fault insurer who has paid or may become obligated to pay  
12 basic no-fault benefits under this act shall be subrogated  
13 to the extent of its obligations to all of the rights of the  
14 injured person against any person or organization other than  
15 a secured person. The subrogee shall have a lien to the  
16 extent of its obligations, and no release of such rights  
17 shall be effective against such rights without the  
18 subrogee's consent.

19 Section 14. Equitable allocation of losses among  
20 insurers. (1) A basic no-fault insurer shall have a right  
21 to recover basic no-fault benefits paid to or for the  
22 benefit of an injured person from the motor vehicle  
23 liability insurer of a secured person if:

- 24 (a) the injured person has sustained a serious injury,
- 25 (b) the amount of such benefits exceeds one thousand

1 dollars (\$1,000); or

2 (c) the injury results from an accident involving two  
3 (2) or more motor vehicles, at least one (1) of which is a  
4 motor vehicle weighing more than six thousand five hundred  
5 (6,500) pounds unloaded.

6 (2) The right of recovery and the amount thereof shall  
7 be determined on the basis of tort law without regard to  
8 section [12] by agreement between the insurers involved, or,  
9 if they fail to agree, by binding inter-company arbitration  
10 under procedures approved by the commissioner of insurance.  
11 The amount of recovery under this section shall not exceed  
12 the limits of liability of the secured person's motor  
13 vehicle liability insurance policy or other security,  
14 reduced by the amount of the liability for tort claims  
15 against the secured person covered by the policy or other  
16 security.

17 Section 15. Exemption of benefits. An agreement for  
18 assignment other than to medical providers of any right to  
19 benefits payable in the future is unenforceable.

20 Basic no-fault benefits are exempt from garnishment,  
21 attachment, execution, and any other process or claim to the  
22 extent that wages or earnings are exempt under any  
23 applicable law exempting wages or earnings from process or  
24 claims.

25 Section 16. Limitation of actions. (1) If no basic

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1 or excess no-fault benefits have been paid for loss arising  
2 other than from death, an action therefor may be commenced  
3 not later than two (2) years after the injured person  
4 suffers the loss and either knows, or in the exercise of  
5 reasonable diligence should have known, that the loss was  
6 caused by the accident, or not later than four (4) years  
7 after the accident, whichever is earlier. If basic or  
8 excess no-fault benefits have been paid for such loss, an  
9 action for recovery of further benefits for such loss by  
10 either the same or another claimant, may be commenced not  
11 later than two (2) years after the last payment of benefits.

12 (2) If no basic or excess no-fault benefits have been  
13 paid to the decedent or his dependent survivors, an action  
14 for benefits for survivors loss and funeral and burial  
15 expenses may be commenced not later than one (1) year after  
16 the death or four (4) years after the accident from which  
17 death results, whichever is earlier. If survivors loss  
18 benefits have been paid to any survivor, an action for  
19 recovery of further survivors loss benefits by either the  
20 same or another claimant, may be commenced not later than  
21 two (2) years after the last payment of benefits. If basic  
22 or excess no-fault benefits have been paid for loss suffered  
23 by an injured person before his death resulting from the  
24 injury, an action for recovery of survivors loss benefits  
25 may be commenced not later than one (1) year after the death

1 or four (4) years after the last payment of benefits,  
2 whichever is earlier.

3 (3) Except as subsections (1) or (2) prescribed a  
4 longer period, an action by a claimant on an assigned claim  
5 which has been timely presented may be commenced not later  
6 than sixty (60) days after the claimant receives written  
7 notice of rejection of the claim by the insurer to which it  
8 was assigned.

9 (4) The time period limitations prescribed in this  
10 section govern all actions for benefits under this act  
11 notwithstanding any limitation prescribed elsewhere in the  
12 laws of this state.

13 Section 17. Mental and physical examinations.  
14 Whenever the mental or physical condition of a person is  
15 material to any claim that has been or may be made for past  
16 or future basic or excess no-fault benefits, the person  
17 shall submit to mental or physical examination by a  
18 physician or physicians, designated by the insurer at a  
19 reasonably convenient location. Insurers are authorized to  
20 include reasonable provisions of this nature in policies  
21 providing basic or excess no-fault benefits.

22 Section 18. Discovery of facts about an injured  
23 person. (1) Every employer or claimant shall, if a written  
24 request is made by an insurer against whom a claim has been  
25 made, furnish forthwith, in a form approved by the

1 commissioner of insurance, a sworn statement of the earnings  
2 since the time of the accidental bodily injury and for a  
3 twelve (12) month period before the injury, of the person  
4 upon whose injury the claim is based.

5 (2) Every physician, coroner or medical officer,  
6 hospital, clinic or other medical institution providing,  
7 before or after an accidental bodily injury upon which a  
8 claim for basic or excess no-fault benefits is based, any  
9 products, services or accommodations in relation to the  
10 injury, or in relation to a condition claimed to be  
11 connected with the injury, shall, if requested in writing to  
12 do so by the insurer against whom the claim has been made:

13 (a) furnish forthwith a written report of the history,  
14 condition, treatment and dates and costs of treatment;

15 (b) permit the inspection and copying of his or its  
16 records regarding such history, condition, treatment and  
17 dates and costs of treatment; and

18 (c) furnish forthwith autopsy reports.

19 (3) In the event of any dispute regarding an insurer's  
20 right to discovery of facts about an injured person's  
21 earnings or about history, condition, treatment and dates  
22 and costs of such treatment, a court of record may enter an  
23 order for such discovery as justice requires.

24 Section 19. Assigned claims plan. (1) Insurers and  
25 qualified self-insurers authorized to provide basic no-fault

1 benefits in this state are hereby directed to organize,  
2 participate in and maintain an assigned claims plan to  
3 provide that any person who suffers economic loss as a  
4 result of any accidental bodily injury arising out of the  
5 operation, maintenance or use of a motor vehicle in this  
6 state, other than a person not entitled to benefits under  
7 section [8 of this act], may obtain basic no-fault benefits  
8 through the plan if:

9 (a) basic no-fault benefits are not applicable to the  
10 injury for some reason other than those specified in section  
11 [8 of this act]; or

12 (b) basic no-fault benefits applicable to the injury  
13 are inadequate to provide the contracted-for benefits  
14 because of financial inability of an insurer to fulfill its  
15 obligations. Payments made by the assigned claims plan  
16 pursuant to this subsection constitute covered claims under  
17 the Insurance Guaranty Association Act.

18 (2) If a claim qualifies for assignment under this  
19 section, the assigned claims plan or any insurer to whom the  
20 claim is assigned shall be subrogated to all of the rights  
21 of the claimant against any person liable, and against any  
22 insurer, its successor in interest or substitute legally  
23 obligated to provide basic no-fault benefits to the  
24 claimant, for basic no-fault benefits provided by the  
25 assignment.

1 (3) The assigned claims plan shall contain such rules  
 2 and regulations for the operation of the plan and for the  
 3 equitable distribution of costs as shall be approved by the  
 4 commissioner of insurance. Any claim brought through the  
 5 plan shall be assigned to an insurer in accordance with such  
 6 regulations and that insurer, after such assignment, shall  
 7 have the rights and obligations it would have had if prior  
 8 to such assignment it has issued a policy providing basic  
 9 no-fault benefits applicable to the loss. Any person  
 10 accepting such benefits hereunder shall have such rights and  
 11 obligations as he would have had under a policy issued to  
 12 him providing basic no-fault benefits.

13 Section 20. Severability. If any provision of this  
 14 act or the application thereof to any person or circumstance  
 15 is held to be unconstitutional or otherwise invalid, the  
 16 remainder of this act and the application of such provision  
 17 to other persons or circumstances shall not be affected  
 18 thereby, and it shall be conclusively presumed that the  
 19 legislature would have enacted the remainder of this act  
 20 without such invalid or unconstitutional provision;  
 21 provided, that section [12] is found to be unconstitutional  
 22 or invalid it shall be conclusively presumed that the  
 23 legislature would not have enacted the remainder of this act  
 24 without section [12] and the entire act shall be held  
 25 invalid.

-End-