

1 *Senate* BILL NO. 221
2 INTRODUCED BY *Drake Flynn Hines*
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE EACH MOTOR
5 VEHICLE LIABILITY POLICY IN THIS STATE TO PROVIDE FIRST
6 PARTY PERSONAL INJURY INSURANCE COVERAGE WHICH IS PAYABLE
7 WITHOUT REGARD TO FAULT."

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

10 Section 1. Definitions. As used in this act:

11 (1) "Income" means salary, wages, tips, commissions,
12 professional fees and profits from an individually owned
13 business or farm.

14 (2) "Motor vehicle" means every self-propelled vehicle
15 that is designated for use upon a highway, including
16 trailers and semitrailers designed for use with such
17 vehicles (except traction engines, road rollers, farm
18 tractors, tractor cranes, power shovels and well drillers)
19 and every vehicle which is propelled by electric power
20 obtained from overhead wires but not operated upon rails.

21 Section 2. What motor vehicle liability policy must
22 include. Each motor vehicle liability policy issued to
23 cover a motor vehicle registered or operated in this state
24 shall provide to the person insured thereunder and members
25 of his family residing in the same household injured in a

1 motor vehicle accident, guest passengers injured while
2 occupying the insured motor vehicle and pedestrians struck
3 by the insured motor vehicle the following benefits for each
4 accident:

5 (1) liability coverage of not less than ten thousand
6 dollars (\$10,000) because of bodily injury to or death of
7 one (1) person in any one (1) accident, and, subject to that
8 limit for one (1) person, in the amount of twenty thousand
9 dollars (\$20,000) because of bodily injury to or death of
10 two (2) or more persons in any one (1) accident;

11 (2) liability coverage of not less than five thousand
12 dollars (\$5,000) for all damages arising out of injury to or
13 destruction of property, including the loss of use thereof,
14 as a result of any one (1) accident arising out of
15 ownership, maintenance or use of the insured vehicle;

16 (3) compensation for:

17 (a) reasonable and necessary expenses for medical,
18 hospital, dental, surgical, prosthetic, ambulance, and
19 funeral services incurred within one (1) year after the date
20 of the accident, in the amount of three thousand dollars
21 (\$3,000) per person; the compensation for funeral expenses
22 shall not exceed the sum of one thousand dollars (\$1,000)
23 per person;

24 (b) loss of income to an injured person usually
25 engaged in a remunerative occupation, not to exceed five

1 hundred dollars (\$500) per month, and not to exceed a period
2 of fifty-two (52) weeks;

3 (c) expenses reasonably incurred for essential
4 services in lieu of those the injured person would have
5 performed, without income, had he not been injured, not to
6 exceed twelve dollars (\$12) per day or to exceed a period of
7 fifty-two (52) weeks.

8 Section 3. Benefits payable without regard to fault --
9 when due -- interest penalty. Benefits payable under
10 section 2 (3) of this act are payable, without regard to
11 fault, monthly as loss accrues. Benefits are overdue if not
12 paid within thirty (30) days after the insurer receives
13 reasonable proof of the fact and amount of loss. Overdue
14 payments bear interest at the rate of ten percent (10%) per
15 year.

16 Section 4. Potential cause of action not to relieve
17 insurer duty. The existence of a potential cause of action
18 in tort that arises out of an accident does not relieve an
19 insurer of the duty to pay the benefits to the injured
20 person as required by this act.

21 Section 5. Liability not admitted by payments.
22 Payment of benefits under section 2 (3) of this act is not
23 an admission of liability for the death, injury, or property
24 damage by the person making the payment.

25 Section 6. When benefits may be reduced -- when in

1 excess over collateral benefits. The benefits payable under
2 section 2 (3) of this act:

3 (1) are primary with respect to the insured and
4 members of his family residing in the same household, and
5 benefits may be reduced or eliminated if they are similarly
6 provided under another motor vehicle liability policy that
7 covers the injured person, or if the injured person is
8 entitled to receive workmen's compensation benefits or any
9 other similar medical or disability benefits; and

10 (2) may be excess over any other collateral benefits
11 to which the injured person is entitled with respect to
12 guest passengers injured while occupying the insured motor
13 vehicle and pedestrians injured by the insured motor
14 vehicle. Collateral benefits include but are not limited to
15 insurance, governmental, or gratuitous benefits.

16 Section 7. Exclusions allowed. The insurer may
17 exclude from coverage of the benefits payable under section
18 2 (3) of this act any person injured outside this state,
19 except for the named insured, members of the insured's
20 family residing in his household or guest passengers in a
21 motor vehicle owned or operated by the named insured.

22 Section 8. Deductible forms allowed. With respect to
23 the insured and members of his family residing in the same
24 household, an insurer may offer deductible forms, up to two
25 hundred fifty dollars (\$250), of coverage for the benefits

1 required by section 2 (3) of this act.

2 Section 9. Payments between insurers -- when --
3 disputes. (1) An insurer transacting motor vehicle
4 liability insurance whose insured is or would be held
5 legally liable for damages for injuries sustained by a
6 person to whom benefits required by section 2 (3) of this
7 act have been paid by another shall reimburse that payor or
8 the benefits paid in an amount not to exceed the damages
9 recoverable if the payor is entitled to reimbursement by
10 terms of an insurance policy or agreement. Disputes between
11 insurers as to the issues of liability for and the amount of
12 reimbursement shall be decided by arbitration.

13 (2) Findings and awards made in an arbitration
14 proceeding are not admissible in any action at law.

15 Section 10. When insurer entitled to recovery.

16 (1) If an insurer has paid benefits required by section 2
17 (3) of this act to a claimant injured by a person who is not
18 covered by a motor vehicle liability policy, the insurer is
19 entitled, to the extent of that payment, to the proceeds of
20 any settlement or judgment that may result from an action
21 against the motorist legally responsible for the injury.

22 (2) The claimant shall execute and deliver to the
23 insurer such instruments and papers as may be appropriate to
24 secure the rights and obligations of the claimant and of the
25 insurer established by this section.

1 Section 11. Reduction in damage payable to insured.
2 Payment of any benefit required by section 2 (3) of this act
3 to or for any insured shall be applied in reduction of the
4 amount of damage that the insured may be entitled to recover
5 from any insurer under bodily liability or uninsured
6 motorist coverage for the same accident.

-End-

Approved by Committee
on Judiciary

1 SENATE BILL NO. 221

2 INTRODUCED BY DRAKE, FLYNN, HIMSL

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5 VEHICLE LIABILITY POLICY IN THIS STATE TO PROVIDE FIRST
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7 WITHOUT REGARD TO FAULT."

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

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REFER TO FIRST READING

11 (Strike everything after the enacting clause and insert:)

12 Section 1. There is a new R.C.M. section numbered
13 40-5901 that reads as follows:

14 40-5901. Short title. This act shall be known and may
15 be cited as the "Montana Motor Vehicle Insurance Act of
16 1975".

17 Section 2. There is a new R.C.M. section numbered
18 40-5902 that reads as follows:

19 40-5902. Definitions. In this act:

20 (1) "Income" means salary, wages, tips, commissions,
21 professional fees and profits from an individually owned
22 business or farm.

23 (2) "Motor vehicle" means every self-propelled vehicle
24 which is designed for use upon a highway, including trailers
25 and semitrailers designed for use with such vehicles (except

1 traction engines, road rollers, farm tractors, tractor
2 cranes, power shovels, well drillers and special mobile
3 equipment as defined in section 53-642, R.C.M. 1947) and
4 every vehicle which is propelled by electric power obtained
5 from overhead wires but not operated upon rails; provided,
6 however, that "snowmobiles" as defined in section 53-1012
7 (b), R.C.M. 1947, are excluded.

8 (3) "Highway patrol chief" means the chief, Montana
9 highway patrol, division of motor vehicles, department of
10 justice.

11 (4) "Dependent" means a person who actually relied
12 upon the decedent, at the time of death, in whole or in part
13 for his support.

14 Section 3. There is a new R.C.M. section numbered
15 40-5903 that reads as follows:

16 40-5903. Required minimum coverage. (1) Each motor
17 vehicle liability policy issued to cover a motor vehicle
18 registered or operated in this state shall provide:

19 (a) Liability coverage of not less than ten thousand
20 dollars (\$10,000) because of bodily injury to or death of
21 one (1) person in any one (1) accident, and, subject to that
22 limit for one (1) person, in the amount of twenty thousand
23 dollars (\$20,000) because of bodily injury to or death of
24 two (2) or more persons in any one (1) accident.

25 (b) Liability coverage of not less than five thousand

1 dollars (\$5,000) for all damages arising out of injury to or
 2 destruction of property, including the loss of use thereof,
 3 as a result of any one (1) accident arising out of
 4 ownership, maintenance or use of the insured vehicle.

5 (2) Each motor vehicle liability policy issued to
 6 cover a motor vehicle registered or operated in this state,
 7 except "motorcycles" as defined in section 53-133(6), R.C.M.
 8 1947, shall provide to the person, firm, corporation, state
 9 or local subdivision insured thereunder and, if an
 10 individual, members of his family residing in the same
 11 household injured in a motor vehicle accident, permissive
 12 users or persons reasonably believing that they have such
 13 permission injured while occupying the insured motor
 14 vehicle, lawful occupants in such motor vehicle and
 15 pedestrians struck by the insured motor vehicle the
 16 following minimum coverage for each accident:

17 (a) Compensation for:

18 (i) reasonable and necessary expenses for medical,
 19 hospital, dental, surgical, prosthetic, ambulance and
 20 funeral services incurred within one (1) year after the date
 21 of the accident, in the amount of at least two thousand
 22 dollars (\$2,000) per person; the compensation for funeral
 23 expenses shall be not less than the sum of one thousand
 24 dollars (\$1,000) per person;

25 (ii) loss of income to an injured person usually

1 engaged in a remunerative occupation or his dependents, of
 2 not less than one hundred dollars (\$100) per week, and for
 3 not less than a period of twenty-six (26) weeks;

4 (iii) expenses reasonably incurred for services in lieu
 5 of those the injured person would have normally performed,
 6 without income, had he not been injured, of not less than
 7 twelve dollars (\$12) per day or for not less than a period
 8 of twenty-six (26) weeks.

9 Section 4. There is a new R.C.M. section numbered
 10 40-5904 that reads as follows:

11 40-5904. Damage to motor vehicle. A person, firm,
 12 corporation, state or local subdivision shall not recover
 13 from another person, firm, corporation, state or local
 14 subdivision, other than his own insurance company through
 15 first party coverage, for damages arising out of injury to
 16 or destruction of a motor vehicle except for damages
 17 intentionally caused by the person, firm, corporation, state
 18 or local subdivision from whom recovery is sought; provided,
 19 however, this section shall not apply to damage which arises
 20 out of the ownership, operation, maintenance or use of a
 21 parked vehicle unless any of the following occur:

22 (1) The vehicle was parked in such a way as to cause
 23 unreasonable risk of the damage which occurred.

24 (2) The injury was a direct result of physical contact
 25 with equipment permanently mounted on the vehicle while the

1 equipment was being operated or used or property being
2 lifted onto or lowered from the vehicle in the loading or
3 unloading process.

4 (3) The damage was sustained by a person while
5 occupying, entering into or alighting from the vehicle.

6 Section 5. There is a new R.C.M. section numbered
7 40-5905 that reads as follows:

8 40-5905. Benefits, when payable -- interest. Benefits
9 payable under section 3(2) of this act are payable, without
10 regard to fault, monthly as loss accrues. Benefits are
11 overdue if not paid within thirty (30) days after the
12 insurer receives reasonable proof of the fact and amount of
13 loss. Overdue payments bear interest at the rate of one and
14 one-half percent (1-1/2%) per month.

15 Section 6. There is a new R.C.M. section numbered
16 40-5906 that reads as follows:

17 40-5906. Attorney's fees. A claimant is entitled to a
18 reasonable attorney's fee for representation in an action
19 for benefits which are overdue as provided in section 5.

20 Section 7. There is a new R.C.M. section numbered
21 40-5907 that reads as follows:

22 40-5907. Benefits not subject to subrogation -- other
23 tort action not restricted -- collateral source recovery --
24 benefits paid submitted to court. (1) Benefits payable
25 under section 3 (2) of this act shall not be subject to

1 subrogation, provided, however, that nothing in this act may
2 be construed to limit actions against a manufacturer or
3 other person liable as a result of defective design,
4 construction or other product liability, or any other tort
5 action.

6 (2) Recovery by an employee from his employer under
7 the Federal Employer's Liability Act, Workmen's Compensation
8 Act or similar acts, for injury incurred in an accident
9 which occurs while he is in the course and scope of his
10 employment, precludes a similar recovery under this act; but
11 compensation or benefits paid hereunder shall be creditable
12 against any claim for injury, under the Federal Employer's
13 Liability Act, Workmen's Compensation Act or similar acts,
14 and may be used by the employer as a setoff against any
15 subsequent recovery under such an act or against any
16 benefits provided by the employer from any collateral
17 source.

18 (3) In the event of a trial between parties involved
19 in an accident, any benefits paid under section 3(2) of this
20 act shall be submitted to the court out of the hearing of
21 the jury, and the court shall then deduct the amount of
22 benefits paid from the total amount of the award or
23 recovery.

24 Section 8. There is a new R.C.M. section numbered
25 40-5908 that reads as follows:

1 40-5903. Certificate as proof of coverage -- notice of
 2 cancellation, termination, failure to renew insurance --
 3 highway patrol may obtain registration and license plates --
 4 penalty. (1) No registration of motor vehicles shall be
 5 issued unless proof of motor vehicle liability insurance
 6 coverage or proof of self-insurance shall be furnished to
 7 the county treasurer. If proof is of motor vehicle
 8 liability insurance it must be in the form of a written
 9 certificate of an insurance carrier or agent authorized to
 10 do business in this state certifying that there is in effect
 11 motor vehicle liability insurance covering the motor vehicle
 12 for which registration is sought. If proof is of
 13 self-insurance, it must be in the form of a written
 14 certificate from the Montana highway patrol chief indicating
 15 compliance with paragraph (2) herein. The form of such
 16 certificates shall be prescribed by the state commissioner
 17 of insurance.

18 (2) Security for the payment of the benefits set forth
 19 in this act may be provided with respect to any motor
 20 vehicle by any other method approved by the Montana highway
 21 patrol board as affording security equivalent to that
 22 afforded by a policy of insurance, provided proof of such
 23 security is filed and continuously maintained with the
 24 Montana highway patrol board throughout the registration
 25 period. The person filing such security shall have all of

1 the obligations and rights of an insurer under this chapter.
 2 Whenever the context permits, the word "insurer", as used in
 3 this chapter, includes any such person.

4 (3) Insurers authorized to write motor vehicle
 5 liability insurance in this state shall inform the highway
 6 patrol chief within fifteen (15) days of the cancellation,
 7 termination or failure to renew motor vehicle liability
 8 insurance issued to a resident of this state. Such
 9 information shall give the effective cancellation,
 10 termination or non-renewal date of such motor vehicle
 11 liability insurance and shall designate by explicit
 12 description or appropriate reference all motor vehicles
 13 covered thereby and the names of all persons named in such
 14 motor vehicle liability insurance.

15 (4) Whenever new motor vehicle liability insurance is
 16 issued to cover a motor vehicle previously insured by motor
 17 vehicle liability insurance which has been cancelled,
 18 terminated or not renewed, the person in whose name the
 19 motor vehicle is registered shall file with the highway
 20 patrol chief the written certificate of an insurance carrier
 21 as provided in section 8 of this act.

22 (5) The Montana highway patrol may obtain physical
 23 possession of motor vehicle registration certificates and
 24 motor vehicle license plates for any motor vehicle not
 25 insured hereunder.

1 (6) Any insurance company, carrier or agent authorized
 2 to write motor vehicle liability insurance in this state who
 3 knowingly or willingly falsifies any written certificate
 4 representing proof of motor vehicle liability insurance or
 5 fails to inform the highway patrol chief of the
 6 cancellation, termination or failure to renew motor vehicle
 7 liability insurance as provided in section 8 (2) of this act
 8 shall be fined not more than one thousand dollars (\$1,000)
 9 or imprisoned not to exceed thirty (30) days, or both.

10 (7) Any person who drives or allows to be driven a
 11 non-insured motor vehicle upon any highway or commits any
 12 other violation of this act shall be fined not more than one
 13 thousand dollars (\$1,000) or imprisoned not to exceed thirty
 14 (30) days, or both.

15 Section 9. There is a new R.C.M. section numbered
 16 40-5909 that reads as follows:

17 40-5909. Insurers regulated by insurance code --
 18 premium tax payment. Every insurer writing motor vehicle
 19 liability insurance under the provisions of this act shall
 20 be regulated by the Montana insurance code, and shall pay
 21 the premium tax set forth in section 40-2821, R.C.M. 1947.

22 Section 10. There is a new R.C.M. section numbered
 23 40-5910 that reads as follows:

24 40-5910. Nonresident motor vehicle insurance coverage.
 25 The motor vehicle liability insurance of any nonresident

1 driver using Montana highways shall be automatically
 2 reformed at the state border so that the limits of the
 3 liability and the kinds of coverage afforded shall be as set
 4 forth in this act, in lieu of the insurance otherwise
 5 provided, but only to the extent required by this act and
 6 only with respect to the operation or use of a motor vehicle
 7 in this state.

8 Section 11. There is a new R.C.M. section numbered
 9 40-5911 that reads as follows:

10 40-5911. (1) An assigned claims bureau and plan shall
 11 be organized and maintained. Insurers authorized to write
 12 motor vehicle liability insurance in this state are
 13 authorized, subject to approval and regulation by the
 14 commissioner of insurance, to organize and maintain an
 15 assigned claims bureau and an assigned claims plan, and to
 16 formulate and from time to time amend rules and regulations
 17 for their operations and the assessment of costs on a fair
 18 and equitable basis consistent with the provisions of this
 19 chapter. In default of the organization and continued
 20 maintenance of an assigned claims bureau and assigned claims
 21 plan, the commissioner of insurance shall organize and
 22 maintain such a bureau and plan.

23 (2) Every insurer writing motor vehicle liability
 24 insurance in this state is required to participate in the
 25 assigned claims bureau and the assigned claims plan.

1 (3) Persons entitled to claim through the assigned
2 claims plan and the benefits to which they are entitled are
3 as follows:

4 (a) Any person entitled to claim because of accidental
5 bodily injury arising out of the ownership, operation,
6 maintenance or use of a motor vehicle as a motor vehicle in
7 this state may obtain insurance benefits set forth in
8 section 3(2)(a) of this act through the assigned claims plan
9 established pursuant to this chapter if:

10 (i) No motor vehicle liability insurance is applicable
11 to the injury, or

12 (ii) No motor vehicle liability insurance applicable to
13 the injury can be identified, or

14 (iii) The only identifiable motor vehicle liability
15 insurance applicable to the injury is, because of financial
16 inability of one or more insurers to fulfill their
17 obligations, inadequate to provide benefits up to the
18 maximum prescribed (in which last case all unpaid benefits
19 due or coming due are subject to being collected under the
20 assigned claims plan, and the insurer to which the claim is
21 assigned, or the bureau of assigned claims if the claim is
22 assigned to it, is entitled to reimbursement from the
23 defaulting insurers to the extent of their financial
24 responsibility).

25 (4) A person claiming through the assigned claims plan

1 shall notify the bureau of his claim within the time that
2 would have been allowed for filing an action for motor
3 vehicle liability insurance benefits had there been in
4 effect identifiable coverage applicable to the claim. The
5 bureau shall promptly assign the claim in accordance with
6 the plan and notify the claimant of the identity and address
7 of the insurer to which the claim is assigned (or of the
8 bureau if the claim is assigned to it). No action by the
9 claimant shall be commenced later than thirty (30) days
10 after receipt of notice of the assignment or the last date
11 on which the action could have been commenced against an
12 insurer of identifiable coverage applicable to the claim,
13 whichever is later.

14 (5) The assignment of claims shall be made according
15 to rules and regulations that assure fair allocation of the
16 burden of assigned claims among insurers doing business in
17 the state on a basis reasonably related to the volume of
18 motor vehicle liability insurance they write. Insurers to
19 whom claims have been assigned shall make prompt payment of
20 loss in accordance with the terms of this act and shall
21 thereupon be entitled to reimbursement by the bureau for
22 such payments and the established loss adjustment costs.
23 The insurer to whom a claim is assigned shall preserve and
24 enforce all rights to indemnity or reimbursement against
25 third parties to the extent authorized by this act and

1 account to the assigned claims bureau therefor.

2 (6) Losses paid, the cost of adjusting such losses and
3 costs incurred in the operation of the bureau shall be
4 assessed against insurers according to rules and regulations
5 that assure fair allocation among insurers writing motor
6 vehicle liability insurance in the state, on a basis
7 reasonably related to the volume of personal protection
8 insurance they write.

9 Section 12. There is a new R.C.M. section numbered
10 40-5912 that reads as follows:

11 40-5912. Tort liability retained. Tort liability
12 arising from the ownership, maintenance, or use of a motor
13 vehicle within this state is retained, except as otherwise
14 provided herein.

15 Section 13. There is a new R.C.M. section numbered
16 40-5913 that reads as follows:

17 40-5913. Act supersedes other laws or regulations. If
18 any provision of this act is in conflict with any other law
19 of this state, or any rule or regulation promulgated
20 thereunder, this act shall govern and control, and such
21 other law, rule or regulation shall be deemed superseded for
22 the purpose of this act.

23 Section 14. Severability. If any provision of this act
24 or its application to any person or circumstance is held
25 invalid, the remainder of this act or the application of the

1 provision to other persons or circumstances is not affected.

-End-

SENATE BILL NO. 221

INTRODUCED BY DRAKE, FLYNN, HIMSL

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE EACH MOTOR VEHICLE LIABILITY POLICY IN THIS STATE TO PROVIDE FIRST PARTY PERSONAL INJURY INSURANCE COVERAGE WHICH IS PAYABLE WITHOUT REGARD TO FAULT."

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traction engines, road rollers, farm tractors, tractor cranes, power shovels, well drillers and special mobile equipment as defined in section 53-642, R.C.M. 1947) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails; provided, however, that "snowmobiles" as defined in section 53-1012 (b), R.C.M. 1947, are excluded.

(3) "Highway patrol chief" means the chief, Montana highway patrol, division of motor vehicles, department of justice.

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(a) Liability coverage of not less than ten thousand dollars (\$10,000) because of bodily injury to or death of one (1) person in any one (1) accident, and, subject to that limit for one (1) person, in the amount of twenty thousand dollars (\$20,000) because of bodily injury to or death of two (2) or more persons in any one (1) accident.

(b) Liability coverage of not less than five thousand

1 dollars (\$5,000) for all damages arising out of injury to or
 2 destruction of property, including the loss of use thereof,
 3 as a result of any one (1) accident arising out of
 4 ownership, maintenance or use of the insured vehicle.

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 8 1947, shall provide to the person, firm, corporation, state
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 22 dollars (\$2,000) per person; the compensation for funeral
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 2 not less than one hundred dollars (\$100) per week, and for
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 8 of twenty-six (26) weeks.

9 Section 4. There is a new R.C.M. section numbered
 10 40-5904 that reads as follows:

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 13 from another person, firm, corporation, state or local
 14 subdivision, other than his own insurance company through
 15 first party coverage, for damages arising out of injury to
 16 or destruction of a motor vehicle except for damages
 17 intentionally caused by the person, firm, corporation, state
 18 or local subdivision from whom recovery is sought; provided,
 19 however, this section shall not apply to damage which arises
 20 out of the ownership, operation, maintenance or use of a
 21 parked vehicle unless any of the following occur:

22 (1) The vehicle was parked in such a way as to cause
 23 unreasonable risk of the damage which occurred.

24 (2) The injury was a direct result of physical contact
 25 with equipment permanently mounted on the vehicle while the

1 equipment was being operated or used or property being
2 lifted onto or lowered from the vehicle in the loading or
3 unloading process.

4 (3) The damage was sustained by a person while
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6 Section 5. There is a new R.C.M. section numbered
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13 loss. Overdue payments bear interest at the rate of one and
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19 for benefits which are overdue as provided in section 5.

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23 tort action not restricted -- collateral source recovery --
24 benefits paid submitted to court. (1) Benefits payable
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1 subrogation, provided, however, that nothing in this act may
2 be construed to limit actions against a manufacturer or
3 other person liable as a result of defective design,
4 construction or other product liability, or any other tort
5 action.

6 (2) Recovery by an employee from his employer under
7 the Federal Employer's Liability Act, Workmen's Compensation
8 Act or similar acts, for injury incurred in an accident
9 which occurs while he is in the course and scope of his
10 employment, precludes a similar recovery under this act; but
11 compensation or benefits paid hereunder shall be creditable
12 against any claim for injury, under the Federal Employer's
13 Liability Act, Workmen's Compensation Act or similar acts,
14 and may be used by the employer as a setoff against any
15 subsequent recovery under such an act or against any
16 benefits provided by the employer from any collateral
17 source.

18 (3) In the event of a trial between parties involved
19 in an accident, any benefits paid under section 3(2) of this
20 act shall be submitted to the court out of the hearing of
21 the jury, and the court shall then deduct the amount of
22 benefits paid from the total amount of the award or
23 recovery.

24 Section 8. There is a new R.C.M. section numbered
25 40-5908 that reads as follows:

1 40-5908. Certificate as proof of coverage -- notice of
 2 cancellation, termination, failure to renew insurance --
 3 highway patrol may obtain registration and license plates --
 4 penalty. (1) No registration of motor vehicles shall be
 5 issued unless proof of motor vehicle liability insurance
 6 coverage or proof of self-insurance shall be furnished to
 7 the county treasurer. If proof is of motor vehicle
 8 liability insurance it must be in the form of a written
 9 certificate of an insurance carrier or agent authorized to
 10 do business in this state certifying that there is in effect
 11 motor vehicle liability insurance covering the motor vehicle
 12 for which registration is sought. If proof is of
 13 self-insurance, it must be in the form of a written
 14 certificate from the Montana highway patrol chief indicating
 15 compliance with paragraph (2) herein. The form of such
 16 certificates shall be prescribed by the state commissioner
 17 of insurance.

18 (2) Security for the payment of the benefits set forth
 19 in this act may be provided with respect to any motor
 20 vehicle by any other method approved by the Montana highway
 21 patrol board as affording security equivalent to that
 22 afforded by a policy of insurance, provided proof of such
 23 security is filed and continuously maintained with the
 24 Montana highway patrol board throughout the registration
 25 period. The person filing such security shall have all of

1 the obligations and rights of an insurer under this chapter.
 2 Whenever the context permits, the word "insurer", as used in
 3 this chapter, includes any such person.

4 (3) Insurers authorized to write motor vehicle
 5 liability insurance in this state shall inform the highway
 6 patrol chief within fifteen (15) days of the cancellation,
 7 termination or failure to renew motor vehicle liability
 8 insurance issued to a resident of this state. Such
 9 information shall give the effective cancellation,
 10 termination or non-renewal date of such motor vehicle
 11 liability insurance and shall designate by explicit
 12 description or appropriate reference all motor vehicles
 13 covered thereby and the names of all persons named in such
 14 motor vehicle liability insurance.

15 (4) Whenever new motor vehicle liability insurance is
 16 issued to cover a motor vehicle previously insured by motor
 17 vehicle liability insurance which has been cancelled,
 18 terminated or not renewed, the person in whose name the
 19 motor vehicle is registered shall file with the highway
 20 patrol chief the written certificate of an insurance carrier
 21 as provided in section 8 of this act.

22 (5) The Montana highway patrol may obtain physical
 23 possession of motor vehicle registration certificates and
 24 motor vehicle license plates for any motor vehicle not
 25 insured hereunder.

1 (6) Any insurance company, carrier or agent authorized
 2 to write motor vehicle liability insurance in this state who
 3 knowingly or willingly falsifies any written certificate
 4 representing proof of motor vehicle liability insurance or
 5 fails to inform the highway patrol chief of the
 6 cancellation, termination or failure to renew motor vehicle
 7 liability insurance as provided in section 8 (2) of this act
 8 shall be fined not more than one thousand dollars (\$1,000)
 9 or imprisoned not to exceed thirty (30) days, or both.

10 ~~{7}--Any-person-who-drives-or-allows--to--be--driven--a~~
 11 ~~non-insured--motor--vehicle--upon-any-highway-or-commits-any~~
 12 ~~other-violation-of-this-act-shall-be-fined-not-more-than-one~~
 13 ~~thousand-dollars-{\$1,000}-or-imprisoned-not-to-exceed-thirty~~
 14 ~~{30}-days,-or-both-~~

15 Section 9. There is a new R.C.M. section numbered
 16 40-5909 that reads as follows:

17 40-5909. Insurers regulated by insurance code --
 18 premium tax payment. Every insurer writing motor vehicle
 19 liability insurance under the provisions of this act shall
 20 be regulated by the Montana insurance code, and shall pay
 21 the premium tax set forth in section 40-2821, R.C.M. 1947.

22 Section 10. There is a new R.C.M. section numbered
 23 40-5910 that reads as follows:

24 40-5910. Nonresident motor vehicle insurance coverage.
 25 The motor vehicle liability insurance of any nonresident

1 driver using Montana highways shall be automatically
 2 reformed at the state border so that the limits of the
 3 liability and the kinds of coverage afforded shall be as set
 4 forth in this act, in lieu of the insurance otherwise
 5 provided, but only to the extent required by this act and
 6 only with respect to the operation or use of a motor vehicle
 7 in this state.

8 Section 11. There is a new R.C.M. section numbered
 9 40-5911 that reads as follows:

10 40-5911. (1) An assigned claims bureau and plan shall
 11 be organized and maintained. Insurers authorized to write
 12 motor vehicle liability insurance in this state are
 13 authorized, subject to approval and regulation by the
 14 commissioner of insurance, to organize and maintain an
 15 assigned claims bureau and an assigned claims plan, and to
 16 formulate and from time to time amend rules and regulations
 17 for their operations and the assessment of costs on a fair
 18 and equitable basis consistent with the provisions of this
 19 chapter. In default of the organization and continued
 20 maintenance of an assigned claims bureau and assigned claims
 21 plan, the commissioner of insurance shall organize and
 22 maintain such a bureau and plan.

23 (2) Every insurer writing motor vehicle liability
 24 insurance in this state is required to participate in the
 25 assigned claims bureau and the assigned claims plan.

1 (3) Persons entitled to claim through the assigned
2 claims plan and the benefits to which they are entitled are
3 as follows:

4 (a) Any person entitled to claim because of accidental
5 bodily injury arising out of the ownership, operation,
6 maintenance or use of a motor vehicle as a motor vehicle in
7 this state may obtain insurance benefits set forth in
8 section 3(2)(a) of this act through the assigned claims plan
9 established pursuant to this chapter if:

10 (i) No motor vehicle liability insurance is applicable
11 to the injury, or

12 (ii) No motor vehicle liability insurance applicable to
13 the injury can be identified, or

14 (iii) The only identifiable motor vehicle liability
15 insurance applicable to the injury is, because of financial
16 inability of one or more insurers to fulfill their
17 obligations, inadequate to provide benefits up to the
18 maximum prescribed (in which last case all unpaid benefits
19 due or coming due are subject to being collected under the
20 assigned claims plan, and the insurer to which the claim is
21 assigned, or the bureau of assigned claims if the claim is
22 assigned to it, is entitled to reimbursement from the
23 defaulting insurers to the extent of their financial
24 responsibility).

25 (4) A person claiming through the assigned claims plan

1 shall notify the bureau of his claim within the time that
2 would have been allowed for filing an action for motor
3 vehicle liability insurance benefits had there been in
4 effect identifiable coverage applicable to the claim. The
5 bureau shall promptly assign the claim in accordance with
6 the plan and notify the claimant of the identity and address
7 of the insurer to which the claim is assigned (or of the
8 bureau if the claim is assigned to it). No action by the
9 claimant shall be commenced later than thirty (30) days
10 after receipt of notice of the assignment or the last date
11 on which the action could have been commenced against an
12 insurer of identifiable coverage applicable to the claim,
13 whichever is later.

14 (5) The assignment of claims shall be made according
15 to rules and regulations that assure fair allocation of the
16 burden of assigned claims among insurers doing business in
17 the state on a basis reasonably related to the volume of
18 motor vehicle liability insurance they write. Insurers to
19 whom claims have been assigned shall make prompt payment of
20 loss in accordance with the terms of this act and shall
21 thereupon be entitled to reimbursement by the bureau for
22 such payments and the established loss adjustment costs.
23 The insurer to whom a claim is assigned shall preserve and
24 enforce all rights to indemnity or reimbursement against
25 third parties to the extent authorized by this act and

1 account to the assigned claims bureau therefor.

2 (6) Losses paid, the cost of adjusting such losses and
3 costs incurred in the operation of the bureau shall be
4 assessed against insurers according to rules and regulations
5 that assure fair allocation among insurers writing motor
6 vehicle liability insurance in the state, on a basis
7 reasonably related to the volume of personal protection
8 insurance they write.

9 Section 12. There is a new R.C.M. section numbered
10 40-5912 that reads as follows:

11 40-5912. Tort liability retained. Tort liability
12 arising from the ownership, maintenance, or use of a motor
13 vehicle within this state is retained, except as otherwise
14 provided herein.

15 Section 13. There is a new R.C.M. section numbered
16 40-5913 that reads as follows:

17 40-5913. Act supersedes other laws or regulations. If
18 any provision of this act is in conflict with any other law
19 of this state, or any rule or regulation promulgated
20 thereunder, this act shall govern and control, and such
21 other law, rule or regulation shall be deemed superseded for
22 the purpose of this act.

23 Section 14. Severability. If any provision of this act
24 or its application to any person or circumstance is held
25 invalid, the remainder of this act or the application of the

1 provision to other persons or circumstances is not affected.

-End-

Corrected Copy 3/27/75

HOUSE OF REPRESENTATIVES

March 26, 1975

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 221

Be amended in the third reading bill as follows:

1. Amend title, page 1, line 7.
Following: "FAULT"
Insert: "AND PROVIDING A DELAYED EFFECTIVE DATE"
2. Amend page 1, section 1, line 15.
Following: "Montana"
Insert: "No-Fault"
3. Amend page 1, section 2, subsection (2), lines 23 through 25, and page 2, lines 1 through 7.
Following: "means"
Strike: The remainder of subsection (2) in its entirety.
Insert: "a vehicle (including a trailer designed for use with a motor vehicle) which is self-propelled and used primarily upon public highways, roads, or streets in the transportation of persons or property and which is required to be registered under Title 53. The term motor vehicle does not include a motorcycle or other self-propelled vehicle with fewer than four (4) wheels or a snowmobile."
4. Amend page 2, section 2, subsection (4), following line 13.
Insert: New subsections (5), (6), (7) and (8) to read as follows:
 (5) "Owner" means a person who holds title to a motor vehicle, or a debtor who is entitled to immediate use or possession of a motor vehicle which is the subject of a security agreement or lease with option to purchase.
 (6) "Insured" means the named insured under a no-fault plan as provided by this act and includes a spouse or other relative of a named insured, a minor in the custody of a named insured, and a minor in the custody of a relative of a named insured if:
 (a) In residence in the same household with the named insured; and
 (b) Not identified by name as an insured in any other no-fault policy complying with this act.
 An individual is in residence in the same household if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.
 (7) "self-insurer" means an owner or other appropriate person who files with the highway patrol:
 (a) A continuing undertaking to pay no-fault benefits and tort liability required by this act, and to perform all obligations imposed by this act;
 (b) Evidence that appropriate provision exists for prompt and efficient administration of all claims, benefits and obligations provided in accordance with this act; and

HOUSE OF REPRESENTATIVES

March 26, 1975

COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 221, Page 2

(c) Evidence that reliable financial arrangements, deposits, resources or commitments exist providing assurance substantially equivalent to that afforded by a contract of insurance complying with this act for payment of no-fault benefits, any tort liability, and performance of all other obligations imposed by this act.

(8) "Reasonable and necessary expenses" means reasonable value of (where no charges are incurred) reasonably needed and used products, services and accommodations. The term does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or other nursing care institution, in excess of a reasonable and customary charge for semiprivate accommodations, unless more intensive medical care is required."

5. Amend page 2, section 3, subsection (1), lines 16, 17 and 18.
Following: "Each"
Strike: The remainder of line 16 and lines 17 and 18 in their entirety.
Insert: "owner of a motor vehicle, registered or operated in this state, shall continuously provide security covering such motor vehicle while it is present or registered in this state by a contract of insurance with an insurer or by qualifying as a self-insurer, as follows:"
6. Amend page 3, section 3, subsections (2) and (a), following line 4.
Strike: Lines 5 through 17 in their entirety.
Insert: "(c) First party coverage payable without regard to fault for each accident arising out of the maintenance or use of a motor vehicle which will provide benefits reimbursing all loss suffered by a victim as follows, for:"
7. Amend page 3, section 3, subsection (i), line 19.
Following: "hospital,"
Insert: "optical, chiropractic, osteopathic,"
8. Amend page 4, section 3, subsection (ii), line 3.
Following: "weeks"
Insert: "(compensation for loss of income from work shall be reduced by any income from substitute work performed by the injured person or by income the injured person would have earned in available appropriate substitute work which he was capable of performing but unreasonably failed to undertake)"
9. Amend page 4, section 4, lines 11 through 25 and page 5, lines 1 through 5.
Following: "40-5904."
Strike: The remainder of this section in its entirety.
Insert: "Priority of applicability of security for payment of benefits. (1) In case of injury to the driver or other occupant of a motor vehicle, if the accident causing the injury occurs while

HOUSE OF REPRESENTATIVES

March 26, 1975

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 221, Page 3

the vehicle is being used in the business of transporting persons or property, the security for payment of benefits is the security covering the vehicle or, if none, the security under which the injured person is an 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 benefits is the security covering the vehicle, or, if none, the security under which the injured person is an insured.

(3) In the case of any other person whose injury arises from the maintenance or use of a motor vehicle described in subsection (1) or (2) who is not a driver or occupant of another involved motor vehicle, the security for the payment of benefits is the security covering the vehicle, or if none, the security under which the injured person is an insured.

(4) In all other cases, the following priorities apply:

(a) The security for payment of benefits applicable to injury to an insured is the security under which the injured person is an insured.

(b) The security for payment of benefits applicable to injury to the driver or other occupant of an involved motor vehicle who is not an insured is the security covering that vehicle.

(c) The security for payment of benefits applicable to injury to a person not otherwise covered who is not the driver or other occupant of an involved motor vehicle is the security covering any involved motor vehicle. An unoccupied parked vehicle is not an involved motor vehicle unless it was parked so as to cause unreasonable risk of injury.

(5) If two or more obligations to pay benefits are applicable to an injury under the priorities set out in this section, benefits are payable only once and the insurer against whom a claim is asserted shall process and pay the claim as if wholly responsible, but he is thereafter entitled to recover contribution pro rata for the benefits paid and the costs of processing the claim. Where contribution is sought among insurers responsible under clause (c) of subsection (4), proration shall be based on the number of involved motor vehicles.

(6) Where an insurer pays benefits which another insurer is obligated to pay under the priority provided in this section, the insurer that pays in subrogated to all rights of the person to whom benefits are paid."

10. Amend page 5, section 5, line 8.
Following: "interest."
Insert: "(1)"

HOUSE OF REPRESENTATIVES

March 26, 1975

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 221, Page 4

11. Amend page 5, section 5, line 9.
Following: "section 3"
Strike: "(2)"
Insert: "(c)"
12. Amend page 5, section 5, following line 14.
Insert: A new subsection (2) to read as follows:
"(2) When an insurer has paid or is obligated to pay benefits for loss arising out of a motor vehicle accident it has a right of reimbursement among and between insurers based upon a determination of comparative negligence."
13. Amend page 5, section 6, line 18.
Following: "fee"
Insert: ", to be paid by the insurer,"
14. Amend page 5, section 6, following line 19.
Following: "section 5."
Insert: "No part of the attorney's fee for representing a client may be deducted from benefits otherwise due the claimant and no part of the benefits may be applied to the fee."
15. Amend page 5, section 7, lines 22 through 25, and page 6, lines 1 through 17.
Following: "40-5907."
Strike: All the material of the section up to subsection (3).
Insert: "Collateral source recovery. (1) In the event a person entitled to benefits under section 3(c) of this act is also entitled to workmen's compensation benefits as a result of the same accident, then the benefits payable under section 3(c) shall be reduced by the amount to which the person is entitled under the workmen's compensation law."
Renumber: Subsequent section.
16. Amend page 6, section 7, present subsection (3), line 19.
Following: "section 3"
Strike: "(2)"
Insert: "(c)"
17. Amend page 7, section 8, subsections (1) and (2), lines 4 through 25, and page 8, lines 1 through 4.
Strike: All of subsections (1) and (2) in their entirety.
Insert: A new subsection (1) to read as follows:
"(1) No person may register or reregister a motor vehicle unless proof that the vehicle is covered by security as required by section 3 of this act, or proof of self-insurance is furnished to the county treasurer. Proof of security shall be submitted in a form prescribed by the insurance commissioner. Proof of self-insurance shall be in the form prescribed by the highway patrol."
Renumber: Subsequent subsections.

HOUSE OF REPRESENTATIVES

March 26, 1975

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 221, Page 5

18. Amend page 8, section 8, present subsection (3), line 4.
Following: "write"
Insert: "no-fault"
19. Amend page 8, section 8, present subsection (3), line 5.
Strike: "liability"
20. Amend page 8, section 8, present subsection (3), line 6.
Following: "within"
Strike: "fifteen (15)"
Insert: "thirty (30)"
21. Amend page 8, section 8, present subsection (3), line 7.
Following: "renew"
Insert: "the no-fault"
22. Amend page 8, section 8, present subsection (3), line 7.
Following: "vehicle"
Strike: "liability"
23. Amend page 8, section 8, present subsection (3), line 11.
Strike: "liability"
24. Amend page 8, section 8, present subsection (3), line 14.
Following: "vehicle"
Strike: "liability"
25. Amend page 8, section 8, present subsection (4), line 15.
Following: "new"
Insert: "no-fault"
26. Amend page 8, section 8, present subsection (4), line 15.
Following: "vehicle"
Strike: "liability"
27. Amend page 8, section 8, present subsection (4), line 17.
Following: "vehicle"
Strike: "liability"
28. Amend page 8, section 8, present subsection (4), line 21.
Strike: "as provided in section 8 of this act"
29. Amend page 9, section 8, present subsection (6), lines 1 and 2.
Following: "Any"
Strike: "insurance company, carrier or agent authorized to write motor vehicle liability insurance in this state"
Insert: "person"

HOUSE OF REPRESENTATIVES

Date: March 26, 1975

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL NO. 221 Page 6

30. Amend page 9, section 8, present subsection (6), line 4.
Following: "proof of"
Insert: "no-fault"

31. Amend page 9, section 8, present subsection (6), line 4.
Following: "vehicle"
Strike: "liability"

32. Amend page 9, section 8, present subsection (6), lines 4, 5, 6 and 7.
Following: "insurance"
Strike: "or fails to inform the highway patrol chief of the cancellation, termination or failure to renew motor vehicle liability insurance"

33. Amend page 9, section 8, present subsection (6), line 7.
Following: "provided in"
Strike: "section 8 (2) of"

34. Amend page 13, section 12, lines 11 through 14.
Following: "40-5912."
Strike: The remainder of the section in its entirety.
Insert: "Restrictions on tort liability. Tort liability with respect to any injury arising out of the maintenance or use of a motor vehicle is restricted as follows:
(1) An owner of a motor vehicle involved in an accident remains liable if, at the time of the accident, the vehicle was not a secured vehicle.
(2) A person in the business of designing, manufacturing, repairing, servicing, or otherwise maintaining motor vehicles remains liable for injury arising out of a defect in such motor vehicle which is caused or not corrected by an act or omission in the course of such business, other than a defect in a motor vehicle which is operated by such business.
(3) An individual remains liable for injuring another individual, either intentionally or as a consequence of intending to injure himself.
(4) A person remains liable for loss which is not compensated because of any limitation under section 3 (c) (ii) or 3 (c) (iii) of this act.
(5) A person remains liable for pain, suffering, mental anguish, inconvenience, physical impairment and other non-pecuniary damage if the accident results in:

HOUSE OF REPRESENTATIVES

Date: March 26, 1975

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL NO. 221 Page 7

(a) Death, serious and permanent disfigurement, or other serious and permanent injury; or

(b) The sum of the following exceeds one thousand dollars (\$1,000):

(i) Reasonable medical expense benefits,

(ii) The value of free medical or surgical care or necessary nursing services performed by a relative of the injured person or a member of his household; or

(c) More than thirty (30) continuous days of total disability. As used in this subsection, "total disability" means medically determinable physical or mental impairment which prevents the victim from performing all or substantially all of the material acts and duties which constitute his usual and customary daily activities."

35. Amend page 13, section 14, lines 23 through 25 and page 14, line 1.

Following: "Severability"

Strike: The remainder of this section in its entirety.

Insert: "and constitutionality. If any provision of this act or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid the remainder of this act and the application of such provision to other provisions or circumstances shall not be affected thereby and it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision; provided that if section 12 of this act is found to be unconstitutional or invalid it shall be conclusively presumed that the legislature would not have enacted the remainder of this act without section 12 and the entire act shall be held invalid."

36. Amend page 14, following line 1.

Insert: A new section 15 to read as follows:

"Section 15. This act is effective on January 1, 1976."

AS SO AMENDED
BE CONCURRED IN

HOUSE OF REPRESENTATIVES
COMMITTEE OF THE WHOLE AMENDMENT

March 27, 1975

Senate Bill No. 221
Third Reading Copy

1. Amend page 4, Section 3(11), line 2.
Strike: "one hundred dollars (\$100)"
Insert: "one hundred thirty seven dollars (\$137)"
-

March 28, 1975

HOUSE OF REPRESENTATIVES

Committee of the Whole Amendment to HOUSE COMMITTEE ON JUDICIARY
AMENDMENTS to Senate Bill No. 221, corrected copy dated March 27,
1975, as follows:

Amend amendment No. 4, page 2, subsection (8), line 6

Following: "means reasonable"

Insert: "charges incurred for, or the"

AND AS SO AMENDED

BE CONCURRED IN

SENATE BILL NO. 221

INTRODUCED BY DRAKE, FLYNN, HIMSL

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE EACH MOTOR VEHICLE LIABILITY POLICY IN THIS STATE TO PROVIDE FIRST PARTY PERSONAL INJURY INSURANCE COVERAGE WHICH IS PAYABLE WITHOUT REGARD TO FAULT AND PROVIDING A DELAYED EFFECTIVE DATE."

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

REFER TO FIRST READING

(Strike everything after the enacting clause and insert:)

Section 1. There is a new R.C.M. section numbered 40-5901 that reads as follows:

40-5901. Short title. This act shall be known and may be cited as the "Montana NO-FAULT Motor Vehicle Insurance Act of 1975".

Section 2. There is a new R.C.M. section numbered 40-5902 that reads as follows:

40-5902. Definitions. In this act:

(1) "Income" means salary, wages, tips, commissions, professional fees and profits from an individually owned business or farm.

(2) "Motor vehicle" means ~~every-self-propelled-vehicle which-is-designed-for-use-upon-a-highway,-including-trailers~~

~~and-semitrailers-designed-for-use-with-such-vehicles-(except traction-engines,-road-rollers,-farm-tractors,-tractor cranes,-power-shovels,-well-drillers-and-special-mobile equipment-as-defined-in-section-53-642,-R.C.M.-1947)-and every-vehicle-which-is-propelled-by-electric-power-obtained from-overhead-wires-but-not-operated-upon-rails,-provided, however,-that-"snowmobiles"-as-defined-in-section-53-1012 (b)-R.C.M.-1947,-are-excluded. A VEHICLE (INCLUDING A TRAILER DESIGNED FOR USE WITH A MOTOR VEHICLE) WHICH IS SELF-PROPELLED AND USED PRIMARILY UPON PUBLIC HIGHWAYS, ROADS, OR STREETS IN THE TRANSPORTATION OF PERSONS OR PROPERTY AND WHICH IS REQUIRED TO BE REGISTERED UNDER TITLE 53. THE TERM MOTOR VEHICLE DOES NOT INCLUDE A MOTORCYCLE OR OTHER SELF-PROPELLED VEHICLE WITH FEWER THAN FOUR (4) WHEELS OR A SNOWMOBILE.~~

(3) "Highway patrol chief" means the chief, Montana highway patrol, division of motor vehicles, department of justice.

(4) "Dependent" means a person who actually relied upon the decedent, at the time of death, in whole or in part for his support.

(5) "OWNER" MEANS A PERSON WHO HOLDS TITLE TO A MOTOR VEHICLE, OR A DEBTOR WHO IS ENTITLED TO IMMEDIATE USE OR POSSESSION OF A MOTOR VEHICLE WHICH IS THE SUBJECT OF A SECURITY AGREEMENT OR LEASE WITH OPTION TO PURCHASE.

1 (6) "INSURED" MEANS THE NAMED INSURED UNDER A NO-FAULT
2 PLAN AS PROVIDED BY THIS ACT AND INCLUDES A SPOUSE OR OTHER
3 RELATIVE OF A NAMED INSURED, A MINOR IN THE CUSTODY OF A
4 NAMED INSURED, AND A MINOR IN THE CUSTODY OF A RELATIVE OF A
5 NAMED INSURED IF:

6 (A) IN RESIDENCE IN THE SAME HOUSEHOLD WITH THE NAMED
7 INSURED; AND

8 (B) NOT IDENTIFIED BY NAME AS AN INSURED IN ANY OTHER
9 NO-FAULT POLICY COMPLYING WITH THIS ACT.

10 AN INDIVIDUAL IS IN RESIDENCE IN THE SAME HOUSEHOLD IF
11 HE USUALLY MAKES HIS HOME IN THE SAME FAMILY UNIT, EVEN
12 THOUGH HE TEMPORARILY LIVES ELSEWHERE.

13 (7) "SELF-INSURER" MEANS AN OWNER OR OTHER APPROPRIATE
14 PERSON WHO FILES WITH THE HIGHWAY PATROL:

15 (A) A CONTINUING UNDERTAKING TO PAY NO-FAULT BENEFITS
16 AND TORT LIABILITY REQUIRED BY THIS ACT, AND TO PERFORM ALL
17 OBLIGATIONS IMPOSED BY THIS ACT;

18 (B) EVIDENCE THAT APPROPRIATE PROVISION EXISTS FOR
19 PROMPT AND EFFICIENT ADMINISTRATION OF ALL CLAIMS, BENEFITS
20 AND OBLIGATIONS PROVIDED IN ACCORDANCE WITH THIS ACT; AND

21 (C) EVIDENCE THAT RELIABLE FINANCIAL ARRANGEMENTS,
22 DEPOSITS, RESOURCES OR COMMITMENTS EXIST PROVIDING ASSURANCE
23 SUBSTANTIALLY EQUIVALENT TO THAT AFFORDED BY A CONTRACT OF
24 INSURANCE COMPLYING WITH THIS ACT FOR PAYMENT OF NO-FAULT
25 BENEFITS, ANY TORT LIABILITY, AND PERFORMANCE OF ALL OTHER

1 OBLIGATIONS IMPOSED BY THIS ACT.

2 (8) "REASONABLE AND NECESSARY EXPENSES" MEANS
3 REASONABLE CHARGES INCURRED FOR, OR THE VALUE OF (WHERE NO
4 CHARGES ARE INCURRED) REASONABLY NEEDED AND USED PRODUCTS,
5 SERVICES AND ACCOMMODATIONS. THE TERM DOES NOT INCLUDE THAT
6 PORTION OF A CHARGE FOR A ROOM IN A HOSPITAL, CLINIC,
7 CONVALESCENT OR NURSING HOME, OR OTHER NURSING CASE
8 INSTITUTION, IN EXCESS OF A REASONABLE AND CUSTOMARY CHARGE
9 FOR SEMIPRIVATE ACCOMMODATIONS, UNLESS MORE INTENSIVE
10 MEDICAL CARE IS REQUIRED.

11 Section 3. There is a new R.C.M. section numbered
12 40-5903 that reads as follows:

13 40-5903. Required minimum coverage. (1) Each ~~motor~~
14 ~~vehicle-liability-policy-issued-to-cover--a--motor--vehicle~~
15 ~~registered-or-operated-in-this-state-shall-provide:~~ OWNER OF
16 A MOTOR VEHICLE, REGISTERED OR OPERATED IN THIS STATE, SHALL
17 CONTINUOUSLY PROVIDE SECURITY COVERING SUCH MOTOR VEHICLE
18 WHILE IT IS PRESENT OR REGISTERED IN THIS STATE BY A
19 CONTRACT OF INSURANCE WITH AN INSURER OR BY QUALIFYING AS A
20 SELF-INSURER, AS FOLLOWS:

21 (a) Liability coverage of not less than ten thousand
22 dollars (\$10,000) because of bodily injury to or death of
23 one (1) person in any one (1) accident, and, subject to that
24 limit for one (1) person, in the amount of twenty thousand
25 dollars (\$20,000) because of bodily injury to or death of

1 two (2) or more persons in any one (1) accident.

2 (b) Liability coverage of not less than five thousand
3 dollars (\$5,000) for all damages arising out of injury to or
4 destruction of property, including the loss of use thereof,
5 as a result of any one (1) accident arising out of
6 ownership, maintenance or use of the insured vehicle.

7 ~~{2}--Each-motor-vehicle-liability-policy-issued-to~~
8 ~~cover-a-motor-vehicle-registered-or-operated-in-this-state,~~
9 ~~except-"motorcycles"-as-defined-in-section-53-133(6),-R.C.M.~~
10 ~~1947,-shall-provide-to-the-person,-firm,-corporation,-state~~
11 ~~or--local--subdivision--insured--thereunder--and--if--an~~
12 ~~individual--members-of--his--family--residing--in--the--same~~
13 ~~household--injured--in--a-motor-vehicle-accident,-permissive~~
14 ~~users-or-persons-reasonably-believing-that--they--have--such~~
15 ~~permission--injured--while--occupying--the--insured--motor~~
16 ~~vehicle,-lawful--occupants--in--such--motor--vehicle--and~~
17 ~~pedestrians--struck--by--the--insured--motor--vehicle--the~~
18 ~~following-minimum-coverage-for-each-accident.~~

19 ~~{a}-Compensation-for:~~

20 (C) FIRST PARTY COVERAGE PAYABLE WITHOUT REGARD TO
21 FAULT FOR EACH ACCIDENT ARISING OUT OF THE MAINTENANCE OR
22 USE OF A MOTOR VEHICLE WHICH WILL PROVIDE BENEFITS
23 REIMBURSING ALL LOSS SUFFERED BY A VICTIM AS FOLLOWS, FOR:

24 (i) reasonable and necessary expenses for medical,
25 hospital, OPTICAL, CHIROPRACTIC, OSTEOPATHIC, dental,

1 surgical, prosthetic, ambulance and funeral services
2 incurred within one (1) year after the date of the accident,
3 in the amount of at least two thousand dollars (\$2,000) per
4 person; the compensation for funeral expenses shall be not
5 less than the sum of one thousand dollars (\$1,000) per
6 person;

7 (ii) loss of income to an injured person usually
8 engaged in a remunerative occupation or his dependents, of
9 not less than one-hundred ONE HUNDRED THIRTY-SEVEN dollars
10 ~~{100}~~ (\$137) per week, and for not less than a period of
11 twenty-six (26) weeks (COMPENSATION FOR LOSS OF INCOME FROM
12 WORK SHALL BE REDUCED BY ANY INCOME FROM SUBSTITUTE WORK
13 PERFORMED BY THE INJURED PERSON OR BY INCOME THE INJURED
14 PERSON WOULD HAVE EARNED IN AVAILABLE APPROPRIATE SUBSTITUTE
15 WORK WHICH HE WAS CAPABLE OF PERFORMING BUT UNREASONABLY
16 FAILED TO UNDERTAKE);

17 (iii) expenses reasonably incurred for services in lieu
18 of those the injured person would have normally performed,
19 without income, had he not been injured, of not less than
20 twelve dollars (\$12) per day or for not less than a period
21 of twenty-six (26) weeks.

22 Section 4. There is a new R.C.M. section numbered
23 40-5904 that reads as follows:

24 40-5904. ~~Damage-to-motor-vehicle. A-person,-firm,~~
25 ~~corporation,-state-or-local-subdivision-shall-not-recover~~

~~from another person, firm, corporation, state or local subdivision other than his own insurance company through first-party coverage, for damages arising out of injury to or destruction of a motor vehicle except for damages intentionally caused by the person, firm, corporation, state or local subdivision from whom recovery is sought, provided, however, this section shall not apply to damage which arises out of the ownership, operation, maintenance or use of a parked vehicle unless any of the following occur:~~

~~(1) The vehicle was parked in such a way as to cause unreasonable risk of the damage which occurred.~~

~~(2) The injury was a direct result of physical contact with equipment permanently mounted on the vehicle while the equipment was being operated or used or property being lifted onto or lowered from the vehicle in the loading or unloading process.~~

PRIORITY OF APPLICABILITY OF SECURITY FOR PAYMENT OF BENEFITS. (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 BENEFITS IS THE SECURITY COVERING THE VEHICLE OR, IF NONE, THE SECURITY UNDER WHICH THE INJURED PERSON IS AN 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 BENEFITS IS THE SECURITY COVERING THE VEHICLE, OR, IF NONE, THE SECURITY UNDER WHICH THE INJURED PERSON IS AN INSURED.

(3) IN THE CASE OF ANY OTHER PERSON WHOSE INJURY ARISES FROM THE MAINTENANCE OR USE OF A MOTOR VEHICLE DESCRIBED IN SUBSECTION (1) OR (2) WHO IS NOT A DRIVER OR OCCUPANT OF ANOTHER INVOLVED MOTOR VEHICLE, THE SECURITY FOR THE PAYMENT OF BENEFITS IS THE SECURITY COVERING THE VEHICLE, OR IF NONE, THE SECURITY UNDER WHICH THE INJURED PERSON IS AN INSURED.

(4) IN ALL OTHER CASES, THE FOLLOWING PRIORITIES APPLY:

(A) THE SECURITY FOR PAYMENT OF BENEFITS APPLICABLE TO INJURY TO AN INSURED IS THE SECURITY UNDER WHICH THE INJURED PERSON IS AN INSURED.

(B) THE SECURITY FOR PAYMENT OF BENEFITS APPLICABLE TO INJURY TO THE DRIVER OR OTHER OCCUPANT OF AN INVOLVED MOTOR VEHICLE WHO IS NOT AN INSURED IS THE SECURITY COVERING THAT VEHICLE.

(C) THE SECURITY FOR PAYMENT OF BENEFITS APPLICABLE TO INJURY TO A PERSON NOT OTHERWISE COVERED WHO IS NOT THE DRIVER OR OTHER OCCUPANT OF AN INVOLVED MOTOR VEHICLE IS THE SECURITY COVERING ANY INVOLVED MOTOR VEHICLE. AN UNOCCUPIED

1 PARKED VEHICLE IS NOT AN INVOLVED MOTOR VEHICLE UNLESS IT
 2 WAS PARKED SO AS TO CAUSE UNREASONABLE RISK OF INJURY.

3 (5) IF TWO OR MORE OBLIGATIONS TO PAY BENEFITS ARE
 4 APPLICABLE TO AN INJURY UNDER THE PRIORITIES SET OUT IN THIS
 5 SECTION, BENEFITS ARE PAYABLE ONLY ONCE AND THE INSURER
 6 AGAINST WHOM A CLAIM IS ASSERTED SHALL PROCESS AND PAY THE
 7 CLAIM AS IF WHOLLY RESPONSIBLE, BUT HE IS THEREAFTER
 8 ENTITLED TO RECOVER CONTRIBUTION PRO RATA FOR THE BENEFITS
 9 PAID AND THE COSTS OF PROCESSING THE CLAIM. WHERE
 10 CONTRIBUTION IS SOUGHT AMONG INSURERS RESPONSIBLE UNDER
 11 CLAUSE (C) OF SUBSECTION (4), PRORATION SHALL BE BASED ON
 12 THE NUMBER OF INVOLVED MOTOR VEHICLES.

13 (6) WHERE AN INSURER PAYS BENEFITS WHICH ANOTHER
 14 INSURER IS OBLIGATED TO PAY UNDER THE PRIORITY PROVIDED IN
 15 THIS SECTION, THE INSURER THAT PAYS IS SUBROGATED TO ALL
 16 RIGHTS OF THE PERSON TO WHOM BENEFITS ARE PAID.

17 (3) The damage was sustained by a person while
 18 occupying, entering into or alighting from the vehicle.

19 Section 5. There is a new R.C.M. section numbered
 20 40-5905 that reads as follows:

21 40-5905. Benefits, when payable -- interest.
 22 (1) Benefits payable under section 3(2)(C) of this act are
 23 payable, without regard to fault, monthly as loss accrues.
 24 Benefits are overdue if not paid within thirty (30) days
 25 after the insurer receives reasonable proof of the fact and

1 amount of loss. Overdue payments bear interest at the rate
 2 of one and one-half percent (1-1/2%) per month.

3 (2) WHEN AN INSURER HAS PAID OR IS OBLIGATED TO PAY
 4 BENEFITS FOR LOSS ARISING OUT OF A MOTOR VEHICLE ACCIDENT IT
 5 HAS A RIGHT OF REIMBURSEMENT AMONG AND BETWEEN INSURERS
 6 BASED UPON A DETERMINATION OF COMPARATIVE NEGLIGENCE.

7 Section 6. There is a new R.C.M. section numbered
 8 40-5906 that reads as follows:

9 40-5906. Attorney's fees. A claimant is entitled to a
 10 reasonable attorney's fee, TO BE PAID BY THE INSURER, for
 11 representation in an action for benefits which are overdue
 12 as provided in section 5. NO PART OF THE ATTORNEY'S FEE FOR
 13 REPRESENTING A CLIENT MAY BE DEDUCTED FROM BENEFITS
 14 OTHERWISE DUE THE CLAIMANT AND NO PART OF THE BENEFITS MAY
 15 BE APPLIED TO THE FEE.

16 Section 7. There is a new R.C.M. section numbered
 17 40-5907 that reads as follows:

18 40-5907. ~~Benefits-not-subject-to-subrogation-----other~~
 19 ~~tort--action-not-restricted----collateral-source-recovery---~~
 20 ~~benefits-paid-submitted--to--court,---(1)--Benefits--payable~~
 21 ~~under--section--3--(2)--of--this-act-shall-not-be-subject-to~~
 22 ~~subrogation,--provided,--however,--that--nothing--in--this--act--may~~
 23 ~~be--construed--to--limit--actions--against--a--manufacturer--or~~
 24 ~~other--person--liable--as--a--result--of--defective--design,~~
 25 ~~construction--or--other--product--liability,--or--any--other--tort~~

1 action;

2 ~~{2}~~--Recovery--by--an--employee--from--his--employer--under

3 the--Federal--Employer's--liability--Act;--Workmen's--Compensation

4 Act--or--similar--acts;--for--injury--incurred--in--an--accident

5 which--occurs--while--he--is--in--the--course--and--scope--of--his

6 employment;--precludes--a--similar--recovery--under--this--act;--but

7 compensation--or--benefits--paid--hereunder--shall--be--creditable

8 against--any--claim--for--injury;--under--the--Federal--Employer's

9 liability--Act;--Workmen's--Compensation--Act--or--similar--acts;

10 and--may--be--used--by--the--employer--as--a--setoff--against--any

11 subsequent--recovery--under--such--an--act--or--against--any

12 benefits--provided--by--the--employer--from--any--collateral

13 source; COLLATERAL SOURCE RECOVERY. (1) IN THE EVENT A

14 PERSON ENTITLED TO BENEFITS UNDER SECTION 3(C) OF THIS ACT

15 IS ALSO ENTITLED TO WORKMEN'S COMPENSATION BENEFITS AS A

16 RESULT OF THE SAME ACCIDENT, THEN THE BENEFITS PAYABLE UNDER

17 SECTION 3(C) SHALL BE REDUCED BY THE AMOUNT TO WHICH THE

18 PERSON IS ENTITLED UNDER THE WORKMEN'S COMPENSATION LAW.

19 ~~{3}~~(2) In the event of a trial between parties

20 involved in an accident, any benefits paid under section

21 ~~3~~(2)(C) of this act shall be submitted to the court out of

22 the hearing of the jury, and the court shall then deduct the

23 amount of benefits paid from the total amount of the award

24 or recovery.

25 Section 8. There is a new R.C.M. section numbered

1 40-5908 that reads as follows:

2 40-5908. Certificate as proof of coverage -- notice of

3 cancellation, termination, failure to renew insurance --

4 highway patrol may obtain registration and license plates --

5 penalty. (1) ~~No--registration--of--motor--vehicles--shall--be~~

6 ~~issued--unless--proof--of--motor--vehicle--liability--insurance~~

7 ~~coverage--or--proof--of--self--insurance--shall--be--furnished--to~~

8 ~~the--county--treasurer;--if--proof--is--of--motor--vehicle~~

9 ~~liability--insurance--it--must--be--in--the--form--of--a--written~~

10 ~~certificate--of--an--insurance--carrier--or--agent--authorized--to~~

11 ~~do--business--in--this--state--certifying--that--there--is--in--effect~~

12 ~~motor--vehicle--liability--insurance--covering--the--motor--vehicle~~

13 ~~for--which--registration--is--sought;--if--proof--is--of~~

14 ~~self--insurance--it--must--be--in--the--form--of--a--written~~

15 ~~certificate--from--the--Montana--highway--patrol--chief--indicating~~

16 ~~compliance--with--paragraph--{2}--herein;--the--form--of--such~~

17 ~~certificates--shall--be--prescribed--by--the--state--commissioner~~

18 ~~of--insurance;~~

19 ~~{2}~~--Security--for--the--payment--of--the--benefits--set--forth

20 in--this--act--may--be--provided--with--respect--to--any--motor

21 vehicle--by--any--other--method--approved--by--the--Montana--highway

22 patrol--board--as--affording--security--equivalent--to--that

23 afforded--by--a--policy--of--insurance;--provided--proof--of--such

24 security--is--filed--and--continuously--maintained--with--the

25 Montana--highway--patrol--board--throughout--the--registration

1 ~~period.--The person filing such security shall have all of~~
 2 ~~the obligations and rights of an insurer under this chapter.~~
 3 ~~Whenever the context permits, the word "insurer," as used in~~
 4 ~~this chapter, includes any such person.~~ NO PERSON MAY
 5 REGISTER OR REREGISTER A MOTOR VEHICLE UNLESS PROOF THAT THE
 6 VEHICLE IS COVERED BY SECURITY AS REQUIRED BY SECTION 3 OF
 7 THIS ACT, OR PROOF OF SELF-INSURANCE IS FURNISHED TO THE
 8 COUNTY TREASURER. PROOF OF SECURITY SHALL BE SUBMITTED IN A
 9 FORM PRESCRIBED BY THE INSURANCE COMMISSIONER. PROOF OF
 10 SELF-INSURANCE SHALL BE IN THE FORM PRESCRIBED BY THE
 11 HIGHWAY PATROL.

12 ~~{3}(2)~~ Insurers authorized to write NO-FAULT motor
 13 vehicle ~~liability~~ insurance in this state shall inform the
 14 highway patrol chief within ~~fifteen-{15}~~ THIRTY (30) days of
 15 the cancellation, termination or failure to renew THE
 16 NO-FAULT motor vehicle ~~liability~~ insurance issued to a
 17 resident of this state. Such information shall give the
 18 effective cancellation, termination or non-renewal date of
 19 such motor vehicle ~~liability~~ insurance and shall designate
 20 by explicit description or appropriate reference all motor
 21 vehicles covered thereby and the names of all persons named
 22 in such motor vehicle ~~liability~~ insurance.

23 ~~{4}(3)~~ Whenever new NO-FAULT motor vehicle ~~liability~~
 24 insurance is issued to cover a motor vehicle previously
 25 insured by motor vehicle ~~liability~~ insurance which has been

1 cancelled, terminated or not renewed, the person in whose
 2 name the motor vehicle is registered shall file with the
 3 highway patrol chief the written certificate of an insurance
 4 carrier ~~as provided in section 8 of this act.~~

5 ~~{5}(4)~~ The Montana highway patrol may obtain physical
 6 possession of motor vehicle registration certificates and
 7 motor vehicle license plates for any motor vehicle not
 8 insured hereunder.

9 ~~{6}(5)~~ Any ~~insurance company, carrier or agent~~
 10 ~~authorized to write motor vehicle liability insurance in~~
 11 ~~this state~~ PERSON who knowingly or willingly falsifies any
 12 written certificate representing proof of NO-FAULT motor
 13 vehicle ~~liability~~ insurance ~~or fails to inform the highway~~
 14 ~~patrol chief of the cancellation, termination or failure to~~
 15 ~~renew motor vehicle liability insurance~~ as provided in
 16 ~~section 8-{2} of this act shall be fined not more than one~~
 17 ~~thousand dollars (\$1,000) or imprisoned not to exceed thirty~~
 18 ~~(30) days, or both.~~

19 ~~{7}~~ ~~Any person who drives or allows to be driven a~~
 20 ~~non-insured motor vehicle upon any highway or commits any~~
 21 ~~other violation of this act shall be fined not more than one~~
 22 ~~thousand dollars-{1,000} or imprisoned not to exceed thirty~~
 23 ~~{30} days, or both.~~

24 Section 9. There is a new R.C.M. section numbered
 25 40-5909 that reads as follows:

1 40-5909. Insurers regulated by insurance code --
 2 premium tax payment. Every insurer writing motor vehicle
 3 liability insurance under the provisions of this act shall
 4 be regulated by the Montana insurance code, and shall pay
 5 the premium tax set forth in section 40-2821, R.C.M. 1947.

6 Section 10. There is a new R.C.M. section numbered
 7 40-5910 that reads as follows:

8 40-5910. Nonresident motor vehicle insurance coverage.
 9 The motor vehicle liability insurance of any nonresident
 10 driver using Montana highways shall be automatically
 11 reformed at the state border so that the limits of the
 12 liability and the kinds of coverage afforded shall be as set
 13 forth in this act, in lieu of the insurance otherwise
 14 provided, but only to the extent required by this act and
 15 only with respect to the operation or use of a motor vehicle
 16 in this state.

17 Section 11. There is a new R.C.M. section numbered
 18 40-5911 that reads as follows:

19 40-5911. (1) An assigned claims bureau and plan shall
 20 be organized and maintained. Insurers authorized to write
 21 motor vehicle liability insurance in this state are
 22 authorized, subject to approval and regulation by the
 23 commissioner of insurance, to organize and maintain an
 24 assigned claims bureau and an assigned claims plan, and to
 25 formulate and from time to time amend rules and regulations

1 for their operations and the assessment of costs on a fair
 2 and equitable basis consistent with the provisions of this
 3 chapter. In default of the organization and continued
 4 maintenance of an assigned claims bureau and assigned claims
 5 plan, the commissioner of insurance shall organize and
 6 maintain such a bureau and plan.

7 (2) Every insurer writing motor vehicle liability
 8 insurance in this state is required to participate in the
 9 assigned claims bureau and the assigned claims plan.

10 (3) Persons entitled to claim through the assigned
 11 claims plan and the benefits to which they are entitled are
 12 as follows:

13 (a) Any person entitled to claim because of accidental
 14 bodily injury arising out of the ownership, operation,
 15 maintenance or use of a motor vehicle as a motor vehicle in
 16 this state may obtain insurance benefits set forth in
 17 section 3(2)(a) of this act through the assigned claims plan
 18 established pursuant to this chapter if:

19 (i) No motor vehicle liability insurance is applicable
 20 to the injury, or

21 (ii) No motor vehicle liability insurance applicable to
 22 the injury can be identified, or

23 (iii) The only identifiable motor vehicle liability
 24 insurance applicable to the injury is, because of financial
 25 inability of one or more insurers to fulfill their

1 obligations, inadequate to provide benefits up to the
 2 maximum prescribed (in which last case all unpaid benefits
 3 due or coming due are subject to being collected under the
 4 assigned claims plan, and the insurer to which the claim is
 5 assigned, or the bureau of assigned claims if the claim is
 6 assigned to it, is entitled to reimbursement from the
 7 defaulting insurers to the extent of their financial
 8 responsibility).

9 (4) A person claiming through the assigned claims plan
 10 shall notify the bureau of his claim within the time that
 11 would have been allowed for filing an action for motor
 12 vehicle liability insurance benefits had there been in
 13 effect identifiable coverage applicable to the claim. The
 14 bureau shall promptly assign the claim in accordance with
 15 the plan and notify the claimant of the identity and address
 16 of the insurer to which the claim is assigned (or of the
 17 bureau if the claim is assigned to it). No action by the
 18 claimant shall be commenced later than thirty (30) days
 19 after receipt of notice of the assignment or the last date
 20 on which the action could have been commenced against an
 21 insurer of identifiable coverage applicable to the claim,
 22 whichever is later.

23 (5) The assignment of claims shall be made according
 24 to rules and regulations that assure fair allocation of the
 25 burden of assigned claims among insurers doing business in

1 the state on a basis reasonably related to the volume of
 2 motor vehicle liability insurance they write. Insurers to
 3 whom claims have been assigned shall make prompt payment of
 4 loss in accordance with the terms of this act and shall
 5 thereupon be entitled to reimbursement by the bureau for
 6 such payments and the established loss adjustment costs.
 7 The insurer to whom a claim is assigned shall preserve and
 8 enforce all rights to indemnity or reimbursement against
 9 third parties to the extent authorized by this act and
 10 account to the assigned claims bureau therefor.

11 (6) Losses paid, the cost of adjusting such losses and
 12 costs incurred in the operation of the bureau shall be
 13 assessed against insurers according to rules and regulations
 14 that assure fair allocation among insurers writing motor
 15 vehicle liability insurance in the state, on a basis
 16 reasonably related to the volume of personal protection
 17 insurance they write.

18 Section 12. There is a new R.C.M. section numbered
 19 40-5912 that reads as follows:

20 40-5912. ~~Tort--liability--retained. Tort---liability~~
 21 ~~arising--from--the-ownership,-maintenance,-or-use-of-a-motor~~
 22 ~~vehicle-within-this-state-is-retained,-except--as--otherwise~~
 23 ~~provided--herein.~~ RESTRICTIONS ON TORT LIABILITY. TORT
 24 LIABILITY WITH RESPECT TO ANY INJURY ARISING OUT OF THE
 25 MAINTENANCE OR USE OF A MOTOR VEHICLE IS RESTRICTED AS

1 FOLLOWS: (1) AN OWNER OF A MOTOR VEHICLE INVOLVED IN AN
 2 ACCIDENT REMAINS LIABLE IF, AT THE TIME OF THE ACCIDENT, THE
 3 VEHICLE WAS NOT A SECURED VEHICLE.

4 (2) A PERSON IN THE BUSINESS OF DESIGNING,
 5 MANUFACTURING, REPAIRING, SERVICING, OR OTHERWISE
 6 MAINTAINING MOTOR VEHICLES REMAINS LIABLE FOR INJURY ARISING
 7 OUT OF A DEFECT IN SUCH MOTOR VEHICLE WHICH IS CAUSED OR NOT
 8 CORRECTED BY AN ACT OR OMISSION IN THE COURSE OF SUCH
 9 BUSINESS, OTHER THAN A DEFECT IN A MOTOR VEHICLE WHICH IS
 10 OPERATED BY SUCH BUSINESS.

11 (3) AN INDIVIDUAL REMAINS LIABLE FOR INJURING ANOTHER
 12 INDIVIDUAL, EITHER INTENTIONALLY OR AS A CONSEQUENCE OF
 13 INTENDING TO INJURE HIMSELF.

14 (4) A PERSON REMAINS LIABLE FOR LOSS WHICH IS NOT
 15 COMPENSATED BECAUSE OF ANY LIMITATION UNDER SECTION 3(C) (II)
 16 OR 3(C) (III) OF THIS ACT.

17 (5) A PERSON REMAINS LIABLE FOR PAIN, SUFFERING,
 18 MENTAL ANGUISH, INCONVENIENCE, PHYSICAL IMPAIRMENT AND OTHER
 19 NON-PECUNIARY DAMAGE IF THE ACCIDENT RESULTS IN:

20 (A) DEATH, SERIOUS AND PERMANENT DISFIGUREMENT, OR
 21 OTHER SERIOUS AND PERMANENT INJURY; OR

22 (B) THE SUM OF THE FOLLOWING EXCEEDS ONE THOUSAND
 23 DOLLARS (\$1,000):

24 (I) REASONABLE MEDICAL EXPENSE BENEFITS,

25 (II) THE VALUE OF FREE MEDICAL OR SURGICAL CARE OR

1 NECESSARY NURSING SERVICES PERFORMED BY A RELATIVE OF THE
 2 INJURED PERSON OR A MEMBER OF HIS HOUSEHOLD; OR

3 (C) MORE THAN THIRTY (30) CONTINUOUS DAYS OF TOTAL
 4 DISABILITY. AS USED IN THIS SUBSECTION, "TOTAL DISABILITY"
 5 MEANS MEDICALLY DETERMINABLE PHYSICAL OR MENTAL IMPAIRMENT
 6 WHICH PREVENTS THE VICTIM FROM PERFORMING ALL OR
 7 SUBSTANTIALLY ALL OF THE MATERIAL ACTS AND DUTIES WHICH
 8 CONSTITUTE HIS USUAL AND CUSTOMARY DAILY ACTIVITIES.

9 Section 13. There is a new R.C.M. section numbered
 10 40-5913 that reads as follows:

11 40-5913. Act supersedes other laws or regulations. If
 12 any provision of this act is in conflict with any other law
 13 of this state, or any rule or regulation promulgated
 14 thereunder, this act shall govern and control, and such
 15 other law, rule or regulation shall be deemed superseded for
 16 the purpose of this act.

17 Section 14. Severability~~---if---any---provision-of-this~~
 18 ~~act-or-its-application-to-any-person-or-circumstance-is-held~~
 19 ~~invalid,-the-remainder-of-this-act-or-the-application-of-the~~
 20 ~~provision-to-other-persons-or-circumstances-is-not-affected,~~
 21 AND CONSTITUTIONALITY. IF ANY PROVISION OF THIS ACT OR THE
 22 APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD TO
 23 BE UNCONSTITUTIONAL OR OTHERWISE INVALID THE REMAINDER OF
 24 THIS ACT AND THE APPLICATION OF SUCH PROVISION TO OTHER
 25 PROVISIONS OR CIRCUMSTANCES SHALL NOT BE AFFECTED THEREBY

1 AND IT SHALL BE CONCLUSIVELY PRESUMED THAT THE LEGISLATURE
2 WOULD HAVE ENACTED THE REMAINDER OF THIS ACT WITHOUT SUCH
3 INVALID OR UNCONSTITUTIONAL PROVISION; PROVIDED THAT IF
4 SECTION 12 OF THIS ACT IS FOUND TO BE UNCONSTITUTIONAL OR
5 INVALID IT SHALL BE CONCLUSIVELY PRESUMED THAT THE
6 LEGISLATURE WOULD NOT HAVE ENACTED THE REMAINDER OF THIS ACT
7 WITHOUT SECTION 12 AND THE ENTIRE ACT SHALL BE HELD INVALID.
8 SECTION 15. THIS ACT IS EFFECTIVE ON JANUARY 1,1976.

-End-